Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	**WC Docket No. 07-245**
Implementation of Section 224 of the Act;	)	
Amendment of the Commission's Rules and	)	**RM-11293**
Policies Governing Pole Attachments	)	
	)	**RM-11303**
	)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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COMMENTS OF CTIA - THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® ("CTIA")[1] hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[2] The NPRM seeks comment on the rules and policies governing pole attachments and whether changes to the implementation of Section 224 of the Communications Act of 1934, as amended, may be warranted. CTIA supports the Commission's efforts to comprehensively review its regulatory framework for pole and conduit access for communications providers, including wireless telecommunications carriers, in light of today's competitive marketplace. CTIA urges the Commission to clarify and reaffirm its existing rules to facilitate nondiscriminatory wireless pole and conduit access at reasonable rates. Specifically, the Commission should adopt rules clarifying that the Telecommunications Rate

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[1] CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, Advanced Wireless Service, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

[2] *In re Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Polices Governing Pole Attachments*, Notice of Proposed Rulemaking, WC Docket No. 07-245, RM-11293, RM-11303 (2007) ("*Pole Attachments NPRM*").

formula applies to wireless attachments, establish a presumption for space used by a wireless attachment, and specify that "usable space" includes the pole top, among others.

I. INTRODUCTION AND SUMMARY

CTIA commends the Commission for taking this critical step towards improving and facilitating pole and conduit access for wireless carriers. CTIA urges the Commission to reiterate the attachment rights of wireless carriers as an important element of carriers' current and future network deployments. In today's evolving communications landscape, the U.S. wireless industry, consisting of more than 150 wireless companies, delivers countless benefits to the more than 250 million American wireless consumers and the American economy. Wireless operators continue to provide lower prices for more minutes of use, competition, and unbelievable choice in carriers, handsets, and service plans, including wireless broadband access. By June 2007, American consumers enjoyed an average of 746 wireless minutes of use per month.[3] CTIA *currently* estimates that wireless subscribership has surpassed 255 million with 13.6 percent of American households that are wireless-only.[4]

As the fastest growing segment in broadband services, wireless providers have deployed high-speed networks reaching 234 million Americans, and more than 99.5 percent of the population has access to "Next Gen" wireless service.[5] Wireless broadband service has seen

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[3] *See* CTIA Wireless Quick Facts, *available at* http://www.ctia.rg/advocacy/research/index.cfm/AID/10323; *See also*, http://files.ctia.org/pdf/CTIA_Survey_Mid_Year_2007.pdf.

[4] *See* Estimated Current US Wireless Subscribers, *available at* www.ctia.org; CTIA Written Ex Parte Communication, PS Docket No. 06-229; WT Docket Nos. 96-86, 05-194, 06-150, 06-169, 07-71 (Jan. 23, 2008), *available at* http://files.ctia.org/pdf/080123_Ex_Parte_Wireless_2007_Facts.pdf.

[5] *In re* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Twelfth Report*, WT Docket No. 7-71, FCC 08-28, Table 11 (Feb. 4, 2008) ("*Twelfth Report*").

explosive growth. The most recent FCC report on High-Speed Services for Internet Access shows a 600% increase in the number of wireless broadband users from December 2005 to December 2006.[6]

In order to meet growing consumer demand, U.S. wireless service providers invest billions of dollars a year, approximately $24.7 billion in 2006, to expand the geographic coverage and augment the capacity of their networks.[7] Providers accommodate the ever increasing communications traffic by adding new cell sites and deploying micro-cell sites or antennas that provide coverage in highly localized areas such as tunnels, airports, and certain neighborhoods. Across the country, wireless carriers often face significant delays in erecting stand alone wireless towers. Land use, local zoning restrictions and community objections to new tower construction make siting tower and building mounted wireless antennas increasingly difficult. The tower siting process can be extremely time-consuming and contentious.[8] As a result, access to electric utility poles is key to facilitating the rapid deployment of wireless services and is especially crucial when customers rely on wireless networks in emergency situations. Thus, placement of wireless communications equipment by wireless carriers on existing electric utility poles – a right affirmed by Congress, the Commission and the courts – is becoming an increasingly utilized option for achieving reliable "last mile" coverage.

