

ATTACHMENT 2

Pole Attachments for

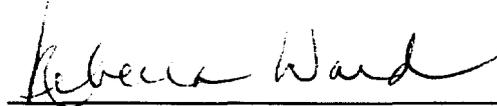
U S WEST Communications 100% Owned Poles*

	<u>Tel Only</u>	<u>Tel & Power</u>	<u>Tel & Cable</u>	<u>Tel + 2 or more</u>	<u>Total</u>
25' & Under	8.86%	54.03%	1.38%	35.73%	100%
30'	2.92%	74.68%	4.78%	17.62%	100%
35'	1.38%	59.32%	25.99%	13.31%	100%
40'	3.37%	54.31%	29.32%	13.00%	100%
45'	.37%	46.80%	31.19%	21.64%	100%
50'	.24%	16.73%	54.88%	28.15%	100%
55' & Over	37.96%	24.25%	6.19%	31.60%	100%

* The above pole attachment data by height of poles are estimates based on actual data from 9 of the 14 states served by U S WEST Communications.

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 27th day of June, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.

A handwritten signature in cursive script that reads "Rebecca Ward". The signature is written in black ink and is positioned above a horizontal line.

Rebecca Ward

James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

Meredith J. Jones
Federal Communications Commission
Room 918-A
2033 M Street, N.W.
Washington, DC 20554

Michael T. McMenamin
Federal Communications Commission
Room 801-B
2033 M Street, N.W.
Washington, DC 20554

(Including 3 x 5 Diskette w/Cover Letter)

International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Rules and Policies) CS Docket No. 97-98
Governing Pole Attachments)

REPLY COMMENTS OF U S WEST, INC.

James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

Attorney for

U S WEST, INC.

Of Counsel,
Dan L. Poole

August 11, 1997

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Washington, DC 20554

In the Matter of)
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Amendment of Rules and Policies) CS Docket No. 97-98
Governing Pole Attachments)

REPLY COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST"), through counsel, and in accordance with the Federal Communications Commission's ("Commission") Notice,¹ hereby replies to comments filed in the Pole Attachment proceeding.

I. **INTRODUCTION AND SUMMARY**

Comments were filed by interests representing local exchange carriers ("LEC"), interexchange carriers ("IXC"), cable companies, and electric utilities. Virtually all commenters, other than electric utilities, opposed the electric's proposals to change the standard presumptions on pole height and usable space. There was also a fair degree of agreement among commenters on the need to address the negative net salvage problem. There was much less agreement on: the use of net book versus gross book or replacement cost; the mapping of Part 31 to Part 32 accounts; the applicability of the pole attachment formula to conduit; and the appropriateness of the 1/2 duct rule for calculating conduit rates for cable

¹ In the Matter of Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, Notice of Proposed Rule Making, FCC 97-94, rel. Mar. 14, 1997 ("Notice"). Comments were filed June 27, 1997. Order extending comments to June 27, 1997, DA 97-894, rel. Apr. 29, 1997.

companies.

In this reply, U S WEST will not repeat its earlier arguments but address a few selected issues which it believes deserve further clarification or additional comment. In the comments which follow, U S WEST supports a continuation of the historical balance between privately negotiated pole rental agreements and the Commission's complaint process. The option to pursue a complaint after signing a pole rental agreement is of critical importance to lessees with little bargaining power and should be preserved. U S WEST also supports the Commission's proposal for mitigating the effects of negative net salvage on pole owners. Most commenters concede that the negative net salvage problem needs to be addressed -- though they differ on the solution.

Another issue of importance to U S WEST is the Commission's proposal to apply its pole attachment formula to conduit. The Commission should not use the formula for conduit without further adjustments to recognize geographic variations in conduit costs. At a minimum, U S WEST recommends that the Commission adopt a structure for determining maximum rates similar to the "zone density pricing" approach that the Commission has employed for access charges.

Lastly, U S WEST argues that the Commission may not expand the scope of the term "pole attachments" beyond "wire and cable" without conducting a formal rulemaking. In adopting the original Pole Attachment Act in 1978, Congress intended that it apply to the attachment of wires and cable. Neither the 1996 Act nor its legislative history indicate that Congress intended to expand the definition

of pole attachments to include wireless antennas.

