

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

In the Matter of)	
)	
Implementation of Section 224 of the Act)	WC Docket No. 07-245
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	

**COMMENTS OF ITTA –
THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) hereby submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) May 6, 2015 Public Notice¹ asking parties to refresh the record regarding the petition for reconsideration or clarification filed by the National Cable and Telecommunications Association (“NCTA”), COMPTTEL, and tw telecom inc. (the “Petitioners”) in the above-referenced proceedings.²

Petitioners request that the Commission’s rules relating to pole attachment rates charged to telecommunications providers be clarified or amended by specifying that the cost allocator to be applied will be based on the number of attaching entities.³ The current rule,⁴ which the Commission adopted with the intent to produce telecom rates comparable to the lower rates

¹ “Parties Asked to Refresh Record Regarding Petition to Reconsider Cost Allocators Used to Calculate the Telecom Rate for Pole Attachments,” Public Notice, WC Docket No. 07-245, GN Docket No. 09-51, DA 15-542 (rel. May 6, 2015).

² Petition for Reconsideration or Clarification of the National Cable and Telecommunications Association, COMPTTEL, and tw telecom inc., WC Docket No. 07-245, GN Docket No. 09-51 (filed June 8, 2011) (“Petition”).

³ *See id.* at 6-7.

⁴ 47 C.F.R. §1.1409(e)(2).

produced by the cable rate formula,⁵ includes a presumption of three or five attaching entities in connection with the cost allocator, depending on whether the pole is located in a rural or urban area. However, when the number of attaching entities varies from the presumed amount, the resulting rates do not approximate the cable rate (and indeed, may be significantly higher than the cable rate), which is inconsistent with the purpose of the rule.⁶

ITTA believes that the Commission's pole attachment policies must ensure just and reasonable rates, terms, and conditions for all attaching entities. As the Commission concluded in the *2011 Pole Attachment Order*, reducing the telecom rate to be lower and more uniform with the cable rate better enables providers to compete on a level playing field, eliminates competitive distortions between different providers of the same services, and fosters broadband deployment by ensuring that provider behavior is driven more by underlying economic costs than arbitrary price differentials.⁷ ITTA has and continues to fully support the Commission's efforts to achieve rate parity between telecommunications and cable providers,⁸ and therefore supports grant of the relief requested by the Petitioners to the extent that it would meet the Commission's stated goal of making the telecom rate for pole attachments closer to uniform with the cable rate.

I. THE COMMISSION'S POLE ATTACHMENT POLICIES MUST ENSURE JUST AND REASONABLE RATES, TERMS, AND CONDITIONS FOR ALL ATTACHING ENTITIES

The Commission has recognized that just and reasonable pole attachment rates, terms, and conditions are a crucial element in facilitating broadband deployment to rural areas

⁵ See *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 8 (2011) ("*2011 Pole Attachment Order*").

⁶ See Petition at 5-6.

⁷ See *2011 Pole Attachment Order* at ¶¶ 134, 147.

⁸ See, e.g., Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 07-245, GN Docket No. 09-51 (filed Aug. 16, 2010).

throughout the nation.⁹ In many rural areas served by ITTA members, trenching for underground fiber is uneconomical. Aerial cable continues to be the most cost-effective and efficient solution to deploy broadband and other communications services to consumers. Thus, ITTA supports the Commission's efforts to minimize the distortionary effects arising from differences in pole attachment rates among communications providers. Consistency in rate regulation is necessary to increase regulatory parity and diminish inappropriate regulatory advantages for certain types of providers. When cable companies pay pole attachment fees at a rate that is generally lower than for competing providers, this discrepancy frustrates broadband deployment by enabling utility pole owners to levy much higher rates on telecommunications carriers than their direct competitors.

