

December 7, 2007

VIA Electronic Filing
Ms. Susan Hudson
Clerk of the Board
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: Proposed Amendments to Pole Attachments – Rule 3.700

Dear Ms. Hudson:

CTIA – The Wireless Association® (CTIA)¹ commends the Vermont Public Service Board (“Board”) for initiating this important proceeding and continuing to improve its treatment of pole attachments. CTIA supports the extension of Rule 3.700 that will allow broadband service providers, both wireless and wired, to attach to utility poles. This Board has long recognized the importance of timely and reasonable access to poles for the development of innovative communications services and competition. This Board has also recognized the value of wireless to the communications landscape.

Wireless communications are critical to today’s evolving communications landscape. Nationally, over 250 million consumers now subscribe to wireless services. Wireless has been the fastest growing segment in broadband services, with over 11 million wireless broadband subscribers as of mid-2006. Wireless communications provide consumers with flexibility and mobility, improving both quality of life and public safety by ensuring consumers have the ability to make calls (including E911 calls) from nearly anywhere. Consumers nationwide use wireless services to place over 260,000 911 calls per day, and total wireless usage nationwide now approaches 2 trillion minutes annually.

The wireless industry has a particularly strong presence in Vermont, accounting for more than \$97 million of Vermont’s economy in 2004 alone.² Well over 334,000 Vermonters subscribe to wireless services.³ This represents approximately 54 percent of the state’s population.⁴ In 2006, the wireless industry employed at least 220 Vermonters with total wages of \$10,976,000.00, and operated

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, and AWS, as well as providers and manufacturers of wireless data services and products.

² FCC, Trends in Telephone Service Report, at Table 15.7 (Feb. 2007).

³ FCC, Local Telephone Competition Report, at Table 14 (Jan. 2007).

⁴ Penetration calculated using subscriber figure found in the FCC Local Telephone Competition Report and the US Census Website, available at: www.census.gov.

at least 28 business locations.⁵ In 2006, Vermont's broadband lines grew by 57 percent. Nationally, broadband adoption rates rose 27 percent with 60 percent of that growth (from June 2006 to December 2006) attributable to wireless telecommunications.⁶ Nationally, the wireless industry spends \$25 billion annually on infrastructure and has invested more than \$233 billion total⁷

Both in Vermont and nationally, wireless providers are developing and deploying exciting new services that make broadband truly mobile and provide consumers greater flexibility and benefits. For example, smart phones allow users to email, review documents, and browse the web without being tied down by wires or the weight of a laptop. Other services employ GPS technology to provide navigational as well as location capabilities, including the ability for parents to quickly locate their children using the parents' phone or personal computer. These services and wireless broadband innovations in the near-future, will bring consumers even more useful and customizable ways to connect to the Internet. Innovative communications providers are also using wireless to bring broadband and cellular services to rural and tribal areas, ensuring that traditionally underserved consumers enjoy the full range of today's communications choices. To support new subscribers and innovative services, wireless carriers need to continually add cell sites.

Wireless attachments on existing poles are a critical source for new cell sites – for both traditional voice services as well as data services. Attaching wireless equipment to existing poles enables carriers to extend their coverage area and increase capacity economically while minimizing environmental impact. Carriers can use wireless attachments to minimize the number of new towers constructed and the associated groundwork required. Wireless attachments also improve public safety by improving the reach and reliability of wireless services, including the reach of enhanced 911 coverage. Public safety also benefits since information about outages can be derived from wireless attachments.

Wireless attachments benefit the public by enabling wireless carriers to extend and improve coverage, and bring even more innovative services to Vermonters. Wireless attachments are used to eliminate “dead spots,” improve coverage indoors, extend the range of existing services, and bring new services to consumers. Local governments and their citizens benefit from the use of existing infrastructure, such as poles, by reducing the need to construct new towers. This is particularly important in residential and pristine areas where consumers expect wireless coverage but likely prefer the minimal aesthetic and environmental impact of antennas on utility poles. Moreover, wireless attachments increase the availability and reliability of both new and existing services while minimizing their environmental impact on the surrounding area.

⁵ BLS Database “Quarterly Census of Employment and Wages,” available at: <http://data.bls.gov/PDQ/outside.jsp?survey=en>.

⁶ FCC, High-Speed Services for Internet Access: Status of December 31, 2006, at Table 2, 10 (Oct. 2007).

⁷ CTIA's Mid-Year 2007 Wireless Industry Indices Report, at p. 120 (Nov. 2007).

In *Gulf Power*, the U.S. Supreme Court noted that attachers “have found it convenient, and often essential to lease space . . . on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.”⁸ Congress has twice recognized the importance of access to poles and conduit, explicitly mandating nondiscriminatory access. In 1978, Congress enacted the Pole Attachment Act, recognizing that cable television services could not be widely deployed without access to poles and conduit, and providing cable operators with an assurance of access to poles on just and reasonable rates, terms and conditions. Congress determined,

Owing to a variety of factors, including environmental or zoning restrictions and the costs of erecting separate [cable] poles . . . there is often no practical alternative to a [cable] system operator except to utilize available space on existing poles. . . . Due to the local monopoly in ownership or control of poles to which cable system operators, out of necessity or business convenience, must attach their distribution facilities, it is contended that the utilities enjoy a superior bargaining position over [cable] systems in negotiating the rates, terms and conditions for pole attachments.⁹

Much like Vermont, the Federal Communications Commission (“FCC”) has specifically and expressly recognized the benefits of wireless attachments: Providing wireless carriers with access to existing utility poles facilitates the deployment of cell sites to improve coverage and reliability of their wireless networks in a cost-effective and environmentally friendly manner. Such deployments . . . promote public safety, enable wireless carriers to better provide telecommunications and broadband services, and increase competition and consumer welfare in these markets. Consistent with these conclusions, the FCC has clearly stated that utilities and pole owners are obligated to provide wireless telecommunications providers with access to utility poles at reasonable rates pursuant to section 224 of the Federal Communications Act.¹⁰

The Board clearly recognizes the need to ensure that carriers have access to poles in order to continue to ensure that customers have access to advanced capabilities. CTIA supports the proposed amendments to Rule 3.700 Pole Attachments. CTIA further urges the Board to continue fostering competition,

⁸ *National Cable & Telecomm. Ass’n v. Gulf Power Co.*, 534 U.S. 327, 330 (2002) (“*Gulf Power*”).

⁹ S. Rep. 95-580 at 13, 1978 U.S. Code Cong. & Admin. News 109, 121 (1977).

¹⁰ *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 (2004) (“*Wireless Attachments Notice*”), citing *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, 13 FCC Rcd. at 6798-9 (¶¶ 37, 39-40).

improve public safety, encourage continued innovation, and minimize environmental impact by facilitating attachments to poles. The wireless industry has and will continue to be a significant contributor to the provision of new and advanced technologies, and appropriate pole attachment policies are critical to that mission.

Sincerely,

/s/ Lisa M. Zaina

Lisa M. Zaina

Assistant Vice President, State Regulatory Affairs