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May 12, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: 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

Dear Ms. Salas:

On behalf of WinStar Communications Inc., please find enclosed for filing an original and eleven copies of WinStar's comments supporting and opposing Petitions for Reconsideration filed in the above referenced proceeding.

Should you have any questions regarding this filing, please contact the undersigned.

Sincerely,

Philip L. Verveer (SK)

Philip L. Verveer

Enclosures

RECEIVED

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

MAY 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

**COMMENTS OF WINSTAR COMMUNICATIONS, INC.
SUPPORTING AND OPPOSING PETITIONS FOR RECONSIDERATION**

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SUMMARY

WinStar Communications, Inc. ("WinStar") opposes the reconsideration petition of EEI/UTC which contends that wireless carriers such as WinStar fall outside of Section 224's reach. That claim flies in the face of Section 224's plain language which ensures just, reasonable, and nondiscriminatory rates for attachments to rights-of-way by "telecommunications carriers." As made clear in Sections 3(43)-(46), a provider of fixed wireless telecommunications services -- telephony, data, etc. -- is a telecommunications carrier. The Commission appropriately reached this same conclusion. Consequently, wireless carriers such as WinStar are entitled to the full panoply of rights granted by Section 224.

WinStar supports Teligent's contention that the Commission on reconsideration must confirm that rights-of-way under Section 224 contemplate access to building rooftops where a utility retains the right to use the building rooftop. Section 224 expressly states that the Commission shall "prescribe regulations" to carry out Section 224. At bottom, carrying out Section 224 obligates the Commission to define the types of rights-of-way governed by the statute.

In carrying out its statutory obligation, the Commission should find that a right-of-way under Section 224 can encompass access to building rooftops secured by utilities. The term "rights-of-way" is synonymous with the

term "easement" which includes rooftop access. Moreover, inclusion of rooftops in the definition of right-of-way will ensure that the relative bargaining positions of utilities and telecommunications carriers will be more balanced. It also will facilitate service to the public because carriers seeking rooftop access will not be required to engage in costly and time consuming negotiations with individual building owners. Thus, the Commission should define the term rights-of-way to include the full array of rights held by utilities, including rooftop access.

In addition, Teligent correctly notes that the Order fails to recognize the importance of rooftop access to wireless CLECs. As WinStar pointed out in its comments, wireless carriers typically cannot provide service to a building without obtaining access to the building's rooftop for antenna placement. Further, the Commission must recognize that utilities and their subsidiaries have deployed significant commercial and private communications systems of their own (including wireless systems), often using poles, ducts, and rights-of-way under utility control.

WinStar also supports Teligent's view that the Commission must promulgate rules governing charges for access to rights-of-way. In the absence of a rate methodology, the Commission should, at a minimum, (1) guarantee that telecommunications carriers pay no more than the actual cost to the utility in making its rights-of-way available and (2) clarify that the utility must charge

uniform rates, particularly when the utility is itself using its existing rights-of-way in support of its own telecommunications offerings.

Not only is a scheme of regulation governing charges for access to rights-of-way required by the statute, but it also represents sound public policy. The benefits of such a scheme include facilitating private negotiations between parties and decreasing the number of complaints to be resolved by the Commission. These benefits ultimately will result in the growth of competitive local service offerings and increased choices for consumers.

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**COMMENTS OF WINSTAR COMMUNICATIONS, INC.
SUPPORTING AND OPPOSING PETITIONS FOR RECONSIDERATION**

WinStar Communications, Inc. ("WinStar"), by its attorneys, hereby files its Comments Supporting and Opposing Petitions for Reconsideration of the above-captioned proceeding.¹ Specifically, WinStar supports the reconsideration petition of Teligent, Inc. and opposes the joint petition of Edison Electric Institute and UTC, the Telecommunications Association (jointly "EEI/UTC").

I. INTRODUCTION.

Section 224 requires that local exchange carriers ("LECs") and other utilities make available on nondiscriminatory and reasonable terms to telecommunications carriers all of their poles, ducts, conduits, and rights-of-

¹ 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").

way used for wire communications. In Section 224, Congress purposely removed these bottleneck facilities from incumbent LECs' and utilities' control in order to assist other telecommunications carriers -- especially competitive local exchange carriers ("CLECs") such as WinStar and Teligent -- with the construction and deployment of their communications networks and, more importantly, the provision of service to end users. In sum, Section 224 was crafted to ensure that telecommunications carriers have nondiscriminatory and fair access to LECs' and other utilities' customers.

