

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	WC Docket No. 09-154
)	
Petition for Declaratory Ruling of)	
American Electric Power Service Corporation <i>et al</i>)	
Regarding the Rate for Cable System Pole Attachments)	
Used to Provide Voice Over Internet Protocol Service)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
)	

COMMENTS OF CHARTER COMMUNICATIONS, INC.

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COMMENTS OF CHARTER COMMUNICATIONS, INC.

Pursuant to the Commission’s *Public Notice*¹ in the captioned matter, Charter Communications, Inc. (“Charter”) submits the following Comments.

I. INTRODUCTION AND SUMMARY

American Electric Power Service Corporation, Duke Energy Corporation, Southern Company, and Xcel Energy Services, Inc. (“Petitioners”) seek a declaration by the Commission that the telecommunications rate formula for pole attachments under 47 U.S.C. § 224(e) applies to attachments for cable system facilities that carry interconnected voice over Internet Protocol service (“VoIP”) and any broadband line “used ... by any third party using the attached cable

¹ *Public Notice*, “Pleading Cycle Established for Comments on Petition for Declaratory Ruling of American Electric Power Service Corporation et al Regarding the Rate for Cable System Pole Attachments Used to Provide Voice Over Internet Protocol Service,” DA 09-1897 (Aug. 25, 2009).

wire (e.g., Vonage Digital Voice)”—which effectively covers any broadband line. The Petitioners’ proposal to raise pole rents would impose an unjustified and massive “broadband tax,” disserving the very policies for broadband deployment that every branch of government is trying to promote. Every reviewing tribunal, including the FCC, has upheld the current cable pole attachment rental formula as providing far more than just compensation for the use of monopoly utility poles. Raising pole rents now would open a new, damaging, and counter-productive chapter in a long history of pole abuses.

The resulting harm would be especially acute in underserved and unserved rural communities. Pole cost increases would translate to a range of \$4.95-\$8.66 per Internet subscriber per month and \$13.27-\$23.23 per voice subscriber per month—wiping out entirely the consumer benefits of VoIP, sheltering ILECs from needed competition, and providing a windfall for the electric utilities. The increase in rates would operate as a penalty to new entrants, and would likely foreclose broadband competition in these areas.

In contrast to the strong policy reasons to deny the utilities’ request, the Petition presents no reason to impose the Telecom Rate on broadband VoIP. First, the rationale behind the Telecom Rate – that numerous facilities-based CLECS would attach to the poles and generate a Telecom Rate close to the Cable Rate – was mistaken and does not provide any reason to impose that rate on VoIP. Second, contrary to the Petitioners’ claims, there is no “discrimination” of any kind to justify the imposition of a VoIP penalty on cable attachments. If there is any excessive rent imposed by utilities on entities that are similar to cable, then giving them the fully compensatory Cable Rate would solve the alleged inequity, as cable interests have previously proposed. Nor would the imposition of excessive rents for VoIP reduce disputes among the parties: it would spawn new grounds for dispute.

II. RAISING POLE RATES WOULD FRUSTRATE BROADBAND DEPLOYMENT

The nation is engaged in one of the most important infrastructure projects of this generation to foment broadband development by private industry. The Commission is working “for every American citizen and every American business to have access to robust broadband services,” and for “the United States to be a model for the world in creating a partnership between government and industry to ensure that all citizens have access to broadband.”² Congress is stimulating investment to ensure that “all people of the United States have access to broadband capability.”³ The Administration sees the Recovery Act funding as “a first step toward realizing President Obama’s vision of a nationwide 21st-century communications infrastructure – one that encourages economic growth, enhances America’s global competitiveness and helps address many of America’s most pressing challenges.”⁴ In the same vein, Chairman Genachowski has shared his vision of enabling “the small business in Gettysburg . . . to connect and compete,” the elderly to get remote medical monitoring, the eighth grader to

² A National Broadband Plan for Our Future , Notice of Inquiry, GN Docket No. 09-51, FCC 09-31, ¶5 (April 8, 2009).

³ *American Recovery and Reinvestment Act of 2009*, Pub. Law No. 111-05, 123 Stat. 115, § 60001 (k)(2) (2009) (“Recovery Act”).

