

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

In the Matter of	)	
	)	
Implementation of Section 224 of the Act	)	WC Docket No. 07-245
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

**COMMENTS OF COMCAST CORPORATION**

Comcast Corporation (“Comcast”) hereby provides comments in response to the Commission’s May 6, 2015 request<sup>1</sup> for parties to refresh the record with respect to the pending Petition for Reconsideration or Clarification filed by the National Cable & Telecommunications Association, COMPTTEL and tw telecom inc.<sup>2</sup> (“NCTA/COMPTTEL Petition”) in the above captioned proceeding.<sup>3</sup>

**I. INTRODUCTION**

In its 2011 comments supporting the NCTA/COMPTTEL Petition, Comcast strongly endorsed the Commission’s efforts in its *2011 Pole Attachment Order* to reduce unnecessary obstacles to broadband deployment, including revisions to the telecommunications pole rate

---

<sup>1</sup> Public Notice, Parties Asked to Refresh Record Regarding Petition to Reconsider Cost Allocators Used to Calculate the Telecom Rate For Pole Attachments, WC Docket No. 97-245 and GN Docket No. 09-51, DA 15-542 (released May 6, 2015). The Public Notice appeared in the Federal Register on May 14, 2015 and established a June 4, 2015 deadline for initial comments.

<sup>2</sup> Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, COMPTTEL and tw telecom inc. (WC Docket No. 07-245), filed June 8, 2011, <http://apps.fcc.gov/ecfs/document/view?id=7021686399>.

<sup>3</sup> *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) (“*2011 Pole Attachment Order*”), *aff’d*, *American Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013).

formula intended to establish parity with the cable rate formula.<sup>4</sup> Comcast further noted that, for the Commission’s objectives to be fully achieved, the telecom pole rate formula (“telecom formula”) would need to be clarified as requested by the NCTA/COMPTEL Petition in order to avoid the materially higher pole attachment rates that will result when the FCC’s attaching entity presumptions are rebutted by pole owners.<sup>5</sup> Subsequent to the NCTA/COMPTEL Petition filing, the D.C. Circuit unanimously upheld the *2011 Pole Attachment Order* and affirmed the Commission’s broad authority to interpret the statutory term “cost” in the telecom formula – providing the Commission great latitude in eliminating artificial, non-cost based differences in the pole rates.<sup>6</sup> Accordingly, the relief sought by the NCTA/COMPTEL Petition falls squarely within the Commission’s Section 224 authority.<sup>7</sup>

In 2011, the discrepancy in pole rates addressed by the NCTA/COMPTEL Petition disadvantaged both telecommunications providers and those cable operators providing telecommunications services. The pole rate differential encouraged disputes over the appropriate number of attaching entities and, in many cases, the regulatory classification of services. As a result, in separate petitions filed seven years apart, a number of pole owners asked the Commission to declare VoIP service to be a telecommunications service – thereby triggering the

---

<sup>4</sup> Comcast Response to Petitions for Reconsideration, WC Docket No. 07-245 and GN Docket No. 09-51 (August 10, 2011) (“Comcast 2011 Comments”).

<sup>5</sup> For example, if a utility established that it had three attachers per pole in an urbanized area instead of the FCC’s presumed five, the resulting telecom pole rate would be 50 percent higher than the cable rate. *See* Comcast 2011 Comments at 4. The FCC’s rules presume five attaching entities in urbanized areas and three in non-urbanized areas. 47 C.F.R. § 1.1417(c).

<sup>6</sup> *American Elec. Power Serv. Corp.*, 708 F.3d at 190 (“Because the FCC’s methodology [eliminating the differences between the cable and telecom rates] is consistent with the unspecified cost terms contained in § 224(e), and the FCC’s justifications are reasonable, the revision warrants judicial deference.”).

