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SUPREME COURT OF THE UNITED STATES

Nos. 00–832 and 00–843

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION, INC., PETITIONER

00–832 *v.*

GULF POWER COMPANY ET AL.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES, PETITIONERS

00–843 *v.*

GULF POWER COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[January 16, 2002]

JUSTICE KENNEDY delivered the opinion of the Court.

I

Since the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.

Congress first addressed these transactions in 1978, by enacting the Pole Attachments Act, 92 Stat. 35, as amended, 47 U. S. C. §224 (1994 ed.), which requires the Federal Communications Commission (FCC) to "regulate the rates, terms, and conditions for pole attachments to

provide that such rates, terms, and conditions are just and reasonable." §224(b). (The Act is set forth in full in the Appendix, *infra*.) The cases now before us present two questions regarding the scope of the Act. First, does the Act reach attachments that provide both cable television and high-speed ("broadband") Internet service? Second, does it reach attachments by wireless telecommunications providers? Both questions require us to interpret what constitutes a "pole attachment" under the Act.

In the original Act a "pole attachment" was defined as "any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility," §224(a)(4). The Telecommunications Act of 1996, §703, 110 Stat. 150, expanded the definition to include, as an additional regulated category, "any attachment by a . . . provider of telecommunications service." §224(a)(4) (1994 ed., Supp. V).

Cable companies had begun providing high-speed Internet service, as well as traditional cable television, over their wires even before 1996. The FCC had interpreted the Act to cover pole attachments for these commingled services, and its interpretation had been approved by the Court of Appeals for the District of Columbia Circuit. *Texas Util. Elec. Co.* v. *FCC*, 997 F. 2d 925, 927, 929 (1993). Finding nothing in the 1996 amendments to change its view on this question, the FCC continued to assert jurisdiction over pole attachments for these particular commingled services. *In re Implementation of Section 703(e) of the Telecommunications Act of 1996: Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd. 6777 (1998). In the same order the FCC concluded further that the amended Act covers attachments by wireless telecommunications providers. "[T]he use of the word 'any' precludes a position that Congress intended to distinguish between wire and wireless attachments." *Id.,* at 6798.

Certain pole-owning utilities challenged the FCC's order in various Courts of Appeals. See 47 U. S. C. §402(a) (1994 ed.); 28 U. S. C. §2342 (1994 ed.). The challenges were consolidated in the Court of Appeals for the Eleventh Circuit, see 28 U. S. C. §2112(a) (1994 ed.), which reversed the FCC on both points. 208 F. 3d 1263 (2000). On the question of commingled services, the court held that the two specific rate formulas in 47 U. S. C. §§224(d)(3) and (e)(1) (1994 ed., Supp. V) narrow the general definition of pole attachments. The first formula applies to "any attachment used by a cable television system solely to provide cable service," §224(d)(3), and the second applies to "pole attachments used by telecommunications carriers to provide telecommunications services," §224(e)(1). The majority concluded that attachments for commingled services are neither, and that "no other rates are authorized." 208 F. 3d, at 1276, n. 29. Because it found that neither rate formula covers commingled services, it ruled those attachments must be excluded from the Act's coverage.

On the wireless question, the majority relied on the statutory definition of "utility": "any person . . . who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." §224(a)(1). The majority concluded that the definition of "utility" informed the definition of "pole attachment," restricting it to attachments used, at least in part, for wire communications. Attachments for wireless communications, it held, are excluded by negative implication. *Id.,* at 1274.

Judge Carnes dissented on these two issues. In his view, §§224(a)(4) and (b) "unambiguously giv[e] the FCC regulatory authority over wireless telecommunications service and Internet service." *Id.,* at 1281 (opinion concurring in part and dissenting in part). We granted certiorari. 531 U. S. 1125 (2001).

II

We turn first to the question whether the Act applies to attachments that provide high-speed Internet access at the same time as cable television, the commingled services at issue here. As we have noted, the Act requires the FCC to "regulate the rates, terms, and conditions for pole attachments," §224(b), and defines these to include "any attachment by a cable television system," §224(a)(4). These provisions resolve the question.

No one disputes that a cable attached by a cable television company, which provides only cable television service, is an attachment "by a cable television system." If one day its cable provides high-speed Internet access, in addition to cable television service, the cable does not cease, at that instant, to be an attachment "by a cable television system." The addition of a service does not change the character of the attaching entity—the entity the attachment is "by." And this is what matters under the statute.

This is our own, best reading of the statute, which we find unambiguous. If the statute were thought ambiguous, however, the FCC's reading must be accepted nonetheless, provided it is a reasonable interpretation. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 842–844 (1984). Respondents' burden, then, is not merely to refute the proposition that "any attachment" means "any attachment"; they must prove also the FCC's interpretation is unreasonable. This they cannot do.

