



November 21, 2017

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to  
Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

The attached report titled “2017 USTelecom Pole Attachment Rate and Pole Ownership Report” (USTelecom Report) is submitted in the above-referenced proceeding. The USTelecom Report strongly shows that the Federal Communications Commission (Commission) should move forward with its proposal to create a presumption that ILECs are entitled to competitively neutral rates when attaching to investor-owned utility (IOU) poles, which in turn will remove significant barriers to broadband infrastructure deployment thereby increasing broadband availability and competition in the provision of high-speed services.

USTelecom supports efforts by the Commission to utilize data to inform its consideration of Commission policies, including those relating to the agency’s infrastructure rules. With the goal of providing the Commission with detailed data to further inform its deliberations in this proceeding, the USTelecom Report includes survey results from a broad range of USTelecom’s members regarding the status of nationwide pole attachment rates and pole ownership, including in states governed by the Commission’s pole attachment regulations. The report also includes survey results on rates charged by electric cooperatives throughout the country, including in seven states governed by the Tennessee Valley Authority.

Please contact the undersigned with any questions.

Sincerely yours,

Kevin G. Rupy  
Vice President, Law & Policy



# **USTelecom Pole Attachment Rate and Pole Ownership Report**

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## **USTelecom Pole Attachment Rate and Pole Ownership Report Executive Summary**

USTelecom completed a detailed survey (2017 USTelecom Survey) of a broad range of its members regarding the status of nationwide pole attachment rates and pole ownership, including in states governed by the Federal Communications Commission's (Commission) pole attachment regulations. USTelecom contrasted the results from the 2017 USTelecom Survey with similar survey results submitted to the Commission in 2008 (2008 USTelecom Survey). The results of the 2017 USTelecom Survey show that the Commission should expeditiously move forward with its proposal to create a presumption that ILECs are entitled to competitively neutral rates when attaching to investor-owned utility (IOU) poles.

### **ILECs Remain at a Significant Rate Disadvantage, Despite the Commission's 2011 Reforms.**

The 2017 USTelecom Survey results show that: 1) the rate goals for ILECs set in the Commission's 2011 Pole Attachment Order remain unrealized; 2) due to the continuing disparity between IOUs and ILECs in pole ownership, ILECs remain in a lopsided bargaining position; and 3) significant disparities remain in pole attachment rates paid by ILECs to IOUs and those paid by CLEC and cable broadband competitors to ILECs. Analyzing the same states from the 2008 USTelecom Survey, the 2017 USTelecom Survey found that the broad disparity in pole attachment rates not only continues, but in most instances has *increased*. The 2017 USTelecom Survey identified instances where ILECs continue to pay vastly disparate rates for pole attachments compared to what their cable counterparts pay the ILECs – in some instances, these rates are 1,800% higher. The disparity between rates paid by ILECs and CLECs remains significant – in some instances greater than 1,000%.

On average, ILECs surveyed in the 2017 USTelecom Survey pay IOUs nearly 9 times what ILECs charge cable providers, and almost 7 times the rates ILECs charge CLECs – results even more imbalanced than those from the 2008 USTelecom Survey (8 times and 6 times, respectively). In dollar terms, these ILECs pay an average of \$26.12 to IOUs today in Commission-regulated states (an *increase* from \$26.00 in 2008), compared to cable and CLEC provider payments to ILECs, which average \$3.00 and \$3.75, respectively (a *decrease* from \$3.26 and \$4.45, respectively, in 2008). These findings clearly demonstrate that the Commission's 2011 Pole Attachment Order has not achieved its desired goal of ensuring just and reasonable pole attachment rates for ILECs.

### **Pole Ownership Imbalance Between IOUs and ILECs Continues.**

Data from the 2017 USTelecom Survey also shows a significant difference in the ratio between the number of IOU poles to which ILECs attach and the number of ILEC poles to which IOUs attach. In the 46 states surveyed, USTelecom's data show that for every ILEC pole to which IOUs attach, ILECs attach to three IOU poles (*i.e.*, ILECs attach to approximately 13.9 million IOU poles, whereas IOUs attach to only 4.6 million ILEC poles). In Commission regulated states, that pole ratio is 3.2:1, with ILECs attaching to approximately 9.7 million IOU poles, and IOUs attaching to approximately 3.1 million ILEC poles. With ILECs needing to attach to so many more IOU poles than the reverse, bargaining power is heavily skewed to the IOUs. USTelecom

analyzed 13 states, demonstrating a consistent – and substantial – disparity in this ratio on a state-by-state basis.

This disparity in bargaining power can also be seen in terms of the relative rates paid by ILECs and IOUs and net annual payments. Despite the fact that electric utility attachments occupy well over five times the average amount of space occupied by ILEC attachments, IOUs pay nearly the same rates on average. Thus, ILECs paid aggregate pole attachment rates of approximately \$351.8 million to IOUs in 46 states, but received only \$125.8 million from IOUs. For the 29 out of 30 Commission-regulated states for which USTelecom received data, ILECs paid aggregate pole attachment rates of approximately \$251.3 million to IOUs, but received only \$82.9 million from IOUs. In Commission-regulated states, this resulted in a net payment from ILECs to IOUs of approximately \$168.4 million. Contrary to assertions by IOUs in this proceeding that the decrease in ILEC pole ownership has been intentional, the increase in IOU pole ownership has been driven by a number of factors that are not in the ILECs' control, including greenfield deployment of IOU networks, national disaster recovery efforts, and IOU pole replacement activities.

#### **Prohibitive Pole Attachment Rates Charged by Cooperatives.**

The 2017 USTelecom Survey also illustrates the acute nature of the recent actions by the Tennessee Valley Authority (TVA) that could significantly undermine the important federal policy goals of accelerating and promoting broadband deployment. TVA's decision to adopt a resolution that substantially increases pole attachment rates charged by electric cooperatives will exacerbate an already challenging rate structure for broadband providers operating in TVA states.

The 2017 USTelecom Survey collected data on rates charged by electric cooperatives throughout the country, including in all seven TVA states. In all but one TVA state, the rates charged by cooperatives for ILEC attachments exceed the national average cooperative rate of \$21.05, and in four TVA states, the rates charged by cooperatives significantly exceed the national average of \$25.23 charged by IOUs to ILEC attachers. Moreover, the cooperative rates in the 2017 USTelecom Survey reflect *current* rates, and not the rates adopted by the TVA Board, which are scheduled to be implemented in 2018. TVA's decision will increase pole attachment rates to an *average* of \$30, involving more than 150 rural electric cooperatives covering more than 9 million consumers. Given the location of electric cooperatives, the TVA's unilateral decision will have a particularly acute impact on rural consumers.

#### **The 2017 USTelecom Survey Results Demonstrate That the Commission's Proposed Rate Reforms Are Necessary.**

Despite the well-intentioned goals of the Commission's 2011 Pole Attachment Order, the 2017 USTelecom Survey demonstrates that pole attachment rates for ILEC attachers have increased, whereas the rates ILECs charge CLEC and cable competitors have significantly *decreased*. Moreover, the imbalance in pole ownership and the ILEC's lack of bargaining power that was integral to the Commission's decision to institute rate reforms in 2011, continues today. Based on these findings, the Commission should expeditiously move forward with its proposal to institute a presumptive just and reasonable rate formula for ILEC attachers.



## USTelecom Pole Attachment Rate and Pole Ownership Report

USTelecom recently completed a detailed survey (2017 USTelecom Survey) of a broad range of its members regarding the status of nationwide pole attachment rates and pole ownership, including in states governed by the Federal Communications Commission's (Commission) pole attachment regulations. The survey results clearly demonstrate that despite the Commission's well-intentioned efforts in its 2011 proceeding (2011 Pole Attachment Order)<sup>1</sup> to "reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks," greater pole attachment rate parity for incumbent local exchange carriers (ILECs) remains unrealized.