<sup>7</sup> The NCTA/COMPTEL Petition requests that the FCC amend or clarify the telecom rate formula to provide cost adjustments “scaled to other entity counts” in addition to the FCC’s presumptions, in order to achieve the FCC’s objective to establish uniform rates near the cable rate. Alternatively, the NCTA/COMPTEL Petition requests that the FCC “establish the maximum just and reasonable rate as the higher of ... the cable rate ... or the ‘lower bound’ telecom rate obtained by excluding capital costs from the definition of ‘cost of providing space’ in the existing telecom rate formula ....” *Id.* at 6-7.

higher telecom pole rate for most cable attachments.<sup>8</sup> The FCC, however, chose not to act on those pole-owner petitions, and instead chose to promote cable industry broadband and VoIP deployment by maintaining the cable pole rate for the vast majority of cable attachments.<sup>9</sup>

Unfortunately, however, the FCC's Title II reclassification of broadband Internet access service ("BIAS") (if it becomes effective as scheduled on June 12, 2015) will *subject virtually all cable television attachments to the telecom formula*. It is now urgent that the Commission act promptly to grant the requested clarification or rule amendment to ensure that pole rates paid by telecom attachers are as close as possible to the cable pole rate formula – as intended by the *2011 Pole Attachment Order*, as recommended in the National Broadband Plan, and as contemplated by the *Open Internet Order*.<sup>10</sup>

## **II. PROMPT CLARIFICATION OF THE TELECOM FORMULA IS NOW CRITICAL TO ADVANCE NATIONAL BROADBAND OBJECTIVES**

### **A. Pole Owners Are Poised to Exploit the Telecom Formula Loophole to Increase Cable Operator Pole Rates.**

The *2011 Pole Attachment Order* generally lowered the telecom formula rate to the cable formula rate based on a record demonstrating that “pole rental rates play a significant role in the

---

<sup>8</sup> See *Wireline Competition Bureau Seeks Comment on Petition of Union Electric Company d/b/a Ameren Missouri for Declaratory Ruling Concerning VoIP Service Offered Using Cable One's Pole Attachments*, WC Docket No. 13-307, Public Notice, DA 13-2453 (rel. Dec. 20, 2013); *Pleading Cycle Established For Comments On Petition For Declaratory Ruling of American Electric Power Service Corp., et al. Regarding the Rate For Cable System Pole Attachments Used To Provide Voice Over Internet Protocol Services*, WC Docket No. 09-154, Public Notice, DA 09-1879 (rel. Aug. 25, 2009).

<sup>9</sup> For example, NCTA reports that annual cable industry broadband investment increased from approximately \$12.9 billion in 2010 to approximately \$13.8 billion in 2013. See *Setting the Record Straight on Broadband Investment*, NCTA website, May 13, 2014, available at <https://www.ncta.com/platform/public-policy/setting-the-record-straight-on-broadband-investment/> (data based on SNL Kagan estimates).

<sup>10</sup> Omnibus Broadband Initiative, Federal Communications Commission, Connecting America: The National Broadband Plan (2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“National Broadband Plan”) (recommending that FCC establish uniform pole attachment rates that are as low and close to uniform as possible); *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC No. 15-24 (released Mar. 12, 2015) (“*Open Internet Order*”).

deployment and availability of voice, video and data networks.”<sup>11</sup> The Commission explained that “[r]educing input costs improves the business case for broadband deployment at the margin, expanding opportunities for investment. The effect of a reduction in one type of input cost becomes even more significant as the Commission undertakes additional steps to accelerate broadband deployment.”<sup>12</sup> While the benefits of the revised telecom formula have been substantial,<sup>13</sup> the job is not complete and the Commission’s reclassification of BIAS as a telecommunications service threatens to dramatically increase input costs and to undermine accelerated broadband deployment efforts.

The NCTA estimates that the Title II reclassification could increase aggregate cable industry pole attachment costs by over \$200 million *annually*, if pole owners rebut the attaching entity presumptions.<sup>14</sup> The Commission acknowledged this concern in its *Open Internet Order* and attempted to deter such pole rate increases arising from the Title II reclassification, stating that the Commission is “committed to avoiding an outcome in which entities misinterpret today’s decision as an excuse to increase pole attachment rates of cable operators providing [BIAS].”<sup>15</sup> The Commission explains that it is not its “intent to see any increase in the rates for pole

---

<sup>11</sup> *2011 Pole Attachment Order*, 26 FCC Rcd 5240, ¶ 172. In lowering pole attachment rates, the FCC recognized that for decades the cable formula has benefited consumers by spurring “investment by cable operators in networks capable of delivering advanced communications services and the growth of facilities-based competition, both to the benefit of consumers” at rates consistent with utility pole investment and utility ratepayer interests. *Id.* ¶ 176.