Some respondents now advance an interpretation of the statute not presented to the Court of Appeals, or, so far as our review discloses, to the FCC. They contend it is wrong to concentrate on whose attachment is at issue; the question, they say, is what does the attachment do? Under this approach, an attachment is only an attachment by a cable television system to the extent it is used to provide cable television. To the extent it does other things, it falls

outside the ambit of the Act, and respondents may charge whatever rates they choose. To make this argument, respondents rely on a statutory definition of "cable system" (which the FCC treats as synonymous with "cable television system," see 47 CFR §76.5(a) (2000)). The definition begins as follows: "[T]he term 'cable system' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community." 47 U. S. C. §522(7) (1994 ed., Supp. V). The first part of the definition would appear to cover commingled services, but the definition goes on to exclude "a facility of a common carrier . . . except that such facility shall be considered a cable system . . . to the extent that such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services." *Ibid.*

Respondents assert that "most major cable companies are now common carriers [since they also provide] residential and/or commercial telephone service." Brief for Respondents American Electric Power Service Corp. et al. 20. If so, they contend, then for purposes of §224(a)(4), a facility that provides commingled cable television and Internet service is a "cable television system" only "to the extent that" it provides cable television.

Even if a cable company is a common carrier because it provides telephone service, of course, the attachment might still fall under the second half of the "pole attachments" definition: "any attachment . . . by a provider of telecommunications service." §224(a)(4). This argument, and the related assertion that "most major cable companies are now common carriers," need not be considered by us in the first instance, when neither the FCC nor the Court of Appeals has had the opportunity to pass upon the points.

There is a factual premise here, as well as an application of the statute to the facts, that the FCC and the Court of Appeals ought to have the opportunity to address in the first instance. This does not leave the cases in doubt, however. Even if a "cable television system" is best thought of as a certain "facility" rather than a certain type of entity, respondents still must confront the problem that the statute regulates attachments "by" (rather than "of") these facilities. The word "by" still limits pole attachments by who is doing the attaching, not by what is attached. So even if a cable television system is only a cable television system "to the extent" it provides cable television, an "attachment . . . by a cable television system" is still (entirely) an attachment "by" a cable television system whether or not it does other things as well.

The Court of Appeals based its ruling on a different theory. The statute sets two different formulas for just and reasonable rates—one for pole attachments "used by a cable television system solely to provide cable service," §224(d)(3), and one for those "used by telecommunications carriers to provide telecommunications services," §224(e)(1). In a footnote, the Court of Appeals concluded without analysis that "subsections (d) and (e) narrow (b)(1)'s general mandate to set just and reasonable rates." 208 F. 3d, at 1276, n. 29. In its view, Congress would not have provided two specific rate formulas, and yet left a residual category for which the FCC would derive its own view of just and reasonable rates. "The straightforward language of subsections (d) and (e) directs the FCC to establish two specific just and reasonable rates . . . ; no other rates are authorized." *Ibid*.

This conclusion has no foundation in the plain language of §§224(a)(4) and (b). Congress did indeed prescribe two formulas for "just and reasonable" rates in two specific categories; but nothing about the text of §§224(d) and (e), and nothing about the structure of the Act, suggest that

these are the exclusive rates allowed. It is true that specific statutory language should control more general language when there is a conflict between the two. Here, however, there is no conflict. The specific controls but only within its self-described scope.

The sum of the transactions addressed by the rate formulas—§224(d)(3) (attachments "used by a cable television system solely to provide cable service") and §224(e)(1) (attachments "used by telecommunications carriers to provide telecommunications services")—is less than the theoretical coverage of the Act as a whole. Section 224(a)(4) reaches "any attachment by a cable television system or provider of telecommunications service." The first two subsections are simply subsets of—but not limitations upon—the third.

Likewise, nothing about the 1996 amendments suggests an intent to decrease the jurisdiction of the FCC. To the contrary, the amendments' new provisions extend the Act to cover telecommunications. As we have noted, commingled services were covered under the statute as first enacted, in the views of the FCC and the Court of Appeals for the District of Columbia Circuit. *Texas Util. Elec. Co.* v. *FCC*, 997 F. 2d 925 (1993). Before 1996, it is true, the grant of authority in §§224(a)(4) and (b) was coextensive with the application of the single rate formula in §224(d). The 1996 amendments limited §224(d) to attachments used by a cable television system "solely to provide cable service," but—despite *Texas Util. Elec. Co.*—did not so limit "pole attachment" in §224(a)(4). At this point, coextensiveness ended. Cable television systems that also provide Internet service are still covered by §§224(a)(4) and (b)—just as they were before 1996—whether or not they are now excluded from the specific rate formula of §224(d); if they are, this would simply mean that the FCC must prescribe just and reasonable rates for them without necessary reliance upon a specific statutory formula de-

vised by Congress.

