

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)	WC Docket No. 07-245
)	
Implementation of Section 224 of the Act;)	RM-11293
Amendment of the Commission’s Rules and)	
Policies Governing Pole Attachments)	RM-11303
)	

**REPLY COMMENTS OF SETH COOPER
DIRECTOR,
TELECOMMUNICATIONS & INFORMATION TECHNOLOGY TASK FORCE
AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC)**

Technological neutrality and low, cost-recovery rates are essential to a competitive marketplace and increased deployment of broadband services. The Commission should adopt a single, uniform pole attachment rate for both cable operators and telecommunications carriers. That rate should be limited to actual public rights-of-ways cost recovery. Moreover, the Commission’s existing, lower pole attachment rate for cable companies should be adequate, absent clear economic data suggesting otherwise. Consumer welfare is best furthered by a uniform, low rate that fosters more broadband service choices and lower service costs.

STATEMENT OF INTEREST

The American Legislative Exchange Council (ALEC) is the nation’s largest nonpartisan, individual membership organization of state legislators. ALEC’s mission is to promote the Jeffersonian principles of individual liberty, limited government, federalism, and free markets.

To guide policymakers through the uncharted waters of the 21st century economy, ALEC's Telecommunications and Information Technology Task Force brings together state legislators, industry representatives, and public policy experts. Working together, the Task Force seeks to develop state public policy that will preserve free-market principles, promote competitive federalism, uphold deregulation efforts, and keep the communications and technology industries free from new burdensome regulations.

I. ALEC SUPPORTS ADOPTION OF A UNIFORM POLE ATTACHMENT RATE FOR CABLE AND TELECOMMUNICATIONS CARRIERS TO PROMOTE BROADBAND DEPLOYMENT AND TO ENSURE TECHNOLOGICAL NEUTRALITY

ALEC's Telecommunications and Information Technology Task Force has consistently supported technological neutral, non-discriminatory government regulation of public rights-of-ways. ALEC's "Wireless Communications Tower Siting Act" (2007) provides that government authorities may not "Discriminate on the basis of the ownership of any property, structure, or tower when promulgating rules or procedures for siting wireless facilities or for evaluating applications for collocations or new wireless facilities or support structures." Similarly, ALEC's "Broadband and Telecommunications Deployment Act" (2002) declares that units of government "shall not discriminate in their treatment of providers over the terms and conditions of access to public-rights-of-way." In addition, ALEC's "Statement of Principles on Rights-of-Way Management" (1998) asserts that "Locale of rights-of-way management must be administered in a predictable, nondiscriminatory and competitively neutral manner."

We believe it is self-evident that a uniform pole attachment rate should be applied to all broadband providers where the attending costs incurred by all such providers are

identical.¹ An equal rate should be applied where there are equal costs. There is no good reason why competing cable operators and telecommunications carriers should be charged different rates where the costs of attaching their respective services to utility poles are equal. Disparate rates for pole attachment bear no rational relation to the compensatory purposes for establishing such rates.

Technological neutrality demands a uniform pole attachment rate. A free-market environment that is competitive and open to new entrants depends upon such neutrality. Consume welfare is enhanced when the regulatory environment is hospitable to competing platforms, services, and pricing packages.

II. ALEC SUPPORTS THE ADOPTION OF THE CURRENT, LOWER CABLE RATE AS THE NEW UNIFORM RATE FOR ALL BROADBAND PROVIDERS TO PROMOTE BROADBAND DEPLOYMENT

ALEC’s Telecommunications and Information Technology Task Force has consistently urged that government regulation of public rights-of-way promote economic entry and development, and that government’s management of public rights-of-ways be limited to actual costs concerns directly related to those rights-of-ways. ALEC’s “Broadband and Telecommunications Deployment Act” declares its purpose “to ensure that the practices of state and local governmental units with respect to access to these public rights-of-way for the installation of telecommunications facilities do not go beyond legitimate management activities so as to create barriers to the deployment of advanced telecommunications and broadband networks.” The Act also finds and declares

¹ Section 224(b)(1) of the Communications Act of 1934, as amended, provides that “the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable.” 47 U.S.C. § 224(b)(1). The Telecommunications Act of 1996 expanded the definition of a “pole attachment” under Section 224 to also include “any attachment” to a “duct, conduit, or right-of-way owned or controlled by a utility.” 47 U.S.C. § 224(a)(4).

that government-charged fees “shall be limited to the actual and direct costs associated with managing the public rights-of-way.” Likewise, ALEC’s Statement of Principles on Rights-of-Way Management states that “Rights-of way fees should be limited to the actual cost of rights-of-way administration, and should be recovered in a competitively neutral manner.”

The Commission should apply the lower pole attachment rate currently charged cable operators to telecommunications carriers. It should *not* set a new, uniform rate that is “higher than the current cable rate, yet no greater than the telecommunications rate,”² absent clear economic data showing the necessity of such an increase. The Commission’s Notice of Proposed Rulemaking provides *no* evidence that the existing rate charged cable operators is not fully compensatory.³ To the contrary, the comments to the Commission have highlighted Commission and judicial precedent affirming the reasonableness of the current cable attachment rate.⁴

While we are in agreement with the Commission’s tentative conclusion that requiring all categories of companies to pay the same attachment rate will promote broadband deployment and technological neutrality,⁵ we do *not* believe that broadband deployment is furthered by increasing the rate.

² *Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachment*, WC Docket No. 07-245, Notice of Proposed Rulemaking, FCC 07-187 (Nov. 20, 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-187A1.pdf (hereinafter, *Pole Attachments NPRM*) at para. 36.

³ See *Pole Attachments NPRM*, para 19.

⁴ See *Comments of the National Cable & Television Association*, WC Docket No. 07-245 (March 7, 2008), available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519864613, Appendix A.

⁵ *Pole Attachments NPRM*, at para. 35.

CONCLUSION

The Commission should adopt a single, uniform pole attachment rate for both cable and telecommunications providers. That rate should be limited to the actual and direct cost related to managing such public rights-of-ways. Absent clear economic data demonstrating that the Commission's existing, lower pole attachment rate for cable companies is not fully compensatory, the Commission should adopt that lower rate for all broadband providers. There is ample authority supporting the reasonableness of the lower rate. This recommended approach embodies technological neutrality and encourages increased broadband deployment.

Respectfully submitted,

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April 1, 2008