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March 10, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554
Via Electronic Filing

Re: *Ex Parte* Presentation, WC Docket No. 07-245

Dear Ms. Dortch:

On March 9, 2011, Scott Thompson of Davis Wright Tremaine on behalf of NextG Networks, Brian Regan of PCIA-The Wireless Infrastructure Association and the undersigned of the DAS Forum, a membership section of PCIA—The Wireless Infrastructure Association ("Parties") met with Zac Katz, Legal Advisor for Wireline Communications, International and Internet Issues for Chairman Genachowski, and Bill Dever and Christi Shewman from the Wireline Competition Bureau.

The Parties discussed the integral role of wireless infrastructure—specifically Distributed Antenna Systems ("DAS")—in the effort to achieve the President's and the Commission's broadband and wireless goals. The Parties urged the Commission to take action in the above captioned proceeding to address barriers facing wireless attachers to utility poles including access, timing, and rates.

In addressing barriers to utility pole access, the Parties urged the Commission to ensure that wireless attachers have guaranteed nondiscriminatory access to the usable space on the pole, including pole tops, and confirm that any denials for any request to attach must be consistent with the Commission's rules and highly specific and detailed.[1] Further, any denial must serve as the basis for a negotiation on standards and terms for wireless attachments.[2] The Parties are confident that through reference to the NESC and reasonable negotiations, utility pole owners can address any legitimate concerns regarding safety or reliability.[3]

The Parties also urged the Commission to ensure that wireless attachers are guaranteed the regulated pole attachment rate for the vital services they are providing.[4] The Parties acknowledged that to the extent that a wireless attacher occupies more than one-foot of usable space, the wireless attacher would have to pay the regulated rate adjusted for the amount of useable space occupied. The Parties explained that the record contains evidence of utility pole owners charging monopoly rates for wireless attachments that far exceed the regulated rates afforded to other attachers,[5] and urged the Commission to resolve this deployment barrier by ensuring that wireless attachers are afforded regulated rates.

Regarding the issue of timing, the Parties urged the Commission to adopt the wireline make-ready timeline and ensure that wireless attachers are afforded a make-ready timeline as similar as possible to the

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[1] *See* Comments of The DAS Forum – A Membership Section of PCIA-The Wireless Infrastructure Association, WC Docket No. 07-245, at 8-12 (filed Aug. 16, 2010) ("DAS Forum Comments"); Reply Comments of The DAS Forum – A Membership Section of PCIA-The Wireless Infrastructure Association, WC Docket No. 07-245, at 4-11 (filed Oct. 4, 2010) ("DAS Forum Reply Comments").
[2] DAS Forum Comments at 10-12; DAS Forum Reply Comments at 6-7.
[3] DAS Forum Reply Comments at 9-12.
[4] DAS Forum Comments at 20-25; DAS Forum Reply Comments at 16-18.
[5] *See* DAS Forum Comments at 20-24; DAS Forum Reply Comments at 16-17; Reply Comments of T-Mobile USA, Inc., WC Docket No. 07-245, at 13-14 (filed Oct. 4, 2010); Reply Comments of NextG Networks, Inc., WC Docket No. 07-245, at 23-24 (filed Oct. 4, 2010).

wireline timeline.[6] The Parties explained that make-ready for a wireless attachment is consistent with make-ready for wireline attachments, and that the difference and antenna types do not significantly impact make ready.

The attached slides were circulated among FCC staff during the meeting.

