

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition of American Electric Power)
Service Corporation, et al, for Declaratory) WC Docket No. 09-154
Ruling Regarding the Rate for Cable)
System Pole Attachments Use to Provide)
Voice Over Internet Protocol Service)

REPLY COMMENTS OF COMPTTEL

COMPTTEL respectfully submits these reply comments, pursuant to the Federal Communications Commission's ("Commission") *Public Notice* released on August 25, 2009 (DA 09-1879), in the above-referenced docket.

Petitioners have requested that the Commission issue a Declaratory Ruling that the telecommunications rate formula for pole attachments under 47 U.S.C. § 224 (the "Telecom Rate") applies to cable system pole attachments used to provide interconnected voice over Internet Protocol service (VoIP), arguing that applying "the Telecom rate to such attachments would bring greater regulatory parity and thereby promote broadband deployment."¹ Comments submitted in response to the petition overwhelming support Commission action to establish a uniform rate for broadband pole attachments. Disagreement in the comments center on the vehicle for establishing the rate - i.e., via declaratory ruling or the existing rulemaking proceeding - and what that rate should be.

¹ Petition at ii.

COMPTEL agrees with the vast majority of commenters calling for parity in the rate charged for pole attachments. COMPTEL agrees with Petitioners that the current disparity in rates provides cable companies an unfair advantage over other telephone providers and that to the extent providers are offering functionally equivalent service they should be subject to the same pole attachment rate.² A number of carriers support the call for parity, as Qwest states: “One rate for all types of providers of broadband Internet access promotes deployment, eliminates discriminatory practices associated with choosing a single type of service to base rates, and ensure fair competition.”³ Even those that competitively benefit from the current regime recognize the need to rectify the disparity.⁴ Indeed the Commission itself, recognizing “the importance of promoting broadband deployment and the importance of technological neutrality,” has tentatively concluded that all attachments used for broadband Internet access service should be subject to a single rate, regardless of the platform over which those services are provided.⁵ Moreover, parity is required for compliance with the nondiscrimination provision of section 224(e).⁶

COMPTEL further agrees with those parties that recognize that the appropriate vehicle to address this matter is in the context of the existing rulemaking proceeding.

² See Petition at 11.

³ Comments of Qwest Communications International Inc. at 1.

⁴ See Comments of Comcast Corporation at 26.

⁵ *Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, FCC 07-187, ¶ 36 (2007)(“Section 224 NPRM”).

⁶ 47 U.S.C. 224(e)(1)[“Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.”]

The Petition only addresses one service and one class of services providers. The Commission should act in a comprehensive manner in ensuring parity in pole attachments across all providers and all services, as well as address non-price terms and conditions.

In addition to ensuring parity in pole attachment rates, in the rulemaking proceeding, the record is more developed for the Commission to establish the most appropriate rate for pole attachments. As many parties have pointed out, the Commission should ensure that the uniform rate established should not “unnecessarily deter the extension of broadband networks and adoption by end users.”⁷ The Cable Rate, which is lower than the current Telecom Rate, has been found to be just and reasonable and fully compensatory to the pole owner.⁸ Therefore, whether the Commission adopts the Telecom Rate for VoIP providers in this proceeding, or in setting a uniform rate in the rulemaking proceeding, the Commission should, as TW Telecom suggests, adjust the inputs to the telecommunications carrier formula so that it yields rates equal or close to the rates currently yielded by the cable formula.⁹

⁷ Comments of the United States Telecom Association at 4.

⁸ *See, e.g., FCC v. Florida Power*, 480 U.S. 245, 253-54; California Competition Decision, 1998 Cal. PUC LEXIS 879 (internal citations omitted); Connecticut Pole Proceeding, 2005 Conn. PUC LEXIS 295, at 11-12.

⁹ Comments of TW Telecom at 4.

Respectfully submitted,

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