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

In the Matter of	)	
	)	
Petition 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 Attachment	)	

VERIZON[1] REPLY COMMENTS

Most commenters agree that the Commission should not decide the regulatory classification of VoIP service in this declaratory ruling proceeding.[2] The Commission should reject Union Electric's ("Amaren") invitation[3] to use a contractual dispute between individual litigants as a proxy for its ongoing IP-Enabled Services Docket or other appropriate rulemaking and should decline to classify Cable One's VoIP service here.

As other commenters explained, the Commission need not decide the regulatory classification of VoIP in order to terminate the controversy and remove the uncertainty that led to the underlying dispute between Cable One and Ameren.[4] Deciding it here, in a limited controversy between two parties in the context of a pole attachment complaint, would constitute

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[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively "Verizon").

[2] *See Wireline Competition Bureau Seeks Comment on Petition of Union Electric Company d/b/a Ameren Missouri For Declaratory Ruling Concerning VoIP Service Offered Using Cable One's Pole Attachments*, Public Notice, 28 FCC Rcd 17023 (2013).

[3] Union Electric Co. d/b/a Ameren Missouri, *Motion for a Declaratory Ruling Pursuant to Section 1.2(a) of the Commission Rules*, WC Docket No. 13-307 (filed June 24, 2013) ("Petition").

[4] *See, e.g.*, AT&T Comments; American Cable Association Comments; and National Cable & Telecommunications Association Comments (Jan. 22, 2014).

the tail wagging the proverbial dog; the Commission should not make that determination with its wide-ranging consequences that affect the industry as a whole in this narrow proceeding with an undeveloped record.

And, further, even were it to decide the issue, granting Ameren's Petition would yield the wrong result. Although the Commission has not yet ruled on VoIP's regulatory classification, the text of the Communications Act and Commission precedent make clear that VoIP is an information service and not a telecommunications service. Verizon has explained in several rulemaking proceedings that VoIP meets the Act's statutory definition of "information service."[5] Verizon incorporates those filings by reference here.

Only a few parties in this proceeding -- including Ameren and the electric utility companies, Southern Company, Duke, and AEP -- argue otherwise. They assert for parochial reasons related to pole attachment rates that if the Commission does rule on the petition, the VoIP service offered over Cable One's attachments should be deemed a "telecommunications service" for the purposes of determining the appropriate pole attachment rental.[6] But even Ameren concedes that the Commission need not reach such a declaratory ruling on the classification issue at all. Instead, Ameren argues that the Commission could hold that utility companies are not required to seek a declaratory ruling on the classification of Cable One's services prior to seeking collection. While Ameren is incorrect that the only appropriate avenue

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[5] *See, e.g.*, Comments of Verizon, *Petition of Sprint for Declaratory Ruling Regarding Application of CenturyLink's Access Tariffs To VoIP Originated Traffic Pursuant to Primary Jurisdiction Referral*, WC Docket No. 12-105 (June 14, 2012); *see also* AT&T Comments at 4, n.16 (incorporating sources to demonstrate that, "Like other interested parties, AT&T has opined on the topic of VoIP classification and has asserted that, because VoIP service is an information service, "VoIP providers—like other providers of IP-based services—are not 'telecommunications carriers' . . . ."),

[6] *See* Ameren Petition at 9; Southern Co., Duke Energy, American Electric Power Service Corp. Comments at 3 ("Electric Utilities Comments").

for presenting the substance of a pole attachment dispute is through a pole attachment complaint,[7] its point that classification *per se* is not required here is correct. As AT&T explains, the Supreme Court has upheld the Commission's finding that attachments by a cable television system that commingled Internet and cable services were still covered by Section 224(b) and that the Commission's decision to apply the prescribed cable rate formula to such attachments was "logical and unequivocal."[8] That rationale could be held to apply equally here.

In their comments, COMPTEL and the Electric Utilities urge the Commission to classify VoIP as a telecommunications service in this proceeding. But these parties are misguided. Whether VoIP is properly classified as an "information service" or a "telecommunications service" has been before the Commission since at least 2004, when it issued its *IP-Enabled Services NPRM*.[9] And also since at least 2004, the Commission has declined to answer the question.[10] Although the Commission should once and for all confirm that VoIP and all IP-

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[7] For example, in the right circumstances, a court could fairly determine with reference to the FCC's *Pole Attachment Order* that a particular set of rates are themselves unjust and unreasonable, or that a utility failed to negotiate new rates in accordance with that order in good faith. *See Implementation of Section 224 of the Act*; *A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011).

[8] *See* AT&T Comments at 7 (citing *NCTA v. Gulf Power Co.*, 534 U.S. 327, 338 (2002)).

[9] *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

[10] *See, e.g.*, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶ 14 (2004) ("We reach this decision irrespective of the definitional classification of DigitalVoice under the Act, *i.e.* telecommunications or information service, a determination we do not reach in this Order."); *E911 Requirements for IP-Enabled Services*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 26 (2005) ("This Order, however, in no way prejudges how the Commission might ultimately classify these services."); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶ 35 (2006) ("The Commission has not yet classified interconnected VoIP services as 'telecommunications services' or 'information services' under the definitions of the Act. Again here, we do not classify these services."); *Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order, 22 FCC Rcd 11275, ¶ 24 n.99 ("We will address the regulatory classification

enabled services are information services, as explained above, the proper place for the Commission to do that is in the *IP-Enabled Services* proceeding or one of several other rulemaking proceedings where there is already a fully developed record.

Respectfully submitted,

/s/ Katharine R. Saunders
William H. Johnson
Curtis L. Groves
Katharine R. Saunders
VERIZON
1320 North Courthouse Road
9th Floor
Arlington, VA 22201
(703) 351-3097

Attorneys for Verizon

Michael E. Glover
Of Counsel

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of IP-enabled services, including VoIP services, in a separate rulemaking proceeding and we make no findings here regarding the appropriate regulatory classification of interconnected VoIP services.”).