



POLE ATTACHMENTS

NCTA Presentation

April 9, 2008

Overview

- The *NPRM* significantly mischaracterizes the existing regime
- The tentative conclusion to raise broadband attachment rates undermines the FCC's goals
- The FCC can achieve regulatory parity and promote broadband

Pole Attachment Precedent

- There is 30 years of history behind the cable rate formula (see Appendix A to NCTA Comments)
- The *NPRM* mischaracterizes the current rules, asks questions that have long been resolved, and ignores key elements of the existing regime

The NPRM Mischaracterizes Precedent on Unusable Space

- The *NPRM* states that under “the current cable rate formula” the “space factor does not include unusable space . . .” *NPRM* at ¶ 19.
- But the Commission previously found that “respondent’s repeated claims that cable attachers do not pay for any costs of unusable space is a *complete mischaracterization* of the Pole Attachment Act and the Commission’s rules.” *ACTA v. Alabama Power*, 16 FCC Rcd 12209, 12236, ¶ 60 (2001) (emphasis added).

The NPRM Ignores Precedent on Subsidized Rates

- The NPRM asks whether the current cable rate formula “results in a subsidized rate . . . at the expense of electric consumers.” NPRM at ¶ 19.
- But the Supreme Court long ago found that it could not “seriously be argued that a rate providing for the recovery of fully allocated cost, including the cost of capital, is confiscatory.” *FCC v. Florida Power*, 480 U.S. 245, 253-54 (1987)

The NPRM Ignores Precedent on Make-Ready

- The *NPRM* ignores make-ready payments by cable operators
- But the Commission previously recognized that “Congress expected pole attachment rates based on incremental costs to be low because utilities generally recover make-ready or change-out charges directly from cable systems.” *Consolidated Reconsideration Order*, 16 FCC Rcd 12103, 12109, ¶ 8 n.37 (2001)

Broadband Economics

[O]ne of America's central challenges is promoting the **widespread deployment of higher-bandwidth broadband facilities** . . . and to make sure that these facilities are **affordable for consumers**.

*Statement of Commissioner Jonathan S. Adelstein,
Dissenting, Section 706 Report (March 19, 2008)
(emphasis added)*

Broadband Economics

- *Increasing the cost of pole attachments by cable operators will lead to **reduced investment** and/or **higher retail prices***
- *Decreasing the cost of pole attachments by telecommunications providers will lead to **increased investment** and/or **lower retail prices***
- **Which approach promotes the “widespread deployment” and “affordable” prices favored by Commissioner Adelstein?**

Broadband Economics

- The effect of changing pole attachment rates on electric company ratepayers is a non-issue
 - FCC has no jurisdiction over electric rate issues
 - State commissions, which do have jurisdiction, overwhelmingly have adopted the cable rate formula
 - Even when pole revenues are considered in electric rate cases, there is a *de minimis* impact on customers

Regulatory Parity

- The record makes clear that ILECs are different than cable and CLECs
 - ILECs are treated differently under Section 224
 - ILEC joint use agreements don't include same make-ready obligations as cable and CLEC license agreements
 - ILEC attachments generally use more space

The FCC Can Achieve Regulatory Parity And Promote Broadband

- Forbear from the telecom rate formula and allow CLECs to attach under the cable rate formula
- Allow ILECs to “opt in” to cable/electric license agreements
- Alternatively, change the telecom rate formula (see Time Warner Telecom and AT&T proposals)