The Proper Rate for Broadband Attachments

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All Broadband Providers[1] Should Pay The Same Pole Attachment Rates

- **Commenters Agree** - Generally, all commenters agree on this principle.
- **Otherwise, the Marketplace for Broadband Would be Skewed** -- Discrimination on pole attachment rates skews the marketplace for broadband services.
- **Commission Precedent Supports this Conclusion** – Imposing the same pole attachment rates on all broadband providers is consistent with Commission's well-reasoned, long-standing, precedent of treating similarly situated providers of like services in a like manner.

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1 References to broadband providers here does not refer to ILECs.

All Broadband Providers Should Pay the Current Predominant Broadband Rate

All Broadband Providers Should Pay:

- The Pole Attachment Rate Currently Paid by Cable Ops Providing Broadband Service (The "Predominant Broadband Rate" or the "PBR")
- Not the Rate Currently Paid By Telecom Carriers (The "High Broadband Rate" or the "HBR")

7 Reasons Supporting the PBR

1. The Commission Should Avoid Taking a Giant Step Backwards – It Should Promote Broadband Deployment, Not Undermine It
2. Today, Nearly 9 out of 10 Attachments are Invoiced at the PBR – Changing the Rate to the HBR Would Greatly Damage the Broadband Services Market
3. The Vast Majority of States that Regulate Pole Attachment Rates Have Adopted the PBR or a Similar Formula
4. The PBR is Legally and Economically Compensatory
5. Fairness, Proportionality and Logic Dictate Use of the PBR
6. The Closest Analogies Support Application of the PBR
7. Utility Conduct Also Supports Adoption of the PBR

Reason No. 1: The Commission Should Avoid Taking a Giant Step Backwards – It Should Promote Broadband Deployment, Not Undermine It

- **Highest Priority: Broadband Deployment** -- Commission's highest priority is to encourage affordable broadband deployment so that everyone -- not just some consumers -- have the opportunity to receive the tremendous benefits of broadband.
- **Utilities Admit that Invoicing at the PBR has Been Tremendously Successful for Promoting Broadband Deployment** -- Utilities admit that by, in effect, requiring payment of the PBR for most pole attachments, Commission has "enabled [providers] collectively to provide their [broadband] services to 92% or more of the country," and so in that sense "the Commission's pole attachment regulations have been a tremendous success."
- **Increased Rates Would Undermine Broadband Deployment** -- Increased rates would undermine this admitted success, to the tremendous detriment of broadband consumers. If all broadband providers were required to pay the HBR, pole attachment rates would rise dramatically, and by several hundred percent in most instances.

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- **Bottom Line Implications of Increased Rates** –- Increased attachment rates would result in far more expensive and significantly more restricted deployment of broadband services. Consumers would suffer from higher broadband bills and, in many instances, loss of broadband services (particularly in rural areas, where more attachments are required per subscriber).
- **Not the Time to Go Backwards** -- The Commission has served the public too well, issuing rules to promote broadband deployment, to **take a giant step backwards now**.
- **Even NASUCA, which Represents Consumers of Both Utilities and Broadband Providers, supports the PBR** -- NASUCA stated, "Commission must not increase the rate paid by broadband service providers because this would be contrary to 'the nation's commitment to achieving universal broadband deployment and adoption.'"

Reason No. 2: Today, Almost 9 Out of 10 Pole Attachments Are Invoiced at the PBR …

And Changing the Rate to the HBR Would Greatly Damage the Broadband Services Market

- **89% Invoiced at the PBR** -- According to utilities, approximately 89% of pole attachments are invoiced at the PBR. Utilities admit that the HBR "has become more myth than reality, because relatively few attachments are subject" to it.
- **Impact of Applying PBR to All Broadband Attachments** -- If Commission requires all broadband providers to pay the PBR, no end-user broadband rates will increase and only 11% would change at all (and those would decrease).
- **Impact of Applying HBR to All Broadband Attachments** –- Conversely, if Commission were to require that the broadband rate equal the HBR, not only would broadband rates increase greatly, but this development would negatively impact the vast majority (approximately 89%) of consumers. This would dramatically shake-up the broadband market with higher prices and significantly restricted deployment, to the detriment of consumers and everyone other than the utilities.

