

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireline Broadband Deployment)	WC Docket No. 17-84
by Removing Barriers to Infrastructure)	
Investment)	

AT&T's Opposition to Petition for Reconsideration

AT&T files this opposition to the Petition for Reconsideration (“Petition”) filed by the Coalition of Utilities (“Coalition”)¹ as applied to the pole attachment rate reforms adopted by the Federal Communications Commission’s (“Commission”) in its Third Report and Order.²

I. INTRODUCTION AND SUMMARY.

The Commission initiated this docket to explore ways to “better enable broadband providers to build, maintain, and upgrade their networks” in a manner that “will lead to more affordable and available Internet access and other broadband services for consumers and businesses alike.”³ After nearly 18 months, hundreds of filings, meetings with stakeholders, and considered and reasoned analysis, the Commission met that goal in part by “eliminat[ing] outdated disparities between the pole attachment rates incumbent local exchange carriers [ILECs] must pay

¹ Petition for Reconsideration of the Coalition of Concerned Utilities, WC Docket No. 17-84 (filed Oct. 15, 2018) (“*Petition*”).

² *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling (rel. Aug. 3, 2018) (“*2018 Pole Attachment Order*”).

³ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266, 3267 (2017).

compared to other similarly-situated telecommunications attachers.”⁴ The Coalition asks the Commission to reconsider and modify these findings because it believes that ILECs are not similarly situated to other telecommunications attachers. The Commission should deny this request because the Coalition fails to identify any material error, omission, or reason warranting reconsideration and relies on arguments that the Commission has considered and rejected.⁵

II. DISCUSSION.

The Coalition asks the Commission to reconsider its rulings that resolve long-standing disparities between the pole attachment rates that investor-owned electric utilities (“IOUs”) charge ILECs compared to other telecommunications attachers. Specifically, the Coalition seeks reversal of the presumption that ILECs are similarly situated to other telecommunications attachers and thus entitled to just, reasonable, and nondiscriminatory rates under the Telecom Rate formula under “renewed” joint-use agreements (“JUAs”), reversal of the Commission’s decision to cap IOU pole attachment rates at the pre-2011 Telecom Rate when the presumption is rebutted, and a corresponding reduction in ILEC pole attachment rates under JUAs. The Commission should deny the Coalition’s Petition for the specific reasons below.

A. The Commission’s rate presumptions are built on an abundant record and reasoned decision-making.

1. The record demonstrates a need for the Commission to offset IOU leverage.

The Coalition argues that lowering the pole attachment rates that ILECs pay to IOUs is unjustified because the Commission has not fully analyzed whether IOUs have bargaining

⁴ 2018 Pole Attachment Order ¶3.

⁵ 47 C.F.R. §1.429(l)(1), (3).

leverage.⁶ To the contrary, the Commission has an abundant record in this proceeding on the disparity in pole ownership and reached a reasoned and fact-based conclusion that this disparity has contributed to an increase in IOU pole attachment rates charged to ILECs, a troubling development considering the substantially lower rates paid by ILEC competitors.⁷ As the Commission observed:

USTelecom provides the results of a recent member survey showing that its incumbent LEC members “pay an average of \$26.12 [per year] to [investor-owned utilities] today in Commission-regulated states (an *increase* from \$26.00 in 2008), compared to cable and CLEC provider payments to ILECs, which average \$3.00 and \$3.75 [per year], respectively (a *decrease* from \$3.26 and \$4.45, respectively, in 2008).⁸

The IOUs had ample time to refute this evidence but failed to do so in this docket or their Petition. Moreover, the Commission did not come to these decisions in a vacuum. At least as far back as 2011, the pole ownership disparity led the Commission to question whether “market forces and independent negotiations . . . alone [are] sufficient to ensure just and reasonable rates, terms, and conditions for [ILEC] pole attachments.”⁹ Seven years later, faced with a growing disparity in pole ownership between ILECs and IOUs and increased IOU pole attachment rates, the Commission concluded that these changed circumstances justified action. The Commission determined that “applying the presumption to new and newly-renewed agreements, [] will . . .

⁶ Petition at n.15.

⁷ *2018 Pole Attachment Order* ¶126 (“[T]he record evidence show[s] that, since 2008, [ILEC] pole ownership has declined and [ILEC] attachment rates have increased (while pole attachment rates for cable and telecommunications attachers have decreased).”)

⁸ *Id.* at ¶125.

