DOCKET FILE COPY ORIGINAL

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

In the Matter of	)	
	)	
Implementation of Section 703(e) of the Telecommunications Act of 1996	)	CC Docket 97-151
	)	
Amendment of the Commission's Rules and Policies Governing Pole Attachments	)	

RECEIVED
OCT 21 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF SPRINT LOCAL TELPHONE COMPANIES ON SPECIFIC QUESTIONS

The Sprint Local Telephone Companies ("Sprint") submit their Reply to Comments filed in response to the Commission's Notice of Proposed Rule Making ("NPRM") released on August 12, 1997 in the above-referenced docket. In the NPRM the Commission seeks comments on implementation of the Act's requirement at Section 703[1] that pole attachment rates for telecommunications carriers be just, reasonable, and nondiscriminatory.

In the NPRM (¶ 13) the Commission seeks comments on whether it should extend its holding in Heritage to other situations in which utilities may attempt to limit the use of attachment space by telecommunications service providers. In its Comments, Sprint urged the Commission to extend its Heritage decision so as to prevent utilities from placing unreasonable restrictions on the use of pole attachments by permitted attachees, including telecommunications service providers. MCI also agreed that Heritage should be extended, but expressed concern that such an extension not allow a cable company to overlash its existing cable attachment with a telecommunications attachment and still be

[1] Telecommunications Act of 1996 ("Act"), Pub. L. No. 104-104, 110 Stat. 61, 149-151, signed February 8, 1996 (codified at 47 U.S.C. § 224).

No. of Copies rec'd 0+5
List ABCDE

billed rates for cable service under 47 U.S.C. § 224(d) rather than for telecommunications services under 47 U.S.C. §224 (e).[2]

MCI's concern is without foundation. As Sprint noted in its comments, the Statute specifically provides that the new formula called for by §224(e) applies where a cable company is providing telecommunications services in addition to its cable service.[3] Under the mechanism created by the statute, once the cable company begins to provide telecommunications service, the old formula for cable services only under §224(d) ceases to apply and the new formula under § 224(e) applies in its place. Extending the Heritage decision will not, indeed cannot, override these statutory provisions.

Rather, Heritage should be extended so that if a telecommunications service provider deploys a single facility on a single attachment capable of providing traditional telecommunications services, cable television or other video services, and enhanced services there should only be, subject to considerations of safety, one attachment charge under § 224(e). Likewise, if a cable company deploys a single facility on a single attachment capable of providing cable television services and enhanced services (or other non-telecommunications services) a single attachment charge under § 224(d) should apply.

The Commission also seeks comment (¶ 15) as to the treatment of overlashing by the original attacher and by third parties that overlash the original attacher. Sprint argued that overlashing should, subject to certain conditions, be allowed and that like facilities, attached by one entity, should be treated as a single attachment, whereas unlike facilities, attached by one entity, should be treated as individual attachments. Each attacher, including any overlasher and the utility owner that has attachments, should be counted as a separate attacher for rate establishment purposes to ensure just, reasonable and

[2] MCI Comments ("MCI"), filed September 26, 1997 at pp. 4-5.
[3] Sprint's Comments at fn. 2.

nondiscriminatory rates among all attachees. KMC agreed, pointing out:

> The formula set forth in Section 224(e)(1) specifies that a calculation of the unusable space rates includes a calculation of an equal apportionment of space among "**all attaching entities**." [Footnote omitted.] The statute does not limit the attachers to telecommunications carriers as defined for purposes of Section 224 nor does it exclude any other classification of carrier or entity. Accordingly, the FCC properly should conclude that the formula requires the inclusion of all attachers regardless of their classification.[4]

Sprint also argued that each attacher, original or overlasher, must have an attachment agreement with the utility that owns the pole. Several parties agreed with Sprint. As Bell Atlantic said:

> First, the pole owner must be given advance notice of, and specifications for, the overlashing in order to evaluate safety considerations, consent to the overlashing, and determine what "make ready" work is required. Because pole owners assume obligations of liability and public safety, they need to have reasonable control to ensure that pole load capacities and access demands do not conflict with one another. Second, where a third party seeks to overlash to an existing attacher's facility, the existing attacher must consent to the overlashing. Third, a third party overlasher must enter into a license agreement directly with the pole owner. Only the pole owner has the right to grant access to such third parties, since the existing attacher has only a right of access, not an ownership right, to its attachment space.[5]

While Sprint supports, subject to the conditions outlined in its Comments in its and above, overlashing, Sprint does not believe that the statute creates a right for

---

[4] Comments of KMC Telecom, Inc. ("KMC"), filed September 26, 1997 at p. 6.

