Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION, INC. *v.* GULF POWER CO. ET AL.

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

No. 00–832. Argued October 2, 2001—Decided January 16, 2002*

The Pole Attachments Act requires the Federal Communications Commission (FCC) to set reasonable rates, terms, and conditions for certain attachments to telephone and electric poles. 47 U. S. C. §224(b). A "pole attachment" includes "any attachment by a cable television system or provider of telecommunications service to a [utility's] pole, conduit, or right-of-way." §224(a)(4). Certain pole-owning utilities challenged an FCC order that interpreted the Act to cover pole attachments for commingled high-speed Internet and traditional cable television services and attachments by wireless telecommunications providers. After the challenges were consolidated, the Eleventh Circuit reversed the FCC on both points, holding that commingled services are not covered by either of the Act's two specific rate formulas—for attachments used "solely to provide cable service," §224(d)(3), and for attachments that telecommunications carriers use for "telecommunication services," §224(e)(1)—and so not covered by the Act. The Eleventh Circuit also held that the Act does not give the FCC authority to regulate wireless communications.

Held:

1. The Act covers attachments that provide high-speed Internet access at the same time as cable television. Pp. 4–11.

(a) This issue is resolved by the Act's plain text. No one disputes that a cable attached by a cable television company to provide only

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*Together with No. 00–843, *Federal Communications Commission et al.* v. *Gulf Power Co. et al.,* also on certiorari to the same court.

cable television service is an attachment "by a cable television system." The addition of high-speed Internet service on the cable does not change the character of the entity the attachment is "by." And that is what matters under the statute. This is the best reading of an unambiguous statute. Even if the statute were ambiguous, the FCC's reading must be accepted provided that it is reasonable. P. 4.

(b) Respondents cannot prove that the FCC's interpretation is unreasonable. This Court need not consider in the first instance the argument that a facility providing commingled cable television and Internet service is a "cable television system" only "to the extent that" it provides cable television, because neither the Eleventh Circuit nor the FCC has had the opportunity to pass upon it. This does not leave the cases in doubt, however. Because "by" limits pole attachments by who is doing the attaching, not by what is attached, an attachment by a "cable television system" is an attachment "by" that system whether or not it does other things as well. The Eleventh Circuit's theory that §§224(d)(3)'s and (e)(1)'s just and reasonable rates formulas narrow §224(b)(1)'s general rate-setting mandate has no foundation in the plain language of §§224(a)(4) and (b). Neither subsection (d)'s and (e)'s text nor the Act's structure suggests that these are exclusive rates, for the sum of the transactions addressed by the stated rate formulas is less than the theoretical coverage of the Act as a whole. Likewise, 1996 amendments to the Act do not suggest an intent to decrease the FCC's jurisdiction. Because §§224(d) and (e) work no limitation on §§224(a)(4) and (b), this Court need not decide the scope of the former. The FCC had to go one step further, because once it decided that it had jurisdiction over commingled services, it then had to set a just and reasonable rate. In doing so it found that Internet services are not telecommunications services, but that it need not decide whether they are cable services. Respondents are frustrated by the FCC's refusal to categorize Internet services and its contingent decision that commingled services warrant the §224(d) rate even if they are not cable service. However, the FCC cannot be faulted for dodging hard questions when easier ones are dispositive, and a challenge to the rate chosen by the FCC is not before this Court. 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. The subject matter here is technical, complex, and dynamic; and, as a general rule, agencies have authority to fill gaps where statutes are silent. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 843–844. Pp. 4–11.

2. Wireless telecommunications providers' equipment is susceptible of FCC regulation under the Act. The parties agree that the Act cov-

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ers wireline attachments by wireless carriers, but dispute whether it covers attachments composed of distinctively wireless equipment. The Act's text is dispositive. It requires FCC regulation of a pole attachment, §224(b), which is defined as "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." Respondents' attempt to seek refuge in §§224(a)(1) and (d)(2) is unavailing, for those sections do not limit which pole attachments are covered and thus do not limit §224(a)(4) or §224(b). Even if they did, respondents would have to contend with the fact that §224(d)(2)'s rate formula is based upon the poles' space usable for attachment of "wires, cable, and associated equipment." If, as respondents concede, the Act covers wireline attachments by wireless providers, then it must also cover their attachments of associated equipment. The FCC was not unreasonable in declining to draw a distinction between wire-based and wireless associated equipment, which finds no support in the Act's text and appears quite difficult to draw. And if the text were ambiguous, this Court would defer to the FCC's judgment on this technical question. Pp. 11–13.

3. Because the attachments at issue fall within the Act's heartland, there is no need either to enunciate or to disclaim a specific limiting principle based on the possibility that a literal interpretation of "any attachment" would lead to the absurd result that the Act would cover attachments such as, *e.g.,* clotheslines. Attachments of other sorts may be examined by the agency in the first instance. P. 13.

208 F. 3d 1263, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, GINSBURG, and BREYER, JJ., joined, and in which SOUTER and THOMAS, JJ., joined as to Parts I and III. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER, J., joined. O'CONNOR, J., took no part in the consideration or decision of the cases.