

be too high -- is not an appropriate one.³⁶ Rather, for incumbent LECs, the Commission should first turn to state arbitration and related proceedings under section 252 of the 1996 Act, in which some states have recently made utility-specific forward-looking cost-of-capital determinations.³⁷ For states that have not yet made any such findings, the Commission should look to the Cost of Capital White Paper by Bradford Cornell, submitted in Docket No. 96-98, which provides a detailed analysis of the current costs-of-capital for the GTOCs, RBOCs, and SNET -- at least until the Commission has had the opportunity to revisit its outdated 11.25% finding in light of current data.³⁸

³⁶ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 (released Aug. 8, 1996).

³⁷ See, e.g., AT&T of New England and New England Tel. & Tel. Co. d/b/a/ NYNEX Requests for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Commission Decisions on Arbitrated Issues at 102 (Maine P.U.C. Dec. 4, 1996) (10.61%); Consolidated Petition of AT&T Communications of the Southwest, Inc., and MCI Telecomm. Corp. and its Affiliates, including MCImetro Access Transmission Servs., Inc., for Arbitration with Southwestern Bell Tel. Co., Case Nos. TO-97-40 and TO-97-67 (Mo. Pub. Serv. Comm'n Dec. 11, 1996) at 33 (10.03%); In re the Interconnection Contract Between AT&T Communications of the Mountain States, Inc. and US West Communications, Inc., Docket No. 96-411-TC, Findings of Fact, Conclusions of Law and Order at 16 (N.M. State Corp. Comm'n Mar 20, 1997) (10.72%); Petition of AT&T for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and GTE; Petition of MCI for Arbitration and Mediation of Unresolved Interconnection Issues with GTE, Arbitration Award at 116-17 (Tex. P.U.C. Dec. 12, 1996) (10.58%); Petition of MFS Communications, et. al., Arbitration Award at 32, Docket Nos. 16189, 16196, 16226, 16285, 16290 (Tex. P.U.C. Nov. 7, 1996) (10.36%).

³⁸ Bradford Cornell, "Estimating the Cost of Capital of Local Telephone Companies for the Provision of Network Elements," (filed as an attachment to AT&T's Ex Parte Presentation - Proxy Cost Model Questions in CC Docket No. 96-45, February 12, 1997) ("Cost of Capital White Paper").

IV. THE COMMISSION'S CONDUIT RATE FORMULA SHOULD REFLECT A "ONE-THIRD," RATHER THAN "HALF-DUCT," CONVENTION.

The Commission has proposed applying the Massachusetts Department of Public Utilities' "half-duct" approach in determining the maximum permissible rate for conduit occupancy. NPRM ¶¶ 44-46. That method would significantly overstate the cost of conduit space, overcompensate conduit owners, and act as a barrier to entry. Instead, the Commission should adopt a "one-third-duct" presumption that will fully compensate conduit owners while reducing the impediments to local competition. And, in all events, a conduit owner should not be allowed to collect multiple charges for use of the same inner duct or other space.

The Commission has long recognized that multiple inner-ducts are usable in each conduit. Multimedia Cablevision ¶ 22. Indeed, the Multimedia Cablevision decision expressly left the door open to a "one-third-duct" or even "one-quarter-duct" methodology in a future proceeding. Id. at n.50. A "one-third" approach is plainly appropriate. Virtually all conduit can support at least three (and often four) inner-ducts -- each of which can contain one or more cables. In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Sec. 252(b) of the Telecommunications Act of 1996, Docket No. 96-395-U, (Initial Testimony of James Hurst on Behalf of Southwestern Bell Telephone Company at p. 13, ¶ 6.07 (Arkansas PSC, filed Dec. 20, 1996). In fact, most of the conduit being deployed today can accommodate four inner-ducts. For that reason, at least one RBOC has been ordered to utilize a "one-third-duct" approach. Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company, Cause No. PUC 960000218, "Report and Recommendations of the Arbitrator" (Oklahoma Corporation Commission, issued

November 13, 1996) at 15; aff'd, Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company, Cause No. PUC 960000218, "Order Regarding Unresolved Issues" (Oklahoma Corporation Commission, issued December 12, 1996) at 3.

