

EX PARTE PRESENTATION

May 11, 2010

VIA ECFS

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 205544

**Re: WC Docket No. 07-145 (“Pole Attachment Proceeding”)
GN Docket No. 09-29 (“Rural Broadband Strategy Proceeding”),
GN Docket No. 09-51 (“National Broadband Plan Proceeding”), and
WC Docket No. 09-154 (“VoIP Pole Attachment Rate Proceeding”)**

On behalf of the Alabama Cable Telecommunications Association, Broadband Cable Association of Pennsylvania, Cable Television Association of Georgia, Florida Cable Telecommunications Association, New England Cable and Telecommunications Association, Ohio Cable Telecommunications Association, Oregon Cable Telecommunications Association, South Carolina Cable Television Association, Virginia Cable Telecommunications Association, West Virginia Cable Telecommunications Association, Astound Broadband, Bay City Cablevision, Bresnan Communications, Cable America, James Cable, Mediacom Communications, Mid-Coast Cablevision, Shentel Cable Company, Texas Mid-Gulf Cablevision, and Wave Broadband, we hereby submit this *ex parte* letter in response to the series of presentations made in the above-referenced dockets by the Coalition for Concerned Utilities (the “Coalition”) in letters dated May 4, April 26, March 25 and February 26, 2010. In its March and April letters the Coalition attacks the Federal Communication Commission (the “Commission” or the “FCC”) staff and complains that the Coalition’s positions in the National Broadband Plan (“Plan”) proceedings have been “completely ignored” in a “single-minded and obviously biased” Plan. In its May 4 letter, the Coalition argues that the FCC’s pole rate formulas do not recover marginal costs. Although all the Coalition’s arguments and positions have been addressed in these proceedings, and are entirely without merit, we briefly address them here.

Pole Attachment Law Was Enacted To Curtail Abuses, Including Monopoly Pole Rents

Pole owning electric utilities have continuously and aggressively challenged the adequacy and application of pole attachment regulation, including the rental rate formulas established by Congress, since the passage of the Pole Attachment Act of 1978, 47 U.S.C. § 224 (the “Act” or “Section 224”).¹ Congress passed Section 224 to prevent utility companies from exploiting their monopoly power over bottleneck facilities needed by cable television systems to deliver their services.² Congress observed that, “[i]n many communities . . . because of the lack of available rights-of-way, environmental restrictions, or zoning laws,” cable operators were “unable to construct [their] own pole plant for the attachment of [their] coaxial cable” and instead were required “to use existing utility company poles.”³ Congress recognized that “public utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates.”⁴ As succinctly summarized by the Supreme Court, “utilities . . . found it convenient to charge monopoly rents.”⁵ Accordingly, the Act “establish[ed] a mechanism whereby unfair pole attachment practices may come under review and sanction, and to minimize the effect of unreasonable pole attachment practices on the wider development of cable television service to the public.”⁶

The Cable Rate Provides More Than Just Compensation

Nothing has changed since the inception of the Act in 1978. Indeed, in the Plan, the Commission acknowledges that “reasonably priced access to poles . . . is critical to the buildout of broadband infrastructure,”⁷ particularly in rural areas, and that “there is a nexus between the availability of VoIP services and the goals of Section 706 of the Act [that will] spur the development of

¹ See, e.g., *Gulf Power Co. v. United States*, 187 F.3d 1324 (11th Cir. 1999) (“*Gulf Power I*”); *Southern Co. Serv. Inc. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002); *Alabama Power Co. v. FCC*, 311 F.3d 1357 (11th Cir. 2002) (“*Alabama Power*”); *Southern Co. v. FCC*, 293 F.3d 1338 (11th Cir. 2002); *Gulf Power Co. v. FCC*, 208 F.3d 1263 (11th Cir. 2000), *rev’d*, *Gulf Power II*, 534 U.S. 327 (2002); *Georgia Power Co. v. Teleport Commc’ns Atlanta, Inc.*, 346 F.3d 1033 (11th Cir. 2003); *Florida Cable Telecomms. Ass’n v. Gulf Power Co.*, Initial Decision of Chief Administrative Law Judge Richard L. Sippel, 22 FCC Rcd 1997 (2007) (“*Gulf Power III*”), *application for review pending*.

