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September 16, 2009

Via Electronic Filing

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

Re: *In re* Implementation of Rule 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245, RM-11293 and RM-11303 - *Ex Parte* Notice

Dear Ms. Dortch:

On behalf of MetroPCS Communications Inc., the undersigned has caused to be electronically delivered the attached letter and "Memorandum on the Importance of Pole Attachments to the Development of Commercial Mobile Radio Service and Broadband Networks" to Chairman Julius Genachowski, Commissioners Copps, McDowell, Clyburn and Baker, and the FCC staff members identified in the letter. Notice of this ex parte communication is given pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

Very truly yours,

/s/ Charles A. Rohe
Charles A. Rohe
Nguyen T. Vu

CAR/NTV/cpm

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September 16, 2009

Via Courier

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In re* Implementation of Rule 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245, RM-11293 and RM-11303

***In re* A National Broadband Plan for Our Future, GN Docket No. 09-51**

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker:

On behalf of MetroPCS Communications, Inc., and in accordance with Section 1:1206(b) of the Commission's Rules pertaining to *ex parte* communications, 47 C.F.R. § 1.1206(b), I am pleased to forward the attached "Memorandum on the Importance of Pole Attachments to the Development of Commercial Mobile Radio Service and Broadband Networks."

Copies of this letter and memorandum have been filed electronically with the Commission Secretary in both of the above referenced proceedings. Please do not hesitate to contact the undersigned if you have any questions in regard to this filing.

Very truly yours,

/s/ Charles A. Rohe
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Attachment

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METROPCS COMMUNICATIONS, INC.
MEMORANDUM ON THE IMPORTANCE OF POLE ATTACHMENTS TO THE DEVELOPMENT OF COMMERCIAL MOB ILE RADIO SERVICE AND BROADBAND NETWORKS

SEPTEMBER 16, 2009

I. BACKGROUND

MetroPCS Communications, Inc. ("MetroPCS")[1] provides commercial mobile radio service ("CMRS") service in selected metropolitan areas throughout the United States, targeting a mass market largely underserved by the larger national wireless carriers. MetroPCS offers attractively priced voice and data plans, starting as low as $30 per month, as well as other value-added services such as mobile instant messaging, push email and mobile Internet browsing, providing meaningful competition to its larger competitors.

The development and roll-out of a National Broadband Plan is one of the most important initiatives that the Commission will undertake in the next several years. As Chairman Julius Genachowski has observed:

> the President and Congress have entrusted the FCC with the responsibility of developing a National Broadband Plan, due in February. ... Broadband is the great infrastructure challenge of our generation. It is to us what railroads, electricity, highways and telephones were to previous generations, a platform for commerce, for democratic engagement, and for helping address major national challenges.[2]

One of the most important aspects of this national broadband plan will be how and where providers will be able to place new facilities to create this great broadband infrastructure. Wireless is one of the Commission's great success stories and one of the most likely technologies to be the spearhead for United States broadband infrastructure as it enters the

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[1] For purposes of this Memorandum on Pole Attachments, the term "MetroPCS" refers to MetroPCS Communications Inc. and all of its FCC-licensed subsidiaries

[2] Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission National Broadband Plan Workshop, August 6, 2009, eGovernment & Civic Engagement, *available at* http://www.fcc.gov/headlines.html.

twenty-first century. Since both traditional wireless services as well as wireless Internet service providers ("WISPs") need locations to place wireless infrastructure, it is imperative that the Commission act to facilitate access to existing utility poles.

Many cell sites for wireless antennas available to other carriers are not available to MetroPCS and new entrants because they are new to the market. In many instances, pole attachments are, and will remain, one of the only viable alternatives that allow MetroPCS and new entrants to rapidly introduce service and provide competition to existing wireless, wireline, and cable voice providers. MetroPCS collocates on existing cell sites whenever possible, and suspects that other new entrants do likewise, but use of distributed antenna systems ("DAS systems") are crucial to MetroPCS' development.[3] Indeed, in constructing its networks in Philadelphia, New York and Boston, MetroPCS used DAS systems because zoning issues and lack of suitable tower sites made DAS the only alternative in many instances. Often, DAS systems are dependent on utilizing utility poles. Because access to poles is crucial in new markets, MetroPCS has played an active role in the Commission's pole attachment proceedings,[4] as well as in pole attachment proceedings at the state level.[5]

II. THE COMMISSION SHOULD RESOLVE FIBERTECH'S OUTSTANDING PETITION FOR RULEMAKING

On December 7, 2005, Fibertech Networks, LLC ("Fibertech") petitioned the Commission to conduct a rulemaking to adopt seven "standard practices" for pole and conduit

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[3] *See* Mike McCormack, Scott Goldman & Manish Jain, *Telecom Buzz, Distributed Antenna Systems*, JPMorgan North America Equity Research (Sept. 25, 2008), attached hereto as Exhibit A (describing DAS systems and providing comparisons to traditional tower systems).

[4] See, e.g., Implementation of Section 224 of the Act of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245, RM-11293 and RM-11303, Notice of Proposed Rulemaking, FCC 07-187 (rel. Nov. 20, 2007), Comments of MetroPCS Communications, Inc. (filed March 7, 2008); Letter from Charles A. Rohe, Counsel to MetroPCS Communications, Inc. to Marlene H. Dortch, Secretary, FCC, RM-11303 (filed Aug. 13, 2008) (notice of ex parte meeting with Commission staff to discuss pole attachments).

[5] *See, e.g.*, Comments of MetroPCS New York, LLC, New York Public Service Commission Case 07-M-0741 (filed Sept. 10, 2007); Reply Comments of MetroPCS New York, LLC, New York Public Service Commission Case 07-M-0741 (filed Sept. 24, 2007), attached hereto as Exhibit B and Exhibit C.

access.[6] Among other things, Fibertech asked the Commission to provide relief from the delays that regularly accompany the pole attachment process. Although some of Fibertech's proposed solutions related to specific problems that Fibertech had experienced, an overarching objective of Fibertech's petition is that the Commission curtail the ability of pole owners to use the pole attachment process to delay competitors' deployment of service.

Since the time Fibertech filed its petition, other tangential issues have found their way into the proceeding, such as the arbitrary rate distinctions for cable and telecom service providers,[7] and incumbent local exchange carriers' ("ILECs") entitlement to protection under Section 224.[8] While these concerns are significant and must be addressed, resolution of the issues originally raised in Fibertech petition should not be forgotten. The Commission should not lose sight of the original problem that was brought to its attention, which has been addressed by virtually every attaching party that has commented,[9] including MetroPCS.[10] Put simply, that problem is delay. Under the Commission's current regulatory regime, pole and conduit owners have the ability to delay or deny access to poles by competitors. For the incumbent local exchange carriers who own and control a substantial number of poles, the attaching parties are

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[6] *See* Petition of Fibertech Networks, LLC for Rulemaking, RM-11303 (filed Dec. 7, 2005) ("Fibertech Petition"). Comments in the Fibertech Petition were due by January 30, 2006, and replies were due by March 1, 2006. *See Pleading Cycle Established for Petition for Rulemaking of Fibertech Networks, LLC*, RM-11303, Public Notice, 20 FCC Rcd 19865 (2005); *Fibertech Networks, LLC, Petition for Rulemaking*, RM-11303, Order, 21 FCC Rcd 155 (WCB 2006).

[7] Implementation of Section 224 of the Act of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245, RM-11293 and RM11303, Notice of Proposed Rulemaking, FCC 07-187 (rel. Nov. 20, 2007) ("Pole Attachment NPRM").

[8] Petition of The United States Telecom Association for Rulemaking, RM-11293 (filed Oct. 11, 2005).