Supporters of the half-duct alternative claim that only two inner-ducts are usable because one inner-duct must be reserved for maintenance or emergency needs. There are at least three problems with this argument. First, as noted above, much of the conduit in use today has four inner-ducts which would still leave three ducts available for use even if one inner-duct in every duct was reserved as a maintenance spare. Second, when conduit is actually laid in the ground, typically multiple conduits are placed in the trench. There is no operational reason to leave idle an inner-duct in each and every conduit, and utilities do not in practice do so; rather, a limited number of inner ducts are reserved to support the maintenance space requirements of the entire collection of conduits. Thus, reserving one inner-duct per conduit for maintenance or emergency needs vastly overstates the number of inner-ducts required for this purpose. Third, it has become common practice for telecommunications companies and utilities to occupy inner-ducts formerly reserved for maintenance and emergency use on a permanent basis as the demand for conduit grows. SWBT for one has agreed in state arbitrations to allow any unassigned inner ducts to be used by AT&T and other entrants. See Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops, et. al., Docket No. 16189, "Arbitration Award," Appendix A, Stipulation on Poles, Ducts, Conduits, and Rights-of-Way (Texas PUC, November 7, 1996). The Commission is thus surely correct in finding that "most ducts in conduits are considered usable." Multimedia Cablevision at ¶ 23. Consequently, the "half-duct"

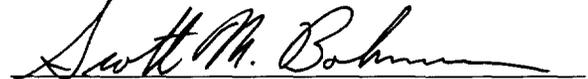
approach -- and even the "one-third-duct" approach to some extent -- forces entrants to unjustly and unreasonably bear the cost of maintenance and emergency inner-ducts that will frequently be unavailable for maintenance or emergencies. Indeed, the Commission has already concluded that "[i]f the attacher has no right to use [the] space or receives no benefit from [the] duct, we propose that the denominator should not be reduced." NPRM ¶ 45. Taken together, these factors conclusively demonstrate that the "half-duct" method cannot be justified, and that even a "one-third-duct" approach is likely to overcompensate conduit owners.

CONCLUSION

For the foregoing reasons, the Commission should: (1) clarify that an attacher pays for the use of a given amount of vertical space on a pole (or a given number of inner ducts in conduit) and that the attacher is free (subject to reasonable safety and operational restrictions) to deploy in that space the attachment or attachments of its choice -- without incurring multiple or discriminatory attachment charges that would unjustly enrich pole owners, raise barriers to entry, and discourage efficient use of pole space; (2) reject utility proposals to inflate pole rates through self-serving "technical" adjustments to the existing rate formula, such as the exclusion of safety space from the calculation of usable space; and (3) develop a conduit occupancy rate formula that generally tracks the pole attachment rate formula and reflects a "one-third duct" convention.