<sup>12</sup> *Id.* ¶ 179. The National Broadband Plan similarly noted that “[t]he cost of deploying a broadband network depends significantly on the costs that service providers incur to access conduits, ducts, poles and rights-of-way on public and private lands. Collectively, the expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment.” National Broadband Plan at 109.

<sup>13</sup> USTelecom estimates that annual capital investment for broadband has increased from \$68 to \$75 billion – over 10 percent – between 2010 and 2013. See <http://www.ustelecom.org/broadband-industry-stats/investment/historical-broadband-provider-capex>.

<sup>14</sup> See, e.g., Letter from Steven F. Morris, Vice President and Associate General Counsel, National Cable & Telecommunications Association, GN Docket No. 14-28, WC Docket No. 07-245, at 2 (Jan. 22, 2015), available at <http://go.usa.gov/3cppB>. The NCTA estimate is based on claims by some pole owners that they have only 2.6 attaching entities rather than the 5 attaching entities presumed by the FCC in urbanized areas. The NCTA/COMPTEL Petition noted that comments filed with the FCC by pole owners have reported attaching entity numbers ranging from 2.28 to 3.08. NCTA/COMPTEL Petition at n.20.

<sup>15</sup> *Open Internet Order*, FCC No. 15-24, ¶ 482.

attachments paid by cable operators that also provide [BIAS], and we caution utilities against relying on this decision to that end.”<sup>16</sup> Further, the Commission states that “we would consider such outcomes unacceptable as a policy matter.”<sup>17</sup> Finally, The Commission resolves to avoid undermining the gains achieved by the *2011 Pole Attachment Order* and states that the Commission “will be monitoring marketplace developments following this Order and can and will promptly take further action in that regard if warranted.”<sup>18</sup>

While the Commission’s efforts to rein in pole attachment rate increases triggered by the *Open Internet Order*’s reclassification of BIAS are appreciated, the reality is that such pole rate increases are coming. The amount of money at stake is significant, and it is only a matter of time before pole owners begin testing the Commission and the current loophole in the telecom formula to facilitate such increases. Indeed, attorneys representing the utility pole owners confirmed the inevitability of rate increases shortly after the *Open Internet Order* was released:

Neither the Commission’s ‘intent’ that rates not go up nor its ‘caution’ to utilities not to raise them have any binding effect on pole owners. Once the reclassification takes effect, the Commission’s rules permit rate increases notwithstanding the language in the order and there is every reason to think those companies will take advantage of those rules.”<sup>19</sup>

Consistent with this warning from the pole owners, Comcast recently received notice from American Electric Power (“AEP”) of a new and higher telecom pole rate. Specifically, AEP alleges that it has rebutted the Commission’s attaching party presumption and established an

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* The *Open Internet Order* specifically states that “no utility could impose *any* increase retroactively.” *Id.* ¶ 484 (emphasis supplied).

<sup>18</sup> *Id.* ¶ 483. *See also id.* ¶ 478 (“The Commission has recognized repeatedly the importance of pole attachments to the deployment of communications networks, and we thus conclude that applying these provisions will help ensure just and reasonable rates for broadband Internet access service by continuing pole access and thereby limiting the input costs that broadband providers otherwise would need to incur.”).

<sup>19</sup> *Net Neutrality Order Leads to Uncertainty Over Cable Pole Attachment Rates*, Communications Daily, Apr. 17, 2015, at 6-9.

annual telecom pole rate of \$21.65 – a 72 percent increase over the cable pole rate of \$12.54.<sup>20</sup>

Clearly, the cautions issued in the *Open Internet Order* are not going to stop the substantial pole rate increases that are on the way – only a timely grant of the NCTA/COMPTEL Petition will achieve that result.<sup>21</sup>

**B. Failure to Clarify the Telecom Formula Will Trigger Costly Disputes and Harm Broadband Deployment.**

One of the principal objectives of the Commission’s *2011 Pole Attachment Order* was to establish a low and more uniform pole rate in order “to reduce disputes and costly litigation,” which creates uncertainty and drives up attachment costs.<sup>22</sup> Unfortunately, the current telecom formula is likely to produce an ever-increasing number of such disputes.

