

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

**COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.**

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Qwest Communications International Inc. (Qwest) submits these comments with respect to the Federal Communications Commission’s (Commission) *Order and Further Notice of Proposed Rulemaking* in the above-captioned proceedings.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

In the National Broadband Plan (NBP), the Commission acknowledged that wired networks rely on attachment to poles to deploy broadband and that “[s]ecuring rights to this infrastructure is often a difficult and time-consuming process that discourages private investment.”<sup>2</sup> As a consequence, the Commission properly acknowledged that “Federal, state and local governments should . . . take steps to improve utilization of existing infrastructure to ensure that network providers have easier access to poles, conduits, ducts and rights-of-way.”<sup>3</sup> The recommendations contained in the NBP at issue in this *Notice* include establishing low and uniform rental rates for pole attachments and the make-ready process, establishing a timeline for

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<sup>1</sup> *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, FCC 10-84, rel. May 20, 2010 (*Notice*).

<sup>2</sup> NBP Chapter 6.

<sup>3</sup> *Id.*

the Section 224 access process, reforming the dispute resolution process and improving the collection and availability of information regarding poles.<sup>4</sup> Qwest generally agrees that appropriate changes to the Commission's rules in this area can help facilitate the deployment of broadband services.

Qwest is both a significant pole owner and attacher. Currently, Qwest owns or jointly owns approximately 970,000 poles and attaches to over 1,400,000 poles that it does not own. Over 500 entities, including competitive local exchange carriers and cable providers attach to nearly 700,000 Qwest-owned poles. Qwest has been providing access to its poles for years and, as both an attacher and an owner, Qwest has been successful in negotiating contracts and addressing any poles related issues on a contractual and commercial basis as best it can under the existing regulatory framework.

Qwest is, however, at a significant competitive disadvantage because the Commission's pole attachment rules (47 C.F.R. §§ 1.1401-1.1418) currently do not apply to pole attachments sought or obtained by incumbent local exchange carriers ("ILECs"). Unlike other providers of broadband services, ILECs have no recourse for disputes arising from individual contract negotiations, including independent rate negotiations. This situation is not consistent with Sections 224(b)(1) and 224(a)(4), which provide that all pole attachments, including those sought by ILECs, must be provisioned at rates, terms and conditions that are just and reasonable. Clarifying the application of these provisions to ILECs would reduce ILECs' cost of broadband deployment, particularly in rural, unserved areas where long loops increase the importance of reasonable rates, terms and conditions for pole attachments. Given that ILECs are often the

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<sup>4</sup> *Id.*, Chapter 6, Sections 6.1, 6.2, 6.3, and 6.4.

predominant, if not sole, provider of broadband services in many rural areas, it is critical that any changes in the Commission's rules apply to ILECs, as well as other pole attachers.<sup>5</sup>

Qwest generally supports the Commission's proposal to establish timelines for different stages of the make-ready work process, which would commence once a signed agreement is in place between the pole owner and the prospective attacher. It is important, however, that the Commission include sufficient flexibility in these timelines to address situations such as where there are multiple attachers, errors in attachers' applications and other factors, some of which are beyond the pole owner's control. Further, any action taken by the Commission must balance its goals of expediency with safety, liability concerns and potential risks to existing facilities and attachers.

In particular, the proposed 45-day performance window in Stage 4 – Performance, should not apply in all circumstances because every project is different and legitimate reasons, such as operational or logistical challenges or the need to respond to factors outside the control of a pole owner may require a longer period of time before the make-ready work can be completed. Further, the proposed 30-day timeline for multiparty coordination under Stage 5 is not workable because attachers move their facilities in seriatim (*i.e.*, the highest attacher moves first, then the next attacher and so on). Alternatively, the Commission should adopt the timeline advocated by Qwest whereby each attacher has 30 days to move its facilities.

