

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

In the Matter of

Report on Rural Broadband Strategy

and

Implementation of Section 224 of the Act;
Amendment of the Commission's Rules
and Policies Governing Pole Attachments

GN Docket No. 09-29

WC Docket No. 07-245
RM-11293
RM-11303

**COMMENTS OF FIBERTECH NETWORKS, LLC AND
KENTUCKY DATA LINK, INC.**

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Fibertech Networks, LLC, (“Fibertech”) and Kentucky Data Link, Inc. (“KDL”) submit these comments in response to the Commission’s Public Notice¹ (“Notice”) requesting comment as to how the Commission and Department of Agriculture can establish a rural broadband strategy to meet the requirements of section 6112 of the Food, Conservation, and Energy Act of 2008 (“2008 Farm Bill”).²

Among other things, Congress has required that the Commission’s report include recommendations:

- (C) to coordinate both short- and long-term needs assessments and solutions for a rapid build-out of rural broadband solutions and application of the recommendations for Federal, State, regional, and local government policymakers; and

¹ *Comment Date Established for Report on Rural Broadband Strategy*, Public Notice, GN Docket No. 09-29 (rel. Mar. 10, 2009) (“Notice”).

² Pub. L. 110-246, 122 Stat. 1651 (June. 18, 2008).

- (D) to identify how specific Federal agency programs and resources can best respond to rural broadband requirements and overcome obstacles that currently impede rural broadband deployment[.]³

The current rules governing pole attachments are one such “obstacle[] that currently impede(s) rural broadband deployment.” The record in the Commission’s proceeding about the Rules and Policies Governing Pole Attachments⁴ repeatedly demonstrates that the lack of just, reasonable and non-discriminatory access to poles and conduit has created a barrier to the timely and economically feasible deployment of fiber – fiber that is necessary to bring broadband to rural America. Reforming pole attachment rules and streamlining timelines will promote rural broadband by reducing barriers to constructing robust fiber networks to communities, strategic community institutions, community ISPs and mobile broadband providers.

Critically, pole access delays and unnecessary make ready costs have the potential to rob broadband stimulus dollars of their full effect by making broadband deployment substantially more costly. Similarly, because make ready delays often consume two years or more, companies spending stimulus dollars may well be unable to achieve critical goals of the stimulus – substantially completing construction, delivering broadband, and creating jobs – during the “2 years following an award,” as required by the ARRA.⁵

Immediate reform of pole attachment access rules is a simple, concrete step that the Commission can take today to provide a “solution[] for a rapid build-out of rural

³ Notice at 2.

⁴ *Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, WC Docket No. 07-245, RM-11293 and RM-11303, 22 FCC Rcd. 20,195 (2007) (“*Pole Attachment NPRM*” or “*Pole Attachment Notice*”).

⁵ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 § 6001(d)(3).

broadband.”⁶ The Commission already has a complete record upon which it can act to reform the pole attachment rules. Fibertech, KDL and many other providers are building networks today. Adopting immediate pole access reforms will allow their limited deployment dollars to go further – quite literally – by eliminating unnecessary delays and costs. As the Commission considers how to improve broadband deployment and access, it should embrace the simple concrete steps that it can take *right now* to remove barriers to broadband. The Commission can and will hit home runs as it crafts a national broadband strategy, but it should recognize that it can also post significant broadband gains by putting together a sustained series of base hits. Pole access reform should be the Commission’s lead-off single.

I. Fibertech and KDL’s Experiences Illustrate How Competitive Providers of Dark and Lit Fiber Services Improve Access to Broadband.

A. Pole Access Delays have Limited KDL’s Ability to Bring Broadband to Rural Communities and Critical Community Institutions.

KDL’s experience attempting to serve rural communities and critical institutions demonstrates how the pole access regime delays broadband deployment to rural America. KDL’s network spans approximately 30,000 route miles and reaches into 26 states with much of its network deployed in rural areas of the United States.⁷ KDL’s customers count on it to deploy fiber infrastructure and to provide services over that infrastructure into areas where there is little or no real competitive alternative for high speed transport services, if any alternative exists at all.

One aspect of KDL’s business focuses on wholesaling fiber transport and interconnection services to companies and carriers that provide broadband and advanced

⁶ Notice at 2.

