

Pole Attachment Pricing

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Overview

- ◆ Section 224 of the Communications Act was enacted to promote competition.
- ◆ The policy is grounded in the fact that pole and conduit space is a limited resource that should be shared on a fair basis.
- ◆ Poles and conduit represent network infrastructure that is essential to consumers.
- ◆ All users of the infrastructure are providing competing services.

ILECs Seek Parity

- ◆ Historically ILECs and power utilities had joint use agreements.
- ◆ The modern reality is that electric utilities own the vast majority of poles, which is increasingly giving ILECs much less bargaining power.
- ◆ States and localities prevent erection of duplicate pole plant.
- ◆ ILECs will help fund that infrastructure.

Section 224 Accommodates ILECs

- ◆ FCC has only specifically given Section 224 rights to cable TV operators and CLECs.
- ◆ The FCC has not squarely addressed the issue before.
- ◆ Although certain parts of the statute, such as (e) and (f), do not address ILECs, other parts of the statute do.

Section 224(b)

- ◆ Section 224(b) obligates the FCC to ensure that all pole attachments are provided on terms and conditions that are just and reasonable.
- ◆ Section 224(a)(4) defines a pole attachment as an attachment by a cable television system or “provider of telecommunications service.”
- ◆ Section 224(a)(5) states that the term “telecommunications carrier” does not include an ILEC.
- ◆ An ILEC is a “provider of telecommunications service”, which does not have the same meaning as “telecommunications carrier” in 224.

Pole Attachment Policy Favors ILEC Protection

- ◆ Operations of utilities and ILECs have changed over the years: ILECs now do not have equal bargaining power to utilities.
- ◆ Utilities have demanded exorbitant rates, sometimes as high as \$35 or \$50 per pole, far more than the \$3 to \$6 rates most others pay.
- ◆ ILECs are not monopolists, particularly not over access to poles.
- ◆ Utilities will be competitors of ILECs and cable TV companies and should not be able to leverage their control over poles to increase the costs of competitors.

The FCC Has the Authority to Establish One Rate

- ◆ The FCC has also asked whether it should establish one rate for broadband connections.
- ◆ Almost all agree the FCC should do this, and it makes the most sense from a competition standpoint.
- ◆ Section 706 of the Act permits the FCC to take action to ensure access to advanced services.
- ◆ The *Gulf Power* Court affirmed the ability of the FCC to use Section 706 to set rates beyond those for cable operators and CLECs.

ILECs Favor Existing Rates

- ◆ There is little reason to reinvent the wheel in terms of a rate formula.
- ◆ The FCC's formulas have been upheld by the courts and are useful frameworks for a unified broadband rate.
- ◆ The FCC should deny attempts to revise these formulas for issues the FCC has rejected in the past.

Conclusion

- ◆ Section 224 is broad enough to ensure that all pole attachment rates, terms, and conditions are reasonable, including for ILECs.
- ◆ Electric utilities are entitled to fair compensation for their infrastructure, but they have unique requirements that make it more costly for their attachments than for communications providers.