

# Joint Use & Pole Attachments Newsletter

## “Mid-Year Review”

July 2009

### What's Inside . . .

#### Page 1

##### Overview

##### Still No Final Rule in NPRM

##### National Broadband Plan Touches Pole Attachments

#### Page 2

##### CenturyTel and Embarq to Become “CenturyLink”

##### Verizon Announces Major Sale of Wireline Assets to Frontier

##### Three New FCC Commissioners

##### Charter Bankruptcy a Non-Event Thus Far

##### North Carolina Regulates Muni and Co-op Owned Poles

##### What to Watch in the Second Half of 2009

### Overview

During the first six months of 2009, one of the nation's largest ILECs announced plans to sell-off its wireline operations in 14 states and a major cable company filed for bankruptcy. Though the FCC has yet to release a final rule in the pending pole attachment Notice of Proposed Rulemaking (“NPRM”), pole attachments are receiving some attention in connection with the FCC's “National Broadband Plan For Our Future” Notice of Inquiry (“National Broadband Plan NOI”). This “Mid-Year Review” captures these and other highlights from the first half of 2009.

### Still No Final Rule in NPRM

Interested parties continue to meet with FCC Commissioners and staff during the “ex parte” phase of the NPRM, in an effort to reinforce the positions set forth in the voluminous comments. The ex parte activities generating the most buzz over the past six months were separate submissions by Fibertech (along with Kentucky Data Link), [LINK](#) and the “Broadband & Wireless Pole Attachment Coalition [LINK](#)”. Collectively, these submissions requested that the FCC adopt specific deadlines for issuance of pole attachment permits and completion of make-ready work; requested an expedited complaint proceeding; and claimed that unreasonable delays in permitting and make-ready hinder broadband deployment. Various electric utility groups responded to these filings explaining why the FCC cannot and should not impose hard-and-fast make-ready deadlines. The electric utilities also emphasized that, while broadband deployment is a laudable goal, it cannot come at the expense of electric system safety and reliability.

While it is uncertain when or if the FCC will release a final rule in the NPRM, it is unlikely a final rule will be released before the new Commissioners are seated and “staffed-up” (See “Three New FCC Commissioners” on p. 2). It is entirely possible that the NPRM is subsumed by the National Broadband Plan NOI, which may draw more attention and focus from the FCC

(especially given the FCC's February 2010 deadline to submit the plan to Congress).

### National Broadband Plan Touches Pole Attachments

On April 8, 2009, the FCC released the National Broadband Plan NOI [LINK](#). The NOI asked, among other things, to what extent pole attachments “stand as impediments to further broadband deployments where such deployments would be made by market participants in the absence of any government-funded programs?” (NOI, ¶50). The deadline for initial comments was June 8, 2009. Thousands of pages of comments were submitted by hundreds of commenters. Roughly 20 commenters addressed pole attachments and the role electric utilities play in broadband deployment. The general positions taken by attaching entities are consistent with their positions in the NPRM: the FCC should remove barriers to broadband deployment; charge all broadband pole attachments a single rate consistent with the existing cable formula; extend protections of the Pole Attachments Act to wireless broadband providers; specify that “usable space” includes the pole top; impose a deadline on the issuance of pole attachment permits and completion of make-ready; and adopt uniform safety standards to prevent pole owners from invoking subjective standards.

Several electric utility groups also filed initial comments reinforcing the positions set forth by electric utilities in the NPRM. The general themes included: pole attachments facilitate, rather than impede, broadband deployment; broadband deployment cannot come at the expense of electric system safety and reliability; the FCC should adopt a rate higher than the current telecom rate for CATV and CLEC broadband attachments; and hard-and-fast make-ready deadlines are unworkable. The deadline for reply comments is July 21, 2009 (extended from July 7, 2009).

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## CenturyTel and Embarq to Become “CenturyLink”

CenturyTel’s purchase of Embarq, announced in October 2008, continues to be evaluated by the regulators. On June 2, 2009, CenturyTel announced that it will change its name to “CenturyLink” when the purchase of Embarq closes. CenturyLink will continue to provide communications and entertainment services to customers across 33 states under the CenturyTel and Embarq brands for the next several months while the “CenturyLink” brand is rolled out. The company expects to launch the “CenturyLink” brand by year end 2009.

## Verizon Announces Major Sale of Wireline Assets to Frontier

On May 13, 2009, Verizon announced plans to divest wireline operations in 14 states. Verizon is transferring these assets to Frontier Communications in an \$8.6 billion stock swap. The sale includes all of Verizon’s wireline assets in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin, as well as some assets in California. As a result, Frontier will become the largest “pure rural” communications provider with approximately 7 million access lines and 8.6 million voice and broadband connections in 27 states. The transaction is expected to be completed by May 2010.

## Three New FCC Commissioners

Julius Genachowski, a longtime friend and advisor to President Obama, was sworn in as FCC Chairman on June 29, 2009. For the past decade, Chairman Genachowski has been an executive with several technology related companies. Commissioner Robert McDowell has been confirmed for a second six-year term, and Commissioner Michael Copps has one year left in his term. With Commissioner Jonathan Adelstein’s departure (left for position at Rural Utilities Service) there are now two open seats on the FCC.

President Obama’s nominees for the two remaining FCC seats are Mignon Clyburn and Meredith Attwell Baker. Ms. Clyburn, a Democrat, is currently Chair of the South Carolina PSC (where she has served for the past eleven years). Ms. Baker, a Republican, was Acting Secretary of the National Telecommunications and Information Administration under President George W. Bush. She previously worked for a lobbying firm representing telecommunications interests. The Senate Commerce Committee will consider

these two nominations together on July 15, 2009. Neither nominee is expected to generate opposition.

## Charter Bankruptcy a Non-Event Thus Far

As expected, Charter filed for bankruptcy (reorganization) in March 2009. Thus far, Charter’s reorganization does not appear to be affecting pole attachment relationships. Charter continues to pay most pole owners for rental and other charges. Charter is expected to emerge from bankruptcy by the end of August 2009. One issue to watch is the “cure amount invoice” Charter should be sending to pole owners in the near future. This invoice must be carefully reviewed (prior to Charter exiting bankruptcy) to ensure all debts are accounted for, and all payments are up-to-date.

## North Carolina Regulates Muni and Co-op Owned Poles

In early July 2009, North Carolina passed legislation regulating attachments on poles owned by co-ops and munis [LINK]. The new law treats ILECs as attachers – rather than joint users – but is silent as to electric attachments on ILEC-owned poles. The law also allows federal pole attachment rules and regulations to be considered when resolving disputes between attachers and electric utilities relating to new contracts. We expect ILEC and CATV lobbyists to carry this legislation to other state capitols, including back to states where their efforts were previously defeated.

## What to Watch in the Second Half of 2009

What priorities will the newly constituted FCC adopt, and how will it impact pole attachment policy?

Will the new FCC act on the NPRM? Will “pro-broadband” policy impact the FCC’s objectivity on matters affecting electric system safety and reliability?

How will ILECs re-position themselves as “broadband providers” in an effort to take advantage of the FCC’s pro-broadband policy?

Will ILEC and CATV attachers seek to visit FCC-type rules on co-ops and munis in other states?