EXHIBIT PDK 13

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the	)	WC Docket No. 07-245
Act; Amendment of the Commission's	)	
Rules and Policies Governing Pole	)	RM-11293
Attachments	)	RM-11303

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

On November 20, 2007, the Federal Communications Commission ("FCC" or "Commission") released a Notice of Proposed Rulemaking ("*NPRM*") seeking comment on the Commission's implementation of 47 U.S.C. § 224, which confers on cable television systems and telecommunications carriers the right to pole attachments at just and reasonable rates, terms and conditions.[1] After publication in the Federal Register,[2] the comments of a multitude of entities were filed on March 7, 2008.

Having reviewed most of the dozens of comments, the National Association of State Utility Consumer Advocates ("NASUCA")[3] submits these brief reply comments.[4] NASUCA finds itself in perhaps a unique position among the commenters. NASUCA members represent the customers of the companies -- providing cable television service, telecommunications

[1] FCC 07-187. Pursuant to the statute, the FCC regulates pole attachment rates except where they are regulated by the states. Id., ¶ 4.

[2] 73 FR 6879 (February 6, 2008).

[3] NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[4] Pursuant to DA 08-582, the reply comment date was extended to April 22, 2008.

services, and broadband service -- that attach to poles.[5] In that respect, NASUCA members are interested in keeping the costs of pole attachments down, so as to keep the costs of the services provided through the pole attachments down. But NASUCA members also represent the customer of the utilities to which the attachments are made. In that respect, NASUCA members are interested in ensuring that pole attachment rates appropriately compensate the owners of the poles, so that other services are not required to subsidize the attachments.[6] That dual perspective informs these reply comments, which focus on general principles rather than delving into many of the specific questions raised in the *NPRM*.

Initial comments were filed by all manner of "pole attachers" and "pole attachees." The "attachers" included those whose principal business is telecommunications,[7] and those whose principle business is cable television.[8] These two groups are increasingly involved in each other's business, and both groups typically provide broadband service.[9] The "attachees" were

[5] As the *NPRM* notes, "the definition of a 'pole attachment' for purposes of section 224 … include[s] not only poles but also 'any attachment' to a 'duct, conduit, or right-of-way owned or controlled by a utility.'" *NPRM*, ¶ 1.

[6] It appears that the impact of pole attachment revenues on end-user electric consumer rates is a matter of vast variability, depending on state law, state regulatory policy and the specific circumstances of the electric utility, so that little can be definitively said about that impact. Nonetheless, as a general principle, NASUCA supports compensatory pole attachment rates. The definition of "compensatory" is discussed below.

[7] Alpheus Communications, L.P. and 360Networks (USA), Inc.; AT&T Inc.; Cavalier Telephone LLC; CenturyTel, Inc.; Crown Castle Solutions Corp.; CTIA - The Wireless Association®; DAS Forum; ExteNet Systems, Inc.; FiberTower Corporation; Frontier Communications ("Frontier"); Independent Telephone & Telecommunications Alliance ("ITTA"); Knology, Inc.; MetroPCS Communications, Inc. ("MetroPCS"); National Telecommunications Cooperative Association; NextG Networks, Inc.; Qwest Communications International Inc.; segTEL, Inc.; Sunesys, LLC; T-Mobile USA, Inc.; Time Warner Telecom Inc. et al. ("TWTelecom"); United States Telecom Association ("USTelecom"); Verizon; Windstream Corporation ("Windstream"); Zayo Bandwidth Entities ("Zayo").

[8] Alabama Cable Telecommunications Association, et al.; Charter Communications, Inc. ("Charter"); Comcast Corporation ("Comcast"); MI-Connection Communications System; Mississippi Cable Telecommunications Association; National Cable & Telecommunications Association ("NCTA"); Time Warner Cable Inc. ("TWC"); WOW! Internet Cable and Phone.

[9] See *NPRM*, ¶ 14. Among the other commenters, CURRENT Group, LLC ("CURRENT") is a provider of broadband over powerline and voice over Internet protocol service; the Wireless Communications Association International, Inc. is the trade association of the wireless broadband industry; and Fibertech Networks, LLC and Kentucky Data Link, Inc., which filed joint comments, are respectively, a builder of fiber networks and a telecommunications carrier providing service over fiber networks.

companies whose principal business is electricity supply, although some are also involved in communications.[10] A few comments were filed by other interests.[11]

As is all too typical in these situations, most of the comments are highly parochial. That is, each attaching industry segment seeks to decrease (or at the very least, not increase) its costs. Many of the comments also oppose decreasing the costs of competing industry segments.[12] And the electric utilities to whose poles the attachments are made seek to maximize their revenues (or at least seek to ensure that their revenues do not decrease).[13] All this is understandable, but it does not make for good public policy.

In response to these various positions, NASUCA starts from the simple proposition that a pole attachment is a pole attachment is a pole attachment. That is, unless there is a significant difference shown in the space used or other costs imposed upon the pole, there is no reason why different attachments should be differently priced.[14] That means that the current variety of prices -- depending on the nature of the attaching entity -- makes little sense.

