The ALJ made one criticism of the Staff's methodology. He said that it was inconsistent for the Staff, as well as Detroit Edison, to use embedded costs to calculate the carrying charge, when that charge is applied to a pole value based on reproduction costs. He found that the carrying charge percentage should decline on a reproduction cost basis. Otherwise, some carrying charge components reflecting embedded costs would produce an overrecovery when applied to a value that exceeds the utility's historical investment. As examples of cost overrecoveries, he cited the rate of return and insurance. He also found that the record was inadequate to compute carrying charges based on reproduction costs. Id., pp. 48-51.

The ALJ recommended the Staff's approach to cost allocation be adopted. Id., pp. 51-52.

The ALJ recommended that conduit rates also be set using reproduction costs. He found that the conduit user's allocation factor should be the ratio of the number of ducts it occupied to total duct capacity, which encompasses capacity that is not currently in use. Id., pp. 37-38.

III.

DISCUSSION

Pole Investment Value

The MCTA takes exception to the ALJ's recommendation that pole attachment rates be determined on the basis of reproduction costs. According to the MCTA, the ALJ erroneously assumed that the current rate of $4.95 per pole is inadequate to recover the cost of providing pole attachments and that attaching parties thereby extract a subsidy funded by other utility rates. The MCTA argues that there is no credible evidence for this view. It says that the comparative rate information in Exhibit I-55 demonstrates that the current rate exceeds both the national average of $4.73 and the regional average of $3.78. It argues that if correct assump-

tions are used, even reproduction cost pricing is less than $4.95 per pole. It suggests that the ALJ engaged in a tautological error by reasoning that rates should be set on the basis of reproduction costs because otherwise they will not be adequate to recover reproduction costs.

According to the MCTA, one of the reasons put forward in support of reproduction cost pricing is to account for the attaching party's avoided costs, an argument that it finds anticompetitive. The MCTA counters that an attaching party's costs of building an alternative network of poles are not truly avoided in the real world because duplication of poles is not feasible and would promote economic waste. It further argues that a basic assumption of reproduction cost theory, that the entire pole network would be replaced at one time, is unrealistic because poles are replaced gradually as they wear out. It says that expenditures for pole replacement are included in embedded costs as they occur. It contends that reproduction cost pricing would not deter uneconomic use of poles because cable TV operators do not have an incentive to use more pole attachments than they need, use only excess space on poles, and pay the full cost of modifying or replacing existing poles when that is required by their needs.

The MCTA argues that reproduction cost pricing does not enjoy regulatory approval as a ratemaking methodology. It observes that the Commission rejected Detroit Edison's reproduction cost depreciated approach for purposes of setting retail wheeling rates in the June 19, 1995 order in Cases Nos. U-10143 and U-10176, pp. 17-18. The MCTA says that escalating expenditures with the Handy-Whitman Index can produce incongruous results, as illustrated by the example of a pole costing $640 in 1992, or $700 in escalated 1994 dollars, which is more than the $560 original cost of installing a pole in 1994. According to the MCTA, this example illustrates that the index does not account for a declining trend of historical costs.

The MCTA contends that reproduction cost pricing would be contrary to the Commission's policies of setting rates based on cost of service and correcting inter-class subsidies within electric tariffs. It says that, unlike reproduction costs, its proposed methodologies would be administratively efficient. It says that using records of historical expenditures avoids controversies created by methods that rely on estimates of hypothetical costs.

Section 361 of the recently amended Michigan Telecommunications Act requires rates for pole attachments offered by telecommunication providers to fall within a range from incremental costs to fully allocated embedded costs. The MCTA argues that the legislative intent was to reduce pole attachment rates from their present level of $4.95 per pole and that using reproduction costs to raise rates would be contrary to this intent. It also argues that using a rate methodology that is inconsistent with Section 361 creates a risk that the FCC will assert its authority to displace state regulation of pole attachments in Michigan due to noncompliance with federal regulations. It says that those regulations require states regulating pole attachments to certify that they have promulgated a "specific methodology" for regulating rates. 47 CFR § 1.1414(a)(3). It claims that Michigan, by using separate approaches for telecommunication providers and electric utilities, would not comply.