The Court of Appeals held that §§224(d) and (e) implicitly limit the reach of §§224(a)(4) and (b); as a result, it was compelled to reach the question of the correct categorization of Internet services—that is, whether these services are "cable service," §224(d)(3), or "telecommunications services," §224(e)(1). It held that they are neither. By contrast, we hold that that §§224(d) and (e) work no limitation on §§224(a)(4) and (b); for this reason, and because we granted certiorari only to determine the scope of the latter provisions, we need not decide the scope of the former.

The FCC had to go a step further, because once it decided that it had jurisdiction over attachments providing commingled services, it then had to set a just and reasonable rate. Again, no rate challenge is before us, but we note that the FCC proceeded in a sensible fashion. It first decided that Internet services are not telecommunications services:

> "Several commentators suggested that cable operators providing Internet service should be required to pay the Section 224(e) telecommunications rate. We disagree . . . . Under [our] precedent, a cable television system providing Internet service over a commingled facility is not a telecommunications carrier subject to the revised rate mandated by Section 224(e) by virtue of providing Internet service." 13 FCC Rcd., at 6794–6795 (footnotes omitted).

After deciding Internet services are not telecommunications services, the FCC then found that it did not need to decide whether they are cable services:

> "Regardless of whether such commingled services constitute "solely cable services" under Section 224(d)(3), we believe that the subsection (d) rate should apply. If the provision of such services over a cable television

> system is a "cable service" under Section 224(d)(3), then the rate encompassed by that section would clearly apply. Even if the provision of Internet service over a cable television system is deemed to be neither 'cable service' nor 'telecommunications service' under the existing definitions, the Commission is still obligated under Section 224(b)(1) to ensure that the 'rates, terms and conditions [for pole attachments] are just and reasonable,' . . . [a]nd we would, in our discretion, apply the subsection (d) rate as a 'just and reasonable rate.'" *Id.*, at 6795–6796 (footnote omitted).

Respondents are frustrated by the FCC's refusal to categorize Internet services, and doubly frustrated by the FCC's contingent decision that even if commingled services are not "cable service," those services nevertheless warrant the §224(d) rate. On the first point, though, decisionmakers sometimes dodge hard questions when easier ones are dispositive; and we cannot fault the FCC for taking this approach. The second point, in essence, is a challenge to the rate the FCC has chosen, a question not now before us.

We note that the FCC, subsequent to the order under review, has reiterated that it has not yet categorized Internet service. See, *e.g.*, Pet. for Cert. in No. 00–843, p. 15, n. 4. It has also suggested a willingness to reconsider its conclusion that Internet services are not telecommunications. See, *e.g.*, *In re Inquiry Concerning High-Speed Access to Internet Over Cable and Other Facilities*, 15 FCC Rcd. 19287, 19294 (2000). Of course, the FCC has power to reconsider prior decisions. The order under review in this litigation, however, is both logical and unequivocal.

If the FCC should reverse its decision that Internet services are not telecommunications, only its choice of rate, and not its assertion of jurisdiction, would be impli-

cated by the reversal. In this suit, though, we address only whether pole attachments that carry commingled services are subject to FCC regulation at all. The question is answered by §§224(a)(4) and (b), and the answer is yes.

Even if the FCC decides, in the end, that Internet service is not "cable service," the result obtained by its interpretation of §§224(a)(4) and (b) is sensible. Congress may well have chosen to define a "just and reasonable" rate for pure cable television service, yet declined to produce a prospective formula for commingled cable service. The latter might be expected to evolve in directions Congress knew it could not anticipate. As it was in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837 (1984), the subject matter here is technical, complex, and dynamic; and as a general rule, agencies have authority to fill gaps where the statutes are silent, *id*., at 843–844. It might have been thought prudent to provide set formulas for telecommunications service and "solely cable service," and to leave unmodified the FCC's customary discretion in calculating a "just and reasonable" rate for commingled services.

This result is more sensible than the one for which respondents contend. On their view, if a cable company attempts to innovate at all and provide anything other than pure television, it loses the protection of the Pole Attachments Act and subjects itself to monopoly pricing. The resulting contradiction of longstanding interpretation—on which cable companies have relied since before the 1996 amendments to the Act—would defeat Congress' general instruction to the FCC to "encourage the deployment" of broadband Internet capability and, if necessary, "to accelerate deployment of such capability by removing barriers to infrastructure investment." Pub. L. 104–104, VII, §§706(a), (b), and (c)(1), 110 Stat. 153, note following 47 U. S. C. §157 (1994 ed., Supp. V). This congressional policy underscores the reasonableness of the FCC's inter-

pretation: Cable attachments providing commingled services come within the ambit of the Act.

