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

In the Matter of:	)	
	)	
Implementation of Section 22 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	RM-11293
Policies Governing Pole Attachments	)	RM-11303
	)	FCC-07-187
	)	

TO: THE COMMISSION

COMMENTS OF EXTENET SYSTEMS, INC

ExteNet Systems, Inc. ("ExteNet") submits these comments in the above-captioned proceeding regarding the pole attachment rules. [1]

ExteNet is an innovative telecommunications company that builds and operates customized distributed antenna systems ("DAS") that extend or enhance the capabilities of wireless service providers in areas that are difficult to serve with traditional wireless sites. DAS network designs must rely primarily on existing infrastructure, such as utility poles, ducts, and conduits in public rights-of-way, making pole attachment rules critical to the successful deployment of a DAS network.

[1] Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245, RM-11293, RM-11303, Notice of Proposed Rulemaking, FCC 07-187, 73 F.R. 6879 (rel. Nov. 20, 2007) ("Notice").

Typical DAS networks use fiber optic cable attached to existing utilities poles to connect a number of wireless communications nodes that are also mounted on the same or adjacent existing utilities poles. Well designed DAS networks enable wireless service providers to improve their service offerings, operate more efficiently and be more competitive in a number of ways, including (i) providing better coverage in areas that cannot be reached by traditional wireless sites due to various factors such as topographic, zoning, or financial impediments and (ii) increasing call handling capacity in areas of high demand. In our increasingly wireless world, DAS allows wireless carriers to extend their networks and give customers the seamless coverage and increased capacity they demand in today's market place.

DAS is an emerging solution to extending wireless coverage that requires a substantial upfront capital investment. While many established traditional wireless carriers are beginning to use DAS to fill gaps in their networks, DAS networks are also an important alternative for smaller wireless carriers looking to compete for customers by offering them improved services at reduced cost. Due to the highly customized designs and smaller scale implementation, DAS implementations are very transaction cost sensitive. Excessive or unreasonable construction costs or attachment charges can effectively prohibit a DAS network from being constructed.

ExteNet regularly encounters resistance and delays in its efforts to secure attachment rights from pole owners and implement its network build-outs. More specifically, ExteNet has frequently encountered demands from incumbent utilities for unreasonable rental rates for the attachment of its wireless node equipment (e.g., remote radioheads, antennas, primary and auxiliary power supplies and corresponding associated equipment) ("Wireless Node Attachments"). For these reasons, ExteNet supports the Commission's proposed rulemaking to improve the pro-competitive and market-opening

provisions of the Telecommunications Act of 1996 while reviewing the reasonable rates, terms, and conditions for attachments under section 224 of the Communications Act of 1934, as amended ("Act").

I. UNREASONABLE CHARGES FOR WIRELESS NODE ATTACHMENTS CREATE A BARRIER TO ENTRY AND COMPETITIVE DISADVANTAGE

The Commission requested comments regarding whether wireless pole attachments are entitled to the telecommunications rate.[2] In the context of DAS implementations, Wireless Node Attachments should be entitled to the telecommunications rate. Wireless Node Attachments are an essential element of DAS networks, which effectively amount to a wireline (fiber optic cable) extension of the larger landline telecommunications network for purposes of interfacing more effectively with users of wireless telecommunications services. Such wireless elements have been incorporated into traditional telecommunications networks for some time when they were the most economical and least intrusive solution to a problem bridging any particular network segment. DAS networks with Wireless Node Attachments represent the next generation of telecommunications equipment to follow this trend.

There is nothing inherently different about Wireless Node Attachments as compared with other ancillary equipment having similar form factors and dimensions that telecommunications carriers, electric utilities, and others have historically mounted on standard utility poles. Further, there is no justification for efforts by utility infrastructure owners to impose charges for Wireless Node Attachments on any basis other than the cost of constructing and maintaining the infrastructure. Mandating the same pole attachment rate for a Wireless Node Attachment as the traditional telecommunications equipment allows all telecommunications companies to build networks on an equal footing and eliminates unjustified barriers or impediments to competition and innovation.