The MCTA proposes that the Commission reject reproduction cost pricing and instead adopt either an incremental or embedded cost approach. Although it asserts that either approach would satisfy the "just and reasonable" standard of MCL 460.6g; MSA 22.13(6g), as well as Section 361, it prefers incremental costs. It claims that incremental costs best reflect the economic realities of attaching parties' dealings with pole owners. It says that when a pole is

modified or replaced to accommodate the requirements of an attaching party, the attaching party pays the cost of the modification or replacement up front.

Finally, the MCTA argues that its proposed pricing would create greater access to bottle-neck facilities and would serve as a check on the anticompetitive tendencies of ufilities with monopoly control over poles. It predicts that those anticompetitive tendencies will increase as utilities seek to become providers of competitive cable TV and telecommunication services. The MCTA asserts that its own proposals will encourage competitive providers to offer customers new communication services featuring state-of-the-art technologies.

EDUNETS supports an incremental cost approach to setting pole attachment rates for educational institutions. It argues that this approach is the best measure of actual costs, which are small. It says that any rate in excess of those costs produces an unwarranted windfall that will go directly to the utilities' shareholders if there is no countervailing reduction in base electric rates.

Consumers contends that the current statewide rate of $4.95 per pole subsidizes attaching parties, as is apparent from the January 29, 1985 order in Case No. U-7204, a complaint brought by Continental Cablevision of Michigan, Inc., against Consumers, which resulted in a rate of $5.95 per pole based on embedded costs in 1981. Consumers says that it calculated its proposed rate of $9.60 per pole by applying the same formula to its current embedded costs.

Consumers supports using either embedded or reproduction costs as the basis for setting pole attachment rates. It says that the Commission has the discretion under MCL 460.6g; MSA 22.13(6g) to adopt either approach as a means of setting just and reasonable rates.

Consumers contends that cable TV is entertainment, not an essential service. It says that electric ratepayers, who financed the construction of the utility pole network, should share in the economic benefit that cable TV operators enjoy by not constructing their own pole network. It adds that rates in other states should not dictate how the Commission sets rates. It says that the average pole attachment rate for those electric utilities shown in Exhibit I-55, p. 5, is $5.21, which is more than the current statewide rate of $4.95.

Detroit Edison supports the ALJ's recommendation to adopt a reproduction cost approach.[11] It argues that reproduction cost pricing will compensate electric utilities for the value of their poles at a rate that is far less than the attaching parties' avoided cost of constructing a duplicate system. It maintains that the current rate forces electric ratepayers to subsidize attaching parties because it does not recover the true economic value of the pole system. It says that departing from traditional methodologies based on embedded costs is appropriate in an era when competitive pressures are accelerating.

The Staff also supports reproduction cost pricing. It contends that the recent enactment of Section 361 does not express a legislative policy to lower rates, but rather it recognizes the differences between the telecommunication and electric industries. The Staff says that the Commission retains broad discretion under MCL 460.6g; MSA 22.13(6g) over electric pole attachment rates and may exercise that authority to adopt reproduction cost pricing. It says that

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[11]Detroit Edison's exceptions note that the PFD inadvertently characterized its proposed rate as $35.49 per pole instead of $32.21. Detroit Edison also responds to a statement in the PFD that no value was assigned to the rights of way for poles by stating that electric ratepayers incurred costs to acquire the rights of way. These exceptions do not require the Commission to make findings or conclusions.

the Commission's decision not to adopt reproduction costs for purposes of retail wheeling can be explained by the need to await further competitive developments.

Several parties, including the electric utilities, oppose the MCTA's argument that the Commission must adopt a methodology consistent with Section 361 of the Michigan Telecommunications Act if it is to satisfy the FCC's required "specific methodology" in 47 CFR § 1.1414(a)(3). They argue that Section 361 affects only telecommunication providers and not the utility poles at issue in these cases. Consumers argues that Section 361 does not itself prescribe a methodology, but only a range of possible rates. Detroit Edison, MEGA, and the Staff argue that, because Section 361 deregulated pole attachments of telecommunication providers, any methodology that is adopted for non-telecommunications poles pursuant to MCL 460.6g; MSA 22.13(6g) would be a "specific methodology" within the meaning of 47 CFR § 1.1414(a)(3).

As stated by the MCTA, reproduction cost pricing is not a conventional approach to public utility ratemaking. By the same token, the Commission is not aware of any widespread use of incremental cost pricing in Michigan. For the present, embedded costs are the norm for electric ratemaking in Michigan. The Commission previously applied an embedded cost standard to pole attachment issues in Case No. U-7204, supra. As a practical matter, embedded costs have the advantage of being verifiable through accounting records of historical investment and expenditures, are readily measured and quantified by applying principles developed through experience, and do not pose the administrative difficulties of implementation that new and untried measures would create.

Because embedded costs have been the basis for setting regulated electric rates in Michigan, it would create a mismatch to set pole attachment rates for the same utilities on a different basis. Combining inconsistent methodologies for different services could obfuscate issues of whether one type of service is cross-subsidizing others. It is also difficult to find any reasoned basis for applying a different approach to the pole attachments that electric utilities offer by using the same facilities that they use to provide electric service.

There is another common element that favors using the same approach for both types of ratemaking. Both pole attachment and electric services are provided with facilities that are not readily available in a competitive market to most of the public. Because there is at present no functional market of competing sellers of pole space, the embedded cost standard is an appropriate means of placing a value on utility poles and providing a fair return on utility investment. Setting rates for both pole attachments and other utility services on the basis of embedded costs should enable the utility to recover all, and no more than, its historical investment in its pole network. The utilities presumably made the investment with the expectation that it would be used to provide a public service, would be financed by ratepayers, and would be recovered in rates based on the cost of service. Reproduction cost pricing would overrecover the utility's actual expenditures incurred to finance, build, and maintain the pole network. Incremental cost pricing would not enable the utility to recoup all of its costs.

The Commission recognizes that changes in competitive market structures and the regulatory environment may cause some of these principles to be reconsidered in the future. However, no compelling showing has been made in these cases that existing circumstances justify a departure from those principles. There was no showing that Michigan electric utilities currently compete

as providers of communication or cable TV service or that they are now using their control of the pole networks to take unfair advantage of current business opportunities. There is little evidence in Michigan of head-to-head competition between established utilities and competitive providers of cable TV, telephone service, or any of the communication technologies that rely on wires attached to poles. Thus, it cannot be said that embedded cost pricing undervalues the utilities' present-day opportunity costs of the resources that are devoted to providing pole attachments.

For the present, the most pertinent inquiry may be how best to effectuate competition in communication services. As of now, embedded cost pricing appears to be the optimal approach. It would not make economic sense to send cost signals that encourage new market entrants to invest in duplicative pole networks or to seek other, more expensive alternatives for access to an infrastructure that is capable of delivering their services. Moreover, duplicate facilities might exacerbate aesthetic and safety concerns in communities that are saddled with competing pole networks.

The claims of some utilities that embedded costs are inadequate to capture the value of pole attachments might have been more compelling if there had been a showing that existing pole networks lack the capacity to accommodate the combined needs of utilities and attaching parties. However, the record is silent in this regard. In instances where more capacity is needed to accommodate attaching parties, the record shows that those parties are required to pay the costs of making the poles ready or replacing them with longer poles.

The Commission finds that embedded cost pricing will affect rates in a manner that is reasonable in light of the current statewide rate of $4.95 per pole.[12] It further finds that embedded cost pricing will not impose a financial disruption on the customers of either the utilities that own the poles or the attaching parties.[13]

The Commission also agrees with the MCTA that, by adopting an embedded cost approach, it achieves a desirable degree of consistency with both the the FCC standard described in 47 CFR § 1.1401 et seq. and the Michigan Legislature's telecommunication standard set forth in Section 361 of the Michigan Telecommunications Act. Implementing the FCC standard should align pole attachment rates in Michigan more closely with other states that already adhere to this standard. Moreover, it appears that the Legislature borrowed the FCC standard in enacting Section 361. In comparing telecommunication and electric poles in Michigan, it is difficult to justify different pricing schemes for pole attachments. It is preferable to adopt a standard that allows both telecommunication and electric pole attachments to be priced on a comparable basis.