The access provisions of Section 224 are essential for the realization of Congress' goal of competition in the local loop. Notably, wireless CLECs such as WinStar require access to rooftops, risers, and inside wiring in order to deliver their services to building tenants and residents. Using pizza-sized dishes placed on four-foot antenna poles, WinStar utilizes spectrum in the 38.6-40.0 GHz band to transmit large amounts of traffic from location to location. From the rooftop, the wireless traffic is transmitted through wireline (generally coaxial cable) to terminating equipment and channel banks located inside the building.

Unfortunately, WinStar's growth as a facilities-based competitor in the local exchange -- and the ability of end users to reap the benefits brought by such new competitors -- is being affected by an inability to regularly access rooftops on fair terms. As detailed in WinStar's filings in this proceeding and in CS Docket 95-184, many landlords and

building owners have been exercising their monopoly power when leasing rooftop space.² Without reasonable access to buildings (including, of course, rooftops), WinStar -- and other wireless carriers -- are precluded from offering competitively-priced services to building tenants and residents. Simply put, the inability to access buildings on reasonable terms significantly diminishes wireless CLECs' ability to compete with incumbent local exchange carriers ("ILECs").

II. WINSTAR SUPPORTS THE COMMISSION'S CONCLUSION THAT WIRELESS CARRIERS ARE ENTITLED TO THE BENEFITS AND PROTECTIONS OF SECTION 224.

In their joint comments, EEI/UTC "continue to dispute the application of pole attachment provisions to wireless attachments."³ WinStar opposes this claim as it is contrary to the plain language of Section 224. WinStar further notes that the Commission appropriately reached the same conclusion in this and other proceedings implementing the provisions of the Communications Act.⁴

² See WinStar Comments in CS Docket No. 95-184, *Telecommunications Services Inside Wiring*, at 7 (Dec. 23, 1997) ("WinStar Inside Wiring Comments").

³ EEI/UTC Petition at 13.

⁴ Order at ¶ 39; see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 96-98, CC Docket No. 95-185, *First Report and Order*, 11 FCC Rcd. 15499, 16085, at ¶ 1186 (1996) (Section 224 does not "describe the specific type of equipment that may be attached when access to utility facilities is mandated . . . establishing an exhaustive list is [not] advisable or even possible.") ("Local Competition Order").

The Order correctly states that the plain language of Section 224(e)(1) makes this section applicable to wireless carriers.⁵ In addition, the Order finds that the use of the word "any" in Sections 224(a)(4) and 224(d)(3) "precludes a position that the Congress intended to distinguish between wire and wireless attachments."⁶ Moreover, wireless carriers meet the definition of "telecommunications carrier" set forth in Section 3(44) because they provide "telecommunications services," defined as "the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used."⁷ Thus, the provisions of Section 224 apply equally to wire and wireless carriers. As a result, EEI/UTC's argument fails; wireless carriers are entitled to the benefits and protections of Section 224.⁸

⁵ The Commission noted that Section 224(e)(1) "plainly states" that the pole attachment provisions apply to "telecommunications carriers." Order at ¶ 39. In addition, the Commission noted that "[t]he use of the word 'any' in Section 3(44) precludes limiting telecommunications carriers to only wireline providers." Id. at ¶ 40.

⁶ Id. at ¶ 40.

⁷ 47 U.S.C. § 3(46).

⁸ See United States v. Ron Pair Enter., Inc., 489 U.S. 235, 242 (1989) ("The plain meaning of legislation should be conclusive, except in the 'rare case [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'") (quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)).

III. WINSTAR AGREES WITH TELIGENT THAT THE COMMISSION MUST CLARIFY THAT SECTION 224'S REFERENCE TO RIGHTS-OF-WAY ENCOMPASSES UTILITIES' RIGHTS TO ROOFTOP ACCESS.