[9] *See, e.g.,* Comments of Sigecom, LLC in the Fibertech Petition at 3-4, RM-11303 (filed Jan. 27, 2006); Comments of Tropos Networks in the Fibertech Petition at 2, RM-11303 (filed Jan. 30, 2006); Comments of segTel, Inc. in the Fibertech Petition at 5-7, RM-11303 (filed Jan. 30, 2006); Comments of Indiana Fiber Works, LLC in the Fibertech Petition at 3-4, RM-11303 (filed Jan. 30, 2006); Comments of Virtual Hipster Corp. in the Fibertech Petition at 4, RM-11303 (filed Jan. 30, 2006); Comments of NextG Networks, Inc. in the Fibertech Petition at 6, RM-11303 (filed Jan. 30, 2006); Comments of Sunesys, Inc. in the Fibertech Petition at 9-13, RM-11303 (filed Jan. 30, 2006).

[10] *See, e.g.,* Comments of MetroPCS Communications, Inc. in the Pole Attachment NPRM at 7, (filed Mar. 7, 2008).

also their competitors for voice, video and broadband Internet access customers, and they can use their control of this crucial property to circumvent broadband policies adopted by the Commission.

III. THE COMMISSION SHOULD ADOPT MORE PRECISE RULES

As the Commission's rules regarding the process for competitors to attach to poles are currently written, pole owners have every opportunity to slow-roll the attachment process in an effort to delay competitive entry. Moreover, the Commission's current light-handed regulatory process makes it nearly impossible in most instances for attaching parties to show clear evidence of rule violations by pole owners. For example, Section 1.1403 of the Commission's Rules requires that access to a pole be *granted* within 45 days from the date the request is made, but there is no limit on the amount of time in which pole owners must *complete* make-ready work. The net effect is that pole owners routinely complete make-ready work over time periods extending from several months to several years.[11]

In order for competitive telecommunications providers to be economically viable in the marketplace, and for the broadband initiative of the Commission to be realized, access to poles is needed on an expedited schedule. Speed to market is the touchstone of technology advancement as competitors strive to complete network upgrades and new construction for deployment of vital services that include voice telecommunications, broadband Internet access, and digital television services. Indeed, access to poles will, in some instances, determine how quickly new entrants such as MetroPCS will be able to introduce additional competition to the marketplace. Pole owners, who include incumbent local exchange carriers that are competitors of new entrants such as MetroPCS, often act much more quickly when installing their own new facilities than when

[11] *See, e.g.,* Comments of Sunesys, Inc. in the Pole Attachment NPRM at 14 (filed Mar. 7, 2008).

acting on a new entrant's application for access to its poles.[12]

Making matters worse, the Commission's vague standard for proving a violation of the rules by the pole owner creates a hurdle that is too high for most attachers to overcome, and Commission precedent has not helped. For example, the Commission has held that forfeitures will not be imposed on a pole owner for denial of access unless the basis for such denial was "so devoid of merit as to be frivolous."[13] In fact, outright denials seldom occur, but attaching parties are instead subjected to excessive delays. Proving that the pole owner's conduct is "frivolous" is a very heavy burden, probably made impossible in the absence of clear rules related to delay, resulting in very little of the deterrent effect that the Commission's oversight should provide.

Even pole owners acknowledge that the Commission's pole attachment rules lack sufficient clarity in some cases. Indeed, pole owners have asked for more specific rules, notably in the area of unauthorized attachments, where they claim the ambiguity of the FCC's policies and insufficient penalties have led to an "epidemic" of trespass on their structures.[14]

IV. ARBITRARY DISTINCTIONS IN RATES

The Commission's current rules, reflecting statutory language, also permit widely disparate pole attachment rates for identical burdens on the poles, based on arbitrary regulatory distinctions. A single rate should be adopted, based on the amount of usable pole space the attachment utilizes. Indeed, the widely disparate pole attachment rates for otherwise identical uses of pole space harms consumers by creating implicit subsidies for certain technologies, based

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[12] Fibertech Petition, Exhibit 1, Declaration of Charles Stockdale at 8 (filed Dec. 7, 2005); Comments of COMPTEL in the Fibertech Petition at 9-10, RM-11303 (filed January 30, 2006).

[13] *Salsgiver Telecom, Inc. v. North Pittsburgh Telephone Company*, Memorandum Opinion and Order, 22 FCC Rcd 9285, ¶ 24 (EB 2007).

[14] Letter from George M. Foote, Counsel to CenterPoint Energy Houston Electric, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, at 2-3 (filed June 3, 2008). MetroPCS does not support the in consistent claims of CenterPoint Energy Houston Electric, LLC ("CenterPoint Energy"). While CenterPoint Energy urges the Commission to clarify its rules regarding unauthorized attachments, it has at the same time, decried the calls of attaching parties for more specific rules relating to timetables for field studies and make ready work. *Id.* at 1.

not on economics, but on arbitrary regulatory distinctions. As the Commission moves forward in its national broadband plan, these distinctions will cause even greater problems. There should be no difference in price based on where the attachment is placed on a pole or what types of service the attaching party provides. Accordingly, in amending the Commission's rules, the Commission should require the following:

(1) a wireless carrier that requires one foot of space should pay the same rate as any other service provider that occupies one foot; and

(2) because pole-top placement of antennas provides better coverage for wireless carriers, such placement should be permitted without discrimination, supplemental charges or delay.

A wireless provider's attachment to the top of a utility pole does nothing to increase the pole owner's costs. In fact, pole-top attachments reduce operating expenses for the pole owner and other attaching parties because the pole owner's employees have less frequent need to "climb over" antennas and therefore fewer occasions to coordinate their maintenance activities with the wireless carrier. Further, attaching at the top of the pole leaves the rest of the pole available for other users with more traditional wireline attachments. Indeed, attaching at the top gives the pole owner more revenue with no consumption of the space that is traditionally considered "useable." Because it makes economic sense for pole owners to allow pole-top attachments, the pole owners' refusals to do so can be assumed to result from anticompetitive motives rather than other legitimate reasons. Thus, the Commission should find that any denial of attachments of wireless attachments to the top of a pole, or denial of any specific type of antenna that has previously been approved by the same utility is presumptively unreasonable, subject to rebuttal on a case-by-case basis.

V. PROMPT COMMISSION ACTION IS REQUESTED

The Commission has taken a very long time to address the issue of delay, as raised in Fibertech's 2005 petition. The conclusion cannot be avoided that the issues of rate discrimination and ILECs' access to poles under Section 224 have "highjacked" a meritorious petition. MetroPCS therefore urges the Commission to take prompt and decisive action to specifically address delay in granting access to utility poles. To that end, MetroPCS recommends that the Commission promptly issue an order addressing the following:

A. Make-Ready Work

The pole owner should be required to complete (or allow licensee-hired contractors to complete) field surveys and identify make-ready work within 30 days of receipt of a completed application. Necessary make-ready work should then be required to be completed within 45 days of receiving payment for the work. This gives the pole owner approximately 75 days from the date of application in which to identify make-ready work and have it completed.

B. Sample Antennas for Wireless Carriers

If a wireless carrier proposes to attach an antenna to a pole, and that type of antenna has never before been used on the same utility's poles, the pole owner should be provided with a sample of the antennas, and be required to examine it for any safety or engineering concerns during the period allowed for identification of make-ready work, or at least within 30 days of the date on which the antennas is provided for examination.

C. Utility-Approved Contractors

The use of utility-approved contractors to perform field surveys and make-ready work is critical, because it answers pole owners' common complaint that they do not have the resources to act on petitions quickly, while protecting their interests in controlling the quality of work.

D. Maximum Rate

Any proposed price-setting regime that relies on case-by-case negotiation has a very negative effect on wireless providers. Negotiations tend to stretch on endlessly because pole owners know that attaching parties have few, if any, real alternatives, and the result is delay. Further, the rates should not discriminatorily favor one attacher or technology over another. Accordingly, wireless carriers need a maximum rate, set by formula.

E. Examination of Wireless Applications

Pole owners should not be allowed to examine wireless applications on a case-by-case basis for the mere reason that antennas are not the traditional wire-bolted-to-pole attachment. This has led to unnecessary delays because of unsupported claims, for instance that a typical 4-foot wireless antenna, extending vertically from the top of the pole, is more susceptible to ice and wind than the heavy copper cables that are already hanging on the poles.

