



May 6, 2010

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

**Re: *Commission's Rules and Policies Governing Pole Attachments
WC Docket No. 07-245, RM-11293; Assessment and Collection of
Regulatory Fees for Fiscal Year 2010, MD Docket No. 10-87;
Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD
Docket No. 08-65.***

Dear Ms. Dortch:

This is to inform you that on May 6, 2010, Glenn Reynolds and Kevin Rupy, representing USTelecom, met with Jennifer Schneider of Commissioner Copps' office, in connection with the proceedings identified above. During the meeting, we discussed the importance of rate parity for broadband pole attachments between all classes of providers to ensure a technology neutral and level playing field where broadband deployment will flourish, and consumers will benefit. We also pointed out that the Commission has ample statutory authority to accomplish that goal. Commission staff was provided with the attached documents for discussion purposes.

We also discussed the Commission's notice on the assessment of regulatory fees and urged the Commission to complete its pending rulemaking to update the methodology for assessing fees prior to issuing this year's assessment order.

Pursuant to Section 1.1206(b) of the Commission's rules, one copy of this electronic notice is being filed in the above-referenced dockets. Please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn Reynolds".

Glenn Reynolds
Vice President, Law & Policy

cc: Jennifer Schneider



We are Broadband.

USTelecom Pole Attachment Ex Parte Presentation

May 6, 2010

WC Docket No. 07-245

RM-11293

RM-11303

National Broadband Plan Findings on Pole Attachments

Recommendation 6.1

“The FCC should establish rental rates for pole attachments that are as low and close to uniform as possible, consistent with Section 224 of the [Act], to promote broadband deployment.” National Broadband Plan, page 110.

The FCC’s National Broadband Plan concluded that:

- Pole attachments rates should be as low and as close to uniform as possible.
- There is wide variation in rental rates paid by broadband providers to attach to utility poles: \$7 year/cable; \$10 year/CLEC; and more than \$20 year/ILEC.
- The impact of these rates *“can be particularly acute in rural areas,”* due to there being more poles per mile than households.
- Uniform and lower rates could result in the *“typical monthly price of broadband for some rural consumers . . . fall[ing] materially.”*

Commission Has Authority to Establish Just and Reasonable Pole Attachment Rates

Section 224(b)(1):

*“**Authority of Commission** to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations - Subject to the provisions of subsection (c) of this section, **the Commission shall regulate the rates, terms, and conditions for pole attachments** to provide that **such rates, terms, and conditions are just and reasonable . . .**”*

- This section of the statute gives the FCC broad, general authority to regulate the rates, terms, and conditions for pole attachments.
- Nothing in Section 224(b) limits the Commission’s authority to a type of provider or type of service provided.
- Nothing in the specific directives in Sections 224(d) (cable rates) or (e) (telecommunications rates) alters Congress’s general grant of authority in Section 224(b).
- Congress’s directives in Sections 224(d) and (e) dictated only what the Commission initially *must* regulate and not what it ultimately *may* regulate.
- The statutory construction of Section 224(b) arguably *requires* the Commission to ensure just and reasonable rates for *all* providers.

Disparity in Pole Attachment Rates is Significant, Consistent and Widespread

Findings of 2007 USTelecom Member Survey

- USTelecom identified instances where ILECs pay more than 1,400% more for pole attachments than their cable counterparts.
- The disparity between ILEC and CLEC rates while not as high as cable, are significant -- in some instances near 900%.
- In a sampling of 13 FCC regulated states, USTelecom found that:
 - ILECs pay more than 8 times what cable providers pay per attachment;
 - ILECs pay almost 6 times the rate paid by CLECs;
 - In dollar terms,
 - ILECs on average pay over \$26.00
 - Cable on average pays \$3.26; and
 - CLECs on average pay \$4.45

A Sampling of Pole Attachment Rates

State	Average Rate Charged			Percentage Difference in Rates	
	ILEC Rate	Cable Rate	CLEC Rate	ILEC vs. Cable	ILEC vs. CLEC
State 1	\$51.76	\$3.43	\$5.20	1409%	895%
State 2	\$43.71	\$3.61	\$5.43	1111%	705%
State 3	\$34.08	\$3.27	\$14.30	942%	138%
State 4	\$34.95	\$3.60	\$3.44	871%	916%
State 5	\$37.55	\$4.62	\$9.85	713%	281%
State 6	\$34.53	\$4.28	\$6.30	707%	448%

Source: *USTelecom Comments*, WC Docket No. 07-245, March 7, 2008, p. 8.

The Disparity in Pole Attachment Rates in Rural Areas is Particularly Acute

Broadband Deployment Issues in Rural Areas

- Rural areas average only 4 subscriber lines per square mile of area served and only 6 lines per route mile of telephone transmission plants.
- In a rural area with 15 households per linear mile, data suggest that the cost of pole attachments to serve a broadband customer can range from \$4.54 per month per household passed (if cable rates are used) to \$12.96 (if ILEC rates are used) *National Broadband Plan*, p. 110.
- Costs to deploy broadband services can range from \$10,500–\$21,120 per mile for fiber optic deployment. *National Broadband Plan*, p. 116, n. 3.
- According to the FCC, if lower rates were applied, and the cost differential of \$8 per month were passed on to consumers, “the typical monthly price of broadband for some rural consumers could fall materially.” *National Broadband Plan*, p. 110.

