

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of )  
)  
Inquiry Concerning Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable ) CC Docket No. 98-146  
And Timely Fashion, and Possible Steps )  
To Accelerate Such Deployment Pursuant )  
To Section 706 of the Telecommunications )  
Act of 1996 )

**REPLY COMMENTS**

Pursuant to Section 1.415 of the Federal Communications Commission’s (“FCC’s”) Rules, the United Telecom Council (“UTC”)<sup>1</sup> hereby submits its reply comments on the *Second Notice of Inquiry*<sup>2</sup> in the above-referenced docket. In its reply comments, UTC encourages the FCC to pursue deregulatory policies that will promote broadband deployment “by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”<sup>3</sup>

**I. Introduction**

UTC is the national representative on communications matters for the nation’s electric, gas, and water utilities and natural gas pipelines. Approximately 1,000 such entities are members of UTC, ranging in size from large combination electric-gas-water

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<sup>1</sup> Formerly the “Utilities Telecommunications Council”.

<sup>2</sup> Inquiry Concerning 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, *Notice of Inquiry*, CC Docket No. 98-146, 65 Fed. Reg. 11059 (rel. Feb. 18, 2000)(“*Second Notice of Inquiry*”).

<sup>3</sup> The Telecommunications Act of 1996 (“1996 Act”), P.L. 104-104, § 706(b), Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157 (2000).

utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each.

## **II. Discussion**

In its comments, UTC identified three obstacles to broadband deployment by utilities and pipeline companies: state review of affiliate transactions; laws that prohibit municipalities and municipal utilities from providing telecommunications; and federal interference with negotiated access for pole attachments. In its reply comments, UTC adds a fourth suggestion for regulatory reform: flexible technical rules to promote the deployment of powerline telecommunications in rural areas.

### **A. State review of affiliate transactions is a barrier to the deployment of advanced telecommunications capability by utilities.**

UTC continues to encourage the FCC to suggest guidelines that states should follow when reviewing transactions between regulated utilities and unregulated affiliates. As indicated in its comments, states have adopted stringent restrictions on the transfer of assets that discourage utilities from providing telecommunications. Some states have implemented codes of conduct that not only restrict the transfer of assets, but the manner in which the assets are used in the future. Such stringent regulation is unwarranted against utilities that seek to provide telecommunications, because cross-subsidization and discrimination are not likely to occur in markets that are horizontally, rather than vertically, aligned. The FCC should, at a minimum, work with the state commissions, directly or through the National Association of Regulatory Utility Commissioners (“NARUC”), to promote the adoption of streamlined rational procedures for approving affiliate transactions.

**B. The Commission should preempt state laws that prohibit municipal utilities from providing telecommunications service.**

The problem of rural deployment of broadband services is being met by municipalities and municipal utilities that are providing affordable access to the communities that they serve. Yet, certain states have passed laws that prohibit such civic-mindedness. The FCC refused to preempt such a law in Texas, and has not acted on a three-year old petition to preempt a similar law in Missouri that is acting as a barrier to entry by municipal utilities.<sup>4</sup> In accordance with Congress's mandate, the FCC must take "immediate action" to preempt laws that prohibit municipalities and municipal utilities from providing telecommunications.<sup>5</sup>

**C. The Commission should encourage negotiated access to utility infrastructure for broadband deployment.**

Deployment of broadband facilities on utility infrastructure would also be accelerated if the FCC encouraged parties to negotiate access to pole attachments, rather than unilaterally modifying the agreements through the complaint process. Utilities report that attaching entities routinely "sign and sue", agreeing to the rates, terms and conditions for pole attachments until they can complain to the FCC. This standard practice undermines the negotiation process that Congress intended as the primary means of gaining access to poles, ducts, conduit and other rights-of-way.

As a result, regulation has displaced negotiation for pole attachments, thereby complicating the process and retarding broadband deployment on utility infrastructure. Thusfar, the FCC has done little to discourage the impression that it is a safe haven for

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<sup>4</sup> See *In the Matter of the Public Utility Commission of Texas et al.*, CCBPol 96-13; CCBPol 96-14; CCBPol 96-16; CCBPol 96-19, 13 FCC Rcd 3460, FCC 97-346 (1997), *aff'd City of Abilene v. FCC*, 164 F.3d 49 (1999) and see *In the Matter of The Missouri Municipal League, et al*, CC Docket No. 98-122.

cable operators and telecommunications carriers. Even in cases of unauthorized attachments, the FCC has entertained complaints, thereby precluding the utility company from seeking enforcement of the attachment agreement in a court of law.<sup>6</sup>

Likewise, the FCC's recent *Cost Component Report and Order* shortchanges utilities, discounting the conduit rate 50% for attachments that theoretically occupy only half a duct, even though NESC standards restrict the entire duct for communications, not electrical, cable.<sup>7</sup> Nor must attaching entities pay for adjacent ducts that are precluded from housing electrical cable due to the proximity of communications cable under the NESC.<sup>8</sup> Thus, even though Congress recognized that utilities could have legitimate safety/capacity concerns that would foreclose mandatory attachment to their property, these policies have been subverted by the FCC to shift costs away from attaching entities, and onto utility ratepayers, for the space that these carriers effectively occupy.<sup>9</sup>

In order to promote broadband deployment on utility infrastructure, the FCC must do more than pay lip service to “emphasize the importance of private negotiations and marketplace solutions in resolving conflicts between utility companies and various leasing entities.”<sup>10</sup> It should require parties to abide by the terms of their agreements, and

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<sup>5</sup> See The Telecommunications Act of 1996 (“1996 Act”), P.L. 104-104, § 706(b), Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157 (2000).

