

UTILITY POLE ATTACHMENTS

OCTOBER 25, 1977.—Ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

SUPPLEMENTAL REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 7442]

This supplemental report replaces the following sections in order to include additional material and make technical changes: Purpose and summary of the bill, background and need for legislation, Federal Communications Commission action, committee action, committee amendments, Senate action, section-by-section analysis, oversight findings, inflationary impact statement, and cost estimate.

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7442) to amend the Communications Act of 1934 to provide for the regulation of utility pole attachments, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, after line 5, insert the following:

(2) The term "State authority" means the government of any State, any political subdivision, agency, or instrumentality of a State, and any public utility district or other similar special purpose district established under State law.

Page 2, line 6, strike out "(2)" and insert in lieu thereof "(3)".

Page 2, line 9, strike out "(3)" and insert in lieu thereof "(4)".

Page 2, line 13, strike out "(4)" and insert in lieu thereof "(5)".

Page 2, line 19, after "authority." insert the following:

Any such State authority may act at any time to regulate such rates, terms, and conditions. Any such regulations prescribed by the Commission or by any State authority shall assure that rates for pole attachments are just and reasonable.

Page 3, after line 4, insert the following:-

SEC. 2. Upon the expiration of the 5-year period that begins on the date of the enactment of this Act—

(1) section 224(a)(4) of the Communications Act of 1934, as added by the first section of this Act, is repealed;

(2) section 224(b)(2) of such Act, as added by the first section of this Act, is repealed; and

(3) section 224(b)(1) of such Act, as added by the first section of this Act, is redesignated as section 224(b).

PURPOSE AND SUMMARY OF THE BILL

The bill (H.R. 7442, as amended) would amend the Communications Act of 1934 to provide for the regulation of utility pole attachments.

The bill has three major provisions:

First, it gives the Federal Communications Commission the authority to regulate the rates, terms, and conditions of pole attachments in any case where such rates, terms, and conditions are not regulated by any State authority;

Second, the legislation provides that regulations prescribed by the Federal Communications Commission or by any State authority shall assure that the rates for pole attachments are just and reasonable. A just and reasonable rate, whether prescribed by the Commission or by any State authority, is defined as follows. The lower limit of such a rate shall assure the utility the recovery of not less than the additional costs of providing the pole attachment. The upper limit of such a rate shall assure the utility the recovery of not more than the actual capital and operating expenses of the utility attributable to that portion of the pole, duct or conduit used by the pole attachment. Such portion shall be the percentage of the total usable space on a pole, defined as the space on a utility pole above the minimum grade level which can be used for the attachment of wires and cables, or the total capacity of the duct or conduit, that is occupied by the pole attachment;

Third, the definition of a just and reasonable rate, otherwise known as the "zone of reasonableness," is repealed 5 years from the date of enactment of the bill.

BACKGROUND AND NEED FOR LEGISLATION

The cable television industry brings broadcast signals and other entertainment and information to its subscribers by attaching its wire to existing utility company poles (for purposes of this report, the word "poles" also refers to ducts or conduits). These poles are usually owned by telephone companies and electric utilities which often enter into joint use or joint ownership agreements for the use of each other's poles. These agreements commonly reserve a portion of each pole for the use of communication services. Regardless of who owns the pole, telephone companies usually control the connection space set aside for communication services. It is a part of this portion that is leased to a cable system for the attachment of

its wire. Use is made of existing poles rather than newly placed poles due to the reluctance of most communities, based on environmental considerations, to allow an additional, duplicate set of poles to be placed. Therefore, some form of accommodation must be reached by owners of poles and those wishing to have access to existing poles.