In fact, the survey shows that pole attachment rates paid by ILECs to investor-owned utilities (IOUs) have *not* declined despite the Commission's expectations in the 2011 Pole Attachment Order. In contrast, pole attachment rates ILECs charge cable and competitive local exchange carriers (CLECs) with whom they compete have *decreased*.<sup>2</sup> Thus, the "wide disparity in pole rental rates,"<sup>3</sup> that the Commission recognized as a barrier to broadband deployment in 2011, has in fact widened. By introducing greater rate parity in its pole attachment regulations, the Commission can energize and further accelerate broadband deployment, helping to close the digital divide by further extending broadband networks, consistent with its intention in the 2011 Pole Attachment Order and this proceeding.

USTelecom both appreciates and shares the Commission's desired goals for its 2011 Pole Attachment Order, and those in its current Notice of Proposed Rulemaking (Notice).<sup>4</sup>

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<sup>1</sup> Report and Order and Order on Reconsideration, *Implementation of Section 224 of the Act*, 26 FCC Rcd. 5240, 76 FR 40817, FCC 11-50, ¶ 1 (released April 7, 2011) (*2011 Pole Attachment Order*). See also, Order on Reconsideration, *Implementation of Section 224 of the Act*, 30 FCC Rcd. 13731, 81 FR 7999, FCC 15-151 (released November 24, 2015) (*2015 Pole Attachment Order*).

<sup>2</sup> USTelecom does not have access to the pole attachment rates that IOUs charge cable and CLEC attachers, but notes that the same formulas apply to the rates for pole attachments on ILEC poles.

<sup>3</sup> *2011 Pole Attachment Order*, ¶ 3.

<sup>4</sup> Notice of Proposed Rulemaking, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (released April 21, 2017) (*Notice*).

However, the results of the 2017 USTelecom Survey,<sup>5</sup> which reflect data from the current marketplace, suggest that the Commission needs to move forward with certain further reforms proposed in its Notice. In particular, it is time for the Commission to create a presumption that ILECs are entitled to competitively neutral rates when attaching to IOU poles, thereby ensuring that such reductions in pole attachment rates do indeed “remove significant barriers to broadband infrastructure deployment and in turn increase broadband availability and competition in the provision of high-speed services.”<sup>6</sup>

## **I. Background and Overview of 2017 USTelecom Survey**

Nearly a decade ago, in response to a Petition filed by USTelecom,<sup>7</sup> the Commission initiated a proceeding to consider comprehensive reforms to its framework governing pole attachment regulation (2007 Pole Attachment Rulemaking).<sup>8</sup> That proceeding ultimately resulted in the 2011 Pole Attachment Order, adopting measures “to improve the efficiency and reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks, in order to accelerate broadband buildout.”<sup>9</sup> During that rulemaking, USTelecom completed a broad survey of rates paid by its members to IOUs for pole attachments and of rates received from cable providers and CLECs attaching to ILEC-owned poles (2008 USTelecom Survey).<sup>10</sup> At the time, the survey results confirmed the existence of a wide disparity in pole attachment rates, with rates paid by ILECs 8 times higher than rates paid by other attachers.

The 2017 USTelecom Survey results, which are further detailed in this filing, reveal that the Commission’s reforms have made progress in reducing pole attachment rates for cable and CLEC attachers. The average pole attachment rates paid by ILECs, however, have actually increased. Among the findings from the 2017 USTelecom Survey are the following:

- In Commission-regulated states, the weighted average pole attachment rate paid by ILECs to IOUs for pole attachments has *increased* from \$26.00 in 2008, to \$26.12 today.

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<sup>5</sup> The Appendix attached to this filing provides an overview of the survey, the methodology used in the analysis, as well as various summary data from the 2017 USTelecom Survey.

<sup>6</sup> Notice, ¶ 3.

<sup>7</sup> United States Telecom Association Petition for Rulemaking, RM-11293 (filed Oct. 11, 2005).

<sup>8</sup> Notice of Propose Rulemaking, *Implementation of Section 224 of the Act*, 22 FCC Rcd. 20195, 73 FR 6879, FCC 07-187 (released November 20, 2007) (*2007 Pole Attachment Rulemaking*).

<sup>9</sup> *2011 Pole Attachment Order*, ¶ 1.

<sup>10</sup> See, Comments of the United States Telecom Association, WC Docket No. 07-245, RM-11293, RM 11303, pp. 6 – 9 (submitted March 7, 2008) (*2008 USTelecom Comments*).

- Conversely, the weighted average regulated rate paid by cable attachers for attachments to ILEC poles has *decreased* 8 percent from \$3.26 in 2008, to \$3.00 today.<sup>11</sup>
- Similarly, the weighted average regulated rate paid by CLEC attachers for attachments to ILEC poles has *decreased over 15* percent from \$4.45 in 2008, to \$3.75 today.
- On average, ILECs surveyed pay IOUs almost 9 times the rates ILECs charge cable providers for pole attachments, and nearly 7 times what ILECs charge CLECs.

Thus, the wide disparity in pole rental rates recognized by the Commission in its 2011 Pole Attachment Order has only worsened. This increasing disparity demonstrates that ILEC minority pole ownership does not give ILECs the genuine ability to negotiate just and reasonable rates that reflect today's competitive marketplace.

## **II. USTelecom's Most Recent Pole Attachment Survey Demonstrates That Further Reforms to the Commission's Pole Attachment Regulations Are Needed.**

Recently, the Commission's priorities have been focused on programmatic and regulatory changes to enhance the deployment of broadband services. These include comprehensive reforms through its Connect America Fund (CAF) program, as well as in other proceedings, including the wireline reforms in its current Notice. Each of these efforts is designed to accelerate the deployment of next-generation networks and services by both removing barriers to infrastructure investment and maximizing capital expenditures to the greatest extent possible. The Commission's Notice states that pole attachments are a "key input for many broadband deployment projects," and that "reduc[ing] pole attachment costs and speed[ing] access to utility poles would remove significant barriers to broadband infrastructure deployment and in turn increase broadband availability and competition in the provision of high-speed services."<sup>12</sup>

Each of these major initiatives, along with the Commission's proposed reforms to rate regulation of ILEC pole attachments will achieve the shared goals of reducing critical infrastructure costs, thereby speeding the deployment of such services. USTelecom agrees with the Commission that consumers will benefit from such reforms through enhanced competition and superior voice, video and broadband services, while at the same time creating a level playing field for providers of essentially identical services making fundamentally similar attachments.

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<sup>11</sup> USTelecom only has visibility into rates cable and CLEC attachers pay to attach to ILEC poles, not utility poles owned by IOUs, municipalities and/or cooperatives.

<sup>12</sup> Notice, ¶ 3.



**A. The 2017 USTelecom Survey Demonstrates that ILECs Remain at a Significant Rate Disadvantage, Despite the Commission’s 2011 Reforms.**

As was the case when USTelecom last submitted pole attachment survey data in 2008, the disparity in pole attachment rates paid by ILECs to IOUs versus the rates paid by CLECs and cable providers to ILECs remains “significant, consistent and widespread.”<sup>13</sup> The 2017 USTelecom Survey results shows, for example, that: 1) the rate goals for ILECs set in the Commission’s 2011 Pole Attachment Order remain unrealized; 2) due to the continuing disparity between IOUs and ILECs in pole ownership, ILECs remain in a lopsided bargaining position; and 3) significant disparities remain in pole attachment rates paid by ILECs to IOUs and those paid by CLEC and cable broadband competitors to ILECs. As USTelecom noted at the time of its 2008 USTelecom Survey, there is no sound policy basis for maintaining such an inequitable pricing mechanism, which continues to hinder competition and hinder deployment in the broadband market through unbalanced regulatory treatment of certain classes of broadband providers over others.

The 2008 USTelecom Survey provided a sampling of thirteen states where the Commission regulated pole attachments.<sup>14</sup> The 2017 USTelecom Survey included these same states and revealed that the wide disparity in pole attachment rates not only continues but, in most instances, has *increased*. The 2017 USTelecom Survey identified instances where ILECs continue to pay vastly disparate rates for pole attachments compared to what their cable counterparts pay the ILECs – in some instances, these rates are 1,800% higher. The disparity between rates paid by ILECs and CLECs while not as high as the disparity between ILECs and cable, remain significant – in some instances greater than 1,000%. Such glaring disparity in pole attachment rates between competing broadband providers lacks any sound public policy basis.

