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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

**COMMENTS OF AMERITECH CORPORATION
ON PETITIONS FOR RECONSIDERATION**

Ameritech Corporation respectfully submits the following comments to the
Petitions for Reconsideration filed by various parties in the above captioned docket.

**I. The Commission Should Permit Flexibility in Determining the Presumptive
Average Number of Attaching Parties.**

Ameritech supports the requests made by SBC¹ and USTA² that the determination
of the average number of attaching parties by the utility be permissive and that the utility
be given flexibility in determining the areas in which different presumptions should apply.
SBC amply demonstrates the difficulty of applying the Commission's chosen method -
determination of different averages for rural, urban and urbanizing areas as defined by the
United States Census Bureau. There is scant evidence that pole attachment patterns
follow the boundaries created by those categories.

¹ SBC Communications Petition for Reconsideration and Clarification of SBC Communications, Inc., pp. 10-16.

² United States Telephone Association, Petition for Reconsideration, pp. 10-11.

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Pursuant to Paragraph 78 of the Commission's Report and Order in this docket, a utility must make the information and methodology it uses to determine a presumptive average available to an attaching party. The utility's determination is subject to the complaint of the attaching party. These two protections should be adequate to preserve the interests of attaching parties without imposing the additional burden on a utility that is use a method of determination that may not comport with actual experience.

Ameritech opposes the request of EEI/UTC³ that the Commission permit the up front recovery of the cost of determining the presumption from an attaching party. As EEI/UTC notes, the costs of determining the presumption, at least under the Commission's methodology, is likely to be substantial. Collecting this cost directly from an attaching party, rather than internalizing it in pole administrative costs, is likely to unduly impact the first new party requesting an attachment after the effective date of these rules and is not likely to spread the costs fairly among all attaching parties. Concern about recovery of these costs may be ameliorated if utilities are granted the option of determining such averages and flexibility in the methodology to do so.

II. Incumbent Local Exchange Carriers and Cable Television Systems Should Not be Counted as Attaching Parties; Governmental Entities Should Only if they Pay for Attachments.

Ameritech supports the requests of EEI/UTC⁴ and SBC⁵ that incumbent local exchange carriers not be counted as attaching entities for purposes of Sec. 224(e)(2).

³ The Edison Electric Institute and UTC, the Telecommunications Association, Joint Petition for Clarification and/or Reconsideration, pp. 22-23.

⁴ EEI/UTC, pp. 18 and 19

⁵ SBC, pp. 8-10

Under Sec. 224(e)(2) the ILEC as the pole owner bears one-third of the cost of the unusable space on the pole, so in the interest of competitive fairness it ought not be counted as an attaching entity and thereby further reduce its recovery of the remaining two-thirds of the costs of the unusable space.

Similarly, as argued by EEI/UTC⁶, cable television systems qualifying for rate treatment under Sec. 224(d) also should not be counted as attaching entities. Cable television systems qualifying for rates under Sec. 224(d) do not share any of the costs of the unusable space on the pole. Besides the legal arguments made by EEI/UTC, fairness dictates that a utility's ability to recover those costs from other attaching entities not be further reduced by counting the cable system as an attaching entity. This requires the utility to shoulder an additional share of the costs of unusable space rather than spread the burden equally among all parties who must contribute to the cost of the unusable space.

Ameritech also supports SBC's⁷ request for clarification on when a governmental entity with attachments may be excluded from the count. When government use is mandated by local law and not paid for, the government's use is a burden necessary to maintain the pole which benefits all attaching parties⁸. Counting the governmental entity as an attaching entity diminishes the amount the utility can recover from other attaching parties to make space available for government use. The Commission states⁹ that there is

⁶ EEI/UTC, pp. 16-18

⁷ SBC, p. 10

⁸ It is appropriate to count governmental entities with cable television or telecommunications attachments who pay for the attachments as attaching entities for purposes of Sec. 224(e)(2). Such entities would be assessed their portion of the cost of the unusable portion of the pole under Sec. 224(e).

