

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Promotion of Competitive Networks )  
In Local Telecommunications Markets )  
)  
Wireless Communications Association )  
International, Inc. Petition for Rulemaking to )  
Amend Section 1.4000 of the Commission's Rules )  
To Preempt Restrictions on Subscriber Premises )  
Reception or Transmission Antennas Designed )  
To Provide Fixed Wireless Services )  
)  
  
Cellular Telecommunications Industry )  
Association Petition for Rule Making and )  
Amendment of the Commission's Rules )  
To Preempt State and Local Imposition of )  
Discriminatory And/Or Excessive Taxes )  
And Assessments )  
)  
  
Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
Of 1996 )

WT Docket No. 99-217

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CC Docket5 No. 96-98

COMMENTS OF KANSAS CITY POWER & LIGHT COMPANY

**Summary**

Kansas City Power & Light Company ("KCPL") submits its comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry in the above-captioned matter. KCPL has reviewed and concurs with the comments submitted jointly herein by the United Telecom Council ("UTC") and the Edison Electric Institute ("EEI"). In addition, KCPL asserts that (1) Section 224 does not confer a general right of access to utility property by telecommunications carries and cable television systems, (2) easements granted by private property owners are limited to rights set forth in the conveyance and (3) the use of in-building conduit or riser owned

or controlled by KCPL is controlled by rights set forth in the easement or license granted by the building owner. KCPL cannot unilaterally expand the use of an easement or license beyond the rights specifically granted to it by the property owner. If the FCC requires the enlargement of such rights by rule or regulation, issues regarding the taking of property without just compensation will come into play.

### **Introduction**

KCPL is an electric utility which provides electric service to approximately 450,000 retail customers in a 4700 square mile service territory in Kansas City, Missouri and surrounding areas consisting of twenty-three counties and numerous other incorporated communities in both Missouri and Kansas. In addition, KCPL sells electric energy and capacity to wholesale customers in both states. The Company is regulated as to its electric service by the Missouri Public Service Commission, the Kansas State Corporation Commission and the Federal Energy Regulatory Commission. Pursuant to Section 224, KCPL is obligated to provide cable television companies and telecommunications carriers access to poles, conduit and rights-of-way, which it owns or controls.

#### **1. Section 224 Does Not Confer A General Right of Access to Utility Property**

KCPL agrees with the FCC's observation that the purpose of legislation regarding pole attachments was to permit cable operators and telecommunications carriers to "piggyback" along the distribution networks owned or controlled by utilities. Electric and telephone utilities have jointly used poles for years. This prevented the expense and congestion caused by redundant facilities. The use of utility poles by cable television operators and telecommunications carriers is grounded in this same practicality and/or necessity. The same "path" can be used for services such as electric, telephone and cable television.

This practicality and/or necessity is not apparent when you consider the issue of general access to all property owned by a utility. What distinguishes the roof of an office building owned by a utility from the roof of the office buildings adjacent to that building owned by a bank or an insurance company? There is nothing about the roof of a building owned or leased by a utility, which cannot be duplicated on a building next to it. The same cannot necessarily be said of poles, ducts, conduits or right-of-way.

Not only is the rationale for general access missing, so is the language in the statute. A fair reading of Section 224 and the rules and regulations implementing it suggests that general access to utility property was not contemplated. The FCC should not change its conclusion on this issue.

## **2. KCPL's Right to Use Property is Limited To the Rights Granted in the Easement Conveyance**

Under both Missouri and Kansas law, an easement is a right to use another's land for a particular purpose. That particular purpose is set forth in the easement conveyance. KCPL has no right to permit the use of an easement, which exceeds the use granted by the property owner.

Upon request, KCPL makes its right-of-way and/or easement records available for review by cable television and telecommunications carriers. If the use of the right-of-way exceeds the rights granted to KCPL, the cable television operator or telecommunications carrier is responsible for obtaining the additional rights needed.

It is KCPL's belief that it has no authority under state law to acquire right-of-way on behalf of a cable television system or telecommunications carrier. The Missouri and Kansas statutes granting KCPL the right of eminent domain limit the use of such right to acquire interests in property, which relate to KCPL's business as an electric public utility. KCPL has no right under state law to acquire easements for use in cable television or telecommunications

systems. Even though Section 224 may permit a cable television operator or telecommunications carrier to use right-of-way owned or controlled by KCPL, state law may permit a claim by the property owner for use of that right-of-way which exceeds the rights granted to KCPL.

**3. KCPL's Right to Use In-Building Conduit or Riser  
Owner or Controlled by KCPL Is Limited to the  
Rights Granted in the Easement Conveyance or License**

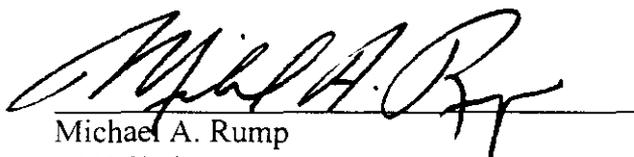
As discussed above, KCPL's right to use in-building conduit or riser is limited to the rights granted to KCPL by the building owner. KCPL cannot unilaterally enlarge or expand those rights to permit the use of the conduit or riser by a cable television system or telecommunications carrier. The cable television operator or telecommunications carrier would be responsible for resolving access issues with the building owner. For the record, KCPL's ownership or control of in-building conduit or riser is limited.

**Conclusion**

Wherefore, KCPL requests the FCC to consider the views expressed herein.

Respectfully submitted,

Kansas City Power & Light Company



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August 27, 1999