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May 22, 2006

VIA HAND DELIVERY

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

**Re: In the Matter of Petition for Rulemaking of Fibertech Networks LLC,
Docket No. RM-11303**

Dear Ms. Dortch:

I am writing on behalf of Virtual Hipster Corporation (“Virtual Hipster”) to underscore the importance of the Commission’s undertaking a rulemaking proceeding in response to the petition filed by Fibertech Networks LLC in the captioned matter, and the inclusion of wireless issues in such rulemaking as outlined by Virtual Hipster and other wireless entities, such as T-Mobile, NextG Networks, Inc. and Tropos Networks, in comments filed in this proceeding. As indicated in the those comments, practices being employed by pole owning utilities are resulting in unnecessary delays and unreasonable costs for wireless providers, and thereby are interfering with the Commission’s commendable goal to ensure that all Americans have access to broadband.

Virtual Hipster is a licensed competitive local exchange carrier that provides competitive telephone service, dial-up Internet, broadband wireless Internet, and Voice over IP service to residents and businesses in rural Nevada. In the spirit of the Telecommunications Act of 1996, Virtual Hipster is committed to deploying broadband service to remote and underserved areas of the country at affordable prices.

As with other wireless service providers, however, Virtual Hipster needs access to utility poles in order to deploy broadband. Without access to utility poles at regulated rates, Virtual Hipster will not be able to deliver its broadband services. Instead, Virtual Hipster would be required to construct prohibitively costly new stand-alone towers or building mounted antennas,

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which are disfavored by local jurisdictions, and would necessarily result in delays and added costs—costs that would eventually have to be passed on to consumers in the form of higher rates, or that would simply render deployment economically unfeasible.

Recent natural disasters such as hurricane Katrina demonstrate that wireless technology and the deployment of additional broadband facilities are critical in bringing time-sensitive information to first responders including police, fire departments, government agencies, businesses and residents. In fact, the Commission has lauded broadband and wireless technology as important resources in emergency situations.¹ However, the benefits of broadband and wireless technology cannot be achieved without first ensuring that service providers have access to the required infrastructure.

Virtual Hipster and other wireless service providers have reiterated that affordable and timely access to utility poles are the crux of wireless broadband deployment.² This is largely due to the unique challenges that are faced by these providers, including:

- **Propagation/Coverage Issues.** Wireless transmitters operating on unlicensed frequency bands must be spaced reasonably close together – approximately every 500 meters or ¼ mile – in order to provide adequate, uninterrupted coverage. This means that four to five antenna sites are needed per linear mile.
- **Municipal Opposition.** Local jurisdictions generally disfavor (and sometimes outright prohibit) the construction of new facilities, leaving service providers to seek access to existing facilities.
- **Residential Restrictions.** New residential developments have severely limited the deployment of towers and building mounted antennas for aesthetic reasons. Moreover, utilities are increasingly being installed underground, as opposed to installed on new above-ground facilities. In many cases, the only alternative for antenna sites is legacy utility poles.
- **Unfulfilled Promises of the Telecommunications Act of 1996.** Despite the Commission's best intentions, court challenges have limited the scope and generally increased the price of network elements that incumbent local exchange carriers must make available to competitors.³ Consequently, competitors must search for alternative platforms to support innovative technologies and services.

¹ See Scot Petersen, *At CTIA, Wireless Paving the Way to the Future*, EWEEK.COM, Apr. 5, 2006, at <http://www.eweek.com/article2/0,1759,1946646,00.asp> (quoting FCC Chairman Kevin Martin that “[wireless technology] can absorb natural disasters better and can be put back in place faster”).

² Comments of Tropos Networks at 2; comments of NextG Networks, Inc. at 4; comments Virtual Hipster Corporation at 4.

³ See *U.S. Telecom. Ass'n v. Fed. Comm'n's Comm'n*, 359 F.3d 554 (D.C. Cir. 2004).

