STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for Our Future*, GN Docket No. 09-51

While not flashy, the statute and applicable rules relating to pole attachments are important pieces of the broadband deployment puzzle. Section 224 of the Communications Act sets forth the requirements for access to poles, ducts, conduits and rights-of-way for both cable television systems and telecommunications carriers (collectively "attachers"). Our action today seeks to provide immediate clarity on some issues that have impeded broadband deployment, while also seeking more advice to help us build a better record for important decisions to come.

Under Section 224(f)(1), a utility is required to provide access on a nondiscriminatory basis. Not surprisingly, there has been some confusion surrounding the meaning of "nondiscriminatory" in the context of Section 224. Today's order clarifies that "nondiscriminatory" means that a pole owner must allow an attacher to use space- and cost-saving techniques when practical and consistent with a pole owner's use of those techniques. This holding, however, does not take away any statutory rights of utilities to limit access when ensuring safety, reliability and sound engineering. Additionally, the order clarifies that Section 224's use of the term "just and reasonable access" includes timely preparation of the poles for attachment, commonly referred to as the "make-ready" process.

As interpreted by the Commission in the past, Section 224 embodies terms that have resulted in different treatment for cable systems and telecommunications service providers when they are seeking to attach to poles. I note that the disparities in this area highlight the overall need to streamline and provide parity wherever legally sustainable. As the stovepipe regulations of yesteryear become increasingly burdensome, we should strive to modernize our regulations so that similar offerings are treated equally. While, as a general rule, I favor parity of regulation for similar providers of services, at the same time, we must meet our statutory obligations. I will keep this in mind as comments are filed pursuant to the Further Notice of Proposed Rulemaking (FNPRM).

I thank Chairman Genachowski for his leadership in putting this topic at the front end of his broadband agenda. I also thank the staff in the Wireline Competition Bureau for their diligence on this order and FNPRM. Both documents are well written and thorough. With regard to the FNPRM, I recognize that some may have wished that some of the issues in the FNPRM actually be in the order rather than put out for further comment, especially regarding rates. However, the Chairman was wise to seek further comment on these issues so that all stakeholders can have one more opportunity to propose creative ideas and set forth additional statutory analysis. Such thoroughness will put any final comprehensive order on a solid legal footing.

In sum, I do recognize that Section 224(c) limits the Commission's action on pole attachment issues to areas of the country where such access issues are not regulated by a State. Nevertheless, each step forward, where possible, can make a difference in overall broadband deployment. I look forward to analyzing the record and applicable law in this docket as we encourage the continued deployment of broadband throughout America.