

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

In the Matter of)	
)	
Petition for Declaratory Ruling that the)	WC Docket No. 09-154
Telecommunications Rate Applies to Cable System)	
Pole Attachments Used to Provide Interconnected)	
Voice Over Internet Protocol Service)	
)	
Implementation of Section 224 of the Act;)	WC Docket No. 07-245
Amendment of the Commission’s Rules and)	RM -11293
Policies Governing Pole Attachments)	RM-11303
)	

COMMENTS OF VERIZON¹

The Commission should adopt its existing tentative conclusion in this proceeding to move to a single, uniform rate for all broadband pole attachments.² In the past, Verizon has advocated for a uniform rate at a level somewhere between the existing cable and telecommunications attachment rate.³ The electric companies suggest that the Commission select a uniform rate by *choosing between* these two rates for VoIP and mixed use attachments, and that the Commission should select the higher telecommunications rate.⁴ That approach does

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, 22 FCC Rcd 20195, ¶ 36 (2007) (“due to the importance of promoting broadband deployment and the importance of technological neutrality . . . all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service.”) (“*NPRM*”).

³ See Comments of Verizon, *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, at 6 (March 7, 2008)..

⁴ American Electric Power Service Corporation, Duke Energy Corporation, Southern Company, and Xcel Energy Services Inc., *Petition for Declaratory Ruling that the*

not make sense. In fact, to encourage broadband deployment and investment, if the choice is between the two existing rates as the electric companies propose, the Commission should adopt the lower cable rate as the uniform rate for all broadband attachments. Regardless, an order adopting the Commission's tentative conclusion to move to a single, uniform rate would obviate the need for action on the electric companies' declaratory ruling petition.

As Verizon and others (including the electric companies) explained in commenting on the *NPRM*, the current regulatory regime governing pole attachment rates is broken. CLECs, cable television systems, and ILECs compete directly against each other when they offer broadband services and increasingly offer triple-play packages that bundle television, telephone, and Internet services under a single rate plan. Yet these competitors pay widely varying rates for pole attachments used to provide these like services. The widely varying rates result from the existing regulatory regime that sets two different maximum rate formulae for attachments by cable television systems and by non-incumbent telecommunications carriers but does not establish any formula for the attachment rates charged to incumbent carriers.

Specifically, Sections 224(d) and (e) require the Commission to establish formulae for determining the maximum just and reasonable rates that non-incumbent telecommunications carriers and cable television systems can be required to pay for pole attachments. 47 U.S.C. § 224. To implement these sections of the statute, the Commission adopted the telecommunications carrier rate formula (outlined in Section 1.1409 (e)(2) of the Commission's rules) and the cable television system rate formula (outlined in Section 1.1409(e)(1)). Of the two

Telecommunications Rate Applies to Cable System Pole Attachments Used to Provide Interconnected Voice over Internet Protocol Service, WC Docket No. 09-154 (Aug. 17, 2009) ("Petition" and the "electric companies").

formulas, the cable rate formula produces lower rates than the telecommunications rate formula.⁵ However, because there is no default rate formula for attachments by ILECs, rates for pole attachments (including broadband attachments) by ILECs are set through commercial agreements. These negotiated rates are generally significantly higher than the rates that non-incumbent carriers and cable television systems pay. And because electric companies own many more poles than ILECs, ILECs have little bargaining leverage in those negotiations.

Although the Commission's rules make clear that the two maximum rate formulae are default rates to be used in the event of a dispute, they serve as *de facto* ceilings on the rates that cable television systems and non-incumbent telecommunications carriers can be charged.⁶ Currently, because ILECs have no default formula, no *de facto* ceiling applies to determine "just and reasonable" rates for ILEC pole attachments. In the absence of a rate formula, electric companies generally charge ILECs at least two to three times more for pole attachments than they charge CLECs and cable television systems.

For example, based on a USTelecom survey filed with the Commission in March of last year,⁷ the average ILEC rate in one state⁸ is \$51.76, while the average CLEC rate in the same

⁵ The cable rate is based on the amount of usable space on a pole. By contrast, the rate formula for non-incumbent telecommunications carriers also accounts for the amount of unusable space on a pole. Due to clearance requirements, there is more unusable space on a pole than usable space. As a result, the cable formula yields lower rates than the telecommunications formula.

⁶ 47 C.F.R. § 1.1409(e) ("When the parties fail to resolve a dispute regarding charges for pole attachments and the Commission's complaint procedures under Section 1.1404 are invoked, the Commission will apply the following [cable rate or telecommunications carrier rate] formulas for determining a maximum just and reasonable rate . . .").

⁷ See Comments of USTelecom, *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 at 8 (March 7, 2008).

⁸ "Each of the states identified . . . are states where the Commission has exclusive jurisdiction over pole attachment rates. Due to the competitively sensitive nature of this

state is \$5.20 and the average cable rate is \$3.43. In other words, the ILEC rate in this state is almost ten times higher than the CLEC rate and more than 15 times the cable rate. In another state, the ILEC rate is 8 times the CLEC rate and more than 12 times the cable rate. And in a third state, the ILEC rate is more than ten times the CLEC rate and almost ten times the cable rate. The effect of these hugely variant rates distorts competition among competing providers of broadband and other services.

To achieve its goals of expanding advanced communications services, including broadband Internet access services, the Commission should adopt a uniform rate that will produce the lowest possible rate while ensuring that pole owners are compensated for the costs to provide pole space for those attachments and bring about competitive parity between ILECs, CLECs, and cable television systems. Such an approach would reduce the costs ILECs and other attachers pay significantly, thereby freeing up funds that could be used to further invest in broadband facilities.

Respectfully submitted,

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September 24, 2009

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information, the chart does not identify by name the states in which these rates were determined.” *Id.* at fn. 16.