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Writer's Direct Access
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The Honorable Julius Genachowski
Chairman, Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: ***Notice of Written Ex Parte Communication***
WC Docket No. 07-245 ("Pole Attachment Proceeding");
GN Docket No. 09-29 ("Rural Broadband Strategy Proceeding");
GN Docket No. 09-51 ("National Broadband Plan Proceeding"); and
WC Docket No. 09-154 ("VoIP Pole Attachment Rate Proceeding")

Dear Chairman Genachowski:

We urge you to consider carefully the impact of the Commission's decisions in the above-captioned proceedings on the operations of electric utility distribution systems throughout the country. Allegheny Power, Baltimore Gas and Electric, Dayton Power & Light, FirstEnergy, Kansas City Power & Light, National Grid, NSTAR and PPL Electric Utilities (the "*Coalition of Concerned Utilities*" or "*Coalition*") collectively provide electric services to more than 14,200,000 customers in 11 States and own, in whole or in part, more than 8,100,000 electric distribution poles. Most of these distribution poles also are jointly used with communications companies to provide video, voice and broadband services to customers.

The *Coalition* supports the Commission's efforts to ensure the nationwide deployment of broadband services, but not at the expense of the safe, reliable and efficient operation of electric utility distribution systems -- particularly in these times of rising energy costs and electric reliability concerns regarding the distribution grid. The recent winter storms here in Washington, DC and the Northeast underscore the importance of the electric system.

As you pointed out in a recent speech, the advent of broadband is akin to electricity in terms of transformative power: "*Electricity reshaped the world -- extending day into night, kicking the Industrial Revolution into overdrive, and enabling the invention of a countless number of devices and equipment that today we can't imagine being without.*"[1] Yet, while electric utilities years ago were able to find

[1] "Broadband: Our Enduring Engine for Prosperity and Opportunity," NARUC Conference, Washington, D.C., February 16, 2010.

ways to serve consumers on a nationwide basis, the high speed broadband industry to this date has found it unprofitable to provide service in rural and less populated areas.

In another speech earlier this week, you stated that "*Wireless providers also face red tape and needless barriers, which slow deployment and increase the costs of investment. The costs of obtaining permits and leasing pole attachments and rights of way can amount to 20 percent of fiber deployment, which is necessary for wireless networks as well as wired networks.*"[2] With all respect, in our view pole attachment leasing adds very little to the cost of fiber deployment. For comparison purposes, Comcast's average monthly revenue per subscriber is $118.00 per month,[3] while pole attachments cost Comcast roughly $0.62 per month per pole to rent from the local electric utility.[4] The cost of pole attachment rentals alone is only 0.53% ($0.62 ÷ $118 = 0.53%), an amount that is miniscule considering the enormous benefits that gigantic companies like Comcast receive by gaining access to a pole distribution system that they need not construct or maintain but nevertheless can use to deliver their services.

Electric utilities have done more than their fair share to facilitate the deployment of broadband services. For decades, communications companies have attached to tens of millions of utility poles -- at artificial and extremely modest rates mandated by the Commission -- without incurring the substantial cost and inconvenience of being required to construct their own distribution systems. Cable companies and competitive local exchange carriers ("CLECs") simply "hop on board" and deploy their increasingly sophisticated video, voice and broadband services at costs far below what they would have incurred had they been required to construct their own distribution systems. Expanded telecommunication company use of electric utility poles will have a direct impact on electric company asset utilization and work plans.

In return for making their internal distribution systems available to attachers throughout the country, utilities have been "rewarded" with unfair and discriminatory pole attachment rates, countless unauthorized attachments, myriad safety violations and innumerable administrative hassles incident to allowing other parties to use their poles.

Details regarding all of these issues and others are available in the *Coalition's* extensive filings in these proceedings.[5] We highlight below the *Coalition's* concerns in response to the attachers' continuing barrage of misinformation.

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[2] "Mobile Broadband: A 21st Century Plan for U.S. Competitiveness, Innovation and Job Creation," New America Foundation, Washington, D.C., February 24, 2010.

[3] Comcast Corporation Form 10-K for fiscal year ending December 31, 2009 at 25. The average monthly total revenue per video customer increased from $102 in 2007 to $111 in 2008.

[4] Cable operators currently pay 7.4% of an electric utility's total annual pole costs. Assuming annual pole costs of $100/pole ($300 net cost of a bare pole X 33% carrying charges = $100/pole), then the annual rental rate per pole is $7.40, and the monthly rental rate is $0.62 ($7.40 ÷ 12 = $0.62).