VI. CONCLUSION

The Commission has recognized that in order for competitive telecom providers to be economically viable in the marketplace, and for such carriers to play a substantial role in the new broadband infrastructure, they need access to poles on an expedited basis. The willingness of new competitors to readily adopt new technology is one of the benefits that has come with competition. However, the 100-year-old monopolies that own virtually all of the nation's utility poles are reflexively resistant to non-traditional uses of their poles. Also, a number of ILECs, which own about one third of the poles in the U.S., are affiliated with competitors of MetroPCS and any new entrants who result from the Commission's national broadband initiative. This will be especially the case in respect to broadband. At best, these ILECs have no incentive to devote sufficient resources to the structure management process. At worst, this may cause them to intentionally obstruct development by new entrants and existing competitors.

Public Notice of December 14, 2005[15] are examples of the type of specific rules that the Commission should adopt. In addition, the Commission should also order that any denial of attachments of wireless attachments to the top of a pole, and denial of any specific type of antenna that has previously been approved by the same utility is presumptively unreasonable, subject to rebuttal on a case-by-case basis.

Respectfully submitted

/s/ Charles A. Rohe

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Counsel for MetroPCS Communications, Inc.

Dated: September 16, 2009

[15] Pleading Cycle Established for Petition for Rulemaking of Fibertech Networks, LLC, RM-11303, Public Notice, DA 05-3182 (rel. Dec. 14, 2005).

EXHIBIT A

North America Equity Research
25 September 2008

JPMorgan

Telecom Buzz

Distributed Antenna Systems

Telecom Services

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J.P. Morgan Securities Inc.

Distributed antenna systems (DAS) have been designed to supplement or replace traditional wireless networks that utilize large steel towers or rooftop infrastructures. We are particularly focused on outdoor DAS, given its increasing relevance to carrier network builds. Rapidly expanding carriers are making heavy use of DAS to build urban markets more quickly, while larger carriers are using DAS to supplement existing infrastructure, particularly in places where they cannot use traditional means.

- **Implementation and management of the systems.** The primary roadblocks to using traditional towers, including rooftop towers, are space limitations, zoning issues, and capacity restrictions on existing towers. With DAS, carriers can access a plethora of utility poles in order to place antennas in multiple locations, potentially providing more flexibility during buildouts. Carriers, whether on their own or through a third-party DAS operator, often prefer to lease space on their networks to other carriers in order to maximize operating leverage. Because DAS is capable of supporting multiple technologies and frequencies, placing multiple tenants on a network becomes easier.

- **The economics of DAS.** Carriers that lease a DAS network from a third-party provider generally pay a monthly lease fee. However, different from the tower model, initial construction costs are typically passed through to the carrier. As a result, carriers have noted that using DAS accelerates the capital spend to launch a market, albeit the cumulative spend may be identical to traditional means of launching a market. In general, we note that DAS models have become increasingly popular in large part because the cost to use them has come down, but we believe they will remain a niche approach for building wireless networks.

- **Advantages and disadvantages of DAS.** The primary advantages of DAS systems include greater flexibility, fewer zoning restrictions, the ability to outsource to third parties, lower interference, and better coverage. Disadvantages include higher up-front capital expenditures and potentially time-consuming processes to obtain municipal licenses.

- **Update on telecom and cable promotions also included.** In addition to our analysis of DAS, we also have included a current view of telecom and cable broadband and video promotions in this note. We believe these promotions are being driven by continued weakness in broadband and video trends.

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See page 9 for analyst certification and important disclosures.

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Portfolio Manager's Summary

What Is DAS?

Distributed antenna systems (DAS) have been designed to supplement or replace traditional wireless networks that utilize large steel towers or rooftop infrastructures. DAS is found in both indoor and outdoor environments. Wireless carriers will often use DAS in large buildings with a lot of foot traffic where it is difficult to provide seamless wireless coverage, such as casinos and malls. However, DAS is becoming increasingly popular in outdoor environments as well in order to accelerate the network buildout of a dense urban area or to augment existing coverage and capacity.

In this report we are focused on outdoor DAS, given its increasing relevance to carrier network builds. Wireless carriers, such as MetroPCS and Leap Wireless, are making heavy use of DAS systems to build urban markets more quickly. Larger carriers are using DAS to supplement existing infrastructure, particularly in places where they cannot use traditional means due to zoning or space restrictions.

Wireless carriers generally take two approaches to roll out outdoor DAS. They either own and run the system themselves and work with utility companies to gain permission to place antennas (nodes) on structures such as utility poles, traffic lights, and traffic signals, or they outsource the work to a third-party provider. Third-party providers include Extenet Systems, Crown Castle International, SBA Communications, and American Tower.

Implementation of the Systems

DAS networks are meant to provide more flexibility to a carrier by providing a location in which to place wireless antennas other than typical towers. The primary roadblocks to using traditional towers, including rooftop towers, are space and zoning issues. Often it does not make sense to place a large tower in the downtown area of a large city. In addition, municipalities may simply object to it because of the unsightly appearance. Rooftop towers are a popular alternative; however, in addition to typical zoning issues, carriers often have to undergo lengthy discussions with property owners before gaining access. In addition, both traditional towers and rooftop towers may have capacity limitations if they already hold several tenants. With DAS, given the near ubiquity of utility poles and traffic lights, carriers potentially have more options.

Building a DAS network begins with receiving state or municipal approval, which requires a license from the respective public utility commission. This can sometimes be a time-consuming, bureaucratic process. The next step involves working with utility companies to gain access to their infrastructure, which can involve signing a contract for a specific group of utility poles or other infrastructure. Once access is received, carriers must install antennas at the desired sites and run fiber (or some other means of transport) and power. The fiber will run from the antennas to a central hub which holds the carrier's base station equipment, and carriers must then run backhaul from the hub to a switching center, as is done in a traditional tower model. Carriers do not need a separate base station at each antenna location. Instead, the

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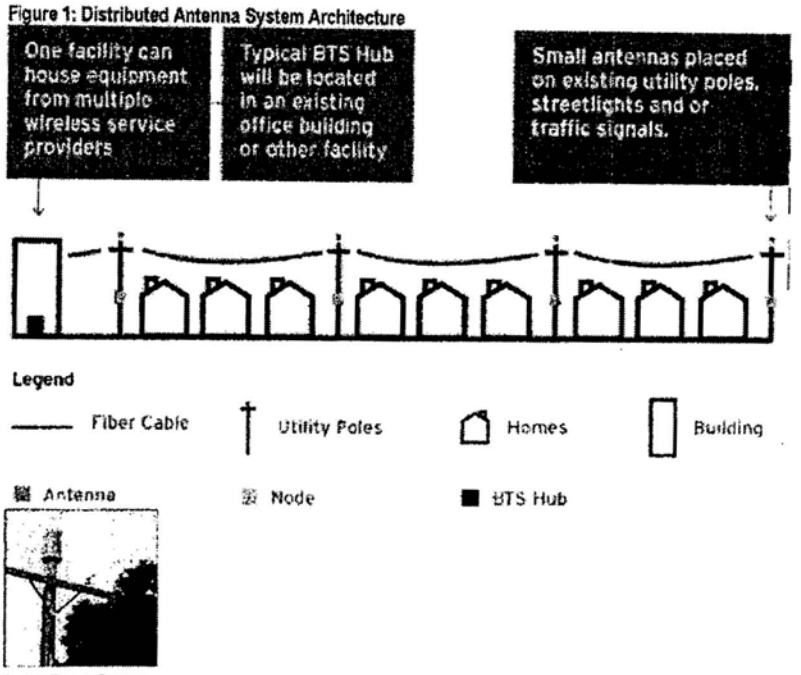
required equipment at the antenna location consists of an optical-to-electrical converter and a radio frequency transceiver.