On average, ILECs responding to the 2017 USTelecom Survey pay IOUs nearly 9 times what ILECs charge cable providers and almost 7 times the rates ILECs charge CLECs – results even more imbalanced than those from the 2008 USTelecom Survey (8 times and 6 times, respectively).<sup>15</sup> In dollar terms, these ILECs pay an average of \$26.12 to IOUs today (an *increase* from \$26.00 in 2008), compared to cable and CLEC providers payments to ILECs, which average \$3.00 and \$3.75, respectively (a *decrease* from \$3.26 and \$4.45, respectively, in 2008). The Table below compares data at a more granular state level from the 2008 USTelecom Survey and the 2017 USTelecom Survey, and reveals persistent disproportionate gaps in rates paid for pole attachments.

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<sup>13</sup> 2008 USTelecom Comments, p. 8.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, p. 7.

**Table 1: Pole Attachment Rate Comparisons from 2008 and 2017 USTelecom Surveys<sup>16</sup>**

State	ILEC Rate Paid to IOUs		Cable Rate Paid to ILECs		CLEC Rate Paid to ILECs	
	2008	2017	2008	2017	2008	2017
State 1	\$51.76	\$29.39	\$3.43	--	\$5.20	--
State 2	\$43.71	\$29.46	\$3.61	\$3.17	\$5.43	\$3.02
State 3	\$34.08	\$13.14	\$3.27	--	\$14.30	--
State 4	\$34.95	\$45.97	\$3.60	\$2.38	\$3.44	--
State 5	\$37.55	\$51.47	\$4.62	\$5.30	\$9.85	\$5.22
State 6	\$34.53	\$44.92	\$4.28	\$4.22	\$6.30	--
State 7	\$29.12	\$54.66	\$3.99	\$4.30	\$6.01	--
State 8	\$26.17	\$36.67	\$3.79	\$3.44	\$6.90	\$3.25
State 9	\$20.00	\$16.52	\$3.17	\$2.93	\$3.57	\$3.13
State 10	\$19.30	\$24.15	\$3.24	\$2.96	\$5.07	\$2.75
State 11	\$22.13	\$23.38	\$5.12	\$3.96	\$19.52	\$5.71
State 12	\$13.34	\$12.07	\$2.90	\$2.32	\$3.08	\$2.70
State 13	\$7.99	\$12.92	\$2.43	\$0.92	\$3.02	--

These findings clearly demonstrate that, while the Commission’s 2011 Pole Attachment Order recognized an ILEC’s right to just and reasonable pole attachment rates, the changes implemented in that Order and the subsequent 2015 Pole Attachment Order have not achieved the Commission’s desired goals.<sup>17</sup> After finding that the Commission had the “authority to ensure that incumbent LECs’ attachments to other utilities’ poles are pursuant to rates, terms

<sup>16</sup> The data in the 2017 USTelecom Survey and table reflects: 1) pole attachment rates paid by ILECs to IOUs; and 2) pole attachment rates paid by cable and CLEC attachers to ILECs. USTelecom does not have data reflecting rates paid by cable and CLEC attachers to IOUs. In addition, the data reflects instances where three or more USTelecom members provided data to USTelecom. Instances in Table 1 reflecting “--” indicates that there are an insufficient number of survey respondents to permit disclosure of that data.

<sup>17</sup> See, *2015 Pole Attachment Order*, ¶ 1 (stating that the order “build[s] on the Commission’s prior efforts to harmonize pole attachment rates that cable and telecom service providers pay utility pole owners,” and that “The 2011 revisions sought to bring the telecom and cable rates into parity. In the intervening time, we have seen that our revisions did not fully achieve that objective. Today, we take the next logical step in achieving the goals set forth in 2011.”).

and conditions that are just and reasonable,”<sup>18</sup> the Commission reasoned that the guidance it provided in the 2011 Pole Attachment Order, subject to case-by-case oversight through the Commission’s complaint process, would “reduce input costs, such as pole rental rates,” which in turn would “expand opportunities for investment.”<sup>19</sup> Unfortunately, that has not occurred.

Contrary to the stated goal in its 2011 Pole Attachment Order, the Commission’s current complaint process has not achieved the Commission’s desired goal of “greater clarity to the industry,” nor has it improved the “administrability of Commission complaint proceedings involving incumbent LEC attachers.”<sup>20</sup> As USTelecom noted in its comments in this proceeding, the Commission’s decision to resolve ILEC pole attachment complaints on a case-by-case basis has instead “proven to be unwieldy, ineffective and has burdened ILEC attachers and the Commission with an unnecessary and prohibitive complaint-based framework for resolving pole attachment complaints.”<sup>21</sup> Moreover, the existing framework has resulted in a continued – and growing – rate imbalance between ILEC attachers and their cable and CLEC competitors.

#### **B. ILECs’ Minority Pole Ownership Gives Them Inadequate Bargaining Power With IOU Pole Owners to Obtain Just and Reasonable Pole Attachment Rates.**

In its 2011 Pole Attachment Order, the Commission found that ILECs appeared to own approximately 25 – 30 percent of poles and electric utilities appeared to own approximately 65 – 70 percent of poles.<sup>22</sup> The Commission further recognized that ILECs were often not “in an equivalent bargaining position with electric utilities in pole attachment negotiations in some cases.”<sup>23</sup> Moreover, the Commission determined that when examining pole ownership imbalances, the appropriate measure should be evaluated on the basis of attachments between IOUs and ILECs, and not overall pole ownership.<sup>24</sup> Specifically, the Commission noted at the time:

“As a hypothetical illustration, if the electric company owned 90% of poles in an area and the incumbent LEC owned 10%, and if the best outside alternative for each party was deploying the remaining needed poles (and having the legal right to do so), the electric

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<sup>18</sup> *2011 Pole Attachment Order*, ¶ 208 (emphasis added).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, ¶ 203.

<sup>21</sup> Comments of the USTelecom Association, WC Docket No. 17084, p. 3 (submitted June 15, 2017) (*2017 USTelecom Comments*).

<sup>22</sup> *2011 Pole Attachment Order*, ¶ 203.

<sup>23</sup> *Id.*, ¶ 206.

<sup>24</sup> *Id.*, ¶ 206, nn. 617 – 618.

utility would face the cost of deploying 10% of poles, while the incumbent LEC would face the cost of deploying 90% of poles.<sup>25</sup>

The Commission further noted in the above scenario that the ILEC would ultimately “have less bargaining power than the electric utility,” and only if less-costly alternatives were available to the ILEC for pole deployment, would there be any reduction in the disparity in the relative bargaining power of the parties.<sup>26</sup> Recently, a nearly two-to-one IOU pole ownership advantage was found to be evidence of the ILEC’s inferior bargaining position.<sup>27</sup> The results of the 2017 USTelecom Survey demonstrate that the pole ownership imbalance between ILECs and IOUs remains significant and generally is much higher than 2 to 1.

Data from the 2017 USTelecom Survey shows a significant difference in the ratio between the number of IOU poles to which ILECs attach and the number of ILEC poles to which IOUs attach. In the 46 states surveyed, USTelecom’s data show that for every ILEC pole to which IOUs attach, ILECs attach to three IOU poles. Specifically, ILECs attach to approximately 13.9 million IOU poles, whereas IOUs attach to only 4.6 million ILEC poles. In Commission regulated states, that pole ratio is 3.2:1, with ILECs attaching to approximately 9.7 million IOU poles, and IOUs attaching to approximately 3.1 million ILEC poles. ILECs clearly “need” the IOUs more than the IOUs need the ILECs, and thus, bargaining power is heavily skewed to the IOUs. The following table highlights data from the 13 states referenced in the chart above, and shows the consistent – and substantial – disparity of this ratio on a state-by-state basis.

**Table 2: Pole Attachment Ratios (IOUs vs. ILECs)<sup>28</sup>**

State	Number of IOU Poles To Which ILECs Attach	Number of ILEC Poles To Which IOUs Attach	ILEC/IOU Ratio of Attaching Poles
All States	13,866,175	4,551,742	3.0:1
FCC States	9,665,689	3,051,533	3.2:1

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<sup>25</sup> 2011 Pole Attachment Order, n. 618.