[5] *See* list of *Coalition* filings attached hereto at **Exhibit A.**

Calls for New Mandatory Deadlines and Operational Constraints Are Dangerous And Misleading

In seeking faster, easier and cheaper pole attachments, some attachers urge the Commission to assert itself into the daily decision-making processes of electric utilities across the country. They propose that utility pole owners cede control over core aspects of their electric distribution systems. They want priority service over the utilities' own electric customers. They want the Commission to impose on utilities expedited make-ready deadlines and severe operational constraints.

These types of proposals would compromise the safety and integrity of electric distribution systems and impair the ability of utilities to operate their systems safely, reliably and efficiently in their best judgment based on their years of experience. The serious problem of shoddy attacher workmanship – motivated solely by speed-to-market – would increase, as would the already staggering number of unauthorized attachments and safety violations, not to mention attacher wires duct-taped to poles, attacher splices covered by garbage bags, huge attacher bundles affixed to poles, attacher cables laying on the ground and other abuses.

Wireless Attachments Must Be Handled On A Case-by-Case Basis

The Commission should reject the self-serving and dangerous proposals of wireless companies for make-ready deadlines, mandatory pole top access and the emasculation of electric utility standards developed over decades of electric distribution experience. Wireless attachments present a host of unique health, safety and reliability issues that need to be considered and resolved by each utility individually, based on pole-specific conditions. Each individual utility must determine that wireless attachments will not compromise worker safety and electric system reliability. Nationwide, across-the-board mandates by the FCC, with no examination of the concerns unique to each utility, would seriously undermine the integrity of many electric distribution systems. The record to date is grossly inadequate for the Commission to appreciate the seriousness of this issue or to impose these types of risky requirements on electric utility distribution systems nationwide.

Unauthorized Attachments And Safety Violations Are Rampant

The record in these proceedings is replete with examples of attachers placing attachments on utility poles without following the required authorization procedures (and without paying even the modest rental fees required by the Commission) and without complying with applicable safety requirements. Unauthorized attachments and attacher safety violations are widespread and

commonplace, resulting in additional lost revenues to utilities and their ratepayers and a compromised electric distribution system.[6]

As the Commission's rules stand now, utilities are largely helpless to combat these problems. Regulatory incentives are urgently needed. Utilities must be permitted to impose reasonable unauthorized attachment and safety violation penalties.[7]

Attachment Rates Are Unfair and Discriminate In Favor Of One Industry (Communications) Over Another (Electric Utility)

The Commission's mandatory pole attachment rental fees grossly discriminate against electric utilities and their consumers and do not come close to representing a fair and appropriate rental amount.

The *Coalition* estimates that since enactment of the Pole Attachment Act in 1978, the FCC's pole attachment rate formula has required electric utilities and their ratepayers to subsidize cable television companies to the tune of *$10 million per year for every 500,000 poles* to which cable companies are attached.[8] This colossal annual subsidy in part has enabled nascent CATV" companies (as identified by Congress in 1978) to morph into today's communications giants.[9]

Companies like Comcast, posting $25-$34 billion in revenues for the last several years, neither need nor deserve these types of originally well-intentioned but now seriously misplaced government subsidies.[10] The subsidy makes even less sense in the current environment because it is paid by the electric utility industry, which is dramatically reducing expenses in an attempt to contain rate increases for their electric consumers (who, ultimately, fund the subsidy).

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[6] *See* "Comments of the Coalition of Concerned Utilities," WC Docket No. 07-245 (Pole Attachment Proceeding) (Mar. 7, 2008), pp. 71-79.

[7] *Id.* at 75-79.

[8] Cable operators currently pay 7.4% of an electric utility's total annual pole costs. Assuming annual pole costs of $100/pole ($300 net cost of a bare pole X 33% carrying charges = $100/pole) and that cable operators should pay the 27.1% rate recommended by the Coalition's Comments in its Pole Attachment Proceeding, then cable attachers should be paying $9,850,000 more per year than they currently do for every 500,000 poles to which they are attached (500,000 X $100 X (27.1% - 7.4%) = $9,850,000.

[9] Congress established the artificially low cable-only pole attachment rate subsidy in 1978 in order "to spur the growth of the cable industry," which in 1978 was in its infancy. H.R. Rep. No. 104-204, at 91 (1995).

[10] *See* "Comments of the Coalition of Concerned Utilities," WC Docket No. 07-245 (Pole Attachment Proceeding) (Mar. 7, 2008), pp. 18-19; "Comments of the Coalition of Concerned Utilities," WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding) (Sept. 24, 2009), pp. 5-8.