Thus the attachments by incumbent local exchange companies ("ILECs"), competitive local exchange carriers ("CLECs"), wireless carriers, and cable companies, among the primary

[10] Alabama Power, et al.; Ameren Services Company and Virginia Electric and Power Company ("Ameren"); American Electric Power Service Corporation, et al.; Clark Public Utilities; Coalition of Concerned Utilities ("CCU"); Edison Electric Institute and the Utilities Telecom Council (joint comments); Empire District Electric Company of Joplin, Missouri; Florida Power & Light and Tampa Electric; Idaho Power Company; Oncor Electric Delivery Company; Pacificorp, Wisconsin Electric Power Company, and Wisconsin Public Service Corporation; Portland General Electric Company; Utilities Telecom Council (separate comments).

[11] Hance Haney, Director & Senior Fellow - Technology & Democracy Project, Discovery Institute. "Reply Comments" were filed on April 1, 2008 by Seth Cooper, Director, Telecommunications & Information Technology Task Force, American Legislative Exchange Council ("ALEC"); because those comments do not really respond to or identify any other party's comments, they are listed here.

[12] See, e.g., Comcast Comments at 24-30; Zayo Comments at 1. But see NCTA Comments at ii (suggesting that the Commission "move the rate for telecommunications attachments closer to the rate produced by the cable formula"); see also id. at 21-22.

[13] See, e.g., Alabama Power, et al. Comments at 15-26.

[14] Likewise, attachments to a "duct, conduit, or right-of-way," while individually priced, should be the same to all that seek to attach.

industry segments, should come at the same price. And narrowband and broadband attachments should also be made at that same price. That would be the arrangement that would be most competitively neutral, leveling the playing field for all the industry participants who need to attach to utility poles.[15]

As the illustrations provided in the early-filed Reply Comments of Fibertower Corporation[16] show (at pages 2 and 3), all attachers must share the limited space on poles. There is no reason why any attachment should be priced differently than another.[17]

Then there is the all-important question of what that price should be based on. In this respect, the poles to which attachments are made are essentially bottleneck facilities owned by public utilities, to which the law has granted other parties access.[18] In similar circumstances -- the provision of unbundled network elements -- the Commission has determined that forward-looking costs are most appropriate to use, because prices would be based on such costs if there were a competitive supply of the facilities.[19] This pricing mechanism was upheld by the United States Supreme Court.[20]

Similarly, the Commission adopted the "cable rate," which is the amount that cable television providers pay for their attachments. This is the lowest of the rates currently being

[15] See, e.g., Frontier Comments at 1; MetroPCS Comments at 2; Windstream Comments at 2.

[16] Filed April 7, 2008.

[17] Again, unless there is a functional difference in the attachment. That may be the case with pole-top wireless attachments.

[18] 47 U.S.C. § 224. See TWTelecom Comments at 1-2 ("[A]s is often the case, pole owners compete with attachers in downstream retail markets for broadband internet access and other services."); CURRENT Comments at 2 (referring to "the existing system of poles erected in scarce public rights of way and funded with decades of monopoly revenues").

[19] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, et al., First Report and Order, 11 FCC Rcd 15499 (1996).

[20] *Verizon Communications v. FCC*, 535 U.S. 467 (2002).

charged for attachments. This rate was upheld against challenges that it was confiscatory.[21] Thus this is the rate that should be used for all pole attachments, regardless of the exact service provided over the attachment, and regardless of the identity of the attacher.[22] This will "remove regulatory bias from investment decisions regarding deployment of broadband and other services."[23]

NASUCA thus agrees with the Commission's tentative conclusion that "all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service,"[24] but urges the Commission to go beyond that tentative conclusion to one that is truly competitively neutral.[25] Equally importantly, the Commission must not increase the rate paid by broadband service providers because this would be contrary to "the nation's commitment to achieving universal broadband deployment and adoption…."[26] As ITTA states, "Consumers share the brunt of unjust discriminatory tactics that obstruct effective broadband deployment."[27] A key part of the Commission's job is to encourage deployment of advanced services[28]; reducing attachment rates for broadband services would help meet that goal.

[21] *FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987); see also *Nat'l Cable & Telecommunications Ass'n v. Gulf Power*, 534 U.S. 327 (2002). See Comcast Comments at 12-19, especially n.41. This effectively rebuts, e.g., CCU Comments at 6-25.

[22] ALEC "Reply" Comments at 4.

[23] *NPRM*, ¶ 12.

[24] Id., ¶ 36; see MetroPCS Comments at 5-6.

[25] ALEC "Reply" Comments at 2-3.

[26] TWC Comments at i. See, e.g., Ameren Comments at 23 (suggesting that the broadband rate could be higher than the current ILEC rate).

[27] ITTA Comments at 7.

[28] 47 U.S.C. § 706.

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April 22, 2008