

**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 THE UTILITIES TELECOM COUNCIL

The Utilities Telecom Council (“UTC”) hereby provides the following comments in response to the Commission’s Public Notice, seeking to refresh the record regarding a petition for reconsideration or clarification filed by the National Cable and Telecommunications Association (NCTA), COMPTTEL, and tw telecom inc. (Petitioners) on June 8, 2011 in the above-referenced proceedings.¹ UTC submits that there is no need to refresh the record at this time because not much has changed since 2011.² Unfortunately, broadband deployment has not accelerated, even though the rate for pole attachments by telecommunications carriers was reduced.³ Rates for broadband services have steadily increased and the

¹ “Parties Asked to Refresh Record Regarding Petition to Reconsider Cost Allocators Used to Calculate the Telecom Rate for Pole Attachments,” Public Notice, DA 15-542 (rel. May 6, 2015).

² UTC and the Edison Electric Institute jointly filed an Opposition to the petition in 2011. UTC submits that the same legal and policy arguments that were made in the Opposition are just as applicable today as they were in 2011. Therefore, UTC incorporates by reference the arguments that it made in the Opposition. *See* Opposition of the Edison Electric Institute and the Utilities Telecom Council to Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, COMPTTEL and tw telecom inc., WC Docket No. 07-245, GN Docket No. 09-51 (filed Aug. 10, 2011); Reply of the Edison Electric Institute and the Utilities Telecom Council WC Docket No. 07-245, GN Docket No. 09-51 at 24-25 (filed Aug. 22, 2011).

³ In the last three FCC Broadband Progress Reports, the Commission has found that “advanced telecommunications capability” was not being deployed to all Americans in a reasonable and timely fashion. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Basis, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, GN Docket No. 11-121, 27 FCC Rcd. 10342 (2012)(hereinafter, “2012 Eighth Broadband Progress Report”); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8009, para. 1 (2011) (hereinafter, “2011 Seventh Broadband Progress Report”); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, Sixth Broadband Progress Report, 25 FCC Rcd 9556, 9558, para. 2 (2010) (hereinafter, “2010 Sixth Broadband Progress Report”).

cost savings from reduced telecommunications attachment rates were never passed onto consumers.⁴ The industry has consolidated and competition has decreased.⁵ All of the promised benefits of reduced rates for pole attachments have proven empty. Now, the same industry that promised those benefits is claiming that if the Commission doesn't further revise the telecom rate formula that utilities will raise their rates and providers won't be incented to deploy broadband.

The Commission is justifiably skeptical that the sky is falling. In its *Open Internet Order*, the Commission declined to forbear from Section 224, despite arguments from cable and other broadband providers, who argued that doing so was necessary to prevent their pole attachment rates from increasing as a result of the Commission's classification of broadband as a telecommunications service, subject to Title II regulation.⁶ The Commission questioned whether forbearance from Section 224 was necessary, appropriate or even beneficial in the final analysis.⁷ Further, the Commission warned that it would be "monitoring marketplace developments following this Order and can and will promptly take further action in that regard if warranted."⁸

UTC agrees with the approach that the Commission took in the *Open Internet Order*. There is no

⁴ Claire Atkinson, "Cable Companies Hike Broadband Prices While Losing Subscribers", New York Post (Nov. 14, 2014), visited at <http://nypost.com/2014/11/07/cable-companies-hike-broadband-prices-while-losing-subscribers/>. See also "The Cost of Connectivity 2014", New America Foundation, visited at <https://www.newamerica.org/oti/the-cost-of-connectivity-2014/> (comparing broadband speeds and prices with other countries and showing that "overall that ... in the past three years ... that the majority of U.S. cities surveyed lag behind their international peers, paying more money for slower Internet access.")

⁵ See e.g. Michael J. de la Merced, "Charter bids \$55 billion for Time Warner Cable", New York Times (May 25, 2015), visited at <http://www.dallasnews.com/business/headlines/20150525-charter-bids-55-billion-for-time-warner-cable1.ece>.

⁶ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, at ¶ 478 (rel. Mar. 12, 2015) (*Open Internet Order*).

⁷ *Id.* at n. 1447 (stating "We are not persuaded that those arguments justify a different outcome regarding section 224 and our associated rules, both for the reasons discussed previously, [citation omitted], and because commenters do not meaningfully explain how these arguments impact the section 10 analysis here, given that the need for regulated access to access to poles, ducts, conduit, and rights-of-way is not self-evidently linked to such marketplace considerations. Nor does the record reveal that concerns about adequate access to poles, ducts, conduit and rights-of-way are limited to broadband providers of a particular size, and we thus are not persuaded that these concerns would differ in the case of small broadband providers, for example.")

⁸ *Id.* at ¶483.

need to further revise the telecom rate formula. The Commission has made it abundantly clear that pole attachment rates shouldn't increase as a result of classifying broadband as a telecommunications service that is subject to Title II regulations. There is no evidence that rates have increased as a result of the FCC's 2011 Pole Attachment Order.⁹ Indeed, the Commission has repeatedly stated that the 2011 Pole Attachment Order *reduced* pole attachment rates. Moreover, if there were rate increases, the carriers would assuredly have complained by now. As such, the Commission should continue to monitor the marketplace to determine if any further action is needed.

This cuts both ways. That is, the Commission should also monitor the market to determine if there is any correlation between broadband deployment and lower pole attachment rates, and if the track record of the cable television companies, telecommunications carriers and the broadband providers continues to show that broadband is not being deployed on a reasonable and timely basis, the Commission should consider reducing these subsidies or eliminating them altogether. That would provide a *real* incentive for the incumbents to upgrade their networks and deploy into unserved areas. Continuing to reward them for failing to provide truly robust, affordable and reliable broadband to served and unserved Americans – and shifting costs onto electric ratepayers through pole attachments -- is not the answer. It's time for the Commission to require the cable television companies, as well as the incumbent carriers and the broadband providers to step up and quit asking for handouts.