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[6] High-Speed Services for Internet Access: Status as of December 31, 2006 at Table 1, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277784A1.pdf (Oct. 2007).

[7] *Twelfth Report* at ¶ 154. The wireless industry's six-month incremental capital expenditure in operational systems was $9.71 billion as of June 2007, resulting in a total cumulative capital expenditure in operational systems of more than $233 billion (not including billions more paid to the federal treasury for their spectrum licenses).

[8] *See e.g.*, American Bird Conservancy, Inc. and Forest Conservation Council v. FCC, No. 06-1165 (D.C. Cir. 2008); CTIA v. FCC, No. 05-1008 (D.C. Cir. 2006).

II. WIRELESS ATTACHMENTS BENEFIT THE PUBLIC INTEREST AND THE FCC SHOULD FACILITATE ACCESS TO EXISTING ELECTRIC UTILITY POLES

With many wireless carriers actively preparing to build-out spectrum acquired – or soon to be acquired – in major auctions, including the Advanced Wireless Service ("AWS") and 700 MHz auctions, licensees are eager to deploy the next generation of broadband-capable wireless services to American consumers. Yet wireless providers face considerable regulatory, technical, and environmental hurdles when meeting the demands for improved and expanded network capacity and coverage. Carriers endure extensive delays, inflated costs and difficulties in obtaining approval for new tower structures. These challenges seriously constrain the ability of wireless providers to effectively compete in the marketplace, address coverage gaps and increase capacity to meet consumer demands. With zoning restrictions, lack of other suitable structures, and spectrum-related propagation challenges, electric utility poles are fast becoming the structures of last resort that are necessary for wireless carriers to achieve ubiquitous coverage.

While wireless carriers continue to pursue all avenues for antenna siting, including traditional towers, co-location, rooftops, buildings, etc., electric utility distribution poles have become an increasingly important option for the deployment of wireless infrastructure. The poles can support a variety of wireless equipment installations including, but not limited to, licensed cellular or PCS antennas, microcells or Distributed Antenna Systems ("DAS"),[9] as well

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[9] A "Microcell" is a cell in a mobile phone network that has a very small coverage area. Microcells are served by lower power cellular base stations and are typically used when coverage and/or capacity are strained when the use of a normal sized cell would cause interference or would be impractical to install, *available at* http://www.mobiledia.com/glossary/162.html, http://en.wikipedia.org/wiki/Microcell. A "Distributed Antenna System" ("DAS") is "a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally at or below the clutter level and installations are compact," *available at* www.thedasforum.org.

as low-power, unlicensed transmitters. Typical wireless-associated attachments on electric utility poles consist of antennas, associated radiofrequency ("RF") communications equipment, electrical power connections and equipment boxes.

Electric utility poles are often the only practicable form of infrastructure that may be located in residential areas. Wireless attachments on electric utility poles allow carriers to increase signal strength (*i.e.*, to improve indoor coverage), improve quality of service (*i.e.* to eliminate "dead spots" and dropped calls), and bring new, innovative broadband services to more Americans. Importantly, wireless attachments to poles allow carriers to extend their networks, increase the availability and reliability of both new and existing services, including E911 services, and minimize the impact on the environment.

By reducing the need to construct new towers, local governments and residents benefit from the efficient use of existing infrastructure, such as electric utility distribution poles and transmission towers. The Commission has previously recognized these important benefits that ultimately inure to consumers:

> [p]roviding wireless carriers with access to existing utility poles facilitates the deployment of cell sites to improve coverage and reliability of their wireless networks in a cost-effective and environmentally friendly manner. Such deployment[s]…promote public safety, enable wireless carriers to better provide telecommunications and broadband services, and increase competition and consumer welfare in these markets.[10]

This is particularly important in residential zones, parks and similar areas where consumers expect wireless coverage but often oppose the aesthetic and environmental impact of new wireless towers or other large infrastructure. In addition, co-location of antennas on standing

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[10] Wireless Telecommunications Bureau Reminds Utility Pole Owners of their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates, Public Notice, DA 04-4046, 19 FCC Rcd 24930 (2004) ("*Wireless Attachments Notice*").

distribution poles facilitates the rapid deployment of wireless services by avoiding costly and time-consuming disputes that commonly arise with the construction of new towers.

