

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>PETITION OF AMERICAN ELECTRIC</b>	<b>)</b>	
<b>POWER SERVICE CORPORATION,</b>	<b>)</b>	
<b>DUKE ENERGY CORPORATION,</b>	<b>)</b>	<b>WC DOCKET NO. 09-154</b>
<b>SOUTHERN COMPANY SERVICES,</b>	<b>)</b>	
<b>INC. AND EXCEL ENERGY SERVICES,</b>	<b>)</b>	
<b>INC. FOR A DECLARATORY RULING</b>	<b>)</b>	

**COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments in the above-captioned proceeding. ITTA is an alliance of mid-size telephone companies that collectively serve approximately 30 million access lines in 44 states, and which offer subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. ITTA members are committed to providing their end-users with affordable access to communications services.

In the instant proceeding, American Electric Power Service Corporation, Duke Energy Corporation, South Company Services, Inc., and Xcel Energy Services, Inc. (Petitioners) seek a declaratory ruling on what rate formula should apply when cable attachments are used to provide interconnected Voice over Internet Protocol (VoIP) service. Pole attachment rate regulation, however, should not address cable providers in isolation from all other broadband providers. Rather, consistency in rate regulation is needed to increase regulatory parity, diminish disruptive market signals, and preempt inappropriate regulatory advantages. Accordingly, ITTA asks that the Commission not

act on the Petition, and, instead, refresh the general record and address pole attachment regulation in a comprehensive fashion within Docket No. 07-245

Currently, cable owners pay attachment fees at a rate that is generally lower than that which is charged to competitive providers of telecommunications services. Exacerbating this discrepancy in the broadband arena is the fact that the Commission has not yet reconciled its rules to reflect the statute that guarantees incumbent local exchange carriers (ILECs) just and reasonable rates, terms and conditions for their pole attachments.<sup>1</sup> This regulatory chasm frustrates broadband deployment by enabling utility pole owners to levy exorbitant rates on ILECs.

In the absence of clear Commission guidance regarding an ILEC rate formula, ILECs may have difficulty refusing a pole owner's "final offer" during negotiations, and accordingly must include within their broadband costs the high fees paid for pole attachments. In instances where deployment depends on aerial cable, unreasonable rates, terms, and conditions that are imposed on ILECs by pole owners serve as formidable disincentives to deployment absent means by which the carrier can recover its pole attachment costs. ILECs consequently are placed at a competitive disadvantage as different rate formulae are applied to similar facilities based largely on the entity that is affixing the attachment. As noted above, cable providers pay one, lower rate; competitive local exchange carriers (CLECs) pay a higher rate; and, ILECs, lacking Commission rule protection afforded by a rate formula, are subject to rates that vary

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<sup>1</sup> See *Implementation of Section 224 of the Act: Amendment of the Commission's Rules and Policies Governing Pole Attachments: Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 07-245, RM-11293, RM-11303 (Mar. 7, 2008). See, also, *Reply Comments of the Independent Telephone & Telecommunications Alliance* (Apr. 22, 2008).

frequently range far upward. This discrepancy perpetuates regulatory disparity and demands regulatory redress.

To further the Commission's stated its intent to "promote the pro-competitive and deregulatory goals of the Act . . . ,"<sup>2</sup> the Commission should remove such regulatory mechanisms that impose on providers varying cost obligations that are not substantially related to actual costs. The Commission's current pole attachment regulatory regime, which enables different rate formulae for identical attachments, is no longer appropriate as intermodal competition increases:

[T]he Commission has recognized that once-clear distinction between 'cable television systems' and 'telecommunications carriers' has blurred as each type of company enters markets for the delivery of services historically associated with the other. The Commission has identified cable operators as market participants in both the enterprise and mass market for telecommunications services. The Wireline Competition Bureau has recently clarified that wholesale telecommunications carriers that provide services to other service providers, including cable operators providing Voice over Internet Protocol (VoIP) services, are indeed 'telecommunications carriers' for the purpose of Section 251 of the Act, and are thus entitled to interconnect with incumbent LECs.<sup>3</sup>

A Time Warner Telecom, Inc., White Paper characterizes the different rates among cable and telecommunications providers as promoting "regulatory bias . . . [in] investment decisions regarding deployment of broadband and other services."<sup>4</sup>

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<sup>2</sup> *Implementation of Section 224 of the Act: Amendment of the Commission's Rules and Policies Governing Pole Attachments: Notice of Proposed Rulemaking*, WC Docket No. 07-245, RM-11293, RM-11303, FCC 07-187, at para. 36 (2007) (Pole Attachments NPRM) at para. 2.

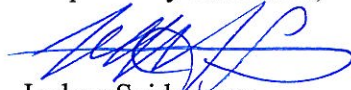
<sup>3</sup> Pole Attachments NPRM at para. 14 (internal citation omitted).

<sup>4</sup> Letter from Thomas Jones, Counsel for Time Warner Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, RM-11293, RM-11303, Attach. at 11-12 (filed Jan. 16, 2007) (TWTC White Paper).

Rather than act in a piecemeal fashion by addressing only rates paid by cable broadband providers, the Commission should, instead, address pole attachment rate regulation in a comprehensive manner within Docket No. 07-245. That open docket should be refreshed with comments on pole attachment rates charged to all broadband providers. Reforms then should be considered in conjunction with development of recommendations included within the National Broadband Plan.

The issues raised in the instant Petition are best resolved by a proceeding that addresses rate formulas for *all* broadband pole attachments, and which concludes in the elimination of inappropriate competitive advantages. Comprehensive resolution of pole attachment issues is necessary to facilitate continuing deployment of affordable broadband and satisfy the Commission's desire to achieve regulatory parity. Therefore, for the reasons stated herein, ITTA recommends the Commission to defer consideration of the instant petition to Docket No. 07-245, and to within that docket address the proper rate formula for all providers of broadband services.

Respectfully submitted,



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