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**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

To: The Commission

**COMMENTS OF THE DAS FORUM  
A MEMBERSHIP SECTION OF PCIA–THE WIRELESS INFRASTRUCTURE ASSOCIATION**

Michael Fitch  
President and CEO  
Connie Durcsak  
Senior Director, Industry Services, and  
Executive Director, The DAS Forum  
Jacqueline McCarthy  
Director of Government Affairs  
Allen Dixon  
Chair, The DAS Forum  
PCIA–The Wireless Infrastructure Association  
500 Montgomery Street, Suite 700  
Alexandria, Virginia 22314  
(703) 739-0300  
[www.pcia.com](http://www.pcia.com) [www.thedasforum.org](http://www.thedasforum.org)

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## SUMMARY

As the FCC continues to auction new radio spectrum to serve the public interest and new fourth-generation technologies begin to meet public demand for broadband services, Distributed Antenna Systems (“DAS”) are playing an increasing role in connecting the public. DAS networks use multi-nodal networks of many small antennas connected to a facility via fiber optic cable, instead of a single centralized antenna facility (such as a tower), to serve areas where traditional, larger wireless antennas are impractical or infeasible due to local zoning restrictions, environmental concerns, or technical factors. In some instances, DAS architectures are the only way that wireless voice and broadband coverage can be deployed. Thus, DAS networks are critical to the national goals of extending wireless voice and broadband coverage into currently unserved and underserved areas, as well as areas where capacity demand has outstripped the carriers’ ability to deliver it using larger facilities. A DAS network typically relies upon the use of existing, non-obtrusive assets such as utility poles or street light standards to provide coverage to a specific geographic area. Thus, the ability to attach antennas to utility poles is usually an integral part of DAS deployment.

Parties deploying DAS networks face terms and conditions of access to poles that impede deployment. DAS providers often face “safety and engineering” restrictions that bear no relationship to actual safety concerns and often well exceed the IEEE’s National Electrical Safety Code (“NESC”) standards, which the Commission should adopt as the national rule. Make-ready work and power hook-ups are also often needlessly delayed. These delays and restrictions ultimately deny the public of the broad array of wireless services DAS can provide.

Despite prior Commission and Supreme Court rulings that wireless carriers are entitled to “telecommunications carrier” treatment in pole attachment matters, many pole owners continue to discriminate against wireless attachers. DAS providers are forced to pay purported “market rates” that substantially exceed the utilities’ regulated telecommunications rates. DAS providers also face protracted negotiation times and other needless delays due to their lack of negotiating power. The Commission should modify its rules to make clear that wireless providers, including DAS operators, are entitled to the telecommunications rate for wireless attachments. To the extent that wireless attachments take more than the one foot of space assumed in the rules, the rules provide for the rate to be multiplied by the feet actually used. This approach is fair to all parties.

DAS networks often must be placed on utility pole tops, yet some utilities deny pole-top access, or demand unreasonable premiums for it. The rule changes also should clarify that wireless providers are entitled to access to the tops of utility poles, limited only by NESC standards, and at no additional charge. There is no basis for a pole-top premium rate. Although a pole has only one top, it also has only one middle and one bottom; different portions of the pole will be desirable to different attachers depending upon their specific needs. The same rate should apply to all parts of the pole. The DAS Forum also supports the Commission’s efforts to establish a unified pole attachment rate for broadband providers.

Finally, the Commission should take more aggressive measures to combat unreasonable and discriminatory provisions in the pole attachment rules in certified states. In some cases, preemption action pursuant to Section 253 may be warranted. At minimum, however, the FCC should use its policy-making influence and example to work with state governors, legislators, and regulators to ensure nationally uniform and reasonable pole attachment regulations.

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The DAS Forum, a membership section of PCIA–The Wireless Infrastructure Association (“PCIA”),<sup>1</sup> on behalf of itself and PCIA as a whole, submits these comments in the above-captioned proceeding regarding the pole attachment rules.<sup>2</sup>

A distributed antenna system (“DAS”) is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally near the clutter level and node installations are compact and low-power. In outdoor environments, small DAS antennas

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<sup>1</sup> The DAS Forum is a broad-based non-profit organization, dedicated to the development of the DAS component of the nation’s wireless network. It is the only national network of leaders focused exclusively on shaping the future of DAS as a viable complement to traditional macro cell sites and a solution to the deployment of wireless services in challenging environments. PCIA is the trade association representing the wireless telecommunications infrastructure industry. PCIA seeks to facilitate the rapid and efficient deployment of widespread dependable communications networks across the country, consistent with the mandate of the Telecommunications Act of 1996.

