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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Pole Attachments, WC Docket No. 07-245

Dear Ms. Dortch:

The National Cable & Telecommunications Association hereby responds to the October 6, 2015 letter submitted by a number of electric utilities¹ in opposition to NCTA's pending reconsideration petition in the above-referenced proceeding.² In their continued attempts to preserve the ability to charge excessive pole attachment rates to broadband providers, the utilities have resurrected several discredited arguments which we will briefly address below.

First, the utilities' statement that granting the petition would "continue to shield cable operators from paying [their] fair share of pole costs" completely ignores consistent and longstanding precedent from the Commission and the courts confirming that the cable rate formula is fully compensatory to pole owners.³ NCTA's petition would ensure that cable operators continue to pay compensatory rates and that telecommunications carriers no longer would be required to pay rates that far exceed these compensatory levels. That is why COMPTEL joined NCTA on the original petition in 2011 and why all types of telecommunications carriers (competitive LECs, incumbent LECs, wireless carriers) have expressed support for granting the petition.⁴

¹ See Letter from Eric Langley, Counsel for Ameren, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245 (filed Oct. 6, 2015) (Utilities Letter).

² See Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, COMPTEL and twtelecom, Inc., WC Docket No. 07-245 (filed June 8, 2011) (NCTA Petition).

³ *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5321, ¶183 (2011) (*2011 Pole Attachment Order*) (citing, e.g., *Alabama Power Co. v. FCC*, 311 F.3d at 1370–71 (“[A]ny implementation of the [Commission’s cable pole attachment rate] (which provides for much more than marginal cost) necessarily provides just compensation.”); *FCC v. Florida Power Corp.*, 480 U.S. 245, 253–54 (1987) (finding that it could not “seriously be argued, that a rate providing for the recovery of fully allocated cost, including the actual cost of capital, is confiscatory”)).

⁴ See, e.g., Letter from Maria T. Browne, Counsel for Conterra Broadband Services, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245 (filed Oct. 8, 2015) (Conterra Letter); Letter from A.J. Burton, Frontier Communications, to Marlene H. Dortch, Secretary, Federal Communications

Second, the suggestion that raising the rates charged to cable operators will have no impact on broadband deployment because cable operators are not deploying new facilities also misses the mark. As NCTA explained, a number of cable operators have received notices of potential increases in pole attachment rates in rural areas where deployment of broadband facilities is still needed.⁵ Members of the American Cable Association have had a similar experience.⁶ Moreover, even if the utilities were correct that cable operators had no plans to expand their networks, allowing utilities to collect millions of dollars in windfall fees for attachments that already have been placed provides no public interest benefit and could reduce the funds available to invest in upgrades of those networks.

Third, the argument that there is no need to change the current regime because it applies to all broadband providers in a nondiscriminatory manner misses the obvious point that the level of those charges matters.⁷ Allowing utilities to continue charging broadband providers rates that exceed the compensatory level of the cable rate formula only can have negative consequences on broadband deployment.⁸ Conversely, granting the petition and ensuring that the rate for

Commission, WC Docket No. 07-245 (filed Aug. 7, 2015) at 1 (“Frontier and ITTA explained that they join the overwhelming support for the Petition . . .”); Letter from Yaron Dori, Counsel for TDS Telecom to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245 (filed July 30, 2015) at 2 (“TDS Telecom endorses this solution, as have many other parties that have filed comments on the Petition.”); Letter from Joshua Bobeck, Counsel for Lightower Fiber Networks to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245 (filed July 30, 2015) at 6 (“[T]he Commission should swiftly grant the petition for reconsideration and should adopt the changes in the telecom rate formula recommended by Petitioners.”); Comments of ITTA-The Voice of Mid-Size Communications Companies, WC Docket No. 07-245 (filed June 4, 2015) at 5 (“ITTA implores the Commission to grant the relief requested by the Petitioners consistent with achieving these public interest benefits.”); Comments of PCIA-The Wireless Infrastructure Association, WC Docket No. 07-245 (filed June 4, 2015) at 4 (“PCIA supports the Petition and urges the Commission to act expeditiously thereon.”); Comments of COMPTEL and Level 3, WC Docket No. 07-245 (filed June 4, 2015) at 4 (“COMPTEL and Level 3 request that the Commission expeditiously adopt the changes and clarifications requested in their Petition for Reconsideration.”); Comments of Verizon, WC Docket No. 07-245 (filed June 4, 2015) (Verizon Comments) at 7 (“The Commission should continue the reform that it began with its 2011 Pole Attachment Order by adopting the rule revisions proposed by the Petitioners . . .”).

⁵ See, e.g., Comments of the National Cable & Telecommunications Association at 6 (“Vyve Broadband, a small cable operator that serves predominantly rural areas, recently received notice from one electric utility that its telecommunications attachment rate was increasing to a level that is 81 percent higher than its cable attachment rate. The increase would cover over 27,000 poles, in an area where it takes more than three poles to reach each subscriber. Requiring a rural cable operator to pay this additional amount significantly increases the cost of operating its existing network and reduces its ability to expand the reach of that network to new customers.”).

⁶ See Letter from Thomas Cohen, Counsel to ACA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245 (filed Oct. 9, 2015) at 3 (“[C]able operators continue to deploy new transmission lines, particularly as they expand into areas where they do not offer service and install fiber to meet exploding broadband demand. Further, increases in attachment rates to supra-compensatory rates would decrease free cash flow needed to upgrade broadband electronics.”).

⁷ See *2011 Pole Attachment Order*, 26 FCC Rcd at 5319, ¶ 179 (“Even beyond the effects of the rate disparity, we anticipate that the absolute level of pole rental rates also is likely to be relevant to decisions regarding what services are provided.”).

⁸ See, e.g., Conterra Letter (“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

Ms. Marlene H. Dortch

October 13, 2015

Page 3

telecommunications attachments is comparable to the rate for cable attachments in all circumstances can only be helpful to broadband deployment and competition, which is what the Commission intended in its *2011 Pole Attachment Order*.⁹

Fourth, the utilities are wrong in suggesting that the Commission should not change the telecommunications rate formula because they already have spent time and money gathering facts to rebut the presumptions used in that formula and exploit the loophole that granting the petition would close. The Commission made clear in the *2011 Pole Attachment Order* that one of the intended benefits of modifying the telecommunications formula was to eliminate disputes regarding the number of attaching parties and thereby save both pole owners and attaching parties the time and expense associated with those disputes.¹⁰ Granting the NCTA petition will finally enable the Commission to achieve this goal.

In sum, the utilities have not identified any reason why the Commission should not grant NCTA's petition. The Commission should move forward expeditiously with an order granting the petition.

Respectfully submitted,

/s/ Steven F. Morris

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cc: S. Weiner
R. Goodheart
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for fulfilling the company's mission of providing high-bandwidth services to schools, libraries, health care providers and businesses in rural America.").

⁹ See *2011 Pole Attachment Order*, 26 FCC Rcd at 5298-99, ¶ 136 ("[W]e believe the telecom rate should be lowered to more effectively achieve Congress' goals under the 1996 Act to promote competition and 'advanced telecommunications capability' by both wired and wireless providers by 'remov[ing] barriers to infrastructure investment,' and the broader pro-competitive goals and policies that Congress directed the Commission to carry out under the 1996 Act.").

¹⁰ *Id.* at 5317, ¶ 174 ("The record here likewise confirms that a low and more uniform rate will reduce disputes and costly litigation about the applicability of "cable" or "telecommunications" rates to broadband, voice over Internet protocol, and wireless services that distort attachers' deployment decisions.").