March 15, 2011

Via Electronic Filing

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

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

Dear Ms. Dortch:

To ensure fulfillment of the President's and the Commission's broadband and wireless goals, the Commission must establish that the rates, terms, and conditions of access for wireless attachments shall be just, reasonable, and non-discriminatory, as required under the Communications Act. As the Commission approaches crafting a final order in this proceeding, it must address the barriers that prevent wireless carriers from building the critical infrastructure that is needed to satisfy the exploding demand for wireless broadband. Specifically, the Commission's order should be guided by the following:

- ***Pole Top Access Is Feasible.*** Pole top attachments are easier to install and more effective than wireless attachments in the communications space, and electric utilities themselves attach and maintain their own wireless antennas and equipment on the pole tops.

- ***Pole Top Access Can Reduce Costs By As Much as 2/3, Which Positively Impacts Wireless Broadband Deployment.*** Pole top attachments are less costly than wireless attachments in the communications space, which translates into more rapid deployment, to consumers' ultimate benefit.

- ***Certified States Have Access Rules and Timelines That Enable Successful Wireless Deployments.*** States such as Utah, Vermont and Massachusetts, expressly provide nondiscriminatory access as well as timelines for wireless attachers, enabling successful and swift buildout.

- ***There is No Persuasive Reason to Differentiate Between Wireless and Wireline Attachments' Access and Make Ready Timelines.*** Numerous certified states do not distinguish between wireless and wire-based providers. Despite having opportunity to do so, these states have taken no affirmative steps to create a regime with different timelines for access, thereby signaling that such a distinction is unwarranted.

- ***The Commission Is Poised To Take the Lead in This Critical Area Of Wireless Access.*** Just as it took action to provide a reasonable "shot clock" in response to unreasonable delays involving zoning authority reviews of tower siting applications,

the Commission can and should give meaning to the statutory directive requiring just, reasonable, and non-discriminatory access for wireless attachments.

- ***CTIA Would Accept A Make Ready Timeline of 178 Days to Ensure Certainty for Wireless Attachers.*** Although the record indicates that a reasonable make ready timeline for wireless attachments should be the same or even shorter than for wire-based attachments, in the spirit of compromise, CTIA proposes to extend the wireline timeline for pole owners to grant physical access to wireless attachers by 30 days to 178 days total. This timeline could be subject to a rebuttable presumption in which the pole owner bears the burden of proving that additional time is warranted.

- ***The Record in This Proceeding Makes Clear That Commission Action is Needed.*** The record reveals that electric utilities have denied wireless attachers' access to poles, prescribed blanket prohibitions on pole top attachments, unreasonably delayed granting wireless attachers physical access to poles, and assessed unreasonable and discriminatory rates for wireless attachments.

- ***Safety Concerns Do Not Prevent the Commission from Establishing Clear Rules.*** Electric utilities' stated concerns related to safety issues are extensively addressed by applicable industry codes, and federal and state rules. In recognition of this fact, some electric utilities have made pole top antenna installations part of their standard practice.

I. Pole Top Access Is Feasible.

The Commission must make explicit that electric utilities cannot categorically bar pole top wireless attachments based on empty claims that such attachments are not feasible. The record demonstrates not only that pole top attachments are feasible, but also that they are easier to install, more aesthetic, and more effective than wireless attachments in the communications space.[1] Indeed, in many cases, access to the pole top is necessary to ensure that microcell and Distributed Antenna System ("DAS") deployments achieve adequate coverage without excessive costs or build-out delays.[2] The superior coverage of pole top attachments is clear in the record.[3]

Moreover, electric utilities' protests regarding the feasibility of pole top attachments are undermined by their own practice: Many electric utilities attach and maintain their own wireless antennas and equipment for their own communications networks.[4] Indeed, one

[1] *See* Ex Parte Communication of American Tower Corporation, WC Docket No. 07-245 (Mar. 15, 2011) ("*ATC Ex Parte*").
[2] *See id.*
[3] *See, e.g., ATC Ex Parte* at 3-7; Comments of NextG Networks, WC Docket 07-245, RM-11293, RM-11303, 16-17 (Mar. 7, 2008).
[4] *See e.g.,* Comments of the DAS Forum, WC Docket No. 07-245, 4 (Apr. 22, 2008) ("*DAS Forum Comments*"); Ex Parte Communication of Edison Electric Institute et al., WC Docket No. 07-245, GN Docket No. 09-51, 33, 94 (Nov. 16, 2010) (showing pictures of pole top augmentation).