Teligent's reconsideration petition correctly states that the Commission must make clear that rights-of-way covered by Section 224 include those private rights-of-way secured by utilities on building rooftops.⁹ Section 224(e)(1) requires that the Commission "prescribe regulations" by February 8, 1998 to govern the charges for pole attachments used by telecommunications carriers for the provision of telecommunications services. Section 224(e)(1) also requires that the Commission's regulations ensure that utilities charge just, reasonable, and nondiscriminatory rates for pole attachments. Section 224(a)(4) defines "pole attachment" to include rights-of-way. Thus, by its terms, Section 224 obligates the Commission to enact regulations governing rights-of-way. At a minimum, therefore, the Commission must define or set forth parameters demonstrating which rights-of-way are covered by Section 224. The Order, however, did not provide such clarity. As shown below, both law and public policy goals dictate that Section 224's reference to rights-of-way contemplates rooftop access.

A. The Commission Must Clarify That Rights-of-Way Contemplate Rooftop Access in Order to Facilitate Negotiations Between Utilities and Wireless CLECs.

Although the Commission has recognized that the provisions of Section 224 apply to bare rights-of-way, it

⁹ Teligent Petition at 2.

has not specifically defined this term.¹⁰ WinStar agrees with Teligent that the Commission must clarify that Section 224's reference to rights-of-way includes bare rights-of-way secured by utilities through and on top of buildings. As asserted by WinStar in its comments, the term "rights-of-way" must be defined broadly to include access to rooftops to ensure that utilities and wireless carriers are placed on equal footing in negotiating attachment agreements.¹¹

It is black-letter law that the term "right-of-way" is used to describe "a right belonging to a party to pass over land of another."¹² Under this definition, the term right-of-way is synonymous with "easement,"¹³ defined as a "right of use over the property of another."¹⁴ This definition has been adopted by numerous federal and state courts.¹⁵

¹⁰ The Commission has recognized that the provisions of Section 224 are applicable where a telecommunications carrier seeks to install facilities in rights-of-way but does not make a physical attachment to any pole, duct, or conduit. See Order at ¶ 117; see also Local Competition Order at ¶ 1162 ("[W]e note that Section 224(f)(1) mandates access not only to physical utility facilities (i.e., poles, ducts, and conduit), but also to the rights-of-way held by the utility.")

¹¹ See WinStar Comments at 3-4; WinStar Reply Comments at 4-6; see also Teligent Comments at 2-10.

¹² Blacks Law Dictionary 1326 (6th ed. 1990); see also 25 Am. Jur 2d, Easements and Licenses § 7 ("right-of-way" refers to a right to "pass over the land of another").

¹³ Blacks Law Dictionary 1326 (6th ed. 1990); see also 25 Am. Jur 2d, Easements and Licenses § 7 (a right-of-way is considered to be an easement).

¹⁴ Blacks Law Dictionary 509 (6th ed. 1990).

¹⁵ See, e.g., Board of County Supervisors v. United States, 48 F.3d 520, 527 (Fed. Cir. 1995) ("Rights-of-

Moreover, the term "land" may be used interchangeably with "property" and includes anything that may be classified as real estate or real property.¹⁶ As illustrated in WinStar's reply comments, it is not at all uncommon for easements to provide access to and through structures such as buildings.¹⁷ In light of this broad definition, Section 224's reference to rights-of-way must be interpreted to include all rights-of-way held by the utility, including the right to access rooftops or other structures.

Furthermore, a broad definition of rights-of-way will enable wireless carriers to more efficiently and rapidly provide competitive services to consumers. Fixed wireless

way' are another term for easements, which are possessory rights in someone else's fee simple estate"), cert. denied, 516 U.S. 812 (1995); The Wilderness Society v. Morton, 479 F.2d 842, 853-54 (D.C. Cir. 1973) (*en banc*) (right of way includes any "right of passage over another person's land" including revocable permits, revocable licenses, and easements) cert. denied, 411 U.S. 917 (1973); Ryan Mercantile Co. v. Great Northern Rwy. Co., 294 F.2d 629, 638 (9th Cir. 1961) ("The term 'right-of-way' is defined as meaning a right of passage over another person's land . . . this definition has been so universally incorporated into innumerable decisions that it may be said to be generally accepted."); City of Manhattan Beach v. Sup. Ct. of Los Angeles Co., 914 P.2d 160, 166 (Ca. 1996) (in the absence of a contrary intent to create a fee interest, conveyance of a right-of-way creates an easement); Nerbonne, N.V. v. Fla. Power Corp., 692 So.2d 928, 929 n.1 (Fla. App. 1997) (conveyance of a right of way is generally held to create an easement).

