

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 11 1997

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of

Amendment of Rules and Policies Governing
Pole Attachments

CS Docket No. 97-98

**REPLY COMMENTS OF
QWEST COMMUNICATIONS CORPORATION**

Qwest Communications Corporation ("Qwest") submits the following reply comments, pursuant to the Notice of Proposed Rulemaking released by the Federal Communications Commission ("FCC" or "Commission") on March 14, 1997 in the above-captioned proceeding.¹

Qwest, a wholly owned, indirect subsidiary of Qwest Communications International Inc., a publicly held corporation, provides high quality competitive interexchange and international telecommunications services. As Qwest continues to expand and enhance its network and services, the availability and pricing of pole and conduit attachments will have a significant impact on its business efforts. Thus, Qwest has a significant continuing interest in the establishment of pole and conduit attachment rules in this proceeding, as well as the interpretation of the pole attachment provisions of the Communications Act of 1934 (the "Act").

¹ See Amendment of Rules and Policies Governing Pole Attachments, Notice of Proposed Rulemaking, CS Docket No. 97-98, FCC 97-94 (Mar.14, 1997) ("NPRM").

No. of Copies rec'd
List ABCDE 024

Qwest generally agrees with the Commission's proposals outlined in the NPRM and supports the Commission's efforts to develop a non-discriminatory, cost-based approach to pole and conduit attachments. Qwest urges the Commission, however, as requested by WorldCom, Inc. ("WorldCom"),² to clarify that incumbent local exchange carriers ("ILECs") are included in the definition of a "utility" under the Act. Immediately following a discussion of the definition of the term "utility," the NPRM notes that "Section 224(a)(5) excludes incumbent local exchange carriers as defined in Section 251(h)."³ As WorldCom correctly points out, however, Section 224(a)(5) excludes ILECs only from the definition of "telecommunications carrier," not from the definition of "utility."⁴

The inclusion of ILECs in the definition of "utility" is compelled by the plain language of the 1996 Act. Section 224(a)(1) defines a utility as "any person who is a *local exchange carrier* or an electric, gas, water, steam, or other public utility. . ."⁵ This definition clearly encompasses ILECs, which are included within the term "local exchange carrier."⁶

Failure to include ILECs within the definition of "utility" also would undermine the procompetitive objectives of the 1996 Act. The pole attachment provisions are intended to promote competition by ensuring new entrants non-discriminatory, cost-based access to the poles and conduits of companies that typically control local rights-of-way -- *i.e.* ILECs and other public utilities. Thus, it would not serve the public interest to exclude the ILECs from the very definition that establishes the requirement that such facilities be made available.

² See WorldCom, Inc. Comments at 4.

³ NPRM at ¶ 4 fn.16.

⁴ See 47 U.S.C. § 224(a)(5).

⁵ 47 U.S.C. § 224(a)(1) (emphasis added).

⁶ See 47 U.S.C. § 251(h).

In order to ensure that Section 224 of the Act works to eliminate a significant barrier to entry for competitive local entrants, the Commission should clarify that the language of the NPRM did not intend to exclude ILECs from the definition of "utility" for purposes of the Act's pole attachment provisions.

Respectfully submitted,

By:  _____
Cheryl A. Tritt
James A. Casey
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Telephone: (202) 887-1500

Counsel for Qwest Communications
Corporation

August 11, 1997

CERTIFICATE OF SERVICE

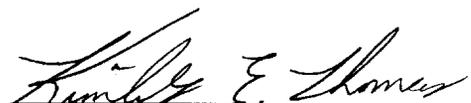
I, Kimberly E. Thomas, do hereby certify that the foregoing **REPLY COMMENTS OF QWEST COMMUNICATIONS CORPORATION** was hand delivered on this 11th day of August, 1997, to the following:

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

Meredith Jones
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.- Room 918
Washington, D.C. 20554

Michael T. McMenamin
Cable Service Bureau
Federal Communications Commission
2033 M Street, N.W.- Room 801(B)
Washington, D.C. 20554

ITS
1231 20th Street, N.W.
Washington, D.C. 20036


Kimberly E. Thomas