



statute. The Commission has already addressed, and rebuffed, similar arguments made in the Local Competition Order<sup>2</sup> where it stated:

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 towers, ... 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 granting access to every piece of equipment or real property owned or controlled by the utility.<sup>3</sup>

Teligent's arguments on this point should be summarily dismissed.

### SBC

SBC asks the Commission to clarify when government agencies will be counted as attaching entities. SBC points out that the Commission ruled that a government agency is only to be considered an attaching entity in the event it offers cable or telecommunications services. SBC asserts, however, that certain government entities operate their own private telecommunications networks that are not operated on a common carrier basis. It is SBC's opinion that the operation of these private networks should not cause the government entity involved to be counted as an attaching entity. Sprint disagrees.

Sprint believes that granting SBC's request would provide an untoward advantage for incumbent owners of pole and conduit facilities. It would incent

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<sup>2</sup> *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, FCC 96-325, released August 8, 1996 ("Local Competition Order").

<sup>3</sup> *Id.*, at para. 1185.

such incumbents to encourage governmental entities to use such facilities, making later use more difficult and more expensive. Moreover, it would permit incumbents to recover the costs of government use from other attaching entities. In this way, the incumbent's competitors will effectively subsidize the incumbent's bid to provide services to government entities. Neither Section 224 nor the Commission intended such a skewed result.

SBC also asks the Commission to provide a more explicit distinction between what are usable and non-usable conduit costs. SBC suggests that the Commission find usable cost to be the cost of "whatever material forms the walls of the individual ducts, whether that it polyvinyl chloride, concrete or some other material. The cost of that material would be usable space costs and the remainder of the costs of constructing the conduit system would be non-usable space costs."<sup>4</sup>

Sprint agrees that clarification is needed in the definition of more definition needs to be placed around what is unusable space. US WEST was correct when it stated in its petition for reconsideration that the rules, in their current form, will be difficult to interpret and apply, leading, undoubtedly, to numerous complaints. In fact, most of the parties filing petitions for reconsideration agreed that this particular rule requires clarification. Sprint does not, however, believe that SBC's suggested remedy would provide the sought-

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<sup>4</sup> SBC at pp. 17-18.

after clarity.

The Commission should instead adopt the views expressed by MCI<sup>5</sup> and ICG<sup>6</sup> in their petitions. Sprint agrees with these carriers that it is appropriate to allocate the total cost of the conduit based on the amount of space in the conduit that is usable or unusable. Sprint also agrees with these parties that the only space considered unusable in a conduit should be that space reserved for maintenance and emergencies. Such an allocation methodology is simple, straightforward, and does not risk shifting the cost of conduits from the incumbents to new entrant carriers. The Commission should, therefore, deny SBC's petition on this issue, but change the rule in accordance with the arguments set forth by ICG and MCI in their petitions for reconsideration.

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May 12, 1998

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<sup>5</sup> MCI at pp. 18-20.

<sup>6</sup> ICG at pp. 16-18.

## CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 12<sup>th</sup> day of May 1998, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of the Sprint Corporation" in the Matter of Implementation of Section 706(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments, CC Docket No. 97-151, filed this date with the Secretary, Federal Communications Commission, to the persons on the attached service list.

  
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