This bill (H.R. 7442, as amended) is designed to remedy a situation which was first brought to the attention of the Subcommittee on Communications last year. During the 2d session of the 94th Congress, the Subcommittee on Communications held 15 days of cable television oversight hearings during which the issue of pole attachments was discussed. On Wednesday, July 28, 1976, the subcommittee heard testimony from Hon. Charles Rose, Democrat of North Carolina, who had introduced House Resolution 1361, which sought to encourage the Federal Communications Commission (FCC) to assert jurisdiction over pole attachments. Mr. Rose had been moved to introduce such a resolution following a pole attachment dispute in two towns in his district (Whiteville and Chadbourne in Columbus County) and in two towns contiguous to his district (Dunn and Erwin in Harnett County), which caused approximately 1,200 cable television subscribers to lose cable television service. The dispute also threatened to disrupt service of 2,000 additional subscribers in Fayetteville, N.C. The subcommittee also heard testimony from representatives of the cable television industry and from telephone and electric companies. Cable industry representatives testified that they are totally dependent on telephone and power company poles for the purposes of building and extending their systems and that such utilities, by virtue of their monopoly ownership of poles, are in a position to force cable television companies seeking to attach their wire to utility poles into virtual contracts of adhesion. Such contracts, it was asserted, leave no room for negotiation and are offered to cable television companies on a take-it-or-leave-it basis. In addition, the subcommittee heard that once cable television companies are permitted to attach their wire to utility poles, the rate charged for such attachments can be adjusted upward without any justification offered by the utility and without any opportunity for negotiation with the utility. Cable television industry representatives testified further that the pole attachment controversy exists, in part, because telephone companies consider the cable industry to be a potential competitor, and pole disputes are the result of anticompetitive conduct. Finally, they stated that accurate estimates of the cost of the pole attachment to the utility cannot be computed unless and until utility companies are willing to disclose capital investment and depreciation costs.

Testimony received from utility company representatives focused on two major points, raising the jurisdictional question about whether the FCC had the authority to regulate the rates charged by telephone and electric power companies for the communication space on their poles and the policy question about whether the FCC or a State authority should regulate these rates. Such witnesses stated that pole rental charges should be based on a formula that correctly assigns usage to each attachment, and that the average price charged cable companies for their attachment does not approximate, or even come close to, what it would cost cable television systems to erect their own pole plant.

On August 25, 1976, Mr. Wirth, Democrat of Colorado, along with Chairman Van Deerlin, Democrat of California, and Mr. Rose, introduced H.R. 15268, a bill granting the FCC the authority to regulate the rates, terms and conditions for the use of communication space on utility poles. The bill also gave the States the authority to so regulate provided that certain federally established minimum standards were met.

On August 31, 1976, Chairman Van Deerlin, along with Mr. Wirth, Mr. Waxman, Democrat of California, Mr. Brown of Ohio, Mr. Florio, Democrat of New Jersey, and Mr. Rose introduced H.R. 15372, identical to H.R. 15268 except for the addition of a section giving the FCC the right to extend its authority to levy penalties and forfeiture for the willful or repeated violation of FCC rules and regulations.

The Subcommittee on Communications held 1 day of hearings on H.R. 15268 and H.R. 15372 on September 1, 1976. The arguments presented in support of and in opposition to the pole attachment sections of the legislation were similar to those heard on July 28, 1976 at the earlier hearing.

The subcommittee met in open markup session on September 8, 1976 to consider H.R. 15372 and reported the bill, with amendments, to the full Committee on Interstate and Foreign Commerce.

H.R. 15372 was ordered reported to the House by the full committee on September 16, 1976, by a voice vote. Due to controversy surrounding section 2 of the bill, extending the authority of the FCC to levy penalties and forfeitures for the willful or repeated violation of its rules and regulations, H.R. 15372 never reached the floor of the House for a vote.

During subsequent months further negotiations on the pole attachment issue were held by interested parties. On March 7, 1977, representatives of the National Cable Television Association (NCTA), which represents a large segment of the cable television industry, and the National Association of Regulatory Utility Commissioners (NARUC), which represents the State regulators, presented Chairman Van Deerlin with a copy of a draft pole attachment bill jointly agreed to by both parties. On March 10, 1977, the draft legislation was circulated to a number of interested parties for comment. On May 6, 1977, Mr. Wirth and Mr. Broyhill, Republican of North Carolina, circulated a "Dear Colleague" letter inviting members to join them in cosponsoring the draft NCTA/NARUC legislation. On May 25, 1977, Mr. Wirth, Mr. Broyhill, and 15 cosponsors introduced H.R. 7442 in the House. Subsequently, duplicate bills, H.R. 8075, H.R. 8675, and H.R. 8564 were introduced with additional cosponsors.

On July 22, 1977, the Subcommittee on Communications held 1 day of hearings on the subject of cable television pole attachments to bring the record up to date. A panel consisting of cable television industry, utility company, FCC and NARUC representatives considered the following questions:

1. Are there barriers to reaching mutually acceptable pole attachment agreements that require the intervention of a third party?
2. If a forum is necessary for the resolution of pole attachment disputes, in which jurisdiction should such authority be vested?