III. CTIA URGES THE FCC TO CLARIFY AND REAFFIRM ITS RULES REGARDING NONDISCRIMINATORY AND REASONABLE RATES FOR WIRELESS POLE AND CONDUIT ACCESS

Wireless service providers are clearly protected under the umbrella of federal regulation yet electric utility pole owners choose not to recognize wireless attachers' rights of just, reasonable and nondiscriminatory access to poles. The 1996 Telecommunications Act requires utilities, including electric utilities and Local Exchange Carriers ("LECs"), to "provide...any telecommunications carrier with nondiscriminatory access to any pole, conduit or right-of-way owned or controlled by it"[11] and to do so at" just and reasonable rates, terms and conditions."[12] The Commission has affirmatively recognized that wireless pole attachments are subject to these statutory rights[13] and its decision that wireless attachments are included within the scope of federal pole attachment protections was upheld by the U.S. Supreme Court in *National Cable & Telecommunications Assoc. v. Gulf Power Co.*[14] The courts and the FCC have reaffirmed that the principles of nondiscriminatory and just and reasonable access to utility poles fully apply to pole attachments of wireless providers.[15] The only recognized limits to access for antenna placement by wireless telecommunications carriers are those contained in the statute: "where

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[11] 47 U.S.C. § 224(f)(1).

[12] 47 U.S.C. § 224(b)(1).

[13] *See* Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, Report and Order, CS Docket No. 97-151, FCC 98-20, 13 FCC Rcd 6777 at ¶¶ 39-41 (1998).

[14] In its opinion, the U.S. Supreme Court held that "attachments at issue in this suit…ones which provide wireless telecommunications–fall within the heartland of the [Pole Attachments] Act," 534 U.S. 327, 151 L.Ed.2d 794, 122 S.Ct. 782 (2002).

[15] *See id. See also* Southern Company Services, Inc. v. Federal Communications Commission, 313 F.3d. 574 (D.C. Cir. 2002); Omnipoint Corp. v. PECO Energy Co., Memorandum Opinion & Order, PA 97-002, DA 03-857 at ¶ 7 (2003); *Wireless Attachments Notice*.

there is insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering purposes."[16]

Further, the FCC made clear that the federal pole attachment laws and Commission regulations "do not allow pole access fees to be levied against wireless carriers in addition to the statutory pole rental rate, which is based on the space occupied by the attachment and the number of attaching entities on the pole, together with reasonable make-ready fees."[17] This limitation is designed to prevent "anticompetitive effects on telecommunications competition" that may result from "overcharges or denial of access."[18] Accordingly, the same statutory protections afforded to wireline attachments are expressly available to wireless attachments. Thus, electric utility pole owners cannot use the pole attachment process to impede competitive entry by wireless carriers. However, notwithstanding these regulatory assurances, in practice, wireless providers continue to endure significant challenges in acquiring reasonable rates, terms and conditions for access to electric utility poles.

IV. THE FCC SHOULD ADDRESS ISSUES UNIQUE TO WIRELESS POLE ATTACHMENTS

Despite existing federal and state regulations that provide for rights of attachment and non-discrimination, wireless carriers around the country have had difficulty negotiating and obtaining fair pole attachment agreements, both for mid-pole and pole-top wireless attachments. A common element of electric utilities' "take-it-or-leave-it" adhesion contracts is high attachment rents, well in excess of the Commission's Telecommunications Rate. As demonstrated in the record created by the Fibertech and United States Telecom Association

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[16] 47 U.S.C. § 224(f)(2); *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* Order on Reconsideration, 14 FCC Rcd 18049, 19074 (¶72)(1999).

[17] *See Wireless Attachments Notice*.

[18] *Id.*

Rulemaking Petitions, an industry epidemic exists due to electric utility pole owners' bottleneck control over access to the poles.[19] When carriers express interest in attaching to poles, pole owners frequently take an unacceptable amount of time to respond or respond with unreasonable demands that delay the pole licensing process for months and even years. These delays occur even though wireless carriers apply to attach to only a single pole (for macro-, micro- or picocell sites) and usually no more than 50 poles, in contrast to other communications providers that submit applications for attachment to hundreds of poles at one time.

