Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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

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PETITION FOR PARTIAL RECONSIDERATION

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OFFICE OF SECRETARY

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SUMMARY

By this Petition for Reconsideration ("Petition") Carolina Power & Light Company ("CPL") challenges certain aspects of the Commission's order in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd ____, FCC 96-325 (Released August 8, 1996. CPL challenges the Commission's rules imposing unreasonable burdens on utilities with regard to provision of access for pole attachments.

CPL raises two broad concerns arising from the revised pole attachment policies. First, with respect to the revision of the rules, CPL argues that the notice provisions set forth in Section 1.1403(c), 47 C.F.R. § 1.1403(c), require extraordinarily lengthy advance notice be given to cable television operators and telecommunications carriers if changes are made to any pole attachments. Additionally, Section 1.1403(c) does not adequately define which television operators and telecommunications carriers must receive notice under that provision. Similarly, Section 1.1403(c) fails to define when the notice provisions are triggered. CPL requests that the Commission revise Section 1.1403(c) to establish a more reasonable notice period and to better define the class of persons entitled to notice under Section 1.1403(c). CPL also requests that the Commission provide a better definition regarding the type of modification which triggers the notice provisions. In this regard, notice is appropriate only when a major overhaul of significant sections of

line is planned, requiring engineering studies to properly modify the pole attachments.

In addition to the revisions to the pole attachment rules, the Commission adopts several guidelines it will use in determining rights and responsibilities in pole attachment complaint cases. CPL is concerned that the guidelines will carry the force and effect of rules, but will not be subjected to the rigorous scrutiny and challenge to which revision of the rules will be subject. Additionally, CPL is concerned that the guidelines adopted do not adequately consider the responsibilities and liabilities they impose upon the utility companies in relation to pole attachments.

CPL also questions the propriety of several of the guidelines, including the reserved space requirements, the requirement that utility companies exercise the right of eminent domain to expand capacity to accommodate cable television operators or telecommunications carriers and the mandate that utility companies provide access to utility poles carrying live electrical wires to technicians working with cable television operators or telecommunications carriers. These guidelines, as set forth in the *Order*, do not adequately consider utility companies' existing obligations to provide utility service to consumers, business and industry.

For these reasons, CPL requests that the Commission reconsider the rules and guidelines it adopted to correctly balance the interests of attachers on utility poles.

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PETITION FOR PARTIAL RECONSIDERATION

Carolina Power & Light Company ("CPL"), through its attorneys, and pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, files this Petition for Partial Reconsideration ("Petition"), in the above-referenced proceeding. The Commission first proposed the subject revision of its rules in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Notice of Proposed Rule Making*, 11 FCC Rcd ___ (1996).[1/] CPL participated in the subject proceeding by filing both Comments and Reply Comments.

I. Introduction

By this Petition, CPL challenges the Commission's rules imposing unreasonable burdens on utilities with regard to

[1/] The *Notice of Proposed Rule Making* was issued in response to the new requirements for interconnection and access imposed, *inter alia*, by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. Sections 151, *et. seq.* ("1996 Act").

provision of access for pole attachments.[2/] In the 1996 Act, Congress expanded the class of communications service providers to whom utilities must provide access to its utility poles. The 1996 Act also mandated non-discriminatory and fair and reasonable rates for pole attachments.[3/]

In response to the Congressional mandate, in the captioned proceeding, the Commission amended Subpart J of Part 1 of its Rules concerning pole attachments. Specifically, Sections 1.1401, 1.1402, 1.1403, 1.1404, 1.1409 and 1.1416 of the Commission's rules, 47 C.F.R. §§ 1.1401, 1.1402, 1.1403, 1.1404, 1.1409 and 1.1416, were amended obligating utilities to provide pole attachments, and specifying the remedies available to those cable television operators and telecommunications carriers complaining of discriminatory or unfair treatment with respect to pole attachments. The revisions to the pole attachment rules fail to fully consider the extreme burdens imposed on CPL and

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[2/] In the 1996 Act, "pole attachment" is defined as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit or right of way owned or controlled by a utility." For purposes of "pole attachments," incumbent local exchange carriers ("LECs") are specifically excluded from the definition of "telecommunications carriers."

