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September 16, 2011

EX PARTE

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

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

Dear Ms. Dortch:

On September 14, Cody Harrison, counsel to Bright House Networks, Tom Larsen, Vice President, Mediacom Communications Corp., Craig Rosenthal, Vice President and General Counsel, Suddenlink Communications, and the undersigned met with the following officials of the Commission's Wireline Competition Bureau: Lisa Gelb, Richard Kwiatkowski, Al Lewis, Marcus Maher, and Marvin Sacks. The purpose of the meeting was to comment in support of the Petition for Reconsideration or Clarification[1] ("Petition") of the Commission's *2011 Pole Attachment Order*[2], filed by the National Cable & Telecommunications Association, COMPTEL, and tw telecom, inc in the above-captioned proceedings regarding the Commission's rules and policies governing pole attachments.

In particular, the Petition seeks to clarify how the telecommunications (telecom) rate formula will operate when the average number of attachers is less than the number of attachers presumed in the 2011 *Pole Attachment Order*, particularly in urban areas. In the *2011 Pole Attachment Order,* the rate for entities attaching telecom services to poles was adjusted by means of a co-efficient that is meant to "provide a reduction in the telecom rate"[3] so that the telecom rate "will, in general,

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[1] Petition for Reconsideration or Clarification of the National Cable and Telecomm Association, COMPTEL, and tw telecom inc. in WC Docket No. 07-245 at 1 (filed June 8, 2011).

[2] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, FCC 11-50 (rel. April 7, 2011) ("*2011 Pole Attachment Order*"). The *2011 Pole Attachment Order* was published in the Federal Register on May 9, 2011, 76 Fed. Reg. 2662

[3] *2011 Pole Attachment Order*, ¶ 149.

approximate the cable rate".[4] The co-efficients – 66 percent in urban areas and 44 percent in non-urban areas – appear to be based on a presumed average number of attachers (five and three, respectively) for poles in these areas.

As the Petition pointed out, and Messrs. Harrison, Larsen, and Rosenthal confirmed for their companies, these presumptions, particularly in urban areas, are frequently challenged successfully by the pole owner.

Where the actual average number of attachers is between two and three, which is often the case, the *2011 Pole Attachment Order* rate formula produces a telecom rate that may be 50 percent or more of the cable rate. Thus, the new telecom rate will not "in general, approximate the cable rate", contrary to the intent of the Order.

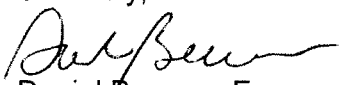
Mr. Harrison pointed out that higher pole rentals play a significant role in Bright House's ability to compete for new telecom-related broadband service contracts against incumbent local exchange companies, such as Verizon, in its Florida markets. The incumbent telco may enjoy a joint pole use arrangement, with little administrative delay over rates from the utility pole owners; Bright House will face costly efforts by those owners to obtain higher pole rates when introducing new broadband services. This disadvantage makes it administratively more time-consuming, and often more expensive, for Bright House to prepare competitive bids for new services to anchor institutions and other potential broadband customers.

Mr. Rosenthal added that in his dealings, if there is an opportunity for the pole owner to charge a higher pole attachment rental rate, it invariably will.

Messrs. Harrison, Larsen, and Rosenthal urged the Bureau to adopt either of the approaches outlined in the Petition to clarify that the new telecom rate will in fact "approximate the cable rate" and thereby result in the policy and statutory conclusion unanimously adopted by the Commissioners and Chairman.

Please contact undersigned counsel if you have any questions about this letter.

Sincerely,



Daniel Brenner, Esq.
Counsel for Bright House Networks

cc: Cody Harrison, counsel to Bright House Networks
Tom Larsen, Vice President, Mediacom Communications Corp.
Craig Rosenthal, Vice President and General Counsel, Suddenlink Communications
Lisa Gelb, Wireline Competition Bureau
Richard Kwiatkowski, Wireline Competition Bureau
Al Lewis, Wireline Competition Bureau
Marcus Maher, Wireline Competition Bureau
Marvin Sacks, Wireline Competition Bureau

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[4] Id.