Respectfully submitted,

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June 27, 1997

APPENDIX

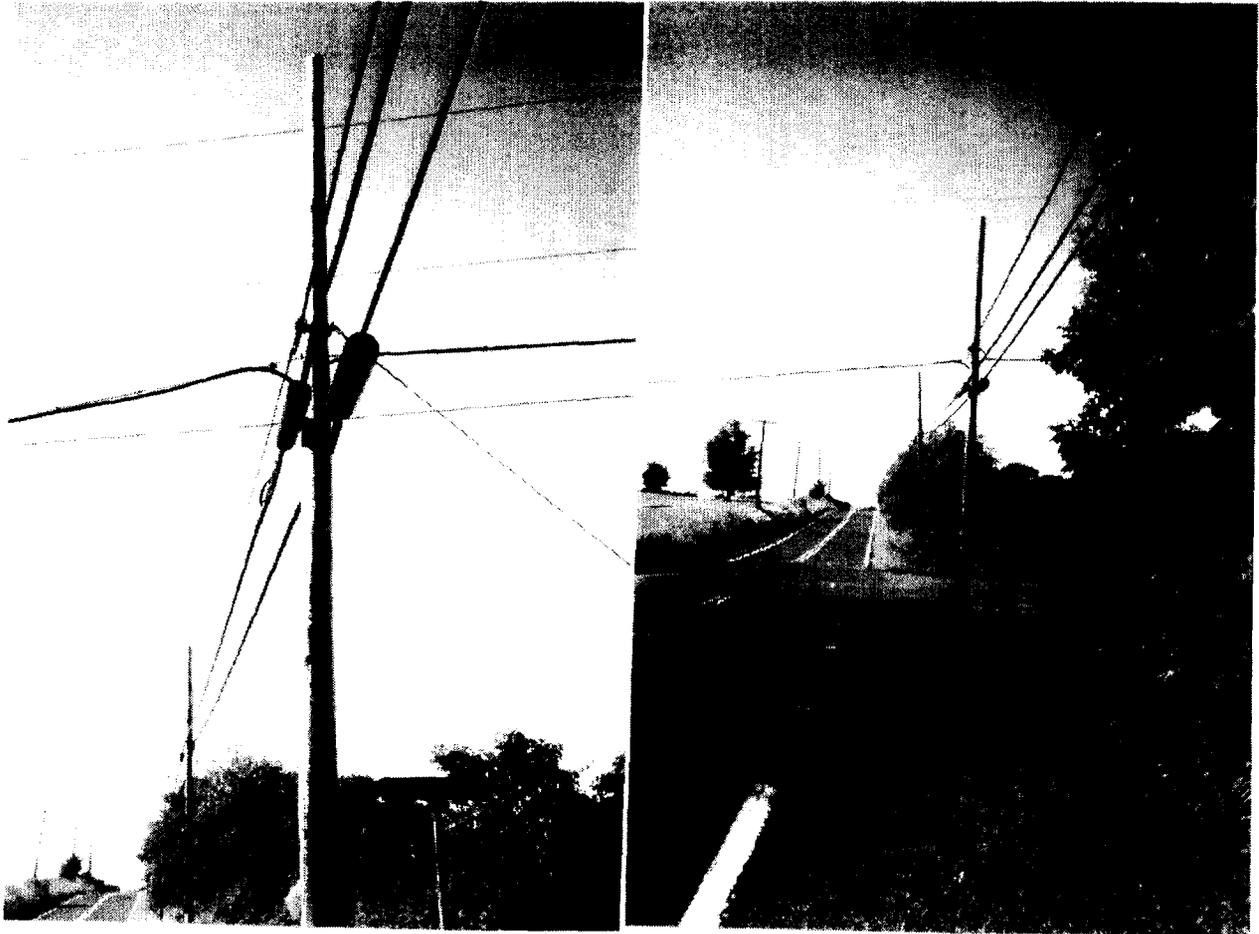
PICTURES DEPICTING CURRENT POLE ATTACHMENT PRACTICES

**PICTURE 1: POLE BRACKETS
WITH THREE SEPARATE ATTACHMENT LEVELS**



Route 206 Bridgewater, NJ
Photo Taken June 1997

PICTURES 2 & 3: DUAL SIDE ATTACHMENTS



Route 212 Pleasant Valley, PA
Photos Taken June 1997

PICTURES 4 & 5: DUAL SIDE ATTACHMENTS



Route 412 Hellertown, PA
Photos Taken June 1997

PICTURES 6 & 7: DUAL SIDE ATTACHMENTS



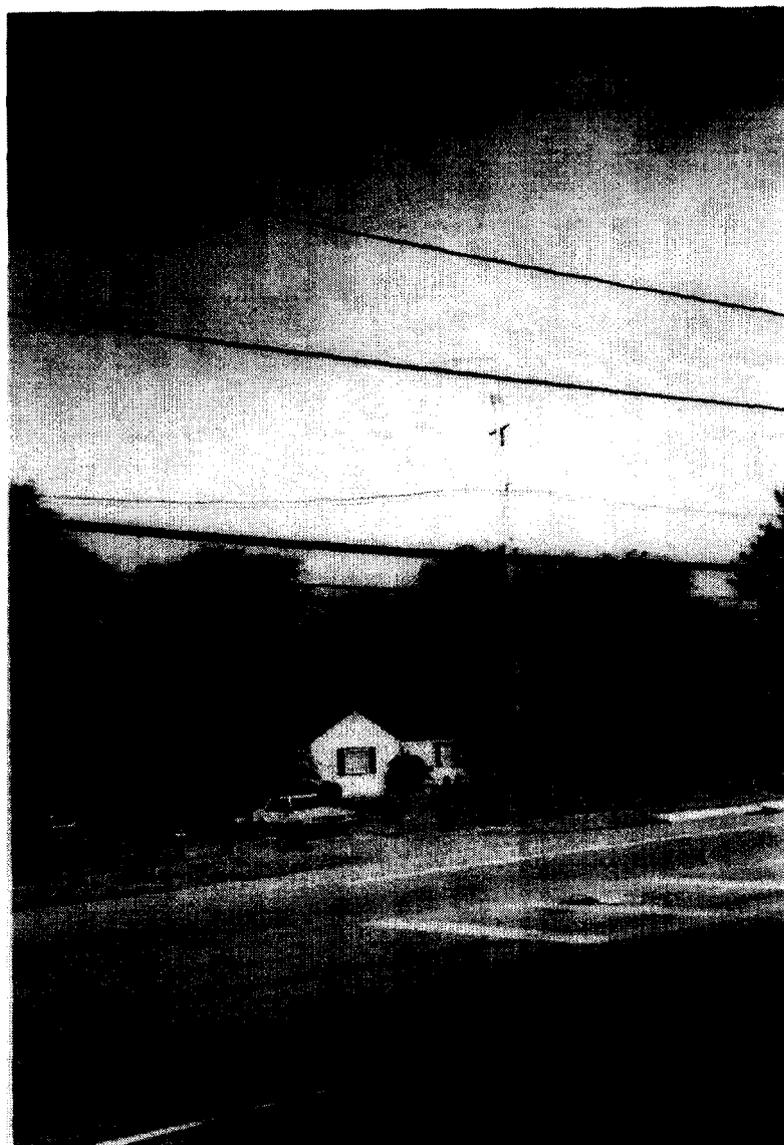
Route 206 Bridgewater, NJ
Photos Taken June 1997