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- **Revenue Stream.** Virtual Hipster currently is offering service at \$19.95 per month, though price points are likely to decrease over time. Given a maximum of 10 customers per access point,⁴ each paying \$19.95 per month, Virtual Hipster can earn a maximum of \$200 per access point per month. Virtual Hipster obviously cannot afford to pay rates in the range of \$1,000 per month, such as suggested by some pole owners.

Until the Commission takes decisive action through a rulemaking that unquestionably establishes the rights of wireless pole attachers to access at rates established using the rental formula for telecommunications entities, utilities will continue to dig in their heels and construct barriers to access in the form of exorbitant pole rents, lengthy survey and make-ready time periods, and other unreasonable demands.⁵ These utilities seek to protect their own competitive interests and shareholder profits at the expense of the public interest—which is served by a competitive environment that fosters rapid deployment of broadband and expanded wireless coverage. As more utilities begin to offer competitive services, the situation will only continue to worsen unless the Commission acts to address the wireless issues raised in Fibertech's petition.⁶ In order to enhance effective competition and to protect the rights of competing providers, particularly those serving rural areas, Virtual Hipster strongly encourages the Commission to adopt a rulemaking that clearly delineates pole attachment rights of wireless service providers.

A rulemaking proceeding, and not a complaint proceeding, is the best way to address these issues. Virtual Hipster already has spent countless hours and far too much money attempting to negotiate an agreement with SPPC. It cannot afford to continue pouring time and resources into what is likely to be a protracted dispute with a company with seemingly endless resources to spend preventing access to its poles at regulated rates. In addition to operating Virtual Hipster, its CEO holds a full time job in another state, is taking courses to stay current on technological issues, and commutes back to Nevada on the weekends to manage Virtual Hipster.

⁴In order to preserve quality of service and provide sufficient bandwidth to each customer Virtual Hipster has a self-imposed limit of 10 customers per access point. This is based on a report of empirical data from a group of users who setup a similiar system and reported about the degree of problems that they were encountering with 5, 10 and 14 users per access point.

⁵ For example, in recent negotiations, Sierra Pacific Power Company ("SPPC") outright denied that Virtual Hipster had any form of pole attachment rights pursuant to 47 U.S.C. § 227(f), despite the Commission's assertion of this right in its Public Notice. See *Wireless Telecommunications Bureau Reminds Utility Pole Owners Of Their Obligations To Provide Wireless Telecommunications Providers With Access to Utility Poles At Reasonable Rates*, DA 04-4046 (rel. Dec. 23, 2004).

⁶ Cities, towns and other municipalities across the country are considering or are already undertaking construction of their own wireless networks. See *Rhode Island wants statewide Wi-Fi*, CNN.COM, May 2, 2006, at <http://edition.cnn.com/2006/TECH/internet/05/01/rhode.island.wifi.reut/index.html>. Electric utilities are also entering the competitive arena with Broadband over Powerline ("BPL"). See Linda Haugsted, *California OKs Powerline Broadband*, MULTICHANNEL NEWS, May 8, 2006, at 23 (reporting on the decision of the California Public Utilities Commission to allow the state's electric utilities to deploy BPL technology); Jim Sielicki, *Clyde to vote on high-speed Internet plan*, TOLEDOBLADE.COM, May 16, 2006, at <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20060516/NEWS17/605160331/-1/ARCHIVES30> (noting that BPL technology could be available to residents of Clyde, Ohio by the end of 2006 and citing other BPL forerunners such as Cynergy in Cincinnati, Pennsylvania Power & Light, and Central Virginia Co-Op).

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Attaching entities, especially small businesses such as Virtual Hipster, need to be able to pool their resources to address issues that are impacting them similarly.

In accordance with FCC rules, a copy of this letter is being filed electronically in the above-referenced docket.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maria T. Browne".

Maria T. Browne

Attorney for Virtual Hipster Corporation