Current Pole Rate Formulas Do Not Reflect Proportionate Share of Costs

Rate Formulas

CABLE

$$\left(\frac{\text{Space Occupied (1')}}{\text{Usable Space (16')}} \right) \times \text{Pole Cost}$$

URBAN CLEC

$$\frac{\text{Space Occupied (1')} + \left(\frac{2}{3} \times \frac{\text{Unusable Space (24.0')}}{5 \text{ Attaching Entities}} \right)}{\text{Pole Height (40')}} \times \text{Pole Cost}$$

RURAL CLEC

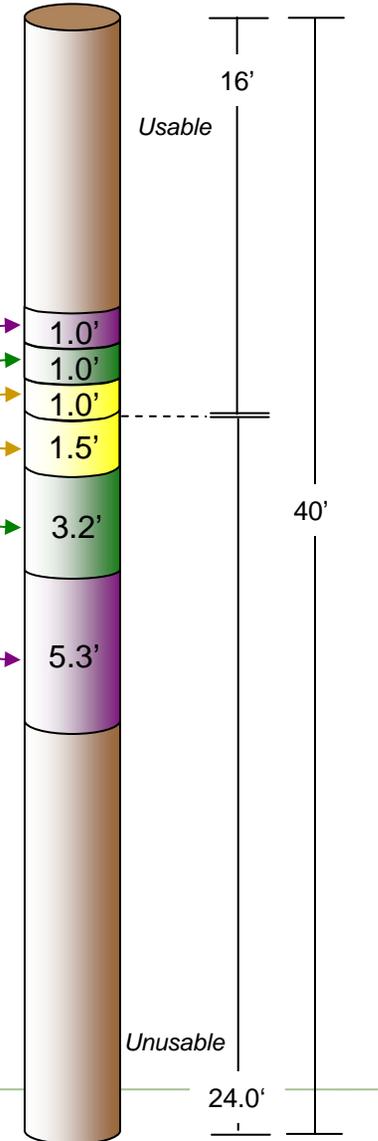
$$\frac{\text{Space Occupied (1')} + \left(\frac{2}{3} \times \frac{\text{Unusable Space (24.0')}}{3 \text{ Attaching Entities}} \right)}{\text{Pole Height (40')}} \times \text{Pole Cost}$$

Result of Formulas

Cable pays for 6.3% of the total pole cost, i.e., 6.3% (1') of usable space and 6.3% (1.5') of unusable space.

Urban CLECs pay for 6.3% (1') of usable space and 13.3% (3.2') of unusable space, or 10.5% of the total pole cost.

Rural CLECs pay for 7.4% (1') of usable space and 22.2% (5.3') of unusable space, or 15.8% of the total pole cost.



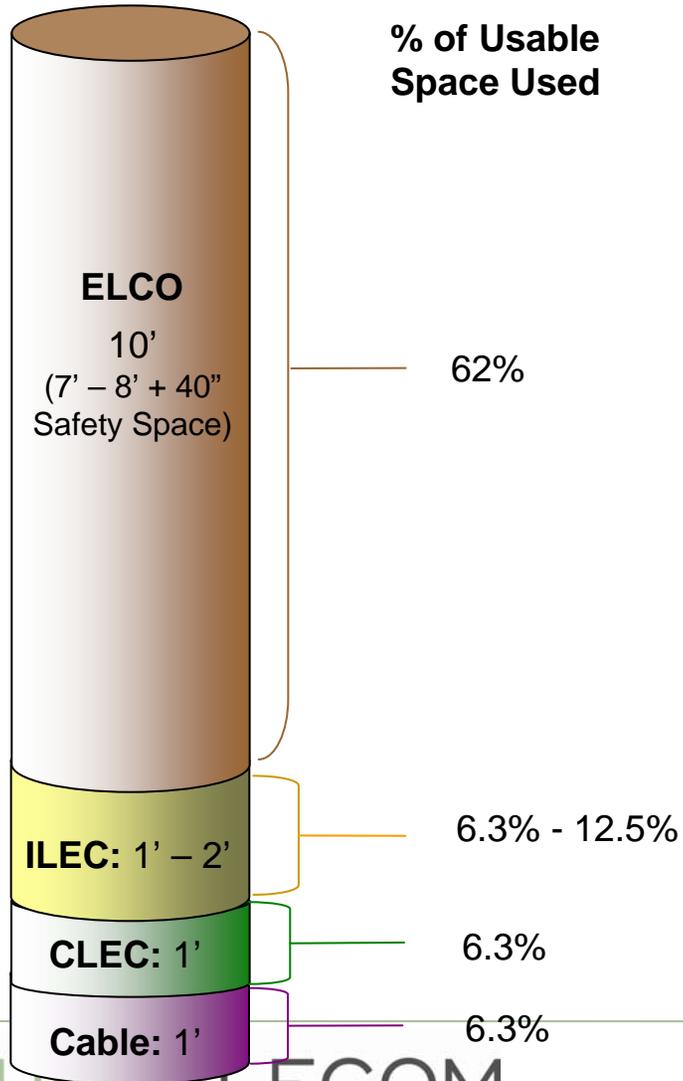
Portion of Cost of Pole Paid by Cable and CLECs Under Current Formulas

Attaching Entity	Usable Space (16')		Unusable Space (24')		Total Space (40')	
	Feet	%	Feet	%	Feet	%
Rural CLEC	1'	6.3%	5.3'	22.2%	6.3'	15.8%
Urban CLEC	1'	6.3%	3.2'	13.3%	4.2'	10.5%
Cable	1'	6.3%	1.5'	7.4%	2.5'	6.3%

Source: USTelecom Analysis of Rate Formulas

Current Status Quo (40 Foot Pole)

Feet Used



Pole Feet Paid For