The Commission also should not adopt its proposal to designate a managing utility for jointly-owned poles, which could actually lengthen the make-ready work process and impose undue costs and responsibility on the managing utility. Likewise, because wireless attachments

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<sup>5</sup> Just as important, the Commission should strive for congressional action to address pole owners not covered at all by Section 224, such as municipalities, *see* 47 U.S.C. § 224(a)(1), who often have much higher rates for pole attachments than other pole owners.

present unique challenges, they should be addressed separately through negotiated terms and conditions.

The Commission also asks for comments relating to the use of independent contractors and the establishment of a national poles database. With respect to an attacher's use of contractors, ILECs, just like other pole owners, must maintain ultimate control over their poles, particularly in terms of safety and protecting the rights of all attachers on a pole. The Commission therefore should give ILECs the same rights of control in its rules as other utilities. The *Notice's* suggestion that ILECs have the incentive and ability to slow-roll or impose unreasonable rates, terms and conditions to gain a competitive advantage is not supportable in today's competitive environment, and, in any case, those concerns are outweighed by the need to ensure the safety and reliability of the networks in question. Upon notice and approval, Qwest has no objection to attachers' use of Qwest-approved contractors. That said, pole owners should be permitted to inspect the contractor's work and require the attacher to correct any problems. Qwest also supports the use of existing third-party web-based systems, rather than the expensive and time-consuming creation of a national database, that would also create security and information access concerns.

With respect to pole rental rates, the Commission should adopt a uniform rate, equally applicable to ILEC attachers, to encourage the deployment of broadband. Additionally, the Commission should not exclude capital costs such as pole placement or replacement, rate of return, depreciation and taxes from any new rate formula. Everyone who attaches on a pole should share in paying for the costs associated with attaching to that pole.

## II. DISCUSSION

### A. Any Changes to the Commission's Rules to Facilitate and Accelerate the Pole Attachment Process Should Apply Equally to ILEC Attachments.

Although congressional amendment of Section 224 would be required to encompass railroads, cooperatives and municipalities, who are currently exempt from Section 224 requirements,<sup>6</sup> the Commission can and should take action to ensure that ILECs as pole attachers have the full and non-discriminatory benefits of Section 224. Based on Section 224 (a)(5)'s exclusion of ILECs from the definition of "telecommunications carrier," the Commission's pole attachment rules currently do not apply to pole attachments sought or obtained by ILECs. Thus, ILECs are put in the position of adhering to the Commission's rules as pole owners because they qualify as a "Utility" under Section 224, while at the same time negotiating their attachments' rates, terms and conditions without the benefit of the Commission's pole attachment rules. In particular, ILECs currently have no recourse to the Commission if they view the rates, terms, and conditions pole owners seek for ILEC attachments as excessive or unfair.

The Commission has sufficient authority under Section 224 to regulate the rates, terms and conditions of ILEC attachments to utility poles. Under Section 224, "pole attachment" is defined to mean "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."<sup>7</sup> Because this definition refers to a "provider of telecommunications service" and not "telecommunications carrier,"<sup>8</sup> the term "pole attachment" as used in Section 224 encompasses ILEC attachments.

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<sup>6</sup> 47 U.S.C. § 224(a)(1).

<sup>7</sup> 47 U.S.C. § 224(a)(4).

<sup>8</sup> Section 224(a)(5) excludes ILECs from the definition of "telecommunications carrier." 47 U.S.C. § 224(a)(5).

Thus, the Commission's obligation to adopt rules ensuring just and reasonable rates, terms and conditions for pole attachments extends to pole attachments sought by ILECs. This outcome would also further the goals of broadband deployment and the recommendations contained in Chapter 6 of the NBP. The Commission therefore should exercise its general authority under Section 224(b) to justly and reasonably regulate the rates, terms and conditions for ILECs as pole attachers.<sup>9</sup>

**B. Any Make-Ready Timelines Adopted by the Commission Should Be Sufficiently Flexible to Address the Realities of the Pole Attachment Process.**

In evaluating the NBP's recommendation to "establish a comprehensive timeline for each step of the Section 224 access process,"<sup>10</sup> the Commission should take a flexible approach when considering whether to take steps to shorten or otherwise impose specific time-limits on completing make-ready work or on completing work where there are multiple attachers. These situations vary in scope from project to project and mandatory timelines are not practicable in all situations. Thus, the Commission should build more flexibility into at least some of the stages it proposed in the *Notice*. In addition, given the unique challenges posed by wireless attachments, the Commission should exempt these attachments from its proposed timeline for make-ready work. Finally, the Commission should not adopt its proposal to designate a "managing utility" for jointly-owned poles.