<sup>26</sup> *Id.*

<sup>27</sup> Verizon Virginia, LLC et al v. Virginia Electric and Power Company d/b/a Dominion Virginia Power, File No. EB-15-MD-006 ¶ 13 (released May 1, 2017) (“Recognizing the Commission’s concern that an incumbent LEC’s minority pole ownership status may negatively impact the incumbent LEC’s bargaining position, we find that Dominion’s nearly two-to-one pole ownership advantage, along with the significant disparity in the per-pole rates charged to each party, constitutes probative evidence of Verizon’s inferior bargaining position relative to Dominion.”).

<sup>28</sup> Instances in the table reflecting “--” indicates that there are an insufficient number of survey respondents that would permit disclosure of that data.

State	Number of IOU Poles To Which ILECs Attach	Number of ILEC Poles To Which IOUs Attach	ILEC/IOU Ratio of Attaching Poles
State 1	238,663	--	--
State 2	1,028,507	316,530	3.2:1
State 3	477,113	200,019	2.4:1
State 4	229,215	62,292	3.7:1
State 5	26,731	--	--
State 6	676,175	188,934	3.6:1
State 7	719,421	164,256	4.4:1
State 8	891,952	196,301	4.5:1
State 9	329,837	88,091	3.7:1
State 10	793,148	365,050	2.2:1
State 11	1,488,557	498,382	3.0:1
State 12	412,558	137,189	3.0:1
State 13	105,678	29,756	3.6:1

This disparity in bargaining power can also be seen in terms of the relative rates paid by ILECs and IOUs and net annual payments. Despite the fact that electric utility attachments occupy at least five times the average amount of space occupied by ILEC attachments, IOUs pay nearly the same rates on average. For example, the Coalition of Concerned Utilities has submitted evidence in this proceeding demonstrating that electric utility attachments typically utilize more than 7 feet of space.<sup>29</sup> Similarly, in a complaint proceeding at the Commission in 2014, Frontier submitted evidence into the record showing that IOU attachments typically use 8 feet of space.<sup>30</sup>

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<sup>29</sup> Comments of the Coalition of Concerned Utilities, WC Docket No. 17-84, Exhibit F, Attachment A, Appendix 3, Space Allocation Illustration (submitted, June 15, 2017) (demonstrating that electric utilities typically use 7.17 feet of space).

<sup>30</sup> See, Reply Affidavit of Susan L. Knowles, Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company, et al. v. Metropolitan Edison Company et al., File No. EB-14-MD-007, EB Docket No. 14-217, ¶ 42, n. 61 (noting that IOUs typically use 8 feet of space and stating that “This 8-foot amount is based on my experience reviewing hundreds of agreements and my experience reviewing pole inventory results. Based on this experience, the space allocated to and occupied by power companies is at least 8 feet.”) (submitted September 15, 2014) (available at: <https://ecfsapi.fcc.gov/file/60001045274.pdf>) (visited November 20, 2017) (*Knowles Reply Affidavit*).

Moreover, these IOU space requirements are conservative because they do not reflect the 40 inches of safety space, which the Commission has consistently viewed as usable space allocated to the IOU.<sup>31</sup> In contrast, ILECs use far less than 2 feet. In the 2014 Commission complaint proceeding, Frontier submitted evidence based on recent inventories showing that its ILEC attachments occupied less than 1.25 feet on average.<sup>32</sup> Even using the very conservative estimate of 7 feet for IOU attachments, IOUs occupy well over 5 times the space occupied by ILEC attachments.

Despite the wide disparity in the amount of space occupied by IOU and ILEC attachments, the 2017 USTelecom Survey showed that they paid nearly reciprocal average weighted rates to each other. In Commission-regulated states, ILECs paid an average of \$26.12 to attach to an IOU pole. On the other hand, IOUs paid an average of \$27.18 to attach to an ILEC pole. As a result, ILECs paid approximately \$351.8 million to IOUs in 46 states for pole attachments, but received only \$125.8 million from IOUs. For the 29 out of 30 Commission-regulated states for which USTelecom received data, ILECs paid aggregate pole attachment rates of approximately \$251.3 million to IOUs, but received only \$82.9 million from IOUs. In Commission-regulated states alone, this resulted in a net payment from ILECs to IOUs of approximately \$168.4 million.

Contrary to assertions by IOUs in this proceeding that the decrease in ILEC pole ownership has been intentional, this pole ownership disparity is primarily the result of marketplace realities whereby IOUs have intentionally and incrementally increased their pole ownership. As noted by various commenters in this proceeding, the increase in IOU pole ownership has been driven by a number of factors that are not in the ILECs' control, including greenfield deployment of IOU networks, national disaster recovery efforts, and IOU pole replacement activities.

For example, CenturyLink notes that when new neighborhoods are built, public power companies are the first to move into those areas. In addition to installing the new utility poles which they immediately claim as their own, they are unwilling to sell them. In other instances, IOUs will sometimes replace ILEC poles – often times without providing notice to the ILEC – in

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<sup>31</sup> See, *2011 Pole Attachment Order*, n. 559 (citing to Consolidated Partial Order on Reconsideration, Amendment of Commission's Rules and Policies Governing Pole Attachments, CS Docket Nos. 97-97, 97-151, 16 FCC Rcd 12103, 12130, ¶ 51 (rejecting utility arguments to remove the 40-inch safety space from the presumptive 13.5 feet of usable space and affirming the 2000 Fee Order, 15 FCC Rcd at 6467–68, ¶ 22 (finding that “the presence of the potentially hazardous electric lines . . . makes the safety space necessary and but for the presence of those lines, the space could be used by cable and telecommunications attachers,” and further that this “space is usable and is used by the electric utilities”).

<sup>32</sup> *Knowles Reply Affidavit*, ¶¶ 48 – 49.

order to accommodate new power attachments or during storm restoration.<sup>33</sup> Once again, the IOUs will immediately claim sole ownership of the new poles. In other instances, municipal power companies have often placed new, taller poles on the opposite side of the road, and then used their statutory control over the public rights-of-way to force relocation from ILEC-owned poles to the new poles owned by the power company.<sup>34</sup>

Moreover, CenturyLink notes that many IOUs are increasingly cancelling joint use agreements.<sup>35</sup> It notes that the termination notices sent to the ILECs by IOUs are typically coupled with demands that attachments be removed unless the ILEC enters into a new license agreement at higher rates. Verizon reported a similar trend in its comments, and notes that ILECs are faced with a “Hobson’s choice: live with insupportably high attachment rates that distort competition, or risk major disruption of their networks to obtain even the chance of a reasonable renegotiation.”<sup>36</sup>

Although the American Public Power Association (APPA) filed comments in this proceeding claiming that “the traditional pole attachment negotiation process between public power utilities and the private sector is working,”<sup>37</sup> the record demonstrates that the ability of ILECs to enter into reasonable negotiations is increasingly challenging. For example, CenturyLink cited its attempts at negotiation with Vigilante Electric Cooperative (Vigilante). In those discussions, Vigilante informed CenturyLink that it declined *any* redline edits to the agreement, stating that, “you have submitted a red-lined revised agreement. We have standard language used throughout the country in our other joint use agreements with the other entities attaching to our poles. We intend to use that standard language.”<sup>38</sup> When parties in a negotiation are foreclosed from making any changes whatsoever to an agreement, such behavior by a pole owner belies the APPA’s claims the traditional pole attachment negotiation process “is working.”<sup>39</sup>

When the Commission decided to review ILEC complaints on a case-by-case basis in its 2011 Pole Attachment Order, it stated that “to the extent that an incumbent LEC can demonstrate that it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement, the Commission can consider that as appropriate in a complaint

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<sup>33</sup> See, Reply Comments of CenturyLink, WC Docket No. 17-84, pp. 3 – 4 (submitted July 17, 2017) (*CenturyLink Reply Comments*).

<sup>34</sup> *Id.*, p. 4.

<sup>35</sup> *Id.*

<sup>36</sup> See, Comments of Verizon, WC Docket No. 17-84, p. 11 (submitted June 15, 2017).

<sup>37</sup> See, Comments of the American Public Power Association, WC Docket No. 17-84, WC Docket No. 17-89, p. 18 (submitted June 15, 2017) (*APPA Comments*).

<sup>38</sup> *CenturyLink Reply Comments*, p. 4.