PICTURES 8 & 9: DUAL SIDE ATTACHMENTS



Route 206 Bridgewater, NJ
Photos Taken June 1997

**PICTURE 10:
DIFFERENCES IN MID-SPAN CABLE SAG**



Route 206 Bridgewater, NJ
Photo Taken June 1997

Note: The top cable is power distribution, the second cable is fiber overlashed to coaxial cable, and the remaining cables are copper cables.

PICTURES 11 & 12: POLE BRACKETS



Route 202 and Lamington Rd. Bedminster, NJ
Photos Taken June 1997

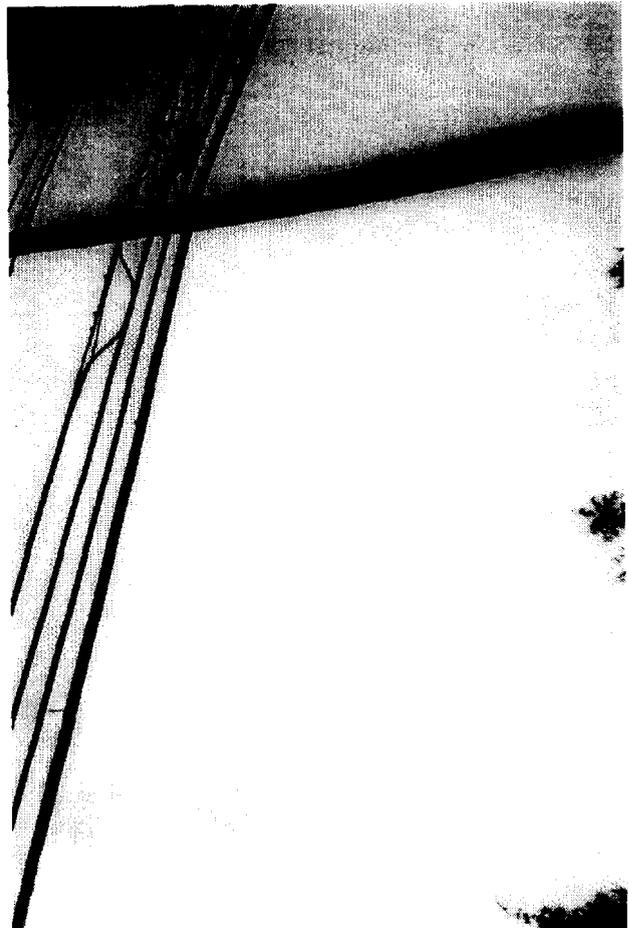
Note: These brackets are being used to correct pole “corners” which arise when the poles have not been place directly in line with one another.

