December 8, 2009

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

Re: **Petition for Declaratory Ruling of American Electric Power Service Corporation *et al* Regarding the Rate for Cable System Pole Attachments Used to Provide Voice Over Internet Protocol Service, WC Docket No. 09-154, GN Docket No. 09-51**

Dear Ms. Dortch:

On December 8, Megan M. Delany, Vice President & Senior Counsel, Charter Communications, and Paul Glist of the law firm of Davis Wright Tremaine LLP met with Priya Aiyar, Legal Advisor for Wireline Competition and International Issues for Chairman Genachowski.

We discussed how recent requests by electric utilities for a penalty pole attachment rental rate for broadband connections would constitute a "broadband tax" that would translate to a range of $4.95-$8.66 per Internet subscriber per month and $13.27-$23.23 per voice subscriber per month and working at cross purposes with national goals of deployment and affordability. By contrast, every reviewing tribunal, including the FCC, has upheld the current cable pole attachment rental formula as providing far more than just compensation for the use of monopoly utility poles.[1]

We noted that EEI claims that it is "absurd" to suggest that utilities have an interest in offering competitive broadband services and that "In general, electric utilities lack the expertise" to do so.[2] The utility Petitioners themselves urged the Commission to facilitate their offering of "BPL to provide a communications platform for the delivery of competitive broadband services to consumers,"[3] the Commission went to court to allow the utilities to do so,[4] and the Commission

---

[1] See, Comments of Charter Communications, Inc, September 24, 2009 and Reply Comments of Charter Communications, Inc, October 9, 2009 in these dockets.

[2] Reply Comments of EEI, p. 10.

[3] *See* Comments of Southern Company, ET Docket 03-104, *Carrier Current Systems, including Broadband over Power Line Systems*, p. 4 (filed July 7, 2003) ("Southern is also interested in the potential for BPL to provide a communications platform for the delivery of competitive broadband services to consumers. As discussed more fully below, BPL provides the opportunity for additional facilities-based competition without significant construction."); *See also* Comments of Duke Energy Corporation, ET Docket 04-37, *Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems* , p. 2 (filed May 3, 2004) ("Duke believes that Access BPL has the potential to provide a viable alternative to existing broadband pipelines and to extend broadband to unserved and underserved areas."); *See also* Comments of Southern Company, ET Docket 04-37, *Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, p. 3 (filed May 3, 2004) ("Southern also agrees with the Commission, as well as many other parties, that Access BPL could be the "third" broadband wire to the home for competitive Internet access services or to extend broadband services to underserved or currently unserved areas").

1919 Pennsylvania Ave., N.W., Suite 200 • Washington, DC • 20006
www.chartercom.com • tel: 202.973.4312 • fax: 202.973.4499

has been certifying Broadband Power Line equipment.[5] TXU entered a 10 year deal with Current to offer residential voice/video/data.[6] Current and TXU (through its Oncor affiliate) announced plans to "leverage the same BPL network to provide homes and businesses high-performance broadband and wireless services, including the "triple play" of voice, video and high-speed Internet access delivered over existing electrical lines by simply plugging into any home outlet."[7]

We also noted that while several utilities claim that raising pole rents would decrease utility rates, state public service commissions have found the contrary.[8] Electric utility customers have actually been subject to steep increases following electric utility deregulation. For example, after Texas electric utility rates were deregulated around 1999, rates soared.[9]

---

[4] *American Radio Relay League v. FCC*, 524 F.3d 227 (DC Cir. 2008). The Court partially upheld the decision based on the FCC's assessment of BPL's potential to bring Internet access services to underserved areas: "[The FCC's] analysis reflects the Commission's considered technical judgment in light of its policy to foster Access BPL technology because it offers the potential for establishing "a significant new medium for extending broadband access to American homes and businesses," could be made available nearly everywhere, including rural areas with power." *Id.* at 242.

[5] *See* FCC Grant of Equipment Authorization, Current Technologies, LLC, FCC Identifier TY7210-0150, Date of Grant: October 11, 2007; *See also Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems, Carrier Current Systems, including Broadband over Power Line Systems*, Report and Order, 19 FCC Rcd 21265, ¶ 126 (2004) (requiring OET certification of bodies approving BPL equipment); *See also Ambient's BPL System FCC Certified for Commercial Deployment*, Press Release, available at http://www.ambientcorp.com/press_releases/archive/2006/PR_2006_0907_FCC_Cert.pdf (visited October 20, 2009);

[6] *See TXU, CURRENT build BPL grid solutions*, FIBER OPTICS WEEKLY UPDATE, Dec 23, 2005, available at http://findarticles.com/p/articles/mi_m0NVN/is_51_25/ai_n27864315/ (visited October 19, 2009); *See also The Web's new outlet Dallas is U.S.' largest test market for Net straight from the socket*, Dallas Morning News, p. 1D, November 20, 2007.