[5] Comments of Bell Atlantic, filed September 26, 1997 at p. 2. See also, Comments of GTE Service Corporation ("GTE"), filed September 26, 1997 at p. 7 citing safety and administrative concerns if the pole owner does not know who is on the pole and what is attached and Joint Comments of The Electric Utility Coalition ("Electric Utility Coalition"), filed September 26, 1997 at p. 8 citing safety concerns with overlashing.

attaching parties to sublease or sublicense attachment space. As SBC stated:

> Section 224 does require utilities to allow attachers to have access for purposes of providing telecommunications or cable services, but it does not require access for purposes of subleasing or sublicensing space to third parties. In short, giving attachers a right to sublease or sublicense attachment space "would be tantamount to bestowing an interest that the statute withholds."... In any event, Section 224 gives attachers a right of access for purposes of their provision of telecommunications or cable service, not to establish themselves as partial owners of or landlords over sections of the pole.[6]

The Commission also proposes that for purposes of rate calculation each utility develop a presumptive average number of attachers on one of its poles rather than developing a pole-by-pole inventory (NPRM at ¶ 26). Sprint supported the Commission's proposal, as did numerous other parties.[7] The Commission also seeks comments on whether a utility should be allowed to develop different presumptions for the urban, suburban, and rural areas in its service territory (¶ 26) and Sprint argued that development of such distinct areas or zones is appropriate and should be allowed.[8] However the Electric Utility Coalition disagreed, stating that "While urban locations may have more wires attached to their poles, there may in actuality be no more entities attached to those poles, ..."[9] Sprint disagrees. Perhaps the Electric Utility Coalition is correct with regard to the number of entities providing electric service, but it is Sprint's experience that more urban areas are clearly seeing more telecommunications carriers than are suburban and rural areas. This variance is likely to last, at least for the foreseeable future as competition, and thus the number of attachers, is likely to develop first in the

---

[6] Comments of SBC Communications, Inc. ("SBC"), filed September 26, 1997 at pp. 9-10.
[7] See, e.g., MCI at pp. 15-16 and Comments of the National Cable Television Association, filed September 26, 1997 at p. 21.
[8] See also, KMC at p. 7: "...KMC encourages the Commission to require utilities to establish separate presumptions for different demographic areas."
[9] Electric Utility Coalition at p. 7.

more dense urban areas. Finally, as Sprint noted in its Comments, by creating only a rebuttable presumption and by requiring the utility to provide telecommunications carriers with the methodology and information used to develop these distinct areas, the interests of those carriers in obtaining reasonable and nondiscriminatory rates will be adequately protected.

Finally, Sprint objects to Teligent's request that the Commission broadly define the rights-of way to which Section 224 grants access and to ". . . confirm that Section 224 provides access to those areas on building rooftops where utilities enjoy the right of access or use."[10]

In the first place, the definition of right-of-ways under Section 224 is not an issue in this proceeding. Rather, the Commission (¶ 43) is seeking comments on whether to adopt a specific methodology or formula to determine reasonable rates for rights-of-way. In the second place, the arguments made by Teligent have already been placed in front of the Commission and soundly rejected in the Local Competition Order:

> We note that some commenters favor a broad interpretation of "pole, duct, conduit, or right-of-way" .... We do not believe that section 224(f) (1) mandates that a utility make space available on the roof of its corporate offices for the installation of a telecommunications carrier's transmission tower, ... The intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to "piggyback" along distribution networks owned or controlled by utilities, as opposed to

[10] Comments of Teligent, L.L.C., filed September 26, 1997 at p. 2.

granting access to every piece of equipment or real property owned or controlled by the utility.[11]

The Commission should similarly reject Teligent's request in this proceeding.

Respectfully submitted,

SPRINT CORPORATION

By: Jay C. Keithley

Jay C. Keithley
1850 M Street, N.W.
Suite 1100
Washington, DC 20036
(202) 857-1030

Craig T. Smith
P.O. Box 11315
Kansas City, MO 64112
(913) 624-3065

Its Attorneys

October 21, 1997

[11] In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, released August 8, 1996 ("Local Competition Order") at para. 1185.