utility has had pole top antennas in place for nearly 20 years.[5] The photographs appearing in Attachment 1 show both an antenna installed on the pole top by an electric utility and a common DAS pole top installation.[6] These photos make clear that no meaningful difference exists between wireless attachers' installations and the antennas utilities have used for their own purposes for years. The installation of these devices (as the devices themselves continue to shrink),[7] can be, and readily is, accomplished simply by using the same qualified construction contractors that the electric power companies themselves use.[8]

II. Pole Top Can Reduce Costs By As Much as 2/3 Which Positively Impacts Wireless Broadband Deployment.

In addition to feasibility, the record demonstrates that pole top attachments are less costly than wireless attachments in the communications space.[9] Specifically, DAS providers have indicated that more nodes are necessary if wireless attachments are relegated to the communications space lower on the pole, instead of the pole top.[10] This can increase the costs of a typical deployment approximately 60-70 percent.[11] But from the other viewpoint, it is beyond dispute that the superior coverage realized through pole top access can "significantly reduce the total number of antennas needed for an installation, thereby decreasing total network cost and minimizing the potential community 'impact.'"[12]

III. Certified States Have Adopted Clear Access Rules and Timelines.

The need for clear rules providing wireless attachers with nondiscriminatory access, pole top access, and deadlines for access is demonstrated by the experience of wireless attachers in states that certify that they regulate pole attachments. Several states are at the forefront of these issues, expressly providing nondiscriminatory access as well as timelines for wireless attachers.[13]

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[5] *DAS Forum Comments* at 4.
[6] *See ATC Ex Parte*, Attachment at Slide 4 (attached hereto).
[7] *See e.g.*, Ex Parte Communication of CTIA – The Wireless Association®, WC Docket No. 07-245, GN Docket No. 09-51 (Feb. 24, 2011) (photograph depicting a new Rubik's Cube-sized commercial mobile radio service ("CMRS") base station).
[8] *See, e.g.*, Ex Parte Communication of T-Mobile USA, WC Docket No. 07-245, GN Docket No. 09-51 at 4 (Mar. 14, 2011); Reply Comments of NextG Networks, Inc., WC Docket No. 07-245, GN Docket No. 09-51 at 21-22, Exhibit A ¶ 5 (Oct. 4, 2010).
[9] *ATC Ex Parte*.
[10] *See, e.g., ATC Ex Parte* at 8.
[11] *Id.*
[12] Comments of NextG Networks, WC Docket 07-245, RM-11293, RM-11303, 16-17 (Mar. 7, 2008); Joint Comments of PCIA, Sunesys, NextG Networks, Extenet Systems, NewPath Networks, and Sprint Nextel, WC Docket. No. 07-245, 3 (filed Mar. 27, 2009) (documenting network savings costs, which "allows for wireless providers to use the cost savings toward further developing their networks in other areas, expanding the provision of wireless services, and enabling wireless broadband as a viable alternative to other broadband options").
[13] *See* Utah Admin. Code. r. 746-345; Mass. Gen. Laws Ann. Ch. 166 § 25A; 220 Mass. Code. Regs. § 45.03; Vt. Pub. Serv. Bd. r. 3.707, 3.708.

For example, in Utah, a public utility must provide a wireless provider "nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable."[14] And, useable space is defined to include the top of the pole.[15] Wireless providers also are entitled to the same make-ready timelines as wire-based providers. Timelines are calculated based on the number of poles included in the request, not the type of attachment.[16]

Likewise, Vermont's rules require a pole owning utility to provide a wireless provider "non-discriminatory access to any pole, support structure, or right-of-way in which it has an ownership interest," and provide that "Broadband Service Providers and wireless telephone providers shall be authorized to have antennas installed within or above the electric supply space."[17] Vermont's rules also calculate timelines based on the number of poles included in the attachment request.[18]

So too in Massachusetts, "[a] utility shall provide a wireless provider with nondiscriminatory access to any pole or right-of-way used or useful in whole or in part, owned or controlled by it for the purpose of installing a wireless attachment."[19]

More states are progressing in the same direction, taking steps to ensure wireless attachers have timely access to poles, and specifically access to the pole top.