Figure 1: Distributed Antenna System Architecture



Source: Extenet Systems.

Managing the Operations

Distributed antenna systems can be operated for multiple tenants. Third-party providers would typically prefer this in order to maximize operating leverage, but in many cases carrier-run networks are even shared with competitors. In addition, DAS is capable of being multitechnology (e.g., CDMA, GSM, LTE) and multifrequency. In terms of distance capabilities, DAS systems are not structured to carry signals far distances given the proximity of antennas. Therefore, though highly dependent on the particular city, a DAS network can require approximately three to six antennas to duplicate the coverage provided by a typical tower.

Economics

The economic model for a DAS network works similarly to typical tower models. Carriers that lease a DAS network from a third-party provider generally pay a monthly lease fee. However, different from the tower model, initial construction costs are typically passed through to the carrier, though in exchange for lower average lease payments. Carriers generally have to front the construction costs, because a DAS network is often built with only one tenant initially.

In general, we note that DAS models have become increasingly popular in large part because the cost to use them has come down. However, we believe DAS will remain a niche approach to building a network and will likely be utilized by smaller, less

established carriers. Larger carriers, in most cases, prefer traditional approaches, given that they already have most of their infrastructure in place and primarily need to fill in gaps in coverage or capacity gaps. In addition, they do not have as much of an urgency to get to market as an expanding carrier such as Metro or Leap.

Advantages over Traditional Tower Systems

We believe the following are advantages in using DAS over traditional tower networks:

- **Flexibility.** DAS can be implemented in more locations. There are numerous utility poles and traffic lights, while open space for placing towers is limited in dense urban areas.
- **Fewer zoning restrictions.** Municipalities and residents generally have few objections to the placement of antennas on utility poles, given their small size relative to larger tower structures. On the other hand, there are often heavy zoning restrictions on traditional towers and rooftop towers.
- **Ability to outsource.** Third-party providers of DAS services help carriers to streamline their operations and to focus more on providing service and less on maintaining a network. This also potentially lowers costs in cases where third-party owners can find multiple tenants to use the network.
- **Lower interference.** DAS systems can lower interference in urban areas, as they are generally lower to the ground and antennas are placed closer to users. This reduces interference from other signals that travel higher and also reduces power.
- **Allows for seamless coverage.** DAS enables much deeper coverage, particularly in places where it is difficult for traditional tower infrastructure to reach. For example, a rooftop tower located on the top of a tall building may not be able to send a strong enough signal throughout the entire building or to customers at street level.
- **Compliance with E-911 requirements.** Because DAS can expand coverage substantially, it improves the ability for police or other emergency authorities to locate customers through cell signals. This has become an increasingly important requirement for wireless providers.

Disadvantages versus Traditional Tower Systems

We believe the following are disadvantages in using DAS versus traditional tower networks:

- **Higher up-front costs.** With third party-operated DAS systems, carriers typically have to fund all initial up-front construction costs, while in a tower system the third-party provider will install the steel tower structure and then charge just the monthly lease fee. Labor costs are particularly high, as the required density and the difficult process to lay fiber connecting antennas to the base station is time consuming.
- **Not always quicker.** Launching a DAS network can sometimes take just as long as building a network with towers. First a carrier, tower company, or DAS operator must receive a license to build the network from state authorities, which could involve a bureaucratic process. Installing antennas in numerous locations

could also be time consuming, particularly since each antenna needs to have a transport line connecting it to the central hub.

- **Sometimes zoning is not so easy.** Even DAS equipment sometimes does not pass through zoning regulations. DAS could run into restrictions in residential areas in particular, where residents may be very averse to having antennas or equipment boxes jutting out of utility poles.

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Current Industry Promotions

On the heels of weak second-quarter broadband results, particularly from the large-cap telcos, we have seen a slew of new broadband promotions. Furthermore, as we indicated in our note "Tough Sledding: Street Consensus Remains Too Aggressive; Reducing Estimates for T and VZ," published on September 10th, we believe this weakness continued into the third quarter. Many of these new promotions, including several that include cash-back offers, came at the beginning of September and will therefore probably have a small impact on broadband adds for the quarter. In addition, most expire by the end of the month, and we expect to see new promotions in October as both telecom and cable providers look to improve market share positions. Below we detail several of the new broadband and video offers from both the telcos and the major cable service providers. It appears that AT&T has the most aggressive promotion, offering $200 cash back on U-Verse video and broadband bundles without any required contract. Qwest is offering guaranteed pricing for life with two-year contracts, while Verizon is offering a free month of service on FiOS video and broadband with one-year commitments. The cable MSOs are not running as aggressive promotions, opting to offer discounted pricing for the first six or 12 months of service in most cases.

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Figure 2: Telecom and Cable 3Q08 Promotions

Company	Service	Promotion - Key Details	Contract Required	Start Date	End Date
Telecom Providers					
AT&T	U-Verse Video and Broadband	$200 cash back and one month free TV with DVR, $84/month - $124/month depending on number of channels	No	N/A	9/20/2008
	Broadband (DSL)	$100 cash back, additional $125 for switching from cable, 24 Month price guarantee, $32.95/month - $42.95/month	No	N/A	9/20/2008
Former BellSouth Territory	Video	$100 cash back, free upgrade to DVR, $49.99/month-$99.98/month for new customers with AT&T w/line service	No	N/A	9/20/2008
	Broadband DSL	$100 cash back, $125 cash back if switching from cable and purchase AT&T wireline service; $32.95/month-$42.95/month	1 year	N/A	9/20/2008
Qwest	Broadband	1.5Mbps, for new customers, must be paired with home phone, $14.99/month for 12 months, price for life guarantee with two year commitment	No	N/A	11/2/2008
	Broadband	7Mbps, for new customers, must be paired with home phone, $24.99/month for 12 months, price for life guarantee with two year commitment	No	N/A	11/2/2008
	Broadband	12Mbps, free modem, must be paired with home phone, $46.99 for 12 months, price for life guarantee with two year commitment	1 year	N/A	11/2/2008
	Broadband	20Mbps, free modem, must be paired with home phone, $99.99 for 12 months, price for life guarantee with two year commitment	1 year	N/A	11/2/2008
Verizon	FiOS TV	Free month of service, free year of DVR, and a free month of HBO and Cinemax, $47.99/month	1 year	N/A	10/4/2008
	FiOS Broadband	Free month of service, $42.99/month for 10Mbps - $139.95/month for 50Mbps	1 year	N/A	10/4/2008
	Broadband DSL	6 months free with 1 year contract, $19.99/month for months 7-12	1 year	N/A	9/12/2008
Cable MSOs					
Cablevision	Broadband	$29.95/month for first 6 months for self-install for new customers combined with cable subscription	No	N/A	9/30/2008
	Triple Play	$90/month for 12 months	No	N/A	9/30/2008
Charter	Digital Cable	$45/month for six months, $55/month thereafter	No	9/1/2008	9/30/2008
	Triple Play	With digital cable, $100/month for 12 months, $155/month thereafter	No	9/1/2008	9/30/2008
Comcast	Digital Cable	Basic package, $29.95/month for six months, $55.48/month thereafter	No	N/A	9/30/2008
	Digital Internet	Basic package, $34.95/month for six months, $57.95/month thereafter	No	N/A	N/A
	Digital Voice	First month free for current customers	No	N/A	N/A
	Triple Play	$114.99/month for 12 months, $153.34/month thereafter	No	N/A	9/30/2008
Time Warner Cable	Digital Cable	Three year price lock guarantee, $49.95/month year 1, $55.95/month years 2 and 3	3 year	9/1/2008	11/30/2008
	Digital Cable and Internet	Three year price lock guarantee, $79.95/month year 1, $94.95/month years 2 and 3	3 year	9/1/2008	11/30/2008
	Triple Play	Three year price lock guarantee, $99.95/month year 1, $119.95/month years 2 and 3	3 year	9/1/2008	11/30/2008

Source: Company websites.