The subsidy provided to communications companies by electric utilities and their ratepayers is actually far higher than even these amounts, considering all of the additional uncompensated costs that communications attachments generate for electric utilities. As just an example, utilities often must install taller and significantly more expensive poles than necessary for their own purposes in order to accommodate the requirements of communications attachers. Further, the attachments themselves burden the poles, create additional liability and decrease pole life.[11]

Apart from higher capital costs, communications attachments vastly increase utility operating expenses, including, to name just a few: (1) employment of numerous full- and part-time personnel to administer all aspects of the attachment process; (2) correction of attacher safety violations; (3) the transfer of attacher facilities; (4) new liabilities caused by communications attachments; and (5) responding to non-electric "wire down" calls.[12] Little, if any, of these costs is recoverable through the Commission's pole attachment rental fees.

Continued Rate Subsidies Will Not Promote Rural Broadband Deployment

The Commission should not be misled by attacher claims that continuation of the rate subsidy will somehow result in further broadband deployment in rural and unserved areas. Cable operators will not take the tens of millions that they save on pole attachments in urban and suburban areas, where customers and revenues are abundant, and for some magnanimous reason invest that money in rural areas where customers and potential revenues are scarce and there is little chance for a satisfactory return on their capital investments.

Continuing to hand colossal pole attachment subsidies to gigantic cable television companies mostly serving urban and suburban areas makes no sense at all in terms of promoting broadband deployment in unserved and underserved areas. The reason that the cable industry does not deploy high speed broadband service in these areas today is the enormous expense associated with head-end equipment installation and system upgrades – not the relatively minute costs associated with pole attachment rentals.[13]

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[11] *See* "Reply Comments of the Coalition of Concerned Utilities," WC Docket No. 07-245 (Pole Attachment Proceeding) (Apr. 22, 2008), pp. 4-7.

[12] *Id.*, pp. 5-7.

[13] *See* Letter dated July 17, 2008, from Thomas B. Magee on behalf of the *Coaltion of Concerned Utilities* to Marlene H. Dortch, Secretary, explaining why broadband is not deployed in rural America, WC Docket No. 07-245 (Pole Attachment Proceeding).

If broadband deployment is to be promoted in unserved and underserved areas, providers in urban and suburban areas should be required to contribute directly to it through the Universal Service System. The perpetuation of an unbalanced communications market through discriminatory and unfair pole attachment rates that mostly benefit urban and suburban providers at the expense of electric ratepayers everywhere will not accomplish the task.

VoIP Should Be Subject To At Least The Telecom Rate

The cable industry's provision of "VoIP service" (a/k/a "telephone service") under the guise of a cable service entitled to a cable pole attachment rate makes no regulatory sense. Telcos providing a virtually identical service are required by statute to pay the higher telecom pole attachment rate.

Similar companies using attachments to provide similar services should pay similar rates. Cable companies and CLECs provide not only "similar" but virtually identical video, voice and Internet services. They should pay the same pole attachment rates.

Any Uniform Broadband Attachment Rate Must Exceed the Telecom Rate

Even if extending the unfair cable-only pole attachment rate subsidy to CLECs made any sense from a policy perspective, the Commission simply does not possess the statutory authority necessary to lower the CLEC attachment rate. As confirmed by the Supreme Court and the Commission's own rulings, the Pole Attachment Act prohibits any CLEC broadband attachment rate that is lower than the existing telecom rate.[14] The Commission needs to establish a uniform broadband attachment rate for cable and CLEC attachers at a level *above* the existing telecom rate. Over-subsidizing one industry (cable) at the expense of another (CLECs) distorts the market for broadband services, creates artificial incentives and ultimately reduces competition.

ILECs Are Not Subject to the Pole Attachment Act

The Pole Attachment Act also prohibits the Commission from regulating the rates paid by Incumbent Local Exchange Carriers ("ILECs") to attach to electric utility poles.[15] This limitation has been well known for at least a decade. It is not a close legal question recently "discovered" by ILEC trade associations looking for a loophole to offset their declining businesses.

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[14] *See* "Reply Comments of the Coalition of Concerned Utilities," WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding) (Oct. 9, 2009), pp. 12-15.

[15] *See* "Comments of the Coalition of Concerned Utilities," WC Docket No. 07-245 (Pole Attachment Proceeding) (Mar. 7, 2008), pp. 61-69.

Even if it were legal to do so, establishing an ILEC broadband attachment rate at the same level as cable companies and CLECs would make no public policy sense. Under their existing joint use/joint ownership arrangements with electric utilities, ILECs have negotiated terms that result in a host of advantages that far exceed those available to cable companies and CLECs under typical pole attachment agreements.[16] Reducing the ILECs attachments rates would provide them with an unfair competitive advantage over cable companies and CLECs paying the same rate but receiving far fewer benefits.

* * *

Although the *Coalition* supports Commission efforts to expedite the provision of broadband service throughout the country, it cannot come at the expense of the safe, reliable and efficient operation of the nation's electric utility distribution systems.

Your attention to these important issues is appreciated. If you wish, we would be pleased to answer any questions or provide any additional information.

