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

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

OPPOSITION OF AT&T CORP.
TO PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, and the Commission's Public Notice,[1] AT&T Corp. ("AT&T") hereby submits its opposition to the petitions for reconsideration filed in this proceeding.[2] In particular, AT&T opposes requests for reconsideration of the Commission's findings that wireless carriers are covered by Section 224 of the Act and incumbent local exchange carriers ("ILECs") should

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[1] Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding, Report No. 2270, 63 FR 20633, April 27, 1998.

[2] Petitions for Reconsideration and/or Clarification were filed by the Edison Electric Institute and UTC, the Telecommunications Association ("EEI and UTC"); the National Cable Television Association ("NCTA"); ICG Communications, Inc. ("ICG"); the United States Telephone Association ("USTA"); SBC Communications Inc. ("SBC"); Teligent, Inc. ("Teligent"); Bell Atlantic; MCI Telecommunications Corporation ("MCI"); and U S WEST, Inc. ("U S WEST").

be treated as attaching entities for purposes of allocating costs associated with other-than-usable space. AT&T supports the request for clarification that attaching entities are allowed to overlash facilities and overlashers must pay both the pole owner and the host attacher.

EEI and UTC (at 13) "continue to dispute the application of the pole attachment provisions to wireless attachments." The joint petitioners claim (id.) that there are significant distinctions between traditional pole attachments and wireless attachments, and those differences require that wireless attachments be treated differently than other attachments. However, the plain language of the Act states: "The Commission shall . . . prescribe regulations to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications service."[3] As AT&T demonstrated in its reply comments (at 19-22), wireless carriers are entitled under the 1996 Act to access to utilities' poles at rates consistent with the rules adopted in this proceeding, because pole attachments are defined as "any attachment by a cable television system or provider of telecommunications service."[4]

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[3] 47 U.S.C. § 224(e)(1).

[4] Section 224(a)(2) of the Act.

The Commission has already recognized that wireless services, including cellular telephone, mobile radio, and PCS are telecommunications services, therefore, there can be no doubt that the pole attachment provisions have been expanded to include wireless services.[5] Thus, wireless attachments are entitled to the benefits and protection of Section 224 of the Act,[6] regardless of any purported differences with wireline attachments.

Moreover, nothing in Section 224 limits a telecommunications carrier's attachments to a particular type of technology. EEI and UTC's concern (at 13) that wireless attachments "rais[e] a host of new safety, reliability and space allocations issues" is best addressed by ensuring that wireless attachments comply with applicable National Electric Safety Code standards, not by excluding wireless attachments from the pole attachment provisions.

EEI and UTC (at 18-19) and SBC (at 8-10) seek reconsideration of the Commission's decision that any pole owner, including incumbent local exchange carriers ("ILECs"),

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[5] See, e.g., Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9175 (1997).

[6] Implementation of Section 703(e) of the Telecommunications Act of 1996, Report and Order, CS Docket No. 97-151, rel. February 6, 1998 ("Report and Order").

should be counted as an attaching entity for the purposes of allocating the costs of unusable space under Section 224(e)(2).[7] SBC's argument (id.) that as a pole owner it should not be counted as an attaching entity because it is already allocated one-third the cost of the unusable space of the pole, confuses the issue. Rather than addressing the real issue -- that ILECs are attaching entities pursuant to Section 224 of the Act -- SBC challenges the formula used to allocate the unusable costs. However, the methodology for cost allocation is set forth clearly in Section 224(e)(2) of the Act and the Commission has determined that all pole owners should be treated similarly, regardless of whether the pole owner is an ILEC or a utility.

U S WEST seeks (at 2-4) clarification of the payment obligation of a third party attacher to both the pole owner and the host attacher. The Commission stated in the Report and Order that overlashing by third parties should be classified as a separate attachment.[8] However, the Commission also states that a third party overlasher is "presumed to share the presumptive one foot of usable space of the host attachment."[9]

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[7] Report and Order, para. 50.

[8] Id., para. 69.

[9] Id., para. 92.

These two statements appear to be at odds with one another. The first indicates that the third party overlasher is responsible for the usable space costs and should pay them to the pole owner. The second indicates, on the other hand, that the third party attacher is not using any additional space on the pole above and beyond the space used by the host attacher. The Commission should clarify this contradiction by allowing pole owners to collect compensatory fees for the use of space on their poles only. As overlashing does not use additional pole space, the owner should not be permitted to collect an additional charge. Thus, overlashers only owe compensation to the host attacher.

Finally, numerous petitioners seek reconsideration of the Commission's definition of unusable conduit space and the related costs.[10] The petitioners contend that the Commission's definition that unusable conduit space costs include the costs associated with the construction of a conduit system, "includ[ing] trenching, excavation, supporting structures, concrete, and backfilling"[11] is too broad. As U S WEST notes (at 5), there are costs involved in creating usable space (a

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[10] MCI, pp. 14-23. See also U S WEST, pp. 4-5; SBC, pp. 16-18; ICG, pp. 3-7; USTA, pp. 8-9; NCTA, pp. 2-5.

[11] Report and Order, para. 110, n.355.

conduit) but not all of these costs are other than usable space costs, as the Commission seems to imply.

The Commission's conclusion is essentially the same as arguing that only the few square inches of surface area on a pole where attachments actually touch the pole should be considered usable pole space. The remainder, including the core of the pole, portions of brackets, and other space not actually touching an attachment, would, under this approach, be classified as unusable. As MCI notes (at 16), the Commission did not reach this conclusion with regards to poles. Rather it identified legitimate pole costs without reference to whether they were usable or other-than-usable, and allocated the costs between usable and other-than-usable purposes.[12] Because the Commission did not define in the Report and Order what, if any, construction costs are usable space costs, it should now provide that guidance.

For the foregoing reasons, the Commission should deny the requests for reconsideration of its findings that wireless carriers are covered by Section 224 and that ILECs should be treated as attaching entities for purposes of allocating costs associated with other-than-usable space. The Commission should also clarify that overlashers do not owe compensation to the

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[12] 47 U.S.C. § 1.1417(b).

pole owners. Finally, AT&T supports the requests for reconsideration of the Commission's determination that all conduit construction costs are unusable costs.

Respectfully submitted,

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May 12, 1998

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 12th day of May, 1998, a copy of the foregoing "Opposition of AT&T Corp. to Petitions for Reconsideration" was served by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

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