

$$\text{Other-than-usable cost} = \frac{2}{3} \times \frac{\% \text{ of other-than-usable space}}{\text{Number of Entities}} \times \text{Net Linear Cost of Total Conduit} \times \text{Carrying Charge Rate}$$

The calculation of the usable space charge per duct would be as follows:

**Usable Charge Factor**

$$\text{Usable cost per duct} = \frac{1}{2} \times \frac{1 - (\% \text{ of other-than-usable space})}{\text{Number of Conduits}} \times \text{Net Linear Cost of Total Conduit} \times \text{Carrying Charge Rate}$$

To illustrate using the Commission's half-duct presumption, assume each conduit is comprised of 2 ducts, in a system with 9 conduits, for a total of 18 ducts, and one duct is required for maintenance and emergencies. The one duct required for maintenance and emergencies would comprise approximately 3% of total conduit space.<sup>50</sup> Total other-than-usable space therefore accounts for 52% (3% + 49%) of total space in the conduit system. Usable space would therefore equal 48% of conduit space.

If the first telecommunications entrant placed one cable in one duct of conduit, there would be one attaching entity. This entity would be allocated 35% of total conduit costs as part of its other-than-usable charge.<sup>51</sup> The new entrant would also be allocated 3% of total conduit costs as part of its usable charges.<sup>52</sup> Thus, in this case, the new entrant would be charged

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<sup>50</sup>(800 feet of usable space ÷ 9 conduits ÷ 2 ducts per conduit) / 1554 feet in conduit system.

<sup>51</sup> $\frac{2}{3} \times 52\% = 34.6\%$ .

<sup>52</sup> $48\% \div 9 \div 2 = 2.6\%$ .

approximately 38% of total conduit costs for an attachment that occupies 3% of usable space.

This amended formula allocates a substantial share of other-than-usable costs to telecommunications carriers without severely penalizing the first entrant as does the Commission's formula.

E. The Commission Should Reconsider its One-half Duct Presumption

In its *Order* the Commission claimed that "...the half-duct methodology is the simplest and most reasonable approximation of the actual space occupied by an attacher."<sup>53</sup> The Commission rightly noted that the National Electric Safety Code does not prohibit the sharing of space by electric and telecommunications cables in the same conduit, and concluded that sharing of space within a conduit is technically feasible.<sup>54</sup>

The Commission went on to note that "[i]f a new entity is installing an attachment in a previously unoccupied duct, we believe that such entity should be encouraged to place inner-duct prior to placing its wires in the duct."<sup>55</sup> If a conduit may be shared by more than one attachment, it must be possible to place at least two attachments. The Commission never addresses evidence supplied by new entrants that current conduit agreements typically require the new entrant to pull between 3-6 innerducts through a conduit.<sup>56</sup> The Commission merely reasserts the findings of the Massachusetts Department of Public Utilities, based on conditions nearly decade ago, before the use of fiber made 3-4 innerducts the norm. It is no longer reasonable to rely on the one-half duct

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<sup>53</sup>Order at ¶ 115.

<sup>54</sup>*Ibid.*

<sup>55</sup>*Ibid.*

<sup>56</sup>MCI Comments at 21; NCTA at 25; AT&T at 16; and ICG at 55.

presumption, and the Commission may not ignore the evidence supplied concerning current innerducting practices. MCI strongly urges the Commission to adopt a one-third duct presumption.

**V. The Commission Should Declare That Attachments to Electric Transmission Facilities Receive the Same Treatment as Wireless Attachments**

In its *Order* the Commission determined that "...wireless carriers are entitled to the benefits and protection of Section 224."<sup>57</sup> The Commission recognized that wireless attachments may have features that differ from wire attachments, and as a result the presumptive figures the Commission adopted for wire attachments may not be appropriate. The Commission nevertheless extended the rate protections of Section 224 by asking the parties to modify the presumptions to account for the unique features of wireless attachments through good faith negotiations. The Commission also determined that it would hear cases pertaining to wireless attachments on a case-by-case basis when parties are unable to reach agreement through good faith negotiations.<sup>58</sup>

MCI requests the Commission declare that attachments to electric transmission facilities receive the same treatment as wireless attachments. As MCI noted in its Comments, it is feasible and necessary for new telecommunications entrants to gain access to electric utility company transmission facilities.<sup>59</sup> The Commission has already determined that electric utility transmission facilities use poles and rights of way, and are therefore subject to Section 224(f)(1) of the 1996

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<sup>57</sup>*Order* at ¶ 39.

<sup>58</sup>*Id.*, ¶ 42.

<sup>59</sup>MCI Comments at 20 which incorporated MCI Comments, Attachment 1, Ex Parte Statement, Discussing MCI's Experience Attaching to Transmission Facilities and Conduit of Electric Utility Companies, *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, June 27, 1997, at 29.

Act.<sup>60</sup> Where safety concerns do not preclude attachment to these facilities, telecommunications carriers must pay Section 224 treatment for attachments to electric utility transmission facilities.

As with wireless attachments, the presumptive averages the Commission has adopted for usable and non-usable space on electric distribution poles may not apply to electric transmission poles and towers. Neither may the accounts included in the calculation of annual costs be the same. MCI recognized this and proposed having the Commission require electric utility companies to enter into good faith negotiations and data sharing with parties seeking attachments to their transmission facilities.<sup>61</sup> MCI requests the Commission clarify that its decision to require good faith negotiations with respect to wireless facilities, applies to any telecommunications attachment to a pole, conduit, or right-of-way, so long as the attachment is safe, and technically feasible.

## **VI. Conclusion**

For the above-mentioned reasons, MCI encourages the Commission to reconsider its decisions in its Order and adopt MCI's proposed modifications.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION



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<sup>60</sup>Section 224(f)(1) mandates access to 'any pole, duct, conduit, or right-of-way,' owned or controlled by the utility. The utilities do not suggest that transmission facilities do not use poles or rights-of-way, for which the statute does mandate the right of access." Local Competition Order at ¶ 1184.

<sup>61</sup>MCI Comments, CS Docket 97-151, at 21.

**STATEMENT OF VERIFICATION**

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 13, 1998.

A handwritten signature in black ink, appearing to read "Lawrence Fenster", written over a horizontal line.

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## CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that a copy of the foregoing **Petition for Reconsideration** has been sent by United States first class mail, postage prepaid, hand delivery, to the following parties on this 13<sup>th</sup>, April, 1998.

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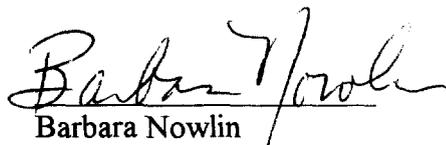
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