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July 23, 2008

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Polices Governing Pole Attachments, WC Docket No. 07-245

***EX PARTE* NOTICE**

Dear Ms. Dortch:

On July 22, 2008, Allen Estes and I (on behalf of Florida Power & Light Co., Tampa Electric Co., Progress Energy Florida, Inc. and Oncor Electric Delivery Co.) (collectively the "Electric Utilities") met separately with the following in connection with the above-referenced Notice of Proposed Rulemaking.

(1) Rosemary McEnery (Deputy Chief) and Suzanne Tetreault (Special Counsel) of the Enforcement Bureau, Market Disputes Resolution Division; and

(2) Greg Orlando, Legal Adviser to Commissioner Deborah Taylor Tate.

During the meeting we discussed the topics addressed in the attached handout, as well as other points consistent with the comments filed by my firm on behalf of the Electric Utilities.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this notice of *ex parte* communication is being filed electronically in the above-referenced matter. Please contact me if you have any questions.

Very truly yours,
/s
Eric B. Langley

Attachment

cc: Ms. Rosemary McEnery
Ms. Suzanne Tetreault
Mr. Greg Orlando

Pole Attachment NPRM

WC Docket No. 07-245

Ex Parte Presentation
July 22, 2008

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Electric Utilities		
Company	**Customers**	**Poles**
Florida Power & Light	4.5 million	1.1 million
Progress Energy Florida	1.7 million	1.1 million
Tampa Electric	0.7 million	0.3 million
Oncor Electric Delivery	3 million	2 million
TOTAL:	**9.9 million**	**4.5 million**

NPRM Issue Summary

- Safety, Reliability and Engineering
  - Defer to State and utility standards
  - Section 224(f)(2) concerns
  - No presumptions re: wireless pole top access
- Relationship between ILECs and Electric Utilities
  - Pole Attachment Act excludes jurisdiction over ILEC attachments
  - ILECs and CATV/CLECs are apples and oranges
- Broadband Rate
  - Support unified rate for CATV/CLEC broadband attachments
  - Should be Telecom Rate with revised presumptions
  - No presumptions re: wireless attachment rates

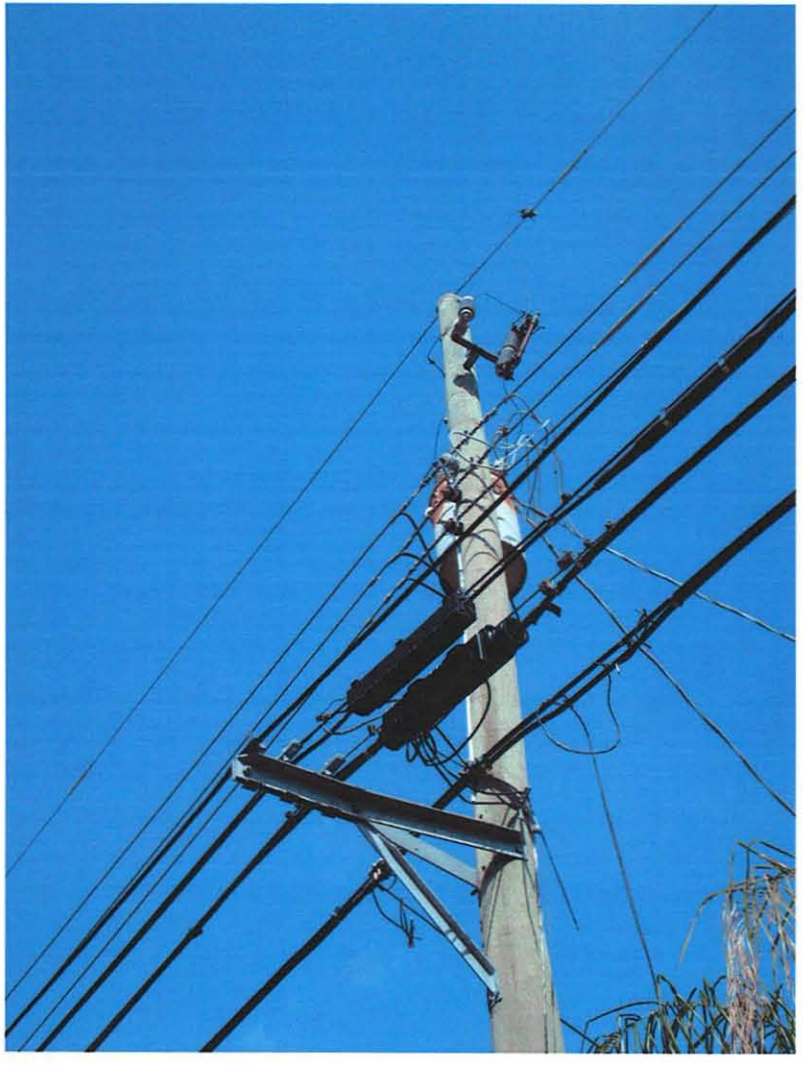
Safety, Reliability and Engineering (Slide 1 of 2)

