

In the NOI, the FCC notes that Section 224 of the Communications Act, relating to pole attachments, was amended by Section 703 of the Telecommunications Act of 1996 to expand the coverage of Section 224 to include pole attachments used by any “provider of telecommunications service” as well as any cable system. The definition of “utility” in Section 224 was also revised to more specifically identify the entities subject to regulated pole attachment rates. Significantly, however, Congress did not revise the longstanding exemption from federal pole attachment regulation that has been provided for any “railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.”³ The FCC now inquires as to “the effect on competition that this exemption has on entities offering telecommunications services, including video services,” and more specifically, whether the “rates charged for pole attachments by cooperatives and municipalities, especially in rural areas, impede or promote competition.”

At the outset, it should be noted that UTC is already on record as supporting, to the greatest extent possible, the use of marketplace negotiations for access to and pricing of attachments to utility property.⁴ A fundamental principle of the 1996 Telecommunications Act is to promote marketplace negotiations and agreements, with arbitration and regulation only as a “backstop or impasse-resolving mechanism for failed

³ “State” is defined in Section 224(a)(2) to mean “any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency or instrumentality thereof.”

⁴ See “Joint Comments of UTC and the Edison Electric Institute (EEI)”, filed May 20, 1996, in CC Docket No. 96-98; “Joint Reply Comments of UTC and EEI,” filed June 3, 1996, in CC Docket No. 96-98; “Joint Petition for Reconsideration and/or Clarification of EEI and UTC,” filed September 30, 1996, in CC Docket No. 96-98; and “Comments of EEI and UTC,” filed June 27, 1997, in CS Docket No. 97-98.

negotiations.”⁵ In the case of pole attachments, Congress specifically provided that a new pricing formula for attachments by telecommunications carriers, including cable operators providing telecommunications services, would govern “when the parties fail to resolve a dispute over such charges.”⁶ Given the myriad factual situations that could arise involving access to utility property, and the significant costs incurred by utilities in constructing and managing these assets in a safe, reliable and cost-effective manner for their originally-intended purposes, one can readily see the wisdom of allowing parties to negotiate these terms.

CONCLUSION

In reviewing the overall state of competition in the telecommunications industry, Congress recently enacted changes to the Communications Act that promote the use of marketplace negotiations, even among competing providers of telecommunications services. Moreover, it revised Section 224 of the Act to redefine the entities that will subject to the benefits as well as the obligations of federal pole attachments regulation. Significantly, Congress did not modify the long-standing exemption for municipally- and cooperative-owned utilities. Therefore, UTC joins the American Public Power Association and the National Rural Electric Cooperative Association in urging the

⁵ Iowa Utilities Board v. FCC, Nos. 96-3321, *et al.*, (8th Cir. July 18, 1997).

⁶ 47 U.S.C. §224(e)(1).

Commission to decline any requests to further expand the scope of federal pole attachments regulation.

Respectfully submitted,

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Dated: July 23, 1997