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Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Section 703(e))	
of the Telecommunications Act)	
of 1996)	CS Docket No. 97-151
)	
Amendment of the Commission's Rules)	
and Policies Governing Pole)	
Attachments)	
)	

REPLY COMMENTS OF OMNIPOINT COMMUNICATIONS INC.

Omnipoint Communications Inc. ("Omnipoint"), by its attorneys, hereby replies to the comments filed in the above-captioned docket.¹ In its initial comments, Omnipoint urged the Commission to fully implement Section 224 in a manner that ensures all telecommunications carriers, including wireless carriers, have access to poles, conduits, and rights of ways² at "rates, terms, and conditions [that] are just and reasonable." 47 U.S.C. § 224(b)(1). Such access on reasonable terms and rates is critical for

¹ Omnipoint and its affiliates hold broadband PCS licenses in many major metropolitan U.S. markets including New York City, Philadelphia, PA, Boston, MA, and Miami, FL. Omnipoint and its affiliates currently provide service in the New York, Philadelphia, and Wichita markets.

² As the Commission has already decided, transmission towers and facilities are within the statutory meaning of "poles, conduits, and rights of ways." First Report and Order, CC Dkt. No. 96-98, 11 FCC Rcd. 15499, 16084 (1996) ("Local Competition Order"), *rev'd in part, on other grounds, Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. July 18, 1996). Likewise, Section 224 obligates water utilities to offer reasonable access and rates to water towers. (Hereinafter, Omnipoint will refer to "poles, conduits, and rights of ways" as "poles.")

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telecommunications providers to rapidly deploy competing telecommunications networks that serve the American public.

Omnipoint files this reply to respond to the certain inappropriate and errant comments in this proceeding that claim (a) wireless carriers are somehow not entitled to Section 224 pole attachment rights, and (b) transmission towers owned or controlled by a utility are somehow not a "pole" under Section 224. Both contentions are not a part of this proceeding, and are flatly contradicted by the statute and prior Commission decisions.³ In addition, the Commission should clarify that utilities must provide access to all poles for requesting telecommunications carriers (including wireless carriers), and cannot select access to some poles but not others. Finally, as also discussed in its comments, Omnipoint believes that the Commission must provide additional guidance on the issue of state regulation, and require any state that has regulated cable television pole attachments to re-certify that it will also regulate pole attachments by telecommunications carriers, in accordance with Section 224. Without an affirmative state certification on telecommunications carrier pole attachments, the FCC should maintain full authority to decide pole attachment disputes.

First, the statute unambiguously provides that "any telecommunications carrier"⁴ is entitled to affix "any attachment"⁵ to the poles of a utility under the regulatory scheme

³ See, e.g., Comments of American Electric Power Service Corp., et al. at 11 (filed Sept. 26, 1997); Joint Comments of the Edison Electric Institute and UTC, at 3-5 (filed Sept. 26, 1997) (arguing that attachments of wireless operators and attachments on utility transmission towers are beyond the scope of the Commission's jurisdiction under Section 224).

⁴ 47 U.S.C. § 224(d)(3).

⁵ *Id.*, at § 224(a)(4). Given that Congress employed the broadest terms possible, "any attachment" necessarily includes antennas and pole-mounted electronic cabinets.

established by the Commission and by Section 224. While AEP and others in the utility industry may have preferred a different legislative outcome in the 1996 Telecommunications Act, the statute now unambiguously affords all telecommunications carriers a legal right to access to poles, and a right to regulatory protection from unreasonable rates, terms, and conditions for such poles. Since wireless carriers are telecommunications carriers,⁶ and have paid the Commission billions of dollars in auction fees for licenses to operate wireless telecommunications systems, there can be no legitimate debate on this issue.

Second, the same utilities attempt to re-litigate the Commission's decision in the First Report and Order that the transmission towers of utilities are included in the statutory meaning of the term "pole, duct, conduit or right of way." As the AEP pleading and its copious attachments demonstrate, the utilities industry has previously presented their arguments for excluding transmission towers, which the Commission has already rejected. Resurrection of those claims in this proceeding is plainly abusive of the Commission's processes, and not within the scope of the issues raised in the Notice.

Third, in Omnipoint's experience deploying its PCS systems, some utilities simply do not believe that all of their poles are subject to Section 224 and the right of access; rather, some utilities attempt to exclude some poles from the ambit of Section 224 regulatory oversight. Omnipoint believes that this practice is in violation of the plain language of Section 224(f), which states: "A utility shall provide . . . any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it." 47 U.S.C. § 224(f)(1). Omnipoint asks for the Commission, in its order, to make this statutory requirement abundantly clear.

⁶ Id., at § 153(44) ("telecommunications carrier" means any provider of telecommunications services . . .").

Finally, Omnipoint believes that the issue of state regulation of pole attachments by telecommunications carriers needs further guidance by the Commission. It is less than clear whether a state that certified to regulate the cable television pole attachment process would, by operation of that pre-1996 certification, be entitled to the reverse preemption afforded under Section 224(c) in cases of telecommunications carrier pole attachments. Omnipoint suggests that the Commission require all states to separately certify, or re-certify, that the state does regulate pole attachments for telecommunications carriers, including wireless carriers. In those states that fail to certify, and similar to the cable television certification process, the FCC would have jurisdiction to resolve pole attachment disputes between a utility and a telecommunications carrier. Such a certification process will minimize confusion over jurisdiction, will expedite resolutions of pole attachment disputes, and will encourage the states to better understand their regulatory role under the 1996 Act amendments to Section 224.

For these reasons, Omnipoint urges the Commission to expeditiously issue rules and orders implementing Section 224 for all telecommunications carriers, including wireless carriers, in a manner that promotes the rapid introduction of local telecommunications competition.

Respectfully submitted,

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Date: October 21, 1997