² *FCC v. Florida Power Corp.*, 480 U.S. 245, 257 (1987) (“*Florida Power*”).

³ H.R. Rep. No. 94-1630, at 5 (1976).

⁴ S. Rep. No. 95-580, at 13 (1977).

⁵ *Gulf Power II*, 534 U.S. at 330. See also *Florida Power*, 480 U.S. at 247 (finding that utilities were “exploiting their monopoly position by engaging in widespread overcharging”).

⁶ S. Rep. No. 95-580, at 114.

⁷ *A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51, 24 FCC Rcd 4342 ¶¶ 1, 50 (rel. April 8, 2009); *Bringing Broadband to Rural America: Report On A Rural Broadband Strategy*, Acting Chairman Michael J. Copps, Federal Communications Commission, ¶ 157 (rel. May 22, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf.

broadband infrastructure.”⁸ The Commission also recognized that with the convergence of video, voice and data services over shared networks, charging different rates for similar pole attachments based on regulatory classifications (i.e., cable vs. telecommunications), is outdated and has led to significant litigation and uncertainty, which could deter further broadband deployment and investment. NBP, Ch. 6.1 at 110. Consequently, the Plan recommends that the FCC establish pole attachment rates as low and as close to uniform as possible, in light of statutory limitations.

Specifically, the Plan notes that the Cable Formula “has been in place for 31 years and is ‘just and reasonable’ and fully compensatory to utilities.” *Id.* Indeed every court, including the Supreme Court, and the vast majority of certified state public service commissions to consider the cable rate has upheld it as fully compensatory. *See* Appendix A.⁹ Despite the overwhelming precedent to the contrary, the Coalition nevertheless insists on repeating long discredited arguments that the Cable Formula is a “taking” or “subsidy.”¹⁰ In addition, the Coalition has renewed an argument that the pole formula does not recover “all” of its marginal costs, specifically alleging unreimbursed costs beyond the attachers’ payment of make-ready, and the cost of capital attributable to placement of paid-for taller poles.¹¹

Putting aside for the moment that these arguments or variations have been made for some time and addressed, the Coalition fails to provide any evidence of out-of-pocket losses that are relevant. Indeed, one pole owning utility had been given the express opportunity and failed: “the regulated rate provides a fair return on investment, and Gulf Power is not entitled to more than marginal or incremental costs as provided by the Cable Formula. The result is that the FCC’s regulated rate, which provides for recapturing allocated costs, is found to be entirely just and equitable.”¹² It is simply beyond challenge that the cable formula provides *much more* than marginal costs—it allows the utility to recover its “fully allocated” costs *and* includes profit in the form of a return on the utilities’ investment in their entire pole infrastructure.¹³ Accordingly any “taking,” “subsidy,” or non-recovered marginal cost argument is completely without merit.

⁸ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection*, Memorandum Opinion and Order, DA 07-709, 22 FCC Rcd 3513 ¶ 13 (2007).

⁹ Submitted with Initial Comments of NCTA, Dkt. 07-245 (March 7, 2008).

¹⁰ Initial Comments of Coalition of Concerned Utilities, WC Docket 09-154, at 1, 3, 4, and 15 (September 24, 2009) (“unwarranted colossal subsidy”; the “artificially low, subsidized Cable-only rate”; “artificially low Cable-only pole attachment rates”; and “A higher than Telecom rate for more than telecom services would provide a much fairer allocation of costs and eliminate the subsidy altogether for cable operators and CLECs alike.”).

¹¹ Comments of Coalition of Concerned Utilities, WC Docket 07-245 at 22-25 (March 7, 2008).

¹² *Gulf Power III*, ¶ 27.

¹³ *Recon. Order*, 16 FCC Rcd 12103 ¶¶ 48-52.

