

Pole Attachment Rates Are Unreasonably Discriminatory

RM-11293, May 25, 2007

CenturyTel Has Demonstrated That It Is Paying Higher Rates Than Competing Providers of Telecommunications Services

- CenturyTel pays one Alabama utility rates that are five times as high as the cable rate and nearly three times as high as the CLEC rate in the same territory
- Thirteen municipal electric cooperatives in Alabama recently demanded that CenturyTel's rates be increased from \$14-\$18 per pole to \$50-\$70
- The sharp increase in attachment rates demanded in Alabama exemplifies a recent trend by utilities to extract monopoly rents from providers of telecommunications services *who have no recourse to the FCC under current rules*

The Communications Act Vests the FCC With Jurisdiction Over Pole Attachment Rates

- Section 224(b)(1) of the Communications Act requires the Commission to regulate the rates, terms and conditions of pole attachments, to provide that they are just and reasonable, and to hear and resolve complaints
- Section 224(a)(4) defines "pole attachment" to include any attachment by a *provider of telecommunications services* to a utility's pole, duct, conduit or right-of-way; Section 224(b)(2) requires the FCC to prescribe rules to carry out these provisions
- The U.S. Supreme Court in *NCTA v. Gulf Power* affirmed the Commission's broad jurisdiction to set just and reasonable rates for pole attachments, and rejected arguments that Sections 224(d) and (e) limit this authority

The Commission Should Put an End To Unreasonable Rate Discrimination

- Section 1.1409(e)(2) of the rules provides a default rate formula only for attachments by *telecommunications carriers* (defined in Section 224(a)(5) to exclude ILECs)
- The Commission should clarify that as *providers of telecommunications services*, ILECs are entitled to just and reasonable pole attachment rates, and may invoke the default rate-setting formula set forth in Section 1.1409(e)(2)

FCC Complaint Procedures Should Ensure Equitable Treatment for All Service Providers

- Current FCC rules limit the Commission's ability to provide an appropriate remedy in response to ILEC complaints of unjust and unreasonable discrimination, by limiting standing to bring a complaint to *telecommunications carriers* (excluding ILECs)
- States are often unwilling to adjudicate such disputes, leaving ILECs without any recourse when utilities unreasonably raise rates and discriminate against ILECs

Pole Attachment Rates Are Unreasonably Discriminatory

RM-11293, May 25, 2007 (continued)

- The Commission should amend Rule 1.1404 so all *providers of telecommunications services* may bring complaints of unjust or unreasonable pole attachment rates

All Providers of Telecommunications Services Should Pay Comparable Rates for Attachments

- Cable system operators directly compete with telecommunications service providers in the offering of voice, video, Internet access, and other broadband services to the public, yet they are entitled to lower rates than providers of telecommunications services, under the Commission's dual default rate formulas; the Commission should consider whether such discriminatory treatment of entities offering comparable services violates Section 224(b)(1) of the Act
- Discriminatory treatment by municipally-owned and cooperative utilities providers may be preempted under Section 253 of the Act as unlawful "barriers to entry" for providers of telecommunications services