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

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

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA),¹ through the undersigned, hereby replies to the oppositions to its Petition for Reconsideration that were filed by the National Cable Television Association, the Joint Cable Parties, Time Warner Cable and Adelphia Communications Corporation and Lenfest Communications, Inc. (hereafter "Cable Filers").² The Cable Filers oppose USTA's request that the Commission "reconsider its unqualified conclusion in the Report and Order³ that the subsection 224(d)(3) 'cable only' pole attachment rate is to be

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA currently represents more than 1200 small, mid-size and large companies worldwide.

² Each of these parties filed in this proceeding on May 12, 1998.

³ Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments, Report and Order, CS Docket No. 97-151, FCC 98-20 (rel. Feb. 6, 1998) (Report and Order).

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applied for commingled cable and Internet Services.”⁴ The Cable Filers have presented neither arguments nor facts that seriously challenge USTA’s stated position that cable attachers should pay the subsection 224(e)⁵ rate if they provide Internet service over the attaching facilities which, in whole or in part, is a telecommunications service. It is indisputable that the subsection 224(e) rate applies instead of the subsection 224(d)(3)⁶ rate when a telecommunications service is provided over the attaching facilities of a cable company.

DISCUSSION

The Cable Filers attempt to rebut the point made by USTA by arguing that Internet service is not a telecommunications service, and it would, therefore, be inappropriate to charge the subsection 224(e) rate to attaching cable companies that provide Internet service.⁷ They miss the point and, to a certain extent, attempt to deny certain realities.

USTA’s point concerning Internet service as stated in its PFR can be summarized as follows: “The Commission’s unqualified conclusion that Internet service is not a

⁴ USTA Petition for Reconsideration (PFR) at pp. 7 and 8.

⁵ 47 U.S.C. § 224(e).

⁶ 47 U.S.C. § 224(d)(3).

⁷ NCTA Opposition at pp. 8 and 9, Joint Cable Parties Joint Opposition at pp. 15-19, Time Warner Cable Opposition at pp. 4-6 and Adelphia Communications Corporation and Lenfest Communications, Inc., Joint Opposition at pp. 2-6.

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telecommunications service is wrong as a matter of fact and law.”⁸ “The Commission can no longer simply lump Internet service in with information services and ignore the reality that Internet service can comprise multiple services -- some of which are information services and some of which are telecommunications services.”⁹ “With respect to pole attachments, this means that cable television systems should not automatically be charged the subsection 224(d)(3) ‘cable only’ rate when they secure pole attachments for facilities on which cable and Internet services are commingled.”¹⁰ “In light of today’s realities concerning the uses of the Internet and the ongoing evaluation by the Commission of the proper classification to be given to Internet service, the Commission should reconsider its unqualified conclusion in the Report and Order that the subsection 224(d)(3) ‘cable only’ pole attachment rate is to be applied for commingled cable and Internet services.”¹¹ USTA did not argue that the Commission has made a final determination on the status of Internet service or the severable elements of Internet service that are functionally equivalent to telecommunications services. Rather, USTA’s point was that the Commission having acknowledged that it needs to evaluate the matter of the proper regulatory characterization of Internet service, it was inappropriate for the Commission to conclude in the Report and Order that facilities carrying commingled cable and Internet services should absolutely be assessed the subsection 224(d)(3) “cable only” pole attachment rate. Pole owners have the right to determine

⁸ USTA PFR at p. 3.

⁹ *Id.* at pp. 4 and 5.

¹⁰ *Id.* at p. 6.

¹¹ *Id.* at pp. 7 and 8.

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in any particular instance whether an attaching cable company's Internet service is, in whole or in part, a telecommunications service.

At paragraph 67 of the Commission's April 10, 1998, Report to Congress, it stated that [t]he provision of leased lines to Internet service providers, however, constitutes the provision of interstate telecommunications."¹² Further, the Commission also stated that "[i]n upcoming proceedings with the more focused records, we undoubtedly will be addressing the regulatory status of various specific forms of IP telephony, including the regulatory requirements to which phone-to-phone providers may be subject if we were to conclude that they are 'telecommunications carriers'."¹³ Since the subsection 224(e) rate does not take effect until February 8, 2001, and the subsection 224(d)(3) rate applies to both cable only and telecommunications attachments until then, there is no compelling reason for the Commission to rule that Internet service is not the provision of a telecommunications service for purposes of pole attachments. Rather, as suggested by USTA, the Commission should reconsider its decision concerning the treatment of facilities carrying commingled cable and Internet services. It should,

¹² Report to Congress, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 98-67 (rel. Apr. 10, 1998), at ¶ 67.

¹³ Id. at ¶ 91.

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instead, find that to the extent that the Internet services are, in whole or in part,
telecommunications services, the subsection 224(e) rate is the applicable pole attachment rate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Donna Young, do certify that on May 28, 1998, copies of the accompanying Reply to Oppositions to Petition for Reconsideration of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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