[3/] EPCO believes that the pole attachment provisions of the 1996 Act violate the Fifth Amendment, by dictating that its property will be taken without due process of law, regardless of whether it is compensated for the taking. There is a challenge to the constitutionality of the 1996 Act pending before a federal District Court in Florida. For that reason, and as the Commission has found that it does not have the authority to address such issues, EPCO will not address the unconstitutionality of the pole attachment provisions in the 1996 Act in this Petition.

other electric utilities and unnecessarily pose risks to continuity of electrical service, property and life for the mere convenience of cable television operators and telecommunications carriers.

CPL raises two broad concerns arising from the revised pole attachment policies. First, with respect to the revision of the rules, CPL argues that the notice provisions set forth in Section 1.1403(c), 47 C.F.R. § 1.1403(c), require extraordinarily lengthy advance notice be given to cable television operators and telecommunications carriers if changes are made to any pole attachments. Additionally, Section 1.1403(c) does not adequately define which television operators and telecommunications carriers must receive notice under that provision.

In addition to the revisions to the pole attachment rules, the Commission adopts several guidelines it will use in determining rights and responsibilities in pole attachment complaint cases. CPL is concerned that the guidelines will carry the force and effect of rules, but will not be subjected to the rigorous scrutiny and challenge to which revision of the rules will be subject. Additionally, CPL is concerned that the guidelines adopted do not adequately consider the responsibilities and liabilities they impose upon the utility companies in relation to pole attachments.

CPL requests that the Commission reconsider and revise the rules and guidelines to better reflect the realities

experienced by utility companies in providing core services to their customers.

II. Section 1.1403(c) is Unduly Burdensome and Broad

Section 1.1403(c) requires that utilities give cable television operators and telecommunications carriers sixty (60) days notice prior to removal, termination, or modification of pole attachment facilities. CPL notes that sixty (60) days is an unreasonably long notice period which is provided only for the convenience of the cable television operators or telecommunications carriers and that is inconsistent with utility practice for routine modifications.[4/] Additionally, CPL notes that the notice required by Section 1.1403(c) must be provided to all cable television operators and telecommunications carriers. Although common sense would limit the class of persons to receive notice under Section 1.1403(c) to those persons who have a written agreement with the utility company to attach to the affected pole or have otherwise notified the utility company of their attachment, the rule does not limit the class of persons to receive notice at all. Section 1.1403(c) must be amended to narrowly define those parties for whom notice is required.

4/ Routine modifications to utility poles and pole attachments do not require extensive engineering studies and are frequently designed in the field. To the extent that any modification requires extensive engineering studies, notice to the attaching parties is appropriate, however, sixty (60) days is an unreasonably long notice period.

A. The Notice Requirement in Section 1.1403(c) is Unduly Long

Section 1.1403(c) of the Commission's rules requires that a utility provide a

> ... cable television system operator or telecommunications carrier no less than sixty (60) days written notice prior to: (1) removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the cable television system operator's telecommunications carrier's pole attachment agreement, or (2) any increase in pole attachment rates; or (3) any modification of facilities other than routine maintenance or modification in response to emergencies.

The notice provisions of Section 1.1403(c) can only contemplate a major overhaul to significant sections of line, requiring advance engineering and planning, yet the rule does not limit the obligation to provide notice. Such major overhauls are rare occurrences.[5/] A normal modification to a utility pole is frequently planned and executed within twenty-four (24) hours. Under normal circumstances, generally, all entities with pole attachments work cooperatively with utility companies to effect smooth transitions. The industry has followed this practice for years without significant complaint.

CPL generally moves or removes its utility poles in response to consumer complaints or after observing that normal

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5/ EPCO concurs that notice to parties with pole attachments on affected poles is appropriate when modifications result from major overhauls of significant sections of line and involve extensive engineering studies. However, something significantly less than sixty (60) days is necessary.

wear and tear have compromised the integrity of existing poles. Holding up the modification of any facility for sixty (60) days notice can compromise the provision of reliable electric utility service, can threaten the peace of mind of residents and will leave compromised poles in service while cable television system operators or telecommunications carriers decide how they will react to the modification. The type of major overhaul which should trigger the notice provisions of Section 1.1403(c) is implemented rarely. Section 1.1403(c) must be revised to reflect the characteristics of such an overhaul as conditions to the trigger of the notice requirements.

B. Tensions Between Section 1.1403(c) and State Law

Most states require that utilities provide service to all customers who request service. To meet this requirement, utility companies often must modify a pole to which there are attachments, or perhaps even remove attachments in order to make room for new electrical service requirements so that it may serve a new customer.

