



POLE ATTACHMENTS

NCTA Presentation

April 30, 2008

Overview

- Widespread agreement that FCC should establish a uniform broadband attachment regime
- Record supports use of cable attachment regime as best approach
- ILECs can be brought under this regime, but differences must be acknowledged

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)
- Tentative conclusion in *NPRM* to establish a rate higher than the cable rate should not be adopted

The Cable Rate Is Not A Subsidized Rate

- 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 Cable Rate Compensates Pole Owners For 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 Cable Rate Assumes The Payment of Make-Ready Costs

- 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

- Increasing the cost of pole attachments by cable operators will lead to reduced investment and/or higher retail prices
 - Pelcovits – potential cost to cable over \$600 million
 - Gregg – higher pole rates hurt rural deployment
- Decreasing the cost of pole attachments by telecommunications providers will lead to increased investment and/or lower retail prices

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

Regulatory Parity

- FCC must acknowledge these differences, not gloss over them
- It makes no sense to look at rates without considering the accompanying terms and conditions

Regulatory Parity

- Real parity – allow ILECs to “opt in” to cable/electric license agreements so that all parties can have equal rates, terms, and conditions
- Fake parity – insert cable rates in ILECs’ existing joint use agreements so that ILECs end up with more favorable rates, terms, and conditions than cable