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**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Implementation of Section 224 of the Act ) WC Docket No. 07-245  
 )  
A National Broadband Plan for Our Future ) GN Docket No. 09-51  
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To: The Commission

**REPLY COMMENTS OF THE DAS FORUM  
A MEMBERSHIP SECTION OF PCIA–THE WIRELESS INFRASTRUCTURE ASSOCIATION**

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## SUMMARY

This proceeding offers the unique opportunity to facilitate broadband deployment in keeping with the goals of the NATIONAL BROADBAND PLAN. The record contains significant evidence that FCC rules should apply equally to all attachments, with minimal variation. By providing reasonable rates and timely access to utility poles for wireless attachments, consumers will ultimately benefit by removing barriers to broadband deployment and increasing availability and competition.

To this end, the Commission must act to ensure that wireless attachers have timely access to poles, including pole tops, at regulated rates. This process begins with the clarification and enforcement of the regulatory obligations of the right to attach. Specifically, the Commission must clarify that a denial of a request to attach must meet the existing rules for denials regardless of whether the utility and attacher have a master agreement and that any denial where there is no master agreement must serve as the basis for negotiations for a master agreement: within 45 days and following a survey and engineering analysis.

Furthermore, wireless attachers' access to pole tops cannot be foreclosed by blanket denials. Pole top antennas maximize coverage area, thereby reducing the total number of attachments, continue to be attached without any report of a safety or reliability issues, and have been aptly addressed by rules in the National Electric Safety Code for years.

There should be no differential treatment between wireline and wireless attachments. Accordingly, the Commission should adopt the wireline timeline for wireless attachments. This timeline should be extended in instances where the utility and the wireless attacher do not have a master agreement. Make ready work for wireless attachments more often is less time consuming than for wireline attachments because significantly fewer poles are used for wireless attachments. The DAS forum proposes a multi-step 90 day period where a utility and attacher do not have a master agreement to resolve any operational and engineering issues and establish a master agreement. The first 45 day step includes a 10 day response time limit for a request to attach and a 35 day period in which the utility must detail its concerns that prevent access to wireless attachments. The second step affords the attacher and the utility 45 days to collaborate to meet the utility's concerns.

Furthermore, to avoid confusion and ensure equality, the Commission should clarify that any telecommunications rate adopted under its *Further Notice of Proposed Rulemaking* will apply to wireless attachments as well. Doing so ensures that pole owners cannot charge for equipment located outside of usable space and that wireless attachers are not charged inflated rates simply because they attach to the pole top.

Finally, the Commission must allow all attachers to use utility approved certified contractors for survey and make ready work among electric lines. If a pole owner is having a difficult time managing staff for an attachment request, it is reasonable to allow utility-approved contractors to assist or take over the task. Also, the Commission's proposal to allow a utility pole owner to deny access to an outside contractor for work among power lines is unnecessary. Utilities no doubt utilize approved and certified contractors themselves, and neither a pole owner nor a wireless attacher will want to use a contractor that lacks the training necessary to install the attachment. At a minimum, the Commission should clarify its statement that the contractor will be allowed in the electric lines "where the contractor has communications-specific training or skills that the utility cannot duplicate."

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**A MEMBERSHIP SECTION OF PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION**

**I. INTRODUCTION**

The DAS Forum, a membership section of PCIA—The Wireless Infrastructure Association (“DAS Forum”)<sup>1</sup> respectfully submits the following reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Order and Further Notice of Proposed Rulemaking* in the above-captioned docket.<sup>2</sup> The FCC is taking action in this proceeding to reduce barriers to broadband deployment that persist throughout the pole

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<sup>1</sup> The DAS Forum is a broad-based non-profit organization, dedicated to the development of the DAS component of the nation’s wireless network. It is the only national network of leaders focused exclusively on shaping the future of DAS as a viable complement to traditional macro cell sites and a solution to the deployment of wireless services in challenging environments. PCIA is the trade association representing the wireless telecommunications infrastructure industry. PCIA seeks to facilitate the rapid and efficient deployment of widespread dependable communications networks across the country, consistent with the mandate of the Telecommunications Act of 1996.