II. **THE PUBLIC INTEREST IS BEST SERVED BY A PROPER BALANCE BETWEEN PRIVATELY NEGOTIATED POLE ATTACHMENT AGREEMENTS AND COMMISSION RULES**

Historically, pole attachments have been provided under privately negotiated agreements. The Commission's only formal rules relating to pole attachments are found in the Commission's complaint procedures. As a result, if no dispute arose between the parties to a pole rental agreement, the Commission had no role. However, if a lessee of poles (e.g., a cable company) signed what it believed to be an unreasonable agreement in order to gain immediate access to poles, the lessee still had an avenue of potential relief through the Commission's complaint process. The option to pursue a complaint after signing a pole rental agreement is of critical importance to lessees under the existing approach to pole regulation.

As the National Cable Television Association, et al., ("NCTA") points out in its comments, the complaint process is fairly straight-forward with a minimum of pleadings.² It is not overly-burdensome to either the complainant or the utility. Often the threat of a complaint has been sufficient to get recalcitrant utilities to adopt more reasonable positions on pole attachments. Furthermore, the traditional approach to pole attachments has not unnecessarily burdened utilities with tariffs, cost studies, or procedural requirements.

The 1996 Act did nothing to change the Commission's pole attachment complaint process or the role of privately negotiated agreements. As U S WEST

² NCTA at 3-4.

stated in its comments, the Commission should do nothing in this or subsequent pole attachment proceedings to upset the balance that currently exists between privately negotiated agreements and the Commission's complaint process.³ This approach has stood the test of time and the Commission should not consider lightly changes which might affect the rights or obligations of either pole owners or pole renters.

Tele-Communications, Inc. ("TCI"), BellSouth Corporation ("BellSouth"), SBC Communications Inc. ("Southwestern Bell") and others suggest changes in the Commission's regulation of pole attachments.⁴ Adoption of any of these changes would upset the delicate balance between pole owners and pole renters. As such, these proposals should be rejected. TCI asserts that the Commission should not leave rate issues to private negotiations, but should adopt "pro-competitive" pricing rules.⁵ U S WEST disagrees. Additional rules will serve neither the interests of pole owners or renters and would increase the administrative burden on Commission staff. As long as pole lessees have the option to file complaints with the Commission, as they have had in the past, there is no need for additional rules as TCI suggests. In its Interconnection Order, the Commission concluded that it would be impossible to adopt a common set of rules due to the wide variety of

³ U S WEST at 7-8.

⁴ TCI at 6-10; BellSouth at 3-4; Southwestern Bell at 41-42. And see American Electric Power Service Corporation, et al., at 8-12 ("American Electric"); Electric Utilities Coalition at 7-9 ("EUC").

⁵ TCI at 6-10.

circumstances facing pole renters and pole owners across the country.⁶ Instead, the Commission adopted a limited set of broad principles to guide negotiations.⁷ Thus, contrary to TCI's assertions, additional rules are neither needed nor appropriate.

Southwestern Bell, BellSouth, and other pole owners propose that the Commission shift the balance in favor of pole owners by adopting a "presumption of lawfulness" for pole attachment rates contained in privately negotiated agreements.⁸ This is not a good idea and will place the burden of proof on the party least able to satisfy it -- the pole renter. It should come as no surprise that parties wishing to rent poles, sometimes enter into agreements with pole owners even when they object to the rates being offered. The reason is simple -- these parties need to gain the right to be on the poles in order to provide service to their customers in a timely manner. Currently, pole renters facing such circumstances have the option of pursuing their claims in a subsequent complaint proceeding if they believe that

⁶ "We conclude that the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis. . . . The record makes clear that there are simply too many variables to permit any other approach with respect to access to the millions of utility poles and untold miles of conduit in the nation. . . . We will not enumerate a comprehensive regime of specific rules, but instead establish a few rules supplemented by certain guidelines and presumptions that we believe will facilitate the negotiation and mutual performance of fair, pro-competitive access agreements." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd. 15499, 16067-68 ¶ 1143 (1996) ("Interconnection Order") (footnotes omitted); rev'd in part Iowa Utilities Board, et al. v. FCC, Opinion filed July 18, 1997 (8th Cir).

