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

In the Matter of	)	
	)	
Fibertech Networks, LLC, Petition for Rulemaking	)	RM-11303
	)	

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] files these Reply Comments in the above-referenced docket.[2]

DISCUSSION

I. Specific, Detailed Rules Are Inappropriate And Would Not Be Able To Take Into Account Safety, Network Reliability, Or Engineering Concerns.

One of the reasons USTelecom urged the Commission in its Opposition to deny the Fibertech Petition was that "the Commission already has in place rules on access to pole and conduits that are working as intended."[3] USTelecom also stressed that the Commission "already contemplated the need for a comprehensive regime of detailed rules governing pole and conduit access and declined to enumerate such rules."[4] It bears repeating that the "Commission's broad rules and guidelines are designed to account for the significant variances among utility pole and conduit facilities across the nation"[5] and they specifically permit pole and conduit owners "to

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[1] USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

[2] Public Notice, "Pleading Cycles Established for Petition for Rulemaking of Fibertech Networks, LLC," RM-11303, DA 05-3182 (rel. Dec. 14, 2005).

[3] USTelecom Opposition at 1.

[4] *Id.*

[5] *Id.*

deny, or condition, attachers' access to poles and conduit 'for reasons of lack of capacity, safety, reliability or engineering standards.'"[6] A number of commenters raise desired attachment methods as consistent with the best practices sought in the Fibertech Petition. However, many of these desired attachment methods are prime examples of why specific, detailed rules should not be adopted and why the Commission should retain the flexibility specifically provided for in section 224(f)(2) of the 1996 Act.[7] Examples of these problematic attachments are discussed below.

McLeodUSA and segTel argue that pole owners should be required to allow attachers to use boxing and extension arms to access poles even if the pole owner has not previously allowed such techniques.[8] This demand calls into question engineering and safety determinations that each pole owner must make. Many owners do not use boxing or extension arms for their own attachments or allow their use for others' attachments because they pose significant risk of danger to their employees who must access the poles. In instances when pole owners have employed boxing or extension arms it is usually, if not always, because there has been a specific determination that for the specific pole in question the attachment technique is sound from an engineering perspective and is safe. Accordingly, it is appropriate that the use of boxing or extension arms for attachments must be made on a case by case basis. This is exactly the type of situation contemplated when the Commission decided not to adopt specific, detailed attachment rules, but to give deference to owners that deny attachments for engineering and safety reasons.

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[6] *Id.*

[7] Section 224(f)(2) permits a pole or conduit owner to deny "access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." 47 U.S.C. §224(f)(2).

[8] McLeodUSA Comments at 3 and segTel Comments at 3.

In no event should incumbent local exchange carriers (ILECs) be forced to implement attachment practices that they do not use for offering their own service.

segTel also argues that ILECs should be forced to either move their own attachments on poles to the minimum clearance level or allow attachers to cross over ILEC facilities to attach at the lower pole position, claiming that ILECs' own attachments on poles are inefficient and waste space.[9] This demand also calls into question engineering and safety determinations that each pole owner must make, particularly with regard to the specific geographic situation of the poles in question. When ILECs have placed their own pole attachments within the margin of space allotted to them on a pole, but not at the minimum clearance point, they have taken into consideration a number of engineering and public safety concerns. Because ILECs' copper cables are heavier than most other cables, they have the most sag. ILECs must take into consideration the sag factor because, among other things, cables over roads can be snagged by over-height vehicles, road re-grading can raise road levels and decrease clearance between the road and cables to the point where the minimum necessary clearance no longer exists, and ice on cables can cause additional sagging. Good engineering accounts for these types of factors and it is one of the reasons why ILECs are allotted a certain amount of space on poles. Good engineering ensures public safety and network reliability. Allowing attachers to cross over ILEC facilities to be placed beneath ILEC facilities also raises similar engineering and safety concerns.[10] Accordingly, it is appropriate that ILECs should determine the necessary and

[9] segTel Comments at 4.

