

ducts, conduits, or rights-of-way, including transmission towers on the same rates and terms as wireline carriers.⁴³

Heritage Cablevision remains in force. A number of owners also collaterally attack yet again the Commission's decision in Heritage Cablevision.⁴⁴ As the comments demonstrate, Heritage Cablevision⁴⁵ remains in force, prohibiting discrimination among telecommunications carriers. Congress simply modified the Commission's existing cost allocation method and permitted traditional cable operators -- the only attachers covered by § 224 prior to the 1996 Act -- to continue relying on the old rate regime. All attachers providing telecommunications services must be treated the same for access and rate purposes, regardless of what type of telecommunications or cable plus telecommunications service they carry over their attachments or the type of attachment they deploy on poles, ducts, conduits, and rights-of-way. The "grandfathered" status of pure cable companies does not grant utilities a license to discriminate among telecommunications carriers based on the type of service or attachment.⁴⁶

(. . . continued)

telecommunication for a fee directly to the public . . . , regardless of the facilities used") (emphasis added). A "telecommunications carrier" is "any provider of telecommunications services." 47 U.S.C. § 153(44) (emphasis added). See also Local Competition Order ¶ 993 (CMRS providers are telecommunications carriers).

⁴³ ICG at 48 ("the attachment of telecommunications facilities to transmission poles and towers at grade clearance levels is fundamentally no different from attachment to distribution poles"); see also NPRM ¶ 61.

⁴⁴ See e.g., Ameritech at 3; USTA at 4; Ohio Edison at 19.

⁴⁵ Heritage Cablevision Assocs. & Texas Cable TV Ass'n v. Texas Utils. Elec. Co., 6 FCC Rcd 7099 ¶ 32 (1991) ("Heritage Cablevision").

⁴⁶ See Sprint at 2; RCN at 5; accord GTE at 6.

The current presumptions regarding usable space, pole height, and safety space should not be changed. Several commenters reiterated the arguments that they raised in Docket No. 97-98 with respect to the Commission's usable space, pole height, and safety space presumptions. These arguments have been thoroughly refuted in Docket No. 97-98⁴⁷ and in comments filed in this proceeding.⁴⁸ Some electric utilities have also sought to increase the presumptive amount of space occupied by a fiber optics cable even though such a cable typically takes up much less space. According to Duquesne (at 35-36)

[T]he Commission should adopt as part of this rulemaking a rebuttable presumption that fiber optics cables require, and should be charged for, two feet of usable pole space. Such a presumption would properly recognize and account for the practice of communication companies to pull fiber optics cables tightly so as to interfere with properly sagged cables above them. A rebuttable presumption of one foot is adequate for other types of communication cables.⁴⁹

The real issue is whether or not the attacher has deployed its fiber optic cables properly so as not to interfere with existing cables. If so, there is no reason to treat fiber, or any other type of cable, differently for these purposes.

The Commission should use net book costs not gross book costs. AT&T continues to favor the net book approach over a gross book methodology. SBC (at 29) attacks AT&T for

⁴⁷ See, e.g., AT&T 97-98 Comments at 16-19; AT&T 97-98 Reply Comments at 18-24; SWBT 97-98 Comments at 34; ConEd 97-98 Comments at 14; GTE 97-98 Comments at 12; Bell Atlantic/NYNEX 97-98 Comments at 10-11; U S WEST 97-98 Comments at 3-4; Time Warner 97-98 Comments at 9; Ameritech 97-98 Comments at 3; Sprint 97-98 Comments at 3; Edison Electric 97-98 Comments at 26.

⁴⁸ See, e.g., NCTA at 13-15; Adelphia at 3-5; USTA at 9; CTTANY at 5; GTE at 9 (pole height unchanged); MCI at 6-10, 19-20 (usable space should be increased and the rest left unchanged); Comcast at 6 (usable space should be 16 feet).

⁴⁹ See also Ohio Edison at 33.

supposedly not recognizing the breadth of the problem when, in fact (i) no company has demonstrated that its rates under the existing net book approach would fall below incremental costs, the floor established in § 224, and, (ii) AT&T has shown that SBC and other owners have been already overcompensated under the existing net book price formula. See AT&T 97-98 Comments at 12-14; AT&T 97-98 Reply Comments at 14. See also Adelpia at 8; US WEST at 5.

CONCLUSION

For the foregoing reasons, AT&T supports most of the Commission's proposals for modifying its pole attachment rules to conform with the requirements of § 704 of the Telecommunications Act of 1996. AT&T also urges the Commission (i) to permit overlashing and other space-conserving sharing of existing attachment space at no additional charge and without unnecessary procedural requirements, (ii) establish a presumption of three attachers per pole in rural areas and six attachers per pole in urban areas, (iii) allocate unusable space costs for poles according to each foot of attached space, (iv) adopt a one-third-duct methodology for setting the maximum rates permissible for conduit, coupled with a determination that conduit has no unusable space, (v) ensure that rates assessed for access to rights-of-way are based on cost and reflect the Commission's rules in its Local Competition Order, (vi) reaffirm that owners cannot discriminate based upon the type of attachment or service provided on an attachment, and (vii) reject the various modifications to the Commission's existing formula advocated by owners that would unjustifiably raise rates and create barriers to competition.

Respectfully submitted,

AT&T CORP.

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October 21, 1997

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American Electric Power Service Corporation, Commonwealth Edison Company, Duke Energy Corporation, Florida Power and Light Company ("Electric Utilities I")

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Bell Atlantic

Cable Television and Telecommunications Association of New York, Inc. ("CTTANY")

City of Colorado Springs ("CSU")

Comcast Corporation, Charter Communications, Marcus Cable Operating Co., L.P., Rifkin & Associates, Greater Media, Inc., Texas Cable & Telecommunications Association of Maryland, Delaware, and District of Columbia, Mid-America Cable TV Association ("Comcast")

Consolidated Edison Company of New York, Inc., Central Hudson Gas & Electric Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation ("Electric Utilities III")

Duquesne Light Company ("Duquesne")

Edison Electric Institute and UTC, the Telecommunications Association ("UTC")

Electric Utilities Coalition ("Electric Utilities II")

GTE Service Corporation ("GTE")

ICG Communications, Inc. ("ICG")

KMC Telecom, Inc. ("KMC")

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National Cable Television Association ("NCTA")

Ohio Edison Company ("Ohio Edison")

Omnipoint Communications Inc. ("Omnipoint")

RCN Telecom Services, Inc. ("RCN")

SBC Communications Inc. ("SBC")

Sprint Local Telephone Companies ("Sprint")

Teligent, L.L.C. ("Teligent")

Texas Utilities Electric Company ("TUEC")

Union Electric Company ("Union Electric")

United States Telephone Association ("USTA")

US WEST, Inc. ("US WEST")

Winstar Communications, Inc. ("Winstar")

CERTIFICATE OF SERVICE

I, Scott M. Bohannon, do hereby certify that on this 21st day of October, 1997, I caused a copy of the foregoing Reply Comments of AT&T Corp. to be served upon each of the parties listed on the attached Service List by U.S. First Class mail, postage prepaid.

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