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<sup>9</sup> Section 224(b) states that "unless a state has satisfied the criteria of subsection (c) to regulate pole attachments, the Commission "shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions."

<sup>10</sup> NBP, Chapter 6, Section 6.1, Recommendation 6.3.

## 1. The Commission's Proposed Phases Need More Flexibility.

As noted, Qwest has been providing access to its poles for years. It therefore has a well-established process that provides such access in a reasonably timely manner while ensuring compliance with safety standards and protection of the facilities of all attachers on the pole. At the beginning of this process, Qwest requires prospective attachers to have a signed agreement in place, and it provides attachers with related rates and billing schedules. Qwest's pole attachment process also recognizes that attachment techniques vary from utility to utility and generally can be agreed upon on a commercial basis, absent safety or other legitimate concerns.

Given the existence of such processes, which have generally worked well over the years, the Commission should proceed cautiously in mandating one-size-fits-all processes and timelines, particularly given the complexity and wide variety of circumstances that arise in the pole attachment process. With all that said, Qwest generally supports the Commission's five-stage proposed timeline in the *Notice*, with certain modifications, particularly to Stages 1, 4 and 5. In addition, even before beginning Stage 1, it is important that the pole owner and prospective attacher have a written agreement in place in order to ensure agreement on the rates, terms and conditions of attachment, which include liability, insurance and other issues not addressed by the Commission's rules.

Stage 1 – Survey: In Stage 1, the *Notice* proposes to retain Rule 1.1403(b), which states that requests for access to poles, ducts, conduits and rights-of-way must be in writing and that “[if] the access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45<sup>th</sup> day.”<sup>11</sup> Beyond these basic rules, Qwest suggests that the details of the application process should be left in the hands of the individual parties because (a) the

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<sup>11</sup> 47 C.F.R. § 1.1403(b).

parties have individually negotiated contracts and (b) the operations of each company will dictate what is required in order for an application to be processed in a timely manner. For example, applications may be electronically filed and errors may cause the order to “fall out” of the system, requiring additional manual handling. Thus, by necessity the timing should be adjusted - - by stopping the 45-day clock -- when an attacher’s application contains errors that delay processing of the application or the survey. Such errors do not need to be significant in order to justify “stopping” the clock.

Stage 2 – Estimate and Stage 3 – Acceptance: Qwest generally supports the proposed timelines for these stages.

Stage 4 – Performance: For this stage, the *Notice* proposes a 45-day window for completion of make-ready work, upon payment by the applicant. However, a uniform 45-day time limit is not reasonable given the variability of scope from project to project. For projects consisting of attachments to a few poles, it is more likely that any make-ready work can be completed within 45 days. If, however, the project involves a large number of poles, the make-ready work would by necessity take longer. The existing rules appropriately require pole owners to act promptly in responding to a request for access. Qwest urges the Commission not to adopt any specific time frame for completing make-ready work, and certainly not to adopt any time limitation without a complete record justifying the selection of a particular limit. However, should the Commission adopt a 45-day period for completion of make-ready work, that framework should permit automatic extensions of that time period for legitimate reasons, as determined by the pole owner, or as otherwise agreed in writing by the attacher and pole owner. As previously noted by the Commission, such legitimate reasons would include operational or logistical challenges or the need to respond to factors outside the control of the pole owner, such

as obtaining permits, multiparty coordination, and a large number of pole attachment requests pending in the state at issue.<sup>12</sup> Other examples of circumstances that can warrant the need for additional time include conforming work to the current standards in the Telcordia Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and any applicable state or local codes. Separately, the parties to the pole attachment agreement should be able to individually agree to applicable timelines where appropriate for the parties. On the other hand, the Commission should not establish different timelines or exceptions for smaller utilities that own poles, but rather treat each utility in a non-discriminatory manner, as in Utah.<sup>13</sup>