Electric utilities set up a number of road blocks that delay the attachment process – particularly when carriers seek access to pole tops and when carriers offer to replace existing poles with taller poles to accommodate new wireless attachments. The refusal of electric utilities to discuss these issues has been the greatest deterrent to completing pole attachment agreements. Even when carriers have been able to initiate the negotiation process, pole owners commonly demand exorbitant fees, including nonrefundable application and engineering fees (as high as $25,000 to $45,000) to cover internal due diligence, installation fees ($80,000 to $100,000) and equipment inspection fees ($70 per hour, which may increase without limit). Electric utility pole owners also charge well above the Telecommunications Rate, arguing that the rate of wireless attachments cannot be determined using a formula because wireless attachments are subject to significant variation. These delays and fees only serve the electric utilities' interests to prevent competition or capture monopoly pole rental rates. Wireless carriers have difficulty getting relief

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[19] *See* Pleading Cycle Established for Petition for Rulemaking of Fibertech Networks, LLC, Public Notice, DA 05-3182 (rel. Dec. 2005); *In re* Fibertech Networks, LLC, Petition for Rulemaking, RM-11303 (filed Dec. 7, 2005) ("*Fibertech Petition*"); Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Report No. 2737 (rel. Nov. 2, 2005); *In re* Petition of the United States Telecom Association for a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures, RM-11293 (filed Oct. 11, 2005) ("*USTelecom Petition*"). *See also* Alabama Power Co. v. FCC, 311 F.3d 1357 (11th Cir. 2002), Georgia Power Company v. FCC, 346 F.3d 1033 (11th Cir. 2003).

from electric utilities' unlawful tactics, as the Commission's enforcement regime often cannot provide relief in the short deployment timeframes faced by wireless carriers – a reality that electric utilities often realize and exploit.

While there should be no debate regarding a wireless provider's right to protection under Section 224 of the Communications Act, wireless carriers' experiences demonstrate the need for the FCC to protect and ensure rights of just, reasonable, and nondiscriminatory pole access.[20] Among wireless carriers that endeavor to attach to distribution poles, there is a general fear that insistence on FCC guaranteed rights under Section 224 would negatively impact negotiations. During negotiation, it is not uncommon for the electric utilities to reject outright the inclusion of the providers' Section 224 rights within the master lease agreement, which then results in carriers' requests for FCC intervention. Negotiations can be quick if the agreement is accepted "as is," however, this is rarely the case as agreements tend to be unfairly weighted in the utility's favor. Often electric utility pole owners refuse negotiation of the terms and conditions as presented in the attachment template agreements and attempt to impose prohibitive contract provisions including mandating the right to power down the attached antenna without notice, reserving the option to remove the antenna after resident complaints for aesthetic reasons are received, and requiring wireless providers to furnish their projected three-year construction plans. Pole owners also have been known to impose limits on the types of services that a carrier may provide over the attachments, restrict rights to third party use and displace Commission jurisdiction with binding or non-binding mediation or arbitration.

V. THE FCC SHOULD USE THIS OPPORTUNITY TO EXPLICITLY RECOGNIZE AND PROTECT WIRELESS ATTACHMENTS

[20] 47 U.S.C. § 224.

Under the current regulatory regime, carriers continue to face difficulty in gaining competitively neutral, nondiscriminatory access to electric utility distribution poles. In some regions, wireless carriers have been unable to negotiate reasonable rates, terms and conditions for the attachment of wireless facilities because of electric utility pole owners' imposition of severe restrictions, demands for extortionate rents, and outright denial of mid-pole and pole top access. The unintended consequences of pole owners' unfair practices are unwarranted delays and denial of wireless services American consumers want and need.

Prompt attachments are crucial to a wireless carrier's business. CTIA is not asking for a broad overhaul of the Commission's pole attachment policies, but rather urges the Commission to provide guidance and adopt policies to induce efficiency into the pole attachment negotiation process.

A. The Commission Should Adopt Rules Clarifying That The Telecommunications Rate Formula Applies To Wireless Attachments.

