



POLE ATTACHMENTS

NCTA Presentation

April 14, 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 Basics

- Cable operators make two sets of payments to pole owners
 1. Annual fee – based on the cable rate formula
 2. Make-ready – any cost to pole owner that is caused by the attachment, including cost of rearranging or replacing pole
- Combination of the two ensures pole owner recovers all of its costs and more, i.e., that it is not subsidizing attachers

Pole Attachment Basics

- Two types of space on a pole – “usable” for attachments and “unusable” for attachments
- Cable formula allocates cost of usable space based on usage – cable uses 1 ft. out of 13.5 ft. or 7.4%
- Cable formula applies the exact same factor to cost of unusable space.

Pole Attachment Precedent

- There is 30 years of precedent upholding the cable attachment regime (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 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 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 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

[C]ontinued and complete deployment of broadband across this nation should be our number one focus, indeed Congress requires this: to provide **incentives for investment in broadband facilities** and encourage broadband deployment.

Statement of Commissioner Deborah Taylor Tate, 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 will “provide incentives for investment in broadband facilities” as favored by Commissioner Tate?**

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)