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March 22, 2011

EX PARTE

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

Re: Implementation of Section 224 of the Act; Amendment of the Commission's  
Rules and Policies Governing Pole Attachments, WC Docket No. 07-245

Dear Ms Dortch:

This is to inform you that in separate meetings on March 21, 2011 Bennett Ross, Wiley Rein, counsel for AT&T, and the undersigned met with Margaret McCarthy, Wireline Policy Advisor to Commissioner Michael Copps, Christine Kurth, Policy Director & Wireline Counsel to Commission Robert McDowell, and Angela Kronenberg, Legal Advisor to Commissioner Mignon Clyburn regarding the above-referenced proceeding.

During the meeting AT&T covered the issues outlined in the attached document and reiterated support for its previously stated position that 1) extending the protections of just and reasonable pole attachment rates to ILECs is consistent with the National Broadband Plan and section 224 of the Telecommunications Act, 2) ILECs should be permitted to bring complaints regarding rates that are unjust and unreasonable, and 3) comprehensive timelines for access to poles must include reasonable exceptions for requests that seek attachments for large numbers of poles, instances of non-payment of pole-related charges, and circumstances beyond the pole owner's control.

Pursuant to section 1.1206 of the Commission's Rules, this letter is being filed electronically with the Commission.

If you have any questions, please do not hesitate to contact me at (202) 457-2321.

Sincerely,

ATTACHMENT

cc: A. Kronenberg  
K. Kurth  
M. McCarthy

**Rates for pole attachments should be low and uniform**

- NBP calls for rates “as low and close to uniform as possible”
  - Impact of current rates are “particularly acute in rural areas”
  - Different rates based on provider classification “distorts deployment decisions”
- ILECs, as providers of telecommunications services, are entitled to just and reasonable rates under §224 (b)
  - The Commission *shall* regulate rates, terms and conditions to provide such rates, terms and conditions are just and reasonable
  - The Commission has broad authority to regulate rates of broadband pole attachments (*NCTA v. Gulf Power*)
- Under the '96 Act, the terms “telecommunications carrier” and “provider of telecommunications services” are not interchangeable
- §224 (b), governing rates, terms & conditions, and §224 (f), governing nondiscriminatory access, impose distinct obligations

**ILECs should be permitted to bring complaints regarding rates that are unjust and unreasonable**

- The FCC should:
  - Amend the pole attachment complaint procedures to allow providers of telecommunications services to challenge unjust and unreasonable broadband pole attachment rates
  - Create a rebuttable presumption that a broadband pole attachment rate in excess of the uniform rate or formula is unjust and unreasonable
  - Ensure that ILECs have a meaningful remedy upon a finding of unjust and unreasonable rates
- Contrary claims by electric utilities are unfounded
  - Joint use agreements are neither sacrosanct nor shielded from the law
  - State Commissions are not a forum to resolve joint use agreements
    - Limited jurisdiction under state law
    - No authority in states that have declined to regulate pole attachments
    - Routinely decline to resolve private contractual disputes
  - Electric utilities can avail themselves of the complaint process, 47 CFR 1.1402(a), (e), (m)

**Nondiscriminatory access including comprehensive timelines is consistent with the NBP and §224**

- A comprehensive timeline of 105 to 149 days should include exceptions for:
  - Single requests for large numbers of attachments (i.e. more than 200 pole attachments)
  - Insufficient or incomplete applications
  - Failure to make payments of pole-related charges
  - Circumstances beyond the pole owner's control (i.e. force majeure)
- Pole top access for wireless attachments is feasible
  - CTIA's compromise timeline proposal for wireless attachments to include an additional 30 days is reasonable