Stage 5 – Multiparty Coordination: The Commission’s proposed timeline for Stage 5 must be modified to address the realities of multiparty coordination. Pursuant to Telcordia Standard 3.2.1,<sup>14</sup> ILECs are typically in the lowest position on the pole. The ILEC cannot physically move its attachments above a party attached above them. The highest attacher must move first. Qwest proposes that each attacher be allowed thirty (30) days to transfer its attachments. Each individual attacher’s thirty-(30) day period should commence when it has been notified that the third-party attachments above its attachment have been moved. When an ILEC is waiting on other attachers to complete the make-ready work, the utility requesting the attachment should not be allowed to unilaterally move the ILEC attachments. It is suggested that the Commission consider this approach in Stage 5.

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<sup>12</sup> Notice ¶ 46.

<sup>13</sup> Utah Administrative Code, Rule R746-345.

<sup>14</sup> The Telcordia Blue Book – Manual of Construction Procedures (SR-1421) states: Since the larger and heavier pair count metallic cables will tend to have larger sags and overload factors than fiber or coaxial cables, locating these metallic cables as the lowest on the pole will provide an additional safety factor to avoid physical contact or interference between different communications cables and between cable plant of different telecom carrier companies.

## **2. Wireless Attachments Present Unique Challenges.**

Wireless attachments present unique challenges for pole owners and, thus, the timelines proposed for wireline attachments should not be applied for wireless attachments. The first step in evaluating a request for a wireless attachment is determining whether the request can be fulfilled. If an attachment can be provided, the negotiated terms, conditions, timelines and costs in the agreement between the pole owner and the wireless carrier (which is required to be in place prior to providing any attachments) should be followed. Additionally, wireless equipment attachments and pole top attachments present significant additional safety concerns for pole owners. For example, Qwest's poles typically cannot safely support a pole top attachment due to the inadequate size and height of the pole. Further, safety, reliability, engineering and cost concerns may result from a pole owner's need to replace an existing pole with a much taller pole, to utilize risers, to move and/or work around power cables and the need to procure equipment to even be able to work on and/or maintain taller poles.

In the *Notice*, the Commission asked for comment regarding whether its proposed timelines are adequate for wireless attachments when a pole needs to be brought into compliance with current standards or when safety violations need to be addressed. Often, a pole owner will not be able to meet such timelines when these or other issues must be addressed before a wireless attachment is added. Therefore, any applicable time-clock should be stopped when such an issue is discovered.

## **3. The Commission Should Not Adopt Its Proposal to Designate a "Managing Utility" for Jointly-Owned Poles.**

The *Notice* proposes that there be a "managing utility" for jointly-owned poles.<sup>15</sup> This proposal raises several challenges that may in fact lengthen the pole attachment process, and also

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<sup>15</sup> *Notice* ¶¶ 72-73.

ignores the fact that the managing utility may not be aware of all attachment-related activities and payments. In addition, imposing the addition of a “clearinghouse” role has the potential for creating increased costs and higher non-recurring “make ready” rates for the responsible utility.

**C. ILECs Should Retain the Same Level of Control as Electric Utilities Over an Attacher’s Use of Independent Contractors.**

Pole owners, including ILECs, need to maintain ultimate control over their poles. That is true for a number of reasons. A pole owner is the only party aware of the big picture regarding the pole, including other ongoing or planned attachment activities. In addition, the ILEC is in the best position to ensure the safety and security of all attachments on its pole in a way that an independent contractor -- especially one not approved by the ILEC -- cannot.