Frequently modifications are required in the field to accommodate service to new customers. Section 1.1413(c), however, makes no exception to the sixty (60) day notice requirement except for (1) modifications for routine maintenance; and (2) modification in response to emergencies.[6/] While

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[6/] Counter-intuitive as it may be, the wording of the rule, as adopted, provides that the exceptions for maintenance and emergencies only apply to "modifications" of the facilities, and not to the "removal" or "termination" of pole attachment

(continued...)

timely response to customer demand is not an "emergency" which would allow the utility to shortcut the notice requirement of 1.1403(c), Section 1.1403(c) would require that some new customers wait sixty (60) days before new utility service can be connected. This interference with utility companies' core service is unwarranted and, more importantly, was not intended by Congress.

C. Section 1.1403(d) Provides for Extension of the Sixty Day Period

Section 1.1403(d) allows the cable television system operator or telecommunications carrier to file a "Petition for Temporary Stay" ("Stay Petition") of the removal of facilities or termination of service, rate increase or modification of their service,[7/] so long as the cable television system operator or telecommunications carrier files its Stay Petition within fifteen (15) days of receipt of the written notice required by Section

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6/ (...continued)
facilities. Compare Section 1.1403(c)(3) to Sections 1.1403(c)(1) and 1.1403(c)(2). As the same public policy reasons apply to each of removal, termination of services and modification of facilities, Section 1.1403(c) should be amended to clarify that removal or termination of services and modification of facilities for routine maintenance and in response to emergency situations are all exceptions to the notice requirement set forth in 1.1403(c).

7/ It is not clear that a Stay Petition would appropriately lie with respect to a termination, removal or modification completed under the maintenance or emergency exceptions to Section 1.1403(c).

1.1403(c).[8] The rules impose no obligation on the Commission to dispose of a Stay Petition in an expeditious fashion. If a cable television system operator or telecommunications carrier wished to avoid modification of a pole on which its system attached, it could simply file a Stay Request and hope that the Stay Request would be processed slowly. Under the Commission's current workload, that hope might not be so speculative. Without specific timetables for the disposition of Stay Requests, and dismissal of the Stay Requests not processed within the time set, the mechanism is open to abuse and so must be eliminated.

D. The Text of Section 1.1403(c) Does Not Reflect the Discussion in the Order

In the discussion of the adoption of Section 1.1403(c), the Commission noted that "[s]ome adjustments [to pole attachments] may be sufficiently routine or minor as to not create the type of opportunity that triggers the notice requirement."[9] Also, the discussion recognized that "the parties themselves are best able to determine the circumstances where notice would be reasonable and sufficient, as well as the types of modifications that should trigger notice obligations, we

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[8] Consistent with the Commission's rules regarding Requests for Stay, the utility's response to a Stay Petition is due within seven (7) days of the filing of the Stay Petition. Section 1.45(d) of the Commission's rules, 47 C.F.R. 1.45(d), specifies that "an opposition to a request for stay ... shall be filed within seven (7) days after the request is filed."

[9] *Order*, 11 FCC Rcd ___, para. 1207.

encourage the owner of a facility and parties with attachments to negotiate acceptable notification terms."[10/]

Section 1.1403(c) does not specify what "adjustments" to pole attachments create the type of opportunity that triggers the notice requirement. There is no exception for an adjustment which is sufficiently minor, although the plain wording of the *Order* specifies that such an exception exists. Modifications which amount to a major overhaul of significant sections of line, requiring engineering studies would trigger notice provisions. In contrast, a replacement of a pole which requires no engineering studies should not trigger the notice provisions. Section 1.1403(c) must be revised to reflect this distinction.

Likewise, Section 1.1403(c) does not allow that private agreements may supersede the sixty (60) day notice requirement. Without the creation of a specific exception for private agreements, the respective interests of parties to private agreements which contravene the specific rule of this Commission may be compromised in a manner never intended by the *Order*.

On reconsideration, the Commission must revise Section 1.1403(c) to include exceptions to mirror those exceptions contemplated by the *Order*, including and exception for minor adjustments and private agreements.

E. The Commission Failed to Balance Utilities' Obligations

10/ *Order*, 11 FCC Rcd at ___, para 1209.

