

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Implementation of Section 224 of the Act

A National Broadband Plan for Our Future

WC Docket No. 07-245

GN Docket No. 09-51

**COMMENTS OF VERIZON IN RESPONSE TO
THE COMMISSION'S REQUEST TO REFRESH THE RECORD**

I. INTRODUCTION

The Commission should grant the Petition for Reconsideration or Clarification filed by the National Cable and Telecommunications Association, COMPTTEL, and tw telecom inc. (collectively, "Petitioners")¹ and revise its pole attachment rules to specify the cost allocators that apply in areas where the average number of attaching entities is different from the Commission's rebuttable presumptions. This rule change would prevent power companies from avoiding the *Pole Attachment Order's* rate reductions² and level the playing field by removing unwarranted rate disparities.

The *Pole Attachment Order* included cost allocators (66 percent for urban areas and 44 percent for non-urban areas) in the new telecom formula "to allow the pole owner to charge a monthly pole rental rate that reflects some contribution to capital costs" but "do[es] not permit

¹ Petition for Reconsideration or Clarification of the National Cable and Telecommunications Association, COMPTTEL, and tw telecom inc. (WC Docket 07-245, GN Docket No. 09-51) (June 8, 2011) ("Petition").

² See *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), *aff'd Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013) ("*Pole Attachment Order*").

utilities to recover 100 percent of apportioned, fully-allocated costs.”³ The Commission found that “the specific percentages we select provide a reduction in the telecom rate, and will, in general, approximate the cable rate, advancing the Commission policies identified above.”⁴ But rather than following the intent of this rule change, power companies have paired the cost allocators in the new telecom formula with significantly lower numbers of average attaching entities than reflected in the Commission presumptions that were used to develop the cost allocators.⁵ These mixed inputs inflate the resulting new telecom rate and take it out of parity with the cable rate.

To remove this disparity, the Commission should adopt the Petitioners’ proposal to add cost allocators for scenarios that do not match the Commission’s rebuttable presumptions. The Petitioners propose the following cost allocators: 66 percent when the average number of attaching entities is five; 56 percent when the average is four; 44 percent when the average is three; 31 percent when the average is two; and an appropriate intermediary cost allocator when the average is not a whole number.⁶ Under this proposal, the cost allocators would apply regardless of whether an area is urban or non-urban. Using these cost allocators would promote broadband deployment by ensuring that pole attachment rates remain low and uniform in areas where the utility establishes that the actual average number of attaching entities is different from the Commission’s rebuttable presumptions.⁷ The added specificity in the Commission’s new

³ *Id.* at 5304 (¶ 149).

⁴ *Id.* at 5304-05 (¶ 149).

⁵ *See* 47 C.F.R. § 1.1417(c).

⁶ Percentages are rounded to the nearest whole number. For complete proposal, *see* Petition, Attachment B.

⁷ *See, e.g., Pole Attachment Order*, 26 FCC Rcd at 5316 (¶ 172) (recognizing that low, uniform rental rates promote broadband deployment).

telecom rate formula will facilitate rate negotiations, reduce the need for Commission oversight, and ensure that the *Pole Attachment Order* achieves its crucial goal of removing market distortions that thwart network expansion and the deployment of broadband nationwide.

II. DISCUSSION

A. Specifying Additional Cost Allocators Will Promote Broadband Deployment By Eliminating Market Distortions.

As in 2011, the Commission’s top priority should be to “increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation” by “removing barriers to infrastructure investment.”⁸ To fulfill this priority, the Commission must ensure that its cost allocators achieve their intended goal.

