Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act	)	WC Docket No. 07-245
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

REPLY COMMENTS OF PCIA – THE WIRELESS INFRASTRUCTURE ASSOCIATION AND THE HETNET FORUM

PCIA – The Wireless Infrastructure Association and The HetNet Forum ("PCIA") respectfully reply to those comments submitted in response to the Wireline Competition Bureau's May 6, 2015 *Public Notice* in the above-captioned proceedings.[1] As discussed below, numerous commenters express support for the Petition for Reconsideration or Clarification jointly filed by the National Cable and Telecommunications Association, COMPTEL, and tw telecom inc. (collectively, "Petitioners"), which seeks to ensure that pole rates paid by telecom attachers are as close as possible to the cable pole rate formula.[2] Accordingly, the Commission should move expeditiously to clarify the telecom attachment formula, as requested by the Petition. Assertions by utility commenters that action is not needed, however, lack merit and should be rejected.

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[1] Public Notice, *Parties Asked to Refresh Record Regarding Petition to Reconsider Cost Allocators Used to Calculate the Telecom Rate for Pole Attachments*, DA 15-542 (WCB rel. May 6, 2015) ("*Public Notice*"), *summarized*, 80 Fed. Reg. 27626 (May 14, 2015).

[2] *See* Petition for Reconsideration or Clarification of the National Cable and Telecommunications Association, COMPTEL, and tw telecom inc., WC Docket No. 07-245, GN Docket No. 09-51 (filed June 8, 2011) ("Petition").

DISCUSSION

I. THE RECORD SUPPORTS PROMPT COMMISSION ACTION TO CLARIFY THE TELECOM ATTACHMENT FORMULA.

In its comments, PCIA explained that the Commission should clarify or amend its rules to eliminate certain anomalies in the "telecom" attachment rate that may result when the actual number of attaching entities on a pole differs from the number of attaching entities presumed under the Commission's pole attachment rules.[3] Such action will serve the public interest by providing attaching entities and pole owners with greater rate certainty, thereby minimizing the potential for disputes where use of Section 1.417(c)'s presumptive number of attachers results in an unintended disparity between the telecom attachment rate and the cable attachment rate.[4]

Numerous commenters agree with PCIA that the Commission should clarify the telecom attachment rate formula, as requested in the Petition.[5] Verizon, for example, explains that "[q]uestions about the proper cost allocator have been raised in at least half of the complaints filed by telecommunications providers seeking just and reasonable rental rates under the Pole Attachment Order."[6] The Commission can help resolve these disputes and reduce the likelihood

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[3] *See* Comments of PCIA – The Wireless Infrastructure Association and the Hetnet Forum, WC Docket No. 07-245 and GN Docket No. 09-51, at 1-2 (filed June 4, 2015) ("PCIA Comments").

[4] *Id*. at 3.

[5] *See* Comments of American Cable Association, WC Docket No. 07-245 and GN Docket No. 09-51 (filed June 4, 2015) ("ACA Comments"); Comments of COMPTEL and Level 3 Communications, LLC, WC Docket No. 07-245 and GN Docket No. 09-51 (filed June 4, 2015); Comments of Comcast Corporation, WC Docket No. 07-245 and GN Docket No. 09-51 (filed June 4, 2015) ("Comcast Comments"); Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket No. 07-245 and GN Docket No. 09-51 (filed June 4, 2015); Comments of Verizon, WC Docket No. 07-245 and GN Docket No. 09-51 (filed June 4, 2015) ("Verizon Comments").

