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March 25, 2011

## **Ex Parte**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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

Dear Ms. Dortch:

On March 24, 2011, Katharine Saunders, Ian Dillner, and the undersigned met with Christine Kurth, legal advisor to Commissioner McDowell, in connection with the above-referenced proceedings. The discussions during the meetings were consistent with the attached presentations.

Specifically, we explained that as the Commission's National Broadband Plan acknowledges, providing a low, uniform rate for pole attachments will benefit consumers by encouraging broadband deployment, particularly in rural areas. We noted that under the current regime, competing broadband providers pay vastly different rates for the same types of attachments and service offerings, which gives some broadband providers an unfair competitive advantage over Verizon. Further, existing joint agreements Verizon has with electric utilities do not provide benefits that would level the playing field in light of the rate disparity. We further explained that many of these existing joint agreements are decades old, and contain evergreen clauses that make re-negotiation of them difficult absent Commission action. Thus, we explained that the pole attachment rates currently paid by Verizon (as an ILEC) are not just or reasonable when they are significantly higher than the rates paid by Verizon's competitors for the same types of pole attachments. As noted in our Comments and Reply Comments filed in this proceeding,<sup>1</sup> the Commission has the authority and duty to regulate the attachment rates utilities charge to all providers of telecommunications services, including ILECs. Thus, to meet its obligations under section 224, we urged that the Commission adopt a uniform rate formula for pole attachments that could serve as a benchmark for further negotiations.

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<sup>1</sup> See Verizon Comments, at 5-10 (Aug. 16, 2010); and Verizon Reply Comments, at 4-8 (Oct. 4, 2010).

We further discussed the appropriate timeline for providing access to poles and urged the Commission to adopt a schedule that is reasonable, sufficiently flexible, and that encourages attachers to act promptly to provide any make-ready payments necessary to third parties. We encouraged the Commission to consider the timeline proposed by Verizon in its comments, as listed in the second attachment to this letter.

In response to questions, we suggest that the timeline proposed in the Commission's order for completing make-ready work would not apply where the utility receives applications to make attachments to a large number of poles in a short period of time. For example, where a utility receives applications within a thirty day period to attach to more than one-half of one percent of the utility's poles in a particular state, the timeframes would not apply, nor would the timeframes apply when a company receives applications from a single provider totaling more than 200 poles in a given 30 day period.

Please let me know if you have any questions,

Sincerely,

A handwritten signature in black ink, appearing to read "Anne D. Burkot". The signature is fluid and cursive, with a large initial "A" and "B".

Attachments

cc: Christine Kurth



## POLE ATTACHMENT DISCUSSION

The Commission has the authority to adopt a uniform pole attachment rate for all broadband service providers. A single, low rate for broadband attachments will reduce the costs associated with deploying broadband facilities, especially in rural areas and level the competitive playing field.

- **As the National Broadband Plan acknowledges, providing a low, uniform rate will benefit consumers by encouraging broadband deployment, particularly in rural areas where deployment costs are high.**
  - The FCC should be particularly interested in lowering the rate for the companies providing mass market broadband service to consumers. Addressing the CLEC rate without lowering the ILEC rate – when ILECs are the ones actually providing the bulk of mass market broadband services – will only *exacerbate* the marketplace discrepancy and will not increase broadband availability to consumers.
  - The National Broadband Plan already concludes that the effect of high pole attachment “rates can be particularly acute in rural areas,” with rate differentials in particular causing more than \$8 in per-customer additional costs.
  - Under the FCC’s proposed Universal Service Fund/Connect America Fund reforms, high pole attachment costs for ILECs could result in more CAF support being needed to serve customers in rural areas that are unserved today.
- **Currently, competing broadband providers pay vastly different rates for the same types of attachments and service offerings, giving some broadband providers an unfair competitive advantage.**
  - Verizon (ILEC) pays many times more for the same pole attachment than do Cable or CLECs.
    - According to the Edison Electric Institute, the typical rate charged for ILEC attachments is \$40.80 per attachment a year, compared to the typical cable rate of \$6.63 per attachment.
    - In Pennsylvania, Verizon pays one electric company \$96.36 per year for each attachment, which is *more than eleven times* that electric company’s Commission-authorized cable rate.



## POLE ATTACHMENT DISCUSSION

- In Virginia, Verizon pays another electric company \$47.21 per year for its attachment, which is *seven times* greater than that electric company's Commission-authorized cable rate.
- The cost to Verizon of attaching to a Verizon-owned pole – even at a lower broadband attachment rate – exceeds the revenue from any potential broadband attachment rate.
  - It costs Verizon many times as much to attach to its own pole as a cable company pays Verizon to attach to that same pole. For example, in Maryland, Verizon's average net pole cost (even factoring in revenues it receives from third party attachers) is \$25.28 and its cable attachment rate is \$3.81
  - In Rhode Island, Verizon's net pole cost is \$41.84 and its cable rate is only \$3.71. Verizon's net pole costs in Rhode Island are more than eleven times the rate cable companies pay to attach to Verizon's poles
- Verizon (ILEC) does not receive benefits from joint agreements with electric utilities that would ameliorate the high attachment rates it pays.
  - Joint agreements impose significant obligations on ILECs (such as performing no-charge make-ready work for the electric utility) which offset any benefits.
  - Lowering the ILEC rate would reduce the competitive disparity, but would not eliminate these costs.
- **Imposing a uniform rate does not therefore create a “competitive advantage” – it only helps reduce the current drastically competitive disadvantage in the marketplace.**
- **Section 224 of the Act gives the Commission the authority to adopt a low, uniform rate for broadband attachments by cable companies, ILECs and CLECs.**
  - Under Section 224(b)(1), the Commission has the authority and duty to “regulate the rates, terms and conditions for pole attachments to provide that such rates, terms and conditions are just and reasonable.”



## POLE ATTACHMENT DISCUSSION

- Section 224(a) defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, conduit or right-of-way owned or controlled by a utility.” This includes attachments by ILECs.
- Section (b)(1) requires that rates, terms, and conditions for pole attachments be “just and reasonable.”
- It is not – and cannot be – “just and reasonable” to have vastly different rates for the same broadband attachments based on who is doing the attaching.
- **Reasonable improvements can be made to improve access to pole attachments.**
  - Verizon proposed in its comments a timeline very similar to the FCC timeline proposal. The Verizon proposed timeline is only one day longer than the timeline suggested in the NPRM.
  - The Commission should adopt reasonable solutions for the multi-party process of make-ready work.
    - An ILEC should not be held responsible for delays outside of its control, such as the inaction of other parties, which prevent them from performing their own obligations.
    - All parties should be present at the site survey, rather than forcing any party to be the go-between.
- **All parties deserve an effective and efficient pole attachment enforcement regime.**
  - The enforcement process should encourage mediation and settlement.
  - Unauthorized attachments can create safety hazards and can be discouraged through more significant penalties.

# Attachment Access



## Verizon's proposed timeframes

**Total:** 149 days, essentially the same total time outlined in the FNPRM.

- **Stage one (survey) and Stage two (make ready estimate):** 45 days to complete both, rather than treating these as separate steps.
- **Stage three (acceptance and *full* payment):** 14 days.
- **Stage four (performance of make ready work):** at least 60 days.
- **Stage five (coordination with third party attachers):** at least 30 days.