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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUL 1 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Rules and Policies Governing Pole Attachments	)	CS Docket No. 97-98
	)	
	)	

TO: The Commission

ERRATUM

On June 27, 1997, pursuant to the March 14, 1997, Notice of Proposed Rule Making ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") in CS Docket No. 97-98, the Electric Utilities Coalition, consisting of Carolina Power & Light Company, Delmarva Power & Light Company, Atlantic City Electric Company, Entergy Services, Florida Power Corporation, Pacific Gas and Electric Company, Potomac Electric Power Company, Public Service Company of Colorado, Southern Company, Georgia Power, Alabama Power, Gulf Power, Mississippi Power, