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December 3, 2009

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

GN Docket 09-51
WC Docket 07-245
WC Docket 09-154

***EX PARTE* NOTICE**

Dear Ms. Dortch:

On December 3, 2009, Russ Campbell, Karen Flewharty (Oncor Electric Delivery) and I met separately with Christi Shewman, Legal Advisor to Commissioner Baker and Jennifer Schneider, Legal Advisor to Commissioner Copps, relating to pole attachment issues in the above-referenced dockets. During both meetings, we made the points expressed in the attached handouts, as well as other points consistent with the comments and other submissions filed by my firm in the above-referenced dockets on behalf of Oncor Electric Delivery Co., Florida Power & Light Co., Tampa Electric Co., and Progress Energy Florida, Inc.

During the meeting with Ms. Schneider, we also briefly discussed the attached representative map (from the National Rural Electric Cooperative Association's website). Specifically, we discussed the potential for Commission pole attachment policy to positively impact broadband deployment in unserved and underserved areas versus the risk of compromising electric distribution infrastructure safety and reliability.

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

Very truly yours,

Eric B. Langley

Attachments

cc: Ms. Christi Shewman (via email with attachments)
Ms. Jennifer Schneider (via email with attachments)

Pole Attachments & Broadband Deployment

GN Docket 09-51
WC Docket 07-245
WC Docket 09-154

***Ex Parte* Presentation by:**

Florida Power & Light Co.
Tampa Electric Co.
Progress Energy Florida, Inc.
Oncor Electric Delivery Co.

BALCH & BINGHAM LLP

Electric Utilities

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

Issues at Stake

- Preserving the Safety and Reliability of Electric Distribution Infrastructure
- Maintaining the Infrastructure Partnership between ILECs and Electric Utilities
- Unifying the rate for CATV and CLEC Broadband Attachments

Safety & Reliability

- This is the most important issue to the Electric Utilities
  - Should be important to communications attachers
  - Same infrastructure supports broadband attachments
- Safety and Reliability are two separate concepts
  - Separate terms in Section 224(f)(2)
  - A practice can be “safe” yet compromise reliability (and vice versa)
- Electric utilities own the vast majority of poles in their service territories

Specific Safety & Reliability Concerns

- Make Ready Deadlines
  - Unrealistic, unnecessary and unlawful
  - Would elevate speed-to-market over safety and reliability
- Unification of Construction Standards
  - One size does NOT fit all
- Pole Top Access for Wireless Antennae
  - Like construction standards, should be a local issue
  - Each utility should make its own decision

Make Ready Deadlines

- UNREALISTIC
  - Scope and complexity of projects vary significantly
  - Too many factors beyond pole owner's control
- UNNECESSARY
  - Electric utilities have no incentive to delay
  - Anecdotal evidence of delay does not meet the "burden of proof"
- UNLAWFUL
  - Electric utilities are not required to expand capacity (perform make ready) under Section 224(f)(2)

Construction Standards Are Local Issues

- Preserve local discretion over standards
  - Pole attachment standards are just ONE PART of an electric utility's overhead distribution standards
  - Utility and state specific issues (construction materials and techniques, geography, weather, industry)
  - Florida Hardening proceedings

- NESC should not be a "ceiling"
  - NESC is a safety code, not a design code
  - NESC is the "floor" in many states

- Commission can ensure non-discriminatory ***application*** of standards without ***creating*** standards

Wireless Pole Top Access

- "Communications Space" has legal meaning
- What is the issue?
  - NOT whether it can be done safely
  - BUT whether electric utilities should be ***required*** to allow wireless antennae in power supply space
- Pole top attachments present special safety and reliability concerns (loading profile, worker safety, maintenance precautions)
  - Given these concerns, each utility should make its OWN decision
  - Commission can/should ensure non-discriminatory application

Solving the Right Problems In the Right Way

- Is the problem lack of broadband competition in the population-dense areas served by investor–owned electric utilities?

OR

- Is the problem lack of broadband at all in areas of rural America served primarily by electric cooperatives and munis?

Pole Attachments Are Not a Barrier To Broadband Deployment

- Make ready charges are ACTUAL COST items
  - Capex to attachers may, indeed, be a factor in deployment
- If make ready slows broadband overbuild, implement a “rocket docket”
  - Complaint–based resolution
  - Relies on specific and unique facts of case
- Annual rental fees (opex) are NOT a barrier to deployment

What Should the Commission Do?