For example, in California, specific construction standards have been developed for pole top antennas, for which the California Public Utilities Commission declared that "[a]fter the adopted revisions to GO 95 are implemented, utilities shall process requests to install pole top antennas in a timely manner and in good faith."[20]

In New York, the New York Public Service Commission has approved a proposed pole top antenna plan, finding that "it would not compromise safety or harm the environment and is in the public interest."[21]

IV. There is No Persuasive Reason to Differentiate Between Wireless and Wireline Attachments' Access and Make Ready Timelines.

In this very proceeding, the Public Utility Commission of Oregon commented that "[t]he Oregon Commission applies the same rules to wireless telecommunication carriers as other

[14] Utah Admin. Code. r. 746-345-1(B)(2).
[15] *Id.* at 746-345-5(A)(2)(d) ("'Usable Space' means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner."); *DAS Forum March 15 Ex Parte* at 2-3.
[16] Utah Admin. Code. r. 746-345-3(C).
[17] Vt. Pub. Serv. Bd. r. 3.707.
[18] Vt. Pub. Serv. Bd. r. 3.708.
[19] Mass. Gen. Laws Ann. Ch. 166 § 25A.
[20] *Decision Adopting Uniform Construction Standards for Pole-Top Antennas*, 08-10-017, 2008 WL 4516408, at *11 (Cal. P.U.C. Oct. 2, 2008).
[21] *Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval of a Pole Attachment Rate for Certain Wireless Attachments to Niagara Mohawk's Distribution Poles*, Case 03-E-1578, 2004 WL 1170162 (N.Y. P.S.C. Apr. 7, 2004).

pole attachers."[22] Other commenters have similarly noted that other certified states do not distinguish between wireless and wire-based providers,[23] prompting the obvious question of whether there is a basis for different timelines for access. CTIA respectfully submits there is no such basis.[24]

Thus, states are advancing wireless attachment deployment by establishing rules that prevent utilities from unfairly discriminating against wireless attachers, and they are making these rules based on the same type of evidence that the Commission currently has before it. What is more, the utilities have failed to demonstrate that there exists a safety problem in these states. The lesson from the certified states is clear: wireless attachments can be attached to poles in a safe and efficient manner. By making explicit wireless attachers' access rights and defining timelines the Commission can ensure the deployment of this necessary infrastructure without unreasonable delay or cost.

V. The Commission Is Poised To Take the Lead in This Critical Area Of Wireless Access.

Everything the Commission needs to take the lead in advancing wireless broadband through wireless pole attachments already exists in the statute, the Commission's prior pole attachment precedent and the record in this proceeding.

Demand for wireless broadband is growing exponentially as new applications, devices, and technologies increasingly consume more bandwidth and attract more subscribers.[25] The technology and the will to meet that demand exist. CTIA members and others are prepared to meet that demand, in part, with wireless facilities that must be placed on utility poles. CTIA members have been at the forefront of wireless deployments, deploying thousands of microcells and DAS facilities to date and improving wireless communication throughout the country.[26]

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[22] Comments of the Public Utility Commission of Oregon, WC Docket No. 07-245, 3 (Mar. 4, 2008) (citing Order No. 07-137, 2007 WL 1198592 (Or. P.U.C. Apr. 10, 2007)).

[23] Comments of T-Mobile USA, Inc., WC Docket No. 07-245, (Mar. 7, 2008) ("California, Louisiana, Maine, Massachusetts, Oregon, Utah, and Vermont—expressly allow CMRS providers to seek nondiscriminatory access and rates under state pole attachment laws."); *see also* Draft Decision, *DPUC Investigation Into the Deployment of Distributed Antenna System (DAS) in the Public Rights of Way in Connecticut—CPCN Requirement*, Docket No. 08-06-19RE01 (Conn. D.P.U.C. Jan. 26, 2011).

[24] Moreover, CTIA's view is buttressed by other pole owners who agree that distinguishing between wireless and wireline attachments is unwarranted. *See, e.g.*, Comments of Verizon, WC Docket No. 07-245, GN Docket 09-51, at 34 (filed Aug. 16, 2010) (explaining that "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"); Comments of AT&T, WC Docket No. 07-245, GN Docket 09-51, at 32 (filed Aug. 16, 2010).

[25] *See e.g.*, *CTIA March 10 Ex Parte*, Attachment at Slides 3-7.