<sup>2</sup> *In re* Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, *Order and Further Notice of Proposed Rulemaking*, FCC-10-84 (May 20, 2010) (“*Order and FNPRM*”).

attachment process. We urge the Commission to act to ensure that wireless attachers have identical rights to wireline attachers.

Today, the Commission is faced with a proceeding that has been pending for three years, and is necessary because of previous actions that made false distinctions between types of attachments providing similar services. If the Commission does not grant wireless attachers—including Distributed Antenna Systems (“DAS”)—the same rights as wireline attachers through this proceeding, it will find itself revisiting its rules again in short time.

The record in this docket contains significant evidence that wireless attachers should receive the same regulatory treatment as wireline attachers. To ensure they do, the FCC must ensure that wireless providers have attachment rights, including on pole tops; that pole owners must provide justification for denials; and that timelines and rates are just and reasonable and mirror the wireline timelines and rates. Further, to effectuate these rights, the FCC must allow the use of utility-approved third party contractors for survey and make ready work among electric lines.

This proceeding finds the Commission at a crossroads: it can act to create uniform rules for all attachers regardless of the type of attachment, or it can perpetuate regulatory and anticompetitive barriers for one class of attachers. We urge the Commission to act to ensure parity among all attachers.

## **II. THE COMMISSION’S GOALS ARE BEST SERVED BY ADOPTING UNIFORM RULES FOR ALL POLE ATTACHMENTS**

The FCC’s rules should apply equally to all attachments, with minimal variation. The benefits that accrue to attachers from low rates and timely access are not exclusive to wireline attachers, and are actually greater for wireless attachers. Wireless attachers have for years been

subject to unreasonable denials, monopoly rates, and extreme delays.<sup>3</sup> The FCC's goals will only be served by guaranteeing timely access at reasonable rates for all attachers.

The FCC has undertaken an unprecedented effort to increase the deployment and adoption of broadband. The FCC has established as a goal that the United States “should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.”<sup>4</sup> This proceeding is a significant opportunity for the Commission to take action to spur broadband deployment, including wireless broadband, and reduce the burdens to the further deployment and development of a nascent and innovative wireless network technology that is an essential element of “the fastest and most extensive wireless networks of any nation.”

This proceeding gained new life when the NATIONAL BROADBAND PLAN (“PLAN”) was released and made several recommendations regarding the Commission's pole attachment rules.<sup>5</sup> The PLAN noted that “[t]he cost of deploying a broadband network depends significantly on the costs that service providers incur to access conduits, ducts, poles and rights of way on public and private lands,”<sup>6</sup> and that “the FCC has authority to improve the deployment process and should use that authority.”<sup>7</sup> The FCC has the authority to take action with respect to all telecommunications attachments, and it should exercise that authority.

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<sup>3</sup> See Ex Parte of the DAS Forum, WC Docket 07-245, at 7-8, 14 (filed Apr. 19, 2010) (explaining the reports of DAS Forum member regarding the persistent delays, denials, and monopoly rates).

<sup>4</sup> NATIONAL BROADBAND PLAN at 9 (2010) (“PLAN”).

<sup>5</sup> *Id.* Recommendations 6.1-6.4.

<sup>6</sup> *Id.* at 109.

<sup>7</sup> *Id.* at 110.

Consistent with the recommendations in the PLAN, this proceeding is aimed at “reduc[ing] network providers’ costs and speed access to utility poles.”<sup>8</sup> By reducing costs and speeding access, the Commission notes consumers will benefit “by removing barriers to telecommunications and cable network deployment, increasing broadband availability, and increasing competition in the provision of broadband, voice, and video services.”<sup>9</sup>

These benefits to network deployment should not accrue exclusively to wireline attachers, and wireless attachments are necessary to generate the benefits to consumers. Indeed, wireless attachments are an integral input to these benefits: as commenters demonstrate, DAS improves wireless coverage and capacity and promotes both intra- and inter-modal competition.<sup>10</sup> As MetroPCS explains, “DAS systems are vitally dependent on the ability to locate DAS antennas on utility poles in many places, especially new markets. Because of this critical dependency, pole attachment rights for DAS providers are essential for their operations.”<sup>11</sup> The FCC’s goals are important and will be best served by rules that are as close to uniform as possible for all attachers.

