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October 8, 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 7, 2015, Mike Tautphaeus (Ameren), Tom St. Pierre (AEP), Scott Freeburn (Duke Energy), Robin Bromberg (Balch & Bingham) and I met with the following:

- Jonathan Reel, Competition Policy Division, Wireline Competition Bureau;
- Randy Clarke, Division Chief, Competition Policy Division, Wireline Competition Bureau;
- Madeleine Findley, Deputy Bureau Chief, Office of the Bureau Chief, Wireline Competition Bureau;
- Marcus Maher, Associate General Counsel, Administrative Law Division, Office of General Counsel (who attended via telephone); and
- Stephanie Weiner, Associate General Counsel and Special Advisor to Chairman Wheeler on Internet Law and Policy.

During that meeting, we urged the Commission to deny the petition to further reduce the telecom pole attachment rate filed by NCTA, COMPTTEL 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. In addition, we explained that further reductions to electric utilities' already-reduced pole cost recovery could result in a declining interest in pole change-outs where there is insufficient capacity on existing poles.

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. Reel, Mr. Clarke, Ms. Findley, and Ms. Weiner, 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

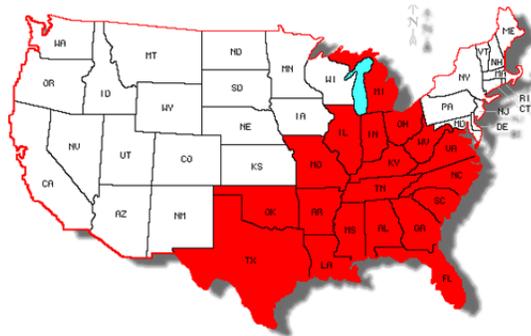
EBL:lk

cc: Jonathan Reel  
Randy Clarke  
Madeleine Findley  
Stephanie Weiner  
Marcus Maher  
Mike Tauthphaeus (*via email*)  
Tom St. Pierre (*via email*)  
Scott Freeburn (*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.



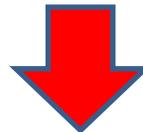
- Pole attachment rentals are a dollar for dollar credit to the electric retail rate base.
- 2011 Order already reduced telecom rate by more than 1/3 in **EVERY** instance.
  - Further reductions wouldn't just continue to shield cable operators from paying fair share of pole costs,
  - But would also 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.