In the 2011 *Pole Attachment Order*, the Commission added cost allocators—66 percent for urban areas and 44 percent for non-urban areas—to the telecom formula to create rate parity among broadband providers. The Commission designed the cost allocators to “minimize the difference in rental rates paid for attachments that are used to provide voice, data, and video services.”⁹ The Commission intended that—when paired with the rebuttable presumptions that the average number of attaching entities is five in urban areas and three in non-urban areas—the cost allocators would produce a new telecom rate that “approximate[s] the cable rate.”¹⁰ The previous telecom formula recovered “approximately 11.2% of the relevant ‘cost’ of a pole in urbanized service areas and about 16.9% in non-urban areas,” while the cable formula recovered approximately 7.4%.¹¹ The Commission expected that the new cost allocators would reduce the

⁸ *Id.* at 5241 (¶¶ 1, 2).

⁹ *Id.* at 5368-69 (¶ 47).

¹⁰ *Id.* at 5305 (¶ 149).

¹¹ *Id.* at 5297 (¶ 131 n.399), 5305 (¶ 150 n.453).

telecom rate so that it also recovered approximately 7.4% of the relevant costs.¹² The D.C. Circuit affirmed the Commission’s addition of cost allocators to produce rates that are “substantially equivalent to its already adopted cable rates.”¹³ The Court affirmed as reasonable the Commission’s justification that “the revised telecom rate would ‘significantly reduce the marketplace distortions and barriers to the availability of new broadband facilities and services that arose from disparate rates.’”¹⁴

But, as some parties predicted, power companies have instead deployed the cost allocators to *create* artificial rate disparities that undermine the Commission’s broadband deployment goals. For example, applying the 66-percent urban cost allocator together with 2.6 average attaching entities—instead of the rebuttable presumption of 5 average attaching entities for urban areas—results in a new telecom rate that is 70 percent higher than the cable rate.¹⁵ The Petition shows that the underlying rate spread can be as high as six dollars—a significant disparity given that “a \$3 difference between the cable rate and the present telecom rate could amount to approximately \$90 million to \$120 million per year, which could ultimately affect subscribers and future infrastructure investment, including broadband deployment.”¹⁶

Verizon has encountered the rate disparities predicted. During the past several years, Verizon has confronted efforts by power companies to use the 66-percent cost allocator for urban areas with average attaching entity numbers lower than 3, including the 2.6 number used in the Petitioners’ illustration. Verizon’s experience is not unique. Power companies have defended

¹² *Id.*

¹³ *Am. Elec. Power*, 708 F.3d at 188 (quoted text), 190 (concluding that “the Commission’s justifications are reasonable”).

¹⁴ *Id.* at 189.

¹⁵ Petition, Attachment A.

¹⁶ *Pole Attachment Order*, 26 FCC Rcd at 5318 (¶ 175).

pole attachment complaints by pairing the 66-percent cost allocator with average attaching entity numbers of 2.4, 2.5, and 2.6.¹⁷

The Commission can eliminate the resulting rate disparities by revising its pole attachment rules to identify specific cost allocators that apply in areas where the utility demonstrates that the actual average number of attaching entities is different from the Commission’s rebuttable presumptions. Revising the cost allocators as requested by the Petitioners will promote broadband deployment by preventing artificially increased rates that “distort infrastructure investment decisions and in turn could negatively affect the availability of advanced services and broadband.”¹⁸

B. Specifying The Proper Cost Allocators Will Facilitate Negotiations And Reduce The Need For Commission Oversight.

By specifying the cost allocators in relation to the number of attaching entities, the Commission can also eliminate a significant point of dispute in ongoing rate negotiations so that parties can focus their time and resources on deploying broadband rather than on contentious negotiations and pole attachment complaints. A clearer pole attachment rate formula will

¹⁷ See Response Ex. 7 ¶¶ 16-18, 20, 45, 46, *Commonwealth Tel. Co. v. UGI Utilities – Elec. Div.*, Docket No. 14-217, File No. EB-14-MD-007 (Aug. 25, 2014) (2.5); Response Ex. 2 ¶ 7 and App. C, p. 1, line 5, *Frontier Commc’ns of the Carolinas LLC v. Duke Energy Progress, Inc.*, Docket No. 14-213, File No. EB-13-MD-007 (Jan. 22, 2014) (2.4); Response Attachment A ¶¶ 6, 7, 9, *Frontier W.V. v. Appalachian Power Co.*, File No. EB-12-MD-004 (Aug. 17, 2012) (2.57 and 2.58).