### **III. THE COMMISSION MUST ACT TO ENSURE THAT WIRELESS ATTACHERS HAVE TIMELY ACCESS TO POLES, INCLUDING POLE TOPS, AT REGULATED RATES**

The record in this proceeding demonstrates strong support for consistent rules for make ready timeframes, rates, and access for wireless attachers. While some commenters continue to

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<sup>8</sup> *Order and FNPRM* ¶1.

<sup>9</sup> *Id.*

<sup>10</sup> Comments of MetroPCS Communications Inc., WC Docket No. 07-245, GN Docket No. 09-51, at 4 (filed Aug. 16, 2010) (“MetroPCS”); Comments of NextG Networks, Inc., WC Docket No. 07-245, GN Docket No. 09-51, at 9 (filed Aug. 16, 2010) (“NextG”).

<sup>11</sup> MetroPCS at 4.

stress red herrings of unsubstantiated claims of safety and reliability, the record shows those concerns are not based in fact or reality. The record supports Commission action to ensure full access to utility poles and pole tops, to set reasonable make ready timelines that are largely identical to wireline timelines, and to establish rates for wireless attachments that are consistent with wireline rates.

**A. The Right to Attach Carries Defined Regulatory Obligations, which the Commission Must Clarify and Enforce**

Section 224 of the Telecommunications Act of 1996 grants all telecommunications attachers the rights to rates, terms, and conditions that are just and reasonable.<sup>12</sup> These rights are without meaning if an attacher is denied access to the usable space on a pole. In the *Order and FNPRM* the FCC reaffirmed that wireless attachers have the same rights as other attachers.<sup>13</sup> We urge the Commission to give meaning to those rights by requiring all denials to request to attach to state specific claims and evidence of reliability or safety concerns and to reaffirm that attachers have the right to attach at pole tops.

- 1. The Commission must clarify that a denial of a request to attach must meet the existing rules for denials regardless of whether the utility and attacher have a master agreement, and that any denial where there is no master agreement must serve as the basis for negotiations for a master agreement**

The Commission's "clarification" with respect to the requirement that a utility respond to a request to attach a wireless attachment within 45 days must be further clarified.<sup>14</sup> The Commission states that "[t]he current rule requiring a response to pole access requests within 45

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<sup>12</sup> 47 U.S.C. §224(b)(1) (2006).

<sup>13</sup> *Order and FNPRM* ¶ 52 n. 153.

<sup>14</sup> *Id.* ¶ 52.

days applies in full to utilities that receive requests by wireless carriers.”<sup>15</sup> This rule requires that a denial be “specific, shall include all relevant evidence and information supporting [the] denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.”<sup>16</sup> As the Commission notes, this requirement is “functionally identical to a requirement for a survey and engineering analysis.”<sup>17</sup>

The Commission then goes on to “clarify” that if a utility does not have a master agreement they may deny a wireless attachers request to attach on capacity, safety, reliability concerns, or engineering standards, which is precisely what the existing rule requires. It is not clear what the Commission is attempting to clarify. The Commission also asks whether a pole owner’s denial of a request to attach wireless equipment on these grounds should be detailed to serve as a basis for negotiating a master agreement.<sup>18</sup>

Consistent with other commenters, we urge the Commission to clearly establish the manner in which a utility must respond to a request by a wireless attacher.<sup>19</sup> Specifically, we urge the Commission to clarify that regardless of whether a master agreement is in place, a denial of a request to attach must be consistent with the Commission’s existing rule: within 45 days and following a survey and engineering analysis. If a master agreement is not in place, the

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<sup>15</sup> *Id.*

<sup>16</sup> 47 C.F.R. § 1.1403(b) (2010).

<sup>17</sup> *Order and FNPRM* ¶ 35.

<sup>18</sup> *Id.* ¶ 52.