⁷ A map of KDL’s network is attached as Exhibit A, and can be found at http://www.kdlinc.com/files/KDL_Network_Map.pdf.

communications services to schools and libraries. These customers are carriers that provide priority 1 telecommunications services under the Schools and Libraries Support Mechanism (also known as E-Rate) and that contract with KDL to engineer and construct fiber networks to provide broadband and related services to K-12 school districts. Since the inception of the E-Rate program, KDL has built, or is in the process of building, fiber infrastructure that is used by its customers to provide high capacity Wide Area Networks (WAN) for nearly 100 school districts and their approximately 1300 schools. These school districts are largely in rural Arkansas, Alabama, Georgia, Illinois, Indiana, Kentucky, Missouri, Texas, Tennessee, Virginia and Wisconsin.

KDL's experience providing WAN networks to its customers and, ultimately, school districts, demonstrates how the current pole access regime hinders the increased deployment of broadband. Time and again, KDL's construction efforts are stalled for many months by delays in the make ready phase of its projects. For example, KDL is currently working to complete a fiber construction project for one of its customers that contracted for Gigabyte Ethernet (GigE) WAN networks with three rural school districts in Kentucky, but has been unable to complete construction of the networks of those districts because of pole access delays. Because the current rules are inadequate, the relevant pole owners have typically taken six months to provide estimates for make ready work, and have delayed the start of make ready work for months after payment of make ready costs. As a result of these delays, those school districts have had to make do with T-1 connections and not the GigE services they need.

Another egregious example of a make ready delay is a project in Virginia where an E-Rate funded school district desired to have a WAN network in place for the 2008-

2009 school year. The district intended to use the network to, among other things, conduct online standardized testing for its students. This project was awarded in February 2008, and the make ready work for it has yet to be completed as of March 2009. The school does not have the WAN network, has missed the first planned date for online standardized testing and is fast approaching a second date for its online testing with no broadband network. Pole access rules that do not set reasonable timelines for make-ready work completion allow this, and similar, denials of access to broadband to occur. Unfortunately, without clear rules and enforceable deadlines, pole owners do not treat make ready work with any sense of urgency – some, for example, are content to plod along with a single crew and will decline to authorize multiple crews to complete a project even when additional crews are available and KDL has paid its make ready costs up front. As a result, school districts that desire connectivity for activities like online assessment testing (in some cases, government mandated testing) are not able to secure critical broadband services during their desired timeframes. Instead, they are forced to use lower speed services provided to them by the very same parties that are dragging their feet in the make ready process.

Another of KDL's customers secured a loan from the United States Department of Agriculture Rural Utility Service to deploy competitively priced 21st century broadband and advanced services to 11 rural communities in Indiana. This particular customer intended to completely overbuild all 11 of those communities within two years of being awarded the loan in 2005. As a result of make ready delays, only three of those communities' networks have been built (a fourth is currently underway). As soon as the make ready work is completed in the remaining eight communities, KDL will coordinate

the fiber installation for its customer. Until then, these rural communities will continue to be deprived of the 21st century technology and advanced services that they deserve and for which funds have already been allocated. The intent of the RUS to bridge the digital divide in rural communities is thwarted when the FCC's pole access regime allows pole owners to act as bottlenecks and keep projects from being completed.

These are just a few of the customer groups served by those who subscribe to KDL's network. KDL's customers also use the KDL network for a long list of diverse services, including wireless backhaul, servicing retail customers, and providing dial tone and Internet access. Many of these services are delivered to rural America. KDL has, for example, suffered a nearly two year delay in make ready work near Beckley, West Virginia and, as a result, has been unable to build critical network requested by a wireless customer.

The single biggest challenge KDL faces in its effort to meet demand and deliver more broadband is the lengthy, unpredictable, and costly make ready process. Unfortunately, it is not uncommon for a KDL or customer project to be delayed by *one or two years* simply because of make ready issues. Far too often, the entities responsible for the delay have no incentive to act diligently and expeditiously. On the contrary, the make ready providers often stand to "win" if the broadband project fails or is delayed because that provider is currently serving the customer (with lower speed services).

Customers that seek to replace their lower speed services with 21st century broadband and advanced services using KDL fiber should not be held hostage by their existing providers. To induce pole owners and providers to complete their make ready work, the FCC must set out concrete timelines for completing make ready and

meaningful consequences when those timelines are not met. Pole owners should be required to use third party contractors when necessary to complete make ready, and, when pole owners fail to meet make ready deadlines, attachers should be free to use utility-approved contractors to perform make ready.