¹⁸ See *Pole Attachment Order*, 26 FCC Rcd at 5243 (¶ 6); see also *Connecting America: The National Broadband Plan*, at 110 (2010) (“Applying different rates based on whether the attacher is classified as a ‘cable’ or a ‘telecommunications’ company distorts attachers’ deployment decisions. . . . This uncertainty may be deterring broadband providers that pay lower pole rates from extending their networks or adding capabilities . . .”).

facilitate negotiations between parties and reduce the number of disputes that the Commission must hear.¹⁹

The ambiguity over the proper use of the Commission’s cost allocators has slowed and thwarted Verizon’s negotiations, as parties have disputed the proper cost allocator and contested the accuracy of a pole survey or sampling methodology. Other companies have faced similar roadblocks in their negotiations. Questions about the proper cost allocator have been raised in at least half of the complaints filed by telecommunications providers seeking just and reasonable rental rates under the *Pole Attachment Order*.²⁰

The Commission can help resolve existing disputes and reduce the number of future disputes by adopting cost allocators that ensure rate parity and eliminate the ambiguity that exists when the actual average number of attachers is shown to be different from the Commission’s presumptions that formed the basis for setting the cost allocators in the first place. Adopting cost allocators that ensure rate parity will “reduce disputes and costly litigation,” “[n]arrow[] the range of potential prices attachers face,”²¹ and reduce and streamline Commission oversight.²²

¹⁹ See, e.g., *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, 6787 (¶ 16) (1998) (“1998 Implementation Order”) (subsequent history omitted) (“An uncomplicated complaint process and a clear formula for rate determination are essential to promote the use of negotiations for pole attachment rates, terms, and conditions”).

²⁰ See Reply at 36-40, *Commonwealth Tel. Co. v. UGI Utilities – Elec. Div.*, Docket No. 14-217, File No. EB-14-MD-007 (Sept. 15, 2014); Reply at 50, *Frontier Commc’ns of the Carolinas LLC v. Duke Energy Carolinas, LLC*, Docket No. 14-214, File No. EB-14-MD-001 (Mar. 18, 2014); Reply at 31-33, *Frontier Commc’ns of the Carolinas LLC v. Duke Energy Progress*, Docket No. 14-213, File No. EB-13-MD-007 (Feb. 11, 2014); Response ¶ 31 n.31 and Attachment A ¶¶ 6, 7, 9, *Frontier W.V. Inc. v. Appalachian Power Co.*, File No. EB-12-MD-004 (Aug. 17, 2012).

²¹ *Pole Attachment Order*, 26 FCC Rcd at 5317 (¶ 174).

²² See, e.g., *1998 Implementation Order*, 13 FCC Rcd at 6823 (¶ 102) (“[A] clear formula for the Commission’s rate determination . . . adds certainty and clarity to negotiations as well as assists the Commission when it addresses complaints.”).

III. CONCLUSION

The Commission should continue the reform that it began with its 2011 *Pole Attachment Order* by adopting the rule revisions proposed by the Petitioners to ensure rate parity based on the presumed or actual number of attaching entities. The result will continue to allow pole owners to rebut the presumptive number of attaching entities where appropriate,²³ still provide pole owners a fully compensatory rate,²⁴ reduce disputes, and effectuate the Commission's important broadband deployment goals by ensuring that low, uniform attachment rates for broadband providers apply nationwide.

Respectfully submitted,



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²³ See 47 C.F.R. § 1.1417(d).

²⁴ See *Pole Attachment Order*, 26 FCC Rcd at 5299 (¶ 137), 5303-06 (¶¶ 146-152), 5321-27 (¶¶ 182-198).