CPL is concerned about the Commission's cursory treatment of the responsibilities of electric utilities to provide electric service, and the comparative responsibilities to provide electric service and access to communications providers. Improper attention to the gravity of the provision of reliable and reasonably continuous electric service, on demand, may have led the Commission to adopt rules and policies that are inconsistent with the obligations of electric utilities under their state franchises, and unnecessarily expose electric utilities to liability exposure for failure to provide appropriate service, and for physical injury or death occasioned by the actions of third parties.

Utility companies also must be able to modify poles promptly which are found to be compromised. Section 1.1403 provides no flexibility to allow a utility to respond when it discovers that pole attachments or other conditions have weakened or otherwise compromised the integrity of a given pole. There will also be situations in which an attachment may have come loose or detached, or suffered some other problem which requires the utility to remove the attachment without the notice required by Section 1.1403(c). While these types of situations may not create an "emergency," as contemplated by Section 1.1403(c)(3), they may create a situation which must be corrected before the expiration of the notice period set forth in 1.1403(c) or any stay period contemplated by Section 1.1403(d). The Commission should recognize that these types of situations arise and provide

additional flexibility to respond to such situations in Section 1.1403.

F. The Commission has Failed to Identify the Parties to Receive Section 1.1403(c) Notice

As written, Section 1.1403(c) is so vague as to be unenforceable. As written, Section 1.1403(c) requires that utilities give notice to cable system operators or any providers of telecommunications services, except aggregators of telecommunications services and incumbent local exchange carriers. As written, Section 1.1403(c) does not limit the notice requirement to those cable system operators or telecommunications carriers to whom it provides pole attachment access.

Additionally, Section 1.1403(c) provides no guidance as to which of the cable system operators or telecommunications carriers notice must be provided. Notice under Section 1.1403(c) should only be required for those parties which have a pole attachment with the utility or which have otherwise provided written notice to the utility of attachment to the pole and which are current in their payments for all attachments on all poles.

G. The Commission must Reconsider the Balance

While there is an express congressional interest in promoting telecommunications deployment, as noted by the Commission, Congress did reserve significant judgement to utilities. By such reservation, Congress recognized the importance of the utility infrastructure to the economic well being of the country. In this first instance in which this

Commission is called upon to impose its regulatory requirements upon an industry regulated by another government agency and state commissions, this Commission must recognize the obligations of the utility industry imposed by the agencies with primary regulatory jurisdiction over the industry. The Commission must avoid imposing obligations which are inconsistent with the obligations of the core business of these utilities, and inconsistent with utilities' obligations under other federal, state and local laws.

III. Adopted Guidelines

The Commission has adopted guidelines concerning particular issues raised in the captioned proceeding. The guidelines are

> intended to provide general ground rules upon which [the Commission] expect[s] the [utilities and cable television operators and telecommunications carriers] to be able to implement pro-competitive attachment polices (sic) and procedures through arms-length negotiations, rather than having to rely on multiple adjudications by the Commission in response to complaints or by other forums (sic).[11/]

In adopting the guidelines, the Commission specifically found it inadvisable to craft specific rules prescribing conduct with respect to the subject matter of each of the guidelines. CPL notes that such guidelines have taken on the full force and

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11/ *Order*, 11 FCC Rcd at ___, para. 1160.

effect of rules in the Commission's past.[12/] CPL is concerned that the pole attachment guidelines will have the force of rules when the Commission considers pole attachment complaints.

CPL is concerned that the specific guidelines fail to adequately consider a utility company's first responsibility to its core services. The restrictions on reservation of capacity jeopardize utility companies' ability to comply with state law and regulation concerning the provision of utility service on demand. The responsibility imposed on a utility company to exercise eminent domain and expand its capacity to accommodate cable television operators and telecommunications carriers wishing to attach to its poles constitutes extreme micro-management of its facilities. Furthermore, requiring that a utility company provide access to its facilities to persons which are not either employed directly by the utility or recognized as qualified by the utility exposes it to liability which cannot be controlled, and unnecessarily places continuous utility service, property and life at risk.

A. Reserved Space Requirements

Under the guidelines, the Commission requires that space can only be reserved pursuant to a bona fide development plan and that if a cable television operator or a telecommunications carrier requests attachment, the utility must

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12/ See e.g., AT&T Communications Revision to Tariff No. 1, CC Dkt. No. 92-95, Transmittal No. 3380, 3537, 3542 and 3543, Memorandum Opinion and Order, 7 FCC Rcd 7730, 7735 (1992), citing Guidelines for Dominant Carrier, MTS Rates and Rate Structure Plan, 59 Rad. Reg. 2d (P&F) 71 (1985)

permit use of its reserved space until such time as the utility has an actual need for that space.