B. Fibertech's Experience Demonstrates that Pole Access Reform Increases Broadband Deployment.

Fibertech brings broadband competition to second and third tier metropolitan areas, and, with better pole access rules, will be increasingly able to deploy fiber that links rural customers with its metropolitan networks.

Fibertech has built networks in 11 states, including Indiana, Pennsylvania and North Carolina.⁸ Four demographically similar markets – Hartford and New Haven in Connecticut; Providence, Rhode Island; and Indianapolis, Indiana – demonstrate vividly how simple pole reforms can dramatically increase fiber deployment. Connecticut has adopted its own pole attachment rules and practices, similar to those urged by Fibertech and KDL in the Commission's pole attachment proceeding; pole access in Rhode Island and Indiana is regulated by the FCC. Over the past nine years, in the two Connecticut markets, Fibertech has deployed a total of 1,353 route miles of fiber (658 route miles of fiber in and around Hartford and 698 route miles in the New Haven area). By contrast, over the same period, Fibertech has deployed only 126 route miles of fiber in Rhode Island and only 248 route miles of fiber in the Indianapolis market. The primary reason for this dramatic difference in broadband deployment is Connecticut's pole attachment regime, which permits boxing as a means to avoid costly and lengthy make-ready work and which now includes firm deadlines for completing the pole licensing process. These

⁸ A map of Fibertech's footprint is attached as Exhibit B, and can be found at http://www.fibertech.com/docs/fibertech_ataglance.pdf.

reforms have made it possible for Fibertech to quickly, economically, and predictably deploy its fiber facilities throughout Connecticut.

In New York State, as well, Fibertech has benefited from regulatory changes instituted to support the deployment of competitive telecommunications facilities. In August 2004, the New York State Public Service Commission adopted rules prescribing licensing deadlines and enabling license applicants to benefit from efficient construction techniques, such as boxing, that had been extensively used by ILECs and cable television companies but were denied to competitive telecommunications companies. By ensuring reasonable make-ready costs and by giving Fibertech the confidence to commit to deliver service to customers within reasonable and predictable timeframes, the PSC's 2004 order dramatically spurred Fibertech's business in New York. During the period of 2000 through 2004, Fibertech signed, on average, 26 new customer contracts annually in New York. From 2005 through 2008, Fibertech was able to sign, on average, 185 new customer contracts per year.

The effect of Connecticut's and New York's rules setting timeframes for licensing is marked and highly conducive to competition. Among pole attachment license applications submitted by Fibertech since March 1, 2008, the average time from submission to licensing was 89 days in Connecticut and 100 days in New York. In contrast, Fibertech has encountered significant difficulty deploying network in Maryland, where pole access is regulated under FCC rules. There, Fibertech's 17 pole applications filed since March 1, 2008, have resulted in only three licenses and an average waiting period that is 253 days and growing.

The efficiencies created by New York's 2004 order have made the extension of fiber-optic network into rural areas financially feasible. Fibertech currently is implementing plans to extend its Rochester-area network into five rural counties south of Rochester, thereby adding 231 new route-miles of fiber-optic network. In comparison to Monroe County (where Rochester is located), which has a population density of 1,108 per square mile, the average population density of these five counties is 105 per square mile.

Fibertech also provides cellular companies, and others, with an economically attractive alternative to ILEC special access that is essential to deploying advanced wireless broadband networks. Backhaul represents an enormous cost to wireless providers and can be prohibitively expensive in rural areas. For example, at the March 19, 2009 NTIA/RUS Public Meeting about the Broadband Technology Opportunities Program, roundtable participants discussed the importance of middle and last mile backhaul in reaching rural, under- and unserved areas, and explained that in some areas, backhaul costs were a reason communities were unserved.⁹ Cellular companies that use Fibertech for backhaul from cell sites save up to 90% over special access offerings.¹⁰ By making backhaul economically feasible, competitive backhaul offerings like Fibertech's support increased deployment of wireless broadband services.

⁹ See generally Public Meeting about the American Recovery and Reinvestment Act of 2009, Broadband Technology Opportunities Program, Roundtable on Definition of Underserved Areas and Reaching Vulnerable Populations and Roundtable on Rural and Unserved Areas (March 19, 2009), <http://www.ntia.doc.gov/broadbandgrants/meetings.html>.

¹⁰ See *ex parte* letter from J. Nakahata, counsel to Fibertech Networks, LLC to M. Dortch, Secretary, Federal Communications Commission at 3, WC Docket No 07-245, RM-11293 and RM-11303 (filed Aug. 26, 2008) ("Fibertech August 2008 *ex parte*"); *ex parte* letter from J. Nakahata, counsel to Fibertech Networks, LLC to M. Dortch, Secretary, Federal Communications Commission, Attachment at 4, WC Docket No 07-245, RM-11293 and RM-11303 (filed June 16, 2008) ("Fibertech June 2008 *ex parte*").

II. By Resolving its Open Pole Access Rulemaking, the Commission can Quickly and Easily Remove Unnecessary Barriers to Broadband Deployment.

The pole attachment rulemaking is a perfect near-term opportunity for the Commission to remove barriers to “a rapid build-out of rural broadband” and to “overcome obstacles that currently impede rural broadband deployment.”¹¹ Reaching rural areas, and end users located there, is a key difficulty in increasing their broadband penetration, and fiber is essential to reaching them – both for wireline services and wireless backhaul. Indeed, as discussed above, backhaul represents a significant cost to wireless companies, and turning to companies such as Fibertech and KDL, as opposed to special access, can save wireless providers up to 90% for backhaul.

The Commission can and should make this change right now. The record in the ongoing pole attachment rulemaking is complete, and conclusively demonstrates both the need for reform and the positive, immediate impact such reforms will have on broadband deployment.

A. Pole Access Reform is Essential to Deploying Broadband in Rural Areas.

Pole access reform is absolutely necessary to spur fiber deployment – including for cellular backhaul – in rural areas. These areas present significant deployment challenges because the distances involved substantially increase the number of poles needed for a fiber network. Adopting enforceable timelines, including permitting attachers to use utility-approved contractors to complete make ready when pole owners cannot meet required deadlines, and ensuring that attachers have non-discriminatory access to time- and money-saving techniques such as boxing and extension arms, will

¹¹ Notice at 2.

allow companies to deploy their fiber quickly and efficiently, and greatly improve the economics of serving rural areas.

As Fibertech has previously noted to the Commission, the Commission should remove the current barriers to pole access by (1) adopting a reasonable timeline for completion of make-ready work and issuance of pole licenses, including allowing attachers the ability to hire and use utility-approved contractors when pole owners cannot meet required deadlines; (2) codifying existing Commission decisions that, among other things, prohibit discriminatory bans on boxing or extension arms, (3) requiring compliance with objective safety standards, (4) requiring pole owners to identify pole locations and to post agreements, fee schedules, and lists of approved contractors, and (5) prohibiting states from conditioning access on state certification.¹² These proposals are distilled from the existing pole attachment docket and will increase opportunities for both fiber and wireless broadband, both in last and middle mile. These steps will enable providers to more quickly and economically lay fiber and vastly expand the areas of the country where laying fiber (and deploying wireless and DAS networks that require pole access) can be profitable.

First, the Commission should set reasonable and enforceable timelines for the completion of make-ready work and issuance of pole licenses. Delayed pole access prevents the deployment of both wired and wireless broadband. The Commission's current rules recognize the importance of firm deadlines by specifying that a utility must grant access to poles and conduit or state why access has been denied within 45 days of a

¹² See *ex parte* letter from B. Strandberg, counsel to Fibertech Networks, LLC to M. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Mar. 6, 2009) ("Fibertech March 2009 *ex parte*") (Attachment presenting "Five Easy Ways to Increase Broadband Deployment" attached as Exhibit C).

request for access. But, despite the Commission’s attempt to ensure timely access to poles through this deadline, unreasonable delays still occur: as Fibertech has previously explained to the Commission, “as pole owners face no deadline for the *performance* of make-ready work[, it will] often take months to complete even relatively minor make-ready work.”¹³ And, when attachers face unreasonable delays, they have no recourse other than filing time-consuming complaints, creating even more delay. The current regime defeats the Commission’s and Congress’s goal in this proceeding of rapidly deploying broadband to rural America. Specifically, Fibertech and KDL suggest¹⁴:

- 45 days to complete the make-ready estimate, as the FCC already requires.
- 45 days to complete make-ready work and issue the requested license.
- Shorter time periods for smaller applications.
- Permit attachers to use utility-approved contractors to perform make-ready work or to use NESC-compliant temporary attachments when pole owners cannot meet the FCC’s deadlines.¹⁵

Second, the Commission should codify its existing holdings that, among other things, pole owners may not adopt discriminatory bans on use of boxing or extension arms by attachers. As noted in Fibertech’s most recent *ex parte*,¹⁶ the Commission should:

- “Codify the holding of *Salsgiver* and *Cavalier Telephone* that prohibitions on the use of techniques that have been used or allowed by the pole owner (including boxing, extension arms, pole improvement or replacement, where consistent with generally applicable safety standards) are unreasonable.”¹⁷

¹³ Fibertech August 2008 *ex parte* at 5.