[26] *See e.g.*, *NextG Launches its Largest DAS Deployment in New York City*, http://www.nextgnetworks.net/corporate/release15.html (last visited Feb. 28, 2011); Michael Libbey, *Verizon Improves Cell Coverage in Some Oakland Hills Areas, But Not Others*, Oakland Hills Examiner, (July 20, 2009), http://www.examiner.com/hills-in-oakland/verizon-improves-cell-coverage-some-oakland-hills-areas-but-not-others. AT&T Wireless currently is pursuing a DAS deployment in the hub of the technology corridor, in Palo Alto, California. http://wireless4paloalto.att.com/das/.

Just as the Commission's implementation of the 1978 Pole Attachment Act allowed the cable television industry to take root and flourish, the Commission is now poised to implement Section 224 of the Communications Act of 1996 to allow wireless attachers to meet the exploding demand for wireless broadband. Because Section 224 applies to wireless attachments,[27] the Commission must "prescribe regulations to govern the charges for pole attachments used by" wireless carriers to provide telecommunications services.[28] And to be effective, those rules must ensure that wireless attachments are treated essentially the same as wire-based attachments.

The Commission has recognized that no statutory or logical basis exists for treating wireless attachments any differently from wire-based attachments.[29] "[T]he only recognized limits to access for antenna placement by wireless telecommunications carriers are those contained in the statute," which are the same limits that apply to wire-based attachments.[30] Indeed, the Commission has acknowledged that providing wireless carriers access to poles "promote[s] public safety, enable[s] wireless carriers to better provide telecommunications and broadband services, and increase[s] competition and consumer welfare."[31] And when electric utilities overcharge or deny access for wireless pole attachments, it results in "serious anticompetitive effects on telecommunications competition."[32] Thus, the Commission can clearly find that rules regarding access rights, timelines, and rates apply equally to both wire-based and wireless attachments.

VI. CTIA Would Accept A Make Ready Timeline of 178 Days.

CTIA applauds the Commission's effort to balance the needs and competing interests at stake in this proceeding, and understands the challenges of doing so. In the spirit of compromise, CTIA is prepared to accept a longer make ready timeline than the 148-day timeline the Commission has proposed for wire-based attachments. Although the record indicates that a reasonable make ready timeline for wireless attachments should be the same or even shorter

[27] Section 224(a)(5) defines a "pole attachment" to include "any attachment . . . by a provider of telecommunications service." 47 U.S.C. 224(a)(5). Based on this broad language, the Commission concluded that the Act encompasses wireless attachments. *See Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd 6777, 6798 (1998) ("Pole Attachment Order"). The Supreme Court affirmed this conclusion, establishing that attachments by wireless carriers fall within the ambit of the statute and the Commission's jurisdiction. *See NCTA*, 534 U.S. 327, 340-41 (2002). Courts and the Commission have subsequently made clear that Section 224 governs wireless attachments. *See Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002): *Omnipoint Corp. v. PECO Energy Co.*, 18 FCC Rcd 5484, 5486 (2003) ("Finally, PECO argues that the Commission does not have jurisdiction in this matter because Omnipoint seeks to attach wireless equipment. We disagree. . . . [T]he Commission has jurisdiction over wireless telecommunications service attachments."); Public Notice, *Wireless Telecommunications Bureau Reminds Utility Pole Owners of their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates*, DA 04-4046, 19 FCC Rcd 24930 (2004) ("*Wireless Attachments Notice*")

[28] 47 U.S.C. § 224(e)(1).

[29] *See Wireless Attachments Notice* ("[S]ection 224 and the Commission's rules do not allow pole access fees to be levied against wireless carriers in addition to the statutory pole rental rate . . . together with reasonable make-ready fees.").

[30] *Id.*

[31] *Id.*

[32] *Id.*

than the one for wire-based attachments, CTIA appreciates that the Commission may deem a longer timeline prudent at this time. Thus, consistent with the recent proposal of the DAS Forum,[33] CTIA proposes to extend the timeline for pole owners to grant physical access to wireless attachers by 30 days to 178 (or even 180) days total.[34] Moreover, the Commission could make available to the pole owner a rebuttable presumption in which the pole owner bears the burden of proving that additional time is warranted.

VII. The Record in This Proceeding Makes Clear That Commission Action is Needed.

The record in this proceeding is replete with evidence of the discriminatory and unreasonable barriers that some electric utilities have erected against wireless attachments. This type of unreasonable conduct must be expressly addressed in a Commission order.