⁴ “Vice President Biden Launches Initiative to Bring Broadband, Jobs to More Americans,” Press Release, The White House, (July 1, 2009) (available at http://www.whitehouse.gov/the_press_office/Vice-President-Biden-Launches-Initiative-to-Bring-Broadband-Jobs-to-More-Americans/). See also WEEKLY ADDRESS: President Barack Obama Discusses New White House Report on an American Recovery and Reinvestment Plan, January 24, 2009 (rebuilding and retrofitting America for the 21st century “means expanding broadband access to millions of Americans, so businesses can compete on a level-playing field, wherever they’re located.”) (available at http://www.whitehouse.gov/the_press_office/WEEKLYADDRESSPresidentBarackObamaDiscussesNewWhiteHouseReportonanAmericanRecoverya/).

get tutoring, and parents to connect with their sons and daughters in Baghdad or Afghanistan.⁵ Those prospects would all be frustrated by the electric utilities' proposal to impose their private toll on any line capable of carrying broadband VoIP bits.

The utilities' rhetoric speaks of combating discrimination and promoting broadband; but the utilities' arguments reprise long discredited claims, and their requested relief would open a new, damaging, and counter-productive chapter in a long history of monopoly pole abuses. We have been urged to be "smart about law and history." The history of pole regulation is that, time and again, the government has been called on to arrest the proclivity of utility pole owners to leverage their monopoly power to hobble or appropriate new and innovative technologies. Congress adopted Section 224 to remedy the electric utility and telephone companies' monopoly over utility poles in the public rights-of-way.⁶ The Act was designed to halt the pole-owning utilities from "extract[ing] monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates,"⁷ and to bring them into line with actual costs.⁸

⁵ Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission June 30, 2009 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291834A1.pdf).

⁶ See, e.g., *NCTA v. Gulf Power Co.*, 534 U.S. 327, 330 (2002) (finding that cable companies have "found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. . . . Utilities, in turn, have found it convenient to charge monopoly rents.").

⁷ S. Rep. No. 95-580, at 13 (1977), reprinted in 1978 U.S.C.C.A.N. 109, 121.

⁸ The Act culminated from a long history of ILECs from leverage their pole ownership into control over emergent communications markets, and to stop a history of onerous pole rents draining cable of capital otherwise available for competitive services. *Applications of Telephone Companies for Section 214 Certificates*, 21 F.C.C.2d 307, 323-29 (1970) (cable systems "have to rely on the telephone companies for either construction and lease of channel facilities or for the use of poles for the construction of their own facilities."); *General Tel. Co. of California*, 13 F.C.C.2d 448, 463 (1968) (by control over poles, telco is in a position to preclude an unaffiliated CATV system from commencing service).

With each evolution in technology, the electric utilities have sought to hinder deployment and extract excessive pole rents. When cable operators added fiber, the utilities sought to extract excessive pole rents and slow deployment, efforts rejected by the Commission and Courts.⁹ When cable offered Internet, the utilities again demanded a pole rent hike that was again rejected by the Commission and Courts.¹⁰ As wireless grew, electric utilities sought extraordinary rent increases and were again reined in by the Commission.¹¹

⁹ In *Heritage Cablevision*, the Commission interpreted Section 224 to apply to operators installing fiber to provide cable and data services and ruled that they could continue to pay the same cable rate for pole attachments. *Heritage Cablevision Assocs. of Dallas, L.P. et al. v. Texas Util. Elec. Co.*, FCC 91-379, 6 FCC Rcd 7099, 7101 ¶ 12 (1991) (“We believe that in light of the fact that Section 224 includes no language limiting the nature of the services of a cable operator to which it applies, Section 224 is most reasonably read to provide that a cable operator may seek Commission-regulated rates for all pole attachments within its system, regardless of the type of service provided over the equipment attached to the poles.”) (“*Heritage*”), *recon. dismissed*, FCC 92-266, 7 FCC Rcd 4192 (1992), *aff’d*, *Texas Utils. Elec. Co. v. FCC*, 997 F.2d 925 (D.C. Cir. 1993). The Supreme Court cited *Heritage* approvingly in *NCTA v. Gulf Power*, 534 U.S. at 336. Likewise, the Commission has promoted rapid fiber deployment by ruling that cable operators need not obtain additional utility approval prior to overlashing fiber to existing cable plant. *Amendment of Commission’s Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141 ¶ 75 (2001) (“We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.”); *Cable Television Ass’n of Ga v. Georgia Power Co.*, 18 FCC Rcd. 16333, 16340 – 41 (Enforcement Bureau 2003) (striking down as “unjust and unreasonable on its face” Georgia Power’s new requirement that cable operators obtain prior written consent to any overlashing).

¹⁰ *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, FCC 98-20, 13 FCC Rcd 6777, 6795-96 ¶ 32 (1998) (“We conclude, pursuant to Section 224 (b)(1), that the just and reasonable rate for commingled cable and Internet service is the Section 224(d)(3) rate.”), *petition for review granted*, 208 F.3d 1263 (11th Cir. 2000) (holding that FCC lacked jurisdiction to regulate pole attachments for facilities used to provide Internet service), *rev’d*, *NCTA v. Gulf Power*, 534 U.S. 327 (2002)(reversing and reinstating FCC decision).