- One size does NOT fit all
  - NESC is a safety code, not a design code
  - Safety and reliability are separate concerns
- Preserve local discretion over standards
  - Pole attachment standards are just ONE PART of a utility's overhead distribution standards
  - Utility and State specific issues (*e.g.* construction materials and techniques, Florida Hardening proceedings)
- Avoid presumptions re: wireless pole top access
  - Presents special concerns → each utility should make its own decision
  - Most utilities allow wireless attachments in the communications space

Safety, Reliability and Engineering (Slide 2 of 2)

- Even with deference, Commission can:
  - Ensure non-discriminatory **application** of standards
  - Without **creating** standards
- Strict make ready deadlines should be rejected
  - Speed-to-market is a valid concern, but should not trump safety and reliability
  - Make ready projects vary significantly in scope and complexity
  - Electric Utilities are not required to expand capacity (perform make ready) → Section 224(f)(2)
- Electric Utilities are not in competition with broadband providers

Safety and Reliability Are Real Issues



Standoff bracket

Overlashing

Dispelling ILEC Myths (Slide 1 of 2)

- Pole Attachment Act does NOT extend to ILEC attachments
  - Act has not changed since 1996
- ILECs are NOT similarly situated to CATVs and CLECs
  - **ILECs pay NOTHING in "rental" when they are in parity of ownership**
  - "Joint Use" relationships premised on true infrastructure cost-sharing

Dispelling ILEC Myths (Slide 2 of 2)

- Premises of joint use have NOT fundamentally changed
  - ILECs placing equal or greater burden on poles today
  - Changes in relative ownership since 1996 are slight and within the control of the ILECs
- Poles are NOT "profit centers" for Electric Utilities
  - If poles were profit centers, ILECs would own more poles
- There is NO disparity between ILEC rates and CATV/CLEC rates because:
  - They are designed to quantify different relationships
  - CATV/CLEC rates do not capture true cost of ownership

Unified Broadband Rate

- Telecom rate makes sense
  - CLECs bound to Telecom Rate per Section 224(e)
  - CATV not similarly bound to 224(d)
  - Telecom Rate is closer-to-fair because of common space allocation
- Two presumptions should be revised:
  - Average number of attaching entities should be 3
  - Common space should include Communication Workers Safety Zone (usually 40 inches)
- Wireless attachment rates (communications space)
  - Configurations vary too much for any presumptions
  - Most rates are based on telecom formula, anyway

What Should The FCC Do?

- **Continue to defer to States and utilities on matters of safety, reliability and engineering**
  - Continue to regulate by exception
  - Safety and reliability of critical infrastructure at risk
  - These are local issues
- **Continue to recognize statutory exclusion of ILEC attachments**
  - Relationship between ILECs and electric utilities is unique
- **Unify rate for CATV/CLEC wireline broadband attachments**
  - Telecom Rate with revised presumptions