

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

Petition For Declaratory Ruling Regarding The Rate For Cable System Pole Attachments Used To Provide VoIP Service))))	WC Docket No. 09-154
A National Broadband Plan For Our Future)))	GN Docket No. 09-51
Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments))))	WC Docket No. 07-245
IP-Enabled Services)	WC Docket No. 04-36

**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its reply comments in response to the Commission’s Notice in WC Docket No. 09-154.¹

NCTA explained in its opening comments that the petition filed by American Electric Power, Duke Energy, Southern Company, and Xcel Energy (the Petition) should be rejected. The Petition’s proposal to apply the Telecom Rate Formula to attachments used for VoIP service would double or triple the rate that cable operators pay for every pole attachment used in providing broadband service.² Such an approach would penalize past investments in broadband

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*, WC Docket No. 09-154, DA 09-1879 (rel. Aug. 25, 2009).

² NCTA Comments, Appendix B at 9. The Petition proposed this treatment for any attachment used in providing VoIP service, including “over the top” VoIP services. As a result, it would affect any pole attachment by a cable operator that is used to provide high-speed Internet access over a broadband network.

and discourage future investments, particularly in rural areas.³ And higher pole attachment rates would discourage broadband adoption to the extent such costs are passed through to consumers.

Rather than raising attachment rates, NCTA encouraged the Commission to adopt the proposal NCTA had advanced in the *Broadband Pole Attachment* proceeding to allow all broadband providers to attach under the same regime that applies to cable operators.⁴ By reducing pole attachment rates for telecommunications carriers, NCTA's proposal would reduce the costs associated with construction and operation of broadband networks. Not only does this improve the business case for new broadband investment, it facilitates the ability of broadband providers to keep retail rates at reasonable levels.

The opening comments revealed strong support among broadband providers for the approach advocated by NCTA. A competitive LEC, tw telecom, urged the Commission to “reject the utilities’ proposal . . . [and] focus its efforts on adopting a single pole attachment formula applicable to all attachments . . . at or near the existing cable rate.”⁵ Incumbent LECs support this concept as well. USTelecom, for example, recognizes that increasing attachment rates for broadband providers will discourage broadband investment and that “these detrimental impacts are disproportionately higher in rural areas.”⁶ And Verizon acknowledges that “to encourage broadband deployment and investment, if the choice is between the two existing rates

³ *Id.* at 4-5. NCTA attached a report prepared by Billy Jack Gregg, former consumer advocate for the West Virginia Public Service Commission, demonstrating the harmful effects raising pole attachment rates would have for consumers in West Virginia. *Id.*, Appendix C.

⁴ Reply Comments of the National Cable & Telecommunications Association, WC Docket No. 07-245 (filed Apr. 22, 2008) (NCTA 07-245 Reply Comments).

⁵ tw telecom Comments at 1.

⁶ USTelecom Comments at 3-4 (“Rather than increase the impact of pole attachments on the costs of deploying broadband, the Commission should be concerned with ensuring that such costs do not unnecessarily deter the extension of broadband networks and the adoption by end users. Indeed, these detrimental impacts are disproportionately higher in rural areas – areas where broadband deployment is most difficult – because of the higher number of poles per end-user needed to deploy long loops in low density areas.”).

as the electric companies propose, the Commission should adopt the lower cable rate as the uniform rate for all broadband attachments.”⁷

Predictably, the electric companies that filed in the opening round were supportive of the Petition. The positions taken in those comments merely echo points made in the Petition and generally add nothing new. In particular, they repeat the tired rhetoric about the purportedly “colossal pole attachment subsidy” that cable operators are receiving under the current regime,⁸ without any acknowledgement or discussion of the decades of precedent upholding this regime as fully compensatory to pole owners. Those arguments have been thoroughly refuted by NCTA, both in our opening comments and in prior pleadings in the *Broadband Pole Attachment* proceeding, and consequently we will not address them again in these reply comments.