¹¹ *NCTA v. Gulf Power*, 534 U.S. at 339 – 341 (upholding FCC assertion of jurisdiction to regulate pole attachments for facilities used to provide wireless services).

Now, the utilities return to the same playbook with a proposed broadband tax not only on managed VOIP, but on any broadband line “used ... by any third party using the attached cable wire (e.g., Vonage Digital Voice)”¹²—which effectively covers any broadband line used by “over the top” voice providers.¹³ With each wave of innovation, the utilities ask to increase their profits on poles, and with each wave, the Commission is called upon to reject their misleading rhetoric and arrest their monopoly demands.

The courts and the Commission have uniformly rejected the Petition’s claims that with current rents, electric consumers are “forced to subsidize” VoIP service.¹⁴ Cable operators pay more than a fair share of pole costs. Before they ever get on the pole, cable operators pay for all of the pole owners’ “make-ready” costs needed to rearrange existing lines and to replace short poles with poles tall enough for cable, thus covering the direct costs of attachment. Cable operators then pay pole rents annually, covering their proportionate share of all of the costs (including a reasonable profit) for the entire pole, not just for usable space.¹⁵ Not one single

¹² Petition at 2 n. 4

¹³ The Petition makes no distinction between interconnected VoIP provided by cable operators themselves, and that provided “over the top” of cable system facilities through IP by service providers such as Vonage and Skype.

¹⁴ Petition at 24.

¹⁵ Any suggestion to the contrary has been described by the Commission itself as “a complete mischaracterization of the Pole Attachment Act and the Commission’s rules. *2001 Reconsideration Order*, 16 FCC Rcd at 12131 ¶ 53 (“Under the *Cable Formula*, the costs of unusable space are allocated based on the portion of usable space an attachment occupies, the space factor.”); *Alabama Cable Telecomm’s Ass’n. v. Alabama Power Co.*, FCC 01-181, 16 FCC Rcd 12209, 12236 ¶ 60 (2001) (“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. *Cable attachers pay all of the costs associated with the pole attachment, which are allocated based on the portion of usable space occupied by the attachment. The costs associated with the entire pole are included in that calculation.*”) (emphasis supplied)

court, nor the FCC itself, has *ever* found that the Cable Rate formula results in any subsidy.¹⁶ To the contrary, every decision considering the adequacy of the cable pole attachment rates has found the rate to be constitutionally sound and more than just compensation.

Likewise, State Public Service Commissions and consumer ratepayer advocates have rejected the Petition’s claims that it would be “unconscionable” not to increase pole rents for broadband. As the New York PSC expressed it when rejecting a telecom pole penalty: “To allow increased pole attachment rates at this time, when competition and the number of attachers has not developed as previously contemplated, is contrary to the public interest under PSL §119-a, in that it would undermine efforts to encourage facilities-based competition and to attract business in New York.”¹⁷ Sister PSCs—each of which has a statutory obligation to “consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services”—have reached the same conclusion.¹⁸ Likewise, the

¹⁶ *Gulf Power Co. v. United States*, 998 F. Supp. 1386 (N.D. Fla. 1998), *aff’d*, 187 F.3d 1324 (11th Cir. 1999); *In re Alabama Cable Telecomm’s Ass’n., et al. v. Alabama Power Co.*, Order, 15 F.C.C.R. 17346 (2000); *In re Alabama Cable Telecomm’s Ass’n., et al. v. Alabama Power Co.*, Order, 16 F.C.C.R. 12209 at ¶60 (2001). To the contrary, every decision considering the adequacy of the cable pole attachment rates has found the rate to be constitutionally sound and affording more than just compensation *See, e.g., Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, FCC 98-20, 13 FCC Rcd 6777, 6795-96 ¶ 32 (1998) (“We conclude, pursuant to Section 224 (b)(1), that the just and reasonable rate for commingled cable and Internet service is the Section 224(d)(3) rate.”), *aff’d*, *NCTA v. Gulf Power*, 534 U.S. 327 (2002).

¹⁷ *Proceeding on Motion of the Commission as to New York State Electric & Gas Corporation’s Proposed Tariff Filing to Revise the Annual Rental Charges for Cable Television Pole Attachments and to Establish a Pole Attachment Rental Rate for Competitive Local Exchange Companies*, Order Directing Utilities to Cancel Tariffs, Case 01-E-0026, 2002 N.Y. PUC LEXIS 14, at *4 (Jan. 15, 2002).