If, in limited circumstances, pole attachers are allowed to use contractors for make-ready work, they need to use contractors from the pole owner’s approved list, upon notice of and approval by the pole owner. Also, pole owners must be allowed to do a final inspection and require attachers to correct any problems. If these concerns are not addressed, the pole owners will be exposed to significantly increased liability.

**1. The Prospective Attacher Should Only Be Allowed to Use a Pole Owner’s Approved Contractor.**

In the *Notice*, the Commission proposes to allow electric utilities and other non-ILEC pole owners to pre-approve the contractors they will permit to perform surveys and make-ready, noting that “[c]ritical judgments about safety, capacity, and engineering are made during surveys and make-ready.”<sup>16</sup> For similar reasons, the Commission proposes that these pole owners should retain final authority to make all judgments that relate directly to insufficient capacity or safety, reliability, and sound engineering, subject to any applicable dispute resolution process. In doing

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<sup>16</sup> *Id.* ¶ 61.

so, the Commission finds persuasive electric utilities' arguments that "section 224 entrusts them with the responsible management of facilities that are both essential and potentially hazardous" and that communications attachers "do not have the same incentives to maintain the safety and reliability of the infrastructure as utilities themselves would."<sup>17</sup>

These arguments apply equally to ILECs as pole owners. They stand in the best position to make critical judgments regarding safety, capacity and engineering and ultimately have the strongest incentive to maintain the critical communications infrastructure attached to its poles. There is simply no basis for the suggestion in the *Notice* that these concerns are outweighed by theoretical prospects of an ILEC using the pole attachment process to gain over its competitors. Any such concerns are best addressed through the enforcement process, rather than potentially sacrificing the safety and security of this critical infrastructure.

Utilities and ILECs should have the option to use either their own personnel or their approved contractors to complete surveys and make-ready work as they deem appropriate. As previously noted, the pole owner must retain control over its poles because the prospective attacher would not have insight into the pole owner's plans for current or future attachments, rearrangements or pole replacements. As well, the attacher and/or an unapproved contractor would be blind to any noted violations or concerns that the pole owner may be in the process of addressing. Moreover, other prospective attachers may have submitted parallel requests to attach to the same pole or pole systems. For these reasons alone, the prospective attacher should only be allowed to use a pole owner's approved contractor when directed to do so by the pole owner or when otherwise agreed to by the pole owner.

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<sup>17</sup> *Id.* ¶ 67 (citations omitted).

Excluding the make-ready concerns noted above, Qwest agrees that the prospective attacher's contractors or employees should be certified to have the same qualifications and training as the pole owner's employees or contractors do. Further, Qwest recommends that the pole owner maintain its right to monitor and audit a contractor's work on its poles.

In all situations, the pole owners must be allowed to complete a final inspection and to require attachers to correct any issues or violations for which their contractors or employees are responsible. In addition, when the prospective attacher performs the work with an approved contractor, all liability associated with completing work on the pole should shift to the prospective attacher.

**a. Approval and certification of contract workers should be the same for all utilities, including ILECs.**

All pole owners should be treated the same. From Qwest's perspective, there is not a heightened risk when a "competitor" attaches to ILEC poles. As mentioned above, Qwest attaches to more poles than it owns. Further, Qwest treats attachers in a just and reasonable manner and as an ILEC, should not be penalized by being subject to different standards than electric utilities and non-ILECs, to whose poles Qwest also attaches.

With that backdrop, Qwest is supportive of creating an approved contractor list, as well as posting or sharing with the attachers the standards it uses to evaluate contractors for approval and certification. This list would need to be kept current so that prospective attachers have an accurate list of Qwest-approved contractors. Only Qwest approved contractors should be allowed to work on Qwest-owned poles as other utilities may have different standards and practices that do not apply to Qwest's network. However, there should be no requirement for a minimum list of contractors because in some areas of the country, there may not be more than one qualified contractor.