<sup>2</sup> *Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, RM-11293, RM-11303, Notice of Proposed Rulemaking, FCC 07-187, 73 F.R. 6879 (rel. Nov. 20, 2007) (“*Notice*”).

are typically mounted on existing vertical structures, such as lamp posts and utility distribution poles, to minimize visual or environmental impacts and to achieve a distributed architecture. Pole attachment rights are critical to DAS deployment because the systems depend on placement on the tops of utility poles for their operations.

The DAS Forum membership includes virtually every outdoor DAS provider, several commercial mobile radio service (“CMRS”) carriers currently deploying DAS as part of their networks, and many other wireless industry representatives. PCIA members, in turn, include CMRS carriers and wireless infrastructure providers that construct, modify, own, operate, lease and manage more than 111,000 communications towers and antenna facilities nationwide, which enable valuable wireless and broadcasting services to the public. These providers are making the promise of universal mobile broadband a reality.

As such, the DAS Forum and PCIA bring to this proceeding a wealth of experience in infrastructure deployment issues at the federal, state and local levels, and a particular knowledge of the challenges that all wireless siting parties – but particularly those using DAS – face in connection with obtaining pole attachment rights. As discussed in more detail below, the DAS Forum urges the FCC to adopt rules that remove needless obstacles to DAS deployment in the terms and conditions that are placed upon pole attachment rights. The Commission should require attachers and pole owners alike to comply with the IEEE’s National Electrical Safety Code (“NESC”) standards, and to impose time limits on make-ready work and power hook-ups. The Commission must also ensure that DAS operators can obtain reasonable attachment rates and access to pole tops.

## **I. DAS IS AN IMPORTANT PART OF WIRELESS VOICE AND BROADBAND INFRASTRUCTURE**

As noted above, DAS networks are an important means of providing radio frequency (“RF”) coverage and capacity for wireless voice, data, and broadband services. Instead of using a single, large antenna facility in a given geographic area, DAS involves the deployment of several smaller nodes, usually placed on existing structures such as lamp posts or utility poles. DAS often becomes the only option to expand or fill in wireless coverage or capacity in communities where zoning and siting restrictions make it impractical or infeasible to deploy traditional tower-based cell sites, or where other technical constraints associated with densely developed or contained areas, such as in airports, tunnels, office parks and areas of rugged terrain,<sup>3</sup> make it preferable. As a result, DAS networks form an integral part of the deployment of wireless infrastructure for voice, data, and broadband.

As the Commission’s own data show, wireless is the most rapidly growing platform for delivering broadband to consumers.<sup>4</sup> According to the Commission’s most recent *CMRS*

### *Competition Report:*

- The two nationwide CDMA operators are upgrading their EV-DO networks with EV-DO Revision A (“Rev. A”), which increases average downstream speeds to 600 kbps-1.4 Mbps and significantly improves average uplink speeds to 350-800 kbps.
- EV-DO/EV-DO Rev. A networks cover 82 percent of the U.S. population, based on census blocks, and WCDMA/HSDPA networks cover 43 percent.
- As of December 31, 2006, 21.9 million mobile wireless devices capable of accessing the Internet at broadband speeds were in use in the United States, versus 3.1 million

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<sup>3</sup> Although DAS is an ideal technology choice in certain settings, the technology is not suitable for deployment in all situations. Also, a significant number of DAS installations are deployed indoors and, therefore, are not impacted by this proceeding.

<sup>4</sup> See *High-Speed Services for Internet Access: Status as of December 31, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau (October 2007) at Tables 1-2.

at the end of 2005.<sup>5</sup>

Thus, CMRS broadband offerings are an important element of broadband deployment in the United States.