3. What method of allocating pole attachment costs among users would be fair and reasonable?

Representatives of the cable television industry testified that from their standpoint the situation had deteriorated since the subcommittee had last considered the problem, and that a legislative solution was still the favored method of resolving continuing differences. Such representatives stated that the cable industry still has a near total dependence on utility poles for delivering service to subscribers and that this dependence was having an adverse economic impact on their industry.

The industry attaches to approximately 10 million utility poles at an average rate of \$3.50 per pole per year. As of July 1977, there were 27 States in which pole attachment disputes existed. Seven independent telephone companies announced an average rate increase of 67 percent for pole attachments, from an average of \$4 per pole to an average of \$6.67 per pole. In addition, one independent telephone company canceled all pole contracts, affecting in excess of 150,000 poles. Thirty-three electric utility companies also announced rate increases. The overall 55 percent increase adjusted the rates from an average of \$3.90 per pole to an average of \$6.05 per pole. For the 41 companies discussed above, the combined overall rate increase was 61 percent. The impacted areas in these 27 States contain approximately 25.4 million television households, 35 percent of all the TV households in the United States. Cable television households in the impacted areas total 4.3 million, or 39 percent of all the cable households in the United States. Finally, the pole attachment agreement between NCTA and the American Telephone and Telegraph Co. (A.T. & T.) is due to expire on December 31, 1978, and the cable industry indicated its concern about the potential effect of such expiration. Their prediction was that the number of pole attachment disputes would dramatically increase upon the expiration of the agreement due to the fact that Bell System companies provide 85 percent of the telephone service in the United States and cover a corresponding large area of cable television service. The contrast was also made that 11 months prior to the July 22, 1977, hearing, only 23 utility companies in 16 States were involved in pole disputes with cable systems. In April 1977, cable systems were involved in disputes with 32 utilities in 20 States and as of July 1977, those numbers had risen to 41 utilities in 27 States.

The telephone and electric company representatives testified that the pole problems that exist between them and the cable television industry are not sufficiently significant to warrant a legislative solution, particularly one which vests authority for such regulation in a Federal agency. If there is to be any regulation of pole attachments, they contended, it ought to be at the State level through public service or public utility commissions. The utility representatives stated that such commissions have a high degree of expertise with respect to the operation and maintenance of utility distribution poles and are more sensitive to local problems than a Federal agency would be. Utility representatives testified further, that pole disputes center on one major issue and that is that the cable industry believes that it should pay a rental fee that is equal to the incremental cost to the utility for the

pole attachment and the utilities believe that they should receive from the cable company a rental fee that is equal to the value of the space that is rented. Such a range is admittedly wide, but the utilities believe that the interested parties can negotiate a rate acceptable to all parties, or failing that, can seek a resolution on the State level.

A representative of the FCC testified that on the basis of Commission research, there have been relatively few formal pole attachment disputes which have resulted in actual litigation, but that the testimony of the cable television industry constituted a fair representation of the potential problem. Such an assessment, it was stated, was based on the appearance of unequal bargaining power on the part of cable television companies and utility companies. The FCC witness testified further that the Commission believes that if the creation of a regulatory forum is necessary for the resolution of pole attachment disputes, such a forum would be most appropriately lodged with the States. The Commission based its position on the belief that the resolution of such matters involves the need for expertise with respect to not only telephone company regulation but also power company regulation. The FCC representative testified that the Commission does not have such expertise and if one adds the necessity to understand local problems, it would be preferable, according to the Commission, to decentralize such regulation rather than centralize it within a Federal agency. Finally, the FCC believes that Federal regulation of pole attachments would place an undue administrative and economic burden on the Commission.

FEDERAL COMMUNICATIONS COMMISSION ACTION

The Federal Communications Commission has had pending since 1966 the question of the nature and the extent of its jurisdiction over pole attachments. In 1973, the Commission terminated the evidentiary phase of its inquiry and invited comment on, and designated for oral argument, the issue of the nature and extent of the Commission's jurisdiction over the policies and practices of pole rental charges to cable companies by telephone common carriers and other utilities.

On September 29, 1975, the National Cable Television Association and American Telephone and Telegraph Co. entered into an agreement with respect to pole attachment rates charged to cable companies. To aid interested parties who did not participate in the agreement and who were negotiating or renegotiating pole attachment agreements, the Commission released a formula, devised by its staff, to be used in determining reasonable pole attachment rates.