The record reveals that electric utilities have denied altogether wireless attachers' access to poles:

- First Energy has refused access to a wireless attacher in several states over the course of seven years, even though First Telecom offers First Energy's infrastructure for wireless infrastructure siting services;[35]
- Hawaiian Electric refuses to allow wireless attachments on the top half of the pole, including the pole top;[36]
- Florida Power & Light took at least four years to negotiate a master agreement for pole attachments after T-Mobile submitted a request for an attachment in March 2004;[37]
- Many utilities categorically deny access rights when first approached by a wireless attacher, agree to accept wireless attachments only after months of negotiation, and even then take months or years to formulate wireless-specific provisions for their attachment agreements;[38]
- A large electric utility in the southern U.S. refused to enter into an agreement or discuss rates, terms, and conditions for wireless attachments until the attacher identified the specific poles intended for use;[39]

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[33] *See* Ex Parte Communication of the DAS Forum et al., WC Docket No. 07-245, GN Docket 09-51 (Mar. 15, 2011) ("*DAS Forum March 15 Ex Parte*").

[34] Consistent with the DAS Forum's proposal, CTIA contemplates 178 (or 180) days total if multiparty coordination is required, and 148 days if multiparty coordination is not required. *See id.* at 2-3.

[35] Ex Parte Communication by The DAS Forum, WC Docket No. 07-245, 3-4 (Mar. 2, 2011) ("*DAS Forum March 2 Ex Parte*").

[36] *Id.* at 4. The record also reveals that an unnamed Hawaiian pole owner also refuses to allow any wireless attachments on its poles because it believes they are presumptively unsafe. *See* Comments of ExteNet Systems, Inc., WC Docket No. 07-245, 7 (Mar. 7, 2008) ("*ExteNet Comments*").

[37] Comments of T-Mobile USA, Inc., WC Docket. No. 07-245, 2 (Mar. 7, 2008).

[38] Comments of NextG Networks, Inc., WC Docket No. 07-245, 6-7 (Mar. 7, 2008) ("*2008 NextG Comments*").

[39] *Id.* at 7.

- A major electric utility in the southeastern U.S. categorically denies access to all poles with facilities carrying more than 25 Kv and all street light poles, and requires the immediate removal of any wireless device to which business owners or residents express discontent.[40]

The record also reveals that electric utilities have prescribed blanket prohibitions on pole top attachments:

- Florida Power and Light prohibits pole top access, effectively denying wireless attachment access in many cases[41] and greatly increasing the cost of those DAS networks that are feasible by requiring a greater number of antennas to cover the same geographic area;[42]
- Some electric utilities deny applications for pole top antennas on primary distribution poles and transmission poles, despite NESC rules addressing the clearance and loading requirements necessary for such attachments;[43]
- Public Service Electric and Gas denied, after a seven-month delay and without explanation, an application for attachments to the tops of its poles;[44]
- A major electric utility in the southeastern U.S. categorically denies access to the top of its poles.[45]

The record further reveals that electric utilities have delayed unreasonably granting wireless attachers physical access to poles:

- Pepco gave a make ready timeline of over 260 working days to a wireless attacher for a DAS installation involving less than twenty 20 nodes, even though Pepco had the same type of attachments on nearby poles;[46]
- Windstream has refused to abide by make ready timelines established in its pole attachment agreement for wireless attachments, indicating that it will follow the Commission's rules when those are adopted;[47]
- Frontier Communications in Minnesota has similarly refused to follow make ready timelines pending the Commission's action in this proceeding;[48]
- Even though some utilities can provide access to their poles within three months or less of receiving an application, several take more than 15 months and one takes approximately four years, without a difference in engineering or reliability issues.[49]

[40] *Id.* at 8.
[41] *Id.* at 4.
[42] *ExteNet Comments* at 7.
[43] *March 2 Ex Parte* at Attachment A, Declaration of David J. Marne.
[44] *2008 NextG Comments* at 5, n.4 (indicating that NextG filed a complaint with the Commission over this denial).
[45] *Id.* at 8.
[46] *DAS Forum March 2 Ex Parte* at 4.
[47] *Id.*
[48] *Id.*

And the record reveals that electric utilities have assessed unreasonable and discriminatory rates for wireless attachments:

- PECO Energy attempted to impose upon Omnipoint Corporation a rental fee of $2,100 per year for wireless attachments, which the Commission rejected as unreasonable;[50]
- Several electric utilities attempt to impose "market" rates for wireless attachments, which are not cost-based and bear no relation to the Commission's rate formula, and can exceed $1,200 per year;[51]
- A Florida-owned IOU charges $12.94 per wire-based attachment per year, but demands $1,564.50 per wireless antenna per year, which does not even include space for the associated radio equipment, which the IOU does not allow on the pole at all;[52]
- Some utilities charge exorbitant application and engineering fees for internal due diligence (as high as $25,000 to $45,000), installation fees ($80,000 to $100,000), and equipment inspection fees ($70 per hour to inspect wireless attachers' antennas).[53]

Thus, the record is abundantly clear on this fundamental point: Some electric utilities routinely exercise their monopoly power over poles to prevent access by wireless attachers or to impose unreasonable rates, terms, and conditions of access. Some even find support for their unreasonable conduct from the fact that the Commission has not yet articulated clear requirements.[54] These concrete examples, which under-represent the instances of real-world obstacles encountered by wireless attachers due to sensitivity over working relationships,[55] underscore the need for the Commission to establish clear guidelines in this proceeding.

VIII. Safety Concerns Do Not Prevent the Commission from Establishing Clear Rules.

While some electric utilities have asserted that their objections are motivated by concerns for safety, none have identified a single instance where an insurmountable safety issue actually has arisen in the course of attaching a wireless antenna to a utility pole.

The electric utilities' stated concerns related to safety issues are extensively addressed by applicable NESC, FCC, OSHA, EPA and state rules. In recognition of this fact, some electric

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[49] Joint Comments of PCIA, Sunesys, NextG Networks, Extenet Systems, NewPath Networks, and Sprint Nextel, WC Docket. No. 07-245, at 9 (filed Mar. 27, 2009).
[50] *Omnipoint Corp. v. PECO Energy Co.*, 18 FCC Rcd 5484, at ¶ 7 (2003).
[51] *2008 NextG Comments* at 11.
[52] *ExteNet Comments* at 4, 7 (noting that the prohibition of associated radio equipment on the pole requires ExteNet to set dozens of new utility poles in the right of way).
[53] *See* Comments of CTIA – The Wireless Association®, WC Docket No. 07-245, GN Docket No. 09-51, at 7-8 (Mar. 7, 2008).
[54] *See, e.g., DAS Forum March 2 Ex Parte* at 4 (discussing Windstream's refusal to abide by agreed-upon make ready timelines pending the Commission's resolution of this proceeding).
[55] *See 2008 NextG Comments* at 8, n.7 (noting that wireless attachers are reluctant to identify by name particular electric utilities because of their politically sensitive relationships with such utilities and because many utilities require non-disclosure agreements as a condition of reviewing their pole attachment agreements).

utilities have made pole top antenna installations part of their standard practice.[56] And the record is clear that where these electric utilities work cooperatively with wireless attachers, any engineering or safety issues can be resolved quickly and efficiently.[57] One reason these concerns can be quickly addressed is that the locations of pole top attachments are flexible: they do not need to be attached to every pole in a line.

Ultimately, electric utilities' concerns are not related to easily solved engineering and safety issues. They simply do not want to be regulated at all and want the unfettered discretion to determine who can attach to their poles and on what terms.[58] These arguments do not warrant serious consideration.

With a clear Commission directive that the pole tops must be made available for wireless attachments, and with the right sort of coordination, including access timelines and enforcement procedures, there is more than sufficient room on the pole for wireless facilities, utility communications networks, and for existing and new wire-based networks.

IX. Conclusion.

The Commission must send a clear signal that Section 224 requires electric utilities to grant access for wireless attachments, especially at the pole top, and must articulate clear timelines for that access, consistent with the timelines for wire-based attachments. The Commission's

[56] Indeed, as one CTIA member has pointed out, there are clear universal standards that apply to pole top installations which have resulted in dozens of utilities allowing DAS attachments on the pole top. Comments of NextG Networks, Inc., WC Docket No. 07-245, GN Docket No. 09-51, at 21-22 (Aug. 16, 2010) (describing NESC guidance for wireless antenna pole top attachment). *See also 2008 NextG Comments* at 1.

[57] *DAS Forum Comments* at 4 ("DAS Forum members have safely attached their facilities on poles owned by approximately 98 different utility companies nationwide, without any evidence of harm to workers, utility operations or utility customers.").