<sup>19</sup> Comments of T-Mobile USA, Inc., WC Docket No. 07-245, GN Docket No. 09-51, at 9 (filed Aug. 16, 2010) (“T-Mobile”); MetroPCS at 12; NextG at 11-13.

record shows significant support for the Commission’s proposal that the denial be sufficiently detailed to serve as the basis for a negotiation of a master agreement.<sup>20</sup>

NextG agrees that “[o]nce the utility provides the list [of detailed concerns] to the requesting attacher, both parties should be required to work in good faith on establishing a construction standard for the wireless antenna.”<sup>21</sup> T-Mobile also agrees that the response should be a “written description of the basis for the denial sufficient to provide a reasonable basis for ultimately reaching agreement on the provision of non-discriminatory access at fair and reasonable rates, terms, and conditions.”<sup>22</sup> Without a detailed denial, utility pole owners can continue to deny access to poles without any justification in fact—the Commission must act to give real meaning to the right to attach.

## **2. The Commission should affirm that utilities may not issue blanket denials for pole top wireless attachments**

Commenters agree that the Commission should ensure non-discriminatory access to pole tops.<sup>23</sup> As AT&T argues, the FCC should “reiterate its directive that utilities not presume that the space above the communications space on a pole is limited to the utility alone.”<sup>24</sup> Pole top access is essential to maximize the benefits of wireless attachments.<sup>25</sup> An essential element of the right to attach to a pole is the right to attach to the “usable space” of that pole, which includes

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<sup>20</sup> MetroPCS at 12-13; NextG at 13; T-Mobile at 9.

<sup>21</sup> NextG at 13.

<sup>22</sup> T-Mobile at 9.

<sup>23</sup> Comments of AT&T, Inc., WC Docket No. 07-245, GN Docket No. 09-51, at 32 (filed Aug. 16, 2010) (“AT&T”); MetroPCS at 7, 11; NextG at 11, 20-14.

<sup>24</sup> AT&T at 32.

<sup>25</sup> MetroPCS at 7; NextG at 20.

the pole top.<sup>26</sup> The Commission has established that the “only recognized limits to access for antenna placement” are the limitations in the Act: insufficient capacity, safety, reliability, and engineering purposes.<sup>27</sup> The Commission must recognize the benefits of pole top attachments, and “recognize that attachment of wireless facilities to the top of utility poles can be accomplished safely, consistent with recognized engineering standards, and without any negative impact on reliability.”<sup>28</sup>

The benefits to placing wireless antennas on pole tops over other locations on the pole are well established on the record. MetroPCS states that its antennas “are usually clamped on the side of a utility pole and extend vertically, preferably upright at the top of the pole to maximize signal coverage.”<sup>29</sup> NextG explains that “[p]ole top placement of antennas provides greater coverage by the simple fact that it is higher than a mid-pole attachment, which provides better coverage. By increasing the coverage area, increased antenna height, in turn, may significantly reduce the total number of antennas needed for an installation, thereby decreasing total network cost and minimizing the potential community ‘impact.’”<sup>30</sup> Yet DAS providers sometimes face

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<sup>26</sup> 47 C.F.R. § 1.1402(c). Usable space includes “the space above the minimum grade level [on the pole] which can be used for the attachment of wires, cables, and associated equipment.” *Id.*

<sup>27</sup> Wireless Telecommunications Bureau Reminds Utility Pole Owners Of Their Obligations To Provide Wireless Telecommunications Providers with Access To Utility Poles At Reasonable Rates, *Public Notice*, 19 FCC Rcd 24930 (Dec. 23, 2004).

<sup>28</sup> NextG at 21.

<sup>29</sup> MetroPCS at 7.

<sup>30</sup> NextG at 20.

denials for pole top access based on unfounded, undocumented, and unsubstantiated claims of threats to reliability and safety.<sup>31</sup>

Some utilities have attempted to flood this docket with recycled, reused, and unsupported claims regarding the impact of wireless pole top attachments on safety and reliability.<sup>32</sup> The facts, however, belie their arguments. Utility pole owners sometimes attach their own SCADA antennas at pole tops. Thousands of pole top antennas have been attached without any report of a safety or reliability issue, and there have been rules in the National Electric Safety Code (“NESC”) governing wireless attachments for years. As David Marne, a national expert in the NESC and overall electrical safety states, “communication antennas can be installed in the pole top position on a power pole in a safe and reliable manner using the applicable [NESC] rules and accepted good industry practice.”<sup>33</sup>

NextG explains that it has agreements with 59 utilities that allow pole top attachment, “with the large majority (53) allowing pole top over both primary, secondary and guy poles.”<sup>34</sup> CPS Energy explains that, subject to some limitations, it allows wireless equipment in the

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<sup>31</sup> See NextG at 21 (“[M]any utilities continue to make carte blanche prohibitions on all or certain types of pole tops”).