<sup>39</sup> *APPA Comments*, p. 18.

proceeding.”<sup>40</sup> Ample facts now exist to demonstrate that minority pole ownership does not give ILECs the ability to terminate an existing agreement and obtain a new arrangement with just and reasonable rates: 1) numerous Commission complaint proceedings with ILECs seeking just and reasonable rates; 2) IOU threats to force ILECs to remove attachments; and 3) the 2017 USTelecom Survey results showing that IOUs continue to extract unreasonable, nearly reciprocal rates from ILECs despite the fact that ILEC attachments occupy a fraction of the space occupied by IOU attachments and nearly the same amount of space as cable and CLEC attachers.

### **III. Data from the 2017 USTelecom Survey Demonstrate the Need for the Commission to Address Prohibitive Pole Attachment Rates Charged by Cooperatives.**

USTelecom and others have commented in this proceeding on the difficulties encountered by broadband providers in accessing poles, ducts, conduits, and rights-of-way owned or controlled by entities that are not subject to Section 224 of the Communications Act, such as municipalities and electric cooperatives.<sup>41</sup> Although Section 224 does not apply in such instances, the exclusion in federal law has unfortunately enabled electric cooperatives to increasingly charge excessive pole attachment rates when ILECs and other broadband providers seek to attach to their owned or controlled poles or conduit. While the unreasonable rates charged by electric cooperatives have long been an issue for broadband providers, the problem has recently become increasingly acute.

In particular, the 2017 USTelecom Survey illustrates the acute nature of the recent actions by the Tennessee Valley Authority (TVA) that could significantly undermine the important federal policy goals of accelerating and promoting broadband deployment. As detailed in the comments of USTelecom and others, the decision by the TVA Board of Directors to adopt a resolution that substantially increases pole attachment rates charged by electric cooperatives will exacerbate an already challenging rate structure for broadband providers operating in TVA states.<sup>42</sup>

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<sup>40</sup> *2011 Pole Attachment Order*, ¶ 216.

<sup>41</sup> *See, Notice*, ¶ 30 (seeking comment on actions that the Commission might be able to undertake to speed deployment of next generation networks by facilitating access to infrastructure owned by entities not subject to Section 224). *See also*, Comments of Frontier Communications Corporation, WC Docket No. 17-84, pp. 9 – 10 (filed June 15, 2017) (*Frontier Comments*); Comments of Comcast Corporation, WC Docket No. 17-84, p. 23 (filed June 15, 2017) (identifying “unreasonable costs imposed for access to their poles,” as one of the two “primary barriers to broadband infrastructure deployment” in areas served by municipalities and cooperatives.).

<sup>42</sup> *See e.g.*, Comments of USTelecom Comments, WC Docket No. 17-84, pp. 13 – 15 (filed June 15, 2017); *Frontier Comments*, p. 12.



The 2017 USTelecom Survey collected data on rates charged by electric cooperatives throughout the country, including in all seven TVA states (Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee and Virginia). The data show that in all but a single TVA state, the rates charged by cooperatives for ILEC attachments significantly exceed the national average cooperative rate of \$21.05.<sup>43</sup> Moreover, in four TVA states, the rates charged by cooperatives also significantly exceed the national average of \$25.23<sup>44</sup> charged by IOUs to ILEC attachers.

**Table 3: Current TVA Rate Comparison**

<b>TVA States</b>	<b>Average Coop Rate</b>	<b>Coop Rate Exceeds Coop Nat. Avg. (\$21.05)</b>	<b>Coop Rate Exceeds IOU Nat. Avg. (\$25.23)</b>
<b>All 7 TVA States</b>	\$26.64	YES	YES
<b>Alabama</b>	\$27.74	YES	YES
<b>Georgia</b>	\$28.73	YES	YES
<b>Mississippi</b>	\$29.58	YES	YES
<b>North Carolina</b>	\$19.61		
<b>Tennessee</b>	\$26.15	YES	YES
<b>Virginia</b>	\$23.16	YES	

It is important to note, however, that the cooperative rates in the 2017 USTelecom Survey reflect *current* rates, and not the rates developed under the new rules that have been adopted by the TVA Board, which are scheduled to be implemented in 2018.<sup>45</sup> As noted in USTelecom's comments, TVA's decision will increase pole attachment rates to an *average* of \$30, involving more than 150 rural electric cooperatives covering more than 9 million consumers.<sup>46</sup> In addition, the TVA Board resolution stipulates that the rates will be based on a

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<sup>43</sup> See, Attachment C to Appendix. Although USTelecom collected data for the state of Kentucky, there were an insufficient number of survey respondents to permit disclosure of that data.

<sup>44</sup> See, Attachment C to Appendix.

<sup>45</sup> While many cooperatives have already adopted the TVA rate structure, the TVA does not mandate that the cooperatives it supplies adopt its exorbitant rate structure until 2018. Nonetheless, the unreasonable rates above illustrate that the TVA's decision is already impeding broadband deployment.

<sup>46</sup> See, TVA Website, TVPPA Membership (available at: <http://www.tvppa.com/membership/member-directory/regular-members/>) (visited November

formula methodology,<sup>47</sup> meaning that many of the rates reflected above may actually *exceed* the \$30 average. While the TVA has proposed a glide-path of up to five years for large rate increases,<sup>48</sup> such an approach simply delays the inevitability of substantially higher pole attachment rates in the rural areas served.

Although the TVA asserts that its resolution is not “intended” to apply to reciprocal or joint use agreements “at this time”,<sup>49</sup> such proclamations raise numerous concerns with respect to the Commission’s broadband policy goals. First, nothing prevents TVA members from terminating existing reciprocal or joint use agreements with ILECs within their respective territories. As discussed previously in this ex parte notice, utility pole owners (including IOUs, cooperatives and municipalities) are already seeking to terminate existing joint use agreements with ILEC attachers.<sup>50</sup> There is nothing in the TVA Board resolution to assuage such concerns. Even with the tenuous exception for joint use agreements, many ILECs providing service in TVA territories will likely see rate increases as a result of TVA’s action – either through the termination of such agreements, or in instances where such poles are exclusively owned by the TVA cooperative.

Second, cable and CLEC attachers – which are not subject to joint use agreements – will likely see their attachment rates skyrocket under the TVA’s resolution. As noted by the TVA when it published its proposed attachment rate reforms, the scope of its proposal included agreements between local power companies, “and third parties making or maintaining wireline attachments, such as cable or telecommunication (including broadband) providers.”<sup>51</sup> Under the TVA’s adopted resolution, these attachers – and potentially ILECs that have seen their joint

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20, 2017); *see also*, TVA Website (available at: [https://www.tva.gov/file\\_source/TVA/Site%20Content/Energy/tva\\_lpc\\_map.pdf](https://www.tva.gov/file_source/TVA/Site%20Content/Energy/tva_lpc_map.pdf)) (identifying the TVA cooperative members’ service territories covering seven states: Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia) (visited November 20, 2017); *see also*, TVA Website, About TVA (available at: <https://www.tva.gov/About-TVA>) (visited November 20, 2017).

<sup>47</sup> TVA Board Resolution, p. 2 (available at: [https://www.tva.gov/file\\_source/TVA/Site%20Content/About%20TVA/Guidelines%20and%20Reports/tva\\_determination\\_on\\_regulation\\_of\\_pole\\_attachments.pdf](https://www.tva.gov/file_source/TVA/Site%20Content/About%20TVA/Guidelines%20and%20Reports/tva_determination_on_regulation_of_pole_attachments.pdf)) (visited November 20, 2017) (*TVA Board Resolution*). *See also*, *TVA Board Resolution*, Attachment A.

<sup>48</sup> *TVA Board Resolution*, Attachment A, Appendix 4. Under the specified transition guideline, attachment rates are permitted to rise by \$5 or more per year. (*e.g.*, a rate increase of \$11 to \$20 per year must be implemented in no more than 3 years.)

<sup>49</sup> *Id.*, Attachment A, p. 1, n. 1. The note also expresses TVA’s expectation that “appropriate costs will be borne by all participants in these reciprocal joint use agreements.”

<sup>50</sup> *See supra*, pp. 9 – 10.