While it is clear that wireless service providers are telecommunications carriers under Section 224 of the Communications Act and Section 1.1402(h) of the FCC's rules, electric utility pole owners continue to discriminate against wireless carriers by extorting disproportionate rents or unreasonably denying access. The Commission and the courts have affirmed that utilities are obligated to grant wireless telecommunications providers access to utility poles at rates prescribed by the Telecommunications Rate formula.[21] Nevertheless, electric utilities often

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[21] *See* Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, Report and Order, CS Docket No. 97-151, FCC 98-20, 13 FCC Rcd 6777, at ¶¶ 36-42 (1998); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Order on Reconsideration, 14 FCC Rcd 18049, ¶¶ 44-45 (1999); National Cable Telecommunications Association v. Gulf Power, 534 U.S. 327 (2002); 47 C.F.R. § 1.1409(e)(2), FCC established rebuttable presumptions for the numerical values to expedite pole attachments negotiations. *See*

insist on excessive rates or restrict access on the mistaken belief that wireless service providers are not telecommunications carriers subject to the Telecommunications Rate formula.

The FCC initially declined to adopt wireless specific pole attachment policies, finding that the Telecommunications Rate is the appropriate default formula, which may be rebutted based on the specifications of the particular attachment.[22] A decade later, the need for Commission action to affirm the status of wireless telecommunications carriers is readily apparent. As wireless carriers have requested in the Fibertech and USTelecom proceedings, CTIA also urges the Commission to revisit its pole attachment rules to clarify beyond a doubt that wireless providers are telecommunications carriers for purposes of access rights and application of the Telecommunications Rate formula.[23]

B. The Commission Should Establish A Presumption For Space Used by a Wireless Attachment And Specify That "Usable Space" Includes The Pole Top.

As T-Mobile suggested in its comments to the Fibertech Petition, CTIA supports adoption of Utah's rebuttable presumption for defining space used by a wireless attachment for the purpose of the applying the Telecommunications Rate formula.[24] Disputes often occur over whether vertical runs (*i.e.*, cabling, wiring, conduits, etc.) associated with the wireless attachments should be considered when factoring the rate charged for space used. CTIA believes the Commission should use this opportunity to defray needless disagreement (whose only purpose is to interfere with carriers' securing their federal rights) and look to the Utah

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also, Southern Company Services v. Federal Communications Commission, 313 F.3d. 574 (D.C. Cir. 2002).

[22] Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, Report and Order, CS Docket No. 97-151, FCC 98-20, 13 FCC Rcd 6777, at ¶¶ 36-42 (1998).

[23] *See e.g.*, T-Mobile Reply, RM-11293, at 2, 9; T-Mobile Reply, RM-11303, at 8-9; NextG Comments, RM-11293, at 8-10; Virtual Hipster Letter, RM-11303, at 3.

[24] *See* T-Mobile Reply, RM-11303, at 9-10.

Administrative Code regarding pole attachments, which provides insight into addressing this issue.[25] Specifically, CTIA urges the Commission to clarify that the space occupied by the wireless providers attachments "may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole."[26]

In addition, wireless providers encounter difficulties in obtaining access to pole tops in a number of markets due to the pole owners' arbitrary and inconsistent requirements regarding placement on the poles. There have been instances of electric utility pole owners in some regions categorically denying access to all pole tops without justification. For wireless carriers, however, antenna placement at the highest point possible on the poles is often essential since the coverage of a wireless antenna directly depends upon its height above the surrounding terrain. Significantly, antenna placement at the pole top reduces the amount of antennas needed.

Section 224(d)(2) of the Act defines "usable space" as "space above the minimum grade level which can be used for the attachment of wireless, cables, and associated equipment." This definition unquestionably includes pole tops. The Commission's previous statement supports this position making clear that pole-top attachments cannot be categorically prohibited.[27] The FCC also declined to establish any presumption that space above the "communications space" is reserved for utility use only.[28] To resolve the ongoing dispute over pole top access, the

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[25] *See generally* Utah Admin Code, Pole Attachments, R746-345-5 ("Utah Code").

[26] Utah Code, R746-345-5 (A)(3)(e)(i).

[27] *See Wireless Attachments Notice*.

