

October 8, 2015

VIA ECFS

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

Re: Notice of *Ex Parte* Presentation -- Implementation of Section 224 of the Act, WC Docket 07-245; A National Broadband Plan for Our Future, GN Docket No. 09-51

Dear Ms. Dortch:

On October 7 and October 8, 2015, Shane Turley, Senior Vice President and General Counsel, Dennis Francis, Executive Vice President and Chief Technology Officer, David Warden, Vice President – Fiber Deployment, of Conterra Broadband Services, and the undersigned met separately with: Amy Bender, Legal Advisor to Commissioner O’Rielly; Nicholas Degani, Legal Adviser to Commissioner Pai; Stephanie Weiner, Senior Legal Advisor to Chairman Wheeler and Madeleine Findley, Deputy Bureau Chief, Wireline Competition Bureau; and Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel.

During these meetings, we encouraged the Commission to grant the Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, COMPTEL and tw telecom, Inc., WC Docket No. 07-245 (filed June 8, 2011) (“Petition”).¹ We explained that access to poles upon reasonable rates, terms and conditions is essential to Conterra’s ability to continue deploying fiber and high speed broadband connectivity to the nation’s underserved communities. Conterra, which has broadband facilities serving schools, libraries and health care providers in more than 20 states, is in growth mode. It has built thousands of miles of network over the last two years, and plans to continue creating jobs and deploying fiber and high speed broadband connectivity throughout its operating footprint.

¹ See also Public Notice, *Parties Asked to Refresh Record Regarding Petition to Reconsider Cost Allocators Used to Calculate the Telecom Rate for Pole Attachments*, WC Docket No. 07-245, GN Docket No. 09-51 (rel. May 6, 2015).

Currently Conterra is paying pole attachment rates to pole owners governed by the FCC's revised telecom formula that exceed the rates being charged to cable operators. Upon information and belief, the rates are higher because the pole owners are not using the FCC's presumed number of attaching entities for urban and non-urban areas and/or the appropriate cost adjustment factors. These pole owners include investor owned utilities in states that have not certified to regulate pole attachments as well as utilities in other states that are required by law to set rates using the FCC's revised telecom formula.² Conterra explained that pole attachment related costs comprise a significant percentage of its deployment expenses and that higher pole attachment rents mean that less money is available for fulfilling the company's mission of providing high-bandwidth services to schools, libraries, health care providers and businesses in rural America.

Based upon Conterra's experience, there is disagreement amongst pole owners concerning which poles should be used to derive the average number of attaching entities and how pole owner service areas should be defined (urban vs. non-urban). In some cases, utilities are blending these two factors to create artificially high pole rents. Conterra also explained that if the formula is not adjusted as requested in the Petition, that attachment rates in some underserved areas could be higher based solely on the fact that fewer entities are attached to the pole located in these underserved areas. Such higher rents would be at odds with the Commission's agenda to promote broadband deployment to underserved areas. Conterra also provided information concerning the inspection fees, make-ready and other directly reimbursable charges that Conterra pays to pole owners in addition to rent.

We also discussed the fact that the cable rate formula has been upheld by courts as compensatory and that the FCC's 2011 amendment to its pole attachment rate formula aligning cost-adjustment factors with the number of attaching entities was also upheld. And, we explained that it has been well established in other contested rate proceedings that reliance on the cable rate has no effect on retail utility rates.³

² In Texas, for example, municipal pole attachment rates are based on the revised telecom rate. *See* Texas Public Utilities Code § 54.204(c) (capping pole attachment rates at the FCC telecom formula). Similar to what is happening on the federal level, cable operators report that municipal pole owners in Texas are also taking advantage of the loophole.

³ *See e.g. A Complaint and Request for Hearing of Cablevision of Boston Co., D.P.U./D.T.E. 97-82 at 18-19, 45 (Apr. 15, 1998) (finding that the cable formula "meets Massachusetts statutory standards as it adequately assures that [the utility] recovers any additional costs caused by the attachment of [] cables . . . while assuring that the [attachers] are required to pay no more than the fully allocated costs for the pole space occupied by them;" and that setting pole rents at the cable rate will have "minimal" impact on utility ratepayers and "will not require an adjustment of other [utility] rates."); Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Decision 98-10-058, p. 56 (Calif. PUC 1998) (rejecting the telecom rate formula and finding that while the "revenue that the utility realizes from pole attachments under the [cable formula]*

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Conterra very much appreciates the opportunity to have met with the Commissioners' legal advisers and Wireline Competition Deputy Bureau Chief. Please contact the undersigned with any questions you may have.

Respectfully submitted,

/s/ Maria T. Browne

cc: Amy Bender
Nick Degani
Stephanie Weiner
Travis Litman
Madeleine Findley
Dennis Francis (via email)
David Warden (via email)
Shane Turley (via email)

may be less than the amount that could be extracted purely through negotiations, there is no reason to conclude that the reduced revenues constitute an unlawful taking of property. . . the formula does not result in a subsidy. . .”).