<sup>51</sup> *TVA Board Resolution*, Attachment B, Appendix 3, p. 1.

use agreements terminated – could see their rates immediately rise by up to \$5.00 upon implementation, and up to \$31.00 or more after no more than five years.<sup>52</sup>

Given the location of electric cooperatives, the TVA’s unilateral decision will have a particularly acute impact on rural consumers. As noted in the Commission’s 2015 Rate Parity Order, “large and sudden” pole attachment rate increases can “destabiliz[e]” broadband deployment plans.<sup>53</sup> The Commission was “particularly mindful” of these harms in rural areas, noting that they are “the least served areas in the nation, and where the most additional pole attachments are needed to reach additional customers.”<sup>54</sup>

Indeed, in its reply comments submitted in this proceeding, the National Rural Electric Cooperative Association (NRECA) noted its own survey of its members, which compared broadband penetration for rural areas served by IOUs versus rural areas served by electric cooperatives. NRECA found a “strong correlation between low household density per square mile and lower broadband penetration in rural parts of the country.”<sup>55</sup> NRECA emphasized that the “large difference in population density and its correlation to lower broadband penetration strongly suggests that the rural households served by electric cooperatives have less access to broadband simply because there are fewer people per square mile in these areas, *making it more expensive to provide service to these households.*”<sup>56</sup>

Despite the realities highlighted by NRECA from its survey (*i.e.*, lower broadband penetration in rural areas served by cooperatives, and the higher costs associated with providing service to such households), NRECA nevertheless asserts that TVA’s increased pole attachment rates are “reasonable.”<sup>57</sup> The 2017 USTelecom Survey, however, demonstrates that the pending increase in TVA pole attachment rates will be particularly destabilizing, given the already exorbitant rates charged by TVA cooperatives.

Moreover, the challenges of deploying broadband in rural areas covered by the TVA’s seven-state service territory will be further exacerbated by the TVA’s decision to deploy its own broadband services in direct competition with existing providers. Specifically, the TVA recently

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<sup>52</sup> *Id.*, Attachment B, Appendix 3, Appendix 1.

<sup>53</sup> 2015 Pole Attachment Order, ¶ 27.

<sup>54</sup> *Id.*

<sup>55</sup> See, Reply Comments of the National Rural Electric Cooperative Association, WT Docket No. 17-79, WC Docket No. 17-84, p. 6 (submitted July 17, 2017).

<sup>56</sup> *Id.* (emphasis added).

<sup>57</sup> *Id.*, p. 12.

approved a \$300 million initiative to expand its fiber capacity.<sup>58</sup> The initiative will take five to 10 years to complete and will include 3,500 miles of fiber to enable broadband connections for more of TVA's generating plants as well as more of its customers. In essence, as the TVA takes affirmative steps to price broadband competitors out of the market, it seeks to deploy, enable and encourage competitive broadband service from the electric cooperatives it serves. To reiterate, a federal entity is not only blocking broadband deployment with extreme pole attachment rates in direct contravention to well-established federal policy, but also is using funding from those rates together with fees collected from electric rate payers to subsidize broadband overbuilding and undermine private investment, again in direct contravention to well-established federal policy.

In its initial comments in this proceeding, USTelecom also noted that the exorbitant TVA rates pose a serious threat to the Commission's goals under the Connect America Fund (CAF) program to promote efficient and carefully targeted broadband deployment in rural areas.<sup>59</sup> The higher rates charged by TVA electric cooperatives will detrimentally impact these CAF broadband deployment efforts by forcing broadband providers to pay exorbitant and unreasonable rates to these cooperatives in order to obtain access to essential infrastructure. As a result, the unreasonable rates expended for access to cooperative poles for any CAF buildouts substantially increase the costs and reduce the funds available for additional broadband deployment.

Since USTelecom last raised this issue in its comments in this proceeding, at least one TVA member – Newport Utilities<sup>60</sup> – is moving forward with plans to deploy broadband services to consumers<sup>61</sup> that have already been targeted for CAF support. Specifically, the electric

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<sup>58</sup> TVA website, *TVA Board Approves \$300 Million Strategic Fiber Initiative*, May 11, 2017 (available at: <https://www.tva.com/Newsroom/Press-Releases/TVA-Board-Approves-300-Million-Strategic-Fiber-Initiative>) (visited November 20, 2017).

<sup>59</sup> Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd. 17663, 77 FR 26987, FCC 11-161, ¶ 1 (released November 18, 2011) (noting the Commission's goal to establish a "framework to distribute universal service funding in the most efficient and technologically neutral manner possible."); Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd. 8769, 79 FR 44352, FCC 14-98, ¶ 10 (released July 14, 2014) (discussing the use of "targeted funding to expand efficiently the availability of voice and broadband-capable infrastructure.").

<sup>60</sup> According to the TVA website, Newport Utilities is a TVA member. See, TVA website, *Local Power Companies* (available at: <https://www.tva.gov/Energy/EnergyRightSolutions/Local-Power-Companies#N>) (visited November 20, 2017).

<sup>61</sup> See, Kampis, Johnny, Tennessee Watchdog.org, *Tennessee town's broadband plan may face difficult hurdles*, October 6, 2017 (available at: [https://www.watchdog.org/tennessee/tennessee-town-s-broadband-plan-may-face-difficult-hurdles/article\\_83adeba8-aa97-11e7-8b27-ff728c594b3b.html](https://www.watchdog.org/tennessee/tennessee-town-s-broadband-plan-may-face-difficult-hurdles/article_83adeba8-aa97-11e7-8b27-ff728c594b3b.html)) (visited November 20, 2017).

service territory of Newport Utilities is located in Cocke County Tennessee, which has already received \$535,396 in CAF support, directed towards approximately two thousand homes and businesses.<sup>62</sup>

The 2017 USTelecom Survey results underscore USTelecom's recommendation for Commission coordination with appropriate federal agency stakeholders and legislative committees holding TVA oversight. While the TVA asserts that its sole obligation is to ensure that electric rates be kept "as low as feasible" for electric ratepayers,<sup>63</sup> such rates should not serve to undermine the broader federal policy goal of increased broadband deployment. The Commission should therefore work with other federal stakeholders to ensure that the shared federal goals of increased broadband deployment are not derailed by the narrower goals of a single federal entity.

#### **IV. The 2017 USTelecom Survey Results Demonstrate That the Commission's Proposed Further Reforms to Pole Attachment Regulations are Necessary.**

In remarks delivered earlier this year to the Hudson Institute, Commission Chairman Ajit Pai stated that using data collected by the Commission and from other sources, the Commission "can make well-informed, economically sound policy."<sup>64</sup> Chairman Pai further noted the importance of utilizing data to inform long-term thinking into Commission policies, including those relating to the agency's infrastructure rules.<sup>65</sup> The data presented in the 2017 USTelecom Survey clearly demonstrates that further reforms are needed to the Commission's rules governing its pole attachment rate formulas.

Despite the well-intentioned goals of the Commission's 2011 Pole Attachment Order, the 2017 USTelecom Survey demonstrates that pole attachment rates for ILEC attachers have increased, whereas the rates ILECs charge CLEC and cable competitors have significantly *decreased*. Moreover, the imbalance in pole ownership and the resulting lack of ILEC bargaining power that was integral to the Commission's decision to institute rate reforms in

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(noting that broadband providers in the service area of Newport Utilities include AT&T, Charter, Comcast and Windstream and fixed wireless providers Planet Connect and Ultranet.).

<sup>62</sup> See, Federal Communications Commission, CAFII - Final Adopted Model for Offer of Model - Based Support to Price, Cap Carriers, AT&T - Offer by State showing Location Obligation, p. 28, April 29, 2015 (available at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-335269A9.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-335269A9.pdf)) (visited November 20, 2017).

<sup>63</sup> *TVA Board Resolution*, Attachment B, p. 1.

<sup>64</sup> See, Remarks Of FCC Chairman Ajit Pai at the Hudson Institute, *The Importance of Economic Analysis at the FCC*, Washington, D.C., April 5, 2017, p. 4 (available at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-344248A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-344248A1.pdf)) (visited November 14, 2017).

<sup>65</sup> *Id.*, pp. 5 – 6.