Electric Grounding Systems

Detroit Edison takes exception to the ALJ's finding that the cost of overhead grounding systems should be excluded from pole investment. It says that grounding is an operational

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[12]Detroit Edison's exceptions state that, unlike its proposed reproduction cost depreciated methodology, the ALJ adopted the Staff approach based on reproduction costs without any reduction for accumulated depreciation. See also Staff replies to exceptions, p.11. It further indicates that it now supports reproduction costs without a depreciation offset. In light of its decision not to use a reproduction cost approach, the Commission need not address this exception.

[13]Federal law requires the Commission to consider the interests of both the utility's consumers and the attaching party's subscribers if it is to retain its authority under state law to regulate pole attachments. 47 USC 224(c)(2); 47 CFR § 1.1414(a)(2). See also MCL 460.6g(2); MSA 22.13(6g)(2).

necessity of operating high voltage electrical equipment because it serves as a safety measure in case of lightning strikes. It argues that cable TV operators should be required to take (and pay for) the electric distribution system as it is.

The MCTA responds that each party using a pole is responsible for grounding its own conductors and that cable TV grounds are available at about a tenth of the cost of an electric utility ground. It says that attaching parties do not receive a benefit from the electric utility's grounding system that is proportionate to an allocated share of the costs. It also argues that the Federal Energy Regulatory Commission classifies grounding systems as part of the conductor system, not as pole investment.

The Commission finds that overhead electric grounding systems should be excluded from pole investment. As stated by the ALJ, the record does not demonstrate that attaching parties receive a benefit from the grounding system that is comparable in degree to its importance in the safe operation of an electric distribution system.

Carrying Charge

In their exceptions, Consumers, Detroit Edison, Wisconsin Electric/WPS Corp, and the Staff object to the ALJ's proposed downward adjustment to the carrying charge to reflect that some costs should decrease when expressed as a percentage of the reproduction cost of pole investment. In its exceptions, the MCTA claims that the ALJ's proposed adjustment can be made on this record by reducing the carrying charge in direct proportion to the ratio of the embedded costs to the reproduction costs of pole investment.

These exceptions are moot in light of the Commission's finding that embedded costs are the appropriate basis for determining the value of pole investment.

Pole Allocation Factor

Consumers and Detroit Edison except to the ALJ's finding that pole costs should be allocated on the basis of usable space, i.e., the user's percentage of the total feet above the lowest point to which wires attach. They both argue that attaching parties should bear more responsibility for the non-usable space, which is necessary to support the structure of the pole and to maintain safety.

Consumers proposes that pole space be allocated in equal shares to each of the pole's users. It says that the concept of usable space is a misnomer because the entire length of the pole is necessary.

Consumers focuses upon recent amendments in the federal Telecommunications Act of 1996, which provide for revisions in the FCC allocation methodology that will take effect five years from the enactment date. See 47 USC 224(e). As revised, the allocation factor assigned to attaching parties will be based on their usable space plus ⅔ of a full share of non-usable space. (A full share is determined by allocating non-usable space equally to all users.) According to Consumers, the prospective federal standard would mean that 22% to 33% of pole costs would be allocated to attaching parties, instead of 7% to 10% under the current FCC methodology.

Detroit Edison echoes Consumers' view that usable space does not account for the benefit that attaching parties receive from non-usable, or common, pole space. Detroit Edison says that it is only realistic to recognize that, without common space, there would be no pole for an attaching party to use. It supports an allocation factor of 26.68%, as calculated in Exhibit A-16.

The MCTA suggests that attaching parties make minimal use of pole space. It states that electrical conductors are heavier than communications facilities, that they require more ground clearance, and that the longer poles required to accommodate electrical facilities are more costly. It argues that the neutral zone separating electric and communication facilities is usable space that should be allocated to electric utilities because the neutral zone ensures safety and can be used by the utilities for street lighting. It proposes to make usable space the basis for allocations.

The MCTA argues that its approach is consistent with Section 361 of the Michigan Telecommunications Act. It says that the federal Telecommunications Act of 1996 is irrelevant because federal regulatory authority over pole attachments does not apply in Michigan, the changes in FCC allocation standards will not begin to take effect until 2001, and those changes will be phased in gradually over the 5-year period ending in 2006.