PICTURES 13 & 14: POLE BRACKETS



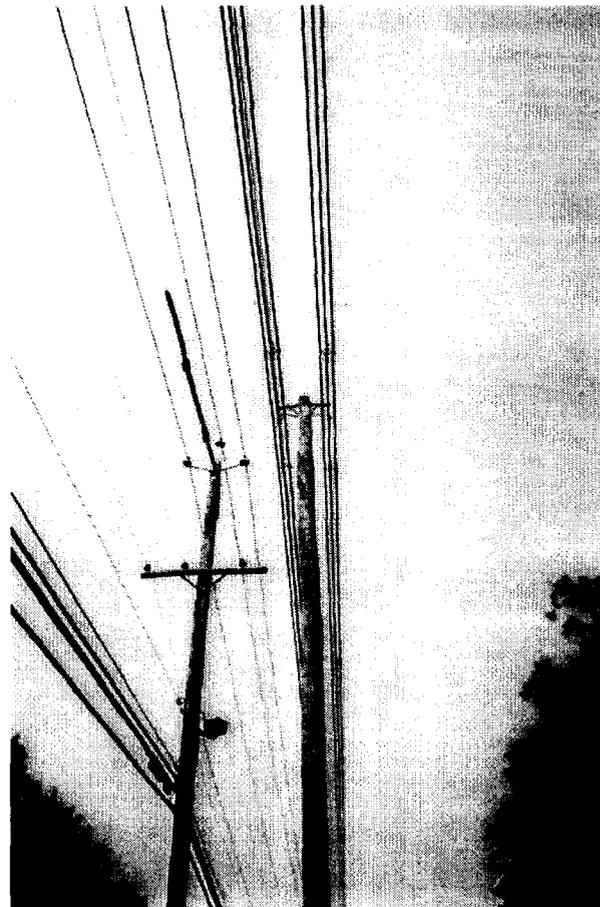
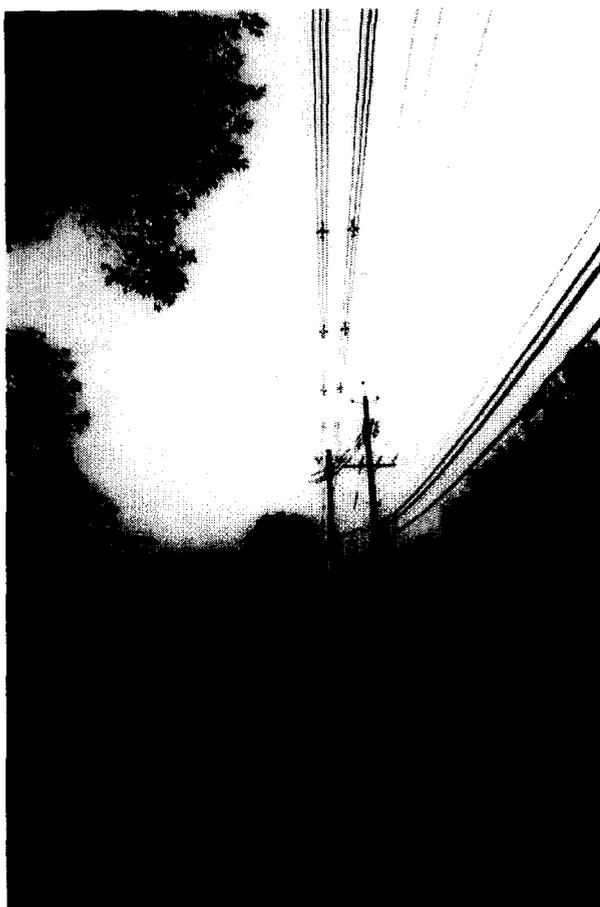
St. Louis County, MO
Photos Taken June 1997

