KELLER AND HECKMAN LLP
Serving Business through Law and Science®

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Thomas B. Magee
(202) 434-4128
magee@khlaw.com

August 8, 2008

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

Re: *Notice of Written Ex Parte Communication – WC Docket No. 07-245*

Dear Ms. Dortch:

This letter is being filed on behalf of the Coalition of Concerned Utilities[1] pursuant to Section 1.1206 of the Commission's Rules, and provides notice that the attached "***Top Ten Cable/CLEC/ILEC 'Myths' About Pole Attachments***" was delivered today to Chairman Kevin J. Martin and his Legal Advisor Amy Bender; Commissioner Jonathan S. Adelstein and his Legal Advisor Scott Bergman; Commissioner Michael J. Copps and his Legal Advisor Scott Deutchman; Commissioner Robert M. McDowell and his Legal Advisor Nick Alexander; Commissioner Deborah Taylor Tate and her Legal Advisor Greg Orlando; and the following Wireline Competition Bureau employees — Richard Kwiatkowski, Al Lewis, Hannah Anderson, Marvin Sacks, Jonathan Reel, Mark Brook, Jesse Skinner, Matt Warner, Jeremy Miller, and Randy Clarke.

The list of ***Top Ten "Myths"*** is a compilation of misleading and inaccurate arguments presented in various forms during the above-referenced proceeding by ILEC, CLEC and Cable attachers to justify unwarranted subsidies and irresponsible, dangerous pole attachment conditions.

[1] The Coalition of Concerned Utilities is composed of Allegheny Power, Baltimore Gas and Electric Co., Dayton Power and Light Col, FirstEnergy Corp., Kansas City Power and Light, National Grid and NSTAR.

Please contact the undersigned if you have any questions or need any further information.

Sincerely,

Thomas B. Magee
Jack Richards

Attorneys for the
Coalition of Concerned Utilities

Enclosure

cc: Chairman Martin
Commissioner Adelstein
Commissioner Copps
Commissioner McDowell
Commissioner Tate
Amy Bender
Scott Bergman
Scott Deutchman
Nick Alexander
Greg Orlando
Richard Kwiatkowski
Al Lewis
Hannah Anderson
Marvin Sacks
Jonathan Reel
Mark Brook
Jesse Skinner
Matt Warner
Jeremy Miller
Randy Clarke

Top 10 Cable/CLEC/ILEC "Myths" About Pole Attachments

1. "Continued Pole Attachment Rate Subsidies Will Bring Broadband to Rural America"

- The cable subsidy has been around since 1978, and cable still has not deployed broadband in rural areas.
- The main obstacle to rural broadband deployment via cable is the huge cost of headend equipment and system upgrades, not attachment fees.
- If broadband is not being provided now, it's not because of pole attachment rates.

2. "Attachment Subsidies Mainly Benefit Small Cable Operators"

- Pole attachment subsidies mainly benefit gigantic communications companies – not small cable operators – that are attached to the most poles.
- Electric ratepayers subsidize Comcast (with revenues of $30.9 billion and profits of $2.6 billion in 2007) and other huge companies while a miniscule portion goes to small cable operators.

3. "The FCC Cable Rate is Not a Subsidy"

- The current, low cable rate was designed "to spur the growth of the cable industry, which in 1978 was in its infancy." (H.R. Report No. 104–204, at 91)
- Thirty years later, cable pole attachment rates remain a pittance, even during an energy crisis.
- Cable pays full value for programming, fiber optic equipment, office leases, salaries, etc. – but pays far below fair value for its use of the utility industry's fully-constructed pole distribution system.

4. "ILECs Should Pay the Same Attachment Rate as Cable and CLECs"

- Granting ILECs the same rate as cable and CLECs grants them a huge, anti-competitive advantage.
- ILEC advantages already include reduced make-ready costs, no pre-approval to attach, easements, reserved space on the pole for future use and avoided relocation and rearrangement costs.

5. "ILECs are Entitled to Regulated Attachment Rates"

- Since the Telecom Act of 1996, everyone – including ILECs – has known that this is false.
- The ILEC'S epiphany of regulated rates after 12 years is ludicrous; neither statutory language nor FCC precedent supports it.
- For almost 100 years, Joint Use arrangements have flourished without government imposed rates.

6. "Sanctions are Unnecessary Because Attachers Follow the Rules"

- Attachers do not follow the rules.
- Attachers have no regulatory incentive to act responsibly; the FCC authorizes no enforcement penalties for unauthorized attachments (beyond back rent that should have been paid in the first place) or safety violations.
- Substantial penalties in Oregon have reduced unauthorized attachments from 30% to 1%.

7. "Utility Claims of Unauthorized Attachments are Trumped-Up"

- Toledo Edison – 29% - 33% unauthorized attachments.
- Progress Energy – 33,350 unauthorized attachments.
- Tampa – 26,000 unauthorized attachments.
- Oncor – 30,000 unauthorized attachments.

8. "Wireless Attachments Must be Permitted On All Pole Tops"

- Wireless attachments are different than wireline attachments.
- Wireless attachments raise a host of complex issues regarding electric service reliability, operations, maintenance, and worker safety.

9. "One-Sized Regulation for Boxing, Make Ready, etc. Fits All"

- Attachers do not know better than utilities how to construct and operate electric distribution systems.
- Utilities must be free to decide for themselves how to build their distribution systems.
- Existing FCC complaint procedures provide relief, if necessary.

10. "The NESC is Good Enough"

- THE NESC is a minimum safety standard, not an operational guide or design manual.
- The NESC does not address ice, wind, lightning, grounding, soil, animal, tree or other issues unique to particular geographic areas or utilities.
- Utilities must be free to exceed the NESC and establish system-specific operational and design standards.

For Further Information

Jack Richards
Thomas B. Magee
Wesley K. Wright
Keller and Heckman LLP
1001 G Street, NW
Washington, D.C.
Phone (202) 434-4100
www.khlaw.com

Prepared by the "*Coalition of Concerned Utilities*" (Allegheny Power, Baltimore Gas and Electric, Dayton Power & Light, FirstEnergy, Kansas City Power & Light, National Grid, and NSTAR). Collectively, the *Coalition* serves approximately 12,800,000 electric customers and owns, in whole or in part, more than 7,200,000 electric distribution poles. The *Coalition* is concerned that the Federal Communications Commission's Notice of Proposed Rulemaking in WC Docket No. 0-245 may exacerbate an already troubling pole attachment and joint use regulatory environment and jeopardize the safe and efficient operation of the nation's electric utility distribution systems.