[2] Notice at ¶14

As the Commission mentions in paragraph 14 of the Notice, many pole owners are already using the same regulated telecommunications rate for a Wireless Node Attachments as for a wireline attachment. The regulated rate is typically multiplied by the number of vertical feet occupied by the Wireless Node Attachment on the pole, thus compensating the pole owner proportionally for the pole attachment space occupied by the Wireless Node Attachment in accordance with 47 U.S.C. §224(e).

Some pole owners are resistant to offering the regulated or any more reasonable rate despite the Commission and United States Supreme Court finding that wireless attachments should receive the same telecommunications rate under section 224(e).[3] A number of pole owners take the position that Wireless Node Attachments do not comprise attachments of telecommunications equipment that must be allowed subject to applicable laws and regulations. They then make such attachments, merely because they involve wireless elements, subject to charges at rates that are clearly unreasonable in comparison to their own regulated rates for wireline attachments.

For example, one Florida investor owned utility ("IOU") currently charges $12.94 per wireline attachment on a distribution pole per year; but it demands $1,564.50 per year for a wireless antenna alone. It does not allow the associated radio equipment on its poles at all, so the attachment rate of $1,564.50 is for a very limited attachment that requires little space on the pole. This rate is 120 times higher than the regulated rate. An attachment rate that is 12,000% of the regulated rate cannot be justified as reasonable in relation to the usage of the pole and therefore creates an economic windfall for the pole owner. This number does not fully represent the cost of building one Wireless Node

[3] *Amendment of the Commission's Rules and Policies Governing Pole Attachments,* CS Docket No. 97-151, Report and Order, 13 FCC Rcd 6777, 6798-99 ¶¶ 39-41 (1998) *("1998 Implementation Order"), aff'd NCTA v. Gulf Power,* 534 U.S. 327, 340-42 (2002).

Attachment because of the need to place an additional utility pole in the public right of way for the associated radio equipment.

Attachment rate disparities like this one increase the cost of building DAS networks in some markets so greatly they effectively prohibit ExteNet from entering those markets at all. Therefore, ExteNet requests the Commission adopt a rule clearly specifying that Wireless Node Attachments receive the regulated telecommunications rate. This will allow companies, such as ExteNet, to deploy DAS networks with reasonable and predictable costs and result in improved service to wireless customers.

II. POLE TOP ATTACHMENTS SHOULD RECEIVE THE TELECOMMUNICATIONS RATE

In response to the Commission's request for comments regarding whether pole top attachments should trigger a greater rate of compensation, ExteNet asserts that pole top antenna attachments should not be subject to additional or different charges than other telecommunications attachments.[4] The Commission mentions that "unlike lateral space, each pole has only one top."[5] This argument is inapposite for a variety of reasons.

First, it appears to assume that the benefits of pole top antenna placement are unique and exclusive to those desiring placement on the pole top and also that there is a demand for the top of every pole. In fact, DAS and other applications involving wireless equipment attachments appropriate for pole top placement generally require attachment on only a small number of the existing poles. There are many poles, and so there are many pole tops. Also, by putting antennas on pole tops, rather

[4] Notice at ¶14.
[5] *Id.*

than on cross arms mounted in the communication space, pole top antenna placement actually frees up other space for attachments that cannot be placed on pole tops.

Further, the ability to place DAS antennas on the tops of poles generally improves system performance and benefits not only the DAS network provider, but also the users of the network, the communities in which they are located, and even the pole owners. Greater elevation generally means that fewer nodes and antennas are needed to cover a given geographic area. Thus pole top placements provide an aesthetic advantage to the surrounding community while decreasing the cost of the DAS network deployment and potentially reducing the numbers of poles that must be adapted to accommodate node installations. Correspondingly, pole top attachment can reduce the overall costs of services ultimately borne by wireless customers.