- Decline the request by CLECs to micro-manage matters impacting safety and reliability of electric distribution systems
  - No make ready deadlines
  - No unification of construction standards
  - Local decisions re: wireless pole top access

- Continue to regulate by exception
  - Commission can ensure non-discriminatory application of standards
  - Complaint-based adjudication of access disputes
  - Implement “rocket docket”

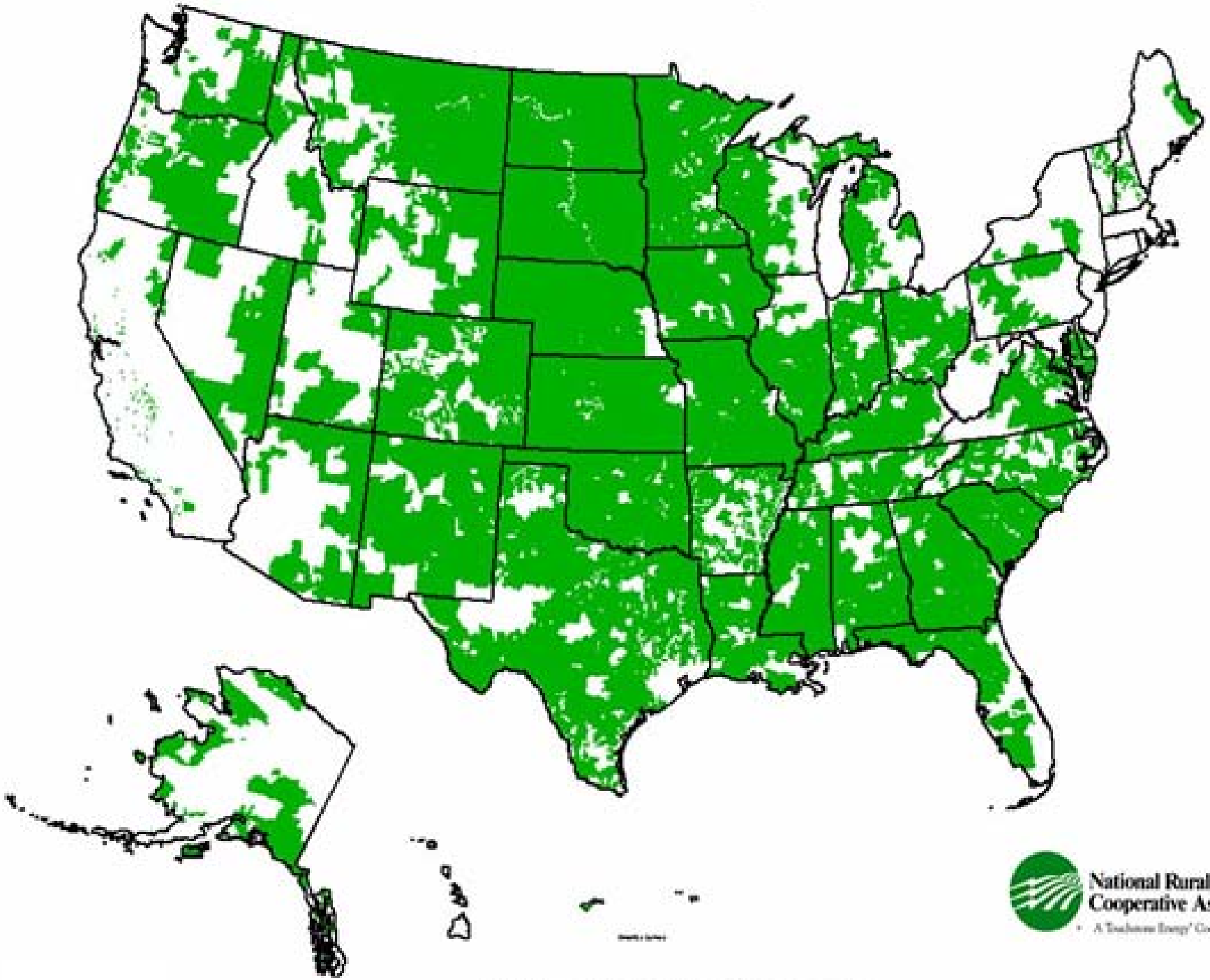
Infrastructure Partnership

- ILECs and CATV/CLECs are apples and oranges
  - ILECs typically pay NOTHING in “rental” when they are in parity of ownership
  - Joint Use is premised on infrastructure cost-sharing
- No fundamental change in relationships since 1996 Act
  - Pole ownership changes are slight
  - ILECs place same or increased burden on poles
- Pole Attachment Act does not cover ILEC attachments on electric utility poles

Broadband Attachment Rate

- Electric Utilities support unified rate for CATV and CLEC broadband attachments
  - Should be Telecom Rate with tweaked presumptions
- VOIP Petition for Declaratory Ruling can resolve this issue
- No presumptions re: rates for wireless antennae
  - Configurations vary too much
  - Telecom formula can/does serve as a guide

America's Electric Cooperative Network



National Rural Electric Cooperative Association

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