⁹ Report and Order, Par 54

a benefit to the pole owner for providing attachments to government entities that justifies counting the governmental entity as an attaching entity. When such attachments are required by the governmental entity without reimbursement, the only benefit to the pole owner is the ability to maintain the pole in the public right-of-way and so is a benefit that inures equally to all other attaching parties, not uniquely or differently to the pole owner. In the interests of competitive fairness, these costs should be shared equally to the extent possible. To better achieve this goal, governmental entities should not be counted under these circumstances.

III. The Commission Should Clarify its Order Regarding Overlapping.

Ameritech supports the clarification requested by SBC¹⁰ that the rate charged to a cable television system which permits overlapping by a third party telecommunications carrier should be the Sec. 224(e) rate. Given that the two attachments are considered as one for purposes of payment of the attachment rate to the utility, it is only fair that the combined attachments be subject to the higher rate. Otherwise, the rate paid would be a function of who attached to the pole first, which would invite gaming to achieve a lower cost for telecommunications attachments overlapped to a cable television system attachment.

Ameritech also endorses US West's¹¹ requested clarifications on third party overlapping. It is particularly important that the Commission clarify that no third party overlapper can proceed without notice to the pole owner. The pole owner provides the management function which insures that the pole is used safely and not overloaded. If a

¹⁰ SBC, pp. 7-8.

stouter or taller pole is necessary as a result of the overlashed facility, only the pole owner is in a position to insure that a pole adequate to the loadings to which it is subjected is placed, and the cost of the modification properly obtained from the attaching party causing the modification. The Commission should not ignore the potential danger to other pole owners, other attaching parties and the general public that can be caused by attachments exceeding the pole's capacity or installed contrary to good engineering practices.

IV. The Commission Should Classify Services for Purposes of Section 224 Only.

Several parties have sought reconsideration of the Commission's decision to charge cable operators providing commingled Internet and cable television services the Sec. 224(d) rate.¹² As a result of the different pole attachment rates charged to a cable television system solely to provide cable services under Sec. 224(d) and to telecommunications carriers to provide telecommunications services under Sec. 224(e), these parties question the proper classification of "non-traditional" services, such as cable modem services, Internet access and the like and seek to apply the higher, Sec. 224(e) rate to such services when provided over a cable television system.

While Ameritech argued in its comments filed earlier in this proceeding that, in the interest of competitive neutrality, a cable television system offering these non-traditional services should be subject to the Sec. 224(e) rate for the purposes of application of Sec. 224, we expressed the view that any such determination should not be dispositive of the classification of such services for any other purpose under the Communication Act.¹³ The

¹¹ US West, Petition for Clarification, pp. 2-4

¹² Bell Atlantic, Petition for Clarification or for Reconsideration; USTA, pp. 2-8; SBC, pp. 3-7

¹³ Ameritech, Initial Comments, filed September 26, 1997, at pp. 4-5.

Commission in its Report and Order recognized that this docket is not the place to consider the broader implications of such classifications.¹⁴ Ameritech concurs in that decision.

Thus, to the extent the Commission reconsiders the pole attachment rate for cable television systems providing these non-traditional services, Ameritech continues to urge the Commission to restrict any result it may reach in the classification of these services to the application of Sec. 224 only. Consideration of the classification of these services for all other purposes under the Communications Act should be reserved for a later docket in which the Commission can fully review and take into account the broad impact of such a determination.

In any event, the Commission ought be careful not to create any classification wherein the attachments of either cable television systems or telecommunications carriers that carry services that do not fall precisely into the definition of cable television services or telecommunications services are not subject to a regulated pole attachment rate. If any

¹⁴ Report and Order, Pars. 33 and 34

such services were excluded from the regulated rates, utilities owning or controlling poles, ducts, conduits or rights-of-way could seek unregulated monopoly rents for use of such structure to provide those services. The rates are likely to be high enough to effectively deter the deployment of these advanced services.

Respectfully submitted,

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May 12, 1998

CERTIFICATE OF SERVICE

I, Janis L Griffin, do hereby certify that a copy of the foregoing Comments of Ameritech Corporation on Petitions For Reconsideration has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 12th day of May, 1998.

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