¹⁴ Fibertech March 2009 *ex parte*, Attachment at 1.

¹⁵ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (“*Local Competition Order*”), First Report and Order, 11 FCC Rcd. 15499, 16083 (1996) (holding that utilities must allow an attacher to use any trained workers who meet the utilities’ requirements for training).

¹⁶ See Fibertech March 2009 *ex parte*, Attachment at 1.

¹⁷ See *Salsgiver Communications, Inc. v. North Pittsburgh Telephone Co.*, Memorandum Opinion and Order, 22 FCC Rcd. 20536, 20543-44 (2007); see *Cavalier Telephone, LLC v. Virginia Electric and Power Company*, Order and Request for Information, 15 FCC Rcd. 9563, 9572 (2000).

- “Codify the Supreme Court’s holding that the protections of Section 224 extend to pole attachments used to provide wireless telecommunications service.¹⁸
- “Codify the holding of *Knology* that it is an unjust and unreasonable condition of attachment for a utility pole owner to hold an attacher responsible for costs arising from the correction of other attachers’ safety violations.¹⁹”

Fibertech and KDL are not asking the Commission to adopt new law, but only to improve transparency by updating its rules to reflect what the case law already has decided. This will discourage relitigation of these issues – a barrier that has delayed broadband deployment and often made it economically infeasible.²⁰

Third, the Commission should require compliance with objective safety standards. Specifically, “[t]o ensure the safety of attachments and prevent pole owners from invoking subjective standards to unreasonably limit access to poles, the Commission should adopt a presumption that attachments are safe if they comply with the NESC, the Bellcore Bluebook, FCC and OSHA rules governing exposure to RF emissions, and any other objective and publicly available safety standards.”²¹

Fourth, the Commission should require pole owners to identify pole locations and to post agreements, fee schedules, and lists of approved contractors. “To reduce delays and make the negotiation process more transparent, the Commission should follow the example of several states and require pole owners to post on their Web sites a complete pole attachment application and standard agreement that complies with all applicable federal and state laws and contains all of the general terms, conditions, and procedures

¹⁸ See *Nat’l Cable & Telecomms. Ass’n v. Gulf Power Co.*, 534 U.S. 327 (2002).

¹⁹ See *Knology Inc., v. Georgia Power Company*, Memorandum Opinion and Order, 18 FCC Rcd. 24615, (2003).

²⁰ Comments of Fibertech Networks, LLC and Kentucky Datalink, Inc. at 13-14, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Mar. 7, 2008) (“Fibertech-KDL Comments”).

²¹ Fibertech March 2009 *ex parte*.

applicable to pole attachments. Pole owners should be required to include maps identifying the specific locations of all facilities allocated, in whole or in part, to local distribution. In addition, pole owners should be required to post fee schedules and a list of approved contractors.”²²

Fifth, the Commission should prohibit states from conditioning access on state certification. “The Commission should affirm that states that have established their own pole attachment regimes are prohibited by section 332(c)(3) of the Act from requiring wireless carriers to submit to state certification requirements as a precondition for access to poles.”²³

B. The Record in the Pole Attachment Proceeding is Complete.

The record in the pole attachment proceeding is complete. The FCC has before it the evidence presented in response to its Notice of Proposed Rulemaking addressing pole access issues, and the FCC is free to adopt pole access reforms at any time. Critically, the contentious and separate issue of pole attachment rates should not further delay action on pole *access* reform, reform that will immediately remove unnecessary barriers to broadband deployment.

C. Providers are Ready to Bring Broadband Service to Rural America.

The record in the pole attachment proceeding demonstrates that providers that want to bring broadband to end-users, wireless carriers, and strategic community institutions have faced long delays and unnecessarily cumbersome make-ready processes.

