

it comports with prior Commission decisions. The administrative expense is therefore 0.52 percent.⁶

13. Taxes. The final element of the carrying charges in dispute is taxes. Booth computes the tax component by dividing total taxes paid in 1981 by gross plant investment. Duke argues that Booth uses a "flow-through" method, i.e. taxes paid, but that the correct method is a "normalized tax approach." It points out that the Internal Revenue Service, the Federal Energy Regulatory Commission, as well as the South Carolina Public Service Commission, which regulates Duke, require utilities to use a "normalized tax approach." In addition, Duke asserts that the use of a "normalized tax approach" is also mandated by the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34 (ERTA).

14. We reject Duke's argument supporting the use of normalized taxes for several reasons. First, Duke's reliance on ERTA is misplaced since that Act, and the regulations promulgated thereunder, apply only to full ratemaking proceedings. Pole attachment complaints, however, are resolved through a simple complaint procedure. In fact, Congress specified that this Commission is to avoid ratemaking proceedings in resolving pole attachment disputes. See Senate Report No. 95-580, supra. Second, the use of normalized taxes results in calculating the tax component with deferred taxes rather than with taxes actually paid. It is well established that only taxes actually paid are to be used to calculate the tax component. Liberty T.V. Cable, Inc. v. Southwestern Bell Telephone Co., Mimeo No. 6625, released September 22, 1983; Teleprompter Corp. v. Florida Power and Light Co., FCC 83-562, released December 5, 1983. This is consistent with the intent of the governing statute to charge cable operators only with actual costs and expenses. See 47 U.S.C. §224(d)(1). Accordingly, we will

$$6 \quad \text{Administrative Expense} = \frac{\text{Accounts 920} + 921 + (-922) + 928}{\text{Gross Plant Investment}}$$

$$\text{Administrative Expense} = \frac{\$22,589,202 + \$15,840,990 + (-\$1,943,972) + \$885,984}{\$7,183,211,765}$$

$$\text{Administrative Expense} = 0.52\%$$

use Booth's calculation of 2.57% for the tax component of the carrying charges.⁷

15. In summary, adopting the component figures outlined above, we calculate the total carrying charges to be 20.10 percent.

Depreciation	3.40%
Administration	0.52%
Maintenance	3.43%
Taxes	2.57%
Cost of Capital	<u>10.18%</u>
Total Annual Carrying Charges	20.10%

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 \$2.21.

$$\begin{aligned} \text{Maximum Rate} &= \frac{\text{Space Occupied by CATV}}{\text{Total Usable Space}} \times \text{Cost of a Bare Pole} \times \text{Carrying Charges} \\ \text{Maximum Rate} &= \frac{1 \text{ Foot}}{13.5 \text{ Feet}} \times \$148.59 \times 20.10\% \\ \text{Maximum Rate} &= \$2.21 \end{aligned}$$

$$\begin{aligned} 7 \text{ Taxes} &= \frac{\text{Total Taxes Paid}}{\text{Gross Plant Investment}} \\ \text{Taxes} &= \frac{\$184,511,051}{\$7,183,211,765} \\ \text{Taxes} &= 2.57\% \end{aligned}$$

17. Under Section 224 of the Act and our underlying rules, \$2.21 per pole attachment per year is thus the maximum just and reasonable rate Duke may charge. As noted, however, Duke has been charging \$3.00 per attachment annually during the period covered by this complaint. The conclusion is inescapable, therefore, that Duke's rates are unjust and unreasonable within the meaning of the Act.

Remedies

19. 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.⁸ For the same reasons described in Cable Information Services, Inc. v. Appalachian Power Co., 81 FCC 2d 383 (1980) (C.I.S.), we are ordering a refund reflecting the difference between the \$2.21 rate and the \$3.00 rate currently being charged Booth for all payments in excess of the \$2.21 rate made for service received after July 6, 1982. See discussion in C.I.S., 81 FCC 2d 392-93.

Ordering Clauses

19. Accordingly, IT IS 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 Booth American Company, d/b/a Anderson Cablevision, IS GRANTED to the extent indicated above.

8 The following are the appropriate rates of interest for pole attachment refunds:

July 6, 1982 through December 31, 1982	20 percent simple interest	Rev. Rul. 81-260 1981-44 I.R.B. 19
January 1, 1983 through June 30, 1983	16 percent simple interest	Rev. Rul. 82-182 1982-44 I.R.B. 9
July 1, 1983 until the date of payment of funds	11 percent simple interest	Rev. Rul. 83-76, 1983-18 I.R.B. 37

See Teleprompter of Fairmont, Inc. v. Chesapeake and Potomac Telephone Company of West Virginia, 79 FCC 2d 232, 238-39, (1980), for discussion of the appropriate rate of interest on overcharges.