⁷ Id. at 16071-74 ¶¶ 1151-58.

⁸ Southwestern Bell at 41-42; BellSouth at 3; United States Telephone Association at 11-16 ("USTA"); EUC at 11-12; American Electric at 12-14.

they have been charged an unlawful rate in a pole agreement.⁹

While the Southwestern Bell proposal appears reasonable on its face, it would shift the burden of proof to the pole renter. The pole renter is in no position to demonstrate whether the pole owner's rate is "just and reasonable." The pole owner is the party in possession of all necessary cost information to show that its pole attachment rates are "just and reasonable." It would be inequitable to shift this burden to pole renters, as Southwestern Bell, et al., suggest, and would be at odds with the statute's nondiscrimination requirements.

III. WITH FEW EXCEPTIONS, THE PARTIES SUPPORT MODIFICATION OF THE POLE ATTACHMENT FORMULA TO REMOVE NEGATIVE NET SALVAGE EFFECTS

While the parties disagree on whether gross book or net book or replacement costs should be employed in Commission pole attachment formulas, there is widespread agreement among commenters that the Commission should modify its formula to remove the effects of negative net salvage. Even NCTA, a strong critic of past utility practices, recognizes the merit of addressing the negative net salvage problem.¹⁰ The comments and data of Sprint Corporation ("Sprint"), Southwestern

⁹ The complaint process does not allow pole lessees to obtain "retroactive" rate reductions long after they have entered into pole lease agreements. Existing Commission rules limit refunds for any unjust and unreasonable rate, term or condition contained in a pole attachment agreement from the date that a complaint was filed. 47 C.F.R. § 1.1410(c).

¹⁰ NCTA at 21-24.

Bell, and U S WEST¹¹ demonstrate that the negative net salvage issue is not an anomaly that can be ignored with respect to incumbent LECs. Only AT&T Corp. ("AT&T") and MCI Telecommunications Corporation ("MCI") oppose adjusting the pole attachment formula for negative net salvage.¹² They claim that there is no evidence that the negative net salvage issue is a problem of any significance.¹³ Such comments are self-serving and ignore reality. In its comments, U S WEST provided evidence that it was experiencing negative net pole costs in five of the 14 states served by U S WEST Communications, Inc. and that three other states had net pole costs approaching zero.¹⁴ Other incumbent LECs provided similar evidence of the magnitude of the negative net salvage problem.¹⁵ The Commission should adopt the solution that it proposed in the Notice. While this proposal is somewhat complex, it does represent a middle ground and would provide a measure of relief for those companies such as U S WEST which find themselves in the situation of having negative net pole cost in numerous states.

IV. POLE RENTAL EXPENSE SHOULD BE EXCLUDED FROM UTILITIES' COSTS IN CALCULATING POLE ATTACHMENT RATES

Bell Atlantic and the Ameritech Operating Companies ("Ameritech") argue

¹¹ Sprint at ii, 6-8; Southwestern Bell at 10-17; U S WEST at 5-7. And see Bell Atlantic and NYNEX at 3-4 ("Bell Atlantic"); GTE Service Corporation at 7-8 ("GTE").

¹² AT&T at iii, 10-13; MCI at 15-20.

¹³ AT&T at 14; MCI at 15-16.

¹⁴ U S WEST at 5-6.

¹⁵ Southwestern Bell at 10-17; Sprint at 6-9. And see GTE at 4-5.

rather unconvincingly that pole rental expense should be included with other Account 6411 expenses in calculating pole attachment rates.¹⁶ U S WEST disagrees and supports the Commission's proposal that these costs be removed. Ameritech opposes the adoption of a general rule of exclusion and would place the burden on pole renters of raising the issue in a complaint proceeding if they believe the inclusion of "certain" pole rental expense (i.e., pole rental expense of subleased space) is inappropriate.¹⁷ Ameritech admits that in most instances (i.e., payments for space actually used by the incumbent carrier on another utility's poles) exclusion is proper.¹⁸ As such, Ameritech has its logic reversed -- Ameritech is proposing a general rule based on the exception rather than the norm. The pole renter should not be placed in the position of trying to determine when it is appropriate for a pole owner to include pole rental expense. This would burden all parties and the Commission by maximizing the number of complaints associated with this issue.

