



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

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

On behalf of Sunesys, LLC (“Sunesys”), and in accordance with Section 1.1206(b) of the Commission’s Rules, 47 C.F.R. §1.1206(b), undersigned counsel hereby submits the instant notice of *ex parte* presentation.

On March 30, 2011, Alan Fishel, on behalf of Sunesys, participated in separate telephone conversations with Zac Katz, Angela Kronenberg, and Christi Shewman, and on March 31, 2011, Mr. Fishel spoke with Margaret McCarthy. During those conversations, the undersigned discussed that if the Commission imposes a limit on the number of attachments that can be requested by an attacher in a month for the timeline to apply, such limit should be no lower than (i) 3,000 poles, or (ii) 5% of the utility’s poles in such state, whichever is less. (And in calculating the 5% figure, the number of poles should include the total number of those of the utility and its affiliates within the state.)

The Commission has proposed the issuance of a timeline to rectify the longstanding problems occurring with access to poles, and to thereby greatly further broadband deployment. For such a timeline to be a success and have the benefits the Commission – and the public – seeks, it is critical that the timeline itself not encourage or condone further delays. For example, if the timeline applied only to applications of 0.5% or less of a utility’s poles in a state, the following would occur: First, many providers would almost certainly not be able to complete their work for BTOP grants within the statutory deadline. For a number of those projects, providers will likely need to obtain 10,000 pole attachments from a utility or more. If such a utility has only 100,000 poles in that state, with a 0.5% cap on the number of applications that can be submitted in a month, the provider would be forced to file its applications, 500 at a time, over a 20 month period. Even if the utility has 200,000 poles in that state, with a 0.5% cap, it would take 10 months of application filings, and then many more months before the make-ready is completed. Under both of these scenarios, the statutory deadline for compliance with BTOP grants would be missed – and the reason would be pole attachment delays because the cap was too low.

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Second, when Sunesys builds-out to serve school districts, for example, the number of pole attachments needed can easily reach 7,000. With a cap as low as 0.5% of the poles, that can mean it may take a year or longer just to submit the applications. School districts generally will not wait a year and a half or more to receive the broadband services they need that such a lengthy application period created by a too-small cap, followed by the additional time to complete make-ready work and the actual buildout will create. Nor should they. Moreover, it is common for facilities-based providers to perform 150 to 200 mile build-outs, which equate to approximately 7,000 poles or more. The Commission should be encouraging – not discouraging – these buildouts (which will be discouraged if the timeline does not apply to them). Also, it is important to remember that only approximately 20 to 25% of poles generally even need make-ready work in the first place.

Accordingly, Sunesys recommends that if there is limit on the number of attachments that can be requested by an attacher in a month for the timeline to apply, such limit should be at least (i) 3,000 poles or (ii) 5% of the utility's poles in such state, whichever is less.

If, however, the Commission decides to impose a lower limit, Sunesys recommends that the Commission take one of the following two approaches:

- Have two limits: (i) the lower limit the Commission decides using for its timeline,¹ and (ii) the upper limit set forth above raised by Sunesys (i.e. the lesser of 3,000 poles or 5% of the utility's poles) but with 30 or 60 days added to the timeline currently proposed by the Commission. That is, for the lower limit, the Commission's proposed timeline would apply, and for the higher limit the Commission's proposed timeline would apply except that an additional 30 or 60 days would be added to that timeline, i.e., there would be a sliding scale.
- Impose just one limit, which would be (i) 2,000 poles, or (ii) 3% of the utility's poles in such state, whichever is less.

Either of these proposals in the bullet points will work in most instances, although they will make it more difficult to comply with stimulus grants, which is why Sunesys believes the correct approach is to have the limit of (i) 3,000 poles or (ii) 5% of the utility's poles in such state, whichever is less.

In reaching its decision here, the Commission should keep in mind that for states such as New York and Connecticut, there are no limits on the number of pole applications that can be made in a month. Therefore, it is highly questionable whether any limit is needed at all. Moreover, another state has included timelines for the lesser of (i) 3,000 poles and (ii) 5% of the utility's poles in the state, and yet another state has imposed a timeline for up to 3% of a utility's poles in

¹ Sunesys believes the lower limit should equal, or be close to, the limit set forth in the second bullet point.

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the state. For the Commission to use even lower limits than those would be extremely unwise and undo much of the good the Commission is seeking to do here. Sunesys recognizes that, in the interests of compromise, a limit may be imposed here, but such compromise should not undermine broadband deployment.

This notice is being electronically filed with the Commission.

Respectfully submitted,



Alan G. Fishel

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