

L8 - L9	L10 =	\$	352,839,000
Services Investment	L11 =	\$	303,893,000
Depreciation Reserve Services	L12 =	\$	91,888,000
L11 - L12	L13 =	\$	212,005,000
L3 + L10 + L13	L14 =	\$	789,957,000
L7 / L14	L15 =		.0838

b. DEPRECIATION. The depreciation rate for distribution plant must be converted to a percentage of net pole investment.

Depreciate Rate for Distribution Plant	L16 =		.030
L16 x (L1 / L3)	L17 =		.0483

c. ADMINISTRATIVE EXPENSE. The Form 1 does not provide figures for general expenses associated only with poles. We assume, therefore, that the administrative expenses associated with poles are in the same proportion to investment as administrative expenses are to net plant in service.

Total Admin. & Gen. Expenses	L18 =	\$	332,169,033
Gross Plant in Service	L19 =	\$	13,236,477,662
Depreciation Total Plant	L20 =	\$	4,651,325,298
L19 - L20	L21 =	\$	8,585,152,364
L18 / L21	L22 =		.0387

d. TAXES. The Form 1 does not provide for tax expense attributable to pole lines only. We assume, therefore, that the taxes associated with poles are in the same proportion to investment as taxes are to net plant in service.

Taxes other than Income Taxes (408.1)	L23 =	\$	486,939,826
Income Taxes (409.1)	L24 =	\$	219,775,961
Prov. for Def. Inc. Taxes (410.1)	L25 =	\$	155,899,829
Invest. Tax Credit Adj. (411.4)	L26 =	\$	(37,914,592)
Prov. for Def. Inc. Taxes (411.1)	L27 =	\$	154,871.811
L23 + L24 + L25 + L26 - L27	L28 =	\$	669,829,213
L28 / L21	L29 =		.0780

e. **COST OF CAPITAL.** The Form 1 does not include a cost of capital figure (return on equity and interest on debt). Therefore, we have used the authorized intrastate overall rate of return.

Rate of Return	L30 =		.1040
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f. **TOTAL CARRYING CHARGE.** Adding the carrying charge components gives the total carrying charge.

L15 + L17 + L22 + L29 + L30	L31 =		.3528
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4. **USE RATIO.** The use ratio may be expressed as the quotient of the space occupied by CATV (1 foot) and the total usable space. It may be presumed that a reasonable estimate is 13.5 feet.

Use Ratio	L32 =		.0741
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5. **MAXIMUM RATE.** The maximum rate is the product of the net investment per pole times the carrying charge times the use ratio.

L6 x L31 x L32	L33 =	\$	5.69
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EXHIBIT F

$$\text{Maximum Rate} = \frac{\text{Space Occupied by CATV}}{\text{Total Usable Space}} \times \left(\text{Operating Expenses} + \text{Capital Costs of Poles} \right)$$

In the instant case, the parties' dispute centers on all of these elements.

5. Total Usable Space and Space Occupied by CATV. The arguments of the parties regarding usable pole space and space occupied by CATV are substantially identical to those in Telegrapher Corporation v. Northwestern Bell Telephone Company, Minno No. 000345 (Released April 21, 1981) ("Northwestern"). Warner has used 13.5 feet as the average usable space figure and twelve inches as the space occupied by CATV. These figures comport with the Commission's rules and prior decisions. FP&L, on the other hand, argues that the Commission should use 10.2 feet as the usable space figure. The utility arrives at this figure by subtracting the 40-inch safety space required by the National Electrical Safety Code from the average usable space figure, 13.5 feet. Since the Commission has, in the past, refused to allocate the cost of any safety space to CATV operators, FPL contends that such space ought to be subtracted from total usable space. The Commission rejected this argument in Northwestern, at para 8. 1/ There is no need to repeat the Commission's rationale for using the 13.5-foot and one-foot figures in the rate formula.

6. Operating Expenses and Capital Costs of Poles. The final formula element to be determined is operating expenses and capital costs of poles. Although operating expenses and capital costs of poles (also known as "carrying charges") can be expressed directly as dollar amounts, these costs may also be expressed as a percentage of net pole investment. Section 1.1404(g)(9), 47 C.F.R. §1.1404(g)(9). Thus, the operating expenses and capital costs of poles normally are determined from the net cost of a bare pole and the carrying charges attributable to the cost of owning a pole. Although the maximum pole attachment rate can also be determined accurately using "gross" rather than "net" figures, it is necessary to ensure that "like kind" figures, i.e., all gross or all net figures, are used in the calculation. In this case, both FP&L and Warner have submitted figures that, for the most part, are on a net basis. Therefore, we will calculate the rate based on net figures and, where necessary, make adjustments to ensure that all figures are net.