2011 continues today. Based on these findings, the Commission should expeditiously move forward with its proposal to institute a presumptive just and reasonable rate formula for ILEC attachers. As USTelecom noted in its comments in this proceeding, such a just and reasonable rate “should mean the same thing for providers of fundamentally identical services making fundamentally similar attachments.”<sup>66</sup>

Any just and reasonable rate charged to ILEC attachers should be based on a rate using the most recent telecommunications rate formula.<sup>67</sup> The Commission should also adopt its proposal that an ILEC would receive the telecommunications rate unless the utility pole owner can demonstrate with “clear and convincing evidence” that the benefits to the ILEC far outstrip the benefits accorded to other pole attachers.<sup>68</sup>

A presumptive just and reasonable ILEC rate will introduce greater certainty into the marketplace for ILEC attachers, investor-owned utility pole owners and the Commission. The Commission’s current case-by-case approach creates an unforgiving marketplace for ILEC attachers by forcing them to choose between two unsatisfactory options: agree to the disparate (and exorbitant) pole attachment rates charged by IOUs, or partake in the Commission’s lengthy (and costly) complaint process. While the former choice leads to increased infrastructure costs for ILECs that are ultimately passed on to consumers, the latter often results in extensive delays to broadband infrastructure deployments. Neither of these choices is efficient, and in both instances consumers lose – whether through delayed broadband deployments, increased consumer costs, or potentially both.

## **V. Conclusion.**

USTelecom greatly supports and appreciates the Commission’s continuing efforts to establish regulatory parity among broadband competitors, and we urge the Commission to expeditiously adopt its proposal for a presumptive just and reasonable rate formula for ILEC attachers.

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<sup>66</sup> See, *2017 USTelecom Comments*, p. 8.

<sup>67</sup> Notice, ¶ 45.

<sup>68</sup> Notice, ¶ 45.

## **Appendix – USTelecom 2017 Pole Survey Methodology**

USTelecom surveyed member companies to collect certain information regarding pole attachments. USTelecom distributed the survey instrument (Attachment A to this Appendix) in late June 2017 and received responses in August and September of 2017 from seven member companies: AT&T, CenturyLink, FairPoint, Frontier, GVTC Communications, Verizon, and Windstream. Participating companies provided data under a nondisclosure agreement that prohibits release of company-specific data. FairPoint did not provide data for Maine, New Hampshire, and Vermont. Consolidated Communications acquired FairPoint on July 3, 2017, but the survey reflects only selected service areas of the former FairPoint, not the acquiring company.

Each participating company submitted state-level data, plus a company-aggregate for all reported states and a company-wide aggregate for all reported states in which the Federal Communications Commission (“FCC”) regulates pole attachment rates (“FCC-regulated states”). Under federal telecommunications law, states can opt to regulate certain pole attachment rates, and the FCC regulates rates for states that have not opted to regulate pole attachment rates. In total, USTelecom members contributed data for 140 company-state operating areas in 46 states, plus seven company aggregates for all states and seven company aggregates for FCC-regulated states. A list of states by regulatory jurisdiction and inclusion in this survey is included in Attachment B to this Appendix.

For each state for which a company submitted data, the survey sought data regarding the number of poles and the attachers to poles owned by incumbent local exchange carriers (“ILECs”) and three types of electric utilities (“utilities”): investor-owned utilities (“IOUs”), municipal utilities (“munis”), and electric cooperatives (“co-ops”). Specifically, the survey requested (1) the number of poles fully owned by incumbent local exchanges carrier (“ILECs”); (2) the number of poles owned jointly by ILECs and utilities; (3) the number of fully-owned electric utility poles with ILEC attachments; and (4) the number of fully-owned ILEC poles with attachments by utilities, cable operators, competitive local exchange carriers (“CLECs”), and “others.”

The survey also sought data regarding certain pole attachment rates: (1) the rates ILECs pay to each of the three types of utilities for attachments to fully-owned utility poles; (2) the rates each type of utility pays to ILECs for fully-owned ILEC poles; and (3) the rates cable operators, CLECs, and others pay to ILECs for fully-owned ILEC poles. The survey requested data on annual – not monthly – rates. For each state for which a company submitted data and for the company-wide aggregates, for each category of attachment, the survey requested the low and high rates, the weighted average rate; and the median rate. The survey also asked for annual gross payments ILECs make to each of the three types of utilities; and it is possible to calculate such gross payments ILECs receive for attachments from utilities, cable operators, CLECS, and others.

The survey does not capture any information regarding the number of attachments to and rates paid for utility poles to which ILECs do not attach; it does not capture rates cable operators, CLECs, and others pay to utilities; and it does not capture any rate information for poles jointly owned by ILECs and utilities. For selected metrics, USTelecom either collected or was able to develop aggregated totals, for example ILEC attachments to and from all utilities and total attachers of any type to ILEC poles.

After a data validation process, USTelecom generated aggregates for all reporting companies in all reported states, in all FCC-regulated states, and selected individual states. USTelecom was independently able to validate the number of poles and attachers, the low and high rates, and the weighted average rates. USTelecom was not able to validate reported median rates.

Per the terms of our nondisclosure agreement, USTelecom does not report company-specific data. Accordingly, USTelecom reports only aggregated state-level data if at least three companies provided data for the state so that it is not possible to derive individual company information. Given our nondisclosure requirements, USTelecom was able to create aggregates for 28 out of 46 states. Even for states in which three or more companies submitted a response, USTelecom reports individual data points for a state only if at least three companies provided that specific data. In addition, USTelecom reports data for aggregated categories (e.g., all utilities or all attachments) only if it would not be possible to derive a subcategory for which data were otherwise withheld. USTelecom also created an aggregate group for the seven states in which the Tennessee Valley Authority operates (“TVA-states”) – Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia. Among these states, all are reportable as individual aggregates, except Kentucky.

Please see Attachment C to this Appendix for a summary of the results for all states and for FCC-regulated states.



## Attachment A to Appendix – Survey Instrument for 2017 USTelecom Survey

General Information	
1. How many poles do you fully own 100%?	
2. How many poles do you <u>jointly own</u> with utilities?	
3. How many poles fully owned by others (e.g. IOUs, munis, coops) do you attach to?	
a) Of the poles fully owned by other entities, how many are owned by municipalities?	
b) Of the poles fully owned by other entities, how many are owned by cooperatives?	
c) Of the poles fully owned by other entities, how many are fully owned by IOUs?	
4. On the poles you fully own, how many have attachments by:	
a) all utility companies	
(i) municipalities	
(ii) cooperatives	
(iii) IOUs	
b) cable companies	
c) CLECs	
d) other	

Investor Owned Utility (IOU) Agreements	Low End	High End
1. What is the <b>range</b> of rates that your company pays to utility companies for ILEC attachments on 100% owned IOU poles (not including munis/coops)?		
2. What is the <b>weighted average</b> rate that your company pays to utility companies for ILEC attachments on 100% owned IOU poles (not including munis/coops)?		
3. What is the <b>[range of] median rates that [compan[ies] pay[]</b> to utility companies for ILEC attachments on 100% owned IOU poles (not including munis/coops)?		
4. What is the total <b>gross payment</b> your company makes for pole attachments to 100% owned IOUs. This calculation should not include payments to muni/coops, or payments made under Joint Ownership agreements.		

## Attachment A to Appendix – Survey Instrument for 2017 USTelecom Survey (Continued)

Electric Cooperative Agreements	
	Low End High End
1. What is the <b>range</b> of rates that your company pays to electric cooperatives for ILEC attachments?	
2. What is the <b>weighted average</b> rate that your company pays to electric cooperatives for ILEC attachments?	
3. What is the <b>[range of] median rates that [ ]compan[ies] pay[ ]</b> to electric cooperatives for ILEC attachments?	
4. What is the total <b>gross payment</b> your company makes for pole attachments to electric cooperatives?	

Municipality Agreements	
	Low End High End
1. What is the <b>range</b> of rates that your company pays to municipalities for ILEC attachments?	
2. What is the <b>weighted average</b> rate that your company pays to municipalities for ILEC attachments?	
3. What is the <b>[range of] median rates that [ ]compan[ies] pay[ ]</b> to municipalities for ILEC attachments?	
4. What is the total <b>gross payment</b> your company makes for pole attachments to municipalities?	