[6] Verizon Comments at 6.

of future ones by taking action consistent with the Petition: "The added specificity in the Commission's telecom rate formula [proposed in the Petition] will facilitate rate negotiations, reduce the need for Commission oversight, and ensure that the *Pole Attachment Order* achieves its crucial goal of removing market distortions that thwart network expansion and the deployment of broadband nationwide."[7] Comcast makes a similar point, noting "Many of these disputes will likely end up before the Commission – unnecessarily consuming valuable Commission resources. All such disputes, and the associated expense, delay, and legal uncertainty can be avoided by granting the NCTA/COMPTEL Petition."[8]

PCIA likewise agrees with Crown Castle that the Commission must remain vigilant in ensuring that wireless providers are not denied the benefits of the Commission's regulatory scheme for pole attachments, particularly with respect to access to pole tops. In its comments, Crown Castle demonstrated that while many negotiations with electric utilities have resulted in mutually-acceptable attachment agreements, a subset of investor-owned utilities "refuse to recognize the Commission's clear mandate with respect to pole-top attachment rates, with resulting roadblocks, delays and unnecessary cost to vital broadband deployment projects."[9] It is imperative that the Commission's rules and enforcement procedures continue to evolve as necessary to eliminate lingering difficulties that defeat the Commission's larger objective of facilitating aggressive deployment of wireless broadband service throughout the country. As Crown Castle notes, "the Commission's valuable time and resources should be reserved to

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[7] *Id*. at 2-3.

[8] Comcast Comments at 7.

[9] Comments of Crown Castle, WC Docket No. 07-245 and GN Docket No. 09-51, at 3-6 (filed June 4, 2015).

adjudicate good-faith disputes, and not be used to address utilities choosing to brazenly ignore the rules."[10] PCIA therefore agrees that "[i]n the face of these negotiating tactics, it is clear the Commission must once again reinforce the application of telecom rates to pole-top attachments."[11]

II. THE COMMISSION SHOULD REJECT ASSERTIONS BY UTILITY COMMENTERS THAT ACTION IS NOT NEEDED.

The Commission should reject assertions by the Utilities Telecom Council ("UTC") that broadband deployment, broadband rates, and broadband competition have not improved since the Commission revised its pole attachment rate formula for telecommunications services in 2011.[12] The Commission's *Seventeenth Report* on mobile wireless competition shows that none of these are true with respect to mobile wireless broadband service.[13] For instance, as of January 2014, mobile wireless broadband service was available to 99.8% of the total U.S. population and 98.5% of the U.S. rural population.[14] Approximately 94% of the total U.S. population was served by three or more mobile broadband service providers, and 94% of the U.S. rural population was served by at least two such providers.[15] And wireless providers in the U.S. have

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[10] *Id*. at 5.

[11] *Id*.

[12] *See* Comments of Utilities Telecom Council, WC Docket No. 07-245 and GN Docket No. 09-51, at 1-2 (filed June 4, 2015) ("UTC Comments").

[13] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 – Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Wireless Service*, Seventeenth Report, 29 FCC Rcd 15311 (2014) ("*Seventeenth Report*").

[14] *Id.* at 15429 tbl. III.A.v., 15431 tbl. III.A.viii.

[15] *Id.*

spent more than $134 billion in capital investments during the past five years and $33.1 billion alone in 2013, a 10.1% increase over the amount spent in 2012.[16] Indeed, mobile wireless broadband providers continue offer a wide and evolving variety of data pricing plans, with price cuts being the predominant form of changes to the monthly pricing of postpaid service plans.[17]

Simply put, there is no merit to suggestions that mobile broadband consumers have not benefitted following the 2011 *Pole Attachment Order*.[18] To the contrary, mobile wireless broadband is a highly competitive market that is continuing to produce more value for consumers in terms of coverage, pricing, competition, and investment – not less.

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[16] *Id.* at 15394 ¶ 170.

[17] *Id.* at 15379 ¶ 139; *see also id.* at 15375-93 ¶¶ 126-167.

[18] *See* UTC Comments at 2 (claiming that "[a]ll of the promised benefits of reduced rates for pole attachments have proven empty").

CONCLUSION

For the reasons stated above and in its comments, PCIA supports the Petition and urges the Commission to act expeditiously thereon. The Commission should also take this opportunity to again reinforce the application of telecom rates to pole-top attachments.

Respectfully submitted,

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