

**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

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to the Public Notice² seeking to refresh the record on a 2011 Petition for Reconsideration filed by the National Cable & Telecommunications Association (“Cable”), COMPTEL, and tw telecom, inc.³ In that petition, Cable, *et al.* sought reconsideration and/or clarification as to the pole attachment cost allocator that is applied under the Federal Communications Commission’s (“Commission”) pole attachment rules based on the number of attaching entities.

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”) providing service in 46 states. All of NTCA’s RLEC members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² *Parties Asked to Refresh the Record Regarding Petition to Reconsider Cost Allocators Used to Calculate the Telecom Rate for Pole Attachments*, Public Notice, WC Docket No. 07-245 and GN Docket No. 09-51, DA 15-542 (rel. May 6, 2015) (“Public Notice”).

³ Petition for Reconsideration or Clarification of the National Cable and Telecommunications Association, COMPTEL, and tw telecom inc., WC Docket No. 07-245, GN Docket No. 09-51 (filed June 8, 2011) (“Petition”).

The Commission should immediately grant the Petition to effectuate greater uniformity in the pole attachment rates applicable to telecommunications and cable providers and lower the pole attachment rates applicable to RLECs and other similarly situated providers. Disparate rates for competing providers introduces an unnecessary and artificial disadvantage into the broadband marketplace in contrast to the specific goals of the *2011 Pole Attachments Order*⁴ and broader national public policy objectives. Grant of the Petition would move the telecommunications provider rate closer to that of the cable provider rate, a rate which courts have found to be adequately compensatory, thereby lowering telecommunications providers' costs for broadband deployment and correcting a marketplace skewed purely as a result of regulation. As such, grant of the Petition is grounded in both law and sound public policy.

II. THE COMMISSION SHOULD GRANT THE PETITION TO EFFECTUATE GREATER UNIFORMITY IN POLE ATTACHMENT RATES

One of the Commission's stated goals in the *2011 Pole Attachments Order* was to reduce the disparity between the telecommunications provider and cable provider pole attachment rates.⁵ In adopting rules to effectuate that goal, the Commission included a rebuttable presumption as to the average number of attaching entities in urban and non-urban areas.⁶ As the Petition and

⁴ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) ("*2011 Pole Attachment Order*").

⁵ *Id.*, ¶ 3.

⁶ 47 C.F.R. § 1.1417(c). ("Utilities may use the following rebuttable presumptive averages when calculating the number of attaching entities with respect to the formula referenced in §1.1409(e)(2). For non-urbanized service areas (under 50,000 population), a presumptive average number of attaching entities of three (3). For urbanized service areas (50,000 or higher population), a presumptive average number of attaching entities of five (5).").

several commenters responding to the Public Notice have stated,⁷ however, this regime can lead to higher (sometimes substantially higher) pole attachment rates for telecommunications providers. In fact, the Petition noted that in this scenario the telecommunications rate could as a result be as much as 70 percent higher than the cable rate.⁸ This result is antithetical to the specific goal of the *2011 Pole Attachments Order* and our broader shared national broadband objectives.

NTCA urges the Commission to grant the Petition. As the Commission has repeatedly found, pole attachment fees can have a significant and meaningful effect on the cost of deploying broadband services.⁹ The Commission should at every turn ensure that pole attachment rates (like any other critical input to broadband deployment) are just and reasonable and do not impose unnecessary or excessive costs on broadband providers. For RLECs operating in rural areas of the nation with small subscriber bases and rugged terrain, pole attachment rates can have a very real effect on the costs of deployment. A number of RLECs operate in areas where the terrain necessitates a greater amount of aerial facilities, where trenching cable is prohibitively expensive or impractical, if not impossible.¹⁰

⁷ Comments of Verizon, WC Docket No. 07-245, GN Docket No. 09-51 (fil. Jun. 4, 2015), p. 2; Comments of COMPTEL and Level 3, WC Docket No. 07-245, GN Docket No. 09-51 (fil. Jun. 4, 2015), p. 2; Comments of PCIA – The Wireless Infrastructure Association and The HetNet Forum, WC Docket No. 07-245, GN Docket No. 09-51 (fil. Jun. 4, 2015), p. 3; Comments of ITTA, WC Docket No. 07-245, GN Docket No. 09-51 (fil. Jun. 4, 2015), p. 2.

⁸ Petition, pp. 5-6.

⁹ *2011 Pole Attachment Order*, ¶ 5; OMNIBUS BROADBAND INITIATIVE, FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 109 (2010).

¹⁰ ITTA, p. 3.

The Commission should reject the assertion that action on the Petition is unnecessary and will not promote broadband deployment because, as one party states, “[f]or all it appears, pole attachment rentals are less than 1% of a broadband provider’s operating expense, to say nothing of *total* expense (including capital expenditures).”¹¹ For one, this assertion is supported by offering little evidence other than data sample from three total providers out of the thousands across the nation. It also ignores the fact that even at one percent of total costs, a disparity in rates produces an arbitrary competitive disadvantage for one class of providers and the consumers they seek to serve. Moreover, as the *2011 Pole Attachments Order* stated, the cable rate has been found by the Supreme Court to be sufficiently compensatory for pole owners.¹² Thus, even assuming the one percent number is accurate (and that assumption should not be made absent much more evidence) the ultimate costs of this competitive disadvantage in terms of pole attachment rates should not fall on one class of providers and ultimately on consumers. Grant of the Petition and a move closer toward uniformity between the telecommunications provider and cable provider rate would therefore be grounded both in law and good public policy.

In terms of uniformity, the *2011 Pole Attachment Order* correctly found that “lowering the telecom rates will better enable providers to compete on a level playing field, will eliminate distortions in end-user choices between technologies, and lead to provider behavior being driven

¹¹ Comments of Ameren Corp. American Electric Power Service Corp. Duke Energy Corp. Oncor Electric Delivery Company LLC Southern Company Tampa Electric Company, WC Docket No. 07-245, GN Docket No. 09-51 (fil. Jun. 4, 2015), p. 5.

¹² *2011 Pole Attachment Order*, ¶ 129, citing *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987).

more by underlying economic costs than arbitrary price differentials.”¹³ Commission action is necessary to ensure that arbitrary price differentials do not stand as a barrier to broadband deployment.

NTCA therefore urges the Commission to grant the Petition and reduce the telecommunications provider pole attachment rate to the level of the cable rate. As the Petition notes, the Commission could amend the telecom rate formula to ensure that it is scaled to the actual number of attaching entities. In the alternative, the Commission could also adopt a proposal contained in the *2010 Pole Attachment FNPRM*¹⁴ to 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 in the existing telecom rate formula.¹⁵ In any case, the Commission’s pole attachment rules should be revised in a manner that would produce equitable telecommunications provider rates more in line with the cable rate and therefore satisfy the “just and reasonable” requirements of Section 224(b) of the Communications Act. This would eliminate artificial and anticompetitive market-skewing rate disparities for pole attachments, and thereby reduce barriers to broadband deployment.

¹³ *2011 Pole Attachment Order*, ¶ 147.

¹⁴ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-245, GN Docket No. 09-51, FCC 10-84 (rel. May 20, 2010).

¹⁵ *Id.* ¶¶ 128-141.

III. CONCLUSION

For the above-discussed reasons, NTCA urges the Commission to immediately grant the Petition.

Respectfully submitted,



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