The MCTA argues that, in adopting the Staff's approach, the ALJ ignored the testimony of the MCTA's expert, Dennis C. Gilliland, Professor in the Department of Statistics and Probability at Michigan State University. Dr. Gilliland found that usable space in Michigan averages 15.4 feet per pole. By attributing 1 foot of usable space to the attaching party, he determined that the allocation factor should be 1 foot ÷ 15.4 feet, or 6.49%.

The Commission finds that usable space is a more reasonable approach to allocation than those proposed by the utilities because it achieves a better approximation of the benefit that each user of a pole receives relative to the other users. The argument advanced by Consumers and Detroit Edison, that the pole length not directly used for attachments is a necessary part of the pole's structure, while literally true, begs the question of how to allocate costs for the entire

pole among multiple users. A cost allocation based upon usable space is a reasonable basis for assigning each user an equitable share of the entire cost responsibility.

This approach to allocation is consistent with the Section 361 prescription for telecommunication poles. Section 361 allocates pole-related costs by "the percentage of the total usable space . . . which is occupied by the attachment." MCL 484.2361(3); MSA 22.1469(361)(3). It defines usable space as "the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable grade clearance and includes the space which separates telecommunication and power lines." MCL 484.2361(1)(b); MSA 22.1469(361)(1)(b). As already stated, although Section 361 does not govern rates for electric poles, consistency in pole attachment methodology between telecommunication providers and electric utilities is reasonable and appropriate.

Consistent with Section 361, the Commission further finds that the neutral zone (which typically provides about 3⅓ feet of separation between electric and communications facilities) should be treated as usable space that is not allocated directly to attaching parties. This recognizes that the electric utility, as the user attaining most of the benefit of the pole, must maintain a neutral zone to provide reasonable assurances of worker and public safety from hazards presented by its own facilities. In addition, the electric utility may use the neutral zone to attach streetlights. The record indicates that the minimum ground clearance requirement for electric lines averages about four feet higher (measured from the ground) than communications lines. Tr. 258-260, 412-414.

The Commission is persuaded by Dr. Gilliland's studies' finding that utility poles used for attachments in Michigan currently have an average of 15.4 feet of usable space. Dr. Gilliland's analysis incorporates several actual surveys and makes projections using statistical techniques. His

analysis encompasses more Michigan utilities than any of the others used in this case for determining allocation factors.

Based on Dr. Gilliland's recommendation, the Commission finds that the allocation factor for attaching parties is 6.49%.

With respect to Consumers' argument that the federal Telecommunications Act of 1996 increases the attaching parties' allocation of pole costs, the Commission finds that future changes in the FCC standard are not controlling in these cases and are not persuasive for purposes of setting current pole attachment rates.

Uniform Statewide Rate

The ALJ recommended that, instead of establishing a methodology that each utility would follow in setting its own pole attachment rate based on its own costs, the Commission should continue to set a uniform rate for all electric utilities in Michigan. He recommended that the Staff proposal be adopted. PFD, pp. 35-36. Under this proposal, the uniform rate would be computed as the weighted average of the rates calculated by applying the methodology to Consumers and Detroit Edison.

In its exceptions, the MCTA argues that using a weighted average to establish a uniform rate would be controversial and difficult to implement. It says that Mr. Celio's testimony provides little assurance regarding the concerns of other interested parties, who would have a vaguely defined opportunity to review and comment upon the rate information that the utilities submit to the Staff. The MCTA complains that the approach outlined in the PFD leaves too much discretion with the utilities in compiling the information, does not require the information

to be verified, and does not establish a mechanism for resolving the disputes that will inevitably arise.

The MCTA also complains that the exclusion of telecommunication providers as a result of Act 216 reduces the pool of utilities providing cost data. It claims that the pool will shrink further if Detroit Edison begins to offer telecommunication services, as it now proposes in Case No. U-11010, thereby bringing its pole attachments under Subsection 361(5).[14]

The MCTA proposes a uniform rate based on one of the two approaches that it supports. If incremental costs are used, the MCTA says that the uniform rate should be $0.50 per pole. If fully allocated embedded costs are used, the MCTA proposes that the uniform rate be based on Ameritech Michigan's cost data, which it says would produce a rate of $1.12 per pole, as computed in Exhibit I-45.