20. IT IS FURTHER ORDERED, pursuant to Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, That the cross-complaint filed by Duke Power Company IS DENIED.

21. 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 \$3.00 for each pole attachment arising out of the agreement between Duke Power Company and Booth American Company d/b/a Anderson Cablevision IS TERMINATED, effective upon the release of this Order.

22. 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 \$2.21 for each pole attachment IS SUBSTITUTED for the existing rate in the contract described in paragraph 21, effective upon release of this Order.

23. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(c) of the Commission's Rules, 47 C.F.R. §§0.291 and 1.1410(c), That Duke Power Company SHALL REFUND, within thirty (30) days of release of this Order, to Booth American Company, d/b/a Anderson Cablevision, excess payments made for service received after July 6, 1982. 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 \$2.21 per attachment. This refund shall consist of the excess portions included in the payment due July 1, 1982, (prorated from July 6, 1982) and all subsequent payments made after that date.

24. IT IS FURTHER ORDERED, That the refund shall bear interest at an annual rate of 20 percent simple interest from the filing date of the complaint through December 31, 1982; at an annual rate of 16 percent simple interest from January 1, 1983; through June 30, 1983; and at an annual rate of 11 percent simple interest from July 1, 1983, until the date of full payment to the complainant.

FEDERAL COMMUNICATIONS COMMISSION


Jack D. Smith
Chief, Common Carrier Bureau

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

CC
FCC 84-440
35090

In the Matter of)
)
BOOTH AMERICAN COMPANY)
d/b/a ANDERSON CABLEVISION,)
Complainant)
)
v.) File No. PA-82-0068
)
DUKE POWER COMPANY,)
Respondent)

MEMORANDUM OPINION AND ORDER

Adopted September 17, 1984 ; Released September 20, 1984

By the Commission:

1. Before the Commission is an application for review filed by Duke Power Company (Duke) of a Memorandum Opinion and Order entered pursuant to delegated authority by the Chief, Common Carrier Bureau, Mimeo No. 3064, released March 22, 1984.¹ In that Order, among other things, the Bureau rejected Duke's use of a normalized tax approach in calculating the tax component of the carrying charges, found that Duke charged an unreasonably high rate, and directed it to refund, with interest, excess payments made by Booth American Company d/b/a Anderson Cablevision (Booth). Duke has sought review only of the rejection of its normalized tax approach.

2. We have fully reviewed the parties' contentions and find no reason to disturb either the rationale or the result of the Bureau's Order. Duke has not provided any arguments which would form a basis for our reaching any different result, but rather has repeated arguments addressed at length and correctly disposed of in the Order.

1 Also before us are Booth's opposition to the application, Duke's reply, and Booth's Motion to Strike and Response. (Booth alleges that a party may reply to an opposition to an application for review only if requested by the Commission, and that the reply shall not exceed 5 pages. In case the Commission accepts the reply, however, Booth has responded to two new matters.) In view of our decision herein, the motion is moot and will be dismissed.

3. Accordingly, IT IS ORDERED, pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. §1.115, that the application for review filed by Duke Power Company IS DENIED.

4. IT IS FURTHER ORDERED, That the Motion to Strike and Response filed by Booth American Co. IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

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

In the Matter of

Booth American Company
d/b/a Anderson Cablevision
Complainant.

File No. PA 82-0068

Duke Power Company
Respondent.

ORDER

Adopted: March 7, 1991; Released: March 18, 1991

By the Chief, Accounting and Audits Division:

On July 6, 1982, Booth American Company, d/b/a Anderson Cablevision filed the above-captioned complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224, seeking a Commission determination that Duke Power Company had imposed unjust and unreasonable rates for cable television pole attachments. The Commission ruled in favor of the complainant, but subsequently the United States Court of Appeals for the Fourth Circuit reversed and remanded the case for further proceedings. Duke Power Company v. FCC, No. 2253 (4th Cir. June 15, 1987); remanding Booth American Co. v. Duke Power Co. (PA 82-068), FCC 84-440 (revised Sept. 20, 1984). See also Alabama Power Co. v. FCC, 773 F.2d 362 (D.C. Cir. 1985).

On October 2, 1989, counsel for both parties advised there are no longer issues in controversy and requested dismissal of the pending complaint.

Accordingly, IT IS ORDERED, pursuant to Section 202 of the Communications Act of 1934, as amended, 47 U.S.C. §154 (i), and authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, that the complaint filed by Booth American Company d/b/a Anderson Cablevision IS DISMISSED and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division
Common Carrier Bureau

RESPONSE OF FLORIDA POWER & LIGHT COMPANY

EXHIBIT G

LIBERTY T.V. CABLE, INC.

V.

SOUTHWESTERN BELL TELEPHONE COMPANY

MEMORANDUM OPINION AND ORDER

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

In the Matter of)
LIBERTY T.V. CABLE, INC.)
v.) File No. PA-80-0012
SOUTHWESTERN BELL TELEPHONE COMPANY)

6625

In the Matter of)
TELEPROMPTER OF GALVESTON CABLE)
T.V. CORPORATION)
v.) File No. PA-80-0015
SOUTHWESTERN BELL TELEPHONE)
COMPANY)

In the Matter of)
TOTAL TELEVISION OF AMARILLO)
v.) File No. PA-81-0019
SOUTHWESTERN BELL TELEPHONE)
COMPANY)

MEMORANDUM OPINION AND ORDER

Adopted September 16, 1983 ; Released September 22, 1983

By the Chief, Common Carrier Bureau:

1. Before the Bureau is a petition for reconsideration filed by the Southwestern Bell Telephone Company ("Southwestern Bell"). 1/ Southwestern Bell requests that the Bureau reconsider its Memorandum Opinion and Order, Mimeo No. 001933 (released July 10, 1981) (Order),

1/ Also before us are an "Opposition to Petition for Reconsideration" ("Joint Opposition") and a "Supplementary Affidavit" both jointly filed by Liberty T.V. Cable, Inc. and Teleprompter of Galveston Cable T.V. Corporation on August 19 and 24, 1981, respectively; an opposition by Total Television of Amarillo filed on August 19, 1981; and a "Reply" filed by Southwestern Bell on August 28, 1981. Southwestern Bell also sought a stay of our Order, infra. Such stay request was denied by our Memorandum Opinion and Order in Liberty T.V. Cable, et al v. Southwestern Bell Telephone Company. Mimeo No. 302, released October 30, 1981.

which found that the \$3 per pole annual attachment rate that Southwestern Bell had been charging the complaining cable television system operators was unlawful under Section 224 of the Communications Act, 47 U.S.C. §224. Southwestern Bell argues that we erred in using 15 rather than 1.03 percent of its net pole investment for its cross-arm adjustment. It contends that we also erred in reducing its proposed figure for the maintenance, income tax, and administrative components of the carrying charges.

Net Investment per Bare Pole

2. In our Order, we calculated the net investment per bare pole with an adjustment of 15 percent to exclude crossarms and other items not used or usable for CATV attachments. In doing so, we rejected Southwestern Bell's proposed 1.03 percent adjustment, finding that Southwestern Bell had:

failed to include an allowance for other fixtures and apparatus not essential for pole attachments such as certain braces, fixtures, cable arms, guard arms, etc. See 47 C.F.R. § 31.241. This single flaw is sufficient to undermine this figure as a substitute for the 15 percent estimate used by the Commission

Order at 4. Southwestern Bell challenges this holding and argues that the information called for expanded the requirements of Section 1.1404 (g) of the Commission's Rules and constitutes unlawful rulemaking. Southwestern Bell also contends that the 15 percent figure is inherently unreasonable. These contentions reiterate arguments which we have previously considered and rejected in this proceeding.

3. Southwestern Bell apparently would have us find that, except for the components of the former crossarm retirement unit subaccount (47 C.F.R. §31.8(c) which was abolished in 1965), there are no items in its pole lines account, Account 241 (47 C.F.R. §31.241), that are not usable for CATV attachments. Yet, on its face, Account 241 lists more than 20 items, many of which, in addition to crossarms, have not been shown to be used or useful for CATV attachments. As noted by the cable operators, Section 1.1404(g) is a procedural rule and neither it nor other procedural rules which the Commission adopted in the First Report and Order in Docket No. 78-144, 68 FCC 2d 1585 (1978), preclude the presentation of data relevant to investment in non-cable associated equipment other than crossarms. Our use of the estimated 15 percent adjustment for items unessential for CATV pole attachments is consistent with previous Commission decisions. ^{2/} As Southwestern Bell correctly notes, the 15 percent figure is merely an estimate which can be used

^{2/} See, e.g., Teleprompter of Fairmont, Inc. et al. v. Chesapeake and Potomac Tel. Co. of West Virginia, 79 FCC 2d 232 (1980), aff'd on recon., 85 FCC 2d 243 (1981), and Memorandum Opinion and Order in CC Docket No. 78-144, 77 FCC 2d 187, 199 at note 18 (1980).

when the utility either fails to provide or to document a substitute figure based on actual data. However, Southwestern Bell's attempt to distinguish Teleprompter of Fairmont is unavailing. Contrary to Southwestern Bell's allegations, use of the 15 percent figure was appropriate in this case since it failed to fully substantiate its proposed alternative estimate. ^{3/} Additionally, such use also served to further the Congressional intent of developing simple and expeditious procedures to resolve pole attachment disputes. Under the circumstances and facts of this case, use of the 15 percent figure was neither unreasonable nor rulemaking.