Bell Atlantic asserts that it may make good business sense for a incumbent LEC to lease poles from others. Bell Atlantic also claims that pole rental expense is appropriately assigned to Account 6411.¹⁹ While U S WEST does not disagree with either of Bell Atlantic's points, it does not necessarily follow that pole rentals should not be excluded from Account 6411 for purposes of calculating pole attachment rates. In fact, U S WEST is of the opinion that it would be appropriate to exclude

¹⁶ Bell Atlantic at 6; Ameritech at 4.

¹⁷ Ameritech at 5.

¹⁸ Id.

pole rental expenses to avoid the possibility of double counting.

V. THE COMMISSION'S PROPOSED CONDUIT FORMULA FAILS TO RECOGNIZE THAT THERE IS MUCH GREATER VARIABILITY AMONG UTILITY CONDUIT STRUCTURES THAN POLES

Conduit systems are comprised of "ducts, conduit, cement or other encasement materials, vaults, handholes, manholes and other related equipment that allow for deployment of, access to, and maintenance of cable facilities."²⁰ Conduit systems vary much more throughout a utility's service area than poles do. Thus, while it may be reasonable to apply the Commission's pole attachment formula (i.e., to develop a pole attachment rate) on a study area basis (i.e., normally a state), U S WEST believes that it is inappropriate to use a single state-wide conduit rate to determine the lawfulness of a utility's conduit rates. A better approach would be to modify the Commission's proposed conduit formula to recognize geographic cost variations in conduit systems.

An extreme approach to recognizing geographic cost variations is American Electric's individual case basis approach which would reflect the costs of the individual conduit route actually being used by a cable company.²¹ A much better approach is one which allows for a reasonable amount of averaging -- which would reflect conduit cost variations but would also provide a degree of predictability for lessees of conduit in a given utility's service area. U S WEST recommends that the

¹⁹ Bell Atlantic at 6.

²⁰ American Electric at 84, citing 1997 NESC, Section 2.

²¹ American Electric at 84.

Commission adopt the equivalent of a "zone density pricing" approach for conduit -- encompassing three zones in a study area -- which would reflect the differences in conduit costs between very expensive downtown areas, other urban/suburban areas and rural areas.²² Such a modification in the Commission's pole attachment formula would make it much more suitable for determining whether a utility's conduit rates are just and reasonable.

Given the above caveat, U S WEST does not object to the adoption of the Commission's proposed formula and 1/2 duct rule. However, where fiber cable and inner duct are being used, U S WEST believes that a 1/3 duct presumption is more reasonable since it is common practice to install three 1 1/2 inch inner ducts in a four inch duct. U S WEST opposes proposals that the Commission adopt a presumption that cable companies use less than 1/3 of a duct. Such advocacy should be rejected as contrary to the public interest -- it would force conduit rates to unrealistically low levels.

VI. SECTION 224 DOES NOT PROVIDE WIRELESS OPERATORS WITH A RIGHT TO ATTACH ANTENNAS AND OTHER RELATED EQUIPMENT TO UTILITY POLES

In arguing that pole owners may not limit "technically feasible multiple uses" of poles, AT&T references wireless carriers' attachments and as much as states that wireless providers have a right to attach antennas and other facilities to utilities'

²² See In the Matter of US West Communications, Southern New England Telephone Company, Zone Density Pricing Plans, Order, 8 FCC Rcd. 8466 (1993).

poles.²³ U S WEST disagrees.