7. Net Cost of a Bare Pole. Using figures gathered from respondent's 1980 FERC Form 1, as provided by FP&L, Warner calculates the net cost of a pole by first subtracting the depreciation from the gross cost of the poles. It then adjusts this figure by subtracting the net investment in crossarms and other items not essential for CATV

1/ See, Memorandum Opinion and Order, 77 FCC 2d 187, at para. 15 (1980) for an explanation of the Commission's rationale for determining that the 40-inch safety space is "usable space."

attachments. Finally, Warner divides this figure by the total number of poles to calculate a net investment per bare pole installed of \$95.62. 2/

8. FP&L agrees in general with Warner's computation of the net investment per bare pole, except that it would adjust this figure by adding \$2.17. 3/ The utility claims that this "adjustment" figure is the percentage of its investment in general and intangible plant allocable to CATV pole attachments expressed in dollar terms. We cannot accept FP&L's figure for net investment in a bare pole because the "adjustment" figure is derived from accounts which are either not

<u>2/</u>	Net Cost of a Bare Pole	=	Gross Pole Investment	-	Depreciation Reserve	-	Net Crossarm Investment	
			<u>Number of Poles</u>					
	Net Cost of a Bare Pole	=	\$174,088,095	-	\$60,592,029	-	\$47,327,860	
					692,015			
	Net Cost of a Bare Pole	=	\$66,168,206					
			692,015					
	Net Cost a Bare Pole	=	\$95.62					
<u>3/</u>	<u>Net Cost of a Bare Pole</u>	=	Investment Per Pole	+	Adjustment for General Intangible Plant			
	<u>Net Cost of a Bare Pole</u>	=	\$95.62	+	\$2.17			
	<u>Net Cost of a Bare Pole</u>	=	\$97.79					

attributable or only minimally related to CATV pole attachments. 4/ Therefore, we will use Warner's calculation of the net cost of a bare pole which comports with Bureau approved methodology.

9. Carrying Charges. We next turn to carrying charges, the remaining figure necessary for calculating operating expenses and capital costs of poles. The parties dispute each component of the carrying charges. Using information supplied by respondent, complainant calculates annual carrying charges of 28.95 percent. Respondent, on the other hand, calculates the carrying charges to be 57.71 percent. 5/

10. Depreciation. In its complaint Warner accepted and utilized the 7.78 percent depreciation component figure originally provided by FP&L. However, in its response, FP&L adjusts this figure

4/ FP&L's "adjustment" figure includes Accounts 301 (Organization), 302 (Franchises and consents), 303 (Miscellaneous intangible plant), 389 (Land and land rights), 390 (Structures and improvements), 391 (Office furniture and equipment), 392 (Transportation equipment), 393 (Stores equipment), 394 (Tools, shop and garage equipment), 395 (Laboratory equipment), 396 (Power operated equipment), 397 (Communications equipment), and 398 (Miscellaneous equipment). The Bureau has determined that the above-stated accounts, absent detailed supporting data to determine a sufficient relation to CATV, are either not attributable or only minimally related to CATV pole attachments and thus unallowable in the determination of the maximum just and reasonable rate. See Liberty TV Cable, Inc., v. Gulf States Utilities Co., Mimeo No. 000765 (released May 8, 1981) at para. 10. See also, Teleprompter Corporation v. Texas Power and Light Company, Mimeo No. 001984 (released July 15, 1981), Teleprompter Corporation v. Florida Power and Light Company, Mimeo No. 002095 (released July 14, 1981). Moreover, if the account is properly attributable to cable, it should be considered in the base calculation and not added as an "adjustment." Cf., King Videocable Co. v. Idaho Power Co., Mimeo No. 2719 (released March 12, 1982) at para. 13 ("King"). See also, Winchester TV Cable v. C&P Telephone, Mimeo No. 1126 (released December 16, 1981) at para. 4.

5/ The following table summarizes the figures supplied by the parties:

	Warner	Florida Power and Light
Depreciation	7.78%	7.87%
Administration	1.58%	3.77%
Maintenance	6.88%	8.49%
Taxes	2.27%	20.73%*
Cost of Capital	10.44%	16.85%
Total Carrying Charges	28.95%	57.71%

* FP&L uses two separate tax components, 16.00% for income taxes and 4.73% for taxes other than income taxes. We have combined the figures for purposes of this chart.

upward by 0.09 percent to account for that portion of depreciation on general plant and amortization expense allocable to poles. We reject FP&L's depreciation component figure to the extent of the 0.09 percent "adjustment" for the same reason we have rejected the utility's "adjustment" figure for investment in a bare pole, i.e., the "adjustment" percentage is derived from several accounts, either not attributable or only minimally related to CATV pole attachments. 6/ Consequently, we will adopt Warner's 7.78 percent depreciation component figure for use in the rate formula.

11. Administrative and General Expense. Utilizing the methodology approved by the Bureau in Teleprompter Corporation, v. Florida Power Corporation, Mimeo No. 001980 (released July 16, 1981) ("Florida Power"), Warner has calculated administrative expenses by dividing the sum of Accounts 920 (Administrative and General Salaries), 921 (Office Supplies), 922 (Administrative Expenses transferred [Credit]) and 928 (Regulatory Commission Expenses) by the gross plant investment. The resulting gross figure is then converted to a net figure of 1.58 percent to represent the administrative and general expense component of the carrying charges. FP&L, on the other hand, calculated its figure by dividing total administrative expenses incurred by net plant investment. 7/ The Bureau has previously determined that the accounts it will accept for purposes of calculating the administrative and general expenses component of the carrying charges are Accounts 920, 921, 921, and 928. Florida Power at para. 14. See also, Cablecom-General, Inc. v. Central Power and Light Company, Mimeo

6/ See note 4.