While broadband is growing rapidly, ubiquitous wireless voice coverage remains a critical goal. Most significantly, wireless coverage is crucial for public safety. The National Emergency Number Association estimates that about half of all E-911 calls in 2006 were made from wireless phones.<sup>6</sup> Lack of wireless voice coverage in a given area also impedes economic activity, in addition to presenting a considerable consumer inconvenience.

Wireless infrastructure is needed for the provision of wireless services, and DAS architectures have proven to be effective solutions in many instances where traditional wireless facilities are impracticable.

*Speed to Market.* Because DAS networks can be placed on existing structures (such as utility poles), there is less local regulatory resistance to such designs and no delay for the construction of an antenna tower. *Once all approvals have been obtained*, DAS networks may be constructed in rapid fashion. Local zoning ordinances typically encourage deployment of wireless facilities on existing structures whenever possible by offering a more streamlined permitting process. One provider was recently able to construct an entire network in a California town in less than five months. This rapid deployment can be critical to emerging carriers trying to serve markets where traditional sites are infeasible or impractical, which ultimately benefits the consumer through increased market competition.

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<sup>5</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 07-71, Twelfth Report, FCC 08-28 (rel. Feb. 4, 2008), slip op. at 8.

<sup>6</sup> NENA homepage, "Cellular and Wireless," [www.nena.org/pages/ContentList.asp?CTID=10](http://www.nena.org/pages/ContentList.asp?CTID=10).

***Coverage and Capacity Expansion in Dense Areas.*** In dense metropolitan areas, DAS architectures are used to boost capacity through frequency re-use and also provide focused coverage at the street level where the RF is needed most. Because each DAS antenna covers such a small area, the same block of spectrum can be used to serve more customers than would be possible with an antenna installation covering a larger area. By increasing capacity, DAS networks also help facilitate the availability of wireless data services, which are more sensitive to network congestion. For all these reasons, DAS networks can be an ideal solution to capacity problems.

***Sensitive Environments.*** Because they operate near the clutter level, are small, and can rely on existing structures, DAS architectures are often well suited for placement in environmentally sensitive areas where tall, larger towers might raise concerns. For example, a DAS Forum member deployed a DAS system in an environmentally sensitive wetlands area in the Carolinas in consultation with environmental authorities. The system uses shorter wooden poles that can be hidden by foliage, making them unobtrusive both to the human eye and to native flora and fauna. In a similar case, another DAS Forum member deployed a large DAS system in an environmentally sensitive coastal area in New England. In this case, new towers were simply not an option, and the DAS network implemented was able to alleviate “dead spots” and provide service to an otherwise unserved area.

In areas where minimal visual impact and concealment are a priority, such as historically significant environments, DAS networks have proven to be effective solutions. Because DAS antennas are small and usually affixed to existing structures, they are substantially less noticeable than concentrated antenna installations. For example, a DAS Forum member deployed an array of DAS antennas in a dense, historically renowned neighborhood in the Southeastern U.S. Wireless coverage is crucial in the area, where tourism and convention business is a major

economic driver for the city. At the same time, the unique architectural character of the neighborhood, combined with its density, makes the use of conventional cell sites impractical. DAS has enabled good wireless coverage in a visually unobtrusive way. In another case, a DAS system was selected for service in a world-class entertainment complex and resort in Southern California with extremely stringent architectural guidelines. In yet another, a DAS Forum member was selected to deploy a DAS system in an exclusive residential community stretching across five municipalities in Texas where securing approvals for traditional towers proved extremely difficult due to considerable community opposition. As a result, this community has had only limited wireless service. With a DAS solution approved, now only pole attachment difficulties stand in the way of full wireless coverage for this area.

In all of these cases, DAS networks presented practical speed-to-market advantages over traditional, larger tower structures. In most cases, in fact, the use of DAS allowed wireless voice and data coverage in situations where it would not otherwise have been possible.

## **II. DAS POLE ATTACHMENTS ARE CRUCIAL FOR WIRELESS VOICE AND BROADBAND DEPLOYMENT**

Because of their versatility and ability to allow wireless coverage in areas where traditional sites otherwise could not be sited, DAS networks are an important part of the Nation's wireless infrastructure, and crucial to the extension of wireless coverage in the United States. As discussed above, DAS networks are sometimes the only viable option for extending or expanding wireless coverage and/or coverage in a given area.