On July 8, 1976, the Commission decided that it did not have jurisdiction over poles owned by power companies and deferred a decision regarding telephone company-owned poles pending further staff study of the "jurisdictional and economic issues."

On March 18, 1977, the FCC issued a Memorandum Opinion and Order in which it affirmed its July 8, 1976 decision regarding jurisdiction over power company-owned poles, and stated that it saw no reason to separate the resolution of policy and legal issues of jurisdiction on the basis of whether the party owning poles is a telephone company or a nontelephone company.

STATE REGULATION OF POLE ATTACHMENTS

On September 21, 1977, Governor Edmund Brown signed into law S.B. 177, a bill to regulate pole attachments. The California bill, which becomes effective January 2, 1978, represents the first such action by a State legislative body and enacts into law regulation of utility poles which includes standards for the regulatory body. Such standards, which include a zone within which rates may be set, are the same as those contained in H.R. 7442. The California pole attachment bill, however, does not include a sunset provision.

Connecticut and Hawaii also regulate utility pole attachments pursuant to their general utility regulation of cable television.

According to a March 1977 report issued by the Cable Television Bureau of the Federal Communications Commission, "Cable Television Pole Attachment State Law and Court Cases," no other States exercise rate regulation for cable television pole attachments.

COMMITTEE ACTION

The committee, acting through its Subcommittee on Communications, held one day of hearings on the need for pole attachment legislation on July 22, 1977. In the course of these hearings testimony was taken from representatives of the cable television industry, telephone companies, power companies, the Federal Communications Commission and State regulators. In addition, written comments were received from approximately 40 interested parties.

The Subcommittee on Communications met in open markup session on October 12, 1977, to consider H.R. 7442 and reported the bill, with amendments, by a unanimous vote to the full committee.

H.R. 7442 was ordered reported to the House by the committee on October 18, 1977, by a unanimous voice vote while a majority of the committee was present.

COMMITTEE AMENDMENTS

The committee amendments to the text of H.R. 7442 are printed in *italic* in the reported bill.

SENATE ACTION

The Senate Committee on Commerce, Science, and Transportation reported S. 1547 from committee to the Senate on October 11, 1977. No report is presently available. S. 1547 deals with pole attachments but also deals with penalties and forfeitures assessed for violation of FCC rules and regulations. Your committee has held no hearings on penalties and forfeitures in this Congress, and therefore, H.R. 7442 contains no such language.

SECTION-BY-SECTION ANALYSIS

The bill amends title II of the Communications Act of 1934 by adding a new section 224.

Section 1(a) of the bill defines—

(1) "Utility" as any person who provides telephone service or electric energy to the public and who owns or controls poles, ducts, conduits, or right-of-way used, in whole or in part, for wire communication. Such term does not include any corporation or other similar entity owned by the Federal Government;

(2) "State authority" as the government of any State, any political subdivision, agency, or instrumentality of a State, and any public utility district or other similar special purpose district established under State law;

(3) "Federal Government" as the Government of the United States or any agency or instrumentality thereof;

(4) "Pole attachment" as any attachment for wire communication on a pole, duct, conduit or other right-of-way owned or controlled by a utility; and

(5) "Usable space" as the space on a utility pole above the minimum grade level which can be used for the attachment of wires and cables.

Section 1(b) states—

(1) That the FCC shall regulate the rates, terms, and conditions for pole attachments in any case in which such rates, terms, and conditions are not regulated by any State authority. Any such State authority may act at any time to regulate such rates, terms, and conditions. Any such regulations prescribed by the FCC or by any State authority shall assure that rates for pole attachments are just and reasonable; and

(2) That a just and reasonable rate, whether prescribed by the FCC or by any State authority, shall assure the utility the recovery of not less than the additional costs of providing pole attachments nor more than the actual capital and operating expenses of the utility attributable to that portion of the pole, duct, or conduit used by the pole attachment. Such portion shall be the percentage of the total usable space on a pole, or the total capacity of the duct or conduit, that is occupied by the pole attachment.

Five years after enactment, section 2 of the bill—

(1) repeals section 1(a)(4) of the bill which added the "usable space" definition;

(2) repeals section 1(b)(2) of the bill which contained rate guidelines; and

(3) redesignates section 1(b)(1), which gave the FCC authority to regulate rates, as section 1(b).