¹⁸ Order Instituting Rulemaking on the Commission’s Own Motion Into Competition for Local Exchange Service, R.95-04-043, I.95-04-044, Decision 98-10-058, 1998 Cal. PUC LEXIS 879

National Association of State Utility Consumer Advocates (“NASUCA”), which represents the interests of consumers of both broadband and electric services, has urged the Commission to use the Cable Rate “for all pole attachments, regardless of the identity of the attacher . . . to encourage deployment of advanced services.”¹⁹

Neither time nor the growth of attaching parties has healed the utilities’ proclivities to abuse their monopoly control of poles. As the Commission put it in 2001: “Nothing in the record demonstrates that the utilities’ monopoly over poles has since changed.”²⁰ The Petition is merely the latest iteration of long discredited claims, this time working at cross-purposes with the national effort to promote broadband deployment, adoption, and competition. The Commission addressed the utilities’ question in 1998 after Congress directed the Commission to “remove

(Oct. 22, 1998); Proceeding on Motion of the Commission as to New York State Electric & Gas Corporation’s Proposed Tariff Filing to Revise the Annual Rental Charges for Cable Television Pole Attachments and to Establish a Pole Attachment Rental Rate for Competitive Local Exchange Companies, Order Directing Utilities to Cancel Tariffs, Case 01-E-0026, 2002 N.Y. PUC LEXIS 14, at *4 (Jan. 15, 2002); Consideration of Rules Governing Joint Use of Utility Facilities & Amending Joint-Use Regulations Adopted Under 3 AAC 52.900 – 3 AAC 52.940, Order Adopting Regulations, 2002 Alas. PUC LEXIS 489 (Oct. 2, 2002); Petition of the United Illuminating Company For A Declaratory Ruling Regarding Availability Of Cable Tariff Rate For Pole Attachments By Cable Systems Providing Telecommunications Services & Internet Access, Docket No. 05-06-01, Decision, 2005 Conn. PUC LEXIS 295, at *11-12 (Dec. 14, 2005); Rulemaking to Amend & Adopt Rules in OAR 860, Divisions 024 and 028, regarding Pole Attachment Use & Safety (AR 506) & Rulemaking to Amend Rules in OAR 860, Division 028 Relating to Sanctions for Attachments to Utility Poles & Facilities (AR 510), Order No. 07-137, 2007 Ore. PUC LEXIS 115, at *24 (Apr. 10, 2007).

¹⁹ *Reply Comments of NASUCA*, WC Docket No. 07-245 (April 22, 2008) at 4 -5.

²⁰ *Amendment of the Commission’s Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, FCC 01-170, 16 FCC Rcd 12103, 12112-13 ¶ 13 (2001) (“*2001 Reconsideration Order*”).

barriers to infrastructure investment.”²¹ In specifying the Cable Rate for broadband attachments, the Commission found that holding the line at current rents “will encourage greater competition in the provision of Internet service and greater benefits to consumers” and that a higher rate “might deter an operator from providing non-traditional services,” and “would not serve the public interest.”²² The Supreme Court agreed that raising pole rents for broadband services would subject innovative cable operators to “monopoly pricing ... [and] defeat Congress’ general instruction to the FCC to ‘encourage the deployment’ of broadband Internet capability and, if necessary, ‘to accelerate deployment of such capability by removing barriers to infrastructure investment.’”²³ It makes little sense to pour out Recovery Act funding for broadband deployment, only to have it appropriated by utilities in artificially increased pole rents.

III. ANY INCREASE IN POLE ATTACHMENT RENTAL WILL HARM BROADBAND DEPLOYMENT AND ADOPTION IN UNSERVED AND UNDERSERVED AREAS

A pole rent increase of the scale proposed in the Petition (up to the Telecom Rate) would frustrate deployment and adoption of broadband in unserved and underserved areas. Charter has extensive experience operating cable television systems in rural communities. Of the 639 U.S. counties in which Charter provides service, more than half are “majority rural,” according to U.S. Census standards. It is much more expensive per customer to deliver services (especially