<sup>32</sup> Comments of Coalition of Concerned Utilities, WC Docket No. 07-245, GN Docket No. 09-51, at 37-43 (filed Aug. 16, 2010) (“Coalition”); Comments of National Rural Electric Cooperative Association, WC Docket No. 07-245, GN Docket No. 09-51, at 13-14 (filed Aug. 16, 2010) (“NERCA”); Comments of Qwest Communications International Inc., WC Docket No. 07-245, GN Docket No. 09-51, at 10 (filed Aug. 16, 2010).

<sup>33</sup> Attachment at 2.

<sup>34</sup> NextG at 21.

electric space.<sup>35</sup> AT&T also “allows wireless telecommunications providers to attach facilities on its poles above the communications space.”<sup>36</sup>

As demonstrated on the record, and through Attachment 1, the NESC has well-established rules governing pole attachments.<sup>37</sup> The NESC has had rules governing the safe and reliable attachment of wireless antennas to poles tops in place since 2002.<sup>38</sup> The NESC rules are crafted in consultation with electric utilities, engineers, contractors, trade unions, and safety organizations.<sup>39</sup> The NESC actually seeks to encourage joint use by requiring “cooperative consideration” to facilitate the joint use of poles, recognizing “that duplicate pole lines may not be in the best interest of the utilities or the public.”<sup>40</sup> As explained by commenters and in Attachment 1, the rules in the NESC governing wireless pole attachments address both safety and reliability issues.<sup>41</sup> The unsubstantiated concerns over pole top attachments are belied by their safe attachment and by rules governing their safe attachment that have been in place since 2002.

With respect to safety, several NESC rules govern worker safety and safe installation of antennas on pole tops. NESC rule 235I establishes safe clearance from supply line conductors to

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<sup>35</sup> Comments of CPS Energy, WC Docket No. 07-245, GN Docket No. 09-51, at 10-11 (filed Aug. 16, 2010) (“CPS”).

<sup>36</sup> AT&T at 32.

<sup>37</sup> NextG at 22; DAS Forum Ex Parte at 9-10; Attachment 1.

<sup>38</sup> Attachment 1 at att. A 6.

<sup>39</sup> Attachment 1 at att. A 2.

<sup>40</sup> Attachment 1 at att. A 2.

<sup>41</sup> Comments of CTIA - The Wireless Association, WC Docket No. 07-245, GN Docket No. 09-51, at 9-10 (filed Aug. 16, 2010) (“CTIA”); NextG at 12-13.

communication antennas. A detailed schematic in the attachment explains how these clearances operate in practice.<sup>42</sup> NESC Rule 239H governs the safe installation for the connection between a pole top antenna and equipment located below the communications space. NESC Section 24, 25, and 26—which contain multiple rules—govern safe installation practices with respect to wind and ice loading. NESC Rule 420Q governs worker exposure to radio frequency emissions. With respect to reliability, the NESC rules govern antenna supports and grounding.

While the Coalition of Concerned Utilities (“Coalition”) continues to cite “a host of reliability, safety, and engineering concerns” they offer no evidence of the existence of these supposed harms.<sup>43</sup> The Coalition makes hollow claims that wireless antennas can fall because of faulty installation, weather conditions, design defects, falling trees, or car collisions.

With respect to faulty installation, wireless attachers utilize trained power linemen to install pole top attachment, and pole top supports must have the “same strength and loading analysis (NESC Sections 24, 25, and 26) as the power line hardware.”<sup>44</sup> The NESC also has rules governing ice and wind loading for pole top attachments. Further, it is no more likely for a wireless attachment to have a design defect than any other type of electrical, telecommunications or cable attachment. Finally, falling trees and car collisions impact the entire pole and the attachments thereto—the fact that a wireless antenna is on top of the pole is irrelevant if the entire pole fails. These claims are red herrings meant to muddy the discussion—wireless

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<sup>42</sup> Attachment 1 at att. A 3.

<sup>43</sup> Coalition at 38.

<sup>44</sup> Attachment 1 at att. A 5.

attachers have the statutory right to attach to the usable space, and the Commission must affirm this right.

