

BOOK OF E. MAYORICHIA

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

FCC MAIL SECTION

OCT 31 4 29 PM '95

FCC 95M-202  
3160183

In the Matters of	)	CC DOCKET NO:	95-93
	)		
TeleCable of Piedmont, Inc.,	)		
	)		
Cencom Cable Income Partners, II, L.P.,	)		
Cencom Cable Entertainment, Inc., and	)		
Cencom Cable Television, Inc.,	)		
	)		
	)	PA	90-0003
TeleCable of Spartanburg, Inc., and	)	PA	91-0001
TeleCable of Greenville, Inc.,	)	PA	91-0002
	)		
Complainants,	)		
	)		
v.	)		
	)		
Duke Power Company,	)		
	)		
Respondent	)		

MEMORANDUM OPINION AND ORDER

Issued: October 26, 1995 ; Released: October 30, 1995

1. Under consideration are the following:

Motion for Entry of Stipulated Order and Settlement Agreement, filed October 3, 1995, by TeleCable of Piedmont, Inc., TeleCable of Spartanburg, Inc. and TeleCable of Greenville, Inc. (collectively, "TeleCable") and Duke Power Company ("Duke");

Motion for Entry of Stipulated Order and Settlement Agreement, filed October 11, 1995, by Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc. and Cencom Cable Television, Inc. (collectively, "Cencom") and Duke;

Supplement to Settlement Agreement, filed October 19, 1995, by TeleCable and Duke; and

Common Carrier Bureau Comments on Motions for Entry of Stipulated Orders Accepting Settlements, filed October 20, 1995.

2. The TeleCable and Duke Settlement Agreement covers all claims between TeleCable and Duke with respect to Duke's pole attachment rates for

the period November 15, 1990 through December 31, 1995, and related billings for TeleCable's attachments to Duke's poles for the period November 15, 1990 through July 31, 1995. By a Supplement to Settlement Agreement the parties clarified their intent to cover all time periods relevant to the subject complaints, including the period July 1, 1990 through August 29, 1990. The parties have agreed to the following pole attachment rates: \$4.23 for the period November 15, 1990 to December 31, 1990; \$4.53 for the year 1991; \$4.62 for the year 1992; \$4.53 for the year 1993; \$5.15 for the year 1994; and \$5.16 for the year 1995. In addition, the parties agree that 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 sixty (60) days notice prior to July 1 of each year, with changes to the billing for January to June to be due the following January, without interest. Duke also agrees to refund to TeleCable \$145,591.24 within ten (10) days after an order approving the settlement is approved.

3. The Cencom and Duke Settlement Agreement resolves all claims between the parties concerning Duke's pole attachment rates for the period January 1, 1991 through December 31, 1995, and concerning related billings for Cencom's attachments to Duke's poles for the period January 1, 1991 through June 30, 1995. Specifically, the parties have agreed to the following pole attachment rates: \$4.53 for the year 1991; \$4.62 for the year 1992; \$4.53 for the year 1993; \$5.15 for the year 1994; and \$5.16 for the year 1995. In addition, Duke will modify its billing and rate setting process. Duke will continue to bill semi-annually in January and July. Changes in rates will be announced with at least sixty (60) days notice prior to July 1 of each year; changes to the billing for January to June will be due the following January, without interest. Duke also agrees to refund to Cencom \$100,000.00 within ten (10) days after an order approving the settlement.

4. Additionally, the parties agree that the settlements constitute a compromise of disputed claims and that their settlement agreements are not to be construed as an admission of liability by either party. Finally, the parties agree not to file any pole attachment complaints with respect to the rates agreed upon in their settlement.

5. The Settlement Agreements will be approved. It appears that there are no longer any issues in controversy, that the rates are just and reasonable, and that approval of the Settlement Agreements are in the public interest. The Commission encourages settlements in complaint cases since eliminating the need for further litigation and expenditure of time and resources of the Commission is in the public interest. See, e.g., Longview Cable TV Company, Inc., et al. v. Southwestern Electric Power Company, 5 FCC Rcd 686 (1990); Warner Amex Cable Communications, Inc. v. Southwestern Electric Power Company, 5 FCC Rcd 578 (1990).

Accordingly, IT IS ORDERED that the Settlement Agreement, filed October 3, 1995, by TeleCable of Piedmont, Inc., TeleCable of Spartanburg, Inc., TeleCable of Greenville, Inc. and Duke Power Company; and the Settlement Agreement, filed October 11, 1995, as supplemented on October 19, 1995, by Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc., Cencom Cable Television, Inc. and Duke Power Company ARE APPROVED; the complaints of TeleCable and Cencom ARE DISMISSED, with prejudice; and

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

  
John M. Frysiak  
Administrative Law Judge