In some instances, DAS networks present unique advantages over larger, traditional tower sitings precisely because of DAS providers' ability to locate antennas on existing structures, particularly utility poles. The ubiquity of utility poles makes them ideal assets for attaching. This ubiquity also serves to make them "invisible" to the public, who no longer really

notices their presence. In many cases, the deployment of DAS antennas on existing structures such as poles is the reason that DAS networks can provide wireless coverage quickly, unobtrusively, and with minimal environmental impact. Thus, in cases where DAS is the only practical option for ensuring wireless coverage in a given area, difficulties obtaining pole attachment rights can become a pivotal factor in retarding the deployment of wireless voice and broadband services to American consumers. As a result, it is crucially important that the Commission take this opportunity to ensure that all wireless carriers seeking pole attachments, particularly DAS providers, are assured such access at reasonable rates, terms, and conditions.

### **III. TERMS AND CONDITIONS OF ACCESS TO POLES PRESENT CHALLENGES TO DAS DEPLOYMENT**

In the *Notice*, the Commission sought comment on parties' concerns regarding terms and conditions of access to poles, conduits, and rights of way.<sup>7</sup> DAS Forum members have encountered a number of systemic problems in their efforts to site distributed antennas on utility poles owned by incumbent local exchange carriers ("ILECs") and electric utilities.

*Safety and Engineering Standards.* Entities seeking to place DAS antennas on poles confront widely varying safety requirements. Some of these requirements bear no apparent relationship to actual safety conditions and appear to be based on arbitrary opinion rather than on industry consensus standards. The IEEE's NESC sets forth detailed requirements for the attachment of wireless antennas, including placing antennas on pole tops, and provides useful guidelines for separation requirements for equipment placed on poles. Under the FCC's caselaw, utilities' safety and engineering objections must rely on generally accepted engineering

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<sup>7</sup> *Notice* at ¶ 37.

standards, such as the NESC,<sup>8</sup> and many states have codified the use of the NESC into law.<sup>9</sup> The NESC, being continuously improved by the IEEE, provides the necessary clearances for pole attachments to ensure that workers are safe on the poles. Most, if not all, utilities have either adopted the standard into their safety/construction guidelines or have incorporated the clearances into their own standards.

Nevertheless, in perhaps the most egregious example of unreasonable safety objections, electric utilities in Hawaii have told DAS Forum members that they will not permit *any* wireless antennas to be placed on their poles for “safety reasons.” Other pole owners impose voltage limitations more stringent than those set forth in NESC standards, which effectively block all wireless attachments or prohibit all third-party pole-top attachments.

In another example, another DAS Forum member has been attempting to obtain permission from an electric utility in New Jersey to place DAS antennas on the tops of twenty-five poles, and has provided the utility with extensive documentation of the consistency of its proposal with NESC and other relevant safety standards. Still, the utility has refused to allow the DAS network to be deployed.

These practices present significant (in some cases, insurmountable) barriers to the deployment of DAS networks, to the ultimate detriment of the public. In the *Notice*, the

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<sup>8</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16071-72 ¶ 1151 (1996) (subsequent history omitted).

<sup>9</sup> At least 19 states automatically adopt the new edition of the NESC as state law while many more adopt the NESC through rulemakings. IEEE, “Survey Information: United States Regulatory Commissions Adopting the IEEE National Electrical Safety Code,” *available at* <http://grouper.ieee.org/groups/nesc/PUCsurvey2007.pdf>.

Commission seeks comment on whether the NESC standards should apply to all attachers,<sup>10</sup> and the DAS Forum has no objection to such a requirement. More importantly, however, the Commission must require all *pole owners* to comply with the NESC, permit NESC-compliant attachments, and also must forbid excessive and arbitrary safety requirements that exceed NESC standards.

***Make-Ready Work.*** The *Notice* observes that parties have complained about delays and difficulties with make-ready work.<sup>11</sup> DAS Forum members have experienced similar problems. Parties seeking to attach DAS antennas to utility poles face make-ready processes that are long, unpredictable, and expensive. DAS Forum members report that make-ready work usually takes between four and nine months to complete, depending on the number of nodes involved. By contrast, in the very rare cases where the DAS operator is permitted to perform the make-ready work itself, the process only takes between two and three weeks for a DAS network with relatively few nodes (i.e., ten to fifteen). In egregious cases, DAS Forum members report waiting as long as one year for the completion of make-ready work.