¹⁶ Blacks Law Dictionary 877 (6th ed. 1990).

¹⁷ See, e.g., Monaghan v. SZS 33 Assocs., 73 F.3d 1276, 1279 (2d Cir. 1996) (easement running through building, including through its stairways, lobby, and vestibule); Burka v. Aetna Life Ins. Co., 56 F.3d 1509, 1511 (D.C. Cir. 1995) (easement for parking in garage).

CLECs such as WinStar must gain access to rooftops in order to provide service to tenants within buildings. The Commission has recognized that utilities' control over rights-of-way creates a bottleneck that may stifle the growth of competitive telecommunications services.¹⁸ It also has recognized that utilities, like ILECs, have "scant, if any, economic incentive to reach agreement" with competitive telecommunications providers seeking pole attachments.¹⁹ Similarly, utilities have little incentive to reach agreements concerning access to rights-of-way. Thus, in the absence of a clear pronouncement by the Commission regarding rooftop access, utilities are likely to impose unreasonable rates, terms, and conditions in exchange for access to rooftop rights-of-way by wireless carriers. Hence, clarification by the Commission that Section 224 fully contemplates access to utilities' rights-of-way on rooftops is necessary to ensure that the relative bargaining positions of utilities and wireless CLECs will be less unbalanced.

B. The Commission Failed to Recognize the Importance of Rooftop Access to Wireless CLECs Seeking to Provide Service to Tenants of Buildings.

The Order asserts that "there have been few instances of attachment to a right-of-way that did not include attachment to a pole, duct or conduit."²⁰ WinStar concurs

¹⁸ Order at ¶¶ 3-4.

¹⁹ Id. at ¶ 21.

²⁰ Id. at ¶ 120.

with Teligent that the Commission has failed to recognize the importance of installations on rights-of-way that do not involve physical attachment to facilities, such as installations on rooftop rights-of-way.²¹ In its comments, WinStar stressed the importance of rooftop access to the provision of wireless local exchange services to tenants and residents of buildings.²² WinStar also asserted that some negotiations with building owners have proven to be both costly and inefficient.²³ Thus, there is ample evidence on the record that rooftop access through utilities' rights-of-way is essential to the provision of wireless local exchange services by competitive carriers such as WinStar.

²¹ Teligent Petition at 10.

²² Unlike traditional wireline carriers who attach distribution facilities to a utility's poles, wireless CLECs such as WinStar provide service using radio spectrum. To provide service to a tenant within a building, wireless CLECs must place antennas on building rooftops to transmit and receive wireless traffic. From the rooftop, a coaxial cable transmits the wireless traffic to terminating equipment and channel banks located inside the building. Hence, wireless CLECs depend on access to rooftops in order to deliver their services. See WinStar Comments at 2-3; see also Teligent Comments at 9-10.

²³ WinStar Comments at 2-3; WinStar Reply Comments at 9; see also WinStar Inside Wiring Comments at 7 ("building owners are treating access by CLECs . . . as a significant new revenue generating opportunity and thus presenting them with discriminatory rate treatment or outright rejection with respect to efforts to secure inside wiring access").

IV. WINSTAR AGREES WITH TELIGENT THAT THE COMMISSION SHOULD ESTABLISH GUIDELINES FOR REASONABLE RIGHTS-OF-WAY ACCESS TERMS AND RATES.

Teligent correctly asserts that the Commission must establish guidelines to be used in determining what constitutes just, reasonable, and nondiscriminatory rates for attachments to rights-of-way.²⁴ As an initial matter, the plain language of Section 224 requires the Commission to prescribe regulations governing charges for attachments to rights-of-way. Moreover, a scheme of regulation governing access to rights-of-way would facilitate private negotiation between parties and minimize the number of disputes to be resolved through the complaint process. As such, creation of a set of guidelines represents sound policy and should not be abandoned by the Commission in favor of case-by-case approach.²⁵

A. The Statutory Language of Section 224 Requires the Commission to Promulgate Rules Governing Charges for Access to Utilities' Rights-of-Way.

WinStar agrees with Teligent that Section 224 obligates the Commission to prescribe rules governing charges for access to utilities' rights-of-way.²⁶ Although the Commission promulgated regulations governing the charges for

²⁴ See Teligent Petition at 7.

²⁵ As asserted in its comments and reply comments, WinStar also supports the development of a rate methodology to govern charges for access to rights-of-way. See WinStar Comments at 11-15; WinStar Reply Comments at 6-13.

²⁶ See Teligent Petition at 2-3.

attachment to poles and conduits,²⁷ it declined to do so with respect to rights-of-way, stating that "there are too many different types of rights-of-way . . . to develop a methodology that would assist a utility and potential attached in their efforts to arrive at just and reasonable compensation for the attachment."²⁸ The Commission elected instead to resolve disputes through "case-by-case adjudication."²⁹ Because the language of Section 224 is mandatory and requires the Commission to implement its provisions by rulemaking, not case-by-case adjudication, this explanation is legally insufficient.

The language of Section 224 imposes upon the Commission an affirmative obligation to regulate the charges for access to utilities' rights-of-way.³⁰ Specifically, Section 224(e)(1) states that the Commission "shall . . . prescribe regulations . . . to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services."³¹ In addition, "[s]uch regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole

²⁷ See Order at ¶¶ 44, 103.

²⁸ Id. at ¶ 120.

²⁹ Id. at ¶ 121.

³⁰ See Teligent Petition at 3.

³¹ As discussed above, Section 224(a)(4) defines "pole attachment" to include rights-of-way.

attachments."³² The mandatory language of Section 224 imposes an affirmative obligation on the Commission to implement its provisions, including the provisions relating to rates for attachments to rights-of-way.³³

WinStar also agrees with Teligent that the statute prescribes the manner in which the Commission must fulfill its obligations under Section 224(e).³⁴ Section 224 states that the Commission "shall . . . prescribe regulations" governing charges for attachments to rights-of-way.³⁵ This language is clear: the Commission must establish, by rulemaking, rules governing charges for access to rights-of-way.³⁶

³² 47 U.S.C. § 224(e)(1). In addition, Section 224(b)(1) states that the Commission "shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable." Section 224(b)(2) states that the Commission "shall prescribe by rule regulations to carry out the provisions of this section."

³³ Generally, "the form of the verb used in a statute, i.e., something 'may,' 'shall' or 'must' be done, is the single most important textual consideration determining whether a statute is mandatory or directory." Sutherland Stat. Constr. § 57.03 (5th ed. 1992). Use of the word "shall" is construed as an imperative instruction. See, e.g., Bennet v. Spear, 117 S. Ct. 1154, 1167 (1997).

³⁴ See Teligent Petition at 4.

³⁵ 47 U.S.C. § 224(e)(1).

³⁶ See supra note 10 ("The plain meaning of legislation should be conclusive" except in rare cases.).

B. The Commission Should Adopt a Set of Guiding Principles to Facilitate Negotiations for Attachments to Utilities' Rights-of-Way.

Teligent correctly states that in the absence of a rate methodology, the Commission should, at a minimum, establish a set of guiding principles for parties negotiating agreements for attachments to rights-of-way.³⁷ In the Order, the Commission refrained from adopting "additional 'guiding principles' or presumptions" in favor of a "case-by-case" approach to rights-of-way issues.³⁸ WinStar previously has explained in its comments why that approach is insufficient.³⁹

The Commission should clarify that a "just and reasonable" rate for attachments to rights-of-way includes only the incremental costs to the utility caused by the telecommunications carrier's use of the right-of-way. The Commission should also clarify that such rates may be no more than what the utility pays for use of the right-of-way. Because utilities often obtain their rights-of-way for free, it should be presumed that utilities already have recovered the capital costs associated with the right-of-way. Thus, rates would be limited to those out-of-pocket expenses

³⁷ See Teligent Petition at 7.