Carrying Charges

4. Southwestern Bell also seeks reconsideration of our rejection of certain elements of its proposed carrying charges. First, it argues that its net figure for carrying charges should have been accepted because the complaining cable operators had not proposed an alternative carrying charge and thus failed to carry their burden. It quotes our statements that:

In the absence of a direct attack on any component of the [utility's] carrying charge, we generally accept [the utility's net carrying charge figure] unless it contains an element which on its face raises questions requiring further investigation.

4/

However, unlike the cases relied upon, the instant case does involve direct attacks by complainants on components of the telephone company's carrying charges. Accordingly, Southwestern Bell's reliance on such cases is misplaced.

3/ The 15 percent adjustment is intended to exclude not only crossarms and the hardware used to support crossarms but also all of that part of the Account 241 pole plant which is not normally used for cable television attachments. For example, it would normally exclude towers and extremely tall poles. Therefore, if a utility wishes to provide a more exact figure for the net cost of a bare pole than that obtained by the Commission's methodology, it should begin with the historic cost (net of depreciation) of a bare wooden pole of the heights used for CATV attachments, and add to that the cost of specific items of hardware (including guys and anchors, unless the cable company supplies its own or pays a separate charge for them) that are used by the cable company. Of course, it would have to supply the specific detail to support all of its figures, including the detailed makeup of the remainder of Account 241 so that we could verify that the totals correspond with the total amount in the account.

4/ Teleprompter Corp. v. Northwestern Bell Tel. Co., Mimeo No. 000345, released April 21, 1981, at 6, para. 16, and Teleprompter Corp. v. Mountain States Tel. & Tel. Co., Mimeo No. 000446, released April 23, 1981, at 4, para. 11, (emphasis added).

5. Maintenance. Southwestern Bell also maintains that the Bureau erred by rejecting loading factors such as social security taxes, relief and pensions and Account 612 (Other maintenance expenses) in the maintenance component of the carrying charges. Its arguments in this connection were previously considered and expressly rejected in our Order. 5/ While certain refinements of the carrying charges are always possible, we agree with the cable operators that offsetting refinements would be required for accuracy and complete fairness and that use of such refinements would unduly complicate the process of determining the maximum lawful rate, in contravention of the statutory mandate in favor of simplicity and expedition. 6/ The kind of detail which would be necessitated were we to attempt the refinements proposed by Southwestern Bell, as well as appropriate offsetting refinements, would involve questions of allocation, division of accounts, new methodology, in short a full-blown rate case which Congress specifically rejected. 7/ Under the circumstances, Southwestern Bell has not persuaded us that we should reconsider our Order insofar as it excluded loading factors and Account 612 as bearing only a minimal relationship, if any, to CATV pole attachments.

6. Taxes. In our Order, we calculated the tax component of Southwestern Bell's carrying charge using reported company-wide, i.e. regional, data from its Form M. We rejected Southwestern Bell's proposed figure -- not because it was based on statewide data -- but because it was based, in part, on estimates or anticipated taxes and was

5/ However, our Order did include all taxes paid in the taxes component of the carrying charges, and therefore should include social security taxes.

6/ See Teleprompter Corporation v. South Central Bell Telephone Co., Mineo No. 001803, released June 29, 1981, at note 3. Such offsetting refinements would not only consist of exclusion of portions of the expense accounts, but also a detailed breakdown of the pole line account to include only that part of the pole plant normally used for cable television attachments. (see note 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. The utility has disregarded this approach. Instead, it adjusted certain expense categories upward by including loading factors, but it made no effort to make the concomitant adjustments downward to exclude those expenses and investments not related to cable attachments.

7/ See Senate Report No. 95-580, 98th Congress, 1st Session (1977).

not limited to taxes actually paid. This was consistent with the intent of the governing statute to charge cable operators only with actual costs and expenses. See 47 U.S.C. §224(d)(1). It also was consistent with the Commission's prior determination that only taxes actually paid should be used in calculating carrying charges. See, e.g., Teleprompter Corp. et al. v. South Central Bell Telephone Co., Mimeo No. 001803, released June 29, 1981, at para. 13. Southwestern Bell's reliance on certain Treasury regulations concerning "normalization" procedures with respect to investment tax credits and accelerated depreciation is misplaced since, as correctly noted in the Joint Opposition, those regulations apply only to full ratemaking proceedings and not to pole attachment proceedings. The method advanced by Southwestern Bell to estimate taxes would introduce needless complexity and uncertainty into determining appropriate rates for attaching to utility poles, contrary to the Congressional intent that the Commission's pole attachment program be simple and expeditious. 8/

