



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

December 22, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Implementation of Section 224 of the Act: Amendment of the Commission's Rules and Policies Governing Pole Attachments*
WC Docket No. 07-245, RM-11293

Petition of American Electric Power Service Corporation, Duke Energy Corporation, Southern Company Services, Inc., and Excel Energy Services, Inc., for a Declaratory Ruling
WC Docket No. 09-154

Dear Ms. Dortch:

Attached please find a letter provided today to Jennifer Schneider, Broadband, Wireline, and Universal Service Legal Advisor to Commissioner Michael J. Copps in regard to the above-captioned dockets.

Please do not hesitate to contact me if you have any questions or require additional information.

Respectfully submitted,

Joshua Seidemann
Vice President, Regulatory Affairs



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Jennifer Schneider
Office of Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Dear Ms. Schneider:

The Independent Telephone & Telecommunications Alliance (ITTA) submits this letter in response to your inquiry at our December 8 meeting. You asked us to describe the experiences of ITTA members when negotiating pole attachments with cooperatives and municipalities -- entities that are currently outside the Commission's jurisdiction under 47 U.S.C. § 224(a)(1).

As you know, our members rely heavily on pole attachments from third parties (chiefly investor owned electric utilities but also municipalities, public utility districts, and cooperatives) to provide services to their customers. The charges ILECs must pay for third party attachments are often unreasonably high, and in the high-cost rural areas that our members serve, the cost of pole attachments can be a barrier to broadband deployment. High pole attachment rates for ILECs materially increase costs per subscriber, reducing economic incentives to invest in broadband networks in high-cost rural areas where broadband investment is most needed but most difficult to justify. This issue was highlighted in the presentation about the National Broadband Plan Policy Framework at the Commission meeting on December 16, 2009.¹

ILECs face a competitive disparity in attachment rates. This disparity is a very serious issue with Section 224 attachments, as ILECs are charged far more than their competitors for comparable attachments. As ITTA described previously to the Commission, some investor owned utilities have imposed pole attachment rates on ITTA members that are 500 percent more than the rate paid by cable in the same local area, and 300 percent more than the competitive local exchange

¹ See, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295259A1.pdf, at 7, 14 (Dec. 16, 2009) (last viewed Dec. 22, 2009, 10:29).

carrier rate.² This disparity has sometimes been mirrored by municipalities, public utility districts, and cooperatives that charge ILECs higher rates than other attachers.

ITTA members reported that some municipalities, public utility districts, and cooperatives are well-intentioned, but often short on experience or knowledge of pole attachment topics. This shortcoming manifests itself in several ways: (1) misconceptions when discussing costs; (2) attempts to obtain excessive rates-of-return; and (3) failure to provide any type of cost study. Members also noted that municipalities, public utility districts, and cooperatives often own all joint poles, so ILECs have little reciprocation clout.

Beyond those well-intentioned entities, however, are some municipalities, public utility districts, and cooperatives whose actions are patently unreasonable. Certain of ITTA members have recently experienced cooperatives increasing rates well above cost (and typically without so much as a pretext of cost support), then insisting that ILEC attachments be removed if the increases are not accepted. Pole owners have also often insisted that ILECs shoulder cost of replacing poles, when the need (if any) is not caused by the ILEC's attachments. ITTA members have often found themselves restricted to one side of a pole, ostensibly to facilitate line-crew work, but without any reduction in the attachment rate. Another member reported owners beginning to apply rates "per attachment," rather than per pole or per allocated space, attempting to double or triple their revenue when the incremental cost to provide that space is zero.

And, when a dispute arises, there is no forum for timely, efficient, or consistent resolution. ILECs face genuine threats of removal of their attachments if demanded rental is not paid. With no ILEC attachment rights, no viable engineering alternative, and no oversight in place, ILECs have no choice but to settle the matter on unfavorable terms. Even where there is recourse to a state commission, proceedings drag on far too long; one state pole attachment proceeding was pending for five years before the parties ultimately settled the matter. Recent state legislation in some instances should help, but those measures are limited and cannot adequately address the problem.

Finally, ITTA members also noted that the sheer number of these entities poses a problem. ITTA members collectively serve approximately 30 million lines across 44 states. In the extensive rural areas served by mid-sized ILECs, there are countless rural cooperatives, municipalities, and public utility districts. One ITTA member alone deals with more than 600 of them. The lack of uniform rules, standards, and oversight makes negotiating reasonable attachment terms very difficult and extremely time consuming.

Given such problems, ITTA is pleased that the Commission is examining the appropriate treatment of pole attachments used to provide broadband. ITTA looks forward to working with the Commission to achieve resolution that will facilitate broadband investment and deployment by promoting regulatory parity and ensuring just and reasonable rates, terms, and conditions for ILEC pole attachments.

Please do not hesitate to contact me if you have any questions or require additional information.

Respectfully submitted,



Joshua Seidemann
Vice President, Regulatory Affairs

² *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).