<sup>6</sup> *Mile Hi Cable Partners, et al. v. Public Service Company of Colorado*, *Memorandum Opinion & Order*, PA 98-003, FCC 99-25, 14 FCC Rcd 3244 (1999).

<sup>7</sup> In the Matter of Amendment of Rules and Policies Governing Pole Attachments, *Report and Order*, DC Docket 97-98, FCC 00-116 at ¶94 (released Apr. 3, 2000)(“*Cost Component Report and Order*”).

<sup>8</sup> *Id.*

<sup>9</sup> See 47 U.S.C. § 224(f)(2)(2000).

<sup>10</sup> See FCC Updates Pole Attachment Rules and Policies Clarifications to Improve Accuracy; Marketplace Negotiations Still Emphasized, *News Release* (released Apr. 3, 2000).

it should not expand the scope of pole attachments to an ever-increasing array of attachments and infrastructure. Therefore, UTC urges the FCC to refrain from requiring utilities to provide pole attachment access to building rooftops and riser conduit, and it urges the FCC to reconsider its decision to provide access to transmission facilities and for wireless attachments.<sup>11</sup>

**B. The FCC should adopt flexible technical and licensing requirements that will facilitate the deployment of powerline telecommunications in rural areas.**

Utilities are studying the application of powerline telecommunications (“PLT”) in the United States.<sup>12</sup> A project has been proposed for a complete system trial for a rural county within the Tennessee Valley Authority (“TVA”) service area.<sup>13</sup> UTC understands that research and development demonstrations have delivered full-duplex Internet protocol data at 2 Mbps with potential capacity to deliver between 200 and 700 Mbps of data on rural high voltage distribution circuits. The proponents propose that the trial would begin before the end of the year 2000 and would last 6-8 months at a total cost under \$200,000.

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<sup>11</sup> See Promotion of Competitive Networks in Local Telecommunications Markets, Notice of Proposed Rulemaking & Notice of Inquiry in WT Docket 99-217 & Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-147 (rel. July 7, 1999), available at 1999 WL 459319; See also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *Order on Reconsideration*, CC Docket No. 96-98; CC Docket No. 95-185, 14 FCC Rcd 18049 (1999). *But see* Comments of the Wireless Communications Association International in CC Docket No. 98-146 on the *Second Notice of Inquiry* at 31-36; and Comments of the Association for Local Telecommunications Services in CC Docket No. 98-146 on the *Second Notice of Inquiry* at 8-9.

<sup>12</sup> In Germany, VEBA AG recently announced that it would offer PLT on a retail basis by the end of the year 2000, delivering speeds of up to 2 Mbps. See “Technical Breakthrough in Powerline Communication,” [http://www.veba.de/www/ArtikelDisplay/en/news\\_media/5574705295/display?ARTIKELID=71&NOPN=1](http://www.veba.de/www/ArtikelDisplay/en/news_media/5574705295/display?ARTIKELID=71&NOPN=1) (visited, March 20, 2000).

<sup>13</sup> PowerCom, which is a privately held partnership based in Lincoln County, TN, has with the support of the Fayetteville Electric Service, submitted a proposal to the TVA requesting support for a complete system trial in Lincoln County, Tennessee, providing Internet access to up to 50 rural customers of Fayetteville Electric Service.

One of the reported problems is unintentionally radiated emissions in the 20 MHz to 150 MHz range in which the PLT signal is carried. Although transmit power levels would not exceed  $-40$  dBm/Hz and would remain in compliance with FCC Part 15 guidelines, the trial proponents believe that propagation of the signal could be extended significantly along the electric transmission system if the power were increased.<sup>14</sup> Because the probability of interference is greatly reduced in rural areas, UTC urges the FCC to relax its Part 15 rules for unintentional radiators designed to operate in rural environments in order to promote use of this new broadband media in the rural marketplace.

Alternatively or additionally, the FCC could permit the use of unassigned VHF broadcast channels 2 through 6 by PLT providers. These frequencies could be used in rural areas where the VHF channels are not assigned and not receivable, so as to permit utilities to increase the transmit power to extend the propagation of the PLT signal. This could allow the power density to exceed  $-40$  dBm/Hz for this frequency band without interfering and would avoid expensive repeaters, making PLT that much more of a cost-effective alternative for rural broadband capability.

## **CONCLUSION**

UTC urges the Commission to encourage broadband deployment by utility companies by recommending to the states guidelines for streamlined review of affiliate transactions by utility companies; by preempting state laws that prohibit municipal utilities from providing telecommunications services; by pursuing deregulatory policies

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<sup>14</sup> See 47 C.F.R. § 15.109 (1998).

with respect to pole attachments; and by promoting the deployment of PLT in the United States through the adoption of flexible technical requirements.

**WHEREFORE, THE PREMISES CONSIDERED,** UTC urges the Commission to act in conformity with the views expressed in its comments and reply comments in the instant proceeding.

Respectfully submitted,

**UNITED TELECOM COUNCIL**

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