

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544**

In the Matter of )  
 )  
Motion of Union Electric Company d/b/a ) WC Docket No. 13-307  
Ameren Missouri for Declaratory Ruling )  
Concerning VoIP Service Offered Using )  
Cable One's Pole Attachments )

**COMMENTS OF SOUTHERN COMPANY, DUKE ENERGY CORPORATION AND  
AMERICAN ELECTRIC POWER SERVICE CORPORATION**

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January 21, 2014

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Southern Company, Duke Energy Corporation and American Electric Power Service Corporation (collectively “Electric Utilities”) respectfully submit these Comments in response to the Commission’s Public Notice seeking comment on a motion for declaratory ruling (“Motion”) filed by Union Electric Company d/b/a Ameren Missouri (“Ameren”) pursuant to 47 C.F.R. § 1.2.

**SUMMARY**

The substantive issue raised by Ameren’s Motion is already pending before the Commission. The Electric Utilities initiated WC Docket 09-154, *Petition of American Electric Power Service Corporation, et. al. for a Declaratory Ruling* (Aug. 17, 2009) (hereafter “Docket 09-154”) and requested that the Commission declare “that the telecommunications rate (‘Telecom Rate’), which applies to jurisdictional pole attachments used for traditional telephone service, also applies to cable system pole attachments used to provide [VoIP] service.” *See* *Petition*, Docket 09-154 attached as Exhibit A. The Electric Utilities adopt and incorporate their

submissions in Docket 09-154 (Petition, Comments and Reply Comments) as if fully set forth herein.<sup>1</sup>

The Electric Utilities also agree with Ameren on the procedural issue raised in its Motion. The proper means of invoking the Commission's jurisdiction over a pole attachment dispute between the parties is through a pole attachment complaint filed by the attacher, not a motion for declaratory ruling filed by the pole owner.

**I. VOIP SERVICES SHOULD BE TREATED AS TELECOMMUNICATIONS SERVICES FOR PURPOSES OF POLE ATTACHMENT RATES.**

In 2009, the Electric Utilities explained why pole attachments used to transmit VoIP services should be subject to the Telecom Rate. Chief among those reasons is that "VoIP is functionally indistinguishable from traditional telephone service." *See* Petition in Docket 09-154 at 5. Because VoIP is functionally indistinguishable from traditional telephone service, the Commission already subjects VoIP service to many of the same regulations that apply to telephone service provided by telecommunications carriers. *See* Petition in Docket 09-154 at 6, attached as Exhibit A.

The Electric Utilities position on this issue is not unique. Time Warner Telecom, Inc. ("TWTC"), a telecommunications carrier and VoIP service provider, filed a petition in mid-2011 requesting that the Commission "clarify that TWTC's facilities-based VoIP services are telecommunications services." *See* Docket 11-119, *Petition for Declaratory Ruling* (July 14, 2011) (hereafter "Docket 11-119") at 2. As TWTC noted, its facilities-based VoIP service offerings satisfy the definition of "telecommunications service" under the Act "and they are therefore telecommunications services." *See* Petition in Docket 11-119 at 4.

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<sup>1</sup> The Electric Utilities' Petition, Comments and Reply Comments in Docket 09-154 are attached hereto as Exhibits A, B and C, respectively.

Treating VoIP services as “telecommunication services” for purposes of pole attachment rates would also promote the Commission’s goal of competitive neutrality. Currently, a telecommunications carrier providing VoIP service indisputably pays the telecom pole attachment rate, while a cable company offering the same service, over the same platform, pays the lower cable pole attachment rate (assuming the cable company offers no other services that subject its attachments to the higher telecom rate).<sup>2</sup> Treating VoIP services as telecommunication services for purposes of pole attachment rates would also reduce disputes over which rate (cable rate v. telecom rate) applies to cable television attachments, given that most cable television attachments are now used to provide VoIP services.

**II. CABLE ONE’S POSITION IN THE FEDERAL COURT CASE UNDERLYING AMEREN’S MOTION CREATES THE POTENTIAL FOR AN ADMINISTRATIVE QUAGMIRE.**

In the event that Cable One, or any other cable television system or telecom carrier, desires to challenge the pole attachment rate charged by a utility, the Commission’s rules provide the mechanism for challenging the rate. *See* 47 C.F.R. § 1.1401, *et seq.* A utility should not be required to seek a declaration of “approval” from the Commission prior to charging a particular rate, especially where (as appears to be the situation in the federal court case underlying Ameren’s Motion) the dispute is party-specific and fact-specific. The Electric Utilities agree with Ameren that being forced to file a motion for declaratory ruling pursuant to 47 C.F.R. § 1.2 is neither procedurally appropriate nor supported by historical practice.

The Eastern District of Missouri’s decision creates a procedural quagmire and places the Commission at risk for numerous party-specific motions for declaratory ruling. The effect of requiring a utility (like Ameren) to file a petition for declaratory ruling on the classification of

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<sup>2</sup> Even under the Commission’s new telecom pole attachment formula, if the presumptive average number of attaching entities is rebutted, the telecom rate is higher than the cable rate. *See* 47 C.F.R. §§ 1.1409(e)(2); 1.1417.

certain services—especially when classification of those services may not be dispositive of the issues—in essence deprives a utility of its ability to enforce contract rights. The Commission should make clear that the pole attachment complaint process, and not 47 C.F.R. § 1.2, is the proper means of invoking the Commission’s jurisdiction over a pole attachment rate dispute between two parties.

#### CONCLUSION

The Electric Utilities support Ameren’s Motion for a declaratory ruling on both the substantive and procedural questions presented in the Motion. The Electric Utilities appreciate the Commission’s attention to, and look forward to further dialogue with, the Commission on these issues.

Respectfully submitted,

*s/ Allen M. Estes*

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