Note: Cash-back offers are available for Time Warner Cable, Comcast, and Charter through authorized dealers.

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EXHIBIT B

Before the
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission Concerning Wireless Facility Attachments to Utility Distribution Poles	)))	Case 07-M-0741

COMMENTS OF METROPCS NEW YORK, LLC

Pursuant to the request of the State of New York Public Service Commission (the "Commission"),[1] MetroPCS New York, LLC[2] ("MetroPCS") respectfully submits the following Comments in the above captioned case. As a preliminary matter, MetroPCS applauds the Commission for recognizing the importance of wireless attachments on utility poles, and for taking a position of leadership in facilitating these essential attachments. As a new entrant, MetroPCS seeks to place its facilities on utility poles so it may bring additional competition to the wireless carriers already established in the market.

I. INTRODUCTION

1. As a new entrant into the New York market, MetroPCS has a need to build-out and place a substantial number of sites. For a variety of reasons, MetroPCS has found existing utility poles to be a viable option for deploying its services. In addition, as more customers use wireless communications services throughout New York, existing wireless carriers must install additional cell sites in their networks to handle the increasing communications traffic. As a

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[1] Case 07-M-0741, *Proceeding on Motion of the Commission Concerning Wireless Facility Attachments to Utility Distribution Poles*, Notice Requesting Comments (issued June 27, 2007).

[2] MetroPCS New York, LLC is currently constructing a network to serve New York on spectrum acquired in the recent Federal Communications Commission Auction 66 for advanced wireless services.

of constructing an initial network and adding new cell sites to a network, some of these sites will be located in sensitive areas, such as residential neighborhoods and lands subject to special land use restrictions.[3] In order to reduce the impact of cell sites in such areas, local governments are increasingly requiring wireless carriers to collocate their facilities with existing cell sites and to blend their cell sites and antenna designs into existing infrastructure and landscapes, although suitable sites are rare.

2. In residential and other sensitive areas, utility poles and power transmission facilities are the most prevalent, and sometimes the only, "existing infrastructure" available to wireless carriers. Utility poles, therefore, present an extremely important option for deploying cell sites in a manner that will satisfy concerns of local governments and residents who would object to wireless towers but are already accustomed to having utility pole infrastructure in their neighborhoods. Furthermore, by avoiding the lengthy and costly siting disputes that often occur when new wireless towers or poles are constructed, co-location of antennas on existing distribution and transmission poles facilitates the rapid deployment of wireless services. The Commission's overarching goal throughout this proceeding should be to promote the expansion of existing and the entry of new wireless services throughout the State of New York, and MetroPCS strongly supports implementing a program for the co-location of wireless communications facilities throughout the state's current electric distribution and transmission infrastructure.

II. BACKGROUND AND STATEMENT OF METROPCS INTEREST IN THE PROCEEDING

3. MetroPCS and its affiliates provide commercial mobile radio service ("CMRS") services in selected metropolitan areas throughout the United States, including the Miami,

[3] In some instances, additional facilities may not be available at existing sites. For example, MetroPCS understands that some jurisdictions limit the amount of space on rooftops available for wireless facilities.

Atlanta, Tampa/Sarasota, San Francisco, Sacramento, Dallas/Ft. Worth and Detroit metropolitan areas. MetroPCS targets a mass market largely underserved by the large national wireless carriers. MetroPCS also introduces substantial competition to the other national wireless carriers through its innovative, simple service plans. MetroPCS' service plans start as low as $30 per month and offer either unlimited local calling or unlimited local and domestic long distance calling at affordable flat rates that are comparable to rates for the most restrictive rate plans offered by other national CMRS providers. MetroPCS also offers attractively priced data plans and other value-added services such as mobile instant messaging, push email and mobile Internet browsing. MetroPCS also offers the ability to roam on other CMRS carriers' networks in areas where MetroPCS does not provide service over its own facilities. In many instances, MetroPCS' subscribers are completely new to wireless, and many subscribers use MetroPCS's service as their primary telecommunications service. Thus, MetroPCS offers a competitive alternative to other existing wireless carriers and wireline carriers.

4. MetroPCS has experience utilizing utility poles for installation of small antennas, having developed cell sites by that method in other metropolitan areas. In some areas, MetroPCS utilizes both distribution and transmission facilities pursuant to negotiated arrangements with pole owners. Now, MetroPCS has commenced the design and construction of a CMRS network in the State of New York, and anticipates the need to attach wireless communications facilities on utility poles belonging to multiple electric utilities and incumbent local exchange carriers. Due to the fact that MetroPCS is a relative late comer to New York, many of the sites available to other carriers are not available to MetroPCS. Thus, in many instances, utility poles may be one of the few viable alternatives which would allow MetroPCS to rapidly introduce service and provide competition to existing wireless providers. Accordingly,

MetroPCS has a strong interest in the rates, terms and conditions for such attachments. One of the new developments is the use of distributed antenna systems ("DAS"). Unlike macro cell sites, distributed antenna systems use nodes with smaller antennas and small power amplifiers. MetroPCS will use both DAS and macro cell sites to construct its systems.

5. The typical antenna used by MetroPCS on distribution poles is a 1.71 - 2.15 GHz Omni Directional antenna, enclosed in a white fiberglass radome. The equipment is approximately two inches wide and either twenty-six or forty-eight inches in length. MetroPCS antennas are usually clamped to the side of a utility pole and extend vertically, preferably upright at the top of the pole to maximize signal coverage. The large equipment consoles previously associated with wireless antennas are a thing of the past. MetroPCS uses newer, smaller locked panels, approximately the size of a medicine cabinet, mounted at least twelve feet above the ground. In some instances, especially in distribution pole situations, MetroPCS uses a separate pedestal to house its cell site equipment.

6. Within the context provided herein, MetroPCS submits the following responses to the questions presented in the Commission's *Notice Requesting Comments*.

III. RESPONSES TO COMMISSION INQUIRIES

A. Are pole attachment policies, time frames, and procedures in the August 6, 2004 order in Case 03-M-0432 appropriate for wireless pole attachments?

7. The policies, time frames, and procedures the Commission adopted in Case 03-M-0432 are appropriate, and should be applied in the case of all wireless pole attachments and irrespective of utility. In Case 03-M-0432, the Commission properly provided schedules that expedited the attachment process, minimized delays and disputes, and created structural

performance incentives conducive to achieving the goal of robust competition in New York.[4] The Commission recognized that in order for competitive telecommunications providers to be economically viable in the marketplace, they need access to poles on an expedited schedule. Speed to market is the touchstone of technology advancement, as competitors strive to complete network upgrades and new construction for deployment of vital services that include telecommunications, broadband, and digital television services. Indeed, as a new entrant, access to poles will in some instances determine how quickly MetroPCS will be able to introduce additional competition in the local wireless and wireline market. Application of the policies adopted in Case 03-M-0432 to wireless pole attachments will only further promote these goals and will enhance competition in the State of New York.

B. Should the Commission create a presumption that wireline antennas approved for the National Grid be allowed on all poles?

8. In Case 03-E-1578, the Commission approved a set of comprehensive procedures designed to facilitate the attachment of wireless equipment to existing transmission towers and facilities owned by Niagara Mohawk throughout the state. MetroPCS submits that any antenna that is comparable in size, weight and wind load factors to those antennas approved for National Grid Communications Inc. ("GridCom") in Case 03-E-1578, as calculated using the National Electric Safety Code ("NESC") rules and practical engineering standards, should be presumed to be compliant with the same and to be allowed on all poles. Although the antennas approved for GridCom were DAS antennas, MetroPCS stresses that *all* antennas that are comparable to the DAS antennas approved for GridCom should be rebuttably presumed to be allowed on all poles. Specifically, this favorable presumption should attach to any antennas that: (1) are comparable in size to the DAS antennas approved for GridCom; (2) have similar weight load factors, as

[4] *See Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments, Case 03-M-0432 (Aug. 6, 2004).

calculated using the NESC rules; and (3) have similar wind load factors, as calculated using the NESC rules. Establishing the presumption would also place the burden on the pole owner to demonstrate that an antenna is not suitable for attaching to a particular pole.