[58] *See e.g.*, Reply Comments of Oncor Electric Delivery Co. LLC, WC Docket No. 07-245, GN Docket No. 09-51, at18 (Oct. 4, 2010) ("Make-ready issues (especially in the dynamic world of wireless attachments) must be left to the local, individual dealings between pole owners and attachers."); Reply Comments of the Florida Investor-Owned Electric Utilities, WC Docket No. 07-245, GN Docket No. 09-51, at 38-42 (Oct. 4, 2010).

failure to do so at this critical crossroads of wireless broadband would (1) put the FCC even farther behind the important work of the certified states on wireless pole attachments (2) disserve its prior precedent; (3) ignore the record in this proceeding documenting the feasibility, cost effectiveness and safety of wireless attachments.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ *Brian M. Josef*

Brian M. Josef
Assistant Vice President, Regulatory Affairs

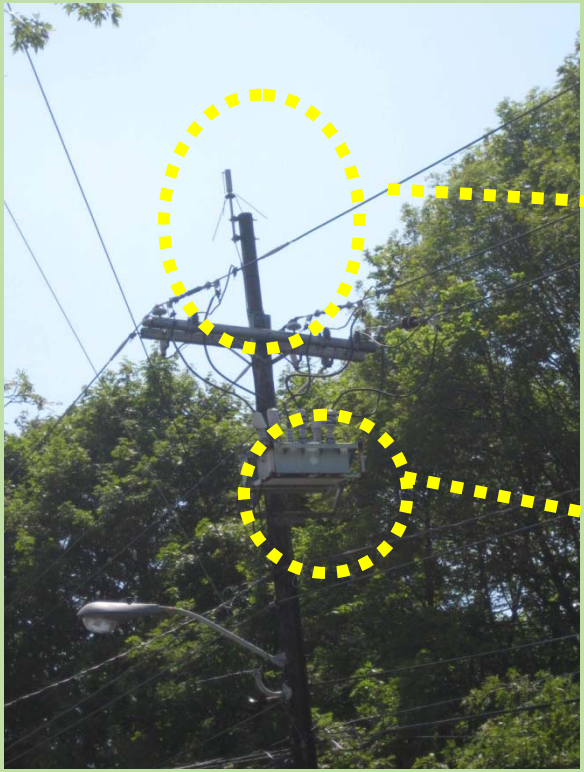
Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Attachment

cc: Sharon Gillett
Christi Shewman
William Dever
Jeremy Miller
Claude Aiken
Albert Lewis
Wesley Platt
Jonathan Reel
Marcus Maher
Marvin Sacks
Dan Abeyta
Donald Johnson
Zachary Katz
John Giusti
Margaret McCarthy
Christine Kurth
Angela Kronenberg
Charles Matthias
Brad Gillen

ATTACHMENT 1

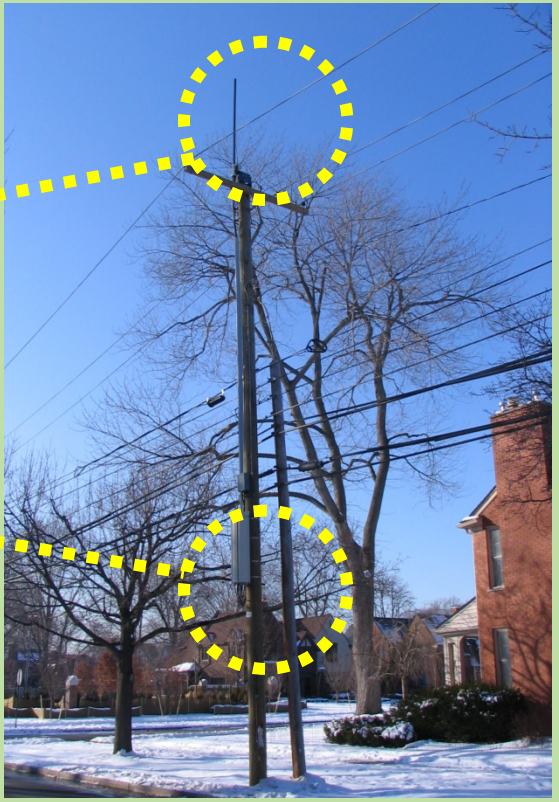
“Laws of Physics” – the higher the antenna, the wider the coverage…



Electric Company Wireless Attachment

Antenna*

Control Box



ATC DAS Node

* The Electric Company attachment consists of a ~10’ pole-top extension and an antenna.

… and it is why Electric Companies locate their antennas at the top of the pole