

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

In the Matter of	)	
	)	WC Docket No. 07-245
Implementation of Section 224 of the Act	)	
	)	GN Docket No. 09-51
A National Broadband Plan for Our Future	)	FCC 10-84

**REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> responds to initial comments filed on the May 20, 2010 Order and Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (Commission or FCC) seeking comment on proposed changes to the Commission’s pole attachment rules.<sup>2</sup> Commenters agreed with NTCA that the Commission should establish a predictable, reasonable make-ready timeline for pole attachments, and that the Commission has the necessary legal authority for imposing deadlines and requiring just and reasonable rates on utilities under Section 224 of the Act and Section 706 of the Telecommunications Act of 1996. Commenters also concurred that lowering the telecom rate for broadband connections will encourage broadband deployment in rural areas, and supported NTCA’s request to revise the current dispute resolution process governing pole attachment complaints.

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<sup>1</sup> NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 585 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, FCC 10-84, Order and Further Notice of Proposed Rulemaking (rel. May 20, 2010) (Order and FNPRM). NTCA’s silence on any positions raised by parties in these proceedings connotes neither NTCA’s agreement nor disagreement with their positions or proposals.

NTCA renews its support for the Commission's proposed 105-149 day make-ready timeline for up to 100 poles per batch request as reasonable for small attachment orders.<sup>3</sup> The Commission's docket reflects broad support for a make-ready timeline.<sup>4</sup> Some, like CTIA and the DAS Forum, want an even shorter timeline for wireless DAS (distributed antenna system) build-out requests, which can be smaller in scale than wireline build-outs.<sup>5</sup>

Utilities including EEI and UTC incorrectly assert that the Commission does not have the authority to impose deadlines on electric utilities for make-ready outside the scope of a specific complaint.<sup>6</sup> NTCA agrees with the United States Telecom Association, Verizon, and others that the Commission has the necessary legal authority for imposing deadlines and requiring just and reasonable rates on utilities under Section 224 of the Act and Section 706 of the Telecommunications Act of 1996.<sup>7</sup>

The Commission likewise has more than sufficient authority to regulate pole attachment rates. Section 224 requires the Commission to afford attachers timely access to utility infrastructure on just and reasonable rates, terms, and conditions.<sup>8</sup> Defining that cost for the purposes of the telecommunications carrier rate formula is within the wide latitude of the

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<sup>3</sup> National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, Western Telecommunications Alliance, and Eastern Rural Telecom Association (NTCA *et al.*) Joint Comment, p. 10.

<sup>4</sup> *See, e.g.*, CTIA—the Wireless Association (CTIA) Comment, p. 6; The DAS Forum (a member section of PCIA—The Wireless Infrastructure Association) (DAS) Comment, p. 16; Massachusetts Department of Telecommunications and Cable Comment, pp. 2, 3; MetroPCS Communications Comment, p. 11; Public Utilities Commission of Ohio Comment, p. 13; T-Mobile Comment, p. 8; tw telecom and COMPTTEL Joint Comments, p. 10; US Telecom Comment, p. 19.

<sup>5</sup> CTIA Comment, p. 7; DAS Comment, pp. 17-18.

<sup>6</sup> Edison Electric Institute and the Utilities Telecom Council Joint Comments, pp. 1, 2.

<sup>7</sup> 47 U.S.C. §§ 224 and 1302. CenturyLink Comment, pp. 22-28; Charter Communications Comment, p. 10; tw telecom and COMPTTEL Joint Comments (tw telecom and COMPTTEL), pp. 4-5; US Telecom Comment, pp. 12-18; Verizon Comment, pp. 12-16.

<sup>8</sup> 47 U.S.C. § 224.

Commission's discretion under Section 224 since the statute does not specify the formula or guidance on setting the cost definitions.<sup>9</sup> US Telecom's interpretation of Section 224(b)'s mandate to ensure just and reasonable rates applying to all telecommunication service providers is sound.<sup>10</sup> Section 706 is another valid source of jurisdiction as it instills a public mandate on the Commission and state commissions to use such regulating methods as necessary to remove barriers to infrastructure investment.<sup>11</sup> Excessive, unreasonable pole attachment rates can create investment barriers to deployment of advanced services, including broadband. The Commission therefore has ample legal authority under these statutes to ensure reasonable pole attachment rates.