Parties installing DAS networks also often face long waits for power hook-ups. DAS Forum members have faced delays of up to six months for utilities to respond to requests for power. Because wireless transmitters and receivers require a steady power supply to operate, a reliable power connection is a precondition to an effective DAS pole attachment.

The length of these delays, and their unpredictable nature, creates a significant barrier to the effective deployment of DAS networks, and thus impedes mobile voice and broadband deployment. Accordingly, the Commission should adopt the New York standard of 45 days to

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<sup>10</sup> *Notice* at ¶ 38.

<sup>11</sup> *Notice* at ¶ 37.

complete surveys and 45 days for make-ready work,<sup>12</sup> and allow attachers to use utility-approved contractors to complete work if necessary to meet the deadline.

#### **IV. DAS OPERATORS SHOULD PAY REASONABLE ATTACHMENT RATES AND HAVE ACCESS TO POLE TOPS**

Although wireless carriers are unquestionably “telecommunications carriers” under the Act, pole owners do not always provide access at the telecommunications rate, and often deny DAS operators necessary access to pole tops or charge unreasonable premiums for such access.

*Telecommunications Rate.* As the Commission itself has held and the Supreme Court has affirmed, wireless carriers are “telecommunications carriers” under the Act and thus are entitled under section 224 to access to utility poles at the telecommunications rate per section 224(e).<sup>13</sup> Nevertheless, entities seeking pole access to deploy DAS networks often are offered a “market rate” that far exceeds the utility’s telecommunications rate. For example, one DAS Forum member is paying a “market” rate of \$2,875 per pole per year to a utility while another nearby utility in the same state that recognizes its obligation charges a regulated rate of only about \$10 per pole per year for wireless equipment attachments. Other DAS Forum members report being charged “market” rates ranging from two to twenty times greater than the utility’s regulated telecommunications rate. In all cases, these rates are plainly illegal, and present an impediment to broader deployment of wireless voice and broadband.

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<sup>12</sup> *Proceeding on Motion of the [New York Public Service] Commission Concerning Certain Pole Attachment Issues*, NY PSC Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments, Appendix A at 3-4 (Aug. 6, 2004). At a minimum, the Commission should adopt the proposal capping survey and make-ready work at 6 months. *Notice* at ¶ 37, n.15 and associated text.

<sup>13</sup> *Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Report and Order, 13 FCC Rcd 6777, 6798-99 ¶¶ 39-41 (1998) (“1998 Implementation Order”), *aff’d* *NCTA v. Gulf Power*, 534 U.S. 327, 340-42 (2002).

Pole owners' failure to recognize wireless attachers as telecommunications carriers under the statute also results in another problem, in addition to unreasonably high rates. DAS operators often face long delays in obtaining pole attachment agreements. DAS Forum members report long delays by utilities in responding to initial requests for attachments and negotiation periods that often stretch from one to three years. Utilities also often offer their wireless pole attachment agreements on a "take it or leave it" basis, including unreasonable terms such as complete waivers of liability by the pole owner and agreement terms too short to allow the DAS operator to earn any return on its substantial investment.

While DAS operators could bring individual pole attachment complaints to address these statutory violations case by case, the cost and delay inherent in such proceedings generally make such complaints infeasible. Therefore, the Commission should clearly specify *in its rules* that wireless carriers are entitled to access to utility poles on a non-discriminatory basis with that of wireline attachments and at the regulated telecommunications rate. The rules also should prescribe maximum time periods for utilities' responses to prospective attachers' requests (such as 30 days) and maximum presumptively reasonable negotiation periods (such as six months).