In that regard, UTC would like to remind the Commission that it has been utilities that have stepped up and who have been providing truly affordable, robust and reliable broadband to unserved areas of the country – despite the best efforts of the incumbent cable television companies and telecommunications carriers to pass laws that would prevent them from doing so. This year has marked a turning point in that regard, when the Commission preempted state laws in Tennessee and North Carolina that restricted municipal utilities in Chattanooga, TN and Wilson, NC from providing broadband to

⁹ *Report and Order and Order on Reconsideration*, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC Rcd 5240 (2011) (Pole Attachments Order).

unserved areas of those states.¹⁰ The Chairman correctly observed that these state laws were passed at the behest of the incumbents to thwart competition and hold back the benefits of broadband access to consumers.¹¹ That kind of bold leadership is what is needed here; stop protecting the cable television and telecommunications incumbents and force them to compete without subsidies.

Utilities have literally begged the carriers and the cable companies to come provide broadband to customers in their service territory. Ultimately, these utilities gave up waiting and deployed broadband themselves. Today, some of these utilities have been awarded funding for rural broadband experiments to provide broadband services with minimum 25/5 mbps download and upload speeds.¹² Meanwhile, the Commission had to literally fight to get the incumbents to agree to provide 10/1 mbps speeds (instead of the minimum 4/1 mbps speeds they previously had to provide), and even then the incumbents wanted concessions in return from the Commission. The Commission should also be mindful that carriers are pulling out and discontinuing services in many of these areas, leaving utilities and residential customers scrambling to find alternative communications.¹³ Again, now is not the time to be rewarding the

¹⁰ *In the Matter of City of Wilson, North Carolina Petition for Preemption of North Carolina General Statute Sections 160A-340 et seq. and The Electric Power Board of Chattanooga, Tennessee Petition for Preemption of a Portion of Tennessee Code Annotated Section 7-52-601*, Memorandum Opinion and Order, WC Docket No. 14-115 and WC Docket No. 14-116 (rel. Mar. 12, 2015).

¹¹ See Statement of Tom Wheeler, Chairman, Federal Communications Commission, Before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives Hearing on "Oversight of the FCC" (May 20, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-327165A1.pdf (stating that "I understand that the experience with community broadband is mixed, that there have been both successes and failures. But if municipal governments want to pursue it, they shouldn't be inhibited by state laws that have been adopted at the behest of incumbent providers looking to limit competition. I believe the FCC has the power – and I intend to ask the Commission to exercise that power – to preempt state laws that ban competition from community broadband.")

¹² See, e.g., "Wireline Competition Bureau Announces Rural Broadband Experiments Support for 15 Provisionally Selected Bids is Ready to be Authorized and Releases Updated Frequently Asked Questions," Public Notice, WC Docket No. 10-90 and WC Docket No. 14-259 (rel. May 27, 2015)(listing two utilities, Northeast Rural Services, Inc. and Alamakee-Clayton Electric Cooperative, among those applicants whom the Commission is ready to authorize for rural broadband experiments support for their provisionally selected bids.)

¹³ See e.g. Letter from Julia A. Hilton, Corporate Counsel for Idaho Power to Marlene H. Dortch, Secretary, Federal Communications Commission in WC Docket No. 13-266 at 2-3 (filed May 7, 2014)(stating that Idaho Power "did not receive clear notice from Centurylink of the entire scope of the proposed discontinuance" and was told by representatives that the discontinuance would only affect one QCC Frame Relay circuit that crossed LATA boundaries in Oregon – when in fact the discontinuance would actually affect 90 Frame Relay circuits running across southern Idaho.) See also *Id.* at 3 (stating that Idaho Power would likely have taken different steps if it had

incumbents for not only failing to expand and improve broadband services, but actually discontinuing voice services to rural America.

CONCLUSION

UTC appreciates the opportunity to refresh the record in response to the Public Notice inviting comment regarding a petition for reconsideration or clarification filed by NCTA, COMPTEL, and tw telecom inc. in 2011. Unfortunately, the record reflects that reducing pole attachment rates has not promoted rural broadband access, nor has it reduced the rates consumers pay for broadband. Thus, further revising the telecom rate to protect the cable television companies that offer broadband is unlikely to make any difference whatsoever to average consumers. Therefore, the public interest would not be served by granting this petition.

Utilities are deploying broadband that far exceeds the service offerings of the carriers and the cable companies – in areas the carriers and the cable companies claimed they couldn’t economically serve (without subsidies). There is no evidence on the record that utilities have been raising rates through the telecom attachment rate formula. Therefore, no action by the Commission to further reduce pole attachment rates is appropriate at this time.

Respectfully submitted,

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not been informed by Centurylink that the October 23, 2014, notice was specifically limited to one Frame Relay circuit.) Idaho Power faced \$3.1 million in engineering, design, materials, and construction costs to implement the substitute options that were suggested by CenturyLink. *Id.* See Comments of Xcel Energy in WC Docket No. 13-266 at i (filed Dec. 2, 2013)(stating that “In this case, Xcel Energy estimates the transition will require important and time-consuming equipment modifications on Xcel Energy’s equipment and will take 3-4 years to implement.”). *See also e.g.* Letter from Public Knowledge, et al., to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, GN Docket No. 09-51, et al., at 2-3 (filed May 12, 2014)(attaching numerous complaints alleging that carriers were forcing consumers to buy more expensive services as they phased out legacy copper networks).