Several commenters echoed NTCA's assessment of the need for lower telecommunications pole attachment rates.<sup>12</sup> The United States Telecom Association, for example, agreed with NTCA that sparsely populated rural areas are acutely affected by price discrepancies and increases in pole rates.<sup>13</sup> Verizon suggests the Commission should set a uniform broadband attachment rate at the cable rate level, and the Massachusetts Department of Telecommunications and Cable and T-Mobile concur.<sup>14</sup> The Ohio Public Utilities Commission suggests that lowering the telecommunications service rate will increase broadband services

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<sup>9</sup> The Public Utilities Commission of Ohio concurs, saying "the FCC has the flexibility pursuant to section 224 to determine 'just and reasonable' pole attachment rates ... bound by the plain language of section 224(d) and (e)." Public Utilities Commission of Ohio Comment, pp. 4, 12.

<sup>10</sup> US Telecom Comment, p. 5.

<sup>11</sup> 47 U.S.C. § 1302.

<sup>12</sup> CenturyLink Comment, p. 3; CTIA Comment, p. 16; ITTA Comment, p. 14; tw telecom and COMPTEL Joint Comments, p. 10; US Telecom Comment, pp. 1, 9; Verizon Comment, p. 10.

<sup>13</sup> US Telecom Comment, pp. 2, 13.

<sup>14</sup> Massachusetts Department of Telecommunications and Cable Comment, p. 4; T-Mobile Comment, p. 16; Verizon Comment, p. 10.

deployment.<sup>15</sup> NTCA agrees. Verizon contends correctly that setting uniform broadband attachment rates will speed negotiations between broadband service providers and utilities.<sup>16</sup> ITTA accurately stated that “consistency in rate regulation is needed to increase regulatory parity, diminish disruptive market signals, and preempt inappropriate regulatory advantages.”<sup>17</sup> AT&T asserted that the Commission’s pole attachment rate proposal should go farther than to address just the telecom rate – they contend the Commission should set a uniform broadband attachment rate for all attachers. These comments show reasoned support for lowering the telecommunications attachment rate, so the Commission should adopt the lowest telecom rate for broadband connections to encourage broadband deployment in rural areas.

Finally, commenters support NTCA’s request for revising the current dispute resolution process governing pole attachment complaints.<sup>18</sup> The Public Utilities Commission of Ohio insightfully observed that, “the FCC staff could play an important role in mediating settlements of disputes” and supported the use of Commission dispute resolution forums for pole attachment complaints where states have not assumed jurisdiction.<sup>19</sup> Small rural ILECs, such as NTCA’s members, may not have sufficient clout or financial resources to successfully engage dispute resolution techniques at the local level, as ITTA advocates.<sup>20</sup> CTIA suggests using a two-tiered complaint process.<sup>21</sup> Clearly, the Commission should take this opportunity to revise the dispute

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<sup>15</sup> Public Utilities Commission of Ohio Comment, p. 9.

<sup>16</sup> Verizon Comment, p. 16.

<sup>17</sup> ITTA Comment, p. 12.

<sup>18</sup> NTCA et al. Joint Comments, p. 8; CenturyLink Comment, p. 46; Charter Communications Comment, p. 23; tw telecom and COMPTTEL Joint Comments, p. 34; Public Utilities Commission of Ohio, p. 2.

<sup>19</sup> Public Utilities Commission of Ohio Comment, p. 3.

<sup>20</sup> ITTA Comment, p. 9.

<sup>21</sup> CTIA Comment, p. 12.

resolution process for pole attachments. Part of that resolution should include the creation of an ILEC dispute remedy mechanism.

For these reasons, the Commission has and should exercise its Section 224 and Section 706 authority to create a reasonable make-ready timeline for pole attachments, to require just and reasonable rates, and to revise the current dispute resolution process governing pole attachment complaints.

Respectfully submitted,



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October 4, 2010

## CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 07-245, GN Docket No. 09-51, FCC 10-84, was served on this 4th day of October 2010 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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