Arent Fox

March 17, 2011

Alan G. Fishel
Attorney
202.857.6450 DIRECT
202.857.6395 FAX
fishel.alan@arentfox.com

VIA ELECTRONIC MAIL

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

Re: *Written Ex Parte Communication*, WC Docket 07-245

Dear Ms. Dortch:

Without limiting any of Sunesys' other recommendations, Sunesys wishes to reemphasize that the Commission's pole attachment rules should also include the following:

- A utility may not charge an attacher for costs arising from the correction of other attachers' safety violations.

- When a utility performs work on its poles (including pole replacements) and that work is not necessary to comply with all applicable laws and the NESC, the utility may only charge the attacher the difference between (i) the costs of such work including any specific costs to provide space on the poles for the attacher to make its attachment on the poles; and (ii) the costs of such work if the attacher were not making an attachment to the poles.

The first point was set forth in *Knology Inc., v. Georgia Power Company,* Memorandum Opinion and Order, 18 FCC Rcd 24615 (2003). In that case, the Commission expressly stated that "it is an unjust and unreasonable term and condition of attachment, in violation of section 224 of the Act, for a utility pole owner to hold an attacher responsible for costs arising from the correction of other attachers' safety violations." The second point is a matter of simple common sense. In fact, any other approach would be analogous to allowing an apartment complex owner to charge the newest tenant for the entire cost of an upgraded air conditioning system for the building.

The Commission needs to include both of these bullet points in its rules because utilities continually harm broadband deployment by ignoring them. Utilities should follow the *Knology* holding, but the record makes it clear that they do not – and they will not until the first bullet

Arent Fox

point becomes part of the Commission's rules. In fact, both of these points should be expressly stated in the Commission's rules, or broadband deployment will continue to be undermined.

Respectfully submitted,

Alan Fishel

Alan G. Fishel
Jeffrey E. Rummel
Counsel for Sunesys, LLC

cc: Zac Katz
Angela Kronenberg
Christine Kurth
Margaret McCarthy
Brad Gillen
Sharon Gillett
Christi Shewman
William Dever
Jeremy Miller
Jonathan Reel
Wesley Platt