

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Implementation of Section 703(e)  
of the Telecommunications Act  
of 1996

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CS Docket No. 97-151

Amendment of the Commission's Rules  
and Policies Governing Pole  
Attachments

**PETITION FOR CLARIFICATION**

U S WEST, Inc. ("U S WEST") hereby requests that the Federal Communications Commission ("Commission") clarify certain aspects of its Report and Order in CS Docket No. 97-151, released February 6, 1998, which prescribed regulations to govern pole and conduit attachments used by telecommunications carriers to provide telecommunications services.<sup>1</sup> As the Commission noted in its Order, these regulations will not affect the rates that cable systems and telecommunications carriers providing telecommunications services<sup>2</sup> pay for pole

<sup>1</sup> In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, Report and Order, FCC 98-20, rel. Feb. 6, 1998 ("Order").

<sup>2</sup> Hereafter, both cable systems providing telecommunications services and telecommunications carriers providing telecommunications services will be jointly be referred to as telecommunications carriers.

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attachments until after February 8, 2001.<sup>3</sup>

While the Commission's Order answered many questions associated with the assessment and calculation of pole attachment rates for telecommunications carriers, a few critical questions remain unanswered. In these cases, further clarification is required in order to calculate maximum rates for the different attaching parties. Therefore, U S WEST requests that the Commission provide further clarification in two main areas: 1) third party overlashing; and 2) the cost of unusable space for conduit. In the remainder of this Petition, U S WEST addresses these subjects.

#### I. THIRD PARTY OVERLASHING

Despite opposition from numerous parties, including U S WEST,<sup>4</sup> the Commission allowed third party overlashing with only the consent of the host attaching entity.<sup>5</sup> The Commission did not require consent of the pole owner. However, the Commission did subject third party overlashers "to the same safety, reliability, and engineering constraints that apply to overlashing one's [a utility's] own pole attachment."<sup>6</sup> Questions still remain as to what rate third party overlashers should pay and to whom. As such, the Commission must clarify certain language in its Order if third party overlashing is to be an option for

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<sup>3</sup> Beginning on February 8, 2001, higher rates for pole attachments for telecommunications services will be phased in over a 5 year period. Order ¶ 129; 47 U.S.C. § 224(e)(4).

<sup>4</sup> Comments of U S WEST, filed herein, Sep. 26, 1997 at 10 ("U S WEST Comments").

<sup>5</sup> Order ¶ 68.

telecommunications carriers.

In paragraph 69 of its Order the Commission stated that overlashing by third parties should be classified as a separate attachment.<sup>7</sup> In the absence of any other comment, U S WEST would interpret this language to imply that a third party overlasher should be charged for a single pole attachment which would include both a charge for usable space and a charge for unusable space. Later in paragraph 92, the Commission states that a third party overlasher is “presumed to share the presumptive one foot of usable space of the host attachment.”<sup>8</sup> In paragraph 94, the Commission states that “we conclude that it is reasonable to allow the host attaching entity to negotiate the sharing of costs of usable space with third party overlashers.”<sup>9</sup> Together, paragraphs 92 and 94 imply that an overlasher only owes the pole owner the overlasher’s share of unusable space costs and that the host attacher is responsible for the costs of usable space. Any liability that the overlasher may incur for usable space would appear to depend on the outcome of negotiations with the host attacher. This result is quite different from the conclusion that one would arrive at by reading paragraph 69 in isolation. Therefore, U S WEST requests that the Commission clarify the payment obligation of a third party attacher to both the pole owner and the host attacher.

Of more concern is the fact that pole owners may be the last parties to learn

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<sup>6</sup> Id.

<sup>7</sup> Id. ¶ 69.

<sup>8</sup> Id. ¶ 92.

<sup>9</sup> Id. ¶ 94.

of the existence of a third party overlasher in the absence of an explicit notice requirement. Without such a notice requirement it will be impossible for pole owners to determine whether overlashing will endanger the integrity of a pole line or create a hazardous condition.<sup>10</sup> It would also be impossible to determine whether overlashing is done in compliance with generally accepted engineering and safety standards. Therefore, U S WEST requests that the Commission clarify that advance notice to pole owners is required by third parties prior to overlashing any existing pole attachments.

## II. UNUSABLE SPACE COSTS

In discussing unusable space in conduit systems, the Commission identifies two types of unusable space: 1) “there is that space involved in the construction of the system, without which there would be no usable space;” and 2) “there is that space within the system which may be unusable after the system is constructed.”<sup>11</sup> The latter category consists of emergency/maintenance ducts and deteriorated ducts. Costs of such space would normally be determined by dividing the total linear duct-feet of deteriorated conduit and duct-feet of emergency/maintenance ducts by total linear duct-feet of conduit. The result of this calculation would then be multiplied by total conduit investment cost to produce a cost per duct-foot for conduit. This approach makes sense and it easily allows the inclusion or exclusion

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<sup>10</sup> While U S WEST opposed the adoption of rules which would permit third party overlashing, in its earlier comments in this proceeding, U S WEST permits overlashing by parties with existing pole attachments on the more than one million poles that U S WEST owns. See U S WEST Comments at 10.

<sup>11</sup> Order ¶ 110.

of emergency/maintenance or deteriorated duct space in unusable space costs (i.e., because all costs are measured in dollars per duct-foot).

U S WEST is perplexed as to how costs of the Commission's first category of unusable space are measured. It appears that the Commission is attempting to modify the approach that it uses for determining unusable space cost for poles to conduit. But it is not at all clear which costs should be included in unusable space costs of conduit or how they should be measured (e.g., dollars per duct-foot).

U S WEST agrees that there are costs involved in creating usable space but not all of these costs are unusable space costs as the Commission's statement seems to imply (i.e., "there is that space involved in the construction of the system, without which there would be no usable space."<sup>12</sup> The parallel that the Commission is attempting to draw between poles and conduit with respect to unusable space is hopelessly confusing. Thus, it is imperative that the Commission further clarify its intentions with respect to the calculation of unusable space costs for conduit. Without clarification there will be no consistency among the parties as to the appropriate way to measure these costs and the ultimate result will be an increase in the number of pole attachment complaints at the Commission.

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<sup>12</sup> Id.

III. CONCLUSION

U S WEST requests that the Commission clarify the foregoing aspects of its pole attachment Order.

Respectfully submitted,

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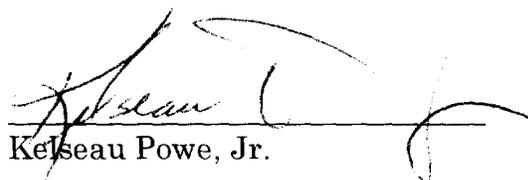
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April 13, 1998

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 13<sup>th</sup> day of April 1998, I have caused a copy of the foregoing **PETITION FOR CLARIFICATION** to be served, via hand delivery, upon the persons listed on the attached service list.

  
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