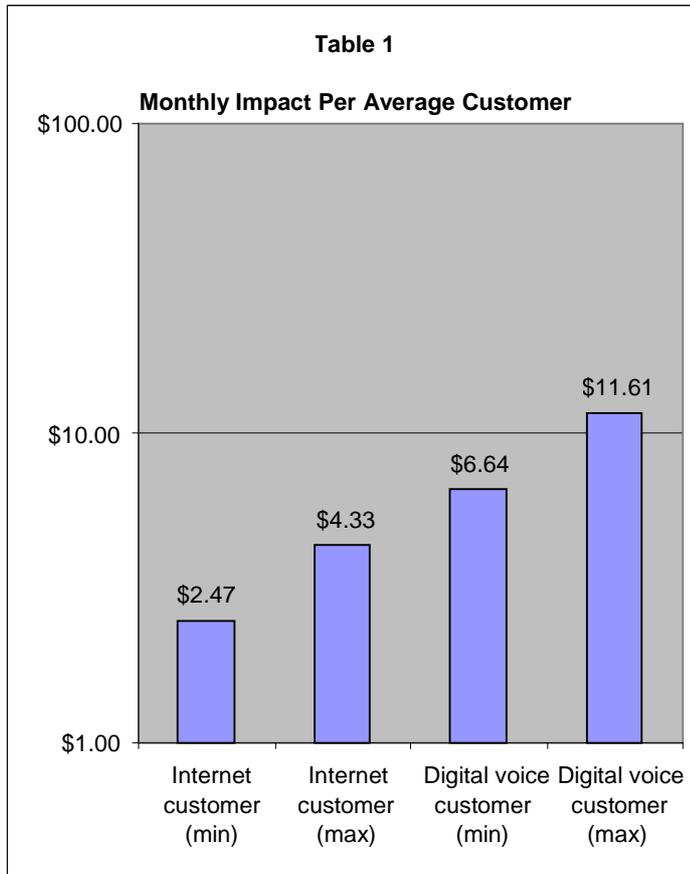
²¹ See § 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), reproduced in notes under 47 U.S.C. § 157.

²² 13 FCC Rcd 6794, ¶ 32 (footnote omitted). In the omitted footnote the Commission recognized that it had encouraged cable operators to provide Internet services to their customers, citing social contracts with Continental and Time Warner. *Id.* at n. 125.

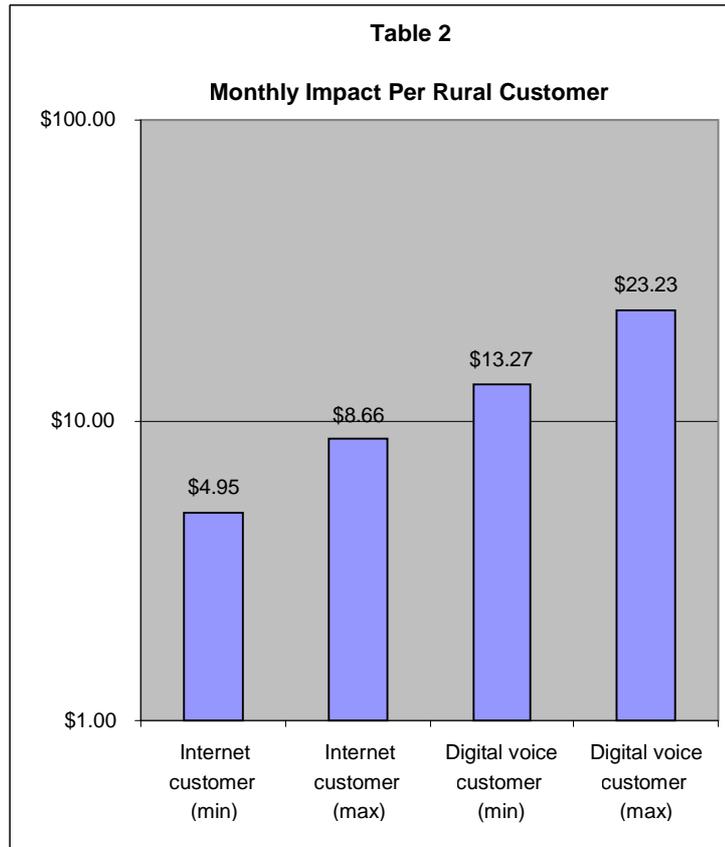
²³ *NCTA v. Gulf Power*, 534 U.S. at 329 (quoting the Telecommunications Act of 1996, Pub. L. 104 – 104, Tit. VII, §§ 706(a), (b), and (c)(1), 110 Stat. 153, note following 47 U.S.C. § 157 (1994 ed., Supp. V)).

broadband and other advanced services like VoIP) to less densely populated rural areas because there are fewer subscribers overall and fewer subscribers per plant mile from which to recover costs. Only *six* of Charter's 384 headends serve more than 15,000 subscribers and pass even 100 homes per mile. These six headends serve a total of fewer than 350,000 Charter subscribers, or 6.6% of Charter's total subscribers. The remaining Charter systems have to deal with the low population density characteristic of rural America. In Connecticut, for example, Charter has only 23 subscribers per average plant mile. It takes many more poles to put wireline plant in front of one rural customer in such reduced population densities. Pole attachment rental rates thus form a much larger portion of the cost of serving its subscribers, and increases in pole rental rates will have significant, deleterious impact.