7. Administration Expense. Southwestern Bell also seeks reconsideration of our disallowance of its Accounts 640 (General commercial administration), 645 (Local commercial operations), 668 (Insurance) and 669 (Accidents and damages) in computing the administrative component of the carrying charges. Insofar as Accounts 640 and 645 are concerned, Southwestern Bell has not carried its burden of showing that its expenses under such accounts are related more than minimally to CATV attachments. Thus, it has not shown that any portion of these expenses are properly chargeable to cable operators. On the other hand, Accounts are 668 and 669 have been accepted in computing the administration factor in recent decisions and we will grant reconsideration of our Order which disallowed those accounts. 9/ With regard to calculating the administrative expense component, we previously have determined that we will use Accounts 661-665, 668, 669, 674 (General services and licenses) 10/ and 677 (Expenses charged construction-Cr.). See, e.g., Winchester T.V. Cable Company v. Chesapeake and Potomac Telephone Company of Virginia, Mimeo No. 1126, released December

8/ Id.

9/ The cable operators contend that they already are paying insurance costs "far greater than their reasonable share." (Joint Opposition at 16). However, whether the level of charges required under their current lease agreements for insurance is unreasonable is an issue not here before us. Nor is the present record adequate to enable us to determine whether the cable operators already are paying more than a reasonable share of the utility's insurance costs, as they allege.

10/ Account 674 includes license contract for expenses. Therefore, our new administrative component will replace both the administrative and license contract components in the Order.

16, 1981. Therefore, by dividing the sum of these accounts by year end 1980 net plant, we recompute the appropriate administrative expense component to be 2.70% percent. 11/

8. Total Carrying Charges. Substituting the revised administrative expense component we have determined the appropriate carrying charge to be 30.27 percent, as follows:

Maintenance Expense	4.01%
Depreciation	7.92
Administrative Expense	2.70
Taxes	5.76
Cost of Capital	9.88
Total Carrying Charge	<u>30.27%</u>

9. Maximum Rate. By inserting the values developed in our Order as modified in paragraphs 7 and 8 above into the formula, we calculate that the maximum rate per attachment is \$1.14.

11/ Administrative Accounts:

661	\$ 1,335,359
662	68,562,032
663	2,200,279
664	3,687,554
665	61,197,956
668	348,155
669	1,832,469
674	68,742,632
677	(13,388,961)
	<u>Total \$194,517,475</u>

$$\text{Administrative Expense} = \frac{\text{Total of Administrative Accounts}}{\text{Gross Plant Investment} - \text{Depreciation Reserve}}$$

$$\text{Administrative Expense} = \frac{\$194,517,475}{\$8,238,545,003 - \$1,044,820,000}$$

$$\text{Administrative Expense} = \frac{\$194,517,475}{\$7,193,725,003} = 2.70\%$$

(Our calculation of the administrative component using figures from the appropriate FERC Accounts listed above discloses there were additional errors in our earlier determination of the administrative and license contract components which Southwestern Bell did not challenge. However, in recalculating the combined administrative component, we have also corrected these errors.)

Maximum Rate	=	$\frac{\text{Space Occupied by CATV}}{\text{Total Usable Space}}$	X	Cost of a Bare Pole	X	Carrying Charges
Maximum Rate	=	$\frac{1 \text{ Foot}}{13.5 \text{ Feet}}$	X	\$50.72	X	30.27%
Maximum Rate	=	\$1.14				

Conclusion and Order

10. Remedies. Since we have determined that the maximum reasonable rate, based on 1980 Texas data, should have been \$1.14, rather than the \$1.41 determined in the Order before us on reconsideration, a refund of excess payments, retroactive to the date of the filing of each complaint, plus interest, is proper. 12/ Therefore, we are ordering a refund reflecting the difference between the \$1.41 and \$1.14 rates for all payments by complainants in excess of the \$1.14 rate made since the filing of the complaints.

11. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 U.S.C. §0.291, That, the petition for reconsideration filed by Southwestern Bell Telephone Company IS GRANTED to the extent indicated above and otherwise IS DENIED.

12/ The Commission has determined previously that the current interest rate for Federal tax refunds and additional tax payments is the appropriate rate of interest in CATV pole attachment matters. See Teleprompter of Fairmont, Inc. v. Chesapeake and Potomac Telephone Co. of West Virginia, 79 FCC 2d 232, 238-39 (1980).

The following are the appropriate rates of interest for pole attachment refunds:

<u>Time Period</u>	<u>Rate of Interest</u>	<u>Source</u>
Date of Order through January 31, 1982	12 percent simple interest	Rev. Rul. 79-365, 79-45, I.R.B. 16
February 1, 1982, through December 31, 1982	20 percent simple interest	Rev. Rul. 81-260, 1981-44 I.R.B. 19
January 1, 1983 through June 30, 1982	16 percent simple interest	Rev. Rul. 82-182, 1982-44 I.R.B. 9
July 1, 1983 until the date of repayment of excess funds	11 percent simple interest	Rev. Rul. 83-76, 1983-18 I.R.B. 37

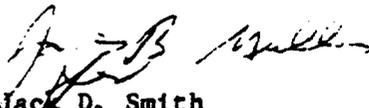
12. IT IS FURTHER ORDERED, That the previously determined maximum annual rate of \$1.41 for each pole attachment arising out of agreements between Southwestern Bell and each complainant herein IS TERMINATED, effective upon the release of this Order.