“The Commission’s cable rate formula, together with the payment of make-ready expenses, provides compensation that exceeds just compensation.”¹⁴

Finally, the Coalition makes one last attack on the formula suggesting that the current pole rates are a “burden” on electric utility ratepayers. As with its other arguments, this contention has been considered and rejected: “pole revenues equate to *no more than one cent of a monthly electric bill...*”¹⁵

Higher Pole Rents Will Deter Broadband Deployment and Conflict with Congressional Intent

In order to encourage the deployment of Internet services in the late 1990’s, the Commission recognized that charging higher pole rents for commingled cable/Internet services would conflict with Congressional objectives to promote the deployment of broadband and new advanced services and decided that these attachments should be charged at the cable rate:

In specifying this rate, we intend to encourage cable operators to make Internet services available to their customers. We believe that specifying a higher rate might deter an operator from providing non-traditional services. Such a result would not serve the public interest. Rather, we believe that specifying the [cable rate] will encourage greater competition in the provision of Internet service and greater benefits to consumers.¹⁶

The Supreme Court agreed, stating that “[r]aising pole rents for Internet services would subject innovative cable operators to “monopoly pricing ... [and] defeat Congress’ general instruction to

¹⁴ *Id.* ¶ 58. On further review, the U.S. Court of Appeals for the Eleventh Circuit agreed with the Commission’s application of the established legal principle that just compensation is measured by the loss to the owner and held that, because Commission regulations provide for owners to be paid both their marginal costs through make-ready payments as well as their fully allocated costs through annual pole rents, Alabama Power received more than just compensation. *Alabama Power*, 311 F.3d at 1363.

¹⁵ Massachusetts BECo Case at 12, citing Docket No. 97-82, Transcript 1 at 205 (emphasis added) (reducing pole rental fees). *See also Greater Media Cable, Inc.*, Mass. Docket No. D.P.U. 91-218 (Apr. 17, 1992), *affirmed*, 415 Mass. 409 (1993) (finding that conduit rent reductions pursuant to what is now the FCC’s standard formula would have trivial impact on the revenues of electric utilities); *Vermont Public Service Board Rule 3.700 – Pole Attachments, Policy Explanation and Summary of Comments* at 9-10 (2001) (“the overall economic impact will be very small in relation to total company revenues, [ranging from] 0.03 % of the company’s total revenues [to] approximately 0.10% of revenue Thus, the Board does not believe this rule change will have a significant rate effect on ratepayers of pole-owning utilities nor any material adverse effect on the stability of the state’s electric utilities.”)

¹⁶ *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, FCC 98-20, 13 FCC Rcd 6777 ¶ 32 (1998) (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.

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.’¹⁷ Indeed, increased pole rents to the levels sought by the Coalition would come at a cost exceeding \$500 million for attachers.¹⁸ On the other hand, the benefit to consumers from the increased deployment of broadband (estimated to be \$34.9 billion annually)¹⁹ would be severely threatened by increasing the cost of providing VoIP and other broadband services.²⁰

Maintaining pole rents at the current levels will achieve the policy of enhancing ubiquitous broadband availability. A major consumer advocate group representing interests of utility and cable consumers concludes that the cable rate “should be used for all attachments” and the Commission “must not increase the rate paid by broadband service providers.”²¹ Even a major pole owning ILEC (which receives pole attachment rent) agreed: “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.”²²

For these reasons, the Plan’s recommendation that the FCC should establish rental rates for pole attachments that are as low and close to uniform as possible is consistent with the Pole Attachment Act, FCC precedent, as well as federal policies and state commission decisions.

¹⁷ *Gulf Power II*, 534 U.S at 339.

¹⁸ NCTA estimated that increasing pole rents for broadband attachments as proposed by the electric industry would result in increased cable industry pole costs of up to \$672 million each year. NCTA Comments in 07-245 at 18-19; *id.*, Appendix B, Declaration of Dr. Michael D. Pelcovits, ¶ 22.

¹⁹ Dr. Michael D. Pelcovits and Dr. Abigail B. Ferguson, Microeconomic Consulting & Research Associates, Inc. “Benefits to Consumers from the Transformation of the Cable Industry,” July 29, 2009, at 36, available at <http://www.ncta.com/ReleaseType/MediaRelease/Cables-Digital-Transformation-Providing-Consumers-with-Advanced-Technology-Lower-Prices-and-Enhanced.aspx> (“Most of the benefit, \$25.2 billion, can be ascribed to the cable companies’ customers. Benefits to the ILECs’ customers, however, should be included in the overall total and are conservatively estimated at another \$9.7 billion. The total annual benefits therefore are \$34.9 billion.”). Indeed, the report explains in great detail all the ways in which the cable industry’s provision of digital video, Internet and telephone services and its offering of these services on a bundled basis, have promoted competition and enhanced consumer welfare.