The Commission does not have the expertise to impose its judgment as to whether a utility company's reserve space projections to prevent interruption to the electric utility's delivery of its core service -- electricity is bona fide.[13/] By allowing a utility company to reserve capacity only if the reservation is consistent with a bona fide development plan, the Commission is imposing its judgment as to whether the development plan is bona fide or proper, in an industry in which it has no expertise. It is beyond the jurisdiction of this Commission to make determinations regarding the bona fides or sufficiency of any utility company's capacity reservation or expansion plans.

B. Capacity for Utility Lines

Current industry practice dictates that when the utility company exhausts its capacity, the utility company simply relocates or removes any pole attachment, with sufficient notice. The guidelines specify that the utility company may continue this practice only with respect to reserved capacity.

13/ Determination of a the bona fides of utility company's reserve space projections is in no way related to the Commission's expertise in regulating communications by radio and wire. The Commission has not provided a mechanism by which such reserve space projections would be reviewed and evaluated by persons who have the appropriate expertise. The Commission's evaluation of utility company's reserve space projections, therefore, will be entitled to no deference and will be considered *de novo* by a reviewing court. Cellwave Telephone Services, L.P. v. F.C.C., 30 F. 3d 1533, 1537 (D.C. Cir. 1994).

The Commission must define procedures by which utility companies define reserved capacity and notifies cable television operators and telecommunications carriers with pole attachments on their poles that they are occupying reserved capacity. Generally, no company, including utility companies, overbuilds its infrastructure beyond forseeable need. If a utility company has built its capacity only to the extent of forseeable need, then all of its available capacity qualifies as reserved capacity. The Commission must affirmatively grant a presumption that any available capacity on a utility companies' poles is reserved capacity, absent an unusual showing to the contrary.

This presumption would allow utility companies to avoid constructing new space a second or third time for future capacity simply because pole attachers have taken all of the capacity. In such a situation, consistent with industry practice, if the cable television operators or telecommunications carriers wish to continue attachment to a particular pole, they would do so by paying the costs of capacity expansion to accommodate their pole attachments after accommodation of the utility company's core needs.

Any other result would force the utility companies and their customers to pay for new capacity when existing capacity is taken by cable television operators and telecommunications carriers. Utility companies and their customers would be unfairly coerced to underwrite the carriage of cable television operators' and telecommunications carriers' attachments. This

preference of telecommunications service providers, to the detriment of utility service providers, was not intended by the 1996 Act.

C. Capacity Supporting Communications Uses

The Commission also does not provide the proper preference for communications capacity used by an electric utility for its core business. The communications capacity used by utilities is, in many ways, essential to the proper operations of the utility system. Much of the traffic carried over these lines is essential to the monitoring of load and demand conditions, line breaks, and the integration of both utility and third party generators. Preferences should be permitted utilities not only for lines which carry electricity, but also for lines which carry core business communications. While Congress intended to promote telecommunications competition, it did not intend to harm the provision of core utility service. Any communications carried by wire for the utility's own core business purposes, therefore, should be preferred in the same manner as the utility's electric lines.

D. Exercise of Eminent Domain

The Commission has placed a heavy and unwarranted burden on electric utilities by requiring them to seek the eminent domain approvals necessary to accommodate expansion and the attachment of new services outside of the core business. To the extent that a utility is required to seek authority, through eminent domain, for additional right of way due to increased loading on poles, or an expansion of the uses permitted under the right of way, this burden should be shifted to the parties requesting the attachments. Not only should these parties shoulder the costs, they should be responsible for exercising the right of eminent domain. To the extent that local laws do not provide them with such authority, the Commission cannot "bootstrap" this authority by requiring the utility to obtain the additional rights or space through its eminent domain authority. Again, the Commission has burdened the utility companies with the underwriting of telecommunications pole attachments. This preference of the telecommunications industry over the utility industry does not reasonably spring from the 1996 Act, and cannot withstand scrutiny.