13. IT IS FURTHER ORDERED, That an annual rate of 1.14 for each pole attachment IS SUBSTITUTED for the existing rate in the contracts involved herein, effective upon release of this Order.

14. IT IS FURTHER ORDERED, That Southwestern Bell SHALL REFUND, within 30 days of release of this Order, the difference between the payments made by the complainants and payments based on the maximum annual rate of \$1.14 per attachment.

15. IT IS FURTHER ORDERED, That the refund shall bear simple interest at the annual rate specified for Federal tax refunds and additional tax payments for the relevant periods, until the date of full payment of the refund by Southwestern Bell.

FEDERAL COMMUNICATIONS COMMISSION


Jack D. Smith
Chief, Common Carrier Bureau

CERTIFICATE OF SERVICE

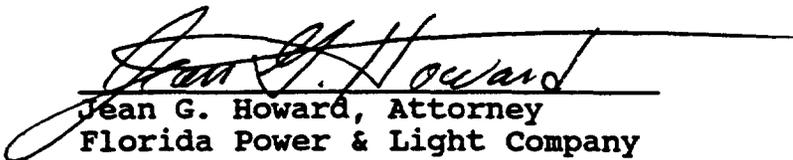
I, the undersigned, do hereby certify that the original and three copies of the foregoing Response were mailed by Federal Express to Mr. Stephen Steckler, Federal Communications Commission, Accounting & Audits Division, Common Carrier Bureau, 2000 L. Street. N.W., Room 812, Washington, D.C. 20554, and that a copy of the Response was mailed postage prepaid by first class mail, this 29th of September, 1992, to the following:

1. Attorney for Complainants; Continental Cablevision of Broward County and Continental Cablevision of Jacksonville, Inc.:

Gardner F. Gillespie, Attorney
Hogan & Hartson
555 13th Street, N.W.
Washington, D.C. 20004

2. Federal Energy Regulatory Commission
825 North Capital Street N.E.
Washington, D.C. 20426

3. Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301-8153


Jean G. Howard, Attorney
Florida Power & Light Company
P. O. Box 029100
Miami, Florida 33102
(305) 552-3929

Florida Bar No. 317462

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
153	7. ADMINISTRATIVE AND GENERAL EXPENSES (Continued)		
154	(923) Outside Services Employed	8,957,831	11,159,723
155	(924) Property Insurance	9,057,710	16,320,833
156	(925) Injuries and Damages	23,201,726	24,018,050
157	(926) Employee Pensions and Benefits	59,360,031	55,230,869
158	(927) Franchise Requirements		
159	(928) Regulatory Commission Expenses	2,381,082	3,072,404
160	(929) Duplicate Charges-Cr.	2,133,257	(2,133,257)
161	(930.1) General Advertising Expenses	64,699	237,681
162	(930.2) Miscellaneous General Expenses	109,879,264	23,120,883
163	(931) Rents	10,013,566	7,769,982
164	TOTAL Operation (Enter Total of Lines 150 thru 163)	327,231,959	245,301,127
165	Maintenance		
166	(935) Maintenance of General Plant	4,937,076	4,527,014
167	TOTAL Administrative and General Expenses (Enter Total of Lines 164 thru 166)	332,169,035	249,828,141
168	TOTAL Electric Operation and Maintenance Expenses (Enter Total of Lines 79, 99, 125, 133, 140, 147, and 167)	3,295,767,297	3,171,034,816

NUMBER OF ELECTRIC DEPARTMENT EMPLOYEES

- The data on number of employees should be reported for the payroll period ending nearest to October 31, or any payroll period ending 60 days before or after October 31.
- If the respondent's payroll for the reporting period includes any special construction personnel, include such employees on line 3, and show the number of such special construction employees in a footnote.
- The number of employees assignable to the electric department from joint functions of combination utilities may be determined by estimate, on the basis of employee equivalents. Show the estimated number of equivalent employees attributed to the electric department from joint functions.