9. The technology of wireless facilities is advancing rapidly, and some antennas now available for attachment to utility poles are even smaller than the ones approved for GridCom, and have improved wind load factors. Accordingly, there should be few, if any, cases in which a particular antenna is categorically not approved. MetroPCS recommends that the Commission not mislead pole owners or attaching parties by appearing to adopt a practice of treating each antenna type as if it needs to be separately examined and approved. Such a process would be unnecessarily burdensome on attaching parties, and would lead to pointless disputes with pole owners and inevitable delays for any new entrants. For example, the Federal Communications Commission ("FCC") is expected to auction over 60 MHz of additional spectrum in early 2008, much of which may be acquired by new entrants. If the Commission requires each entrant to go through a lengthy antenna review and approval process, it will lead to substantial delays in new competition. In general, MetroPCS believes that *any* antenna that meets the standards of the NESC should be entitled to a presumption of acceptability. That policy would conform with the Federal statutory provision, as implemented by rules in the State of New York, that a utility may deny access to its poles only where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.[5]

10. If the pole owner rebuts the presumption that a particular antenna is acceptable for attachment, an attaching party should have an opportunity to present contrary information. However, if the dispute cannot be resolved by negotiations between the parties, the Commission

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[5] 47 U.S.C. § 224(f)(2).

should provide an expedited review of the attachment requests, on a case-by-case basis. While MetroPCS acknowledges that questions of insufficient capacity, safety, reliability and generally applicable engineering purposes are entitled to great deference, an expedited process is necessary because of the extreme costs of delaying a new entrant's construction process. Past experience has shown that delayed construction projects often result in the facilities never being deployed.[6]

C. Should pole owners be required to provide taller poles to accommodate wireless attachers?

11. The Commission should require pole owners to allow wireless carriers to install their antennas at the highest point on its existing poles, to use pole extensions, or require utilities to replace existing poles with taller poles at the new carrier's request. Other factors being equal, the coverage provided by a wireless antenna is directly dependent upon its height above the surrounding terrain. While lower positions may sometimes be employed when a wireless carrier is more concerned with expanding its capacity than with coverage (as when it adds additional cell sites within an area), in most cases wireless carriers desire to install their antennas as high above ground as possible in order to yield the greatest degree of coverage. Pole top placement provides better coverage and also reduces the number of antennas needed.

12. In some cases, even an attachment to the top of a utility pole provides insufficient coverage to meet the community's need for reliable access to wireless signals. In still other cases, the pole owner's electrical conductors may already occupy the highest location on a particular structure, preventing its use by wireless carriers. When these circumstances exist, consistent with what is reasonably acceptable from an aesthetic standpoint, the Commission should allow wireless carriers to require installation of taller poles, at the wireless carrier's

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[6] This is especially true when the new entrant may be a competitor to the existing utility provider. Since electric utilities are starting to experiment with broadband over power lines ("BPL"), they will increasingly become competitive to wireless providers of similar services.

expense, provided that the wireless carrier should have the opportunity to recover contributions to the cost of the taller facility from other attaching parties who subsequently benefit from the additional space.

13. MetroPCS also respectfully requests that the Commission adopt a specific and explicit rule establishing a presumption that pole top attachments for wireless devices are allowed. To rebut that presumption, a pole owner should be required to obtain an order from the Commission based on conclusive evidence of insufficient capacity, reliability, and generally applicable engineering purposes that cannot be remedied through make-ready, pole expansion, or installation of a taller pole at the attaching party's expense, or other engineering solutions that are acceptable under generally applicable engineering or safety standards.

D. How should safety issues about antennas falling over onto power lines in high winds and heavy wet snow conditions be addressed?

14. MetroPCS appreciates that ice and snow accumulation, wind, and other weather conditions all may affect a pole's safety, and MetroPCS believes it is important that such variables be taken into account in the context of a utility's pole attachment policies. MetroPCS submits, however, that pole owners and attachers should continue to rely on industry codes and standards, such as the NESC's wind and ice loading factors, to achieve the objective of meeting the need for safety, reliability and generally applicable engineering purposes.[7] It would be generally impractical for the Commission to provide rules pertaining to wind and snow conditions, because to do so effectively would require comprehensive and frequently-updated expert testimony. Moreover, such rules are not required, because weather loading is comprehensively addressed in the NESC, and frequently refreshed with up-to-date data. For

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[7] *See, e.g.*, The Institute of Electrical and Electronics Engineers, Inc., *National Electric Safety Code* (2007 ed.) § 25 (most pole owners specify that attachments must conform with the NESC, the National Electrical Code and/or the Telcordia Blue Book - Manual of Construction Procedures).

example, in explaining recent changes to NESC ice and wind loading standards, the Sixth Edition of the NESC Handbook, released in 2006, notes that "[d]ata on climatic loading have been collected for a number of years..." and "climatic data and the extensive experience of the wire-using companies were used as a basis for the selection of the loading assumptions contained in [the NESC]."[8] Moreover, weather loading is subject to detailed standards in the NESC, which includes, among other considerations, the strength of structures to which facilities will be attached, which would be difficult for the Commission to comprehensively address.

15. In addition, MetroPCS would like to note that the wireless antennas it expects to install in New York, and probably all other antennas now being considered for attachment to utility poles, resemble a stalk that is approximately two inches wide and about two to four feet in length, positioned upright. This design is not very susceptible to thrashing in the wind, nor is snow likely to accumulate on such antennas. Compared to the heavy, sagging wires already attached to utility poles, modern antennas are perhaps the least unlikely attachments to be dislodged by wind or heavy snow.

E. Are there clearance concerns with placing wireless facilities in close proximity to electric facilities?

16. With respect to the installation of wireless facilities on distribution poles, in MetroPCS's experience, some electric utilities have been very resistant to permitting the installation of wireless facilities at or above the level of the electrical conductors. Either allowing the installation of a taller pole or placing wireless antennas at the top of the pole and above the electrical conductors, as suggested by MetroPCS in paragraphs 11 - 13, above, will mitigate any pole owner's concerns regarding clearance. Pole owners will be better able to maintain appropriate distances from the antennas if the antennas are mounted higher than the

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[8] The Institute of Electrical and Electronics Engineers, Inc., NESC Handbook, Sixth Edition (2006) at 475.

electrical conductors, so that the utilities' employees do not need to move past antennas mounted at lower heights in order to work on the electric transmission facilities. Further, by placing antennas at the top, it is less likely that the antennas may be inadvertently disturbed by work on the transmission lines.

17. Finally, attachment of antennas at the top of poles requires less coordination between a co-locating wireless carrier and the pole owner when the pole owner needs to work on the transmission lines. Pole-top antennas are out of the way of utility crews, with the result that the wireless carrier does not need to de-energize its facility in order to permit the utility crews to work nearby. Accordingly, attachment of antennas to the top of poles reduces the impact of wireless co-location on the pole owner's *and* the attaching party's operating practices.

F. Are there pole loading concerns with ice and wind prevalent during New York State winters that should be considered with wireless attachments?

18. As indicated in MetroPCS's discussion in paragraphs 14 and 15, above, the Commission should not at this time impose weather loading regulations on pole owners or attachers, because NESC standards are currently in place to ensure the integrity of pole attachments.

19. To the extent that wind and snow have an effect on employee safety, the pole owners and attaching parties are always subject to federal requirements set forth in rules of the Occupational Safety & Health Administration ("OSHA") and similar state regulations. Because both the NESC and OSHA currently provide ample safeguards concerning safety issues relating to ice and wind conditions, the Commission should not impose any additional regulations on pole owners or attachers.

G. Are there climbing and work space issues with the antennas and or their associated equipment on the utility pole (equipment enclosures, power supplies, cabling, etc.)?

