

FCC MAIL SECTION
Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20555

FCC 96M-262

DEC 5 3 54 PM '96

70322

In the Matter of)
)
Multimedia Cablevision, Inc.,)
)
Complainant,)
)
v.)
)
Southwestern Bell Telephone)
Company,)
)
Respondent.)

DISPATCHED BY

CS Docket No. 96-181
PA 95-008

MEMORANDUM OPINION AND ORDER

Issued: December 3, 1996 ; Released: December 4, 1996

1. Under consideration are a Joint Request for Approval of Settlement Agreement, filed on November 8, 1996, by Multimedia Cablevision, Inc. ("Multimedia"), and Southwestern Bell Telephone Company ("SWBT"), and comments in support thereof, filed on November 15, 1996, by the Cable Services Bureau.

2. Multimedia and SWBT have entered into a Settlement Agreement ("Agreement") which has been submitted for approval. Among other things, the Agreement provides that: (a) for the period from December 30, 1994, through December 31, 1998, SWBT will use the "half-duct convention" as articulated in the Memorandum Opinion and Hearing Designation Order in this proceeding, 11 FCC Rcd 11,202 (1996) ("HDO");¹ (b) SWBT will pay to Multimedia a lump sum settlement payment in the amount of \$35,058.83; (c) for the period from January 1, 1995, through December 31, 1998, the half-duct rate shall be \$0.23 per linear foot, using the "half-duct convention" as articulated in the HDO; (d) Multimedia and SWBT's Licensing Agreement for Conduit Occupancy, dated January 15, 1986, shall be deemed amended to provide for billing according to the "half-duct convention" described in the Agreement at the rate agreed upon in the Agreement; (e) Multimedia will not file any complaint challenging SWBT's rates for conduit attachments for 1995 through 1998 agreed upon in the Agreement or any lawsuit or claim against SWBT challenging such agreed upon rates; (f) the Agreement is a compromise settlement of disputed claims and will not be construed as an admission of liability by either Multimedia or SWBT; and (g) the Agreement does not affect the present or future participation of Multimedia or SWBT in rulemaking or other similar non-complaint proceedings related to the Pole Attachment Act of 1978, including, but not limited to, any proceedings to modify

¹ Specifically, pursuant to this "half-duct convention," each foot of ductspace occupied by Multimedia's cable facilities will be billed at either a half-duct rate or a full duct rate. The full duct rate will apply to the foot of ductspace only if Multimedia's cable facilities preclude use by other conduit attachers of the other half of the duct. Otherwise, the half-duct rate will apply.

the Commission's pole attachment rules or its formula for pole and conduit attachment rates pursuant to the Telecommunications Act of 1996 or otherwise.

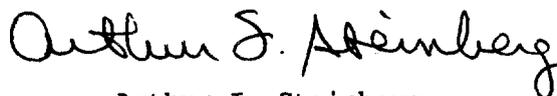
3. The Joint Request for Approval of Settlement Agreement will be granted and the Settlement Agreement approved. Suffice it to say, the conduit attachment rate agreed upon appears just and reasonable, and the approval of the Settlement Agreement is in the public interest. In this connection, it is noted that the Commission encourages negotiations and mutually agreeable settlements in complaint cases since eliminating the need for further litigation and the expenditure of the time and resources of the Commission, as well as the parties, 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). Finally, since there no longer appears to be any issue remaining for determination at the hearing, the above captioned complaint will be dismissed and this proceeding will be terminated.

Accordingly, IT IS ORDERED that the Joint Request for Approval of Settlement Agreement filed on November 8, 1996, by Multimedia and SWBT IS GRANTED, and the Settlement Agreement entered into on November 5, 1996, by Multimedia and SWBT IS APPROVED.

IT IS FURTHER ORDERED that the above captioned complaint IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge