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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: from the Wireline Competition Bureau: Lisa Gelb, Richard Kwiatkowski, Al Lewis, Marcus Maher, Jenny Prime, and Marvin Sacks; from the Office of General Counsel, Diane Griffin Holland and Julie Veach; and from the Office of the Chairman, Zac Katz.

The purpose of the meeting was to comment in support of the Petition for Reconsideration or Clarification¹ ("Petition") of the Commission's *2011 Pole Attachment Order*², filed by the National Cable & Telecommunications Association, COMPTTEL, and tw telecom inc. in the above-captioned proceedings regarding the Commission's rules and policies governing pole attachments.

¹ Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, COMPTTEL, 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.

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 by the FCC, particularly in urban areas. In the *2011 Pole Attachment Order*, the older 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, 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 number of average attachers (five and three, respectively) for poles in these areas.

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 does not “in general, approximate the cable rate”, contrary to the intent of the Order.

Messrs. Harrison, Larsen, and Rosenthal urged the staff to recommend granting the Petition to lead to adoption of either approach outlined in the Petition. The result should be 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.

Mr. Katz asked if there were examples of situations where the *2011 Pole Attachment Order*, which was released in early April and made effective through publication in the Federal Register in May, already has had any adverse effect because of the “presumed number of attachers.” Mr. Harrison indicated that Bright House has already had the new telecom rate cited in one proposed rate adjustment for 2011 by a utility. And in that case the presumptions were rebutted by the pole owner leading the owner to demand rates much higher than the cable service rate.

Upon further checking, and to supplement the response made at the meeting, we note the following: that in two other instances in the last two years, but prior to the publication of the rule, utilities with whom Bright House has rental agreements have successfully rebutted the presumption of an average of five attachers on urban utility poles. This has led to demands for a higher rental rate merely to continue to attach already-mounted plant that might carry innovative telecom and telecom-like services. These higher input costs were the impetus of the *National Broadband Plan's* recommendation that led the FCC to reconsider its telecom pole rate formula.

It should be noted that in an earlier meeting with the Wireline Competition staff, Messrs. Harrison, Larsen, and Rosenthal confirmed for their companies that the presumptions regarding average number of attachers, particularly in urban areas, are frequently challenged successfully by the pole owner. Thus, it is important for the FCC to act quickly to reconsider or clarify the *2011 Pole Attachment Order* to avoid unintended rate disputes over the telecom rate formula when the Commission's explicit intention is that the new formula “approximate the cable rate”.

³ *2011 Pole Attachment Order*, ¶ 149.

⁴ *Id.*

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

Sincerely,



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Marcus Maher, Wireline Competition Bureau
Jenny Prime, Wireline Competition Bureau
Marvin Sacks, Wireline Competition Bureau
Diane Griffin Holland, Office of General Counsel
Julie Veach, Office of General Counsel
Zac Katz, Office of the Chairman