In reply, Detroit Edison argues that the Staff is more than capable of performing the calculations and other functions necessary to implement a uniform rate. The Staff states that using a weighted average of Consumers' and Detroit Edison's pole data to set a uniform rate would not be complicated. MEGA suggests that the Staff's approach will minimize controversy and avoid the need to litigate the rates charged by each utility in Michigan. MEGA claims that computing a uniform rate without Ameritech Michigan's pole data is feasible. It further claims that Detroit Edison's poles need not be excluded from the pool because its proposed communication services would not be regulated. MECA/Edison Sault urge the Commission to implement a

[14]Subsection 361(5) provides: "A public utility that directly provides a regulated telecommunication service or cable service shall establish the rates, terms, and conditions for attachments as provided under this section." MCL 484.2361(5); MSA 22.1469(361)(5).

new pole attachment rate as soon as possible and to provide clarity as to when the new rate becomes effective.

Applying a uniform statewide rate to all Michigan utilities has worked well for the past decade. The Commission finds that the regulatory practice of requiring all utilities subject to MCL 460.6g; MSA 22.13(6g) to offer pole attachments at a single uniform rate should continue. The Commission further finds that the uniform rate should be set by applying the methodology set forth in this order to the pole cost data of Consumers and Detroit Edison and computing a weighted average.

Contrary to the MCTA's exceptions, using data of those two utilities, which have by far the most non-telecommunication poles in Michigan, will produce an outcome that is just and reasonable. The record provides no indication that a rate based on their cost data would fail to be broadly representative of the cost of pole attachments in Michigan. Moreover, the record does not suggest that the cost of pole attachments varies dramatically from one electric utility to another. In any event, the information available in the record regarding poles owned by electric utilities other than Consumers and Detroit Edison is sparse.

Because the parties presented their cost data in somewhat different formats, the available information on the record makes it difficult to compare rate computations for Consumers and Detroit Edison. However, the MCTA performed comparable rate calculations for both utilities in Exhibits I-48 and I-51 that apply fully allocated embedded costs and are consistent with the FCC methodology. The Commission finds that Exhibits I-48 and I-51 are a reasonable basis for setting a uniform rate.

The calculations in the exhibits provide rate outcomes for Consumers and Detroit Edison of $3.37 and $4.24 per pole, respectively. The uniform statewide rate is the average of the two rates, weighted on the basis of the number of each utility's poles. According to Exhibits I-74 and I-75, Consumers and Detroit Edison have 1,315,531 and 970,078 poles, respectively, for a total of 2,285,609 poles. Consumers' and Detroit Edison's percentages of the total are 57.56% and 42.44%, respectively. The weighted average rate is $3.74 per pole.

The Commission finds that a uniform statewide rate of $3.74 per pole per year is just and reasonable. It further finds that each utility subject to MCL 460.6g; MSA 22.13(6g) should file tariff sheets making an annual pole attachment rate of $3.74 per pole effective on April 1, 1997.[15]

Competition between Public Utilities and Attaching Parties

The MCTA says that electric utilities will soon use their poles to begin offering communication services in competition with attaching parties. It objects to the ALJ's determination that competitive concerns can be relieved by requiring the utilities to impute their pole attachment rate to the costs of their competitive services. It says that the Commission does not have a mechanism for imputing costs to an unregulated service provided by an electric utility, that excessive pole attachment rates would merely reduce the utility's revenue requirement for core services, and that those rates would continue to suppress the competitive posture of attaching parties.

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[15]If any electric utility has already billed for attachments covering periods after April 1, 1997, it should make retroactive adjustments during its next billing cycle.

Competitive concerns regarding electric utilities entering into telecommunication businesses are not strictly at issue in these cases. The Commission is not aware of any electric utility that is currently providing telecommunication services on a regulated basis in Michigan. If these concerns do materialize, so that an adversely affected party is in a position to create an evidentiary record, it may seek relief in an appropriate case.

Educational Exemption

EDUNETS argues that public educational institutions should either be exempted from paying pole attachment rates or should be charged a rate based upon incremental costs. It bases its position on educational statutes and policies in Michigan, which promote applications of evolving technologies to improve learning and the delivery of educational services. It also argues that the utilities obtained the rights to erect poles in public rights of way from local governing bodies and hold those rights as a matter of public necessity. It reasons that charging schools for using the poles would be inconsistent with the public trust.