7/ FPL includes Accounts 920-926, 928, 930.2 931 and 932.

No. 00029 (released October 15, 1981). Under those circumstances, we will adopt Warner's calculation of 1.58 percent for the administrative and general expense component of the carrying charges. 8/

12. Maintenance. To calculate its maintenance expense component of 8.49% percent, FP&L combines two separately computed figures. The first, 6.88 percent, is determined in accordance with Bureau approved methodology. 9/ To this, FP&L adds a supplemental amount consisting of general account expenses. Warner objects to the inclusion of the supplemental amount in the computation of the maintenance expense component. That objection is well-taken. We have determined that the only accounts which should be included in computing the maintenance expense are Accounts 593 (Maintenance of overhead lines), 364 (Poles, towers, and fixtures), 365 (Overhead conductors and devices), and 369 (Services). Teleprompter Corporation v. Alabama Power

$$8/ \text{ Gross Administrative and General Expense} = \frac{\text{Account 920} + 921 + 922 + 928}{\text{Gross Plant Investment}}$$

$$\text{Gross Administrative and General Expense} = \frac{\$39,482,163 + \$18,595,515 + (-\$398,611) + \$1,455,073}{\$4,841,709,356}$$

$$\text{Gross Administrative and General Expense} = 1.22\%$$

The gross administrative component is converted from gross to net as follows:

$$\text{Net Administrative and General Expense} = \text{Gross Administrative and General Expense} \times \frac{\text{Gross Plant Investment}}{\text{Net Plant Investment}}$$

$$\text{Net Administrative and General Expense} = 1.22\% \times \frac{\$4,841,709,356}{\$3,736,633,367} = 1.58\%$$

$$9/ \text{ Net Maintenance Expense} = \frac{\text{F&L Account 593}}{\text{F&L Accounts (364 + 365 + 369) - Depreciation Reserve}}$$

$$\text{Net Maintenance Expense} = \frac{\$23,791,156}{(\$174,088,095 + \$235,417,543 + \$95,404,331) - \$159,139,267}$$

$$\text{Net Maintenance Expense} = \frac{\$23,791,156}{\$345,770,702} = 6.88\%$$

Company, Mimeo No. 001808 (released June 29, 1981) at para. 14. 10/ Therefore, we will adopt the 6.88 percent figure as the maintenance expense component, but reject the supplemental amount calculated by the utility.

13. Taxes. In calculating the taxes component, FP&L has computed two separate tax factors in lieu of a single tax component. The first, "taxes other than income taxes", is based on accrued taxes. To obtain the second tax factor FP&L has determined the combined incremental tax rate for Federal and State income tax, and applied that rate to the return on common equity. Warner, on the other hand, computes a single tax component based on taxes actually paid. We cannot accept either party's figures. While we agree with Warner that the taxes component should be based on taxes paid rather than taxes accrued, we must reject its calculations. Warner has correctly included total Federal and State income taxes in its calculation but improperly excluded several other categories of taxes on the theory they are not applicable to pole attachments. 11/ Therefore, consistent with Bureau practice, we will use total actual taxes paid by FP&L divided by net plant investment. On this basis, we calculate 5.59 percent as the taxes component of the carrying charges. 12/

10/ FP&L has included in its supplemental amount, Accounts 588 (Overhead line expenses), 589 (Rents), and 590 (Maintenance supervision and engineering expenses), accounts which we have rejected in previous decisions as bearing either little or no relationship to CATV operations. See, e.g., Trenton Cable TV, Inc. v. Missouri Public Service Company, Mimeo No. 2152 (released February 12, 1982) at para. 10.

11/ Warner excludes franchise taxes, gross receipt taxes, federal auto and airplane use tax, a state intangible tax and a state motor vehicle license tax. The Bureau has determined that total taxes paid is the correct figure to use when calculating the taxes component. See, Teleprompter of Falmouth Inc. v. Chesapeake & Potomac Telephone Co. of West Virginia, 79 PCC 2d 232 (1980), aff'd on recon. 85 PCC 2d 243 (1981). But see, King at para. 12, note 7, where we excluded kilowatt hour taxes because it was calculated in the nature of a user fee assessed on the amount of electricity generated by the utility.

12/ Taxes (expressed as a percentage of net plant) = $\frac{\text{Total Taxes Paid}}{\text{Net Plant Investment}}$

Taxes (expressed as a percentage of net plant) = $\frac{\$ 208,756,401^*}{\$3,736,633,367}$ = 5.59%

* Since neither party provides the dollar figure for total taxes paid, we have used data obtained from FP&L's 1980 PERC Form 1 (Line 28, p. 222-2), the most recent data available.