**b. Qwest should be allowed to direct and supervise outside contractors and make the same decisions as other utilities.**

The direction and supervision of outside contractors, as well as decision-making authority, should be the same for utilities, non-ILECS and ILECs. Just like other pole owners, ILECs should have decision-making power with respect to attachments being made on their poles. Regardless of the type of entity, pole owners should be on a level playing field. This is especially compelling because ILECs like Qwest attach to many non-ILEC owned poles. Further, the majority of poles are jointly used by communication and utility companies, such that the rights and obligations of those attached to joint-use poles should not differ. In the case that a prospective attacher is planning to attach to a pole that Qwest jointly owns with a utility, Qwest has no objection to working with the attacher to find mutually satisfactory solutions to conflicting opinions. Ultimately, however, the pole owner, whether a utility or an ILEC, should be allowed to make all judgments that relate to capacity, safety, engineering or other issues impacting the requested attachment.

**2. The Commission Should Consider the Voluntary Use of Commercially Available Web-Based Systems for Improved Access to Pole Data.**

Qwest does not support the development of a National Database for pole attachment data due to the proprietary nature of the information that would be collected and the potential network security risks that may result from public access to such data. Rather, Qwest recommends that the Commission consider commercially available web-based systems that are currently available for pole owners to utilize when sharing pole attachment information with legitimate prospective attachers. For example, Qwest currently uses a commercially available and secure web-based application called Joint Relationship Manager Notify (JRMN) to facilitate paperless communication with prospective attachers on a multitude of issues, including make-ready work,

project status, and pole specifications. Qwest restricts an attacher's access to JRMN so that it can only view information specific to its request and not that of competitors or other providers. Third party web-based systems, such as JRMN, could be useful in streamlining the joint-use request process. Such databases can be completely mechanized and integrated into daily operations. From a Qwest perspective, creating and maintaining a separate National Database would be a significant burden and expense that would also create increased security concerns.

Given commercially available solutions like JRMN, there does not appear to be a need for a National Database, which would require continual update and maintenance and would itself present security and access challenges. The magnitude of effort associated with creating such a National Database would be daunting. For example, Qwest is attached to thousands of poles and simple inventories have taken years to complete in the past.

**D. Appropriate Uniform Pole Rental Rates, Equally Applicable To ILECs, Would Encourage the Deployment of Broadband.**

**1. The Commission Has Authority to Promulgate a Single Rate for All Attachments, Including Attachments by ILECs.**

The Commission should move to a single, reasonable rate for all pole attachments, including those utilized by ILECs. The Commission has authority under Section 224 to establish a single rate for all attachments used to provide broadband internet access, including ILEC attachments. Further, the Supreme Court holding in *NCTA v. Gulf Power*, 534 U.S. 327 (2002), supports the Commission's exercise of authority under Section 224(b) to regulate the rates, terms, and conditions of ILEC pole attachments.

Moving toward a single rate for attachments will reduce the competitive inequities that the current rate scheme creates. Having different rates for separate categories of providers makes increasingly less sense as cable providers and telecom providers use their attachments to provide similarly functioning service bundles. Also, as mentioned above, Qwest is attached to

more poles than it owns and current data indicates that the primary attachers to Qwest poles are cable companies. Thus, the easiest and most straightforward way to address these rate disparities is to move to a single rate for pole attachments that is based on the amount of space occupied within the communications space on the pole, to the extent permitted by Section 224.

Unfortunately, complete reform will not be accomplished unless railroad, municipal and co-op rates are subjected to legislative reform. Currently, these entities charge any rate they want, and the rates are often exorbitant -- having a direct impact on a company's ability to deploy broadband.

**2. There Should Be a Uniform Rate, Inclusive of Capital Costs, Applicable to All Attachers, Including ILECs.**

Although Qwest is not at this point advocating a specific rate formula, several important facts are worth noting. Currently, capital costs are included in both the cable and telecom rate calculations. Presently the Commission has five proposals that would impose different sharing arrangements between the pole owner and the other attachers for the used/unused space on the pole. These sharing proportions range from that imposed by the existing Cable formula, which basically assumes that each pole attachment requires one foot (7.4%) of useable space and that an equivalent proportion of unusable space should also be assigned to the attacher (resulting in an attachment rate equal to 7.4% of total pole costs per foot). Based on an assumption of four attachers (including a telecom pole owner and an electric utility requiring three feet of space), the various methods discussed in the *Notice* would assign between 39% and 63% of the total pole costs to the telecom pole owner, when that owner got basically the same benefit from that pole as did the other three attachers. This is where the Commission should focus, insuring that the pole owner and the various attachers, inclusive of ILECs, are treated in a competitively neutral manner.