EDUNETS says that community colleges and intermediate school districts are currently expanding educational opportunities through fiber optic lines connecting their facilities. It claims that any increase over the current pole attachment rate of $4.95 would curtail funding for current distance learning applications and adversely affect the institutions' efforts to expand their networks.

To the extent that EDUNETS' concerns are to avoid the financial hardship of a rate increase, those concerns are obviated by this order, which provides for a lower rate. However, the Commission is not persuaded by EDUNETS' argument that educational institutions should receive an exemption or more favorable rate treatment than other attaching parties. Although

Michigan educational policy favors educational applications of telecommunications technology, it is another thing to say that rates should be altered to the specific benefit of educational institutions. Necessarily, this would require a subsidy from other attaching parties, ratepayers, or the utility. None of the statutes cited by EDUNETS support a subsidy.

Conduit Rate

The MCTA excepts to the ALJ's recommendation that conduit rates be set using a reproduction cost methodology, arguing that embedded costs should be used instead. However, it agrees with the ALJ's recommended allocation factor, which is the ratio of the number of ducts occupied by attaching parties to the total number of ducts (including ducts that are not currently in use).

Detroit Edison excepts to the ALJ's recommendation regarding the basis for allocating conduit space. It argues that the average cost per foot of conduit in use should be divided by a fill factor, which is the reciprocal of the number of users occupying a conduit (including the utility). The effect of using a fill factor, it says, is to allocate all costs, including spare capacity, equally to all users; e.g., if an attaching party and the utility are the only users, both would be allocated half of the costs. It contends that a fill factor recognizes the value that the utility provides to the attaching party by affording access to an existing conduit, which is a limited resource that provides a secure communications pathway. It argues that new conduit space is becoming increasingly expensive to construct, particularly in urban environments. It says that the effect of the ALJ's recommendation would be to reduce its conduit rate to $0.16 per foot per year, a rate it claims is so low that it may be cheaper not to bill the customer.

Consumers agrees with Detroit Edison that the ALJ's recommendation would lower conduit rates to an insignificant amount. Consumers says that the record shows little consistency between the cost characteristics of its and Detroit Edison's conduits and that it may not be practical to set a uniform conduit rate. Consumers proposes that the Commission adopt the separate methodologies proposed by the two utilities for purposes of setting their conduit rates.

The Commission agrees with Consumers that using a weighted average of Consumers' and Detroit Edison's cost data to set a uniform conduit rate would not be appropriate on this record. The information regarding conduit rates in the record is sparse. Consumers has only one customer for conduit service, which is provided in the Grand Rapids area. Tr. 279. Detroit Edison provides less than 25 miles of conduit service to attaching parties. Exhibit A-9.

The Commission finds that the ideal methodology for setting conduit rates would be consistent with the embedded cost methodology that is approved for pole attachment rates in this order. However, the record does not provide an adequate basis for calculating conduit rates under this approach. Consumers and Detroit Edison were the only parties to introduce computations of conduit rates into evidence. Their computations are not consistent with each other. Although the MCTA proposed an allocation factor based on an attaching party occupying one out of nine total ducts, its position lacks substantial evidentiary support.

Because conduit rates cannot be computed in a consistent manner on this record, the Commission finds that the rates proposed by Consumers and Detroit Edison should be approved for the present. Consumers' proposed conduit rate of $6.70 per foot apparently does rely on embedded costs. Exhibit A-5. Although Detroit Edison's proposal does not, its rate of $3.36 per foot is less than Consumers', possibly because Detroit Edison did not allocate any O&M

expense to conduit rates.[16] However, the Commission will not accept rate applications by Consumers, Detroit Edison, or other utilities in the future if they are inconsistent with the embedded cost methodology approved in this order for computing pole attachment rates. Moreover, if any attaching party believes that conduit rates are excessive in light of the approved methodology, it may file a complaint.