III

The second question presented is whether and to what extent the equipment of wireless telecommunications providers is susceptible of FCC regulation under the Act. The Eleventh Circuit held that "the act does not provide the FCC with authority to regulate wireless carriers." 208 F. 3d, at 1275. All parties now agree this holding was overstated. "[T]o the extent a wireless carrier seeks to attach a wireline facility to a utility pole . . . the wireline attachment is subject to Section 224." Brief for Respondents American Electric Power Service Corp. et al. 31; see also Brief for Respondents Atlantic City Electric Co. et al. 40; Brief for Repondent TXU Electric Co. 18; Brief for Respondent Florida Power & Light Co. 10–11. We agree, and we so hold.

The dispute that remains becomes a narrow one. Are some attachments by wireless telecommunications providers—those, presumably, which are composed of distinctively wireless equipment—excluded from the coverage of the Act? Again, the dispositive text requires the FCC to "regulate the rates, terms, and conditions for pole attachments," §224(b), and defines these to include "any attachment by a . . . provider of telecommunications service," §224(a)(4). "Telecommunications service," in turn, is defined as the offering of telecommunications to the public for a fee, "regardless of the facilities used," §154(46). A provider of wireless telecommunications service is a "provider of telecommunications service," so its attachment is a "pole attachment."

Once more, respondents seek refuge in other parts of the statute. A "utility" is defined as an entity "who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications."

§224(a)(1). The definition, though, concerns only whose poles are covered, not which attachments are covered. Likewise, the rate formula is based upon the poles' "usable space," which is defined as "the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment," §224(d)(2). This definition, too, does not purport to limit which pole attachments are covered.

In short, nothing in §224(a)(1) or §224(d)(2) limits §224(a)(4) or §224(b). Even if they did, moreover, respondents still would need to confront the provision for "associated equipment." As noted above, respondents themselves concede that attachments of wires by wireless providers of telecommunications service are covered by the Act. See *supra,* at 10. It follows, in our view, that "associated equipment" which is indistinguishable from the "associated equipment" of wire-based telecommunications providers would also be covered. Respondents must demand a distinction between prototypical wire-based "associated equipment" and the wireless "associated equipment" to which they object. The distinction, they contend, is required by the economic rationale of the Act. The very reason for the Act is that—as to wires—utility poles constitute a bottleneck facility, for which utilities could otherwise charge monopoly rents. Poles, they say, are not a bottleneck facility for the siting of at least some, distinctively wireless equipment, like antennas. These can be located anywhere sufficiently high.

The economic analysis may be correct as far as it goes. Yet the proposed distinction—between prototypical wire-based "associated equipment" and the wireless "associated equipment" which allegedly falls outside of the rationale of the Act—finds no support in the text, and, based on our present understanding of the record before us, appears quite difficult to draw. Congress may have decided that the difficulties of drawing such a distinction would burden

the orderly administration of the Act. In any event, the FCC was not unreasonable in declining to draw this distinction; and if the text were ambiguous, we would defer to its judgment on this technical question.

IV

Respondents insist that "any attachment" cannot mean "any attachment." Surely, they say, the Act cannot cover billboards, or clotheslines, or anything else that a cable television system or provider of telecommunications service should fancy attaching to a pole. Since the literal reading is absurd, they contend, there must be a limiting principle.

The FCC did not purport either to enunciate or to disclaim a specific limiting principle, presumably because, in its view, the attachments at issue here did not test the margins of the Act. The term "any attachment by a cable television system" covers at least those attachments which do in fact provide cable television service, and "any attachment by a . . . provider of telecommunications service" covers at least those which in fact provide telecommunications. Attachments of other sorts may be examined by the agency in the first instance.

The attachments at issue in this suit—ones which provide commingled cable and Internet service and ones which provide wireless telecommunications—fall within the heartland of the Act. The agency's decision, therefore, to assert jurisdiction over these attachments is reasonable and entitled to our deference. The judgment of the Court of Appeals for the Eleventh Circuit is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR took no part in the consideration or decision of these cases.

APPENDIX TO OPINION OF THE COURT

47 U. S. C. §224. Pole attachments

(a) Definitions

As used in this section:

(1) The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

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

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(5) For purposes of this section, the term "telecommunications carrier" (as defined in section 153 of this title) does not include any incumbent local exchange carrier as defined in section 251(h) of this title.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear

and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filed with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

(d) Determination of just and reasonable rates; "usable space" defined

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e) of this section, this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

(e) Regulations governing charges; apportionment of costs of providing space

(1) The Commission shall, no later than 2 years after February 8, 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecom-

munications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(4) The regulations required under paragraph (1) shall become effective 5 years after February 8, 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

(f) Nondiscriminatory access

(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

(g) Imputation to costs of pole attachment rate

A utility that engages in the provision of telecommunications services or cable services shall impute to its costs

of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(h) Modification or alteration of pole, duct, conduit, or right-of-way

Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

(i) Costs of rearranging or replacing attachment

An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).