[10] In addition to engineering and safety factors there would be additional and unnecessary costs imposed on ILECs in the context of pole replacements if other attachers were entitled to locate beneath ILEC facilities, particularly so when ILECs are responsible for removing and replacing old poles. Specifically, ILECs would have to go a pole site in a replacement situation as many as three times for every pole replacement, resulting in additional and unnecessary manpower costs

appropriate placement of their attachments on poles free of second-guessing from other attachers without the same engineering needs or safety concerns. This too is another example of the type of situation the Commission contemplated when it decided not to adopt specific, detailed attachment rules, but to give deference to owners, to establish the best engineering and safety practices for attachments – their own and those of other attachers. In the event that movement of ILEC attachments is appropriate from an engineering and safety perspective, ILECs should be reimbursed for the cost of such movement.[11] Finally, the Commission should be wary of attachers that demand movement of ILEC facilities; it is often the case that such attachers simply seek to avoid make-ready costs.

II. The Commission Should Not Presume A Failure To Comply With Non-Discrimination Rules Based On The Fibertech Petition.

As USTelecom noted in its Opposition, the "Fibertech Petition merely raises generalized, unsupported allegations on what Fibertech claims are unreasonable terms and conditions for access, none of which warrant a rulemaking."[12] With regard to the allegations raised in the Fibertech Petition, there is no evidence of discrimination against attachers on the part of any pole

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for the ILECs. For example, when a pole is replaced, the wires and cables are transferred from the old pole to the new one from the top down. So, if an ILEC is replacing a jointly-owned pole, the ILEC will go to the job site initially to set the pole. After the power company, and perhaps cable television company, transfers its wires, the ILEC would then return to the job site to transfer its own cables in a second visit. After a third-party attacher, such as Fibertech or segTel, transferred its attachments then the ILEC would have to return to the job site for a third time to remove the old pole.

[11] Notably, the placement of many ILEC attachments on poles pre-date the 1996 Act. ILECs should not be penalized by being forced to pay the cost of moving their facilities to the minimum clearance position on a pole when their attachments made prior to 1996 were proper at the time and there could have been no impact on any other attacher. Similarly, they should not be penalized with the cost of moving their facilities when they are acting within their rights to attach anywhere within their allotted space on the pole, particularly in light of their engineering and safety assessments.

[12] USTelecom Opposition at 2.

owner. CompTel, building on the Fibertech allegations, argues for a successive series of findings and actions, bootstrapping violations of sections 224 and 251(b)(4), and imposition of penalties (disgorgement of revenue) and conditions (reinstating unbundling obligations) under section 271(d)(6) upon these allegations.[13] The extreme and unfounded measures proposed by CompTel put the cart before the horse; Fibertech has not even established a need for the pole and conduit access rules sought, much less, shown need to develop rules on how complaints of existing or new access rules are handled.

III. The USTelecom Petition Does Not Demonstrate A Need To Amend The Commission's Rules, Rather A Need To Fully Implement The Act.

As USTelecom stated in its Opposition, the USTelecom Petition is significantly different from the Fibertech Petition. In its Petition, USTelecom seeks a rulemaking that will fully implement the pole attachment provisions of the 1996 Act, providing rules for rights granted under the 1996 Act. On the other hand, the Fibertech Petition is a thinly veiled attempt to impose national rules to address generalized and unsupported allegations of violations of more than adequate Commission rules on access to poles and conduit. Contrary to the claim of Tropos Networks, the Fibertech Petition is distinguishable from the USTelecom Petition and the Fibertech allegations do not warrant a rulemaking.[14]

[13] *See* CompTel Comments at 5-11.

[14] *See* Tropos Networks Comments at 2-3.

CONCLUSION

The Commission should deny the Fibertech Petition for the reasons cited here and in USTelecom's Opposition.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: Robin E. Tuttle

James W. Olson
Indra Sehdev Chalk
Jeffrey S. Lanning
Robin E. Tuttle

Its Attorneys

607 14th Street, NW, Suite 400
Washington, DC 20005
(202) 326-7300

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on March 1, 2006, the aforementioned Reply Comments of The United States Telecom Association was electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to BCPI, at the address identified below, and mailed by U.S. Mail, first class, postage prepaid to Fibertech and its counsel, at the addresses identified below:

BCPI
Portals II
445 12th Street, SW
CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Janice Myles
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
Room 5-C140
445 12th Street, SW
Washington, DC 20554
Janice.myles@fcc.gov

Charles Stockdale
Robert T. Witthauer
Fibertech Networks, LLC
140 Allens Creek Road
Rochester, NY 14618

John T. Nakahata
Brita D. Strandberg
Stephanie Weiner
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, DC 20046

By:_____

Meena Joshi