Section 224 of the Act does not give telecommunications carriers any greater rights as to what they may attach to utility poles than cable companies had prior to passage of the 1996 Act. Cable companies' rights under the 1978 Pole Attachment Act (i.e., Sec. 224 of the Communications Act prior to passage of the 1996 Act) pertained to the attachment of "wires and cable and associated equipment," not to the attachment of antennas. While the 1996 Act obligates utilities to provide access to poles to cable companies and telecommunications carriers and expands the scope of the term "utility," the Act is silent on the question of how poles might be used by telecommunications carriers and cable companies or what type of equipment may be attached to them. The only reasonable statutory construction is that telecommunications carriers are permitted to use poles in the same manner as cable companies have under the terms of the 1978 Pole Attachment Act -- that is to attach "wires and cables and associated equipment." The legislative history of the 1978 Act clearly indicates that Congress intended that the Act cover the attachment of "wire and cables" to utility poles.²⁴

This same issue was raised by American Electric in a Petition for Reconsideration in the Interconnection proceeding²⁵ and is pending before the

²³ AT&T at 7-8.

²⁴ P.L. Law 95-234, Senate Report No. 95-580.

²⁵ American Electric, et al., Petition for Reconsideration and/or Clarification of the First Report and Order, CC Docket No. 96-98, filed Sep. 30, 1996 at 26-30.

Commission.²⁶ Until such time that the Commission finds that the 1996 Act has changed the traditional nature of pole attachments to encompass more than the attachment of “wire and cables,” U S WEST remains of the opinion that Section 224 does not provide wireless providers with a right to attach antennas and associated equipment to utility poles.²⁷ U S WEST is also of the opinion that the Commission may not change the scope of the pole attachment obligation facing utilities without conducting a formal rulemaking.

²⁶ The only reference to wireless providers’ use of poles in the Commission’s Notice was in the Commission’s Initial Regulatory Flexibility Analysis which was prepared to assess the impact of the Commission’s policies and rules on small entities, as required by the Regulatory Flexibility Act. The Commission’s assertion that wireless carriers are entitled to affix their equipment to poles under the terms of the 1996 Act is the first time that U S WEST is aware that the issue of wireless attachments has been raised in a Commission proceeding. The Commission’s comments in its Notice are hardly dispositive on the matter. If the Commission believes that pole attachments for cable companies and telecommunications carriers should be expanded to encompass more than “cable and wire” and associated facilities, it must initiate a rulemaking to address the scope of pole attachments.

²⁷ Prior to the passage of the 1996 Act, the Commission provided no indication that it was of the opinion that Section 224 extended any rights to wireless providers to attach their equipment to utility poles. In its Notice of Proposed Rule Making and Second Report and Order implementing Sections 3(n) and 332 of the Communications Act which addressed the applicability of Title II to commercial mobile radio service (“CMRS”) and the Commission’s authority to forbear from regulation of CMRS, the Commission stated that Section 224 “do [does] not appear to apply to commercial mobile services so that a determination concerning forbearance is not required.” In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Notice of Proposed Rule Making, 8 FCC Rcd.7988, 8000-01 ¶ 65 n.87 (1993); Second Report and Order, 9 FCC Rcd. 1411, 1482 n.375 (1994).

VII. CONCLUSION

U S WEST urges the Commission to modify its pole attachment rules as discussed above and in U S WEST's initial comments.

Respectfully submitted,

U S WEST, INC.

By: James T. Hannon
James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2764

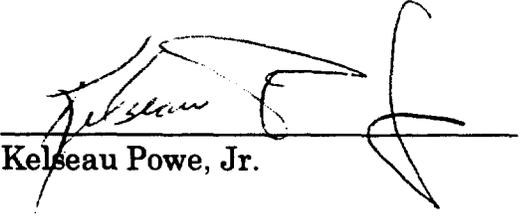
Its Attorney

Of Counsel,
Dan L. Poole

August 11, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 11th day of August, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via United States mail, postage pre-paid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

*** Via Hand-Delivery**

(CS9798.COS/JH/ss)

***James H. Quello**
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

***Reed E. Hundt**
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

***Susan P. Ness**
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

***Rachelle B. Chong**
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

***Meredith J. Jones**
Federal Communications Commission
Room 918-A
2033 M Street, N.W.
Washington, DC 20554

***Michael T. McMenamin**
Federal Communications Commission
Room 801-B
2033 M Street, N.W.
Washington, DC 20554

(Including 3 x 5 Diskette w/Cover Letter)