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 21st day of October, 1997, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Local Telephone Companies on Specific Questions" in the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governig Pole Attachments, CC Docket No. 97-151, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

Melinda L. Mills

Melinda L. Mills

*** Indicates Hand Delivery**

Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Wilbur Thomas*
ITS
1919 M Street, NW, Room 246
Washington, DC 20554

Joel Ader*
Bellcore
2101 L Street, NW
Suite 600
Washington, DC 20036

Edward N. Rizer
The Dayton Power and Light Company
P.O. Box 8825
Dayton, OH 45401

Philip Shapiro
Charles Stockdale
Cable Television & Telecommunication Assoc.
126 State Street, 3rd Floor
Albany, NY 12207

Mary McDermott
USTA
1401 H Street, NW, Suite 600
Washington, DC 20005

Timothy Graham
Winstar Communications, Inc.
1146 19th Street, NW
Suite 200
Washington, DC 20036

Philip Verveer
Willkie Farr & Gallagher
1155 21st Street, NW, Suite 300
Three Lafayette Centre
Washington, DC 20036
Counsel for Winstar Communications, et. al.

Rick Giannantonio
Ohio Edison Company
76 South Main Street
Akron, OH 44308

John H. O'Neill, Jr.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037-1128
Counsel for Ohio Edison Company, et. al.

Martin H. Heslin, Esq.
4 Irving Place
New York, NY 10003
Counsel for NY State Investor Owned
Electric Utilities

James A. Hirschfield
President
Summitt Communications, Inc.
3633 136th Place SE, Suite 107
Bellevue, WA 98006

Shirley S. Fujimoto
McDermott, Will & Emery
1850 K Street, NW, Suite 500
Washington, DC 20006
Counsel for American Electric Power, et. al.

Cindy Schonhaut
ICG Communications, Inc.
9605 E. Maroon Circle
Englewood, CO 80112

Albert H. Kramer
Dickstein, Morin, Shapiro & Oshinsky
2101 L Street, NW
Washington, DC 20037-1526
Counsel for ICG Communications

James D. Ellis
Robert M. Lynch
SBC Communications, Inc.
175 E. Houston, Room 1254
San Antonio, TX 78205

Durward D. Dupre
Mary W. Marks
Jonathan W. Royston
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

James T. Hannon
US WEST, Inc.
1020 19th Street, NW
Suite 700
Washington, DC 20036

Steven J. Del Cotto
Duquesne Light Company
411 Seventh Avenue, 16-006
PO Box 1930
Pittsburg, PA 15230-1930

Paul A. Gaukler
Norman J. Fry
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037-1128
Counsel for Duquesne Light

Walter J. Steimel, Jr.
Hunton & Williams
1900 K Street, NW
Suite 1200
Washington, DC 20006
Counsel for Carolina Power & Light, et. al.

Mark J. Tauber
Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 19th Street, NW
7th Floor
Washington, DC 20036

Russell M Blau
Swidler & Berlin, Chtd.
3000 K Street, NW, Suite 300
Washington, DC 20007

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

Laurence E. Harris
Teligent, L.L.C.
Suite 300
11 Canal Center Plaza
Alexandria, VA 22314

Paul Glist
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
Counsel for Comcast Corp., et. al.

Lawrence Fenster
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

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

David L. Lawson
AT&T Corporation
1722 Eye Street, NW
Washington, DC 20006

William Niehoff, Esq.
Union Electric Company
1901 Chouteau Avenue
P.O. Box 66149 (M/C 1310)
St. Louis, MO 63166-6149

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

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

Paul Glist
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
Counsel for National Cable Television Assoc.

Daniel L. Brenner
National Cable Television Assoc
1724 Massachusetts Avenue, NW
Washington, DC 20036

Joseph Wilson
Debra Geibig
Colorado Springs Utilities
104 South Cascade, Suite 204
P.O. Box 240
Colorado Springs, CO 80901

Betsy L. Roe
Bell Atlantic
1320 North Court House Road, 8th Floor
Arlington, VA 22201

Mark J. Fauber
Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 19th Street, NW
7th Floor
Washington, DC 20036
Counsel for Omnipoint Communications

Ward W. Wueste
GTE Service Corporation
1850 M Street, NW, Suite 1200
Washington, DC 20036

R. Michael Senkowski
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Counsel for GTE

Stuart F. Feldstein
Fleischman & Walsh, L.L.P.
1400 16th Street, NW
Washington, DC 20036
Counsel for Adelphia Communications

Henry Goldberg
Goldberg, Godles, Wiener & Wright
1229 19th Street, NW
Washington, DC 20036
Counsel for Texas Utilities Electric Co.

Tricia Beckenridge
KMC Telecom, Inc.
1580 South Milwaukee Avenue, Suite 305
Libertyville, IL 60048