## Attachment A to Appendix – Survey Instrument for 2017 USTelecom Survey (Continued)

### Pole Ownership Information

1. What is the **range** of rates your company receives for attachments for 100% ILEC owned poles from:

	Low End	High End
a) utility companies		
(i) municipalities		
(ii) cooperatives		
(iii) IOUs		
b) cable companies;		
c) CLECs		
d) Other		

2. What is the **weighted average** rate your company receives for attachments from:

a) utility companies;	
(i) municipalities	
(ii) cooperatives	
(iii) IOUs	
b) cable companies;	
c) CLECs	
d) Other	

3. What is the [range of] **median** rate[s] your compan[ies] receive[] for attachments from:

a) utility companies;		
(i) municipalities		
(ii) cooperatives		
(iii) IOUs		
b) cable companies;		
c) CLECs		
d) Other		

## Attachment B to Appendix – Regulatory Authority by State\* for Pole Attachments and Status of Inclusion in the 2017 USTelecom Survey

State	Pole Attachment Regulator	Data Submitted in USTelecom 2017 Pole Survey?
Alabama	FCC	Yes
Arizona	FCC	Yes
Colorado	FCC	Yes
Florida	FCC	Yes
Georgia	FCC	Yes
Indiana	FCC	Yes
Iowa	FCC	Yes
Kansas	FCC	Yes
Maryland	FCC	Yes
Minnesota	FCC	Yes
Mississippi	FCC	Yes
Missouri	FCC	Yes
Montana	FCC	Yes
Nebraska	FCC	Yes
Nevada	FCC	Yes
New Mexico	FCC	Yes
North Carolina	FCC	Yes
North Dakota	FCC	Yes
Oklahoma	FCC	Yes
Pennsylvania	FCC	Yes
Rhode Island	FCC	Yes
South Carolina	FCC	Yes
South Dakota	FCC	Yes
Tennessee	FCC	Yes
Texas	FCC	Yes
Virginia	FCC	Yes
West Virginia	FCC	Yes
Wisconsin	FCC	Yes
Wyoming	FCC	Yes
Arkansas	STATE	Yes
California	STATE	Yes
Connecticut	STATE	Yes
Delaware	STATE	Yes
District of Columbia	STATE	Yes
Idaho	STATE	Yes
Illinois	STATE	Yes
Kentucky	STATE	Yes
Louisiana	STATE	Yes
Massachusetts	STATE	Yes
Michigan	STATE	Yes
New Jersey	STATE	Yes
New York	STATE	Yes
Ohio	STATE	Yes
Oregon	STATE	Yes
Utah	STATE	Yes
Washington	STATE	Yes
Hawaii	FCC	No
Alaska	STATE	No
Maine	STATE	No
New Hampshire	STATE	No
Vermont	STATE	No

Total States	51
States Submitted	46
Submitted - FCC Regulated	29
Submitted - State Regulated	17
States Not Submitted	5
Not Submitted - State Regulated	4
Not Submitted - FCC Regulated	1

\*"State" includes the District of Columbia

## Attachment C to Appendix – Aggregated Results of 2017 USTelecom Survey

	All States		FCC-Regulated States	
General Information				
1. How many poles do you fully own 100%?	14,755,164		9,279,969	
2. How many poles do you jointly own with utilities?	8,876,986		1,051,899	
3. How many poles fully owned by others (e.g. IOUs, munis, coops) do you attach to?	22,424,588		16,635,659	
a) Of the poles fully owned by other entities, how many are owned by municipalities?	2,696,576		2,356,976	
b) Of the poles fully owned by other entities, how many are owned by cooperatives?	5,861,837		4,612,994	
c) Of the poles fully owned by other entities, how many are fully owned by IOUs?	13,866,175		9,665,689	
4. On the poles you fully own, how many have attachments by:				
a) all utility companies	5,392,992		3,762,405	
(i) municipalities	570,118		495,664	
(ii) cooperatives	271,132		215,208	
(iii) IOUs	4,551,742		3,051,533	
b) cable companies	9,242,678		4,159,856	
c) CLECs	1,321,545		433,532	
d) other	126,161		41,854	
Investor Owned Utility (IOU) Agreements				
1. What is the range of rates that your company pays to utility companies for ILEC attachments on 100% owned IOU poles (not including munis/coops)?	\$0.00	\$123.18	\$0.00	\$123.18
2. What is the weighted average rate that your company pays to utility companies for ILEC attachments on 100% owned IOU poles (not including munis/coops)?	\$25.23		\$26.12	
3. What is the [range of] median rate[s] the companies pay to utility companies for ILEC attachments on 100% owned IOU poles (not including munis/coops)?	\$7.00	\$37.45	\$9.45	\$37.57
4. What is the total gross payment your company makes for pole attachments to 100% owned IOUs. This calculation should not include payments to muni/coops, or payments made under Joint Ownership agreements.	\$351,779,591		\$251,303,331	
Electric Cooperative Agreements				
1. What is the range of rates that your company pays to electric cooperatives for ILEC attachments?	\$0.70	\$42.93	\$1.00	\$40.86
2. What is the weighted average rate that your company pays to electric cooperatives for ILEC attachments?	\$21.05		\$21.57	
3. What is the [range of] median rate[s] that the companies pay to electric cooperatives for ILEC attachments?	\$10.94	\$29.05	\$10.94	\$29.05
4. What is the total gross payment your company makes for pole attachments to electric cooperatives?	\$124,231,337		\$100,569,692	
Municipality Agreements				
1. What is the range of rates that your company pays to municipalities for ILEC attachments?	\$0.00	\$59.08	\$0.00	\$53.42
2. What is the weighted average rate that your company pays to municipalities for ILEC attachments?	\$19.96		\$20.98	
3. What is the [range of] median rate[s] the companies pay to municipalities for ILEC attachments?	\$8.51	\$25.45	\$8.13	\$25.57
4. What is the total gross payment your company makes for pole attachments to municipalities?	\$54,757,746		\$50,302,619	

## Attachment C to Appendix – Aggregated Results of 2017 USTelecom Survey (Continued)

Pole Ownership Information				
1. What is the range of rates your company receives for attachments for 100% ILEC owned poles from:				
a) utility companies	\$0.00	\$96.20	\$0.00	\$96.20
(i) municipalities	\$0.00	\$60.57	\$0.00	\$60.57
(ii) cooperatives	\$1.00	\$79.81	\$1.00	\$46.75
(iii) IOUs	\$0.00	\$96.20	\$0.00	\$96.20
b) cable companies;	\$0.42	\$25.00	\$0.42	\$25.00
c) CLECs	\$0.42	\$25.00	\$0.42	\$25.00
d) Other	\$0.97	\$118.75	\$0.97	\$25.00
2. What is the weighted average rate your company receives for attachments from:				
a) utility companies;	\$26.59		\$26.08	
(i) municipalities	\$20.86		\$21.67	
(ii) cooperatives	\$21.05		\$20.65	
(iii) IOUs	\$27.64		\$27.18	
b) cable companies;	\$4.83		\$3.00	
c) CLECs	\$5.07		\$3.75	
d) Other	\$5.80		\$3.83	
3. What is the [range of] median rate[s] the companies receive for attachments from:				
a) utility companies;				
(i) municipalities	\$9.00	\$25.57	\$9.00	\$29.82
(ii) cooperatives	\$14.40	\$30.46	\$13.70	\$30.46
(iii) IOUs	\$11.32	\$28.03	\$9.59	\$28.03
b) cable companies;	\$3.29	\$5.30	\$2.77	\$5.64
c) CLECs	\$2.44	\$5.59	\$2.14	\$6.00
d) Other	\$3.40	\$62.38	\$3.20	\$6.00

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## Submit a Filing

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<b>Confirmation #:</b>	20171121127523024
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<b>Status:</b>	RECEIVED
<b>Name(s) of Filer(s)</b>	USTelecom
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<b>Attorney/Author Name(s)</b>	Kevin G. Rupy, Pat Brogan, Diane Holland, Jon Banks
<b>Primary Contact Email</b>	<a href="mailto:krupy@ustelecom.org">krupy@ustelecom.org</a>
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