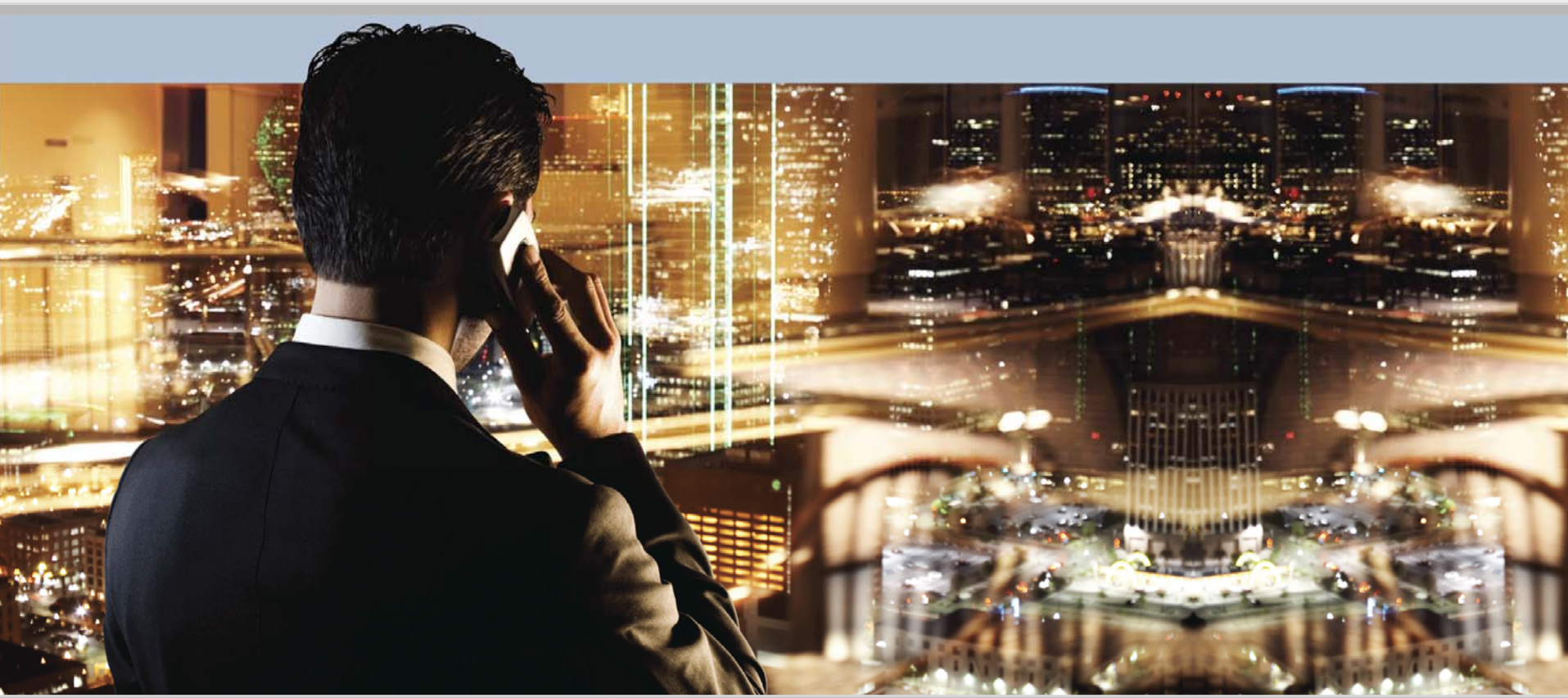
Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter will be filed via ECFS with your office. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

Jonathan M. Campbell
Government Affairs Counsel
PCIA—The Wireless Infrastructure Association
901 N. Washington St., Suite 600
Alexandria, VA 22314

Cc: Zac Katz
Christi Shewman
Bill Devers

[6] DAS Forum Comments at 16-20; DAS Forum Reply Comments at 11-16.



Wireless Pole Attachments: Value, Barriers, Solutions

DAS Forum Ex Parte Presentation

March 9, 2011

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Roadmap

- ✓ The Benefits of DAS and Wireless Pole Attachments
- ✓ The Barriers Facing Wireless Attachers
  - Denials of Access
  - Monopoly Rates
  - Excessive Delays
- ✓ Solutions
  - Ensure that denials follow a survey, are specific, based on the statutory grounds for denial, and start a negotiation for a master agreement if not already in place.
  - Ensure that wireless attachers are subject to the regulated rate for the service provided.
  - Ensure that the wireless make ready timeline mirrors the wireline make ready timeline as much as possible.

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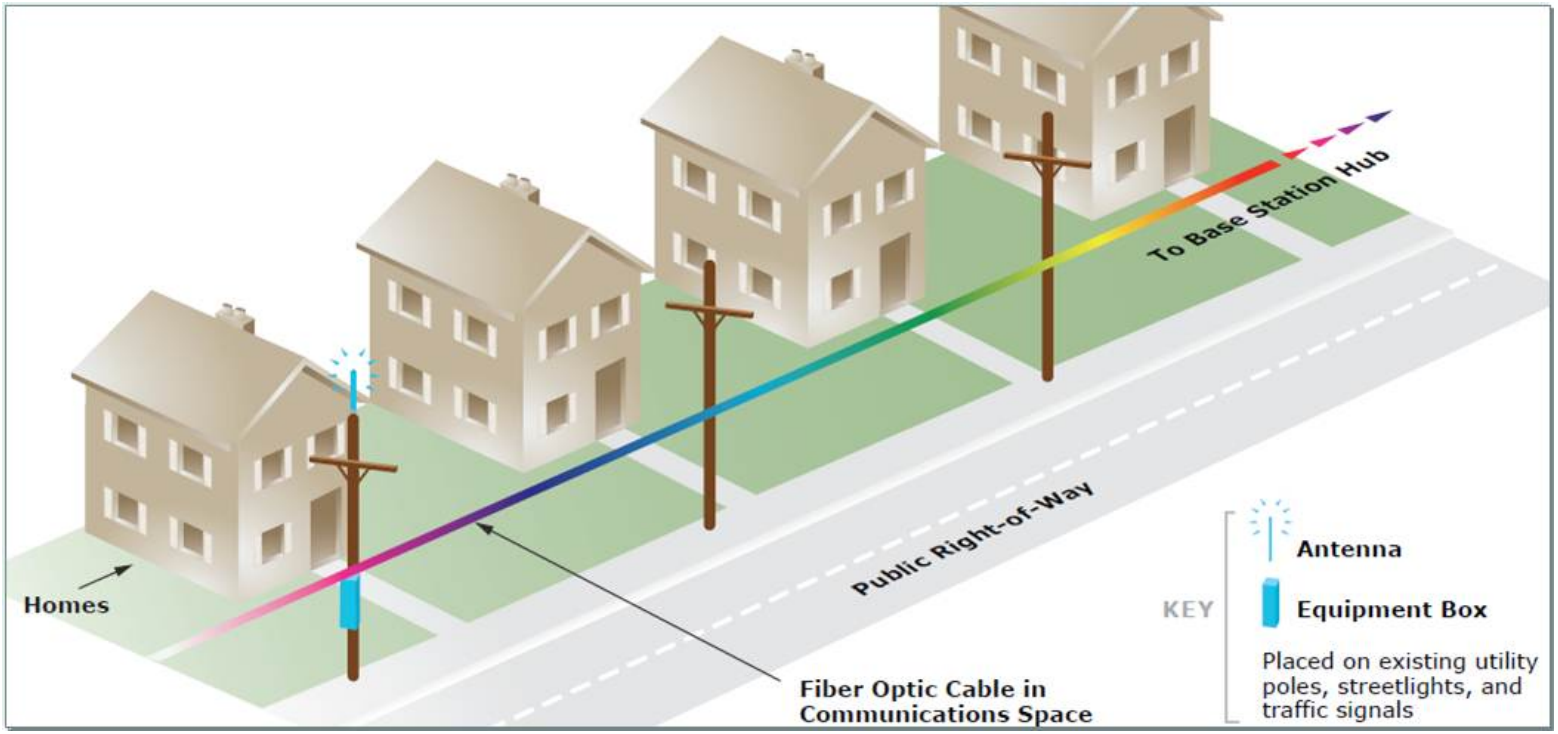
What is DAS?