The pole rent increase proposed by Petitioners for VoIP would profoundly harm the availability and cost of advanced services in cable systems. Let us take as an example an average pole rent of \$7.50, and assume that the Commission was to grant the Petition. The presence of one VoIP customer would "contaminate" the entire system and thus all pole attachments with a higher rate, with a severe result for all Charter's customers. With a VoIP pole rate as high as the current Telecom Rate in most areas, the cost per customer would increase by \$2.47-4.33 per subscriber per month over and above current pole costs, as shown in the Table 1 below. (Source: Exhibit A)



But that is not the worst of it. In the areas that Charter serves with 10-15 subscribers per mile, the impact of an FCC broadband tax in rural areas would be devastating given the already higher costs in rural areas, as shown in Table 2. (Source: Exhibit A)



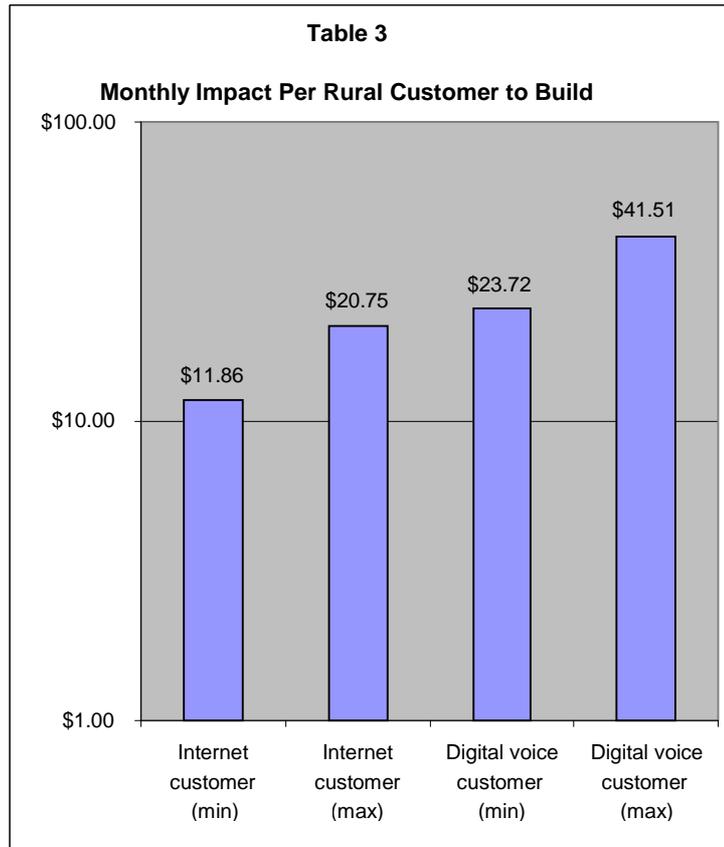
Such higher costs resulting from the Petitioners’ proposed pole rent increase would further degrade Charter’s penetration rate expectations and thus deter broadband investment and deployment, particularly to the rural communities, for whose benefit the Administration’s and Congress’ broadband deployment goals are largely intended. It would severely harm the very facilities-based local voice competition that has been producing greater choice and lower prices for consumers.²⁴

²⁴ The direct savings to consumers in discounted digital voice bills average \$11.70 per month per customer across the industry. The indirect consumer benefits multiply the effect, by facilitating delivery of “over the top” voice services by IP providers and thereby fomenting competition that pressures ILECs to lower their circuit-switched prices for telephony. Total savings are projected to exceed \$71 billion in the years 2008 - 2012. Michael D. Pelcovits and Daniel E. Haar,

Even these figures do not adequately portray the full extent of the chilling effect that the proposed pole rent increases would have on decisions to deploy broadband facilities and services in rural areas. The impact on a new entrant who must charge incrementally more to recoup its new plant investment within a reasonable amount of time by building its subscriber base from the ground up in rural areas, is utterly cost-prohibitive, as the following Table 3 illustrates.

(Source: Exhibit B)

Consumer Benefits from Cable-Telco Competition, Nov. 2007, http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf. Cable's provision of VoIP alone yields an estimated increased monthly consumer benefit of \$18.67. Michael D. Pelcovits and Abigail D. Ferguson, *Benefits to Consumers from the Transformation of the Cable Industry*, available at <http://www.ncta.com/ReleaseType/MediaRelease/Cables-Digital-Transformation-Providing-Consumers-with-Advanced-Technology-Lower-Prices-and-Enhanced.aspx>. Consumer benefits of cable's provision of Triple Play services, however, provides about \$35 billion in annual consumer benefits, with the added benefit to all consumers as a result of the competitive response of incumbent telephone companies. *Id.*



Such increases in rates will serve as a penalty causing substantial harm to new entrants, and probably foreclose competitive entry.

