



March 7, 2011

EX PARTE

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

Re: *Implementation of Section 224 of the Act, WC Docket No. 07-245; A National Broadband Plan for Our Future, GN Docket No. 09-51*

Dear Ms. Dortch:

This is to inform you that on March 4, 2011, Glenn Reynolds and the undersigned of USTelecom, along with Jeb Benedict of Centurylink, Anne Berkowitz of Verizon, Jay Bennett and William Brown of AT&T, Jennie Chandra of Windstream Communications and Mike Saperstein of Frontier Communications, met with Zac Katz, Legal Advisor to Chairman Julius K. Genachowski in connection with the proceedings identified above. During the meeting, USTelecom discussed pole attachment rate and access issues, and shared the attached presentation.

USTelecom emphasized that by far the most important steps the Commission could take in this proceeding to facilitate broadband deployment would be to implement the recommendation of the National Broadband Plan to ensure that pole attachments rates for all attachers, including ILECs, are “as low and close to uniform as possible.”¹ Indeed, ensuring that ILECs are afforded the protections of just and reasonable rates, terms, and conditions, as required under Section 224(b) of the Act, is the one policy objective the Commission could implement in the proceeding to significantly improve the economics of rural broadband deployment.

USTelecom highlighted the Commission’s finding in its National Broadband Plan that rate disparity in pole attachments is particularly acute in rural areas where there are fewer homes per mile of plant. The National Broadband Plan concluded that if lower cable rates were applied to attachers, the typical monthly price of broadband for some rural consumers “could fall materially.”²

USTelecom also emphasized some of the points raised in its prior advocacy in this proceeding. In particular, USTelecom noted that the Commission has a statutory obligation to

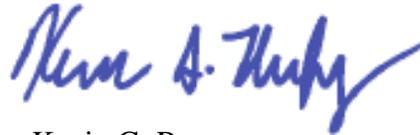
¹ National Broadband Plan, Recommendation 6.1, p. 110.

² National Broadband Plan, p. 110.

ensure just and reasonable pole attachment rates, terms and conditions for all attachers, including Incumbent Local Exchange Carriers.³ USTelecom also dismissed erroneous assertions from the utility industry regarding the full scope of the Commission's authority and appropriate statutory interpretation.⁴

Please let me know if you have any questions.

Sincerely,



Kevin G. Rupy

Attachment

cc: Zac Katz
Jeb Benedict
Jay Bennett
Anne Berkowitz
William Brown
Jennie Chandra
Mike Saperstein

³ See e.g., USTelecom Comments, WC Docket No. 07-245, pp. 16 – 18 (Aug. 16, 2010).

⁴ See, USTelecom Ex Parte, WC Docket No. 07-245 (Feb. 16, 2011).

FCC Pole Attachment Proceeding

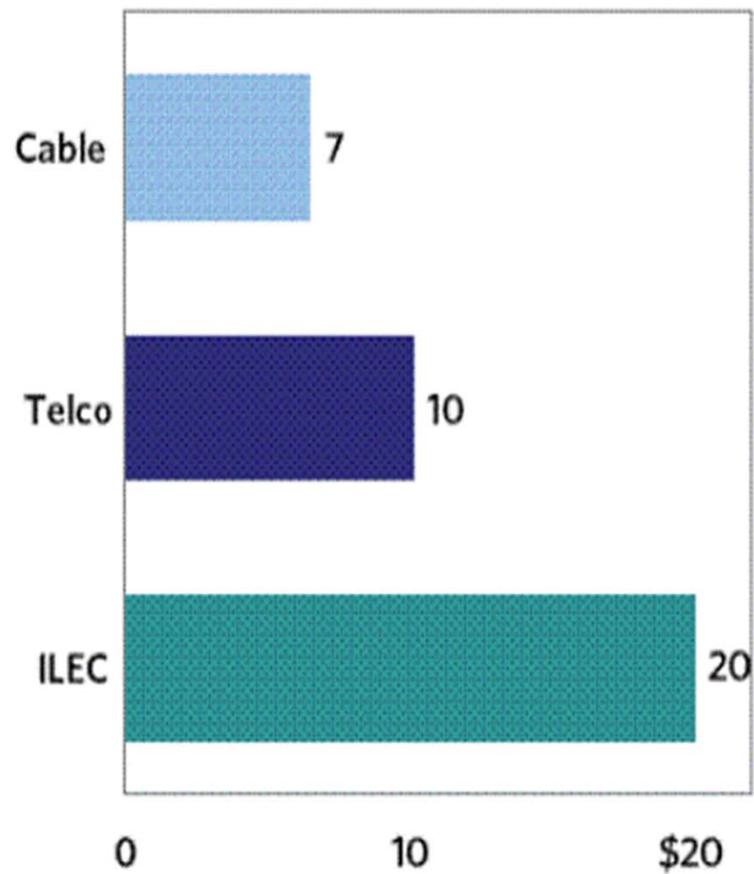
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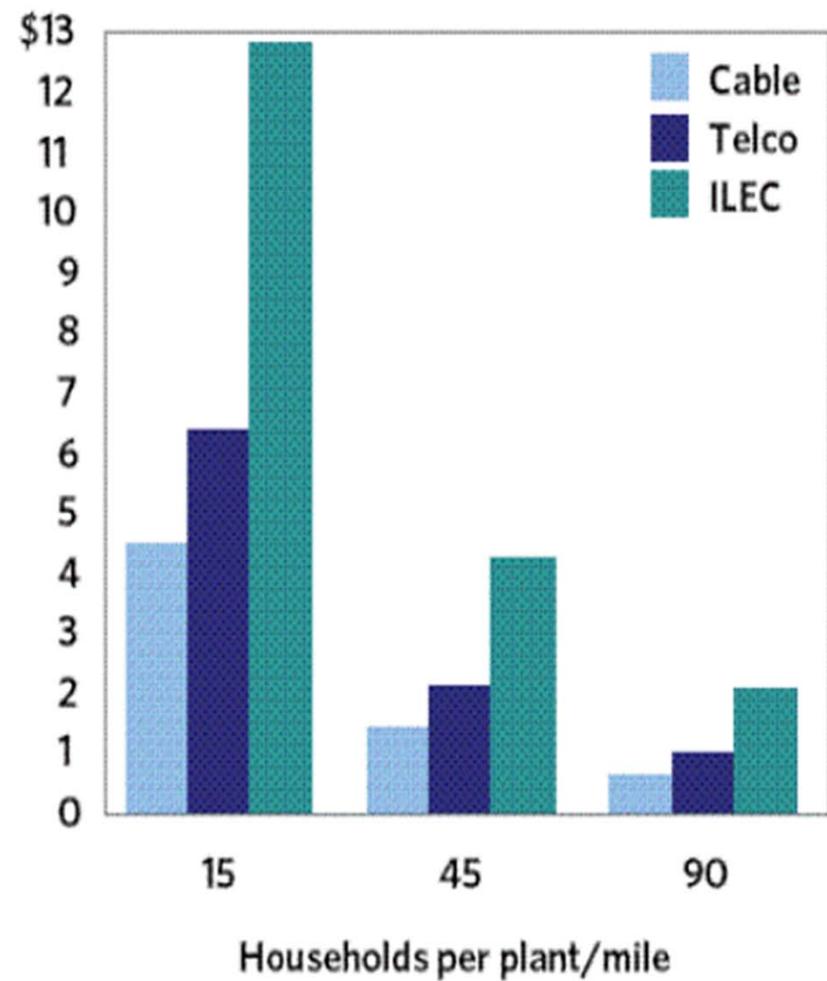
Average pole attachment rates