Reason No. 3: The Vast Majority of States that Regulate Pole Attachment Rates Have Adopted the PBR or a Similar Formula

- **Vast Majority of States Regulating Attachments Use the PBR or a Similar Formula** -- Most states that regulate pole attachment rates have adopted the PBR or a similar formula, including Alaska, California, Massachusetts, Michigan, New Jersey, New York, Ohio, Oregon, Utah, and Vermont.
- **Near Uniformity if Commission Adopts PBR** -- If the Commission adopts the PBR, there will be near uniformity across the country.
- **Inconsistency if Commission Adopts HBR** -- If the Commission adopts the HBR, regulatory inconsistency will reign as many states have already concluded otherwise.

Reason No. 4: The PBR is Legally and Economically Compensatory

- **Supreme Court Decisions --** U.S. Supreme Court Decisions, *NCTA v. Gulf Power*, and *FCC v. Florida Power*, have reached this conclusion.
- **Court of Appeals Decision** -- 11th Circuit Decision in *Alabama Power v. FCC* supports this conclusion as well.
- **FCC Rulings** -- Commission has reached this conclusion as well. *Amendment of Commission's Rules & Policies Governing Pole Attachments*, 16 FCCR 12,103; *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 68 FCC2d 1585.
- **State Findings** --As discussed above, vast majority of states that regulate rates have adopted the PBR or a similar formula, thereby necessarily concluding that it is legally and economically compensatory.

Reason No. 5: Fairness, Proportionality and Logic Dictate Use of the PBR

- **The PBR is Consistent with Principals of Fairness and Proportionality** -- Under the PBR, the percentage of the total costs (for both the usable and unusable space) for which an attacher pays equals the percentage of the usable space the attacher uses.
- **PBR is the Correct Formula and Produces a Logical Result** --The percentage of usable space used by an attacher should be determinative of the percentage of costs paid. If you are getting 7.4% of the value of the pole, you should pay for 7.4% of the costs – not some far higher figure.
- **Utilities' Admission** -- Utilities argue that providers who pay the PBR pay only a "negligible" portion of the costs associated with the common space on the pole. Thus, utilities have conceded that such broadband providers use only a "negligible" amount of usable space on the pole.

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- **Utilities' Inequitable Proposal** -- Utilities, who are the predominant users of the poles, want all providers to share equally in the cost of the unusable space, even though utilities use far more space on the pole than cable or telecom providers – often anywhere from 400% to 1300% as much usable space.
- **Where Utilities' Proposal Would Lead** -- Under utilities' theory, no matter how little space an attacher used, it would have to pay the same amount of the costs for the unusable space as the largest user of the pole (i.e., the utility).
- **Safety Clearance Space --** Commission has previously confirmed that it is only necessary because of potentially hazardous electric lines, and utilities should pay for this space.

Reason No. 6: The Closest Analogies Support Application of the PBR

- **Shopping Center Analogy** --- In a shopping center, there is a significant amount of common area. Also, the lessees, just as is the case here, use their rental space in connection with their business. Nevertheless, it is well-settled that in a shopping center common area maintenance (CAM) charges are allocated based on the percentage of usable space used, and are not allocated equally among all lessees.
- **Apartment Complex Analogy** -- Similarly, in an apartment building, the amount of rent paid is based on the amount of space used and is not dependent upon the number of other renters. Each time a landlord rents an apartment or a lease ends, the landlord does not contact the other tenants to lower or raise their rent. The same principle should apply here, and does under the PBR. That is, the rate should be based on the amount of space used, not the number of other attachers on the pole (which is how the HBR is calculated).
- **Utilities' Misplaced Analogy** -- Utilities claim that the appropriate analogy to the PBR would be parties riding in a car together and the passengers paying only for a portion of the gas, with the car owner paying for the car. While that is not an apt analogy in any event, the fact of the matter is that passengers usually do just pay for gas, and do not reimburse the owner for a portion of the car.

Reason No. 7: Utility Conduct Also Supports Adoption of the PBR

- **Utility Silence** -- Despite the fact that 89% of the invoices are for the PBR, utilities did not seek to commence a proceeding to have that rate changed, but rather just responded on the offensive when TWTC sought to have the final 11% of invoices lowered to the PBR.
- **Utility Overreaching** -- Apparently recognizing that rates above the PBR would give the utilities a windfall, utilities contend that the Commission should not "complicate" things by ensuring that utilities are "not overcompensated for pole attachments."
- **Utilities Cannot Make Showing of Need for Higher Rents** -- For example, recently Gulf Power could not show that higher cable pole rents were justified.
- **Utilities Selling/Purchasing Activities** -- Utilities resist selling poles and keep purchasing more poles. If utilities were harmed by attachment rates, they would be selling poles, not buying more poles.
- **Utilities Revenues** -- Predominant use of PBR has not prevented utilities from earning tremendous revenues in their businesses, as the attached chart shows.