⁹ *Implementation of Section 224; A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5327, para. 199 (2011).

encourage infrastructure deployment by addressing [ILECs'] bargaining power disadvantage.”¹⁰ The Commission further adopted the pre-2011 pole attachment rate as an upper bound rate where the presumption is rebutted, finding that it would eliminate uncertainty by “enabl[ing] better informed pole attachment negotiations . . . [and] reduc[ing] the number of disputes’ regarding pole attachment rates.”¹¹ Contrary to the Coalitions claims, these Commission decisions were built on an abundant record, follow substantial history and a reasoned analysis, and do not warrant reconsideration.

2. JUAs confer no net benefits that materially advantage ILECs.

The Coalition further argues that ILECs receive unique benefits under the terms of renewed JUAs. The Commission rightly rejected that very argument in its Report and Order.¹² The Coalition provides a list of alleged benefits received by ILECs under JUAs. That list is unconvincing. Many of the listed benefits are illusory. For example, AT&T’s make-ready costs are not generally lower than other attachers; AT&T does not generally avoid the costs to relocate its facilities; AT&T’s JUAs do not generally preclude IOUs from performing post-construction inspections; IOUs assign pole space on a first-come first serve basis, regardless of how much space the JUA designates for the ILEC, whose footprint on IOU poles has continued to shrink over the last decade with the proliferation of fiber and removal of copper in their networks; and AT&T’s JUAs do not allow AT&T to collect rent from communications attachers occupying such space in those situations.

¹⁰ *2018 Pole Attachment Order* ¶127.

¹¹ *Id.* at ¶128.

¹² *Id.* at ¶127 (“We disagree with utilities that argue that we should not apply the presumption to any existing agreements . . . because [ILECS] receive unique benefits under joint use agreements.”)

Other allegedly favorable terms provide no net benefits that give ILECs a material advantage over other attachers. For example, some “benefits” are reciprocal with the electric utility (e.g., pay less for pole replacements) or are no longer advantageous due to changes in circumstances or increased risks (e.g., attaching without advance approval, lower pole placement). Simply put, to the extent that benefits may exist, they do not provide a net benefit and certainly not a benefit that materially advantages the ILEC, as any perceived benefits cannot offset the huge disparity in the pole attachment rates ILECs pay to IOUs relative to cable and other telecommunications attachers.

3. IOUs can challenge whether a JUA provides net benefits that materially advantage ILECs.

To the extent that an IOU believes that an ILEC with which it has a JUA—including one that has been renewed—is not similarly-situated to other telecommunications attachers, the IOU can rebut that presumption by demonstrating that the JUA confers on the ILEC net benefits that materially advantage the ILEC. IOUs are in the best position to know whether and how their JUAs with ILECs compare to access agreements with cable and other telecommunications attachers. In contrast, ILECs do not have and cannot readily obtain this information, which prevents ILECs from easily or effectively making those assessments and partially explains the lack of complaints against IOUs and the resulting trajectory of IOU pole attachment rates. Keeping the presumption on ILECs to demonstrate that their JUAs are NOT similarly situated to other telecommunications attachers, as the IOUs prefer, would retain the status quo, despite the changed circumstances identified by the Commission, and allow IOUs to continue charging ILECs artificially high attachment rates that deter infrastructure deployment.

B. The Coalition has not demonstrated a need to alter ILEC attachment rates.

The Coalition proposes that a reduction in IOU attachment rates be accompanied by a proportional reduction in ILEC attachment rates, ostensibly to prevent “price gouging.”¹³ But, the Coalition provides no evidence that ILECs are overcharging IOUs, much less engaging in price gouging, or any other legitimate basis why ILEC attachment rates should be altered. A tit-for-tat decision—lowering ILEC pole attachment rates merely because IOU pole attachment rates are lowered—would not be reasoned decision-making. And there is simply no record demonstrating that ILEC pole attachment rates are too high. To the contrary, the USTelecom Pole Attachment Survey reveals that IOUs pay ILECs the same rates on average as ILECs pay IOUs despite occupying at least five times the average amount of space occupied by ILECs.¹⁴ An automatic reduction of ILEC rates to correspond with substantially inflated IOU rates would be arbitrary, bear no relationship to the amount of space used, and undercompensate ILECs for IOU attachments on ILEC poles.

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Respectfully submitted,



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¹³ *Petition* at 7.

¹⁴ USTelecom Pole Attachment Rate and Pole Ownership Report at 8-9, attached to Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 21, 2017).