Dollars per foot of pole space per year



Pole attachment operating expenditure/subscribing household

Dollars per foot of pole space per year



National Broadband Plan

Findings & Recommendations

- “Collectively, the expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment.”
 - “Applying different rates based on whether the attacher is classified as a “cable” or “telecommunications” company distorts attachers’ deployment decisions. This is especially true with regard to integrated, voice, video, and data networks.”
 - “The impact of these rates can be particularly acute in rural areas, where there are often more poles per mile than households.”
 - Reducing the average attachment rates paid by ILECs to that paid by cable companies “could have the added effect of generating an increase – possibly a significant increase – in rural broadband adoption.”
- ***“To support the goal of broadband deployment, rates for pole attachments should be as low and as close to uniform as possible.”***

Source: National Broadband Plan, pp. 109-110

Section 224

(a)(4) The term “pole attachment” means any attachment by a cable television system or **provider of telecommunications service**...

(a)(5) For purposes of this section, the term “**telecommunications carrier**” ...does not include any incumbent local exchange carrier...

Section 224(b)

(1) Subject to the provisions of subsection (c) of this section, the Commission **shall regulate** the rates terms and conditions for pole attachments [defined as attachments by a cable television system or **provider of telecommunications service**] to provide that such rates, terms and conditions are just and reasonable, and **shall adopt procedures** necessary and appropriate to hear and resolve complaints concerning such rates, terms and conditions...

(2) The Commission **shall prescribe** by rule regulations to carry out the provisions of this section.

“Provider of telecommunications service” and “telecommunications carrier” have distinct meanings in the ‘96 Act

- Electric Utilities assert that the two terms are “interchangeable” but they are used distinctly throughout the ‘96 Act.
- § 256(b)(1) directs the FCC to establish rules for “network planning by **telecommunications carriers *and other providers of telecommunications service...***”
- § 10 requires the Commission to forbear from applying regulations “to a telecommunications carrier” and shall consider whether forbearance “will enhance competition among providers of telecommunications service.”
- Other examples include §§ 11, 251, 254, 255, and 257.

Nor Are §224(b) and §224(f) “Inseverable”

- §224(b) is a broad mandate to ensure that “*rates, terms, and conditions are just and reasonable*”
- §224(f) requires that utility pole owners provide “*nondiscriminatory access*”
- §224(c) underscores that the statutory scheme views these as separate and distinct by removing Commission “jurisdiction with respect to *rates, terms, and conditions, or access to poles*” where States have certified their intent to regulate.
- The Commission has found that §224(f) ensures that pole owners allow “the same pole attachment *techniques*” used by the owner, such as boxing and bracketing. *See, May 10 Order*

Sections 224(d) and (e) “work no limitation on” the scope of §224(b)– *Gulf Power*

- The Electric Utilities argument would make §224(b) completely superfluous.
- Instead, §224(b) is intended to be the safety net provision to ensure just and reasonable rates terms and conditions for attachments outside the specific provisions of subsections (d) and (e), including:
 - Attachments by cable companies of facilities providing services other than cable television, and thus falling outside §224(d), as previously established by the FCC and upheld by the S.Ct. in the *Gulf Power* decision.
 - Attachments by telecommunications carriers other than for the provision of telecommunications services, such as for broadband, and thus falling outside §224(e).
 - Attachments by providers of telecommunications services that are neither cable companies nor telecom carriers as defined in the statute—which, here, includes ILECs.