



Connecting Hometown America

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April 5, 2010

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

via ECFS

Re: American Cable Association Notice of Ex Parte Presentation Supporting State Cable Associations' March 18, 2010 Ex Parte Letter; GN Docket Nos. 09-47, 09-51, and 09-137; WC Docket No. 07-245

Dear Ms. Dortch:

On behalf of the American Cable Association ("ACA"), I write to strongly support the State Cable Associations' March 18, 2010 Ex Parte Letter ("Cable Associations' Letter") filed in the above-referenced proceedings. For the reasons herein, ACA strongly supports the State Cable Associations' response to the March 8, 2010 presentation made by the National Rural Electric Cooperative Association ("NRECA").

In numerous filings with the Commission, ACA has shown the need for Commission action to ensure that **all** pole owners calculate rates consistent with the FCC's regulations.¹ The ability of some pole owners – such as electric cooperatives and municipalities – to charge pole attachment rates without regard to the FCC's pole attachment rate calculation impedes the delivery of broadband in sparsely populated rural areas. As the Commission has recognized, there are fewer homes per mile of plant in these areas.² More poles — and, consequently, more attachments — are required to

¹ See, e.g., *In the Matter of A National Broadband Plan For Our Future*, GN Docket No. 09-51, Comments of the American Cable Association (filed June 8, 2009); *In the Matter of 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, Opposition of the American Cable Association (filed Sept. 24, 2009); *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, Reply Comments of the American Cable Association (filed Apr. 17, 2008).

² See, e.g., *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd. 6453, ¶ 118 (2000) ("The Commission has recognized that small systems serve areas that are far less densely populated areas than the areas served by large operators. A small rural

bring broadband to each subscriber's home. Excessive rates have a disproportionately negative impact on the subscribers in rural areas, and increase the cost of broadband deployment in small markets and rural areas – areas served by ACA's member companies. In short, high pole attachment rates impede the delivery of broadband in sparsely populated rural areas.

The Cable Associations' Letter details the significant problems with electric cooperatives' and municipalities' exemption from pole attachment regulation. These include the enormous disparity in pole attachment rates cooperatives and municipalities charge compared to those entities not subject to the exemption from pole attachment regulation,³ as well as the impact unregulated rates have on broadband deployment.⁴ The State Cable Associations also correctly note that many cooperative and municipal pole owners compete against cable operators in providing broadband service.⁵

Permitting electric cooperatives and municipal utilities to charge pole attachment rates without regard to the FCC's pole attachment rate calculation has a disproportionately negative impact on the subscribers served by ACA's members. This is because ACA's members serve mainly lower-density markets. No economic theory supports the dramatically higher pole attachment rates cooperatives and municipal utilities seek. As the courts have routinely held, pole owners are fully compensated for cable attachments under the cable formula.⁶

ACA strongly supports the Cable Associations' Letter, and continues to advocate ending the pole attachment regulation exemption for cooperative and municipally owned utilities. The Commission must ensure that all pole owners provide access to poles, ducts, conduits, or rights-of-way on a non-discriminatory basis.

Sincerely,



Matthew M. Polka
President and CEO
American Cable Association

operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers."); *In the Matter of Caribbean Communications Corp., Petition for Special Relief*, Memorandum Opinion and Order, 17 FCC Rcd. 7092, ¶ 14 (2002) (noting that systems with more than 15,000 subscribers average 68.7 subscribers per mile, while small systems service on average only 35.3 subscribers per mile).

³ Cable Associations' Letter at 2-4 (providing examples of rate disparities in Arkansas, Tennessee, Texas, Virginia, and California).

⁴ *Id.* at 4 ("high pole costs extinguish broadband deployment...").

⁵ *Id.* at 5.

⁶ See generally *Alabama Power Co. v. FCC*, 311 F.3d 1357 (11th Cir. 2002).