***Access to Pole Tops.*** In most cases, DAS antennas must be placed above the tops of utility poles to be effective. It is critically important that DAS antennas be placed at the correct height. If antennas are too low, the signal will not propagate far enough, and additional nodes will have to be deployed at additional cost and increased antenna proliferation. If antennas are too high, interference with other node locations is more likely. While the optimal height varies

as a function of topology and foliage, it typically falls between 30 and 40 feet above ground level. Thus, the pole top is often the only viable location for a DAS antenna.<sup>14</sup>

As the Commission's Wireless Telecommunications Bureau has pointed out, the statute contains no limitation on telecommunications carriers' access to poles that would support denying access to the pole top.<sup>15</sup> The Commission declined to establish a presumption that space above what has traditionally been called "communications space" on a pole may be reserved for utility use only; thus, "the only recognized limits to access for antenna placement by wireless telecommunications carriers are those contained in the statute: 'where there is insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering purposes.'"<sup>16</sup> Thus, per se denial of DAS providers' access to pole tops is a clear statutory violation.

For the same reason, imposing special charges for pole-top access also is a violation of the statutory requirements. The Commission's formula for determining reasonable telecommunications carrier pole attachment rates does not contemplate any premium charge for access to the pole top.<sup>17</sup> To the extent that a wireless attachment takes up more space than the standard one foot assumed in the rule, the rule permits the presumption to be rebutted, and the rate calculated based on the total feet of space that the wireless attacher uses.<sup>18</sup>

Thus, it is a violation of both the statute and the Commission's rules to deny DAS operators pole-top access or to charge them a premium rate for such access. Nevertheless, as the

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<sup>14</sup> The Commission presumes utility poles to be 37.5 feet high. See <http://www.fcc.gov/eb/mdrd/PoleAtt.html>.

<sup>15</sup> *Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers With Access to Utility Poles at Reasonable Rates*, Public Notice, 19 FCC Rcd 24930 (WTB 2004).

<sup>16</sup> *Id.* (citing 47 U.S.C. § 224 (f)(2)).

<sup>17</sup> See 47 C.F.R. § 1.1409.

<sup>18</sup> See *id.* See also *1998 Implementation Order* at ¶ 42.

examples described above make clear, such violations are commonplace. Accordingly, the Commission should modify its rules to make clear that telecommunications carriers' access to poles includes access to the pole top, and that the standard rate (computed on a per-foot basis) applies.

The *Notice* seeks comment on whether a different rate should apply for wireless attachments, given that the attachments differ somewhat from wireline or cable attachments.<sup>19</sup> There is more in common between DAS and other pole attachments than there is a difference. There is no basis for such a departure from prior Commission precedent. As discussed above,<sup>20</sup> and as the Commission has frequently stated itself,<sup>21</sup> today's telecommunications and information service marketplaces are characterized by robust intermodal competition. It would make no sense to single out a specific group of potential attachers for a different rate absent a showing that those users impose different burdens on pole owners than other attachers. The current formula, which bases attachment rates on the number of feet of the tower that the attacher uses (consistent with the statute), appropriately compensates tower owners for wireless attachments. The rate a wireless attacher pays should serve to reimburse the pole owner for the costs it incurs; the rate should not become a profit stream for pole owners. A typical DAS

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<sup>19</sup> *Notice* at ¶¶ 20, 34.

<sup>20</sup> *See supra* sections I and II.

<sup>21</sup> *See, e.g., Notice* at ¶ 3 and Separate Statement of Comr. Tate. *See also e.g., Telecommunications Services Inside Wiring and Customer Premises Equipment, et al.*, CS Docket No. 95-184 et al., Report and Order and Declaratory Ruling, 22 FCC Rcd 10640 (2007), Statement of Chairman Kevin J. Martin (praising action for seeking “to foster competition across different platforms”); Commissioner Michael J. Copps, “America’s Internet Disconnect,” Editorial, *The Washington Post*, Nov. 8, 2006 (pointing the need to encourage broadband competition, including from wireless platforms); Luncheon Address of Commissioner Robert M. McDowell, Broadband Policy Summit III (June 7, 2007) (praising broadband policies that open “windows of opportunity for the construction of new [broadband] delivery platforms – especially wireless platforms”).

attachment is five feet in length, so charging five times the telecommunications rate would be both logical and fair.

For the same reasons, the Commission should not permit a higher rate of compensation for pole-top attachments.<sup>22</sup> Although pole owners argue that each pole “only has one top,”<sup>23</sup> each pole also only has one middle and one bottom, and (for example) one segment of lateral space 25 feet above ground level. Depending upon the attacher’s specific needs, any part of the pole might be particularly desirable. There is no justification to permit pole owners to exercise their market power to charge a premium for any part of the pole. Indeed, any such rule would be inconsistent with the statutory mandate to prescribe a rate structure based solely on linear feet of space used.<sup>24</sup> Thus, permitting a premium for pole-top attachments would be both bad policy and contrary to the statute.

