

EX PARTE OR LATE FILED



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July 2, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Ex Parte Presentation
CC Docket No. 96-98
Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

Dear Mr. Caton:

On July 2, 1996, Mr. Mark Haddad of Sidley & Austin, Ms. Connie Forbes of AT&T and I met with Mr. Tom Powers, Ms. JoAnn Lucanik, Ms. Barbara Esbin, Ms. Libby Beaty and Mr. Paul Glenchur of the Commission to discuss AT&T's previously-stated positions in the above-captioned docket. Attached is an outline of our presentation.

Two copies of this Notice and attachment are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

Attachment

cc: T. Powers
J. Lucanik
B. Esbin
L. Beaty
P. Glenchur

2 copies rec'd
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"ACCESS TO RIGHTS-OF-WAY"

Presented by

AT&T Corp.

July 2, 1996

I. "Pole, Duct, Conduit, or Right-Of-Way" In § 224(f)(1) Should Be Defined Broadly To Include All Pathways Used To Place Facilities, Including:

- public and private easements across land
- entrance facilities
- telephone closets and equipment rooms
- cable vaults
- manholes and control environment vaults
- remote terminals
- risers
- any other pathway owned or controlled by the LEC

A. An inclusive definition is:

- crucial to facilities-based competition
- consistent with the structure of the Act
- consistent with the plain language of the Act

B. Commenters' concerns about an overbroad definition are unfounded: almost always, there should be a way to accommodate a CLEC:

1. Public easements: Under § 253, public owners have a duty of non-discrimination
 - Non-neutral permits or fees are preempted by Section 253
2. Private easements: Real problems are likely to be rare
 - Where utility owns or controls pathway, it must assign an easement to CLEC
 - Where utility alone has the right to expand or access its pathways, utility should install and maintain facilities for CLECs
 - Where utility does not own or control pathway, utility should allow CLECs to use its dark fiber and unused media

II. **Non-Discriminatory Access Requires Parity Between Utilities and Competing Telecommunications Carriers**

- A. The duty of nondiscriminatory access means that a utility cannot favor itself over others, with regard to use of and charges for pathways
- This follows from the structure of Act, which is designed to create competition with the incumbent, not merely between new competitors (which do not now exist)
 - This also follows from § 224(a)(1), which defines utility very broadly, as any person that owns or controls poles, ducts, conduits, or rights-of-way used for "any wire communications"
- B. The duty is asymmetrical, that is, not all persons that have the duty are owed the duty
- Section 251(b) imposes a duty upon all LECs with regard to rights of way consistent with that imposed in Section 224
 - Section 224(f), in turn, requires utilities to provide nondiscriminatory access to any "telecommunications carriers"
 - Section 224(a)(5) defines "telecommunications carriers" to exclude "incumbent LECs"
 - Hence, while AT&T and other CLECs owe each other a duty of non-discriminatory access to facilities used in the provision of exchange service, CLECs do not owe such a duty to ILECs
 - That result not only is compelled by the statute but promotes the statute's competitive goals

III. Non-Electric Utilities Cannot Deny Access On Grounds Of Insufficient Capacity or Safety, Reliability, or Generally Applicable Engineering Purposes (Section 224(f)(2))

A. Non-electric utilities have duty to accommodate all and must:

- free up or create needed capacity by, e.g.,
 - removing obsolete cable
 - allowing use of dark fiber or unused media
 - replacing poles, or adding conduit
- not deny access based upon planning horizons

B. All utilities should provide copies of cable plats and conduit/pole prints

C. Electric utilities should have burden of proving any defense they assert based on insufficient capacity or safety, reliability, or generally applicable engineering purposes

- Act imposes a new duty upon utilities
- Utilities possess the relevant information

IV. Modifications By Pathway Owner (Sections 224(h), (i))

A. Notice

- 60 days written notice
- 10 days for routine maintenance
- exception: emergency structural repair

B. Cost

- An entity that requests space, or adds to or modifies its existing attachment, must pay its "proportionate share" of the owner's costs in making the pathway accessible
- proportionate share should be determined by the percentage of new space reserved for that entity's use
- per capita approach could often lead to double-recovery for owners
- entities that make no modifications pay nothing