**B. The Commission Should Adopt the Wireline Timeline for Wireless Attachments, With a Modification When the Utility and Wireless Attacher do not Have a Master Agreement**

Both wireless attachers and utility pole owners have demonstrated on the record that the proposed wireline timeline is appropriate for wireless attachments. MetroPCS notes that “no convincing reason has ever been given for differential treatment [between attachers], and parity between wired and wireless providers is essential to maintaining a level playing field.”<sup>45</sup> The DAS Forum agrees. Furthermore, the DAS Forum has proposed an initial period before the wireline timeline begins for instances where the utility and attacher do not have prior agreement or the utility does not have a standard agreement for all wireless attachers.

The discussion in the record regarding timelines for wireless attachment make ready contains many of the same unsubstantiated safety and reliability arguments as the discussion about wireless pole top attachments. The reality, again, is much different than what some utility pole owners portray. In many ways, wireless attachments require less make ready time than wireline and can be done just as quickly if not quicker.

Verizon explains that “[c]ontrary to the view expressed in the *FNPRM*, make ready work for wireless attachments typically does not require substantially more time to complete than make ready work required to accommodate other types of attachments.”<sup>46</sup> CTIA accurately notes that as a result of the need to attach to substantially fewer poles, “quantifiably less

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<sup>45</sup> MetroPCS at 11.

<sup>46</sup> Verizon at 34.

engineering and make-ready work is required for building out a wireless system.”<sup>47</sup> NextG also argues that “the same make-ready timelines should apply because a relatively few number of poles are typically submitted when entities request wireless attachment.”<sup>48</sup>

Many of the issues raised by electric utilities to justify a longer time frame can be worked out through the negotiation of a master agreement. As the DAS Forum contemplates, utility pole owners and wireless attachers will have a timeline before the wireline make ready timeline within which they can work out these issues with reference to existing standards such as the NESC and best practices.

Concerns regarding pole engineering, installation standards, and specifications can be addressed through a master agreement between wireless attachers and a pole owner. As Oncor explains, its standards and specifications for wireless attachments facilitate deployment; when the process is followed, both parties win.<sup>49</sup> If these issues are resolved at the outset through a master agreement, there is no reason that the make ready timeline for wireline then cannot apply to wireless.

Many of the additional issues (not related to safety or reliability) raised by utility pole owners are irrelevant to the application of the wireline make ready timeline for wireless pole attachments. The American Public Power Association argues that some wireless attachments

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<sup>47</sup> CTIA at 8.

<sup>48</sup> NextG at 18.

<sup>49</sup> Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, GN Docket No. 09-51, at 38 (filed Aug. 16, 2010) (“Oncor”).

may require significantly larger poles.<sup>50</sup> However, the proposed wireline timeline is only applicable for make ready where a new pole is not required.

The Coalition claims that the wireline attachment timeline is unworkable for wireless pole attachments because of “routine municipal reviews” of DAS networks.<sup>51</sup> The Coalition claims that DAS providers are delayed through such reviews “because [DAS providers] seek to place their not-so-attractive antennas with unknown radiofrequency emissions in close proximity to residences and the general public.”<sup>52</sup> This statement is off-base for a variety of reasons. First, wireless pole attachments are designed to have a minimal aesthetic impact on a community, and often do in practices. Second, the radio frequency emissions from a wireless antenna on a pole top are not only known, but highly monitored and are regulated by the FCC.<sup>53</sup> Regardless, any possible delay caused by the right of way permitting process is irrelevant to whether a utility should be obligated to complete the make ready within a specific timeline.

Finally, several utility pole owners claim that fixed timelines are unworkable because of a lack of experience with wireless attachments.<sup>54</sup> Again, like many of the other claims by utility pole owners, the facts do not support this argument. The three pole owners that make up POWER, as well as CPS Energy and Oncor all have indicated that they allow wireless pole

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<sup>50</sup> Comments of American Public Power Association, WC Docket No. 07-245, GN Docket No. 09-51, at 26 (filed Aug. 16, 2010).

<sup>51</sup> Coalition at 39.

<sup>52</sup> *Id.*

<sup>53</sup> Furthermore, to the extent a locality attempts to govern the placement of wireless antennas, their review of radio frequency emissions is prohibited by statute. 47 U.S.C. § 332(c)(7)(B)(iv).

<sup>54</sup> Coalition at 39; NRECA at 14.

attachments. NextG notes that it has deployed 54,000 wireless nodes across the country.<sup>55</sup> Electric utilities are increasingly utilizing their own wireless antennas for SCADA systems and smart grid deployments.

The Commission must ensure that wireless attachers are afforded the same make ready timeline as wireline attachers. The DAS Forum proposal contemplates an initial multi-step 90 day period where a utility and attacher do not have a master agreement to resolve any operational and engineering issues and establish a master agreement.<sup>56</sup>

- **Step One (45 days total): Request for wireless attachment.** After the wireless attacher submits an application for pole access, the pole owner must respond within 10 days to a wireless attacher either granting the request or stating that it has further concerns. If a utility has further concerns that prevent it from granting access it must respond enumerating any and all specific concerns related to engineering, safety and reliability within 35 days of its initial response, which is day 45 of the entire process. The detail in this response must be sufficient to facilitate further negotiations between the attacher and the utility to develop a master agreement, as proposed by the Commission.<sup>57</sup>
- **Step Two (45 days): Wireless attacher and utility collaborate.** Once the wireless attacher has received the utility's detailed response, the attacher and utility have 45 days to collaborate on specific engineering standards that meet the utility's concerns. This timeframe is reasonable given the fact that many different attachment standards currently exist nationwide that have facilitated deployments of DAS in all regions of the country. The DAS provider brings a wealth of experience in suggesting reasonable standards that have been successfully implemented elsewhere. Concurrent with the development of the engineering standard, the wireless attacher and utility will collaborate to develop a master agreement that addresses the other specific remaining issues related to the proposed installation.

This initial timeline is more than sufficient to come to an agreement on the appropriate standards. As discussed *infra*, the pole owner will still have an obligation to conduct a survey

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<sup>55</sup> NextG at 20.

<sup>56</sup> DAS Forum Initial Comments at 17-18.

<sup>57</sup> *Order and FNPRM* ¶ 52. *See supra*, Section III(A) for a description of why a detailed response is paramount.

within the initial 45 day period, as it does for all requests to attach. Further, we support the proposal to require pole owners to make master agreements publicly available in a conspicuous manner on their Websites.<sup>58</sup> As more master agreements are struck between wireless attachers and pole owners, the terms will move closer towards standardization and transaction costs will fall. However, if wireless attachers and pole owners do not have access to other master agreements, they will not be able to benefit from the prior experience of other attachers and pole owners.

Once the master agreement is negotiated, the pole owner can meet the wireline timeline. As the Florida Investor-Owned Utilities explain, “Once the initial engineering evaluation is completed, and necessary new specifications are created, the application process is much faster for subsequent requests involving the identical attachments.”<sup>59</sup> Without fixed timeframes for wireless attachers that mirror the wireline timeline, the right to attach lacks real effect; the Commission must act to ensure wireless attachers are afforded timely access to utility poles at reasonable rates.

**C. The Commission Must Reaffirm that Wireless Attachers are Subject only to the Regulated Attachment Rates for the Services They Provide**

The Supreme Court has affirmed that wireless telecommunications providers are entitled to the same protections under section 224 as all other telecommunications providers.<sup>60</sup> However, just as wireless attachers are denied protections such as the right to attach in a timely manner,

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<sup>58</sup> *Order and FNPRM* ¶ 147; MetroPCS at 17-18.

<sup>59</sup> Comments of the Florida Investor-Owned Electric Utilities, WC Docket No. 07-245, GN Docket No. 09-51, at 29 (filed Aug. 16, 2010).

<sup>60</sup> Nat’l Cable Telecommunications Ass’n v. Gulf Power Co., 534 U.S. 327 (2002).

wireless providers are also routinely denied the protection of a regulated attachment rate.<sup>61</sup> The Commission must affirm that wireless attachments are subject to the telecommunications rate.