**a. There are flaws in the TWTC rate approach.**

Time Warner Telecom Inc., *et al.*, (TWTC) proposes that capital-related costs (rate of return, depreciation & taxes) should be eliminated from the telecom rate.<sup>18</sup> However, capital-related costs legitimately comprise a significant portion of both the cable and telecom pole rates today. TWTC's proposed limitation of cost recovery to maintenance and administrative costs in calculating telecom pole rates would deny the pole owner an opportunity to adequately recover their costs of providing service. Contrary to TWTC's current proposal, there is no justifiable need to revisit pole rate formulae cost components or to assume that capital-related pole costs should be borne solely by the customers of the pole owner. The pole attachers should be required to share these costs with the pole owner, rather than allowed to ride for free.

Each entity that attaches on a pole has a need for the pole and should share in paying for the costs associated with the poles to which they attach. This includes the capital-related costs for placing, or replacing, the pole. There is no reasonable basis for permitting pole attachers to get a free ride on the owner's pole. If there were no poles already in place, or if a pole needed to be replaced, and two or more parties had a need for the pole, it would be equitable for the parties to share in the construction (capital) costs of the pole. The principles of cost causation should not change just because one party owns, and has already constructed, the pole and other parties want to use it.

Since the Cable rate formula has already been deemed reasonable,<sup>19</sup> and it includes capital-related costs, then such costs should not be deemed unreasonable in the formulae used in calculating telecom pole attachment rates.

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<sup>18</sup> Notice ¶ 124 (referencing TWTC's Reply Comments, WC Docket No. 07-245, RM-11293 and RM-11303, filed Apr. 22, 2008).

<sup>19</sup> Notice ¶¶ 111-12 and 47 U.S.C. § 224.

**b. The Commission's rate approach should include capital costs.**

The Commission proposes an alternative approach which would recognize that the Commission has substantial -- but not unlimited -- discretion under the statutory framework to interpret the term "cost" for purposes of Section 224(e). This proposal would view the range of possible interpretations of "cost" under Section 224(e) as yielding a range of permissible rates, from the current application of the telecom rate formula at the higher end of the range, to an alternative application of the telecom rate formula based on cost causation principles at the lowest end.<sup>20</sup>

In determining whether pole rates are just and reasonable, there is no need to establish a range of rates, or upper and lower rate limitations that merely reflect inclusion or exclusion of current cost components that have been deemed appropriate in the past, in order to reconstruct telecom pole rates. The Commission should not focus on the exclusion of capital costs to arbitrarily and inappropriately lower telecom pole rates, as TWTC would propose and the Commission has incorporated in its proposal as the "lower bound" as these proposals result in significant inequitable rate treatment between attachers and the pole owners.<sup>21</sup> ILECs would suffer the most because currently they do not get the benefit of lower attachment rates but would be required to adopt, under the proposed method, rates significantly lower than they are required to pay. The Commission should focus on establishing a uniform pole rental rate applicable to all attachers, including ILECs.

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<sup>20</sup> Notice ¶¶ 124-26.

<sup>21</sup> *Id.* ¶ 133.

### III. CONCLUSION

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

QWEST COMMUNICATIONS  
INTERNATIONAL INC.

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Its Attorneys

August 16, 2010

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be: 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 07-245 and GN Docket No. 09-51; 2) served via e-mail on the Competition Policy Division, Wireline Competition Bureau at [cpdcopies@fcc.gov](mailto:cpdcopies@fcc.gov); and 3) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

/s/ Richard Grozier

August 16, 2010