

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Telephone Company-Cable Television)
Cross-Ownership Rules.)
Sections 63.54-63.58)
)
and)
)
Amendments of Parts 32, 36, 61,)
64, and 69 of the Commission's Rules to)
Establish and Implement Regulatory)
Procedures for Video Dialtone Service)

CC Docket No. 87-266

RM-8221

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REPLY COMMENTS

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to the Federal Communications Commission's ("Commission") Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking in the above-captioned docket.¹ hereby replies to comments filed on December 16, 1994.²

¹In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, FCC 94-269, rel. Nov. 7, 1994 ("Order on Reconsideration" or "NPRM"), appeals pending sub nom. NCTA v. FCC, Nos. 94-1750, et al., (D.C. Cir. pet. for rev. filed Dec. 15, 1994).

²U S WEST only recently received copies of the comments of certain parties which were filed on December 16, 1994 (e.g., Continental Cablevision, Inc.). Due to the delay in receiving these comments, U S WEST has not had sufficient time to analyze them fully. If U S WEST determines that additional reply comments are necessary, it will supplement this reply.

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In this reply, U S WEST addresses two issues -- Viacom's "open access" proposal³ and pole attachment issues. The fact that U S WEST is not addressing other NPRM issues in this reply is not an indication of the relative importance of these issues to U S WEST, but an acknowledgment that the positions of the parties are fairly predictable and no purpose is served by repeating or attacking earlier positions.⁴

I. VIACOM'S INTERPRETATION OF VDT ACCESS REQUIREMENTS IS CONTRARY TO THE COMMISSION'S CPE RULES

Viacom claims that the requirement of "open access" to local exchange carrier ("LEC") basic VDT platforms also applies to customer premises equipment ("CPE") connected to VDT systems.⁵ This position is totally at odds with the Commission's long-standing CPE and enhanced services rules and finds no support in the Commission's VDT Order⁶ or Order on Reconsideration.⁷ In the Order on Reconsideration

³Viacom International, Inc. ("Viacom"), at 3-8.

⁴For example, no purpose would be served by further discussion of the legal foundation, or lack thereof, supporting arguments for preferential access. However, U S WEST would urge the Commission to pay particular attention to United Video's comments on this issue. Rather than engaging in a legal debate, United Video's comments discuss the practical problems associated with trying to implement preferential access in a common carrier video dialtone (or "VDT") framework.

⁵Viacom at 7.

⁶In the Matter of Telephone Company-Cable Television Cross-Ownership rules, Sections 63.54-63.58, CC Docket No. 87-266, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 5781 (1992) ("VDT Order"), appeals pending sub nom. Mankato Citizens Telephone Co., et al. v. FCC, Nos. 92-1404, et al. (D.C. Cir. Sep. 9, 1992).

⁷Viacom attempts to bolster its arguments by citing language in the Order on Reconsideration. More often than not, these quotes are taken out of context and provide no support for the premise put forth by Viacom.

tion, the Commission reaffirmed its finding that VDT services should be subject to the same two-level regulatory structure that applies to enhanced services and CPE.⁸ This structure differentiates between basic network services and CPE/enhanced services. In order to guard against cross-subsidization and discrimination in the provision of regulated (i.e., basic) and nonregulated (i.e., CPE/enhanced) services, the Commission adopted the following safeguards which also apply to VDT: 1) accounting separation; 2) network disclosure requirements; 3) CPNI requirements; and 4) non-discriminatory provisioning/access requirements.

In the Commission's basic/enhanced regulatory framework, set-top boxes and other CPE are not part of the basic network. LEC basic VDT systems will be open all the way from the customer-programmer to the network interface at an end-user customer's residence. Viacom presents no evidence or reasons why the Commission should abandon its long-standing policy of not regulating any inside wire or terminal equipment on the customer's side of the network interface.

II. THIS IS NOT THE PROCEEDING IN WHICH TO ARGUE BROADER ISSUES ASSOCIATED WITH POLE ATTACHMENTS AND CONDUIT RIGHTS

In its NPRM, the Commission raised a very narrow issue with respect to the use of LEC pole attachments and conduit (hereinafter referred to generically as pole

⁸Order on Reconsideration ¶¶ 230-33.

attachments). That is, whether the Commission should adopt a rule similar to Section 63.57⁹ with respect to video programmers accessing LEC VDT platforms. The underlying concern was that LECs might have the incentive to use their control of pole attachments to prevent facilities-based competition between video programmers' locations/premises and LEC basic VDT gateways.

The Commission's inquiry was not directed at incumbent cable operators. These entities already are protected by the Pole Attachment Act¹⁰ and specific provisions in the Commission's complaint procedures. Nor was the Commission's inquiry directed at unbundling of or interconnection with LEC facilities and rights-of-way by interexchange carriers or competitive access providers. Despite the narrow scope of the Commission's inquiry, certain commenters, AT&T and Continental Cablevision in particular, attempt to use this narrow inquiry as a "springboard" to propose all-encompassing rules to govern the use of LEC pole attachments and rights-of-way.¹¹ This proceeding is not the place to address such broad proposals for

⁹47 CFR § 63.57.

¹⁰47 USC § 224.

¹¹AT&T goes so far as to advocate that the Commission:

- (i) require the LECs to transfer their control over conduit, pole attachments, rights-of-way, and other pathways to a disinterested third party that would make those assets generally available on reasonable and nondiscriminatory terms and conditions; or (ii) mandate that the LEC itself provide to unaffiliated entities access to, and use of, conduit, pole attachments, rights-of-way, and other pathways on terms and conditions (including price) identical to the terms and conditions pursuant to which the LEC provides itself access to, and use of, those pathways.

Clearly, AT&T's proposal goes far beyond the scope of the Commission's inquiry and is only tangentially related to facilities-based competition by video programmers.

modifying pole attachment rules.¹²

III. CONCLUSION

As discussed above, the Commission should give no weight to comments proposing "open access" to television sets or broad-based changes in pole attachment rules.

Respectfully submitted,

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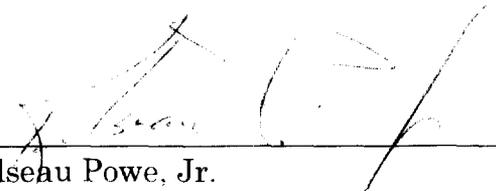
Of Counsel,
Laurie J. Bennett

January 17, 1995

¹²It is hardly surprising that incumbent cable operators find the Commission's pole attachment requirements to be insufficient -- it is in their competitive interest to do so .

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 17th day of January, 1995, I have caused a copy of the foregoing **REPLY COMMENTS** to be served via first-class U.S. Mail, postage-prepaid, upon the persons listed on the attached service list.



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