14. Cost of Capital. The final component of the carrying charges is cost of capital. FP&L uses a cost of capital component based on its maximum allowable return on equity of 16.85 percent. The complainants, however, maintain that the appropriate figure to use is the authorized intrastate rate of return. We concur with Warner. The Commission has previously determined that that latest available authorized interstate rate of return will serve as the cost of capital component. Telecomputer of Fairmont, Inc. v. Chesapeake and Potomac Telephone Company of West Virginia, 79 FCC 2d 232 (1980) at 241, aff'd on recon. 85 FCC 2d 243 (1981). Therefore, we will adopt Warner's figure of 10.44 percent.

15. In summary, adopting the figures outlined above, we calculate the total carrying charges to be 32.27 percent.

Depreciation	7.78%
Administrative and General	1.58%
Maintenance	6.88%
Taxes	5.59%
Cost of Capital	10.44%
Total Annual Carrying Charges	<u>32.27%</u>

16. Maximum Rate. By inserting the values developed in paragraphs 5-15 into the formula, as follows, we calculate that the maximum rate per attachment is \$2.29.

$$\begin{aligned} \text{Maximum Rate} &= \frac{\text{Space Occupied by CMV}}{\text{Total Usable Space}} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charges} \\ \text{Maximum Rate} &= \frac{1 \text{ Foot}}{13.5 \text{ Feet}} \times \$95.62 \times 32.27\% \\ \text{Maximum Rate} &= \$2.29 \end{aligned}$$

17. Under Section 224 of the Act and the Commission's underlying rules, \$2.29 per pole attachment per year is thus the maximum just and reasonable rate FP&L may charge. As noted, however, FP&L has been charging \$5.00 per attachment annually during the period covered by this complaint. The conclusion is inescapable, therefore, that FP&L's rates are unjust and unreasonable within the meaning of the Act.

Remedies

18. Where, as here, substantial overcharges are established by the record, a refund of excess payments retroactive to the date of the filing of the complaint, plus interest, is proper. For the same reasons described in Cable Information Services, Inc. v. Appalachian Power Company, 81 FCC 2d 383 (1980) (C.I.S.), we are ordering a refund reflecting the difference between the \$2.29 rate and the \$2.29 rate currently being charged Warner for all payments in excess

of the \$5.00 rate made for service received after December 30, 1981 (the date Warner filed its complaint), as specified below. See discussion in C.I.S., 81 FCC 2d at 392-93.

19. In addition, the Commission has determined previously that the current interest rate for Federal tax refunds and additional tax payments is the appropriate rate of interest on the overcharges. See Teleprompter of Fairmont, Inc. v. Chesapeake and Potomac Telephone Company of West Virginia, 79 FCC 2d 232, 238-39 (1980). It has also taken official notice that the Commissioner of Internal Revenue has set a rate of 20 percent per year effective February 1, 1982, thereby increasing the rate from 12 percent. Rev. Rul. 81-260, 1981-44 I.R.B. 19.

20. Accordingly, we will apply a 12-percent interest rate on overpayments held by FP&L for the period from the filing date of the complaint until January 31, 1982. An annual interest rate of 20 percent will then be imposed from February 1, 1982, until the payment of the refunds by FP&L.

Ordering Clauses

21. Accordingly, IT IS ORDERED, pursuant to Sections 0.291 and 1.1401-1413 of the Commission's Rules, 47 C.F.R. §90.291 and 1.1401-1413, That the complaint of Warner Amex Cable Communications, Inc. IS GRANTED to the extent indicated above.

22. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(a) of the Commission's Rules, 47 C.F.R. §90.291 and 1.1410(a), That the existing annual rate of \$5.00 for each pole attachment arising out of the agreement between Florida Power and Light Company and Warner Amex Cable Communications, Inc., IS TERMINATED, effective upon the release of this Order.

23. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(b) of the Commission's Rules, 47 C.F.R. §90.291 and 1.1410(b), That an annual rate of \$2.29 for each pole attachment IS SUBSTITUTED for the existing rate in the contract described in paragraph 22, effective upon release of this Order.

24. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(c) of the Commission's Rules, 47 C.F.R. §90.291 and 1.1410(c), That Florida Power and Light Company SHALL REFUND, within thirty (30) days of release of this Order, to Warner Amex Cable Communications, Inc., excess payments made for service received after December 30, 1981. These excess payments for which a refund is ordered consist of the difference between the payments made and payments based on the maximum annual rate of \$2.29 per attachment. This refund shall consist of the excess portions included in the payment due September 1, 1981 (prorated from December 30, 1981) and all subsequent payments made after that date.

25. IT IS FURTHER ORDERED, That the refund shall bear interest at an annual rate of 12-percent simple interest from the filing date of the complaint through January 31, 1982, and at an annual rate of 20-percent simple interest from February 1, 1982, until the date of full payment to the complainant.