***William H. Johnson**
Federal Communications Commission
Room 918-B
2033 M Street, N.W.
Washington, DC 20554

***International Transcription
Services, Inc.**
1231 20th Street, N.W.
Washington, DC 20037

Sarah D. Smith
Public Service Company
of New Mexico
Alvarado Square, Mailstop 0806
Albuquerque, NM 87158

Paul A. Gaukler
Norman J. Fry
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037-1128

DUQUESNE

Steven J. Del Cotto
Duquesne Light Company
16-006
411 7th Avenue
POB 1930
Pittsburgh, PA 152230-1930

Diane C. Iglesias
The Southern New England
Telephone Company
227 Church Street
New Haven, CT 06510

Mark C. Rosenblum
Roy E. Hoffinger
Connie Forbes
AT&T Corp.
Room 3245G1
295 North Maple Avenue
Basking Ridge, NJ 07920

David L. Lawson
Scott M. Bohannon
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006

Paul Glist
John Davidson Thomas
Cole, Raywid & Braverman
Suite 200
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006

NCTA, et al.

Lawrence Fenster
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Brian Conboy
Michael G. Jones
Gunnar D. Halley
Willkie, Farr & Gallagher
Suite 600
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20036-3384

TELE-COMMUNICATIONS

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

Jeffrey L. Sheldon
Sean A. Stokes
UTC
Suite 1140
1140 Connecticut Avenue, N.W.
Washington, DC 20036

David L. Swanson
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

Adam C. Newman
Bellcore
3 Corporate Place
PYA-2E233
Piscataway, NJ 08854

Walter E. Steimel, Jr.
Richard E. Jones
Marjorie K. Conner
Ronnie London
Hunton & Williams
Suite 1200
1900 K Street, N.W.
Washington, DC 20006

Electric Utilities, et al.

Shirley S. Fujimoto
Christine M. Gill
Thomas J. Navin
Catherine M. Krupka
Kris Anne Monteith
McDermott, Will & Emery
Suite 500
1850 K Street
Washington, DC 20006

AEPSC, et al.

Ward W. Wueste
Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

R. Michael Senkowski
Robert J. Butler
Bryan N. Tramont
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

GTE

Jay C. Keithley
Sprint Corporation
Suite 1100
1850 M Street, N.W.
Washington, DC 20036

Joseph P. Cowin
Sprint Corporation
POB 11315
Kansas City, MO 64112

Betsy L. Anderson
Bell Atlantic Telephone Companies
Eight Floor
1320 North Court House Road
Arlington, VA 22201

Gardner F. Gillespie
Cindy D. Jackson
Hogan & Hartson
555 13th Street, N.W.
Washington, DC 20004-1109

TIMEWARNER

David N. Porter
Anne La Lena
Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
WorldCom, Inc.
Suite 400
1120 Connecticut Avenue, N.W.
Washington, DC 20036

M. Robert Sutherland
Theodore R. Kingsley
Bellsouth Corporation
Suite 1700
1155 Peachtree Street, N.W.
Atlanta, GA 30309-3610

Robert P. Slevin
NYNEX Corporation
Room 3731
1095 Avenue of the Americas
New York, NY 10036

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications, Inc.
Room 1254
175 East Houston
San Antonio, TX 78205

Margaret E. Garber
SBC Communications, Inc.
Suite 1100
1401 I Street, N.W.
Washington, DC 20005

Emily M. Williams
Association for Local
Telecommunications Services
1200 19th Street, N.W.
Washington, Dc 20036

Eric E. Breisach
Christopher C. Cinnamon
Kim D. Crooks
Howard & Howard Attorneys, P.C.
The Kalamazoo Building, Suite 400
107 West Michigan Avenue
Kalamazoo, MI 49007-3956

SCBA

Gerald A. Friederichs
Ameritech Operating Companies
39th Floor
30 South Wacker Drive
Chicago, IL 60606

Lori L. Ortenstone
SBC Communications, Inc.
Room 900
525 B Street
San Diego, CA 92101

Durward D. Dupre
Mary W. Marks
Jonathan W. Royston
SBC Communications, Inc.
Room 3520
One Bell Center
St. Louis, MO 63101

William J. Niehoff
Union Electric Company
POB 66149 (M/C 1310)
1901 Chouteau Avenue
St. Louis, MO 63166-6149