[28] *Id*. citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Order on Reconsideration, 99-266, 14 FCC Rcd 18049, 19074 (at ¶

Commission should adopt an explicit rebuttable presumption that pole top access for wireless attachments are allowed and clarify that usable space extends to the top of the pole.[29]

C. The Commission Should Address Electric Utilities' Unsubstantiated Objections To Wireless Attachments Based On RF Emissions And Safety Issues.

As a justification to deny or severely limit wireless carriers' access to poles and pole tops, electric utility pole owners frequently make unsupported claims that certain wireless structures on distribution poles are unsafe or unreliable. Electric utility pole owners allege concerns about RF emissions and other safety issues such as pole loading, antennas falling onto power lines, ice and snow.[30] These concerns are not warranted since wireless carriers must comply with very comprehensive statutes, regulations, and codes enacted to address these issues. To ensure safe installations, wireless providers strictly adhere to the National Electrical Safety Code ("NESC"), FCC regulations, Occupational Safety and Health Administration ("OSHA") rules, Environmental Protection Agency ("EPA") regulations and state building code standards, among others.[31] The FCC and OSHA wholly regulate issues involving RF emissions.[32] Additional

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72)(1999), the Commission "decline[d]…to grant [petitioners'] request [to] establish a presumption that it would be reasonable for an electric utility to reserve any space above what has traditionally been referred to as "communications space" on a pole."

[29] Utah Admin Code, R746-345-5, (A)(2)(d) defining "[u]sable space" as "space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner."

[30] *See* Reply Comments of Clearlinx Network Corporation, LLC, RM-11303, at 6; Comments of Virtual Hipster, RM-11303, at 6.

[31] *See e.g.*, NESC Rules: 222 – Joint use structures, 224A – Communications circuits located within the supply space and supply circuits located within the communications space, 230A3-4 – Measurement of clearance and spacing; Rounding of calculation results, 235I – Clearance specifications between antennas attached in the supply space, 236 – Climbing space, 237 – Working space, 238 – Vertical clearance between certain communications and supply facilities located on the same structure.

[32] *See* Office of Engineering and Technology, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields*, OET Bulletin 65 (1997). *See also*

regulations than those already in effect are completely unnecessary. The Commission should proactively prevent electric utility pole owners from requiring arbitrary and unnecessary technical standards on top of those already in place.

VI. CTIA SUPPORTS THE COMMISSION'S TENTATIVE CONCLUSION THAT ALL ATTACHMENTS USED TO PROVIDE BROADBAND INTERNET ACCESS SERVICE SHOULD BE SUBJECT TO A SINGLE BROADBAND RATE

In the NPRM, the Commission tentatively concluded "that all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service."[33] CTIA shares the Commission's goal of ensuring that advanced services are deployed in a reasonable and timely manner. CTIA supports the FCC's conclusion for a unified rate for all providers capable of providing broadband service. Consistent with the Commission's pro-competitive policy of encouraging broadband deployment, broadband providers should be subject to as low of a rate as possible for the electric utilities to receive just compensation. While there is no question that the Telecommunications Rate applies to wireless providers of telecommunications services, the Commission has repeatedly affirmed that the Cable Rate provides just and reasonable compensation.[34] Accordingly, a unified rate for all providers of broadband service should not preclude setting this rate as the Cable Rate.

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47 C.F.R. § 1.1310; http://www.fcc.gov/oet/rfsafety. OSHA rules also address RF emissions, *see* 29 C.F.R. §§1910.97, 1910.268.

[33] *Pole Attachments NPRM* at ¶ 36.

[34] *See* Alabama Power Co. v. FCC, 311 F.3d 1357, 1370-71 (11th Cir. 2002), Georgia Power Company v. FCC, 346 F.3d 1033 (11th Cir. 2003).

VII. CONCLUSION

For the American public and the wireless industry to reap the many benefits of pole attachments, Commission recognition and protection of wireless attachment rights is essential to achieving improved speed to market to better serve America's more than 250 million wireless consumers. CTIA believes affirmation of the Commission's current regulatory framework for pole attachments coupled with the adoption of guidelines consistent with the recommendations herein will promote nondiscriminatory access and certainty in the pole attachment process for wireless service providers.

Respectfully submitted,

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