FEDERAL COMMUNICATIONS COMMISSION

Gary M. Epstein
Gary M. Epstein
Chief, Common Carrier Bureau

EXHIBIT G

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

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In the Matter of)	
)	
Warner Amex Cable Communications Inc.)	
Complainant)	
)	
v.)	File No. PA-82-0019
)	
Arkansas Power and Light Company)	
Respondent)	

MEMORANDUM OPINION AND ORDER

Adopted October 6, 1983 ; Released October 11, 1983

By the Chief, Common Carrier Bureau:

1. Before the Bureau, pursuant to delegated authority, is a complaint filed under Section 224 of the Communications Act, 47 U.S.C. §224 (Supp. II, 1978), by Warner Amex Cable Communications Inc. (Warner Amex) alleging that Arkansas Power and Light Company (APL) has imposed unjust and unreasonable rates for cable television pole attachments. ^{1/} That section empowers the Commission to adjudicate attachment rate disputes between cable television system operators and telephone and electric utilities. After consideration of the pleadings, we conclude that APL in fact charges unjust and unreasonably high rates, but that a refund is not warranted at this time.

2. Warner Amex owns and operates a cable television system serving Russellville, Arkansas. Pursuant to a contract with Arkansas Power and Light dated July 15, 1978, Warner Amex has attached distribution facilities to approximately 1900 poles.

^{1/} APL filed a motion requesting that we dismiss the complaint for Warner Amex's alleged failure to adequately pursue a negotiated settlement. APL does not indicate what provisions, if any, of the Communications Act or the Rules require such negotiations. In response, Warner Amex contends that it undertook all reasonable steps in an attempt to resolve this matter through negotiations. Moreover, it is Warner Amex's position that regardless of what steps were taken, Section 1.1404(i) of the Rules requires only that the complaint contain a ". . . brief summary of all steps taken to resolve the problem . . ." The Rule is clear that the complaint must include only a description of the negotiation process, not a showing that the attempt was "adequate." Accordingly, APL's motion to dismiss will be denied.

3. Using information provided by APL and applying the formula established by Section 1.1409(c) of the Commission's Rules, 47 C.F.R. §1.1409(c), Warner Amex calculates that the maximum just and reasonable rate is \$2.15 per attachment. It therefore urges us to substitute this lower rate for the \$3.15 rate contained in the contract and, further, to order appropriate refunds. APL, by contrast, argues not only that the \$3.15 rate is reasonable, but that a rate of \$3.55 is fully justified under the pole attachment rate formula.

4. Section 1.1409(c) of the Commission's Rules, 47 C.F.R. §1.1409(c), provides that the maximum "just and reasonable" rate for pole attachments is to equal the percentage of the total usable space occupied by the pole attachment times the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole. This rule, expressed as a formula, is as follows:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by CATV}}{\text{Total Usable Space}} \times \left(\text{Operating Expenses} + \text{Capital Costs of Poles} \right)$$

In the instant case, the parties' dispute centers on operating expenses and capital costs of poles.

5. Total Usable Space and Space Occupied by CATV. While APL objects to Warner Amex's figures for total usable space (13.5 feet) and space occupied by CATV (one foot), both of which comport with the Commission's Rules and prior decisions, it nonetheless uses these figures in its calculations. Thus, we will use these figures in the rate formula.

6. Operating Expenses and Capital Costs of Poles. The final formula element to be determined is operating expenses and capital costs of poles. Although operating expenses and capital costs of poles (also known as "carrying charges") can be expressed directly as dollar amounts, these costs may also be expressed as a percentage of net pole investment. Section 1.1404(g)(9), 47 C.F.R. §1.1404(g)(9). The operating expenses and capital costs of poles normally are determined from the net cost of a bare pole and the carrying charges attributable to the cost of owning a pole. Nevertheless, the maximum pole attachment rate can be determined accurately using "gross" rather than "net" figures. It is necessary, however, to ensure that "like kind" figures, i.e., all gross or all net figures, are used in the calculation. In this case, the parties have submitted figures that are on a gross basis. Therefore, we will calculate the rate based on gross figures.

7. Gross Cost of a Bare Pole. Using figures provided by APL and gathered from respondent's 1980 FERC Form 1, Warner Amex reduces the gross pole cost by 15 percent to eliminate the investment in crossarms and other items not essential for CATV attachments. Finally, Warner Amex divides this figure by the total number of poles to calculate a gross investment per bare pole installed of \$166.37.

8. APL does not dispute Warner Amex's methodology, but rather provides an updated figure using 1981 information. However, APL

did not provide any underlying data, and accordingly Warner Amex objects to APL's figure because it has no means of independently calculating the result.

9. APL then filed a Motion for Leave to File Amendment to Response and an Amendment containing the supporting information from its 1981 FERC Form 1. Warner Amex opposes the motion on the grounds that the amendment is a pleading not contemplated by the Rules and is not justified since the data was available at the time APL filed its response. While we agree that APL should have filed the data with its response, we prefer to use the most recent year-end data available if supplied by the parties. Therefore we will grant APL's motion. Inserting the figures in the formula, we calculate the gross investment per bare pole to be \$177.42. 2/

10. Carrying Charges. We next turn to carrying charges, the remaining figure necessary for calculating operating expenses and capital costs of poles. The parties disagree on the formula to be used for calculating three components of the carrying charges: maintenance expenses, general and administrative expenses, and taxes. Using information supplied by the respondent and obtained from APL's 1980 FERC Form 1, Warner Amex calculates carrying charges of 17.48 percent. APL, using 1981 data, calculates the carrying charges to be 21.68 percent. We will calculate the carrying charges using the relevant 1981 data.

