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March 10, 2011

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

Re: Implementation of Section 224 of the Act, WC Docket No. 07-245; A National
Broadband Plan for Our Future, GN Docket No. 09-51

EX PARTE NOTICE

Dear Ms. Dortch:

On Wednesday, March 9, 2011, Scott Freeburn (Progress Energy), Eric O'Brien (Tampa Electric), Tom Kennedy (Florida Power & Light), Tom Orvald (Florida Power & Light) and I – on behalf of the Florida IOUs (Progress Energy Florida, Tampa Electric, Florida Power & Light, Florida Public Utilities and Gulf Power) – met with the following members of the Wireline Competition Bureau: Al Lewis, Marv Sacks, Jeremy Miller and Claude Aiken.

During the meeting, we circulated the attached handout. The primary focus of the meeting was the relationship between electric utilities and ILECs. We explained why (in addition to the statutory barriers) the Commission should not disturb the nearly century-old joint use relationships between electric utilities and ILECs. We made the points expressed in the attached handout (page 9) as well as other points consistent with the comments and other filings made by the Florida IOUs.

We also briefly discussed the use of contractors in the communications space as an effective means of expediting the vast majority of make-ready work. We explained that in the service areas for Progress Florida and Florida Power & Light only 10% of poles within pole attachment applications require electric supply space make-ready (see also Reply Comments of the Florida IOUs, p. 8 n.15 (citing declarations submitted with Reply Comments)).

We also briefly discussed wireless pole top attachments consistent with the points expressed in the attached handout. We did not discuss the content on the last page of the attached handout (addressing the Commission's proposed changes to the telecom rate formula).

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this notice of *ex parte* communication is being filed electronically in the above referenced matter. Please contact me if you have any questions.

Ms. Marlene Dortch, Secretary

March 10, 2011

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Sincerely,

A handwritten signature in black ink, appearing to read "E. Langley". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

Eric B. Langley
Counsel to the Florida IOUs

cc: Mr. Scott Freeburn
Mr. Eric O'Brien
Mr. Tom Kennedy
Mr. Tom Orvald
Mr. Al Lewis
Mr. Marv Sacks
Mr. Jerry Miller
Mr. Claude Aiken

Pole Attachment FNPRM

WC Docket No. 07-245

GN Docket No. 09-51



The Florida IOUs
March 2011
Ex Parte Presentation

Executive Summary

- ❑ **Wireless Attachments:** So long as wireless attachers are being granted non-discriminatory access to poles, they should not be able to demand a specific position on the pole.
- ❑ **Make-Ready Deadlines:** A one-size-fits all make-ready deadline is a recipe for failure. Commission policy should encourage pre-planning and coordination. Arbitrary deadlines will only lead to further disputes.
- ❑ **Use of Contractors:** Contractors can expedite make-ready work in the communications space (where most make-ready work occurs). The proposed rules appropriately allow electric utilities to exclude non-utility personnel from the electric supply space.
- ❑ **Rates:** Commission should not disturb the infrastructure cost sharing agreements between ILECs and electric utilities. Commission should adopt the current telecom rate for all section 224 wireline attachments.

Wireless Attachments (1 of 2)

- ❑ Wireless attachers are not being denied access
 - Many electric utilities accommodate wireless attachments in the communications space
 - Some electric utilities allow pole top attachments
- ❑ Wireless attachers should not be able to demand a specific location on the pole
 - Nothing in section 224 guarantees an attacher a specific position on the pole
 - The “usable space” argument is a red herring
 - There are critical differences between the communications space and the electric supply space



Wireless Attachments (2 of 2)

- ❑ Pole top access should remain a utility-specific decision
 - Subject to non-discriminatory access requirement
- ❑ The fact that the NESC has standards for pole top attachments does not resolve the issue
 - Many electric utilities have safety or reliability standards that *exceed* the NESC
 - A pole top access presumption would be tantamount to adopting national engineering standards, a step the Commission specifically has declined to take
- ❑ At a bare minimum, any final rules regarding pole top access should follow a NPRM with specific proposed rules and opportunity for comment

Make-Ready Deadlines (1 of 2)

- ❑ The keys to quick access are PRE-PLANNING and COORDINATION
- ❑ Deadlines will discourage pre-planning and coordination
 - Without pre-planning and coordination, make-ready deadlines will only lead to more disputes (not faster access)
 - Post-inspection failures will increase, leading to increase in construction costs (increased deployment costs)
- ❑ One-size-fits-all make-ready deadlines ignore reality
 - Some jobs are fast and easy
 - Some jobs are complicated and time-consuming
 - Some factors are beyond the control of either the attacher or the pole owner
 - No two make-ready jobs are exactly alike

Make-Ready Deadlines (2 of 2)

- ❑ The “whole pole” solution to expedite access will not work under the current statutory framework
 - Some attachers and agencies are completely outside the Commission’s jurisdiction (WiFi, governmental)
- ❑ Commission can and should require CATV and telecom attachers to quickly rearrange if necessary
 - Most make-ready work is within the communications space
 - Requiring communications attachers to rearrange quickly can expedite the make-ready process
- ❑ The permitting and make-ready process is not “red-tape” or a “road block”
 - It is the process by which electric utilities ensure that the *road they built* is properly maintained and safe for everyone

Use of Contractors (1 of 2)

- The Commission's proposed rules appropriately allow electric utilities to exclude non-utility personnel from the power supply space
 - There are critical differences between the communications space and the electric supply space
- Proposed clarifications to Rule 1.424:
 - (a) Utilities may exclude non-utility personnel from working among the electric lines on a utility pole ~~except workers with specialized communications equipment skills or training that the utility cannot duplicate which are necessary to add or maintain a pole attachment.~~
 - (b) Utilities shall permit workers with specialized skills or training concerning communications equipment to work among the electric lines when such workers are necessary to add or maintain a pole attachment and the utility cannot duplicate such skills:
 - (1) in concert with the utility's workforce; and
 - (2) when the utility deems it safe, and where reliability will not be adversely impacted.

Use of Contractors (2 of 2)

- Commission's proposed rules recognize distinction between survey work and attachment of facilities
 - Survey work= greater control + authorized contractors
 - Attachment of facilities= any qualified contractor

- Communications space rearrangements can be performed by qualified contractors
 - Will expedite access without compromising electric system safety and reliability
 - Electric utilities typically are not involved in communications space make-ready anyway

Pole Rental Rates (1 of 2)

- ❑ ILECs are utilities, not attachers, for purposes of section 224
- ❑ Joint use agreements between electric utilities and ILECs are premised upon the shared cost of infrastructure ownership
 - The “rates” paid by each party to the other are designed to offset imbalances in the cost of ownership
 - ILECs pay NOTHING in rental when they are in parity of ownership
 - Pole networks were designed and built to accommodate joint use
- ❑ ILEC complaints about comparative “rates” are unreliable and immaterial
- ❑ Providing a financial windfall to ILECs at the expense of electric utilities will not promote broadband deployment

Pole Rental Rates (2 of 2)

- All stakeholders agree there should be a unified rate for section 224 wireline attachments providing functionally identical services
- The Commission should apply the current telecom formula to all section 224 wireline attachments
 - Would create regulatory parity between different classes of providers providing same services
 - Would be the path of least litigation
 - Commission can tweak formula through re-evaluation of space presumptions rather than upending the settled meaning of “cost”
- The current telecom formula has NOT deterred broadband deployment