IV. THERE IS NO REASON TO IMPOSE THE TELECOM RATE ON BROADBAND VOIP.

The utilities portray this rent increase as necessary to fulfill Congressional intent and to avoid unfair discrimination. They are mistaken.

Congress adopted the “telecommunications” rate approach in 1996 for a far different technology than that used by cable for Internet and VOIP. The formula was set when Congress expected many new competing facilities-based providers under the federal and state laws then opening up the local exchange market. The technology of the day was multiple, new physical

lines attached to the poles, offered by a growing number of competing CLECs. Had that scenario played out, many attaching parties would have imposed new burdens on the pole, and paid new pole rents. Had CLECs and CLEC lines proliferated, the “telecom” formula would have produced a rate quite similar to the Cable Rate, decreasing in amount as the number of attaching parties increased. But instead, the CLEC market collapsed, and the technology changed from one involving more attached lines to that of integrated IP-enabled broadband networks that carry video, Internet access, and voice on one line that occupies no more space and adds no new burden to justify any surcharge.

Nor do requirements to avoid “discrimination” among cable operators, CLECs and “other telecommunications carriers”²⁵ compel the increase in cable pole rents. In the first place, ILECs attach under very different rates, terms and conditions. The utilities have previously explained to the Commission that unlike cable, ILECs generally do not pay rent for every electric utility pole, use more space, and build and use that space under favorable terms that are not available to cable.²⁶ If there is any excess rent being imposed by utilities on attaching parties who are similar to the cable industry, the utilities can right the wrong in a stroke: nothing compels the utilities to charge more than just compensation to CLECs, and nothing compels the Commission to raise all other parties to the excessive rents utilities may charge to others. If the Commission wishes to

²⁵ Petition at 17.

²⁶ See, e.g., *Implementation of Section 224 of the Act*, WC Dkt. No. 07-245, Letter from Eric B. Langlay, Balch & Bingham, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed July 24, 2008) (“ILECs pay NOTHING in ‘rental’ when they are in parity of ownership”) (emphasis original). See also Comments of the National Cable & Telecommunications Association, WC Dkt. No 07-245 (March 7, 2008) at 15 – 17 (explaining dissimilarity in factors for ILEC attachments as compared to cable and CLEC attachments); Comments of Comcast Corporation, WC Dkt. 07-245 (filed March 7, 2008) at 24 – 30 (explaining greater ILEC benefits in pole attachments).

formally adjust its formula to preclude such excess rents, then it could adopt proposals previously offered by cable, which include options to adjust the “telecom” rate downward to the Cable Rate, “forbearing” from the “telecom” rate, and even allowing ILECs to “opt-in” to cable rates, terms and conditions.²⁷

Lastly, raising pole rents will do nothing to “avoid disputes,” as suggested by the utilities. What the utilities are really saying is that if cable operators would simply pay the higher rate, then the utilities would stop demanding it. The Commission already has an expert affidavit on record explaining that raising rents will actually increase disputes, not reduce them.²⁸ In any event, any perceived cost to disputes is just as easily resolved – in a manner that promotes further broadband investment and innovation in services – by a rule that applies the Cable Rate for all broadband services, regardless of whether they provide VoIP.

Increasing pole rents and erecting a new barrier to voice competition will slow (and in some cases stop) the roll out of facilities-based competitive voice services, and thus undermine the national policy of promoting broadband services. It would also protect the ILECs from further competition from IP-enabled voice providers. In contrast, when an ILEC follows the FCC’s invitation to provide competitive video services, it incurs no increased pole rents, enjoys

²⁷ See, e.g., Reply Comments of NCTA, WC Dkt. 07-245 (filed Apr. 22, 2008) at 18-23.

²⁸ See Comments of Comcast Corporation, WC Dkt 07-245, Ex. 2 (Declaration of Harold Furtchgott-Roth, Mar. 5, 2008) at p. 21 (explaining that, even if there were a new rate for cable system attachments that support VoIP services, the parties would need to determine how to charge the new fees, dividing up the universe of poles, tracking the number of customers, or perhaps even tracking customer time spent using VoIP services.)

streamlined access, and faces franchise fees and PEG burdens that are proportional to market share.²⁹

The Commission should not increase pole rents as Petitioners propose. If any adjustments are to be made, the rates for CLECs should be changed to the Cable Rate.

