

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544**

Union Electric Company d/b/a Ameren Missouri)
Motion for Declaratory Ruling)
Pursuant to Section 1.2 (a) of)
The Commission’s Rules)
)
To: Chief, Wireline Competition Bureau

WC Docket No. 13-307

COMMENTS

Mediacom Communications Corporation (“Mediacom”) hereby submits the following Comments in response to the above-captioned Petition for Declaratory Ruling (“Petition”) filed by Union Electric Company d/b/a Ameren Missouri (“Ameren”) seeking a determination that cable operator VoIP traffic be treated as “telecommunications services” for purpose of calculating pole attachment rental rates under Section 224 of the Communications Act¹ and associated Commission rules.² Mediacom is a nationwide cable operator that operates communications services extensively in both Illinois and Missouri, states where Ameren is the primary electric utility. In each state, Mediacom has attached its facilities to thousands of Ameren affiliate poles. For the following reasons, the Bureau should decline Ameren’s reclassification request and instead clarify that Ameren’s attempt to unilaterally reclassify cable operator VoIP traffic as “telecommunications” in order to resurrect and apply the now defunct pre-2011 rate formula to cable operator attachments undermines the Commission’s 2011 determination that public policy demands that broadband infrastructure costs, including pole attachment rental fees, should be driven lower and as technology neutral as possible.

¹ 47 U.S.C. § 224.

² 47 C.F.R. § 1.1409(e).

Ameren readily acknowledges that its Petition revives questions that have already been exhaustively briefed and deliberated in various Commission proceedings, and, if granted, would upset a regulatory and practical stasis regarding pole attachment rates that very few now call for to be disrupted. We agree and thus to the extent that the Petition presents any novel legal approaches to such issues, which is unlikely, Mediacom leaves those issues to be hashed out by the principal parties in this dispute. And as the current stasis is working as the Commission intended, with the two rate formulas producing virtually similar lower rates, the Bureau should decline to address a classification question which for pole attachment purposes is virtually moot.

Nonetheless, in analyzing any arguments here, the Bureau must not lose sight of the forest for the trees. Ameren's declaratory ruling request is part of a sly litigation strategy aimed at circumventing the Commission's policy, best expressed in the 2011 Order, to keep pole attachment rental fees down and to do so in a technology neutral way.³ Specifically, Ameren here is trying to thwart the Commission's lower, unified rate formulas by convincing a non-expert court to apply the defunct, pre-2011 telecommunications rate formula to cable operator pole attachments under the guise of properly reclassifying those attachments. In so doing, Ameren seeks to accomplish exactly what the Commission rejected in the 2011 Order, the imposition of significantly higher pole attachment costs on cable operators. U.S. District Judge Jackson obviously sees Ameren's game for what it is, and refuses to play along without the Commission's express blessing, thus its referral order demanding that Ameren seek the instant clarification from the Commission before allowing the case to proceed.

Ultimately, the Commission must reject Ameren's request. To grant it, thereby allowing its court claim to survive, would possibly sock its target, cable operator Cable One, with

³ *Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240, ¶ 134 (2011) ("2011 Order"), *aff'd by American Electric Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied* 134 S. Ct. 118 (U.S. Oct. 7, 2013).

significantly increased pole attachment costs. Such a result would be exactly opposite to the Commission’s policy intention in 2011 “to establish [pole rental] rates ‘as low and close to uniform as possible’” as “pole rental rates play a significant role in the deployment and availability of voice, video, and data networks,”⁴ and given that “uncertainty regarding the applicable rate” for broadband services ultimately deters ongoing broadband deployment.⁵ But more destructively, such a result would invite a proliferation of similar breach of contract lawsuits, with electric utilities rushing to the courts to claim increased back rents for cable operators’ pre-2011 attachments. Again, this is a risk the Commission specifically intended to avoid in 2011, where in the name of promoting further broadband deployment, it sought to discourage “disputes and costly litigation about” the rate formula that applies to “broadband, voice over Internet protocol, and wireless services that distort attachers’ deployment decisions.”⁶ Indeed, suits that would surely proliferate by granting Ameren’s request would risk monstrous, unforeseen infrastructure costs to the cable operators, resulting in reduced capital for their ongoing broadband network deployments. Other than providing a windfall for the electric utilities, such a result benefits no one.

Accordingly, the Bureau should deny Ameren’s request to reclassify cable operator VoIP traffic as “telecommunications services” for pole attachment rate calculation purposes. It should confirm that attachments carrying commingled VoIP (and indeed all other non-telecommunications) services offered by cable operators remain subject only to the cable attachment rate formula. Finally, the Bureau should state that Ameren’s attempt to unilaterally reclassify cable operator VoIP traffic as “telecommunications” in order to resurrect and apply the

⁴ 2011 Order at ¶¶ 134, 172.

⁵ *Id.* at ¶ 134.

⁶ *Id.* at ¶ 174.

now defunct pre-2011 rate formula to cable operator attachments run contrary to the Commission's 2011 determination that public policy demands that broadband infrastructure costs, including pole rental fees, should be driven lower and as technology neutral as possible.

Respectfully submitted,

**MEDIACOM COMMUNICATIONS
CORPORATION**

By: _____


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