By removing regulatory mechanisms that impose upon providers varying obligations that are not substantially related to actual costs, the Commission is able to promote the pro-competitive and deregulatory goals of the Telecommunications Act. Thus, in revising its pole attachment formula to create regulatory parity with cable, the Commission correctly concluded that a pole attachment regime that enables different rate formulas for identical attachments is no longer appropriate in light of increased intermodal competition. As the Commission found:

Reducing the telecom rate to make it closer to uniform with the cable rate will enable more efficient investment decisions in network expansion and upgrades, most notably in the deployment of modern broadband networks. In addition, the change reduces the uncertainty facing third party attachers, and in particular cable companies, as to what charges they are likely to face when they engage in the provision of new advanced services or network upgrades. The new telecom rate also will substantially reduce the incentives for costly disputes by substantially reducing the potential gains that a party can claim by arguing for a favorable attachment definition.¹⁰

⁹ Omnibus Broadband Initiative, Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 109 (available at: <http://download.broadband.gov/plan/national-broadband-plan.pdf>) (“National Broadband Plan”).

¹⁰ 2011 Pole Attachment Order at ¶ 181.

Arguably, the Commission should have gone a step further by setting one low, across-the-board rate applicable to all communications providers, including cable providers, competitive local exchange carriers, and incumbent local exchange carriers, as advocated by other parties in this proceeding.¹¹ However, the Commission made a move in the right direction in the *2011 Pole Attachment Order* by devising a methodology to make telecom rates for pole attachments more consistent with the rates paid by cable operators, and ITTA supports the Commission's ongoing efforts to ensure that "rates for pole attachments [are] low and as close to uniform as possible."¹²

II. THE COMMISSION SHOULD CLARIFY THE APPLICATION OF THE TELECOM RATE FORMULA IN LIGHT OF ITS STATED GOAL OF MAKING THE TELECOM RATE CLOSER TO THE CABLE RATE

The Petitioners propose that the Commission revise its methodology for calculating pole attachment rates for telecommunications providers by taking into account the actual number of attaching entities.¹³ The current rule, which includes a presumption of three or five attaching entities depending on whether the pole is located in a rural or urban area, can produce telecom pole attachment rates that do not closely approximate, and in fact may be significantly higher than, the cable rate. For instance, when using 2.6 as the number of attaching entities, the rate formula adopted by the Commission would result in a telecom rate that is 70 percent higher than the cable rate for most poles.¹⁴ This result contradicts the FCC's stated goal of adopting the revised telecom rate methodology to create greater uniformity with the pole attachment rates paid by cable operators.

¹¹ See AT&T Inc.'s Response to Petitions for Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51 (filed July 5, 2011), at 9-10.

¹² National Broadband Plan at 110.

¹³ See Petition at 6-7.

¹⁴ See *id.* at 5-6.

To avoid these unintended consequences, Petitioners request that the Commission clarify or amend the telecom rate formula to provide the corresponding cost adjustments scaled to other entity counts.¹⁵ Alternatively, Petitioners request that the Commission adopt the proposal in the *2010 Pole Attachment FNPRM* to establish the maximum just and reasonable rate as the higher of the cable rate or the lower bound telecom rate obtained by excluding capital costs in the existing telecom rate formula under the Commission’s rules.¹⁶

ITTA supports the Petitioners’ request to the extent that it would apply the telecom rate formula consistent with the Commission’s stated goal of producing telecom rates that “generally will recover the same portion of pole costs as the current cable rate.”¹⁷ Interpreting the rule in a manner that ensures that telecom rates are as close to uniform as possible to the cable rate “will better enable providers to compete on a level playing field, will eliminate distortions in end-user choices between technologies, and lead to provider behavior being driven more by underlying economic costs than arbitrary price differentials.”¹⁸ ITTA implores the Commission to grant the relief requested by the Petitioners consistent with achieving these public interest benefits.

¹⁵ *See id.* at 6-7.

¹⁶ *See id.* at 7, citing *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-245, GN Docket No. 09-51, FCC 10-84, ¶¶ 128-141 (rel. May 20, 2010).

¹⁷ *2011 Pole Attachment Order* at ¶ 8.

¹⁸ *Id.* at ¶¶ 134, 147.

III. CONCLUSION

ITTA has and continues to fully support the Commission's efforts to achieve rate parity between telecommunications and cable providers, and therefore believes that the Commission should grant the relief requested by Petitioners to the extent that it would meet the Commission's stated goal of making the telecom rate for pole attachments closer to uniform with the cable rate.

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
gmorelli@itta.us
mcaldwell@itta.us

June 4, 2015