Other than the electric companies, only one other party seems not to appreciate the damaging effect that raising attachment rates would have on broadband providers. AT&T reiterates its support for a proposal that it filed with Verizon in the *Broadband Pole Attachment* rulemaking. Under that proposal, all broadband providers would pay a rate based on a modified version of the Telecommunications Rate Formula.⁹

The AT&T Proposal should be rejected. As NCTA demonstrated in the *Broadband Pole Attachment* proceeding, that proposal would require broadband providers to pay rates that exceed not only the rate produced by the Cable Rate Formula, but also the rate produced by the

⁷ Verizon Comments at 2.

⁸ Concerned Utilities Comments at 5 (“[T]he cable industry’s colossal pole attachment subsidy should be terminated immediately and the gross disparity in pole attachment rates between cable operators and CLECs should be eliminated.”)

⁹ AT&T Comments at 4-5, attaching Letter from Robert W. Quinn, Jr., AT&T, and Susanne A. Guyer, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245 (filed Oct. 21, 2008) (AT&T Proposal). AT&T proposes three modifications to the Telecom Rate Formula: (1) unusable space would be divided equally among the parties using the pole (including the pole owner); (2) a presumption of four attachers (including the pole owner) would be applied; and (3) all attaching parties, including ILECs, would be presumed to occupy one foot of usable space. AT&T Proposal at 2-3.

Telecommunications Rate Formula.¹⁰ It is difficult to envision an approach that could be more damaging to the Commission’s broadband policy. While Verizon has come to recognize the harmful effects of increasing attachment rates and the benefits of allowing broadband providers to attach pursuant to the cable attachment regime, apparently AT&T has not.

The critical flaw in the AT&T Proposal is that it allocates the cost of unusable space on the pole equally among attaching parties, rather than in proportion to usage. Assigning costs “equally” to an electric utility that uses 8-12 feet of space and a cable attachment that uses less than 1 foot of space has been rejected time and again by the Commission and by state public service commissions.¹¹ These decisions recognize that there is nothing remotely unfair about allocating the costs of a pole based on proportionate use, as NCTA has proposed. As NCTA explained in its opening comments, AT&T’s own expert in the *Broadband Pole Attachment* proceeding recognized that the only reason to adopt such an approach is to raise the rates imposed on attaching parties.¹²

The AT&T Proposal also fails to charge attaching parties based on the amount of space they occupy. Given that ILEC attachments often take up more space than those of CLECs or cable operators, this is a significant flaw.¹³ Even other ILECs, such as Qwest, recognize that the

¹⁰ See Letter from Daniel L. Brenner, NCTA, to Marlene H. Dortch, WC Docket No. 07-245 at 3-4 (filed Nov. 14, 2008) (NCTA Letter).

¹¹ *Id.* at 6-7; NCTA 07-245 Reply Comments at 13-14.

¹² NCTA Comments at 8, citing Reply Comments of AT&T, WC Docket No. 07-245, Reply Declaration of Veronica MacPhee at ¶ 29.

¹³ NCTA Letter at 8. As the record in the *Broadband Pole Attachment* proceeding demonstrates, ILECs enjoy other advantages over CLECs and cable operators as well. For example, they generally are not subject to the same make ready requirements and they often are not obligated to pay attachment fees on many poles. *Id.* at 7-8. As the Commission considers adopting a uniform regime for all broadband providers, it should not ignore these ILEC advantages.

Commission should adopt “a single rate for pole attachments that is based on the amount of space occupied within the communications space on the pole.”¹⁴

In sum, both the proposal in the Petition and the AT&T Proposal would raise pole attachment costs and therefore should be rejected. The Commission consistently has recognized that pole attachment fees are a significant cost component in the construction and operation of broadband networks.¹⁵ To best promote the congressional goal of universal access to broadband capability, the Commission should reject any proposal that would raise attachment rates and instead adopt NCTA’s proposal to allow all broadband providers to attach under the same regime that applies to cable operators.

Respectfully submitted,

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¹⁴ Qwest Comments at 6.

¹⁵ Presentation of the Omnibus Broadband Initiative Team, September 29, 2009, Slide 50 (“The cost of obtaining pole attachments and rights of way may have a significant impact on fiber deployment.”).