***Impact of Providing Broadband.*** The *Notice* seeks comment on whether the Commission should prescribe a pole attachment rate for broadband providers.<sup>25</sup> The DAS Forum agrees that “the importance of promoting broadband deployment and the importance of technological neutrality” support a common pole attachment rate “for all attachments used for broadband Internet access service.”<sup>26</sup> The DAS Forum also agrees that the unified broadband rate level should be no higher than the current telecommunications rate.<sup>27</sup>

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<sup>22</sup> *Notice* at ¶ 34.

<sup>23</sup> *Id.*

<sup>24</sup> 47 U.S.C. § 224(d).

<sup>25</sup> *Notice* at ¶ 36.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

## V. NEED FOR NATIONWIDE UNIFORMITY IN RATES AND TERMS

Although DAS Forum members have faced difficulties, as discussed above, in siting DAS antennas on utility poles in states governed by the FCC's rules, they typically face far greater difficulties in certified states. While the Commission's rules are relatively straightforward and consistent with the federal Act, the states' procedures are often arcane or even archaic, and sometimes simply biased in favor of pole owners. While the Commission lacks jurisdiction to regulate pole attachment rates in states that have certified that they regulate them themselves,<sup>28</sup> this does not undermine the Commission's authority to preempt state regulation that presents a barrier to entry.<sup>29</sup> The Commission should be prepared to preempt state regulations that present barriers to entry for wireless providers in general and DAS operators in particular.

The problems with state pole attachment regulations as they pertain to wireless attachers present another reason why it is important for the Commission to "get it right" in its own pole attachments rules for wireless carriers. Appropriate FCC rules can serve as a model for certified states. There is also an inherent value to more uniform rules. Wireless systems are generally deployed by carriers that operate in several states pursuant to nationwide rate plans, and nationwide uniformity can substantially reduce costs.

Thus, in addition to being prepared step in to enforce its pole access rules and to preempt state pole attachment rules that impede wireless attachments, the FCC should use its policy-making influence and example in forums such as the National Governor's Association, the

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<sup>28</sup> 47 U.S.C. § 224(c).

<sup>29</sup> 47 U.S.C. § 253. The FCC's preemption authority is restricted in certain areas, but pole attachments is not one of them. 47 U.S.C. § 253(c). While utility poles often are sited in public rights of way, they are not *themselves* rights of way.

National Conference of State Legislators, and the National Association of Regulatory Utilities Commissioners to strongly encourage certified states to adopt pole attachments rules that mirror the federal standards and ensure reasonable rates and terms of attachment for wireless carriers. Encouraging the adoption of the federal rules (as revised in this proceeding) as model state rules would be an appropriate starting point for the FCC's efforts.

## CONCLUSION

DAS networks are sometimes the only way that mobile voice, data, and broadband can be provided in certain areas. Thus, they are crucial to the national policy goals of expanding access to these services. Currently, wireless carriers attempting to deploy DAS networks face unreasonable discrimination in rates and terms that result in unnecessary delay for the deployment of DAS networks. The Commission should amend its rules to clarify wireless network operators' rights to reasonable rates and terms for pole attachments, particularly for DAS networks.

Respectfully submitted,

**THE DAS FORUM, A MEMBERSHIP SECTION OF  
PCIA–THE WIRELESS INFRASTRUCTURE ASSOCIATION**

By: \_\_\_\_\_/s/\_\_\_\_\_

Michael Fitch

President and CEO

Connie Durcsak

Senior Director, Industry Services, and  
Executive Director, The DAS Forum

Jacqueline McCarthy

Director of Government Affairs

Allen Dixon

Chair, The DAS Forum

PCIA–The Wireless Infrastructure Association

500 Montgomery Street, Suite 700

Alexandria, Virginia 22314

(703) 739-0300

[www.thedasforum.com](http://www.thedasforum.com)

[www.pcia.com](http://www.pcia.com)

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