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December 2, 2010

Ex Parte

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

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

Dear Ms. Dortch:

Yesterday, Rashann Duvall, Katharine Saunders and the undersigned from Verizon, and James Pachulski counsel for Verizon, met with Bill Dever, Al Lewis, Jeremy Miller, Wes Platt, Jonathan Reel, and Marvin Sacks of the Wireline Competition Bureau to discuss pole attachment rates and access issues. During the meeting, we explained that broadband providers pay vastly different rates for broadband attachments, giving some providers an unfair competitive advantage. We also explained that high pole attachment rates increase the costs of deploying broadband services. Consistent with Verizon's comments, we explained that Section 224 gives the Commission the authority to adopt a uniform rate for broadband attachments by all providers.

In addition, we discussed the differences between joint use, joint ownership and licensing agreements. We explained that parties to joint ownership and joint use arrangements have obligations and responsibilities that are not found in licensing agreements, including the obligation to perform no charge make ready work for the other party to the agreement. These obligations effectively increase the attachment rates that ILECs pay, and any benefits that ILECs receive under these agreements do not offset these high rates. We also explained that ILECs typically lack leverage to negotiate more favorable rates, terms and conditions under existing joint use and joint ownership arrangements and that it is not clear that ILECs can use the existing complaint process to challenge those unreasonable rates, terms and conditions.

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Finally, we discussed its proposed timeframes for completing make ready work. In particular, we explained that 60 days, rather than the proposed forty-five days, is closer to the time that it typically takes to complete make ready work.

The attached presentation was used to guide our discussion. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne D. Burk". The signature is fluid and cursive, with a large initial "A" and "B".

Attachment

cc: Bill Dever
Al Lewis
Jeremy Miller
Wes Platt
Jonathan Reel
Marvin Sacks



Pole Attachments

December 1, 2010

Attachment Rates



Today, competing broadband providers pay vastly different rates for the same types of attachments, giving some broadband providers an unfair competitive advantage and increasing deployment costs.

- According to the Edison Electric Institute, the typical rate charged for ILEC attachments is \$40.80 a year, compared to the typical cable rate of \$6.63. This is more than a five-hundred percent difference.
- In Pennsylvania, Verizon pays one electric company \$96.36 per year for its attachments, which is *more than eleven times* that electric company's Commission-authorized cable rate.
- In Virginia, Verizon pays another electric company \$47.21 per year for its attachments, which is *seven times* greater than that electric company's Commission-authorized cable rate.
- The National Broadband Plan acknowledged that attachment costs incurred to serve rural broadband customers are nearly three times as high for ILEC attachments compared to cable attachments. (NBP at 110)

Attachment Rates



The FCC has the authority to set a low, uniform rate for broadband attachments by all providers.

- Section 224(a) defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, conduit or right-of-way owned or controlled by a utility.” This includes attachments by ILECs.
- Under Section 224(b)(1), the Commission has the authority and duty to “regulate the rates, terms and conditions for pole attachments to provide that such rates, terms and conditions are just and reasonable.”
- In *Gulf Power*, the Supreme Court confirmed that the Commission’s authority under Section 224 is not limited to the two prescribed rate formulas and further confirmed that the Commission has broad authority under Section 224(b)(1) to regulate the rates for pole attachments by any entity listed in Section 224(a).

Attachment Agreements



License Agreement	An agreement between an attacher and a pole owner. The license agreement sets rates that the pole owner will charge for the attacher's pole attachments.
Joint Use Agreement	An agreement between an ILEC and an electric utility where they each solely own poles. The joint use agreement sets rates that the ILEC will charge the electric utility for attachments on the ILEC's solely owned poles and the rates the electric utility will charge the ILEC for attachments on the electric utility's solely owned poles.
Joint Ownership Agreement	An agreement between an ILEC and an electric utility where they jointly own poles. Under a joint ownership agreement, the ILEC and the electric utility generally do not charge each other for attachments on their jointly owned poles. However, a joint ownership agreement may set rates for attachments to the electric utility's or the ILEC's solely owned poles.

Attachment Agreements



Joint use and joint ownership agreements with electric utilities do not provide ILECs with significant financial benefits or more favorable terms and conditions that offset the high attachment rates that ILECs pay.

- ILECs typically have obligations under joint use and joint ownership agreements (e.g., performing “no charge” make ready work for the electric utility) that effectively increase the attachment rates paid by ILECs.
- ILECs lack the leverage to negotiate for lower rates under existing agreements with electric utilities.

Attachment Access



Like the Commission's current regulatory approach towards access issues any new access regulation should provide sufficient flexibility.

- In adopting the existing guidelines governing access to poles, the Commission rejected one size fits all rules and explained that "there are simply too many variables to permit any other approach with respect to access to the millions of utility poles and untold miles of conduit in the nation." (Local Competition Order para.1143)
- The Commission should ensure that pole owners have sufficient time to complete the various steps.
- New rules should accommodate factors that rest outside of the control of the pole owner.

Attachment Access



Verizon's proposed timeframes

Total: 149 days, essentially the same total time outlined in the FNPRM.

- **Stage one (survey) and Stage two (make ready estimate):** 45 days to complete both, rather than treating these as separate steps.
- **Stage three (acceptance and *full* payment):** 14 days.
- **Stage four (performance of make ready work):** at least 60 days.
- **Stage five (coordination with third party attachers):** at least 30 days.

Attachment Access



The other access rules proposed in the FNPRM would complicate, rather than expedite, access to poles.

- For jointly-owned poles, requiring a single pole owner to administer all phases of providing access to poles would not improve access to poles. Attachers deal directly with each pole owner and have more direct communication regarding the processing of their applications and make ready work.
- Many ILECs and many electric companies have indicated that their labor agreements restrict the use of outside contractors. Instead, the use of third party contractors should be encouraged where allowed.

Recommending timeframes will resolve timing issues for providing access to poles.

Conclusion



- Today, competing broadband providers pay vastly different rates for the same types of attachments, giving some broadband providers an unfair competitive advantage.
- Section 224 of the Act gives the Commission the authority to adopt a low, uniform rate for broadband attachments by cable companies, ILECs and CLECs.
- Joint use and joint ownership arrangements with electric utilities do not provide ILECs with significant financial benefits or more favorable terms and conditions that would offset the high attachment rates that ILECs pay.
- Any new access rules the Commission adopts should provide sufficient time for completing the various stages, and should also be sufficiently flexible.