The committee wants to state its intention that: (1) the FCC establish a complaint procedure for the purpose of enforcing this legislation, rather than act on its own initiative to seek out and resolve pole attachment disputes; (2) the maximum lawful pole attachment rate be computed by multiplying the percentage of the usable space on a pole occupied by the cable television pole attachment times the total actual capital and operating expenses of the pole for the period covered by the rate; and, (3) nothing in this legislation, especially the ratemaking criteria, be construed to apply in any area of Federal or State regulation other than in the regulation of cable television pole attachments.

OVERSIGHT FINDINGS

There are no formal oversight findings by the committee pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives.

No oversight findings have been submitted to the committee by the Committee on Government Operations pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the committee makes the following statement regarding the inflationary impact of the reported bill:

The committee is unaware that any inflationary impact on the economy will result from the passage of H.R. 7442.

COST ESTIMATE

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the committee estimates that there will be some costs involved in carrying out this bill in each of the 5 fiscal years following the enactment of this bill. The committee was unable to determine the exact amount of these projected costs with the information available to it.

In regard to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the committee includes the following cost estimates submitted by the Congressional Budget Office relative to the provisions of H.R. 7442.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

OCTOBER 19, 1977.

1. Bill number: H.R. 7442.
2. Bill title: Communications Act Amendment of 1977.
3. Bill status: As ordered reported by the House Committee on Interstate and Foreign Commerce, October 18, 1977.
4. Bill purpose: This bill provides for the regulation, by the Federal Communications Commission (FCC), of rates, terms and conditions for attachments to utility poles, conduits, or other rights-of-way for wire communication owned by utilities. The FCC is to perform such regulation only in the absence of State regulation.
5. Cost estimate:

Fiscal year:	[In thousands of dollars]	<i>Estimated costs</i>
1978.....		137
1979.....		441
1980.....		470
1981.....		500
1982.....		532

The costs of this bill fall within budget function 400.

6. Basis of estimate: This bill increases the regulatory responsibilities of the FCC, thus increasing its manpower requirements. It is assumed, however, that some of the regulatory functions will be performed by the various States. It is estimated that the FCC will need to hire 20

additional lawyers, economists and clerks to first develop attachment regulations and then process complaints.

For the purpose of this estimate, it is assumed that this bill will be enacted on or about April 1, 1978. On this basis, these personnel requirements will result in an estimated cost of \$137,000 during the latter part of fiscal year 1978, increasing to \$441,000 when fully implemented in fiscal year 1979. Costs in the following years reflect inflation and shifts in manpower resources as actual processing of complaints begins.

7. Estimate comparison: None.

8. Previous CBO estimate: On October 17, 1977, CBO prepared a cost estimate for S. 1547, the corresponding Senate bill ordered reported by the Senate Committee on Commerce, Science, and Transportation. S. 1547 is estimated to result in somewhat higher costs, due to the additional requirements regarding forfeiture regulation.

9. Estimate prepared by: Mark Berkman.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum),
Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE II—COMMON CARRIERS

* * * * *

UTILITY POLE ATTACHMENTS

SEC. 224 (a) *As used in this section:*

(1) *The term "utility" means any person who provides telephone service or electric energy to the public and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any corporation or other similar entity owned by the Federal Government.*

(2) *The term "State authority" means the government of any State, any political subdivision, agency, or instrumentality of a State, and any public utility district or other similar special purpose district established under State law.*

(3) *The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.*

(4) *The term "pole attachment" means any attachment for wire communication on a pole, duct, conduit, or other right-of-way owned or controlled by a utility.*

(5) *The term "usable space" means the space on a utility pole above the minimum grade level which can be used for the attachment of wires and cables.*

(b)(1) *The Commission shall regulate the rates, terms, and conditions for pole attachments in any case in which such rates, terms, and conditions are not regulated by any State authority. Any such State authority may act at any time to regulate such rates, terms, and conditions. Any such regulations prescribed by the Commission or by any State authority shall assure that rates for pole attachments are just and reasonable.*

(2) *A just and reasonable rate, whether prescribed by the Commission or by State authority, shall assure the utility the recovery of not less than the additional costs of providing pole attachments nor more than the actual capital and operating expenses of the utility attributable to that portion of the pole, duct, or conduit used by the pole attachment. Such portion shall be the percentage of the total usable space on a pole, or the total capacity of the duct or conduit, that is occupied by the pole attachment.*

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ADMINISTRATION COMMENTS

OFFICE OF TELECOMMUNICATIONS POLICY,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., May 2, 1977.

