

**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 THE UTILITIES TELECOM COUNCIL

The Utilities Telecom Council (“UTC”) hereby provides the following reply 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 reiterates that the Commission should defer from granting the petition at this time. There is no evidence that utilities have increased pole attachment rates, contrary to the claims by petitioners and their supporters. What is evident is that reduced pole attachment rates have failed to accelerate broadband deployment in rural unserved areas or to reduce broadband prices for consumers. As UTC explained in its comments, further reducing the telecom rate for pole attachments as petitioners request will only reward them with subsidies for empty promises of broadband access and lower prices that they failed to deliver.²

Comments on the record support UTC. Utility commenters agree with UTC that granting the petition will not spur broadband deployment.³ They estimate that pole attachments constitute as little as 1% or as much as 2% of the overall cost of deploying broadband, and in any event, the insignificant operating expense of pole attachment rentals does not drive broadband deployment; capital expenditures

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 Comments of Utilities Telecom Council in WC Docket No. 07-245 (filed June 4, 2015).

³ Comments of Ameren Corp., American Electric Power Service Corp., Duke Energy Corp., Oncor Electric Delivery Company LLC, Southern Company, and Tampa Electric Company, WC Docket No. 07-245 at 5 (filed June 4, 2015)(hereinafter “Comments of Utilities” of “Utility Comments”).

drive deployment.⁴ They also observe that “broadband deployment is best facilitated through a cooperative approach between pole owners and broadband providers;” and that “a further reduction of the telecom rate would run afoul of basic economic principles,” that increased demand for pole attachments is likely to result in increased rates.⁵ Finally, they agree with UTC that unfairly shifting the cost of pole attachments onto electric ratepayers is not the answer, because “[g]ranted the Petition would result in further revenue losses for electric utilities that have chosen to rebut the average number of attaching entities presumption.”⁶

Contrary to dire predictions by cable television operators of significant rate increases, the Commission is right to remain skeptical. These claims lack credibility. For example, Comcast’s comments erroneously claimed that “attorneys representing the utility pole owners confirmed the inevitability of rate increases shortly after the *Open Internet Order* was released,” and it quoted an utility attorney as having said that:

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.⁷

In reality, it was an attorney for the cable industry, not the utility industry, who was quoted in the article cited by Comcast.⁸ The Commission should ignore this and other fallacious claims by petitioners and comments in support of the petition.

⁴ *Id.* at 8.

⁵ *Id.*

⁶ See Comments of UTC at 3 (stating that “the Commission is justifiably skeptical that the sky is falling.”). See also Comments of Utilities at 9.

⁷ Comments of Comcast in WC Docket No. 07-245 at 5 (filed June 4, 2015), *citing Net Neutrality Order Leads to Uncertainty Over Cable Pole Attachment Rates*, Communications Daily, Apr. 17, 2015, at 6-9.

⁸ *Net Neutrality Order Leads to Uncertainty Over Cable Pole Attachment Rates*, Communications Daily, Apr. 17, 2015, at 6-9. (stating “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,” **the cable attorney told us**. “Once the reclassification takes effect,

In 2010, utilities correctly predicted that reducing pole attachment rates would not promote broadband access, and they suggested that the Commission could promote broadband access to rural areas by adopting presumptions for the number of attaching entities that were based on the actual average number of attaching entities, rather than the outdated presumptions that the Commission had adopted in 1998.⁹ Utilities suggested that the presumption should be the same for urban and non-urban areas – three attaching entities per pole.¹⁰ The practical effect of this would be that the rate for attachments would be the same, whether they were in urban or non-urban areas, and the carriers wouldn't have to pay more for pole attachments in rural areas. The Commission may want to consider this idea again, because clearly the current policies are only creating incentives for carriers to deploy in urbanized areas – to the extent that any correlation can be made between pole attachment rates and broadband deployment.

While the courts have upheld the Commission's discretion to define costs within the upper and lower bounds of Section 224(d), that doesn't mean that the Commission may do so arbitrarily. There must be some connection between the facts found and the decision made, and as UTC has shown, there is nothing that would show that a lower telecom rate has resulted in accelerated broadband access or lower broadband rates for consumers.¹¹ Instead of continuing to subsidize the cost of pole attachments in the hope of promoting broadband, the Commission should adopt a single rate based on the telecom rate, rather than the cable rate. As a policy

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.”)

⁹ See e.g. Comments of the Edison Electric Institute and the Utilities Telecom Council in WC Docket No. 07-245 (filed Aug. 16, 2010)(stating that “[w]hile the FCC’s mission may be to promote broadband deployment and competition, the rules proposed in the FNPRM will not achieve the stated goal.”)

¹⁰ *Id.* at 76-78.

¹¹ *Motor Vehicles Mfgs. Ass’n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (requiring agency to show a “rational connection between the facts found and the choice made”).

matter, that would be fairer to electric rate payers and better for broadband deployment, because it would support the underlying infrastructure that supports the broadband network infrastructure. As a legal matter, it would be more defensible, as well.

CONCLUSION

UTC reiterates that the Commission should defer from granting the petition at this time. There is no need for the Commission to further reduce the telecom rate, as petitioners request. There is no evidence that utilities have raised rates by using their own data of the actual number of attaching entities on poles when calculating the telecom rate. Moreover, UTC submits that there is no evidence that lower pole attachment rates have promoted broadband access or reduced broadband prices for consumers. As such, 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.

Respectfully submitted,

Utilities Telecom Council

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June 15, 2015