

UTILITIES AND TELECOMMUNICATIONS ALERT

THE FCC SEEKS COMMENT REGARDING PROPOSED MODIFICATIONS TO THE POLE ATTACHMENT RATE FORMULA

The Federal Communications Commission (“FCC” or “Commission”) released yesterday a [Public Notice](#), requesting that parties refresh the record on an outstanding [Petition proposing modifications to the Section 224\(e\) pole attachment rate formula](#) which would potentially have the effect of reducing the maximum rate chargeable to telecommunications service providers (the “Telecom Rate”) to the same level that currently applies for cable service providers in all cases—regardless of the actual number of attaching entities per pole, or whether the FCC’s presumptions are used.

The Petition, filed by trade associations for the cable and competitive telecommunications industries, has been outstanding since 2011. However, lingering disparities between the maximum pole attachment rates prescribed for cable service providers, under Section 224(d), and for telecommunications service providers, under Section 224(e) have new significance given the FCC’s recent reclassification of broadband Internet access service as “telecommunications service.”

The Petitioners have requested that “the rules be clarified or amended by specifying [that] the cost allocator to be applied [will be] based on the number of attaching entities” To justify this request, the Petitioners first note that, in the 2011 Pole Attachment Order, “the new formula adjusts the cost basis to 66 percent in urban service areas and to 44 percent in rural service areas.” The Petitioners then argue that the Commission should expand the current telecom rate formula to provide cost adjustments scaled to other entity counts beyond the current presumptions of five entities on urban poles and three entities on rural poles so that the derived rate almost always exactly equals the cable rate.

Notably, the Petitioners also request as an alternative relief that “the Commission could 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 from the definition of ‘cost of providing space’ in the existing telecom rate formula.” Thus, if the Commission grants the Petition, electric utilities would be bound to charge all entities an attachment rate that is less than or equal to the current maximum rate for cable service providers.

Eckert Seamans will be hosting a conference call to provide interested parties with additional information on Wednesday, May 13 at 2:00 PM Eastern Time, for further discussion of:

- The Petition, and proposals to reduce the Telecom Rate;

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- The impact of the FCC's Open Internet Order, and reclassification of broadband Internet access service on pole attachment rates; and
- Strategies for participation at the FCC going forward.

If you have any additional questions regarding the above or if you would like to participate in the May 13th conference call, please contact Charles Zdebski at 202.659.6605 (czdebski@eckertseamans.com), or Brett Freedson at 202.659.6669 (bfreedson@eckertseamans.com).

This Utilities and Telecommunications Alert is intended to keep readers current on matters affecting businesses and is not intended to be legal advice.

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