20. Although in rare instances workers may have to physically climb a pole, utilities have largely discontinued the practice of climbing poles and now use bucket trucks to reach their facilities. Furthermore, since the NESC requires that climbing space be provided on all poles and structures, the Commission need not implement further regulations in this regard. Further, to the extent antennas are top mounted, they should not interfere with the climbing of poles. As in previous discussions in these Comments, MetroPCS requests that the Commission emphasize that attachments not be denied, except on a non-discriminatory basis, for reasons of safety, reliability and generally applicable engineering purposes.

H. Are there concerns with the radio frequency emissions from these devices?

21. With regard to radio frequency ("RF") safety, MetroPCS stresses here that Congress has long vested in the FCC exclusive jurisdiction over radio communications, which includes preemption of state and local jurisdictions in matters concerning RF safety. The FCC has established guidelines for evaluating radio frequency exposure limits, which apply to "all FCC-regulated transmitters."[9] When the FCC established the federal RF safety standard in 1997, it specifically announced, *inter alia*, a rule that prohibited state and local governments from regulating any personal wireless service facilities based upon perceived health risks posed by RF emissions as long as the facilities conformed to the FCC Guidelines regarding such

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[9] *See* Office of Engineering and Technology, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields* (1997). *See also* 47 C.F.R. § 1.1310; http://www.fcc.gov/oet/rfsafety. RF emissions are also addressed by OSHA rules. *See* 29 C.F.R. §§ 1910.97, 1910.268.

emissions.[10] For the Commission to attempt to impose rules pertaining to RF emissions would be redundant, would invite challenges on the basis of Federal preemption, and would result in costly delays for all parties.

I. What rates, terms, and conditions are appropriate for wireless attachments to utility poles?

22. The Commission should follow the approach it adopted in the Case 03-E-1578 and apply the modified cable television formula, which reflects that pole space occupied by wireless attachments, the pole owner's costs of providing the space, and produces a just and reasonable rental charge for attachers.[11] Access to poles at just and reasonable rates is necessary, in conjunction with nondiscriminatory access, for the preservation of a robustly competitive telecommunications marketplace. Attachment of antennas is the result of evolving technology, and should not be viewed by pole owners as an opportunity to invent an entirely new attachment regime. The existence of a modified formula that establishes a maximum rate gives attaching parties a semblance of equal footing with the pole owners in negotiations. Otherwise, negotiations stretch on endlessly, because the pole owners know that attaching parties have few, if any, real alternatives. The resulting delay in attaching antennas leads to postponement in deploying competitive networks and services. Indeed, in some instances, an attaching party such as MetroPCS is a potential competitor of the pole owner, especially those poles owned by incumbent local exchange carriers, many of which are affiliates of CMRS providers. These entities have little incentive to negotiate just and reasonable rates with attaching parties, absent

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[10] *See Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934*, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 13494 (1997).

[11] *See Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval of a Pole Attachment Rate for Certain Wireless Attachments to Niagara Mohawk's Distribution Poles*, Order Approving Petition with Modifications, Case 03-E-1578, at 3-5 (April 7, 2004).

the Commission's mandated maximum rate. The Commission should therefore adopt rules prohibiting pole owners from charging pole attachment rates in excess of the maximum rate that would apply using the Commission's attachment formula, as modified in Case 03-E-1578.

23. While the importance of maintaining rates at just and reasonable levels cannot be overestimated, MetroPCS submits that pole owners should be allowed to retain a sufficient share of the relevant revenues from pole attachments, and should be required to share with ratepayers only a portion of the net revenue realized after the utility covers all its administrative costs of the pole rental program. MetroPCS makes this point to emphasize that pole owners need to be provided with strong incentives to promote pole attachments as a potential revenue source, and also to perform their obligations in a timely and satisfactory manner. The actual allocation of revenues is ultimately a Commission policy decision, but MetroPCS urges the Commission to give strong consideration to providing utilities with the maximum incentive to devote the necessary personnel and other resources to develop a successful wireless pole attachment program that is flexible and responsive to the needs of wireless carriers.

J. What other concerns do attachers, pole owners, local governments or community members have about attachment of wireless facilities to utility distribution poles?

24. This question, as well as the title assigned to this case, suggests that the Commission will apply its decisions in this proceeding to distribution poles only, and not to transmission facilities. Attachments to transmission poles provide another excellent opportunity for wireless carriers to extend their coverage by use of existing infrastructure. However, experience has shown that pole owners resist extending the attachment rights to transmission poles. MetroPCS believes that the distinction between distribution and transmission poles is usually more imagined than real. MetroPCS respectfully requests that decisions reached in this case be extended to distribution *and* transmission poles, or that a new case be opened as soon as

possible to consider the degree to which decisions in this case may be extended to transmission facilities.

IV. CONCLUSION

25. Attachment of wireless facilities to New York's existing electrical infrastructure will provide numerous benefits, reduce wireless carriers' costs, and advance esthetic and environmental concerns, all while providing financial benefits to the electric utilities. MetroPCS' experience in other states demonstrates that a wireless co-location program will not impair electric system cost, safety, or reliability.

Respectfully submitted,

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September 10, 2007

EXHIBIT C

Before the
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission Concerning Wireless Facility Attachments to Utility Distribution Poles	)))	Case 07-M-0741

REPLY COMMENTS OF METROPCS NEW YORK, LLC

Pursuant to the request of the State of New York Public Service Commission (the "Commission"),[1] MetroPCS New York, LLC[2] ("MetroPCS") respectfully submits the following Reply Comments in the above captioned case. The Commission received insightful information and well-considered opinions in comments from numerous interested parties, and MetroPCS endorses those comments. However, MetroPCS requests that the Commission look critically at some of the one-sided, self-serving proposals submitted in the joint comments of the Owners of Distribution Poles ("Pole Owners") that, if adopted, would severely delay if not altogether deter, the rapid deployment of additional wireless services to consumers throughout New York, and harm the public interest.[3]

By and large, the comments submitted in response to the Commission's *Notice Requesting Comments* sound a consistent theme - the Commission can best promote rapid deployment of new wireless services throughout New York and otherwise serve the public interest by adopting a streamlined process allowing wireless attachments on utility poles. Not

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1 Case 07-M-0741, *Proceeding on Motion of the Commission Concerning Wireless Facility Attachments to Utility Distribution Poles*, Notice Requesting Comments (issued June 27, 2007).

2 MetroPCS New York, LLC is currently constructing a network to serve New York on spectrum acquired in the recent Federal Communications Commission Auction 66 for advanced wireless services.

3 *See* Joint Comments of Owners of Distribution Poles in New York Responding to the Commission's Notice Requesting Comments, Case 07-M-0741 (filed Sept. 10, 2007) ("Pole Owners Comments").

surprisingly, the majority of comments thus reflect substantial resistance to any proposal that would unnecessarily impose artificial hurdles for attaching wireless antennas onto utility poles, delay the approval of pole attachments, or otherwise interfere with the ability of a wireless carrier to rapidly introduce new services by attaching wireless antennas to utility poles.[4] The Commission can and should adopt rules and policies in response to the *Notice Requesting Comments* that expedite that availability of utility poles for wireless attachments.

At the outset, the record dictates that the Commission apply the very reasonable time frames and procedures set forth in Case 03-M-0432 to wireless pole attachments. For example, as T-Mobile, Sprint Nextel, and AT&T Mobility ("T-Mobile *et al.*") point out, the "pro-competitive pole attachment policies, time frames and procedures adopted in the Policy Statement" in Case 03-M-0432 "are appropriate for, and should be extended to, wireless attachments."[5] As MetroPCS established in its Comments, the Commission in that proceeding properly expedited the attachment process, minimized delays and disputes, and created structural performance incentives conducive to pole attachments and achieving robust competition in New York.[6] As T-Mobile *et al.* point out, the Commission's "rules requiring binding estimates for make ready work, limiting increases in pole owners' unit charges to once annually, and adopting an expedited dispute resolution process are technology neutral."[7] Furthermore, as pointed out by Broadcast Signal Lab, and contrary to what the Pole Owners would have the Commission

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[4] Indeed, it is interesting that only the electric power utilities oppose pole attachments. Verizon supports pole attachments and has even proposed a draft contract and rates.

