

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Cencom Cable Income Partners, II, L.P.,)
Cencom Cable Entertainment, Inc., and)
Cencom Cable Television, Inc.;)
)
Complainants,)
)
v.)
)
Duke Power Company,)
)
Respondent)
)

CC DOCKET NO. 95-93

PA 91-0001

DOCKET FILE COPY ORIGINAL

TO: The Honorable John M. Frysiak
Administrative Law Judge

SETTLEMENT AGREEMENT

This settlement agreement is made and entered into as of October 9, 1995, by and between Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc., and Cencom Cable Television, Inc. (collectively, "Cencom") and Duke Power Company who are parties to the Pole Attachment Complaint now pending before the Federal Communications Commission ("FCC") as CC Docket No. 95-93, PA 91-0001.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

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1. Cencom executes this agreement for itself, its successors, assignees and anyone or any entity claiming through it for Cencom's claims asserted in this case. This agreement does not affect present or future claims by Cencom, its predecessors, successors, assignees, subsidiaries or affiliates which concern matters other than concerning Duke Power Company pole attachment rates for 1991 through 1995, and related billings for Cencom's attachments to Duke's poles.

2. Duke Power Company executes this agreement for itself, its successors, assignees, and anyone or any entity claiming through it. This agreement does not affect present or future claims by Duke, its predecessors, successors, assignees, subsidiaries or affiliates which concern matters other than concerning Duke Power Company pole attachment rates for 1991 through 1995, and related billings for Cencom's attachments to Duke's poles.

3. This agreement does not affect the present or future participation of any of the parties hereto in rulemaking or other similar non-complaint proceedings related to the Act.

4. In full and final settlement of Cencom's claims concerning Duke Power Company's pole attachment rates at issue in this case, the parties agree as follows:

- a. The rate of \$ 4.53 will be applied for 1991; \$4.62 for 1992; \$ 4.53 for 1993; \$ 5.15 for 1994; and \$ 5.16 for 1995.
- b. Duke will modify its billing and rate setting process as follows:
Duke will continue to bill semi-annually in January and July;
changes in rates will be announced with at least 60 days notice

prior to July 1 of each year. Changes to the billing for January-June will be due the following January, without interest.

- c. Each of Cencom's respective Licensing Agreements for Pole Attachments (the "License Agreements") shall be deemed amended without the necessity of (1) signing any further amendments to such agreement or (2) any written notices.
- d. Duke Power Company agrees to refund to Cencom \$ 100,000.00 within ten (10) days after an order approving this settlement.

5. Neither Cencom nor Duke Power Company will file any pole attachment complaint with the FCC, any state or federal court or agency, or any other tribunal, with respect to the pole attachment rates and related billings for Cencom's attachments to Duke's poles agreed upon above.

6. Cencom has agreed to and does hereby compromise and settle with Duke Power Company, its employees, directors, officers and agents and does hereby release Duke Power company, its employees, directors, officers and agents from any and all claims, demands, actions, or causes of action of whatever nature or character which have been or which may hereafter be asserted by Cencom or any other person or corporation whatsoever claiming by, through or under Cencom, arising from (a) Duke Power Company's per pole attachment rates, for the period of January 1, 1991 through December 31, 1995; and (b) related billings for Cencom's attachments to Duke's poles for the period of January 1, 1991 through June 30, 1995.

7. Duke Power Company has agreed to and does hereby compromise and settle with Cencom, its employees, directors, officers and agents and does hereby release Cencom, its employees, directors, officers and agents from any and all claims, demands, actions, or causes of action of whatever nature or character which have been or which may hereafter be asserted by Duke Power Company or any other person or corporation whatsoever claiming by, through or under Duke Power Company, arising from (a) Duke Power Company's per pole attachment rates for the period of January 1, 1991 through December 31, 1995; and (b) related billings for Cencom's attachments to Duke's poles, for the period of January 1, 1991 through June 30, 1995.

8. The parties agree that this agreement is a compromise settlement of disputed claims and that this agreement will not be construed as an admission of liability by either party. This agreement shall not provide third parties with any remedy, claim, liability or other right.

9. This agreement contains the entire agreement between the parties with respect to the matters described herein, and all prior agreements, oral or written presentations, statements, understanding, proposals, and undertakings with respect to such matters are superseded and replaced by the provisions of this agreement. This agreement cannot be modified or terminated except by a written document executed by all parties hereto.

10. This agreement may be executed in counterparts.

IN WITNESS THEREOF, the parties hereby execute this agreement effective
as of the date first written above.

Respectfully submitted,

Cencom Cable Income Partners, II, L.P.,
Cencom Cable Entertainment, Inc., and
Cencom Cable Television, Inc.;

By:



Paul Glist
Frederick W. Giroux
COLE, RAYWID & BRAVERMAN
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Washington, D.C. 20006

Its Attorneys

Duke Power Company

By:



Shirley S. Fujimoto
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1850 K Street, N.W.
Suite 500
Washington, DC 20005

Its Attorneys

October 9, 1995

CERTIFICATE OF SERVICE

I, Connie M. Simmons, a legal secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that a copy of the foregoing was sent via first-class, postage pre-paid, United States mail, this 11th day of October, 1995, to the following:

Hon. John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street N.W. Room 223
Washington, D.C. 20554

Duke Power Company
P.O. Box 33189
Charlotte, NC 28242
Attn: Rowe Hass

George E. Johnson*
Jon Reel*
Federal Communications Commission
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Connie M. Simmons

*Via Hand Delivery