



February 19, 2015

Chairman Tom Wheeler  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Open Internet, GN Docket No. 14-28  
Pole Attachments, WC Docket No. 07-245**

Dear Chairman Wheeler:

On behalf of cable operators of all sizes, we request that you take all necessary steps to ensure that the Commission's forthcoming order reclassifying broadband providers as Title II telecommunications carriers does not lead to significant and unwarranted increases in pole attachment rates. In particular, before any reclassification decision takes effect, the Commission should grant the pending reconsideration petition filed by the National Cable & Telecommunications Association (NCTA) and COMPTTEL in 2011,<sup>1</sup> which would ensure that all broadband providers are able to attach to poles at the lowest rate available under the Commission's rules.

Almost two decades ago the Commission established a policy that allows cable operators to continue paying pole attachment rates under the cable rate formula of Section 224(d) when they provide broadband services.<sup>2</sup> The Commission recognized that requiring payment of rates under the telecommunications rate formula of Section 224(e), which typically produces higher

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<sup>1</sup> See Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, COMPTTEL and twtelecom, Inc., WC Docket No. 07-245 (filed June 8, 2011) (NCTA/COMPTTEL Petition).

<sup>2</sup> *Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777 (1998) (*1998 Pole Attachment Order*), reversed *Gulf Power v. FCC*, 208 F.3d 1263 (11<sup>th</sup> Cir. 2000), reversed *NCTA v. Gulf Power Co.*, 534 U.S. 327 (2002) (*Gulf Power*).

rates, was unwise because it would have the effect of penalizing operators for deploying broadband, a result that fundamentally undermines the goal of universal broadband access.<sup>3</sup>

Reclassification of broadband as a Title II telecommunications service exposes cable operators to hundreds of millions of dollars in increased pole attachment fees each year and threatens to undo the Commission's longstanding policy of encouraging broadband deployment by allowing cable operators to attach to poles at the cable rate.<sup>4</sup> These rate increases could be particularly harmful in rural areas, where more poles are needed and there are fewer subscribers to bear the costs.<sup>5</sup> Such a result is completely unrelated to the Open Internet issues that are the focus of this proceeding and wholly at odds with your definitive statement that reclassification "will not **impose, suggest or authorize** any new taxes or fees."<sup>6</sup>

Fortunately, these fee increases can easily be avoided by granting the petition filed by NCTA and COMPTTEL in 2011, which would eliminate the gap between the cable rate and the telecommunications rate in all circumstances. Eliminating this gap was the intended purpose of the Commission's 2011 reforms,<sup>7</sup> but the NCTA/COMPTTEL petition demonstrates that subtle

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<sup>3</sup> *1998 Pole Attachment Order*, 13 FCC Rcd at 6794, ¶ 32 (1998) ("We conclude, pursuant to Section 224 (b)(1), that the just and reasonable rate for commingled cable and Internet service is the Section 224(d)(3) rate. In specifying this rate, we intend to encourage cable operators to make Internet services available to their customers. We believe that specifying a higher rate might deter an operator from providing non-traditional services. Such a result would not serve the public interest. Rather, we believe that specifying the Section 224(d)(3) rate will encourage greater competition in the provision of Internet service and greater benefits to consumers.").

<sup>4</sup> See Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 14-28 (filed Jan. 22, 2015).

<sup>5</sup> See Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 14-28 (filed Jan. 20, 2015) at 3 ("If the attachment rates of cable operators that also provide broadband Internet access service increase as a result of a reclassification decision, that decision would create disincentives for broadband deployment and investment by affected cable operators, especially for those operating in less dense areas where access to more poles is generally required and where there are fewer subscribers over which to spread costs. It would also would create pressure to increase retail rates for broadband Internet access service, harming subscribers and dampening adoption of the service by those not yet connected.").

<sup>6</sup> Fact Sheet: Chairman Wheeler Proposes New Rules for Protecting the Open Internet (rel. Feb. 4, 2015) (emphasis in original).

<sup>7</sup> *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), Statement of Chairman Julius Genachowski ("The record shows that pole rental rates vary widely and are often inefficiently high, which slants the competitive playing field, distorts infrastructure investment decisions, and deters broadband build-out."); Statement of Commissioner Capps ("The disparities in pole attachment rates for different providers have also been a source of confusion and litigation, and hopefully the clarity we add today will discourage such outcomes."); Statement of Commissioner McDowell ("[T]he Commission's use of its authority under Section 224 of the Act to adopt a new telecommunications pole rental rate formula - generally lowering the attachment rate to the current 'cable rate' - will more effectively encourage competition in broadband deployment."); Statement of Commissioner Clyburn ("[B]y addressing the disparate pole rental rates paid by service providers, we are establishing a more evenhanded opportunity for providers to compete with one another based on their offerings and prices.").

changes to the rules are needed to effectively carry out this policy. Grant of this petition would benefit all broadband providers by eliminating the threat of higher rates for cable operators and enabling other telecommunications carriers to attach at lower rates than they may be paying today.

The cable industry has always been a leader in broadband deployment and the Commission's pole attachment policies have been a significant factor in that success. The upcoming reclassification of broadband needlessly jeopardizes this successful policy and potentially hinders additional deployment, particularly in rural areas. Based on your unqualified assurance that reclassification will not result in any new fees, there simply is no excuse for the Commission not to fix this problem before a reclassification decision takes effect.

Respectfully submitted,



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