[5] Joint Comments of T-Mobile, Sprint Nextel and AT&T Mobility, Case 07-M-0741, at 27 (filed Sept. 10, 2007) ("T-Mobile *et al.* Comments"). *See also*, Comments of CTIA - The Wireless Association, Case 07-M-0741, at 13 (filed Sept. 10, 2007) ("CTIA Comments"); Comments of Light Tower Wireless LLC, f/k/a National Grid Communications, Case 07-M-0741, at 2-3 (filed Sept. 10, 2007) ("Light Tower Comments"); Comments of Broadcast Signal Lab, Case 07-M-0741, at 2 (filed Sept. 10, 2007) ("BSL Comments").

[6] *See* Comments of MetroPCS New York, LLC Case 07-M-0741, at 4-5 (filed Sept. 10, 2007) ("MetroPCS Comments").

[7] T-Mobile *et al.* Comments at 27-28 *citing Proceeding on Motion of the Commission Concerning Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments, Case 03-M-0432, at 3 (Aug. 6, 2004).

believe, the policies set forth in Case 03-M-0432 can be readily applied to wireless attachments because wireless attachments "are fundamentally no different than pole attachments commonly made by other attachers."[8]

Next, the Commission should create a rebuttable presumption that all wireless antennas comparable in size and wind loading to those approved for National Grid be allowed on all poles. For example, along with MetroPCS, T-Mobile *et al.* similarly suggested "all wireless antenna attachments that meet the requirements of the NESC *in addition* to those adopted in the *Niagara Mohawk/GridCom Order*" should be presumed to be allowed on all utility poles in New York.[9]

The Pole Owners, however, obviously take an opposite view and would rather straddle any potential wireless attacher with unnecessary administrative burdens and other red tape which would seriously delay if not completely prevent the proliferation of additional wireless services throughout the state and which would frustrate the public interest. The Pole Owners suggest that the Commission provide them with unconstrained authority to address wireless attachments "on a case by case basis with an aggrieved party having recourse to the Commission."[10] The prospect of repeated delays while launching appeals to the Commission on a case-by-case basis would create an uncertainty that would deter potential pole attachments and would inhibit development of new facilities. Establishing a rebuttable presumption similar to the ones the Commission approved for National Grid is crucial for the rapid deployment of additional wireless services throughout New York. In addition, as pointed out by MetroPCS in its

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8 *Compare* BSL Comments at 2 *with* Pole Owners Comments at 3, 5-7.

9 T-Mobile *et al.* Comments at 30 (emphasis added). *See also*, Light Tower Comments at 3; BSL Comments at 2, CTIA Comments at 13-15; Comments of NextG Networks of NY, Case 07-M-0741, at 15-18 (filed Sept. 10, 2007) ("NextG Comments"). Although the antennas approved in the *Niagara Mohawk/GridCom Order* were Distributed Antenna System ("DAS") antennas, MetroPCS stresses that *all* antennas that are comparable to the DAS antennas approved for GridCom should be rebuttably presumed to be allowed on all poles.

10 Pole Owners Comments at 5. *See also id.* at 15.

comments, the technology of wireless facilities is advancing rapidly, and some antennas now available for attachment to utility poles are even smaller than the ones approved for GridCom in the *Niagara Mohawk/GridCom Order*, and have improved wind load factors specifically for attaching to poles like the ones currently at issue. Accordingly, there should be few, if any, cases in which a particular antenna is categorically not approved.[11] If the pole owner rebuts the presumption that a particular antenna is acceptable for attachment to the Commission, an attaching party should have an opportunity to present contrary information. However, as T-Mobile *et al.* and MetroPCS agree, if the dispute cannot be resolved by negotiations between the parties, the Commission should provide an expedited review of the attachment requests, on a case-by-case basis.[12]

The record submitted to the Commission also makes clear that pole owners should be required to provide taller poles to accommodate wireless attachers, at the attachers expense.[13] The record is indisputable that taller poles allow for better coverage as "the coverage of a cell site is tied directly to the height of the antenna"[14] and also reduces the number of antennas needed in an area.[15] When shorn of their extraneous arguments seeking only to delay or preclude wireless attachments, the essence of the Pole Owners comments is that they do not want to be bothered to install taller poles to accommodate wireless attachments when, in fact, pole owners routinely install taller poles when it is necessary for the provision of their own services or for that of other non-wireless pole attachers. As Broadcast Signal Lab succinctly put it, "[p]ole

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11 MetroPCS Comments at 6.

12 *Id.*; T-Mobile *et al.* Comments at 32.

13 *See* MetroPCS Comments at 7-8; T-Mobile *et al.* Comments at 33. *See also* NextG Comments at 18; Light Tower Comments at 3-4; BSL Comments at 2.

14 T-Mobile *et al.* Comments at 33.

15 *See* MetroPCS Comments at 7.

owners ordinarily install taller poles to accommodate non-wireless attachments, such as additional communications and electrical lines or hardware. It should be no different for a wireless installation."[16] The Pole Owners have not submitted any sustainable reason for disallowing the installation of taller poles for wireless attachments, but permitting them for traditional attachments. MetroPCS furthermore wholly agrees with Broadcast Signal Lab that "[t]he same safety and structural standards that apply to establishing pole heights for other utility purposes should apply to wireless applications."[17] Moreover, MetroPCS fails to understand why the Pole Owners would refuse to perform work which improves their assets. The Commission should therefore require all pole owners to allow wireless carriers to install their antennas at the highest point on its existing poles, to use pole extensions, or require utilities to replace existing poles with taller poles at the new carrier's expense.

Additionally, any concerns regarding wireless antennas falling onto power lines in high winds or heavy snow conditions can be addressed simply by requiring wireless attachers to comply with the requirements of the NESC, a point with which even the Pole Owners agree.[18] The NESC discusses wind and ice loading at length,[19] and as NextG submitted, it "is not aware of any situation where an antenna has fallen into power lines in high winds and wet snow, independent of incidents that cause all types of pole attachments to fall."[20] The Commission should therefore establish a policy requiring all wireless attachments to meet the strict standards for weather related loading set forth in the NESC.

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16 BSL Comments at 2.

17 *Id.*

18 Pole Owners Comments at 13.

19 Light Tower Comments at 5 *citing* 2007 NESC Rule 250(B).

20 NextG Comments at 13.

Lastly, the Pole Owners express concern that the RF emissions from wireless attachments may expand "the universe of persons exposed to RF emissions" and suggest that the Commission "thoroughly study this subject beyond the extent of the written comments submitted...."[21] While MetroPCS is certainly sensitive to exposure concerns for those who work near RF emitting devices, Congress and the FCC have affirmed that the FCC has *exclusive* authority to regulate RF emission from *all* wireless transmitters, as said by several commenters in this proceeding.[22] The FCC has set forth Maximum Permissible Exposure limits that address all of the Pole Owners' RF exposure concerns.[23] Thus, as long as the wireless attachments meet the already stringent federal RF exposure requirements, the Commission should not attempt to impose any additional RF regulations.

The Commission should move quickly to adopt the wireless attachment policies overwhelmingly established in the record submitted in response to the *Notice Requesting Comments*. Once the Commission sets forth clear regulations and policies as suggested by the majority of commenters to streamline the wireless pole attachment process, it is expected that additional wireless services will be rapidly deployed in New York to provide consumers with more robust wireless competition.

Signatures on Following Page

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21 Pole Owners Comments at 18.

22 *See, e.g.*, MetroPCS Comments at 11-12; T-Mobile *et al.* Comments at 37-39; NextG Comments at 24-26.

23 *See* Office of Engineering and Technology, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields* (1997).

Respectfully submitted,

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