PICTURES 15 & 16: DUAL SIDE ATTACHMENTS



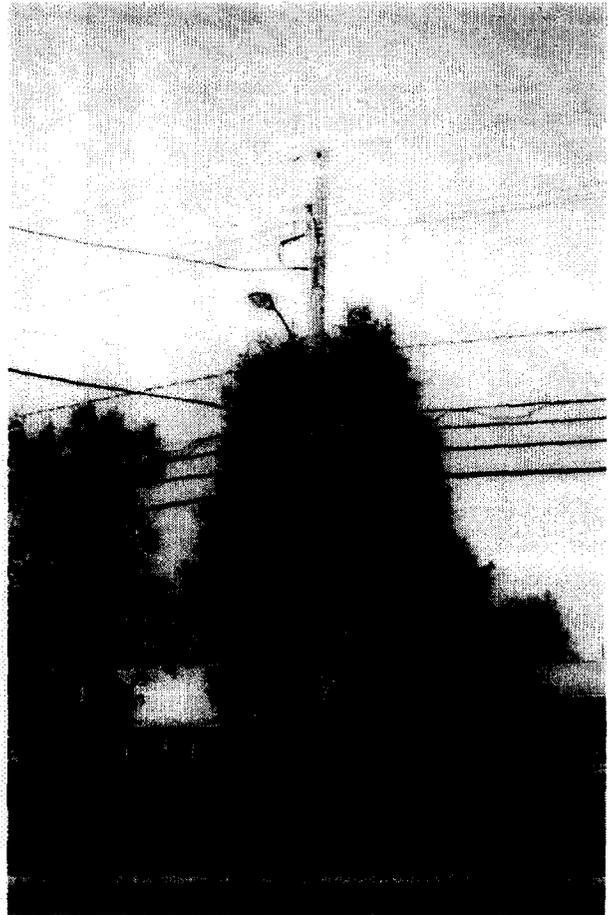
Country Club Rd. Bridgewater, NJ
Photos Taken June 1997