Sincerely,

Jack Richards

Thomas B. Magee

Counsel for the
Coalition of Concerned Utilities

CC: (By electronic distribution and U.S. Mail)
Commissioner Copps
Commissioner Clyburn
Commissioner McDowell
Commissioner Baker

[16] *See id.* and December 8, 2009 Letter from Thomas B. Magee on behalf of the *Coaition of Concerned Utilities* to Marlene H. Dortch, Secretary, providing data showing that cable companies and especially CLECs pay far more in make-ready costs than do ILECs, WC Docket No. 07-245 (Pole Attachment Proceeding), GN Docket No. 09-29 (Rural Broadband Strategy Proceeding), GN Docket No. 09-51 (National Broadband Plan Proceeding), and WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding).

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EXHIBIT A

WC Docket No. 07-245 ("Pole Attachment Proceeding")
GN Docket No. 09-29 ("Rural Broadband Strategy Proceeding")
GN Docket No. 09-51 ("National Broadband Plan Proceeding")
WC Docket No. 09-154 ("VoIP Pole Attachment Rate Proceeding")

FILINGS TO DATE OF THE
COALITION OF CONCERNED UTILITIES

March 7, 2008	"Comments of the Coalition of Concerned Utilities," WC Docket No. 07-245 (Pole Attachment Proceeding).
April 22, 2008	"Reply Comments of the Coalition of Concerned Utilities," WC Docket No. 07-245 (Pole Attachment Proceeding).
June 3, 2008	*Ex Parte* Letter to the Honorable Kevin J. Martin expressing pole attachment concerns, WC Docket No. 07-245 (Pole Attachment Proceeding).
June 5, 2008	Letter to Marlene H. Dortch, Secretary, describing *ex parte* meetings and attaching handouts, WC Docket No. 07-245 (Pole Attachment Proceeding).
July 3, 2008	Letter to Marlene H. Dortch, Secretary, describing *ex parte* meetings and attaching handouts, WC Docket No. 07-245 (Pole Attachment Proceeding).
July 17, 2008	Letter to Marlene H. Dortch, Secretary, regarding why broadband is not deployed in rural America, WC Docket No. 07-245 (Pole Attachment Proceeding).
August 14, 2008	Letter to Marlene H. Dortch, Secretary, describing *ex parte* meetings and attaching *ex parte* filing entitled "***Top Ten Cable/CLEC/ILEC 'Myths' About Pole Attachments,***" WC Docket No. 07-245 (Pole Attachment Proceeding).
November 13, 2008	Letter to Marlene H. Dortch, Secretary, responding to ATT/Verizon and US Telecom rate proposals, WC Docket No. 07-245 (Pole Attachment Proceeding).
May 1, 2009	Letter to Acting Chairman Copps and Commissioners Adelstein and McDowell, responding to Fibertech/KDL and BWPA make-ready deadline and pole attachment access proposals, WC Docket No. 07-245

	(Pole Attachment Proceeding) and GN Docket No. 09-29 (Rural Broadband Strategy Proceeding).
June 8, 2009	"Comments of the Coalition of Concerned Utilities," GN Docket No. 09-51 (National Broadband Plan Proceeding).
July 21, 2009	"Reply Comments of the Coalition of Concerned Utilities," GN Docket No. 09-51 (National Broadband Plan Proceeding).
September 24, 2009	"Comments of the Coalition of Concerned Utilities," WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding).
October 7, 2009	Letter to Marlene H. Dortch, Secretary, describing *ex parte* meetings and attaching handouts, WC Docket No. 07-245 (Pole Attachment Proceeding), GN Docket No. 09-29 (Rural Broadband Strategy Proceeding), GN Docket No. 09-51 (National Broadband Plan Proceeding), and WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding).
October 9, 2009	"Reply Comments of the Coalition of Concerned Utilities," WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding).
December 8, 2009	Letter to Marlene H. Dortch, Secretary, providing data showing that cable companies and especially CLECs pay far more in make-ready costs than do ILECs, WC Docket No. 07-245 (Pole Attachment Proceeding), GN Docket No. 09-29 (Rural Broadband Strategy Proceeding), GN Docket No. 09-51 (National Broadband Plan Proceeding), and WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding).
December 10, 2009	Letter to Marlene H. Dortch, Secretary, attaching recently-adopted pole attachment regulations from New Hampshire establishing a 195-day make-ready deadline, WC Docket No. 07-245 (Pole Attachment Proceeding), GN Docket No. 09-29 (Rural Broadband Strategy Proceeding), GN Docket No. 09-51 (National Broadband Plan Proceeding), and WC Docket No. 09-154 (VoIP Pole Attachment Rate Proceeding).