11. Maintenance Expenses. In its calculation of the maintenance expense component of the carrying charges, APL includes Accounts 590-598 (Maintenance supervision and engineering, and Maintenance of structures, station equipment, overhead lines, underground lines, line transformers, street lighting and signal systems, meters, and miscellaneous distribution plant, respectively), Account 364 (Poles, towers and fixtures), Account 365 (Overhead conductors and devices) and Subaccount 369.1 (Overhead services). APL recognizes that the Commission generally uses the entire Account 369 (Services) in determining this component of the carrying charges. However, APL contends that it is more accurate to use Subaccount 369.1 which includes only overhead services rather than entire Account 369 which encompasses both overhead and underground services. Underground services, according to APL, are not related to pole attachments. Using these accounts, APL concludes that the maintenance component is 2.97 percent.

2/	Gross Cost of a Bare Pole	=	<u>Gross Pole Investment - 15% (Gross Pole Investment)</u> <u>Number of Poles</u>
	Gross Cost of a Bare Pole	=	<u>\$156,394,498 - \$23,459,175</u> <u>749,265</u>
	Gross Cost of a Bare Pole	=	\$177.42

12. In contrast, Warner Amex alleges that the accepted method for calculating this element of the carrying charges is to divide Account 593 by the sum of Accounts 364, 365 and 369. Using this formula, Warner Amex calculates the maintenance expense to be 2.27 percent.

13. We find Warner Amex followed the formula generally accepted by the Commission to calculate the maintenance component of the carrying charges. Only accounts which represent expenses attributable to poles are used in the formula. APL's use of Accounts 590-2 and 594-8 must be rejected for not conforming to this standard. See, Teleprompter Corp. v. Florida Power Corp., Mimeo No. 001980, released July 16, 1981; Teleprompter Corp. and Teleprompter Southwest, Inc. v. Alabama Power Co., Mimeo No. 001808, released June 29, 1981. We agree with APL that use of Subaccount 369.1, which includes expenses only for overhead services, would be more accurate here than one which includes expenses for both overhead and underground services. However, overhead expenses are not reported in a separate account in FERC Form 1, and to provide the kind of detail necessary to support allocation of the accounts used to compute the components of the carrying charges would unduly complicate and unnecessarily delay the process of determining the maximum lawful rate. ^{3/} This would contravene the statutory mandate in favor of a simple and expeditious process rather than a full-blown rate case. See S. Rep. No. 95-580, 98th Cong., 1st Sess. (1977). Therefore, we reject APL's methodology and accept the formula used by Warner Amex. Applying the figures supplied from APL's 1981 FERC Form 1 in the formula, we calculate the maintenance charge to be 2.47 percent. ^{4/}

14. Administrative and General Expenses. APL calculates the administrative component of the carrying charges by adding Accounts 920 (Administrative and general salaries), 921 (Office supplies and

^{3/} The Commission's methodology is predicated on a simple procedure by which all of the parties can predict the FCC-determined maximum just and reasonable rate, without a formal complaint in most instances, by applying the data from publicly available records (the FCC Form M or the FERC Form 1) to the Commission's formula. It relies on balancing. Thus, while small portions of some accounts which admittedly relate to cable attachments (such as loading factors) are omitted, other entire accounts which contain non-cable-related expenses are included. Liberty TV Cable Co. v. Southwestern Bell Telephone Co., Mimeo No. 6625, released September 22, 1983.

^{4/} Maintenance Expenses	=	$\frac{\text{A/C 593}}{\text{A/C 364} + \text{A/C 365} + \text{A/C 369}}$
Maintenance Expenses	=	$\frac{\$7,397,172}{\$156,394,498 + \$96,118,645 + \$46,487,586}$
Maintenance Expenses	=	2.47%

expenses), 922 (Administrative expenses transferred-credit), 923 (Outside services employed), 924 (Property insurance), 925 (Injuries and damages), 926 (Employee pensions and benefits), 928 (Regulatory commission expenses) and Subaccount 930.2 (Miscellaneous general expenses) and dividing this total by the gross plant investment. In particular, APL alleges that Account 924 (Property insurance) should be included in the administrative component because, while the cable operators carry insurance to protect against their own negligence, the utility's insurance covers different types of risks. Warner Amex, on the other hand, following Commission precedent, includes only Accounts 920, 921, 922 and 928 and divides the sum by the gross plant investment.

