1901 Sixth Avenue North • Suite 1500 • P.O. Box 306 (35201) • Birmingham, AL 35203-4642 www.balch.com

BALCH
& BINGHAM LLP

ERIC B. LANGLEY
t: (205) 226-8772
f: (205) 488-5680
e: elangley@balch.com

October 7, 2015

VIA ECFS

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Petition to Further Reduce the Telecom Pole Attachment Rate**
WC Docket No. 07-245; GN Docket No. 09-51

EX PARTE NOTICE

Dear Ms. Dortch:

On October 6, 2015, Mike Tautphaeus (Ameren), Tom St. Pierre (AEP), Scott Freeburn (Duke Energy), Adam Padgett (Tampa Electric), Robin Bromberg (Balch & Bingham) and I met separately with the following:

- Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel;
- Nick Degani, Legal Advisor to Commissioner Pai; and
- Commissioner O'Rielly and Amy Bender, Legal Advisor to Commissioner O'Rielly.

During those meetings, we urged the Commission to deny the petition to further reduce the telecom pole attachment rate filed by NCTA, COMPTEL and tw telecom in the above-referenced dockets. Alternatively, and at a minimum, we urged the Commission to consider further changes to the telecom rate formula, if any, through a notice of proposed rulemaking rather than a request to "refresh the record" on a four year old petition for reconsideration of the Commission's 2011 Order on pole attachments.

We explained that pole attachment rentals are a dollar for dollar credit to the electric retail rate base, and that the Commission's 2011 Pole Attachments Order already has reduced the telecom rate by more than 1/3 in every instance, even where a pole owner rebuts the Commission's presumed number of attaching entities. We further explained that the current telecom rate formula is not discouraging broadband deployment in any way because the only group of attachers who possibly stand to pay more in pole attachment rentals as a result of the Commission's reclassification of

broadband internet access service as a "telecommunications service" are cable companies, whose networks are already deployed and for whom the roll-out of additional services will have no impact on pole attachment rates.

We explained that the petition, if granted, would render the statutory cost allocators in section 224(e) meaningless. Further, and more importantly, we explained that the petition's proposed manner of defining "cost" for purposes of section 224(e) would assume that the exact same pole decreases in cost each time an attachment is added. Though different poles in different areas might fairly be deemed to have a different "cost" for ratemaking purposes (as is the case in the Commission's 2011 changes to the telecom rate formula), the same pole in the same place cannot be deemed to have a floating cost depending on the number of entities attached..

We also discussed other points consistent with (1) the attached handout, which was provided to Mr. Litman, Mr. Degani, Commissioner O'Rielly, and Ms. Bender, and (2) the comments and reply comments filed by Ameren Corp., AEP Service Corp., Duke Energy Corp., Oncor Electric Delivery Company LLC, Southern Company and Tampa Electric Company in June 2015. Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this notice of ex parte communication is being filed electronically in the above referenced dockets.

Very truly yours,

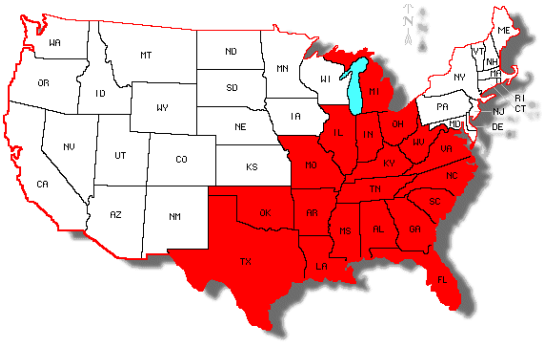
/s/ Eric B. Langley

EBL:lk

cc: Travis Litman
Nick Degani
Commissioner Michael O'Rielly
Amy Bender
Mike Tauthpaheus (*via email*)
Tom St. Pierre (*via email*)
Scott Freeburn (*via email*)
Adam Padgett (*via email*)
Robin Bromberg (*via email*)

NCTA's Petition to Further Reduce the Telecom Pole Attachment Rate
WC Docket No. 07-245; GN Docket No. 09-51

- Commission should **DENY** the petition.
- The Electric Utilities serve 19 different states, 12 of which fall under the Commission's pole attachment jurisdiction.



- Pole attachment rentals are a dollar for dollar credit to the electric retail rate base.
- 2011 Order already reduced telecom rate by more than 1/3 in **EVERY** instance.
  - Further reductions wouldn't just continue to shield cable operators from paying fair share of pole costs,
  - But would also reduce the share currently paid by CLEC, wireless, broadband providers.
- Current telecom rate formula (using $75 annual pole cost hypothetical):

Average # of Attaching Entities	Rate
5.0	$5.54
4.0	$6.60
3.5	$7.35
3.0	$8.36
2.5	$9.77

- Current telecom rate formula does NOT discourage broadband deployment.
  - Only group that will even possibly pay slightly more are CATVs, who are already deployed.
  - Pole attachment rentals are less than 1% of operating expenses.
  - If current telecom rate formula discourages broadband deployment, why did Commission adopt it in the first place?
- Current telecom rate formula applies to **EVERYONE** who offers broadband
  - There is no longer even an argument that the telecom rate is discriminatory.

- 2011 Order already reduced Electric Utilities' pole cost recovery in two ways:

  (1) Reduction in telecom rate by more than 1/3
  (2) Downward pressure on ILEC joint use rates

- Many electric utilities were rebutting the presumption long before either the Open Internet Order or the 2011 Order based on data they spent significant time and money to gather in reliance on the Commission's rules.

  - Some electric utilities don't rebut the presumption at all.

- This is not an increase in pole attachment rates for CATVs.

  - CATVs have **ALWAYS** been subject to the telecom rate upon offering telecom service.
  - Only difference is that, now, CATVs can no longer argue that they are not offering telecom service.

- NCTA's proposal violates the spirit of the law, even if it complies with the letter of the law:

  - Renders statutory cost allocators meaningless in **ALL** instances
  - Assumes that the **SAME POLE** costs less with each additional attacher

- Commission should **DENY** petition.

  - Rules shouldn't change based on **WHO** is subject to them.
  - If Commission believes telecom rate should change, then it should rebuild the rate formula from the ground up rather than continuing to add-on piecemeal.