- Time Warner Telecom Inc., One Communications Group, and Comptel filed comments reporting that pole owners have often not allowed extension arms or

²² *Id.*

²³ *Id.*

boxing and taken months or years to review applications for make-ready work or pole availability.²⁴

- NextG Networks Inc. filed comments describing delays in make-ready work and post-construction surveys, even describing an instance in which the utility failed to provide a timeline for work on fourteen poles – work for which NextG had already paid – until six months after NextG's request.²⁵
- T-Mobile's reply supporting Fibertech's petition for rulemaking described its experience of delays in gaining access to poles and explained its need to access poles for last mile coverage and advanced wireless services.²⁶

These companies, and other fiber companies and wireless providers, have said they are ready and willing to deploy, and would be able to deploy in a timely manner if the Commission codified its existing rulings and set timeframes for completion of make-ready work. Such deployment is essential to providing infrastructure and service to rural America, and the reform of the pole attachment rules, which the Commission can undertake immediately, meets Congress's goal for rapidly reaching rural areas with broadband.

D. Boxing and Extension Arms are Demonstrably and Presumptively Safe.

The Commission should not let unfounded accusations that boxing and extension arms are unsafe delay the pole attachment reform that will speed the deployment of broadband to rural America by avoiding costly, lengthy and unnecessary make-ready work, including pole replacements. In the pole attachment proceeding, pole owners repeatedly complain that it would be unsafe to codify Commission decisions that pole owners may not adopt discriminatory bans on the use of boxing or extension arms by

²⁴ See Comments of Time Warner Telecom Inc., One Communications Corp, and Comptel at 15, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Mar. 7, 2008).

²⁵ See Comments of NextG Networks, Inc. at 20-21, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Mar. 7, 2008).

²⁶ See Reply of T-Mobile Inc. at 3, 10-11, RM-11303 (filed Mar. 1, 2006).

attachers.²⁷ But not only is there no evidence in the pole attachment proceeding record to support this, the evidence that is in the record – which includes real-world examples – belies the claim.²⁸ First, as AT&T’s comments noted, boxing and extension arms can increase pole stability through load balancing.²⁹ Second, Connecticut and New York have adopted clear deadlines and permitted use of boxing and extension arms. The experience in Connecticut and New York demonstrates that pole reforms can be safely implemented.³⁰ In any event, all that Fibertech and KDL have sought here is a presumption that boxing and extension arms will be permitted where pole owners have permitted such uses by other attachers. If there is a true issue of safety for which there is actual proof, the presumption can be rebutted.

E. Codifying Existing Commission Decisions will Speed Deployment.

Although the Commission has decided that pole owners may not adopt discriminatory bans on use of boxing or extension arms,³¹ Fibertech, KDL and other companies are still confronted with such actions. The only option attachers have is to file a complaint and litigate the issue – which as discussed above, delays or even prevents build out. If the Commission codifies its key decisions, however, the transparency of the

²⁷ See, e.g., Initial Comments of Florida Power & Light, Tampa Electric and Progress Energy Florida Regarding Safety and Reliability at 18-19, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Mar. 7, 2008); Comments of the Edison Electric Institute and the Utilities Telecom Council at 84-86, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Mar. 7, 2008); Comments of the Coalition of Concerned Utilities at 81-84, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Mar. 7, 2008).

²⁸ See Fibertech August 2008 *ex parte* at 3; see also Reply Comments of Fibertech Networks, LLC and Kentucky Data Link, Inc. at 14, WC Docket No. 07-245, RM-11293 and RM-11303 (filed Apr. 22, 2008).

²⁹ See Reply Comments of AT&T at 40 n.113, WC Docket No. 07-245 (filed Apr. 24, 2008).

³⁰ See Fibertech August 2008 *ex parte* at 4.

³¹ See *Salsgiver Communications, Inc. v. North Pittsburgh Telephone Co.*, Memorandum Opinion and Order, 22 FCC Rcd 20536, 20543-44 (2007); *Cavalier Telephone, LLC v. Virginia Electric and Power Co.*, Order and Request for Information, 15 FCC Rcd 9563, 9572 (2000).

Commission's positions on these issues will be increased.³² This will give attachers concrete rules to which they can point pole owners, avoiding unnecessary efforts to relitigate settled issues. Codifying existing decisions is a simple, near-term way to help companies reach rural America with broadband and give rural Americans and critical institutions improved broadband access.

III. Conclusion

The Commission has at its disposal a simple method to rapidly increase broadband deployment to rural areas. Fibertech and KDL urge the Commission to adopt the pole attachment reforms they and others have urged in the pole attachment proceeding.

Respectfully submitted,



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³² See Fibertech August 2008 *ex parte* at 3.