³⁸ Order at ¶ 121.

³⁹ See WinStar Comments at 11-13; WinStar Reply Comments at 8-13; see also Teligent Comments at 10-11; Teligent Reply Comments at 2-5.

actually incurred by the utility in making its rights-of-way available, such as clerical costs for recordkeeping.

In order to ensure that utility rights-of-way are made available to telecommunications carriers on a nondiscriminatory basis, the Commission should clarify that a utility must charge telecommunications carriers uniform rates. Where utilities are using their existing assets, including rights-of-way, in support of their own telecommunications offerings, attachments must be offered on equivalent terms to independent telecommunications carriers.⁴⁰ As noted by the Commission, "a utility that is itself engaged in video programming and telecommunications services has the ability and the incentive to use its control over distribution facilities to its own competitive

⁴⁰ The Commission also should bear in mind that many utilities are using their existing poles, ducts, conduits, and rights-of-way in direct support of their own commercial wireless telecommunications offerings. For example, Southern Company, an electric public utility holding company, operates a commercial Specialized Mobile Radio (SMR) system across its 120,000 square mile service territory through a subsidiary, Southern Communications Services. Southern Company recently requested an extension of its implementation period. See Southern Company, Request for Waiver of 47 C.F.R. § 90.629 Construction and Operation Requirements for 800 MHz Business and Industrial/Land Transportation Channels at Various Transmitter Sites (filed Feb. 20, 1998). Another example of a utility's wireless interest is Texas Utilities' ("TU") 20% share in PrimeCo Personal Communications. As stated on TU's web site, "PrimeCo succeeded, in part, because it was able to locate many of its antenna structures on TU Electric transmission towers and in substation yards." Texas Utilities, "The Shape of Energy: New Business" (visited May 5, 1998) <<http://www.tu.com/investor/96tuannual/newbus.html>>.

advantage."⁴¹ Hence, the Commission must provide additional guidance as to what constitutes "nondiscriminatory access" in situations in which the utility is itself providing telecommunications services.

C. Development of a Set of Guidelines Governing Charges for Access to Rights-of-Way Also Represents Sound Public Policy.

Sound policy goals also support the creation of a set of guidelines to govern charges for access to rights-of-way. Without the "backdrop" of a scheme of rate regulation, incumbent utilities will be less likely to engage in good faith negotiations.⁴² Accordingly, a set of guiding principles should be adopted in order to inform parties as to reasonable negotiation parameters. Efficient and speedy private negotiation for attachments to rights-of-way will lead, in turn, to increased service offerings by competitive carriers.⁴³ Moreover, due to the significant demand for rights-of-way by wireless carriers such as WinStar,⁴⁴

⁴¹ Local Competition Order at ¶ 1150.

⁴² Order at ¶ 9; see also id. ¶ 12 ("An ILEC is likely to have scant, if any, economic incentive to reach agreement [for interconnection under Section 251]. In the Local Competition Order, the Commission determined that a utility stood in a position vis-a-vis the competitive telecommunications provider seeking pole attachment agreements that was virtually indistinguishable from that of the ILEC.")

⁴³ See id. at ¶ 17 ("Prolonged negotiations can deter competition because they can force a new entrant to chose between unfavorable and inefficient terms on the one hand or delayed entry and, thus, a weaker position in the market on the other.")

⁴⁴ As discussed above, wireless CLECs such as WinStar need rooftop access in order to roll out their networks.

disputes over rates are likely to be frequent. For the reasons discussed above, development of a set of guidelines would decrease the number of complaints for Commission consideration.

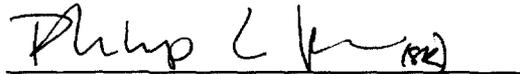
V. **CONCLUSION.**

WinStar respectfully urges the Commission to take the actions outlined herein.

Respectfully submitted,

WINSTAR COMMUNICATIONS, INC.

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May 12, 1998

CERTIFICATE OF SERVICE

I, Sophie J. Keefer, do hereby certify that on this 12th day of May, 1998, copies of the foregoing "Comments of WinStar Communications, Inc. Supporting and Opposing Petitions for Reconsideration" were delivered by hand to the following parties:

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