15. We find that Warner Amex has used the accepted formula for calculating the administrative component of the carrying charges, whereas APL has included accounts unrelated to the furnishing of pole attachments. Alabama Power Company, supra; Liberty TV Cable, Inc. v. Georgia Power Company, Mimeo No. 5827, released August 18, 1982; Tele-Communications Inc. and Community Tele-Communications, Inc. v. Mountain States Telephone and Telegraph Co., Mimeo No. 6039, released August 31, 1982. Account 924 represents insurance or reserve accruals for property used in utility operations. Specifically, Account 924 includes premiums for fire, storm, burglary, boiler explosion, lightning, fidelity, riot and similar insurance. Most of these items are only tangentially related to CATV operations and the benefit to the cable company is minimal in relation to what is covered by the account. Therefore, applying 1981 FERC figures and Warner Amex's methodology we calculate the administrative and general expenses to be 0.85 percent. 5/

16. Taxes. APL computes the taxes component by using all of its tax expenses booked or deferred. Warner Amex maintains that the proper methodology for computing this component is to divide taxes paid (ad valorem taxes, federal income taxes and state income taxes) by gross plant investment. See Florida Power, supra; Teleprompter of Fairmont, Inc. v. Chesapeake and Potomac Telephone Company of W. Virginia, 79 FCC 2d 232, 241 (1980), aff'd., 85 FCC 2d 243 (1981).

17. The Commission has determined that the taxes expense should be calculated on the basis of taxes actually paid. Tele-Communications, Inc., supra; Florida Power Corporation, supra; Logan

<u>5/</u>	Administrative and General Expenses	=	<u>A/C 920 + 921 + 922 + 928</u> Gross Plant Investment
	Administrative and General Expenses	=	<u>\$15,121,138 + \$5,599,293 + [-\$193,746] + \$790,513</u> \$2,505,154,405
	Administrative and General Expenses	=	0.85%

Cablevision, Inc. v. Chesapeake and Potomac Telephone Company of W. Virginia, Memo No. 003600, released September 29, 1981. Accordingly, we compute the tax component to be 2.12 percent. 6/

18. Direct Incremental Cost of Implementing Agreement. In addition to the rate proposed by APL using a variation of the Commission's rate formula, APL argues that it is entitled to impose an additional charge of \$0.81 per pole as compensation for implementing the pole attachment agreement. For support, APL provides a summary of the results of a study indicating the direct incremental costs of implementing the pole attachment agreement. APL includes such expenses as general administration, annual billing, notice to transfer contracts, correspondence and billing data preparation. APL argues that this charge is not an attempt to add the minimum rate to the maximum rate; rather, it contends that the charge is part of the fully distributed costs of providing pole attachments. APL maintains that these costs are normally billed directly to cable operators by utilities.

19. Warner Amex responds that the additional expense is part of the general and administrative expenses already included in that component of the carrying charges. It maintains that the imposition of this charge would result in the double recovery of cost by APL and is an effort by APL to inflate its pole rental charge.

20. We find APL's attempt to impose an additional expense of \$0.81 per pole is improper and therefore disallowed. These expenses claimed by APL are already included in the maintenance or administrative expense component of the carrying charges. Accordingly, this added expense would, as Warner Amex claims, result in double billing. We reject APL's contention that the items included in its direct implementation costs are normally billed directly to CATV operators. These costs appear to be no more than the ordinary costs of doing business. If these general costs are in fact billed separately to the CATV operator, the costs for these functions cannot also be reflected in the maximum rate paid by the CATV operator.

21. In addition, we will disallow this charge because, despite its contention to the contrary, it is an attempt by APL to add the minimum rate to the maximum rate. The maximum just and reasonable rate a utility may charge is the cable company's share of the fully allocated costs of the pole while the minimum just and reasonable rate is the incremental cost, i.e., the additional cost to the utility of

6/	Taxes	-	<u>Total Taxes Paid</u>
	Expense		Gross Plant Investment
	Taxes	-	\$53,050,273
	Expense		<u>\$2,505,154,405</u>
	Taxes	-	2.12%
	Expense		

providing pole attachments. A just and reasonable rate could be any rate from the maximum rate obtained from inserting the appropriate values into our formula, down to the low rate of the utility's incremental costs, in this case \$0.81. The Rules do not permit a utility to add the two rates. See Section 1.1409(c) of the Rules, 47 C.F.R. §1.1409(c). APL has apparently chosen to request the maximum rate by utilizing a variation of our formula. It cannot then increase the maximum rate by adding the incremental cost or minimum rate. Therefore, we reject APL's argument that it is entitled to an additional \$0.81 per pole. See King Videocable Company v. Idaho Power Company, Mimeo No. 2719, released March 12, 1982.

22. In summary, adopting the component figures outlined above, plus the depreciation and cost of capital elements which are not in dispute, we calculate the total carrying charges to be 18.19 percent.