PICTURES 17 & 18: DUAL SIDE, TRIPLEX POLE ATTACHMENTS



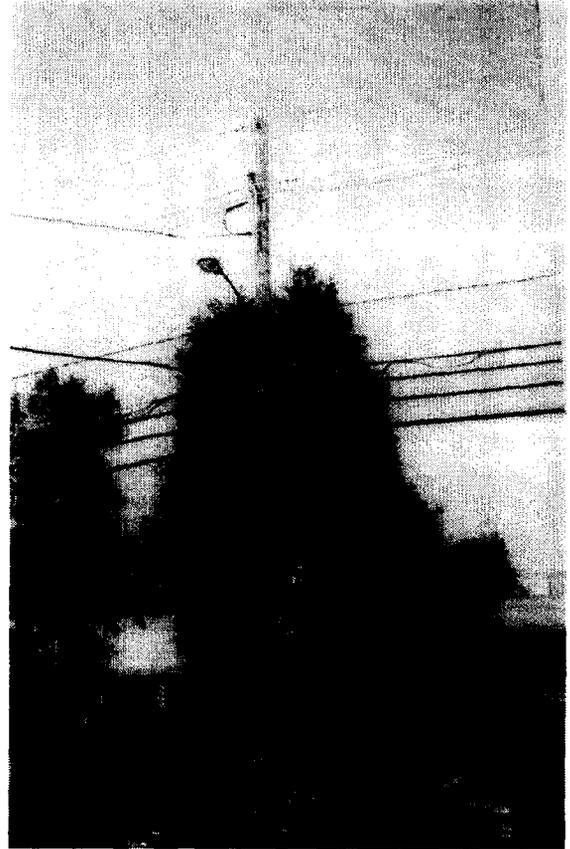
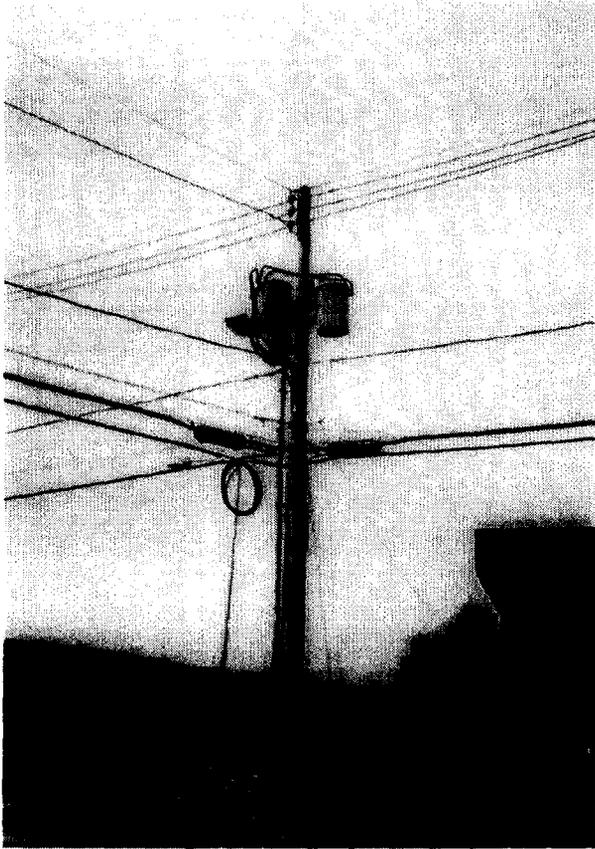
Photos Taken June 1997

PICTURES 19 & 20: LIGHT FIXTURES OCCUPYING NETURAL SPACE



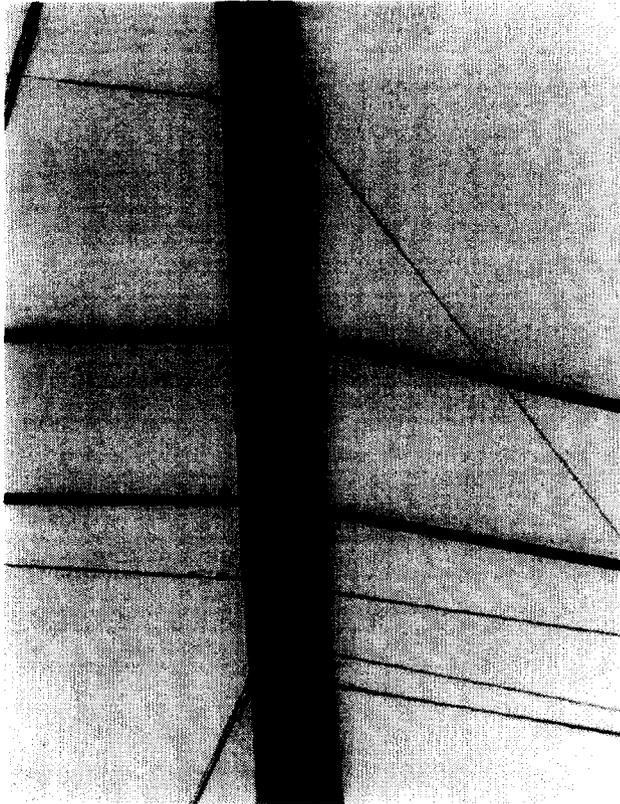
Route 206 Flanders, NJ
Photos Taken June 1997

PICTURES 21 & 22: LIGHT FIXTURES OCCUPYING NETURAL SPACE



Route 206 Bridgewater, NJ and Flanders, NJ
Photos Taken June 1997

PICTURES 23 & 24: DUAL SIDE POLE ATTACHMENTS



Denton Drive at Royal Lane Dallas, TX
Photos Taken June 1997

PICTURE 25: DUAL SIDE POLE ATTACHMENTS



Denton Drive at Royal Lane Dallas, TX
Photo Taken June 1997