Finally, charging an increased rate for a pole top attachment based on its location on the pole runs counter to the Commission's historic cost recovery approach to attachment rate calculations based on space occupied. This formulaic method is not only fair to the pole owners and all attachers, but it has the benefit of being uniform and relatively predictable over time. Any shift to a method based on negotiated or presumptive differential charges for certain spaces on poles would add arbitrariness or complexity or both and result in uncertainty that would inhibit innovation and deployment of solutions that are optimal with respect to the main goal of improving telecommunications services.

Section 224(e) of the Act requires a "just, reasonable, and nondiscriminatory" approach to pole attachment rates, so pole top attachment rates should be equal to the telecommunications rate. Therefore, ExteNet requests the Commission adopt a rule specifying that pole top attachments receive the telecommunications rate.

III. UNREASONABLE RESTRICTIONS ON POLE ACCESS FOR WIRELESS NODE ATTACHMENTS OFTEN CREATE A BARRIER TO ENTRY AND COMPETITIVE DISADVANTAGE

The Commission requested comments regarding conditions of access to poles.[6] Many pole owners continue to discriminate against Wireless Node Attachments regardless of the Commission requiring pole owners give equal access to wireless and traditional telecommunications attachments .[7] This discrimination creates a barrier to entry in many markets or results in increased expense for building a DAS network—costs ultimately born by customers.

Some pole owners effectively prohibit DAS networks or greatly increase their cost by excessively restricting the use of poles for Wireless Node Attachments. For example, one Florida IOU will only allow a wireless antenna, but no associated radio equipment, be attached to its poles. In order to build a DAS network, ExteNet must set dozens of new utility poles in the right of way to accommodate the associated radio equipment. Additionally, when pole owners prohibit pole top antenna attachments, they greatly increase the cost of the DAS network by requiring a greater number of antennas be attached to cover the same geographic area than if pole top attachment were allowed.

In a more extreme situation, a pole owner in Hawaii has refused to allow any Wireless Node Attachments on its poles at all because in its opinion Wireless Node Attachments are presumptively unsafe. As justification for such *per se* denials of access, this pole owner cites 47 U.S.C §224(f)(2) claiming any wireless equipment at all will necessarily run contrary to "safety, reliability, and generally applicable engineering purposes." Pole owners like these often refrain from offering any more detailed

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[6] Notice at ¶16

[7] *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, 19 FCC Rcd 24930 (WTB 2004).

justification for their denial because specific safety, reliability, and engineering claims could not withstand scrutiny in light of the contrary experiences and practices prevailing elsewhere throughout the country. These pole owners effectively prohibit any DAS network from being developed within their service areas by making implementation infeasible economically or politically, thus adversely impacting the overall coverage and capacity of wireless services within those markets.

ExteNet has made great efforts, including the expenditure of substantial amounts of time and money, to demonstrate the safety of Wireless Node Attachments to the pole owners with whom it has had dealings and communications to date. ExteNet provides examples of existing DAS networks around the country and explains that the National Electric Safety Code ("NESC") sets out guidelines for pole attachments with the greatest contemplation of safety. ExteNet complies with the NESC and also agrees to abide by other attachment requirements developed by specific pole owners, whether or not it deems these to be entirely reasonable; however, these facts often fail to persuade a pole owner that takes the position it will not allow any Wireless Node Attachments on its poles.

Therefore, ExteNet requests the Commission adopt a rule that is more explicit in requiring that Wireless Node Attachments be allowed on utility poles. This will allow companies, such as ExteNet, to deploy DAS networks in all markets equally and result in improved services to wireless customers.

IV. CONCLUSION

ExteNet's business objective is to build DAS networks across the nation that provide increased coverage and capacity to wireless customers. Some pole owners greatly interfere with this objective by discriminating against Wireless Node Attachments through unreasonable attachment rates and unjustified restrictions on access rights. The Commission should amend its rules to clearly require pole owners to provide equal and non-discriminatory treatment for Wireless Node Attachments.

Respectfully submitted,
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