V. CONCLUSION

Congress and the Administration have instructed the Commission to ensure “all people of the United States have access to broadband capability.” The public policy reflected in the Recovery Act and the Broadband Program are extraordinarily strong and clear. Imposing a higher broadband pole rate for VoIP would only raise barriers to broadband deployment and adoption, and undo the consumer savings that facilities-based competition has created.

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²⁹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-180, 22 FCC Rcd 5101, 5154, ¶ 120 (2006).

Exhibit A

CHARTER COMMUNICATIONS, INC.
WC Docket No. 09-154 and GN Docket No. 09-51

(Previously Filed in WC Docket No. 07-245)

CHARTER COMMUNICATIONS
WC DOCKET 07-245
EXHIBIT A

SUBSCRIBER IMPACT		AVERAGE DENSITY	
Cost per broadband Internet subscriber			
Rent Increase	\$	9.60	\$ 16.79
Subscribers per pole		0.32	0.32
Annual Impact	\$	29.69	\$ 51.96
Monthly Impact	\$	2.47	\$ 4.33
Cost per digital voice subscriber			
Rent Increase	\$	9.60	\$ 16.79
Subscribers per pole		0.12	0.12
Annual Impact	\$	79.64	\$ 139.36
Monthly Impact	\$	6.64	\$ 11.61

SUBSCRIBER IMPACT		RURAL DENSITY	
Cost per basic subscriber			
Rent Increase	\$	9.60	\$ 16.79
Subscribers per pole		0.34	0.34
Annual Impact	\$	28.46	\$ 49.81
Monthly Impact	\$	2.37	\$ 4.15
Cost per broadband Internet subscriber			
Rent Increase	\$	9.60	\$ 16.79
Subscribers per pole		0.16	0.16
Annual Impact	\$	59.39	\$ 103.93
Monthly Impact	\$	4.95	\$ 8.66
Cost per digital voice subscriber			
Rent Increase	\$	9.60	\$ 16.79
Subscribers per pole		0.06	0.06
Annual Impact	\$	159.27	\$ 278.73
Monthly Impact	\$	13.27	\$ 23.23

Source Material

Potential Rate Increase	
Average pole rent	\$ 7.50
Cost allocator for cable rent	7.41%
Cost allocator for telecom rent (3 entities)	16.89%
Cost allocator for telecom rent (2 entities)	24.00%
Average telecom pole rent-low	\$ 17.10
Average telecom pole rent-high	\$ 24.29

Density

Source Data:	Connecticut DPUC		
	Plant Miles	Homes Passed	Basic Subscribers
Charter/Northeastern	1518	51560	31401
Charter/Western	2803	101046	70568
Total	4321	152606	101969

	Average	Rural
Basic subscribers per plant mile	23.60	11.80
Broadband Internet Subscribers per mile	11.31	5.66
Digital voice subscriber per mile	4.22	2.11
Poles per mile	35	35

Exhibit B

CHARTER COMMUNICATIONS, INC.
WC Docket No. 09-154 and GN Docket No. 09-51

(Previously Filed in WC Docket No. 07-245)

CHARTER COMMUNICATIONS
WC DOCKET 07-245
EXHIBIT B

SUBSCRIBER IMPACT TO BUILD	RURAL DENSITY			
Cost per basic subscriber				
Rent Increase	\$	9.60	\$	16.79
Subscribers per pole		0.34		0.34
Annual Impact	\$	28.46	\$	49.81
Monthly Impact	\$	2.37	\$	4.15
Cost per broadband Internet subscriber				
Rent Increase	\$	9.60	\$	16.79
Subscribers per pole		0.07		0.07
Annual Impact	\$	142.31	\$	249.04
Monthly Impact	\$	11.86	\$	20.75
Cost per digital voice subscriber				
Rent Increase	\$	9.60	\$	16.79
Subscribers per pole		0.03		0.03
Annual Impact	\$	284.62	\$	498.09
Monthly Impact	\$	23.72	\$	41.51

Source Material

Potential Rate Increase	
Average pole rent	\$ 7.50
Cost allocator for cable rent	7.41%
Cost allocator for telecom rent (3 entities)	16.89%
Cost allocator for telecom rent (2 entities)	24.00%
Average telecom pole rent-low	\$ 17.10
Average telecom pole rent-high	\$ 24.29

Density

Source Data:	Connecticut DPUC		
COMPANY NAME	Plant Miles	Homes Passed	Basic Subscribers
Charter/Northeastern	1518	51560	31401
Charter/Western	2803	101046	70568
Total	4321	152606	101969

	Introducing HSD	Building Rural
Basic subscribers per plant mile	23.60	11.80
Broadband Internet Subscribers per mile	4.72	2.36
Digital voice subscriber per mile	2.36	1.18
Poles per mile	35	35