Official Notice

On May 31, 1996, after the record closed, Ameritech Michigan submitted to the Commission a proposed pole attachment rate of $2.88 per pole pursuant to Section 361 of the Michigan Telecommunications Act. On June 24, 1996, the MCTA filed a motion in these cases, requesting the Commission to take official administrative notice of Ameritech Michigan's rate submission. It argued that Ameritech Michigan's proposal to charge a pole attachment rate that is substantially less than the current rate of $4.95 per pole demonstrates that the current rate is excessive. Consumers, Detroit Edison, Wisconsin Electric/WPS Corp, and the Staff filed responses, arguing that the Ameritech Michigan proposal was irrelevant.[17] On August 20, 1996, the Staff, Consumers, and Detroit Edison filed a joint motion to exclude the information offered by the MCTA from evidence. On September 12, 1996, the MCTA filed a response.

On September 16, 1996, the Staff returned Ameritech Michigan's submission supporting its $2.88 per pole proposal with a letter indicating that the proposed tariffs were unacceptable because they had an effective date prior to the issue date.

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[16]See Detroit Edison's reply brief, pp. 20-21.

[17]On July 11 and August 9, 1996, the MCTA filed replies to the responses.

On September 27, 1996, Ameritech Michigan submitted a second proposed tariff to the Commission, this time proposing a rate of $1.97 per pole. On October 7, 1996, the MCTA filed another motion in these cases for official notice of Ameritech Michigan's $1.97 rate proposal. On October 25, 1996, Consumers filed a response opposing that motion.

Whether the Commission may take official notice of public documents is a discretionary matter. 1992 AACS, R 460.17327; Federal Armored Service, Inc v Public Service Comm, 204 Mich App 24, 27-29; 514 NW2d 178 (1994). In this case, the Commission finds that official notice need not be taken because the Ameritech Michigan rate submissions lack material value. Poles of telecommunication providers have been excluded from the scope of this case. Moreover, it is not clear that the cost characteristics of telecommunication poles are similar enough to electric poles to use the Ameritech Michigan rate information as a basis for comparison.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

b. A uniform statewide pole attachment rate of $3.74 per pole per year should be approved as just, reasonable, and in the public interest, which encompasses the interests of attaching parties' customers as well as the interests of utilities and their ratepayers.

c. Conduit rates of $6.70 per foot per year for Consumers and $3.36 per foot per year for Detroit Edison should be approved as just, reasonable, and in the public interest, which encompasses the interests of attaching parties' customers as well as the interests of utilities and their ratepayers.

d. The MCTA's request for the Commission to take official notice of Ameritech Michigan's rate information should be denied.

THEREFORE, IT IS ORDERED that:

A. All utilities subject to MCL 460.6g; MSA 22.13(6g) shall charge a pole attachment rate of $3.74 per pole per year, effective April 1, 1997.

B. Consumers Power Company shall charge a conduit rate of $6.70 per foot per year, effective April 1, 1997.

C. The Detroit Edison Company shall charge a conduit rate of $3.36 per foot per year, effective April 1, 1997.

D. The public utilities subject to this order shall file appropriate tariff sheets within 30 days of the date of this order.

E. The requests of the Michigan Cable Telecommunications Association to take official notice of the rate information submitted by Ameritech Michigan on May 31 and September 27, 1996 are denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ John G. Strand
Chairman

I dissent, as discussed in my separate opinion.

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of February 11, 1997.

/s/ Dorothy Wideman
Its Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **CONSUMERS POWER COMPANY** for authority to modify tariffs governing attachments to poles.	)	Case No. U-10741
In the matter of the application of **THE DETROIT EDISON COMPANY** for authority to modify tariffs governing attachments to poles.	)	Case No. U-10816
In the matter of the proceeding, on the Commission's own motion, to examine setting just and reasonable rates for attachments to utility poles, ducts, and conduits, pursuant to MCL 460.6g.	)	Case No. U-10831

DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA

(Submitted on February 11, 1997 concerning order issued on same date.)

The artificially low attachment rate adopted today by the majority does not adequately recognize the value of attachment to attaching parties and thus does not adequately compensate the electric customers of Michigan. The low rate set by the majority was set without considering the actual cost to an attaching party of constructing and operating its own poles (the "avoided cost"). This avoided cost is important because as long as the attachment rate is lower than that avoided cost, it cannot be viewed as harmful to an attaching party.

I do not suggest that the only appropriate rate for attachment should be the avoided cost to the attaching party. However, I would adopt the position formulated by Staff and largely