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

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	RM-11293
Policies Governing Pole Attachments	)	RM-11303
	)	
	)	

Comments of Frontier Communications

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I. Introduction and Summary

Frontier Communications ("Frontier")[1] hereby submits its comments in the above captioned matter pursuant to the Commission's November 20, 2007 Notice of Proposed Rulemaking ("NPRM").[2] In summary, Frontier submits the Commission's should take jurisdiction[3] over pole attachment rates charged by utilities to Incumbent Local Exchange Carriers ("ILECs") and that all telecommunications attachers, including ILECs, Competitive Local Exchange Carriers ("CLECs") and cable television providers should pay the same rates for pole attachments that provide telecommunications services, including but not limited to local exchange, interexchange and broadband Internet access services.

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[1] Frontier is a mid-size carrier with incumbent local exchange carrier (ILEC) operations in 24 states under the common ownership of Citizens Communications Company. As an ILEC, Frontier operates in one of the most competitive (both residential and business) urban markets in the country (Rochester, NY), but the balance of its ILEC operations are located in several small, high cost rural markets throughout the United States.

[2] Notice of Proposed Rulemaking, WC Docket No. 07-245, RM-11293 and RM-11303, FCC 07-187 (Nov. 20, 2007).

[3] Frontier recognizes that states have the right to "reverse preemption" of pole attachment rates, terms and conditions pursuant to 47 U.S.C. §224(c).

II. Both the Public Interest and the Telecommunications Act Require the Commission to Take Jurisdiction Over Pole Attachment Rates Charged to ILECs.

There is no policy reason for ILECs, as opposed to CLECs and cable television providers, to be left to the mercy of pole owners when they need to attach telecommunications facilities to utility poles. Frontier's experience in multiple states is that where Frontier does not jointly own poles with electric utilities and needs to attach to an electric utility pole, Frontier pays significantly higher pole attachment rates than do CLECs and cable television providers, including cable television providers that use their facilities to compete directly with Frontier in the provision of switched dial tone voice and broadband Internet access services. Frontier has also found that some electric utilities increase their ILEC pole attachment rates with greater frequency than they increase the rates to other telecommunications service providers, and that the increases are well above the level of inflation. In fact, what is happening is that a number of electric utilities are treating ILECs as captive customers from which they can extract a rich revenue stream. This is an example of classic monopolistic behavior that ultimately damages consumers by slowing the expansion and increasing the costs of new and improved services.

This situation is contrary to the public interest. Although an ILEC could, with the approval of governmental right-of-way owners and with appropriate private easements, construct a duplicate pole line alongside an electric company's pole line, such construction would be uneconomical as well as extremely unsightly. Similarly, although an ILEC could, with right-of-way permits and easements, place its facilities underground, once again this construction would be uneconomical and possibly disruptive to traffic, damaging to roadways and troublesome to landowners. CLECs and cable television providers also have the same options of constructing their own pole lines or underground facilities, but it has been the judgment of Congress and the Commission that they should be permitted to attach to existing

pole lines with reasonable rates, terms and conditions. The same public policy considerations require reasonable rates, terms and conditions for ILECs.

It is in the public interest for ILECs to use existing electric company poles where it is economical and technically feasible to do so. It is also in the public interest for ILECs to provide improved services, greater capacity and increased geographic reach where it is economical to do so. It becomes less economical for ILECs to expand their services, including broadband services, if they are charged unreasonably high pole attachment rates, particularly where the ILECs' direct competitors are paying lower attachment rates for the same kinds of facilities that ILECs attach, and are using those facilities to provide the same kinds of telecommunications services that ILECs offer. It is therefore manifestly contrary to the public interest to allow pole owners to charge ILECs discriminatory and uneconomic rates for pole attachments.

This situation is not required by statute. Although ILECs are excluded from the definition of "telecommunications carrier" for purposes of section 224 of the Act,[4] the term "telecommunications carrier" is not referenced in the requirement in section 224(b)(1) for the Commission to regulate pole attachment rates, terms and conditions to provide that the rates, terms and conditions are just and reasonable. Instead, section 224(b)(1) uses the defined term "pole attachments", which is defined in section 224(a)(4) to include any attachment by a "provider of telecommunications service." Although ILECs are not "telecommunications carriers" for purposes of this section of the statute, it is inarguable that ILECs are "providers of telecommunications service." It follows that ILEC attachments are entitled to the protections of section 224(b)(1).

Indeed, Congress has denied the protections of sections 224(e) and 224(f) to ILECs by specific use of the term "telecommunications carrier", but it cannot be inferred that this denial extends to section 224(b)(1). If Congress had intended ILECs to be left totally out in the cold, it

[4] 47 U.S.C. §224(a)(5).

would have said that none of the provisions of section 224 apply to ILECs, or that the protections of section 224(b)(1) are only available to a "telecommunications carrier." Congress did neither of these things, but instead specifically defined "pole attachment" to include the attachments of any "provider of telecommunications service" and used that defined term in section 224(b)(1). It follows that the Commission not only has jurisdiction, but it also has a mandate to regulate utility pole attachment rates that are charged to ILECs, and to require those rates to be just and reasonable.

III. All Pole Attachments Used to Provide Telecommunications Services Should Be Subject to the Same Rates.

If the Commission allows some attachers to pay lower rates than other attachers for attachments that provide the same or similar services to consumers, the Commission will be creating unreasonable discrimination and uneconomic distortion of the competitive marketplace. Cable television providers are now using their attachments to provide switched voice dial tone, long distance and broadband Internet access services that are directly competitive with the same services provided by ILECs and CLECs. Although cable television providers no doubt prefer that if there is to be a unified rate, it would be the lower cable television rate, such a position is not sustainable. As noted in the NPRM, the cable rate does not include an allocation of the cost of unusable space.[5] Such an omission would violate the cost apportionment requirements of section 224(e)(2). The appropriate policy is that all entities providing telecommunications services, including but not limited to local exchange, interexchange and broadband Internet access services, should pay for pole attachments at a just and reasonable rate established for all providers of telecommunications services.

[5] NPRM, ¶22.

Accordingly, the Commission should assert jurisdiction over pole attachment rates charged to ILECs, and should require a single pole attachment rate for all providers of telecommunications services.

Respectfully Submitted,

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Date: March 7, 2008

CERTIFICATE OF SERVICE

I, Gregg C. Sayre, do certify that on March 7, 2008, the aforementioned ***Comments of Frontier Communications*** were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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