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April 23, 2010

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

Re: Implementation of Section 224 of the Act; Amendment of the Commission's Rules & Policies Governing Pole Attachment, WC Docket No. 07-245; RM-11293; RM-11303

Dear Ms. Dortch:

On April 22, 2010, Daniel Brenner, Hogan & Hartson, and the undersigned met with Sharon Gillett, Chief of the Wireline Competition Bureau, as well as Jenny Prime, Jonathan Reel, Jeremy Miller, Wes Platt, Marcus Maher, Bill Dever, Ian Dillner, Al Lewis and Marv Sacks also of the Wireline Competition Bureau, to discuss the impact of the Commission's recent Broadband Plan on its pending rulemaking in the above-referenced docket.

As reflected in the attached presentation, we urged the FCC to implement the Broadband Plan's findings and recommendations related to pole attachments by adopting a pole attachment rate structure that yields rates for broadband services that are as uniform and close to the current cable rate as possible. We emphasized that formulas that produce wildly different maximum rates for different services do not make sense in an era of convergence.

We also discussed the costly, distracting and counterproductive litigation engendered by a rate structure that yields vastly divergent rates for cable and information services, on the one hand, and telecommunications services, on the other. In particular, we discussed state court litigation that Bright House has faced concerning the proper rate applicable to its new service offerings. In a dispute tried this year in state court, Bright House was required to produce tens of thousands of pages in pre-trial discovery, defend numerous depositions of managers and senior corporate

officers in several cities in the United States, and defend itself during the two-week trial. And there is every reason to believe that utilities will continue to bring cases such as this in an effort to raise attachment fees when cable operators and other attachers introduce innovative services that are commingled on the attached wire. Implementation of the Plan recommendations should help to deter these costly disputes that draw resources away from companies like Bright House, as they expand broadband services to their communities.

Sincerely,

Paul A. Werner

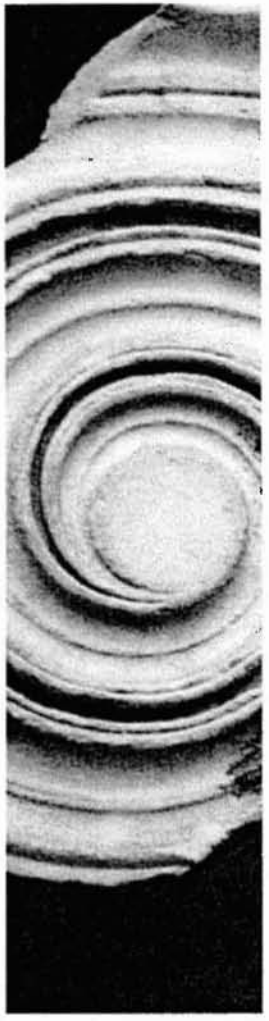
PAW/dg

Bright House Networks

Presentation Regarding Pole Attachments
WC 07-245

Daniel Brenner, Paul Werner

Counsel for Bright House Networks



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The Broadband Plan's Treatment of Pole Attachments: Major Step Forward

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- Pole Attachment regulation has long history, even pre-dating the 1984 Cable Act
- The Plan made very important recommendations on pole attachments and broadband
- Addressed pending 2007 rulemaking (WC Docket No. 07-245), issues also raised in petition for declaratory rulemaking (AEP Serv. Co. et al. Petition for Declaratory Ruling (2009)

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Broadband Plan Findings, p. 110

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- *"The rate formula for cable providers articulated in Section 224(d) has been in place for 31 years and is "just and reasonable" and fully compensatory for utilities."*
- *"To support the goal of broadband deployment, rates for pole attachments should be as low and as close to uniform as possible. "*
- *"Through a rulemaking, the FCC should revisit its application of the telecommunications carrier rate formula to yield rates as close as possible to the cable rate in a way that is consistent with the Act."*

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Broadband Plan Findings, p. 110

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- *"Applying different rates based on whether the attacher is classified as a 'cable' or a 'telecommunications' company distorts attachers' deployment decisions. "*
- *"This is especially true with regard to integrated, voice, video and data networks."*
- *"This uncertainty may be deterring broadband providers that pay lower pole rates from extending their networks or adding capabilities (such as high-capacity links to wireless towers)."*

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Key Principles Going Forward

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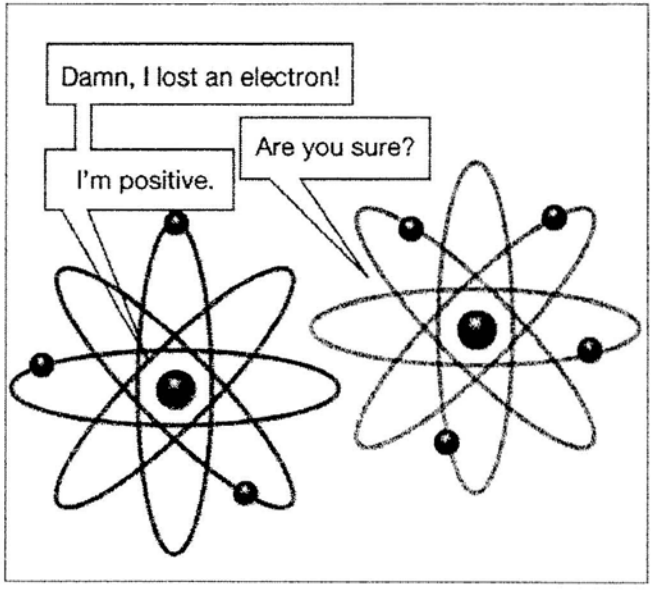
- Lowest Compensable Lease Rate to Pole Owners (plus payments for make ready) is the fair, right result
- Uniform, Lowest Compensable Rate For Commingled Services on Pole Attachments
- With Convergence, It Makes No Sense to Maintain Different Rates for Attachments – All Electrons Are Alike



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Incentives for Utilities to Litigate

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- **Challenging the Cable Rate**
  - Cost borne by Utility Rate payers, not shareholders
  - multiple findings by FCC, state Commissions that cable rate is $5-8, not $30-55, yet the issue is frequently litigated
- **Commingled Services Create New Incentives to Litigate**
  - FCC's initial *Gulf Power order* led to appeals by utilities to the U.S. Supreme Court – FCC commingled decision was upheld (2002)
    - Recall, at the time of the *Gulf Power* decision, cable modem service had not yet been classified. Similar situation exists today as innovative services are commingled on common wire
    - Again, cost of litigation can be borne by ratepayers; given size of rate base, the cost of bringing cases not very significant but more pronounced for cable operators

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