²⁰ Dr. Kevin A Hassett and Dr. Robert J. Shapiro, “Toward Universal Broadband: Flexible Broadband Pricing and the Digital Divide” (August 2009), submitted by American Cable Association *ex parte* in GN Docket 09-51, WC Docket 07-245 and MB Docket 07-269 (Sept. 9, 2009).

²¹ Reply Comments of NASUCA, Dkt. No. 07-245 at 5 (filed April 22, 2008).

²² Verizon Initial Comments in WC Docket 09-154 at 2 (September 24, 2009) (emphasis added).

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Please do not hesitate to call should you have any questions regarding this matter.

Respectfully submitted,

/s/ John D. Seiver

John D. Seiver

Counsel for:

*Alabama Cable Telecommunications Association
Broadband Cable Association of Pennsylvania
Cable Television Association of Georgia
Florida Cable Telecommunications Association
New England Cable and Telecommunications Association
Ohio Cable Telecommunications Association
Oregon Cable Telecommunications Association
South Carolina Cable Television Association
Virginia Cable Telecommunications Association
West Virginia Cable Telecommunications Association
Astound Broadband
Bay City Cablevision
Bresnan Communications
Cable America
James Cable
Mediacom Communications
Mid-Coast Cablevision
Shentel Cable Company
Texas Mid-Gulf Cablevision
Wave Broadband*

cc: The Honorable Michael J. Copps, Commissioner
The Honorable Mignon Clyburn, Commissioner
The Honorable Robert M. McDowell, Commissioner
The Honorable Meredith Attwell Baker, Commissioner
Ms. Marlene Dortch, Secretary

APPENDIX A

EXAMPLES OF FCC, STATE AND COURT DECISIONS ADDRESSING REASONABLENESS OF CABLE POLE ATTACHMENT RATES

Supreme Court

NCTA v. Gulf Power, 534 U.S. 327 (2002) – affirming FCC decision to apply the cable rate formula to attachments used by a cable operator to provide broadband services

FCC v. Florida Power, 480 U.S. 245 (1987) – finding that FCC regulation of pole attachment rates is not an unconstitutional taking of property and that the cable rate formula is not confiscatory

Courts of Appeals

Alabama Power v. FCC, 311 F.3d 1357 (11th Cir. 2002), *cert. denied*, 124 S.Ct. 50 (2003) – affirming FCC’s decision that utility’s rates were unreasonable and that the cable rate formula provides just compensation and is not an unconstitutional taking of property

Southern Co. Services v. FCC, 313 F.3d 574 (D.C. Cir. 2002) – affirming FCC’s implementation of changes to Section 224 that were adopted as part of the Telecommunications Act of 1996

Texas Utilities Electric Co. v. FCC, 997 F.2d 925 (D.C. Cir. 1993) – affirming FCC’s decision to apply cable rate formula to non-video attachments

Monongahela Power v. FCC, 655 F.2d 1254 (D.C. Cir. 1981) – affirming FCC’s original rules implementing the cable rate formula contained in Section 224(d)

Federal Communications Commission

A. Rulemakings

Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of Rules and Policies Governing Pole Attachments, 16 FCC Rcd 12103 (2001) (*Consolidated Reconsideration Order*) – rejecting utilities’ arguments that regulation of pole attachment agreements no longer is necessary and reaffirming the validity and importance of the FCC’s rate formulas

Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of Rules and Policies Governing Pole Attachments, 15 FCC Rcd 6453 (2000) (*Fee Order*) – reaffirming the use of rate formulas based on historical costs and declining to modify the usable space presumptions

Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of Rules and Policies Governing Pole Attachments, 13 FCC Rcd 6777 (1998) (*Telecom Order*) –

establishing the telecom rate formula and deciding that the cable rate formula will continue to apply when a cable operator provides commingled cable and Internet services

Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd 4387 (1987) – making minor adjustments to the cable rate formula and clarifying that make-ready fees may not recover costs already recovered in the annual pole rental fee

Petition to Adopt Rules Concerning Usable Space on Utility Poles, 56 Rad. Reg. 2d 707 (1984) – declining to reconsider assumptions underlying the cable rate formula adopted in 1978-80

B. Adjudications¹

FCTA v. Gulf Power, 22 FCC Rcd 1997 (ALJ 2007) – rejecting utility arguments that poles were at full capacity and therefore it was appropriate to charge an unregulated attachment rate

FCTA v. Gulf Power, 18 FCC Rcd 9599 (EB 2003) – granting complaint that utility violated FCC rules by unilaterally imposing attachment rate and finding that payment of rent based on cable rate formula plus make-ready expenses exceeds just compensation

Teleport Communications Atlanta v. Georgia Power, 16 FCC Rcd 20238 (EB 2001), *affirmed* 17 FCC Rcd 19859 (2002) – granting complaint that utility violated FCC rules by using its own formula to calculate pole attachment rates rather than using cable or telecom rate formula and reaffirming that both formulas provide just compensation to pole owners

RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Co., 17 FCC Rcd 25238 (EB 2002) – rejecting utility's \$47.25 pole attachment rate as unjust and unreasonable and calculating a maximum just and reasonable annual cable rate of \$6.79 per pole attachment

Nevada State Cable Television Ass'n v. Nevada Bell, 17 FCC Rcd 15534 (EB 2002) – affirming a Cable Services Bureau Order that calculated a maximum per pole attachment rate of \$1.26 for poles owned by Nevada Bell

Cable Television Ass'n of Georgia v. BellSouth Telecommunications, 17 FCC Rcd 13807 (EB 2002) – finding unjust and unreasonable an annual pole attachment rate of \$5.03 and setting the proper rate at \$4.27

ACTA v. Alabama Power, 15 FCC Rcd 17346 (EB 2000), *affirmed* 16 FCC Rcd 12209 (2001) – granting complaint that utility's proposed attachment rate was unreasonable and affirming that cable rate formula plus the payment of make-ready expenses provides the pole owner with compensation that exceeds the just compensation required under the Constitution

¹ This list only includes examples of adjudications following the Supreme Court's 1987 decision in *Florida Power*. There are literally dozens of decisions prior to *Florida Power* applying the cable rate formula and finding that rates proposed by utilities were unreasonable.

TCTA v. GTE Southwest, 14 FCC Rcd 2975 (CSB 1999) – reaffirming that a utility cannot recover in make-ready charges any costs that it recovers through the annual pole fee

Time Warner Entertainment v. Florida Power & Light Co., 14 FCC Rcd 9149 (CSB 1999) – rejecting a pole attachment rate of \$6.00 as unjust and unreasonable and calculating the maximum just and reasonable rate at \$5.79 per pole

Texas Cable & Telecommunications Association, et al. v. Entergy Services Inc., et al., 14 FCC Rcd 9138 (CSB 1999) – ordering Entergy to reimburse cable company complainants the difference between the parties prior negotiated rate of \$3.50 and a non-negotiated rate of \$4.34 per pole charged by Entergy

Heritage Cablevision v. Texas Utilities Electric Co., 6 FCC Rcd 7099 (1991) – finding that it is unreasonable for a pole owner to charge a cable operator higher pole attachment rates for attachments that carry commingled cable and data services; *see also Selkirk Communications v. Florida Power & Light*, 8 FCC Rcd 387 (CCB 1993); *WB Cable Assoc. v. Florida Power & Light*, 8 FCC Rcd 383 (CCB 1993)

State Public Utility Commissions

Alaska

In the Matter of the Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint-Use Regulations Adopted Under 3 AAC 52.900 – 3 AAC 52.940, Order Adopting Regulations, 2002 Alas. PUC LEXIS 489 (Alas. PUC Oct. 2, 2002) – finding that the cable rate formula “provides the right balance given the significant power and control of the pole owner over its facilities” and that “changing the formula to increase the revenues to the pole owner may inadvertently increase overall costs to consumers”

California

Order Instituting Rulemaking on the Commission’s Own Motion Into Competition of Local Exchange Service, R.95-04-043, I.95-04-044, Decision 98-10-058, 1998 Cal. PUC LEXIS 879, pp. 53-56, 82 CPUC 2d 510 (Oct. 22, 1998) (internal citations omitted) – finding “that the adoption of attachment rates based on the [cable rate] formula provides reasonable compensation to the utility owner, and there is no basis to find that the utility would be lawfully deprived of any property rights.”