In the *Order and FNPRM*, the Commission expounds extensively on the rate for telecommunications and cable attachments.<sup>62</sup> However, it fails to explicitly state that any rate adopted under the *FNPRM* will also apply to wireless attachments. NextG assumes that the Commission did so because “any rates developed will apply equally to all telecommunications attachments” and urges the Commission to take action to clarify this ambiguity.<sup>63</sup> The DAS Forum agrees, and urges the Commission to clarify that the telecommunications rate applies to all attachers, including wireless attachers.

Further, the DAS Forum agrees with MetroPCS’s suggestion that the Commission must also clarify that “the rate may be assessed solely based on the amount of usable pole space the attachment utilizes.”<sup>64</sup> This ensures that pole owners cannot charge for equipment located outside of usable space, but also allows the rate to be adjusted to account for additional usable space that a wireless attachment may consume. It also ensures that wireless attachers are not charged inflated rates simply because they attach to the pole top. The Commission must take action to ensure that wireless attachers have the same rights as wireline, namely the right to access utility poles in timely manner at just and reasonable rates.

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<sup>61</sup> See Comments of the DAS Forum Comments, WC Docket No. 07-245, GN Docket No. 09-51, at 22 (filed Aug. 16, 2010).

<sup>62</sup> *Order and FNPRM* ¶¶ 110-43.

<sup>63</sup> NextG at 26.

<sup>64</sup> MetroPCS at 9.

#### **IV. THE COMMISSION MUST ALLOW ALL ATTACHERS TO USE UTILITY-APPROVED CERTIFIED CONTRACTORS FOR SURVEY AND MAKE READY WORK**

The delays associated with surveys and make ready can sometimes be alleviated with assistance from outside contractors. If a pole owner is having a difficult time managing staff for an attachment request, it is reasonable to allow utility-approved contractors to assist or take over the task. The Commission proposes to allow attachers to “use contractors that a utility has approved and certified for the purposes of performing such work.”<sup>65</sup> \The DAS Forum supports this proposal and urges the Commission to allow utility approved contractors to conduct surveys or make ready among power lines.

The Commission also proposes to allow a utility pole owner to deny the ability of a wireless attacher to use an outside contractor for work among electric lines.<sup>66</sup> This limitation is hedged by allowing the attacher to use an outside contractor for work among the electric lines if “the contractor has special communications-equipment related training or skills that the utility cannot duplicate.”<sup>67</sup> This limitation is unnecessary. Utilities no doubt utilize approved and certified contractors themselves. Further, neither a pole owner nor a wireless attacher will want to use a contractor that lacks the training necessary to install the attachment. Therefore, it is reasonable to require utilities to approve and certify contractors that are permitted to work among the electric lines and that have communications specific training. In fact, the Commission notes

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<sup>65</sup> *Order and FNPRM ¶ 61.*

<sup>66</sup> *Order and FNPRM ¶ 69.*

<sup>67</sup> *Id.* ¶ 69.

that “some utilities ‘do not dispute that ‘owner approved contractors’ are capable of performing this work safely, including make-ready work in the power space.’”<sup>68</sup>

At a minimum, we urge the Commission to clarify its statement that the contractor will be allowed to work among the electric lines “where the contractor has communications-specific training or skills that the utility cannot duplicate.”<sup>69</sup> This statement is wrought with ambiguity and is highly susceptible to being misused by utilities to delay or otherwise prevent wireless attachments. For instance, a utility may be able to technically duplicate communications specific training—say by utilizing the same training resources that a trained contractor would use—yet refuse to duplicate the training for other reasons. In that instance, a utility would be able to duplicate the training, yet choose not to, resulting in the attacher having to wait for the utility to complete the survey or make ready. The result would be the status quo—delays and denials.

The Commission has taken significant strides toward establishing policy goals for the future of the United States’ communication network, especially for wireless and broadband networks. It can take a significant step toward achieving those goals by acting to set uniform rules for all pole attachments.

## **V. CONCLUSION**

For the foregoing reasons, the DAS Forum respectfully requests that the Commission guarantee wireless attachers timely and predictable access to utility poles at just and reasonable rates, terms, and conditions as mandated by section 224 of the Act.

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<sup>68</sup> *Id.* ¶ 69 n. 192.

<sup>69</sup> *Id.* ¶ 69.

Respectfully submitted,

**THE DAS FORUM, A MEMBERSHIP SECTION OF  
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