1	Payroll Period Ended (Date)	December 31, 1991
2	Total Regular Full-Time Employees	14,509
3	Total Part-Time and Temporary Employees	N/A
4	Total Employees	14,509

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
103	3. DISTRIBUTION EXPENSES (Continued)		
104	(581) Load Dispatching	281,126	
105	(582) Station Expenses	4,831,260	5,328,892
106	(583) Overhead Line Expenses	20,004,318	24,362,220
107	(584) Underground Line Expenses	8,939,618	8,954,035
108	(585) Street Lighting and Signal System Expenses	2,617,943	2,346,696
109	(586) Meter Expenses	10,843,574	11,526,012
110	(587) Customer Installations Expenses	5,661,833	5,349,825
111	(588) Miscellaneous Expenses	37,122,241	37,130,848
112	(589) Rents	5,638,936	5,774,136
113	TOTAL Operation (Enter Total of Lines 102 thru 112)	123,204,015	127,995,524
114	Maintenance		
115	(590) Maintenance Supervision and Engineering	12,102,831	10,226,209
116	(591) Maintenance of Structures	1,235,343	978,191
117	(592) Maintenance of Station Equipment	9,786,060	7,956,151
118	(593) Maintenance of Overhead Lines	66,188,732	63,264,533
119	(594) Maintenance of Underground Lines	17,374,407	16,024,157
120	(595) Maintenance of Line Transformers	1,996,826	1,963,642
121	(596) Maintenance of Street Lighting and Signal Systems	6,012,245	5,267,681
122	(597) Maintenance of Meters	828,353	796,689
123	(598) Maintenance of Miscellaneous Distribution Plant	3,669,422	3,385,024
124	TOTAL Maintenance (Enter Total of Lines 115 thru 123)	119,194,219	109,862,277
125	TOTAL Distribution Expenses (Enter Total of Lines 113 and 124)	242,398,234	237,857,801
126	4. CUSTOMER ACCOUNTS EXPENSES		
127	Operation		
128	(901) Supervision	9,640,169	10,569,077
129	(902) Meter Reading Expenses	13,293,583	13,446,566
130	(903) Customer Records and Collection Expenses	85,688,865	80,128,766
131	(904) Uncollectible Accounts	23,718,517	14,910,532
132	(905) Miscellaneous Customer Accounts Expenses	705,506	(907,837)
133	TOTAL Customer Accounts Expenses (Enter Total of Lines 128 thru 132)	133,046,640	118,147,104
134	5. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES		
135	Operation		
136	(907) Supervision	6,712,568	9,625,556
137	(908) Customer Assistance Expenses	42,251,342	27,231,499
138	(909) Informational and Instructional Expenses	6,837,873	5,506,676
139	(910) Miscellaneous Customer Service and Informational Expenses	5,092,342	4,695,398
140	TOTAL Cust. Service and Informational Expenses (Enter Total of lines 136 thru 139)	60,894,125	47,059,129
141	6. SALES EXPENSES		
142	Operation		
143	(911) Supervision	34,577	77,967
144	(912) Demonstrating and Selling Expenses	321,700	494,765
145	(913) Advertising Expenses		
146	(916) Miscellaneous Sales Expenses	151	
147	TOTAL Sales Expenses (Enter Total of Lines 143 thru 146)	356,428	572,732
148	7. ADMINISTRATIVE AND GENERAL EXPENSES		
149	Operation		
150	(920) Administrative and General Salaries	69,482,302	69,309,669
151	(921) Office Supplies and Expenses	33,351,433	38,216,480
152	(Less) (922) Administrative Expenses Transferred-Credit	650,942	1,022,190

STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts 412 and 413, Revenue and expenses from Utility Plant Leased to Others, in another utility column (i,k,m,o) in a similar manner to a utility department. Spread the amount(s) over lines 01 thru 20 as appropriate. Include these amounts in columns (c) and (d) totals.
 2. Report amounts in account 414, Other Utility Operating Income, in the same manner as accounts 412 and 413 above.
 3. Report data for lines 7, 9, and 10 for Natural Gas companies using accounts 404.1, 404.2, 404.3, 407.1, and 407.2
 4. Use page 122 for important notes regarding the statement of income or any account thereof.
 5. Give concise explanations concerning unsettled rate pro-

ceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the right of the utility to retain such revenues or recover amounts paid with respect to power and gas purchases.
 6. Give concise explanations concerning significant amounts of any refunds made or received during the year