Connecticut

Petition of the United Illuminating Company for a Declaratory Ruling Regarding Availability of Cable Tariff Rate for Pole Attachments by Cable Systems Providing Telecommunications Service and Internet Access, Docket No. 05-06-01, pp. 5-6, 2005 Conn. PUC Lexis 295 (Dep’t of Pub. Util. Control 2005) – upholding cost-based attachment rate and finding that the provision of additional services by a cable operators does not impose costs on the pole owner.

District of Columbia

Formal Case No. 815, In the Matter of Investigation Into The Conditions For Cable Television Use of Utility Poles In The District of Columbia, Order No. 12796 (2003) – finding that FCC regulations should be followed in determining reasonable rates

Massachusetts

A Complaint and Request for Hearing of Cablevision of Boston Co., D.P.U./D.T.E. 97-82 at 18-19 (Apr. 15, 1998) – finding that FCC formula “meets Massachusetts statutory standards as it adequately assures that [the utility] recovers any additional costs caused by the attachment of [] cables . . . while assuring that the [attachers] are required to pay no more than the fully allocated costs for the pole space occupied by them.”

Michigan

In the Matter of the Application of Consumer Power Company, Case Nos. U-10741, U-10816, U-10831 at 27, 1997 Mich. PSC Lexis 26 (1997), *reh’g denied*, 1997 Mich. PSC LEXIS 119 (April 24, 1997), *aff’d Detroit Edison Co. v. Mich. Pub. Serv. Comm’n*, No. 203421 (Mich. Court of Appeals, Nov. 24, 1998); *aff’d Consumers Energy Co. v. Mich. Pub. Serv. Comm’n*, No. 113689 (Mich. Sup. Ct. Aug. 31, 1999) – adopting FCC standard and finding that the FCC cable rate formula aligns pole rates in Michigan “more closely with other states that already adhere to this standard.”

New Jersey

Regulations of Cable Television Readoption with Amendments: N.J.A.C. 14:18, Docket No. CX02040265 (2003) – affirming use of a cost-based attachment rate and adopting the FCC formula

New York

In the Matter of Certain Pole Attachment Issues Which Arose in Case No. 94-C-0095, 997 N.Y. PUC Lexis 364 (1997) – adopting FCC approach to pole attachments

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 Carriers, Case 01-E-0026 (2001) – rejecting a higher telecom rate formula based on concerns that competition would suffer

Ohio

Re: Columbus and Southern Electric Company, 50 PUR 4th 37 (1982) – adopting the FCC cable formula for attachments by cable operators

Oregon

Oregon Rulemaking to Amend and Adopt Rules in OAR 860, Divisions 024 and 028, regarding Pole Attachment Use and Safety, AR 506; 510 at p. 10 (2007) – adopting FCC cable rate formula and finding that “the cable formula has been found to fairly compensate pole owners for use of space on the pole.”

Utah

In the Matter of an Investigation into Pole Attachments, 2006 Utah PUC Lexis 213 (2006) – adopting the FCC cable rate formula following a comprehensive pole attachment rulemaking, later codified at UTAH ADMIN. CODE R746-345-5(A) Pole Attachments (2006).

Vermont

Vermont Policy Paper and Comment Summary on PSB Rule 3.700 (2001) at 6 – finding that a reduction in pole attachment costs to cable companies will lead to increased deployment of advanced services and “lead to cable services becoming available in some additional low-density rural areas. . . . [Thus creating] even more value for Vermonters as cable TV companies are increasingly offering high-speed Internet service to new customers.”