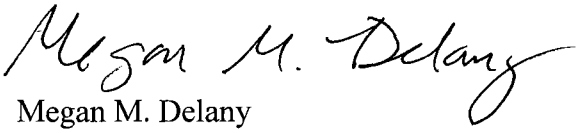
[7] *TXU and CURRENT Communications to Create Nation's First Multipurpose Smart Grid*, Press Release, December 19, 2005, available at http://www.oncor.com/news/newsrel/detail.aspx?prid=916 (visited October 19, 2009).

[8] See, e.g., *Cablevision of Boston v. Boston Edison Co.*, Mass. Docket No. D.T.E. 97-82 at 12, 45, 46 (Apr 15, 1998) (reducing pole rental fees and holding that the cable rate will "not require an adjustment of other [utility] rates." The record demonstrated that "pole revenues equate to no more than one cent of a monthly electric bill....") The DTE reached the same conclusion when a utility proposed to increase pole attachment rates from $9.40 to nearly $16.00. The DTE rejected the proposed increase and followed the cable rate formula. It found that the cable rate formula adequately considers the interests of electric and cable customers and "is reasonable and will not impose a financial disruption on the subscribers of CATV services or MECo ratepayers." *A/R Cable Servs. v. Massachusetts Elec. Co.*, Mass. Docket No. D.T.E. 98-52 at 30 (Nov 6, 1998) (*MECO*).

[9] *Report says Texas electricity rate soar*, EL PASO TIMES, February 9, 2009 ("The [Texas] Legislature passed a sweeping deregulation law in 1999 that sought to break down electric company monopolies and remove strict government control over retail electricity rates. The idea was to allow competitive market forces to drive down prices. The sponsor of the legislation, former Sen. David Sibley, acknowledges rates have gone up.... Ratepayers in Rhode Island and Massachusetts, which have also introduced retail electric competition, saw electricity prices rise by 39 percent and 62 percent between 1999 and 2007, respectively, according to the study." Texas rates rose 64% during the same period, confirming consumer cost increases coincide with deregulation."), available at http://www.allbusiness.com/energy-utilities/utilities-industry-electric-powerity/11834056-1.html (visited October 20, 2009).

While EEI claims that rent increases will help utilities "partner" with cable and other providers, the history is sadly to the contrary. With each wave of technological innovation, the utilities have sought to increase pole rents, and each time, the Commission has had to rein them in.[10] Raising rents will frustrate broadband. It is time for the Commission to once again say no to pole rent increases.

Respectfully submitted,



Megan M. Delany

Charter Communications

cc: Priya Aiyar

---

[10] *See Heritage Cablevision Assocs. of Dallas, L.P. et al. v. Texas Util. Elec. Co.*, FCC 91-379, 6 FCC Rcd 7099, 7101 ¶ 12 (1991), *recon. dismissed*, FCC 92-266, 7 FCC Rcd 4192 (1992), *aff'd*, *Texas Utils. Elec. Co. v. FCC*, 997 F.2d 925 (D.C. Cir. 1993) (surcharge for fiber). *See also Heritage Cablevision Assocs. of Dallas, L.P. v. Texas Utils. Elec. Co.*, 8 FCC Rcd. 373 (1993) (surcharge for fiber); *Common Carrier Bureau Cautions Owners of Utility Poles*, Public Notice, DA 95-35 (Jan. 11, 1995) *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Public_Notices/1995/pncc5001.txt (anti-competitive overlash policies); *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments,* FCC 98-20, 13 FCC Rcd 6777, 6795-96 ¶ 32 (1998) (Internet), *petition for review granted*, 208 F.3d 1263 (11th Cir. 2000), *rev'd*, *NCTA v. Gulf Power*, 534 U.S. 327 (2002) (Internet); *Amendment of the Commission's Rules and Policies Governing Pole Attachments,* 13 FCC Rcd. 6777 ¶¶ 60-64 (1998) (surcharge for fiber); *Amendment of Commission's Rules and Policies Governing Pole Attachments,* Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141 ¶ 75 (2001), *aff'd, Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002) (overlashing fiber to existing cable plant); *Cable Television Ass'n of Ga. v. Georgia Power Co.*, 18 FCC Rcd. 16333, 16340-41 (Enforcement Bureau 2003) (overlashing); *Marcus Cable Assocs., L.P. v. Texas Utils. Elec. Co.*, 12 FCC Rcd. 10362 (1997) (utility requiring cable operator to disclose nonvideo service offerings); *NCTA v. Gulf Power*, 534 U.S. at 339-341 (wireless).