A distributed antenna system (DAS) is a network of spatially-separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally at or below the clutter level of nearby trees and buildings.



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Federal Priority on Wireless Deployment

- **National Broadband Plan**
  - "The United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation."
- **Chairman Genachowski**
  - "[W]e need to spur the deployment of wireless infrastructure. That's why we're removing barriers to the build-out of wireless infrastructure – reforming tower siting, pole attachments and other such areas."
- **President Obama**
  - "Within the next five years, we'll make it possible for businesses to deploy the next generation of high-speed wireless coverage to 98 percent of all Americans."

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Benefits of DAS

- **Coverage**: DAS architecture provides coverage in areas that cannot be effectively addressed with traditional sites.
- **Capacity**: DAS can closely align capacity to actual market requirements, managing available radio resources.
- **Spectrum**: DAS uses available spectrum efficiently through multiple low-power transmission points.
- **Interference**: DAS reduces interference through low radiation centers and lower output power.
- **Data**: DAS provides better data throughput given signal strength and proximity of transmission points to user equipment.
- **Scalability**: DAS is a scalable network that can meet future capacity requirements, or additional carriers, by adding additional nodes.
- **Adaptability**: DAS can respond to market dynamics, equipment architecture changes and new technologies.

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Pole Attachment Barriers

Access

- Wireless attachments are most effective when located at the top of a utility pole.
- Some pole owners have outright bans on pole-top attachments, despite the fact that the pole top is “useable space” under the FCC’s rules, and that the NESC has had rules in place governing pole top attachments since 2001.

Rates

- Some utility companies require the acceptance of pole attachment rates on a “take it or leave it” basis.
- Utility pole owners often demand unlawful monopoly rents of thousands of dollars above the regulated rate.

Timing

- Wireless attachers face extreme delays in make ready for wireless attachments.
- Extreme delays for wireless attachments result in delays in the delivery of services.

Statutory Rights

Implementation Order

- The Commission found in its *Implementation Order* that wireless attachers are entitled to the benefits and protections of section 224 for the attachment to utility poles of antennas and associated equipment.
  13 FCC Rcd 6777, 6798-99 (1998).

Gulf Power

- The Supreme Court affirmed this finding in *National Cable Telecomm. Ass'n v. Gulf Power Co.,* 534 U.S. 327 (2002).

2004 Public Notice

- In 2004 the Commission reiterated "the obligation to provide wireless telecommunications providers with access to utility poles at reasonable rates pursuant to section 224 of the Communications Act."
- "[T]he only recognized limits to access for antenna placement by wireless telecommunications carriers are those contained in the statute: 'where there is insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering purposes.'"
  Public Notice, DA 04-4046 (rel. Dec., 23, 2004).

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Pole Attachment Solutions

The Commission can take action now to ensure that wireless attachers are afforded their statutory rights under the Act

- **Access**
  - Affirm that utility pole owners may not issue blanket denials for pole top wireless attachments, that any denials must be based on statutory grounds consistent with FCC rules, and that denials must serve as the starting point for negotiation of a master agreement if one is not already in place.
- **Timing**
  - Ensure that wireless attachers are afforded make ready timelines that are as close as possible as wireline attachers, and adopt the wireline attachment timeline.
- **Rates**
  - Explicitly affirm that wireless attachers are afforded the regulated rate for the type of service provided.

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