

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) WC Docket No. 07-245
Implementation of Section 224 of the Act;) FCC 07-187
Amendment of the Commission's Rules and)
Policies Governing Pole Attachments) RM-11293, RM-11303

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ responds to the initial comments filed March 7 regarding the Federal Communications Commission's (Commission's or FCC's) November 20, 2007, Notice of Proposed Rulemaking (NPRM) seeking comment on changes to its implementation of Section 224 of the Act which establishes the rights of pole attachments at just and reasonable rates, terms and conditions.²

NTCA, on behalf of its small rural ILEC members, joins other commenters in urging the Commission to create a dispute resolution mechanism that allows ILECs to resolve complaints of unjust and unreasonable pole attachment rates, terms and conditions against utilities.³ NTCA encourages the Commission not to lose sight of this critical issue while striving to set the lowest, fairest rate for broadband attachments that will encourage broadband deployment in rural areas.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 580 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, RM-11293, RM-11303, FCC 07-187, Notice of Proposed Rulemaking (NPRM) (rel. Nov. 20, 2007).

³ CenturyTel Comment, pp. 15, 18; Independent Telephone & Telecommunications Alliance (ITTA) Comment, p. 5; Verizon Comment, p. 17.

NTCA renews its contention that small rural ILECs are entitled to just and reasonable rates, terms and conditions for pole attachments, and that rural ILECs need and deserve a remedy mechanism by which ILECs can present claims of unjust, unreasonable pole attachment rates, terms and conditions imposed by utilities.⁴ Small rural ILECs operating in states that have not certified their control over pole attachments, such as Arizona and North Carolina, lack an express procedural remedy for unjust and unreasonable pole attachment rates, terms, and conditions.⁵ For rural ILECs who provide service in certified states, such as Kentucky, New Hampshire, Vermont, Massachusetts, and Ohio, the Commission’s actions regarding reasonable rates, terms and conditions provide influential guidance to the state public service commissions on handling ILEC pole attachment complaints. The Commission should keep in mind its ability to influence state approaches to resolving pole attachment complaints brought by small rural ILECs.

Other commenters agree with NTCA that without a remedy or complaint procedure, ILECs are without protection. ITTA, representing mid-sized carriers, characterized the situation facing ILECs concisely: “ILECs are left without recourse when utilities impose unreasonable rates, terms, and conditions and otherwise discriminate against ILECs.”⁶ CenturyTel’s assertion that an overly-narrow construction of the Commission’s rules has left ILECs without a remedy

⁴ NTCA Comment, p. 2.

⁵ On March 21, 2008, the Commission released its corrected list of states who have certified that they regulate pole attachment rates, terms and conditions. That corrected list consists of Washington, D.C. and the following 19 states: Alaska, California, Connecticut, Delaware, Idaho, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Utah, Vermont, and Washington. “Corrected List of States That Have Certified That They Regulate Pole Attachments,” WC Docket No. 07-245 (rel. Mar. 21, 2008). This state certification process is provided under 47 U.S.C. § 224(c) and is sometimes referred to as “reverse preemption.”

⁶ ITTA Comment, p. 5.

for pole attachment complaints is correct.⁷ Frontier argued that there is no policy reason for leaving ILECs to the mercy of utility pole owners regarding pole attachment issues.⁸ Verizon noted correctly that allowing ILECs access to a dispute resolution process at the Commission would deter the utilities' exploitation of ILECs who use pole attachments to provide service.⁹ Qwest correctly asserted that, "the Commission can and should adopt rules to regulate the reasonable rates, terms, and conditions of ILEC pole attachments."¹⁰ AT&T stated that ILECs have a statutory right to just and reasonable pole rates.¹¹ Small, mid-sized and large ILECs all convey the same message to the Commission: Give ILECs the ability to resolve complaints of unjust and unreasonable pole attachment rates, terms and conditions.

An NTCA member from Arizona recently observed that, while they currently have a good working relationship with a certain utility company regarding pole attachments, he has no idea what recourse he would have if that relationship deteriorated. A Kentucky NTCA member reported that the excessive bills he has received for pole attachment rates recently are monstrously burdensome. Also, a North Carolina NTCA member contemplated the huge impact that pole attachment rate increases would have on his operating budget.

Several commenters have demonstrated that ILECs are repeatedly being charged unreasonable rates for pole attachments that are more than rates charged to cable and CLEC providers. ITTA's example of ILECs being charged as high as 500% more than cable attachers

⁷ CenturyTel Comment, p. 16.

⁸ Frontier Comment, p. 2.

⁹ Verizon Comment, p. 17.

¹⁰ Qwest Comment, p. 2.

¹¹ AT&T Comment, pp. 24, 33.

and 300% more than CLECs attachers in the same local area shows the inequality that ILECs face in negotiating pole attachment rates.¹² USTA, relying on an internal survey, noted that some incumbents telephone companies are asked to pay more than 8 times the pole attachment rate paid by cable companies, removing any semblance of a level playing field.¹³ Qwest succinctly described the disparity by noting if a cable company and a telecommunications company provide the same services over similar pole attachments; the cable rate is significantly less than the telco rate without significant distinction in the services provided.¹⁴

NTCA agrees with ITTA that rural ILECs depend on pole attachments for broadband deployment, and that excessive rates and improper terms and conditions can discourage and delay broadband deployment.¹⁵ Consumers of broadband, as USTA accurately explained, will benefit the most when the artificial handicap of rate discrimination is removed.¹⁶ When broadband providers compete directly, consumers benefit from the lower prices, higher speeds, and better quality of service. Unfair advantages created by discriminatory rate structures will hinder if not harm those providers who bear unequal regulatory burdens, such as rural ILECs.

¹² ITTA Comment, p. 5.

¹³ USTA Comment, pp. 2, 7.

¹⁴ Qwest Comment, p. 5.

¹⁵ ITTA Comment, p. 2.

¹⁶ USTA Comment, p. 3.

For these reasons, the Commission should create a dispute resolution mechanism that allows ILECs to resolve complaints of unjust, unreasonable pole attachments rates, terms and conditions. Furthermore, the Commission should set the lowest, fairest rate for broadband attachments that will encourage broadband deployment.

Respectfully submitted,

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April 22, 2008

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC 07-245, FCC 07-187, was served on this 22nd day of April 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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