The reclassification of BIAS as a telecommunications service has provided pole owners with a compelling incentive to rebut the FCC’s attaching entity presumptions in order to impose a higher telecommunications pole rate on Comcast and other cable operators. Absent grant of the NCTA/COMPTEL Petition, a costly and time consuming process will ensue whereby utilities will seek to rebut the Commission’s attaching entity presumptions, and cable operator attachers will then seek to refute the utilities’ attachment studies. Pole owners – and only pole owners – have access to internal records tracking the number of attaching entities. This data is not subject to any sort of public disclosure and is not included in any regulatory filings, such as FERC Form 1 annual reports.

---

<sup>20</sup> See attached May 1, 2015 letter from American Electric Power.

<sup>21</sup> In its May 8, 2015 Order Denying Stay Petitions, the Commission reiterated its resolve to eliminate the unjustified differential between the cable and telecom formulas to prevent pole rate increases triggered by broadband reclassification “to the extent that any situations remain in which the telecom and cable rate formulas for pole attachments produce different results, the Commission is taking its statements in the *Order* seriously.” Order Denying Stay Petitions, GN Docket No. 14-28, DA 15-563, ¶ 41 (released May 8, 2015).

<sup>22</sup> *2011 Pole Attachment Order*, 26 FCC Rcd 5240, ¶¶ 134, 174. See also *id.* ¶ 5 (explaining that the pole attachment rate structure is “so arcane that there has been near-constant litigation about the regulatory classification of pole attachers ...”).

Given these circumstances, pole owners have both the incentive and the ability to understate their average number of attaching entities. Cable operators, on the other hand, must rely on either a “complete inspection” of pole plant or a “statistically sound survey.”<sup>23</sup> As a result, it will prove far more difficult – and more costly – for a cable operator to challenge the pole owner’s assertions as to the number of attaching entities. Comcast will be forced to deploy system technicians and other system staff to perform detailed pole attachment inspections to rebut whatever studies or evidence the pole owners have presented.

This will be an expensive, lengthy and contentious process that will trigger ongoing disputes between cable operators and pole owners – all clearly to the detriment of broadband deployment. Moreover, while any given utility will address its *own* attaching entity statistics, cable operators will be faced with responding to *all* such utilities’ rebuttal efforts – a massive and costly burden. Many of these disputes will likely end up before the Commission – unnecessarily consuming valuable Commission resources. All such disputes, and the associated expense, delay, and legal uncertainty can be avoided by granting the NCTA/COMPTEL Petition.

---

<sup>23</sup> 47 C.F.R. § 1.1417(d)(3).

For the reasons stated above, Comcast urges the Commission to clarify the *2011 Pole Attachment Order*'s telecom formula as requested by the NCTA/COMPTEL Petition.

Kathryn A. Zachem  
Lynn Charytan  
Mary P. McManus  
COMCAST CORPORATION  
300 New Jersey Avenue, NW  
Suite 700  
Washington, DC 20001-2030  
(202) 379-7134

Brian A. Rankin  
Jeffrey E. Smith  
Andrew Fisher  
Tracy Haslett  
COMCAST CABLE  
COMMUNICATIONS, LLC  
One Comcast Center  
1701 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2838

*s/ Wes Heppler*

---

Wes Heppler  
James F. Ireland  
DAVIS WRIGHT TREMAINE LLP  
1919 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006-3401  
Phone: (202) 973-4200

*Counsel for Comcast Corporation*

June 4, 2015



*AEP: America's Energy Partner*™

William Smith, Joint Use Administrator  
P.O. Box 1986  
Charleston, WV 25327  
wsmith@aep.com

May 1, 2015

Mr. Richard Moslen  
Comcast  
908 National Road  
Bridgeport, OH 43912

RE: Pole Attachment Rental Rate Notice (WPCO)

Dear Mr. Moslen:

Please be advised that the following revised rates apply for pole attachments to Wheeling Power Company poles.

The rate for attachments classified as carrying Cable TV service as defined by 47 U.S.C. 224(d) is \$12.54.

The rate for attachments classified as carrying Telecommunications service as defined by 47 U.S.C. 224(e) is \$21.65.

The revised fee set forth herein shall become effective July 1, 2015. The 47 U.S.C. 224(e) rate is based upon The Company's determination through field inventories that the Company averages 2.55 attaching parties per pole.

Sincerely,

*William C. Smith*

William C. Smith  
Joint Use – Charleston, WV  
304-746-2564