**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of | ) | |
| | ) | |
| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |
| | ) | |
| (II.C.4. Access to Rights-of-Way) | ) | |

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**COMMENTS OF**
**THE CONNECTICUT LIGHT AND POWER COMPANY,**
**WESTERN MASSACHUSETTS ELECTRIC COMPANY,**
**HOLYOKE WATER POWER COMPANY AND**
**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

Pursuant to Section 1.415 of the Commission's Rules, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company and Public Service Company of New Hampshire (collectively, the "NU system companies"), hereby submit their Comments on certain of the issues raised in the Notice of Proposed Rulemaking, FCC 96-182 released April 19, 1996 (NPRM), in the above-captioned matter Specifically, the NU system companies will address the issues raised at paragraphs 220-225 of the NPRM relating to access to poles, ducts, conduits and rights-of-way by telecommunications service providers.

The NU system companies provide electric service to approximately 1.7 million customers in 407 communities in the States of Connecticut, Massachusetts and New Hampshire. They are

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operating subsidiaries of Northeast Utilities ("NU"), the parent company of the NU system. NU is among the 20 largest electric utility systems in the country and is the largest in New England.

The NU system companies respectfully submit the following comments:

## I. Nondiscriminatory Access under Section 224(f)

The Commission has sought comment with respect to the meaning of "nondiscriminatory access" under section 224(f) of the Telecommunications Act of 1996 (the "Act"). The term "nondiscriminatory access" must be construed to mean that parties requesting access to facilities will be treated similarly under similar circumstances. It should not mean that access is required in all cases. Only those poles, ducts, conduits or rights-of-way that are used in whole or in part for third party wire communications must be made available to parties requesting access, and then only when the attachment can be accomodated without compromising safety, reliability or engineering standards.

For poles, ducts, conduits or rights-of-way used primarily for providing electric service, a utility should not be required to provide access to such facilities unless the utility has already permitted one or more third parties access. The question of whether a particular pole, duct, conduit or right of way is

subject to the nondiscriminatory access provisions should be made on a facility by facility basis. For example, if an electric utility maintains a line of poles solely for electric conductors, or for electric conductors along with facilities for its own internal communications, the utility should not be required to provide access under the Act. This result is truly "nondiscriminatory", in that all telecommunications providers are treated on an equal footing. Conversely, if an electric utility shares pole space with a telecommunications carrier and a cable television system, as is the case with many distribution poles in the NU service territory, access would be provided, subject to considerations of safety, reliability and engineering.

## II. Denial of Access

Section 224(f) also provides that a utility may deny access on a nondiscriminatory basis where there is "insufficient capacity" or for reasons of safety, reliability and generally applicable engineering purposes. The commission has sought comment on standards for determining "insufficient capacity" as well as safety, reliability and engineering concerns.

Each of these considerations must be reviewed on a case-by-case basis, focusing on the particular facility or facilities to which access is sought, and the particular circumstances. It is not possible to define a logical standard.

One must start from the premise that it would be impractical in many cases to attempt to accomodate all entities seeking access. An electric utility must exercise its reasonable discretion, in reference to applicable codes and standards, to determine how many pole attachments, if any, can be accomodated. The safe and reliable operation of the electric system must take precedence. For this reason, the Act does not mandate that all attachments be accomodated, but only those that can be made without compromising safety, reliability and engineering standards.

The utility must review the proposed attachment to determine if proper clearances between electric and communication conductors would be maintained. In doing so, it would rely on the National Electric Safety Code ("NESC"), state law provisions, and its own standards. There are likely to be variances from state to state, and from company to company within each state.

In the case of the NU system companies, certain of its standards are more restrictive and conservative as compared to the NESC and other state law provisions. It is likely that this is the case with many other electric utilitites. This is done because the latter provisions are minimum requirements only. The more stringent company standards are intended to ensure the safety and reliability of the electric system. The Act must not

be implemented in a way that would have electric utilities compromise their standards, and hence the level of safety or reliability.

Determining the existence of capacity, and considerations of safety, reliability and engineering, are very case specific. They do not lend themselves to a universal standard. As mentioned above, electric utilities must consider various clearance requirements in assessing a facility. The utility must also consider whether the proposed attachment might require it to employ unconventional or nonstandard construction, which could hinder its ability to operate or maintain its electric facilities. In addition, there are many instances where a utility is reserving space on a pole or within a conduit for future electric facilities, including emergency replacement of failed components. This reserved space is as important to the present and future reliable operation of an electric system as is the space presently occupied by electric conductors; this would not be space that a utility would consider to be available for use by a third party.

The Commission should allow parties to review such considerations on a case-by-case basis. The Commission may wish to address this issue by setting forth a mechanism to resolve legitimate disputes over the existence of sufficient capacity, safety, reliability or engineering concerns.

**III. Additions and Modifications of Attachments**

The Commission has sought comment as to whether it should adopt requirements regarding the manner and timing of notice that must be given pursuant to section 224(h). This section requires notice to entities with existing attachments in the event of an intended modification or alteration of a pole, duct, conduit or right of way.

A single standard for notice applicable to all utilities would be impractical. There are many instances when an electric utility would have occassion to alter or modify a pole that would not permit a lengthy notice period. These cases often arise during storm restoration work, when the priority is to return electric service to customers as quickly as possible. They may also arise when installing new electric services to customers, which often must occur on an expedited basis. If the Commission adopts a notice period, it must be short (5 to 10 days), and must carve out an exception to accomodate emergency and customer-driven demands.

The Commission has also sought comment on the provision of section 224(h) that requires the attaching entity to bear its "proportionate share" of the costs incurred to modify or alter the pole, duct, conduit or right-of-way. Such costs should be borne equally by all parties that have existing attachments on the facility. This is the method that has generally been use in

the NU service territories among electric and telephone companies.

Contrary to the suggestion in paragraph 225 of the NPRM, it would be inappropriate to offset the actual cost of work to alter or modify a pole by a speculative potential for increased revenues afforded by the alteration. It is unrealistic to suggest that an electric utility would modify its facilities for additional attachments, unless this were done at the specific request of an entity, under terms and conditions acceptable to both parties. An electric utility would not install a larger facility for the speculative purpose of attempting to generate revenue from pole attachments.

Similarly, the Commission must not impose limitations on an owner's right to modify a facility, nor should it set forth rules purporting to limit "unnecessary or unduly burdensome modifications or specifications." This would potentially and directly interfere with crucial day-to-day electric operations. In the world of electric utilities, the modification of electric facilities is driven by customer needs and reliability. Applicable codes, state laws and company standards will generally dictate when and where modifications are needed. It would be inapproporiate and impractical to suggest a "limitation" or standard that could be applied in all cases.

Respectfully submitted,

THE CONNECTICUT LIGHT AND POWER COMPANY
WESTERN MASSACHUSETTS ELECTRIC COMPANY
HOLYOKE WATER POWER COMPANY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Daniel P. Venora
Senior Counsel
Northeast Utilities Service Co.
P.O. Box 270
Hartford, CT 06141-0270
(203) 665-3395

Its Attorney

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