

Summary of Testimony Of Larissa Herda, President, CEO, Chairman of the Board, tw telecom inc. Before the United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet

July 22, 2008

Introduction. Thank you Chairman Markey, Chairman Dingell and distinguished members of the Subcommittee for inviting me to appear before you today to discuss the role of pole attachments to the deployment of broadband services. My name is Larissa Herda, and I am the Chairman, CEO and President of **tw telecom**, formerly known as Time Warner Telecom.

tw telecom relies of poles to provide broadband. tw telecom has deployed, and continues to deploy, fiber networks in the 75 markets across 30 states in which it offers broadband service to business customers in the U.S. In order to deploy fiber for these purposes, tw telecom has no choice but to rely on pole attachments owned by utilities. Unfortunately, utilities usually have a monopoly over poles. This monopoly gives utilities the incentive to charge unreasonably high prices.

Existing FCC pole attachment rate regulation is discriminatory. Congress has granted the FCC the authority to impose effective regulatory constraints on utilities' pole attachment rates. Unfortunately, the existing FCC rules are discriminatory and skew competition in the provision of broadband.

The existing FCC rules establish two rate formulas for pole attachments: one for telecommunications carriers and one for cable operators that do not provide telecommunications services. The two formulas yield very different rates. The rates for attachments by telecommunications carriers are two-to-three times higher than the rates for attachments by cable operators.

This differential in rates skews the market for broadband deployment because both telecommunications carriers and cable operators provide broadband services to downstream retail customers. Moreover, telecommunications carrier pole attachments do not impose greater costs or burdens on pole owners than cable operator pole attachments.

The FCC Should Adopt A Single Rate For All Pole Attachments Used To Provide Broadband. In January, the FCC released a Notice of Proposed Rulemaking in which it tentatively concluded that all providers of broadband internet access should pay the same pole attachment rate. I applaud the FCC for taking this initiative. I urge this Committee to encourage the FCC to adopt final rules implementing its tentative conclusion.

Thank you.

Before the United States House of Representatives

Committee on Commerce and Energy

Subcommittee on Telecommunications and the Internet

Testimony of

Larissa Herda

President, CEO, Chairman of the Board

tw telecom inc

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I. INTRODUCTION

Good morning Chairman Markey, Chairman Dingell and distinguished members of the Subcommittee. My name is Larissa Herda and I am the Chairman, CEO and President of **tw telecom**, formerly known as Time Warner Telecom. Thank you for the invitation to appear before you today to discuss issues critical to the deployment of broadband services.

tw telecom provides voice, Internet and data services to business customers in 75 markets spanning 30 states and the District of Columbia. We have invested billions of dollars to construct networks and connect over 8500 buildings with our own fiber network – more than any other non-incumbent telecommunication carrier in the country. And, we continue to deploy fiber facilities directly to commercial buildings at a faster rate than any other competitor. We use the fiber facilities we deploy to provide our business customers with innovative and cost-effective broadband solutions that allow them to operate more efficiently. We have been recognized by many organizations as the best in the industry at what we do.

II. tw telecom inc. HAS NO CHOICE BUT TO RELY ON POLES TO DELIVER ITS SERVICES

I understand that encouraging broadband deployment is an important national policy objective. Deploying fiber networks in the communities where we do business is the heart of our business plan.

Nevertheless, we have no choice but to rely on services and inputs provided by third parties. We must obtain special access services and interconnection from the ILECs and pole attachments from utility pole owners. As you may recall from my testimony before this Committee last October, special access in particular is an extremely important issue for my company. I also applaud the Committee's interest in reviewing the Forbearance process, which is in drastic need of reform. Today, however, I would like, if I may, to focus my opening comments on pole attachments.

In order to deploy fiber and deliver broadband services to our customers, **tw telecom** must be able to obtain reasonable access to pole attachments. As Congress has long recognized,

pole owners have a monopoly over poles. This is because most local governments only allow one pole owner in any particular location for both safety and aesthetic reasons.

Given their monopoly control over poles, pole owners have a natural and understandable incentive to charge high prices for pole access. Congress has granted the FCC powerful regulatory tools to limit the pole owners' ability to act on their incentives to charge unreasonably high rates. Congress first adopted pole attachment legislation in 1978, when its main objective was increase cable penetration of video services. In 1996, Congress added provisions for telecommunications carriers. The challenge today is to ensure that all of these provisions grant providers of broadband service reasonable and fair access to poles.

III. THE EXISTING REGULATORY REGIME FOR POLE ATTACHMENTS IS FLAWED

Unfortunately, the FCC's rules governing pole attachments are seriously flawed. Under the existing rules, pole owners charge two different regulated rates for pole attachments: one applies to telecommunications carriers like **tw telecom** and the other applies to cable companies that do not provide telecommunications services. All of these entities provide broadband service to end user customers, but their pole attachment rates are determined based on their legacy regulatory classifications.

This is a problem because the pole attachment rates for telecommunications carriers are two or three times higher than the rates applicable to cable companies. For example:

- One Georgia utility pole owner charges the cable companies \$5.70 to attach to a utility pole, but it charges telecommunications carriers \$13.86 in urban areas and \$14.93 in rural areas.
- An Indiana utility pole owner charges a cable rate of \$4.90, compared to a telecom rate of \$18.21

- In North Carolina we've seen cable rates at \$6.36 compared to a telecom rate of \$13.64
- In Texas, we've seen \$7.10 for cable compared to \$16.00 for the telecom rate.

These rate differences exist even though the use of a pole attachment to provide telecommunications services does not cause the pole owner to incur higher costs than is the case with a cable service.

To the extent that **tw telecom** provides services like broadband internet access service in competition with cable operators, the different rates yielded by the pole attachment rules skew competition -- they cause competitors to pay dramatically different rates for an identical input that they have no choice but to buy. The effect on competition can be substantial given that **tw telecom** and other telecom carriers must establish tens of thousands of pole attachments to deploy the fiber they need to offer services to end user customers and expand broadband deployment.

IV. THE FCC SHOULD ADOPT A SINGLE RATE APPLICABLE TO ALL COMPETITORS USING POLE ATTACHMENTS

In light of the flaws in the existing rules governing pole attachment rates, I urge the Committee to press the FCC to adopt a single rate that applies to all competitors that use pole attachments to provide service.

In January the FCC adopted an NPRM in which it tentatively concluded that it should adopt a single rate applicable to all pole attachments used to provide broadband internet access services.

Since that time all industries, including many pole owners, have commented on the FCC's proposed rulemaking and all agree that a single rate is appropriate.

Any assistance the Committee can provide in its oversight role to ensure that the Commission adopts rules consistent with its NPRM as quickly as possible, will encourage investment in and deployment of the broadband networks critical to a vibrant economy.

Every day that passes in which telecommunications carriers pay higher pole attachment rates contributes further to the inefficiencies created by the current regime

Thank you for your time and attention today. I'd be happy to answer any questions.