Line No.	Account (a)	(Ref.) Page No. (b)	TOTAL	
			Current Year (c)	Previous Year (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301	5,158,766,379	4,987,689,706
3	Operating Expenses			
4	Operation Expenses (401)	320-323	2,890,750,005	2,762,957,736
5	Maintenance Expenses (402)	320-323	405,017,292	408,077,080
6	Depreciation Expense (403)	336-338	446,757,850	441,487,600
7	Amort. & Depl. of Utility Plant (404-405)	336-338	55,758,326	44,537,037
8	Amort. of Utility Plant Acq. Adj. (406)	336-338		
9	Amort. of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)		4,584,464	5,144,346
10	Amort. of Conversion Expenses (407)			
11	Taxes Other Than Income Taxes (408.1)	262-263	486,939,826	450,236,964
12	Income Taxes - Federal (409.1)	262-263	186,133,814	105,475,421
13	- Other (409.1)	262-263	33,642,147	22,059,922
14	Provision for Deferred Inc. Taxes (410.1)	234, 272-277	155,899,829	195,756,752
15	(Less) Provision for Deferred Income Taxes - Cr.(411.1)	234, 272-277	154,871,811	117,501,180
16	Investment Tax Credit Adj. - Net (411.4)	266	(37,914,592)	(24,100,041)
17	(Less) Gains from Disp. of Utility Plant (411.6)		109,436	255,792
18	Losses from Disp. of Utility Plant (411.7)		22,653	36,438
19	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 18)		4,472,610,367	4,293,912,283
20	Net Utility Operating Income (Enter Total of line 2 less 19) (Carry forward to page 117, line 21)		686,156,012	693,777,423

RESPONSE OF FLORIDA POWER & LIGHT COMPANY

EXHIBIT C

AFFIDAVIT OF ROSEMARY MORLEY

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)
)
AMERICAN CABLESYSTEMS OF)
FLORIDA, LTD., a)
Massachusetts Limited Partnership)
d/b/a/ Continental Cablevision)
of Broward County and)
CONTINENTAL CABLEVISION OF)
JACKSONVILLE, INC., a)
Florida Corporation)
)
Complainants,)
)
v) File No. PA-91-0012
)
FLORIDA POWER & LIGHT COMPANY)
)
Respondent.)

AFFIDAVIT OF ROSEMARY MORLEY

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

BEFORE ME, this day personally appeared Rosemary Morley, who being duly sworn, deposes and says that she has personal knowledge of the following information and such information is true and correct according to her best knowledge and belief.

1. My name is Rosemary Morley; my business address is 9250 West Flagler Street, Miami, Florida 33174. I am employed

by Florida Power & Light Company as Supervisor of Cost of Service Studies.

2. I have a Bachelors Degree with Honors in Economics from the University of Maryland and a Masters Degree in Economics from Northwestern University. I have also taken numerous employer sponsored courses on subjects such as rates, finance, and statistics.

3. I began my career with Florida Power & Light in 1983 as an Assistant Economist in the load forecasting group. I subsequently held positions in a variety of functions including planning, forecasting, pricing, and rates. In August 1990, I was made Acting Supervisor of Cost of Service Studies. This position was made permanent in August 1991.

4. As Supervisor of Cost of Service Studies I am responsible for the production of cost of service studies that are filed with the Florida Public Service Commission (FPSC) and with the Federal Energy Regulatory Commission (FERC). I am also responsible for the development of cost studies pertaining to jurisdictional separation factors, loss expansion factors, interchange service schedules, and the cable television pole attachment rate.

5. I prepared the calculation of Florida Power & Light Company's cable television pole attachment rate as shown in Exhibit C of the Complaint and in Exhibit A attached to FPL's Response and attest to the accuracy of those calculations.

6. FPL first began using subaccount 369.1 in its calculations of the cable television pole attachment rate in June 1988 after FPL reported depreciable plant base and accumulated depreciation and amortization for subaccount 369.1 in its 1987 FERC Form 1.

7. The use of subaccount 369.1 (overhead services) in the calculation of the maintenance component of the pole attachment formula does not upset any "balance" within the maintenance component itself or within the Commission's formula as a whole. The use of subaccount 369.1 creates a better balance within the maintenance component, which is based on the ratio of maintenance expenses to net plant. (FPL Response, Exhibit A, lines 7 - 15.) By including overhead services only, the denominator of the ratio (i.e., distribution poles, overhead lines, and overhead services) is kept in balance with the nominator which is based on overhead distribution line maintenance expenses only.

8. The Uniform System of Accounts prescribed by FERC for electric utilities describes Account 593 to "include the cost of labor, materials used, and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in account 364, Poles, Towers and Fixtures, account 365, Overhead Conductors and Devices, and account 369, Services." FERC similarly specifies that account 594, Maintenance of Underground Lines shall "include the cost of labor, material used and expenses incurred in the maintenance of underground distribution line facilities, the book cost of which is includible in account 366, Underground Conduit, account 367, Underground Conductors and Devices, and account 369, Services." Thus, the Uniform System of Accounts requires that overhead and underground services be separately identified for the purpose of charging maintenance expenses.

?

9. By including overhead services only and excluding underground services, the denominator of the ratio (i.e., distribution poles, overhead lines, and overhead services) is kept in balance with the nominator which is based on overhead distribution line maintenance expenses only.

10. While it creates a more balanced and accurate maintenance component, the use of subaccount 369.1 in no way upsets the "balance" of the CATV rate as a whole. A review of the pole attachment formula reveals the other components of