Depreciation	3.66
Administrative and General	0.85
Maintenance	2.47
Taxes	2.12
Cost of Capital	9.09
Total	<u>18.19%</u>

23. Maximum Rate. By inserting the values developed in paragraphs 7-22 into the formula as follows, we calculate that the maximum rate per attachment is \$2.39.

$$\begin{aligned} \text{Maximum Rate} &= \frac{\text{Space Occupied by CATV}}{\text{Total Usable Space}} \times \text{Cost of a Bare Pole} \times \text{Carrying Charges} \\ \text{Maximum Rate} &= \frac{1 \text{ Foot}}{13.5 \text{ Feet}} \times \$177.42 \times 18.19\% \\ \text{Maximum Rate} &= \$2.39 \end{aligned}$$

24. Under Section 224 of the Act and our underlying rules, \$2.39 per pole attachment per year is thus the maximum just and reasonable rate APL may charge. As noted, however, APL has been charging \$3.15 per attachment annually during the period covered by this complaint. The conclusion is inescapable, therefore, that APL's rates are unjust and unreasonable within the meaning of the Act.

Remedies

25. After making a determination, based upon a complaint and responsive pleadings, that an existing pole attachment rate is unjust and unreasonable, it is our responsibility to fashion a suitable remedy. Where the amount of the overcharge has been established, it has generally been our policy to order refunds of the overpayments (with interest) commencing from the date the CATV operator filed the complaint. While we have determined that the maximum just and reasonable rate in this proceeding is less than that currently being

charged by APL, we are not persuaded to order a refund at this time. APL asserts that Warner Amex is delinquent in its payments under the agreement. Warner Amex did not respond directly to this allegation but rather repeated its request for a refund of the unjust portion of the present rate paid by Warner Amex from the date the complaint was filed. We are unable to determine from the pleadings what specific payments APL has collected from Warner Amex. Therefore a refund order would be premature. In order for the Commission to resolve this dispute between the parties, it would have to calculate the specific amounts owed by each party, taking into consideration whether delinquent payments should be allowed to offset a refund. However, resolution of these extraneous issues would go beyond the regulation of "rates, terms and conditions" of pole attachments provided for under Section 224 of the Act. 47 U.S.C. §224. Appalachian Power Company v. Capitol Cablevision Corp. Mimeo No. 000355, released April 22, 1981; Teleprompter Corp. v. Kentucky Power Co., Mimeo No. 4763, released June 25, 1981. The Bureau has already established the maximum lawful rate for pole attachments since the date the complaint was filed. It is now the parties' responsibility to determine what monies have been paid and what refunds, if any, are due. If such determination does not ultimately take into account any overpayment Warner Amex may have made, we will grant complainant leave to return to the Commission to request appropriate action regarding the refunding of overcharges. Cox Cablevision Corp. v. Florida Power Corp. Mimeo No. 2639, released March 8, 1982.

ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to Section 0.291 of the Commission Rules, 47 C.F.R. §0.291, That the Motion to Dismiss filed by Arkansas Power and Light Company IS DENIED.

27. IT IS FURTHER ORDERED, pursuant to Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, That Arkansas Power and Light's Motion for Leave to File Amendment to Response and Amendment IS GRANTED.

28. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1401-1413 of the Commission's Rules, 47 C.F.R. §§0.291, and 1.1401-1413, that the complaint of Warner Amex Cable Communications Inc. IS GRANTED to the extent indicated above.

29. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(a) of the Commission's Rules, 47 C.F.R. §§0.291 and 1.1410(a), That the existing annual rate of \$3.15 for each pole attachment arising out of the agreement between Arkansas Power and Light Company and Warner Amex Cable Communications Inc. IS TERMINATED, effective upon the release of this Order.

30. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(b) of the Commission's Rules, 47 C.F.R. §§0.291 and 1.1410(b), That an annual rate of \$2.39 for each pole attachment IS SUBSTITUTED for the existing rate in the contract described in paragraph 29, effective upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION



Jack D. Smith
Chief, Common Carrier Bureau

EXHIBIT H

Florida Power & Light Company
 Calculation of Cable T.V. Pole Attachment Rate
 For the Year 1986

1	<u>Net Cost of Bare Pole</u>		
2			
3			
4	Item	Gross Plant	Depreciation Reserve
5			Net Plant
6	Account 364	\$254,890,803	(\$100,959,193)
7	Crossarms	38,233,620	(15,143,879)
8			
9	Net Pole	\$216,657,183	(\$85,815,314)
10		=====	=====
11			
12	Number of Poles	792,286	
13			
14	<u>Net Cost of Bare Pole</u>		
15			
16	Net Investment/# of Poles	\$165.14	
17		=====	
18			
19	<u>Capital Carrying Charge Rate</u>		
20			
21			
22	Depreciation Expense	8.44 %	
23	Administrative & General	4.04 %	
24	Operation & Maintenance	8.07 %	
25	Taxes	9.58 %	
26	Cost of Capital	10.40 %	
27			
28	Total	40.53 %	
29		=====	
30			
31	<u>Percentage Space Occupied by Attachment</u>		
32			
33			
34	Space Occupied by Attachment		1 ft.
35			
36	Total Usable Space on Pole		13.5 ft.
37			
38	Percentage (%)		7.407 %
39			=====
40			
41	<u>Maximum Allowable Rate</u>		
42			
43	Bare Pole Investment X Usable Space		
44	X Capital Carrying Charge Rate		\$4.96
45			=====