HON. LIONEL VAN DEERLIN,
*Chairman, Subcommittee on Communications, Committee on Interstate
and Foreign Commerce, U.S. House of Representatives, Washington,
D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of March 10, 1977, in which you have requested the comments of this office with respect to the proposed pole attachment legislation agreed to by the National Association of Regulatory Utility Commissioners (NARUC).

The proposed Bill establishes Federal Communications Commission (FCC) jurisdiction to regulate the rates, terms, and conditions for pole attachments for wire communication if the pole, duct, conduit, or right-of-way is used in whole or in part for wire communications, is owned or controlled by any person who provides telephone service or electric energy to the public, and the rates, terms, and conditions are not regulated by any State authority.

It requires either the Commission or the State authority, as the case may be, to assure that only just and reasonable rates are charged for pole attachments. A just and reasonable rate must assure the utility the recovery of not less than the additional costs of providing pole attachments nor more than the actual capital and operating expenses attributable to that portion of the pole used by the pole attachment. This latter portion would be the percentage of the total usable space on the pole used by the pole attachment.

In September of last year, the subcommittee considered a similar but more restrictive bill, H.R. 15268. That bill placed primary jurisdiction over poles and ducts in the FCC and authorized the Commission to establish minimum standards to be met by State regulatory authorities choosing to regulate pole attachment arrangements.

OTP expresses no view on whether a compelling case has been made justifying pole attachment legislation as necessary to assure CATV access at reasonable rates to utility facilities and services. We believe, as a general principle, monopoly utility facilities should be available to serve the general public good. This principle certainly extends to

public rights-of-way used by those utilities. We view this legislation as consistent with that principle.

We do not believe the FCC should be delegated general jurisdiction over the facilities of electric companies and other noncommunications utilities. Jurisdiction over cable television companies and telephone companies does not necessarily imply the FCC needs or has the expertise required for specific jurisdiction over all suppliers of pole and conduit space, including electric utility companies. However, under the proposed bill, FCC jurisdiction would not exist if the state regulatory authorities adopt any plan to regulate pole and conduit space. This accommodates our concerns. In this regard, we are advised that the NARUC has prepared model legislation for states to adopt if they so choose.

The NCTA/NARUC bill provides incremental costs as a rate floor and the actual capital and operating expenses of the utility attributable to that portion of the pole, duct, or conduit used by the pole attachment as a rate ceiling for pole attachment charges. Assuming that actual capital expenses include a reasonable return on capital based upon a regulated industry standard determined in a proceeding consistent with the principles of the Administrative Procedure Act, we believe this is an adequate rate standard. The burden of proof for pole rate increase should be on the utility which has control of the right-of-way when it chooses to set or increase pole attachment rates. We suggest that clarifying language be added to the bill to place the burden of proof on whichever party seeks to change the applicable pole attachment rates.

We believe the pole attachment formula developed by the FCC staff in November of 1975 is a reasonable approach to the pole attachment rate problem and that the legislative history of this proposed bill should make clear that the FCC proposal is fully consistent with the standards in the legislation.

The proposed bill does not contain a clear statement of intent by the Congress to circumscribe the rate setting authority of State authorities which do exercise pole attachment jurisdiction. The "just and reasonable" standard should be made clearly applicable to states. We suggest that a new sentence be inserted following the first sentence in section 224(b) as follows: "No rate, whether prescribed by the Commission or a State authority, shall be other than just and reasonable as herein defined." The next sentence should be modified to eliminate duplicative wording.

This proposed legislation addresses itself only to rate regulation, but its statement of purpose indicates an intent to allow FCC regulation of "rates, terms, and conditions for the use of communications space on poles, ducts . . .," et cetera. It is unclear, therefore, what authority the Commission has to require access to pole rights-of-way in the first instance or the expansion of communications space on existing utility poles or ducts or, generally, to exercise jurisdiction over problems which might arise in relations between the parties to pole attachment arrangements. This authority should be clarified.

In conclusion, this bill addresses a number of issues relevant to the overall regulation of both mass media and common carriers under the Communications Act of 1934. For example, the bill establishes stand-