E. Liability for Unskilled or Underskilled Crews

The guidelines require that utility companies provide access to all live wires, both transmission and distribution facilities, to cable television operators and telecommunications carriers. This mandated access to persons not employed by the utility companies opens up hazards and exposes utility companies

to uncontrollable risk for damage caused by the technicians acting on behalf of the cable television operators and telecommunications carriers. Accidental injury or death are likely to take place in at least two scenarios around electrical distribution and transmission facilities -- (1) with workers on or around the facilities; or (2) with third parties around fallen lines, open manholes or other hazards. CPL noticed the complete lack of any rules governing access to facilities, beyond mandating access. The Commission must specifically recognize the increase of these risks attendant to the mandated open access to live electrical wires. It must adopt rules which would control that risk, including minimum skills and performance requirements for the technicians to perform work on the pole attachments and requirements that the cable television operators or telecommunication carriers provide minimum insurance coverage for the risk attendant to their technicians work on the pole attachments. By adopting these minimum requirements, the Commission will specifically protect utilities and their ratepayers from unnecessary exposure to risk attendant to the actions, or inactions, of pole attachers granted access to poles supporting live electrical wires. Utilities must be given authority to bar workers who do not meet the same safety standards, training and safety culture that their own employees must meet.

IV. The Commission Must Adopt Rules to Protect Utilities and the Public

Neither the rules nor the guidelines protect utility companies from unauthorized pole attachments. Cable television operators and telecommunications carriers are not required to label their pole attachments and do not always inform the utility companies about the attachments on their poles. The rules and guidelines fail to provide the utility companies the protection needed to complete emergency recovery operations in the event of natural disaster. CPL requests that the Commission reconsider the guidelines. On reconsideration, the Commission must act to protect utility companies and the public at large.

A. Ability to Remove Unauthorized Facilities Without Notice

The Commission fails to provide guidance as to the handling of unauthorized facilities attached to poles. Because of the breadth of the parties to receive notice under Section 1.1403(c), CPL is concerned that it may place itself at risk under the Commission's rules if it removes any unauthorized attachment without following the notice provisions set forth in that Section. Protection of cable television operators and telecommunications carriers with unauthorized pole attachments was not contemplated by Congress or this Commission. CPL requests that the Commission limit the parties to receive notice under Section 1.1403(c), prior to termination, removal or modification of facilities to allow termination, removal or modification of unauthorized pole attachments. Additionally

Section 1.1403(c) would require that a cable television operator or telecommunications carrier which failed to pay for pole attachment would be entitled to the same protection accorded those authorized cable television operators and telecommunications carriers which were current in payment for pole attachment. Such deadbeat attachers are not entitled to the protection accorded by Section 1.1403(c). The Commission must clarify the class of persons entitled to notice under Section 1.1403(c) to include only authorized attachers which are current in payment for pole attachment.

B. Requirement that All Attachments are Identified on Each Pole

Because the Commission must limit the class of attachments entitled to notice under Section 1.1403(c), a utility must have a means by which to ascertain which facilities attached to its poles are appropriately attached. The Commission must order that all pole attachments be clearly labelled including the identity of the cable television operator or telecommunications carrier to whom the facilities belong and a local point of contact. Additionally, for safety reasons, the lines must also identify what type of service is provided by the facilities and an indication of the amount and type of transmission distributed by the equipment.

These minimal labelling requirements will enable the utility companies to better accommodate parties requesting pole attachment, by allowing utility companies a way to identify unauthorized attachers, which can be removed to make room for

those seeking attachment through the provisions of the 1996 Act and the Commission's rules.

C. Right to Remove Facilities in Case of Emergency and Recovery

Recently, several utilities experienced extreme emergency recovery operations in the wake of Hurricane Fran. Power lines and facilities attached to these utilities' poles were torn down by high winds and were mixed and tangled beyond recognition. CPL requests that the Commission specifically grant to utilities a right to remove pole attachment facilities in such situations. The right would allow utilities to conduct the required emergency and recovery operations, cutting down and even destroying facilities attached to its poles without liability. The cable television operator or telecommunications carrier would be responsible for the replacement, repair and reattachment of any equipment which was destroyed by inclement weather or other natural disaster and the clean-up operations following a natural disaster. The cable television operator or telecommunications carrier, however, would maintain its position on the pole.

These recommended additions to the rules and guidelines will help utility companies accomplish the goals set forth in the 1996 Act. By these recommendations, utility companies will be able to police pole attachments, maintaining the maximum capacity for use in accord with the 1996 Act and the Commission's rules. Required labelling of pole attachments will enable identification and unrestricted removal of unauthorized pole attachments will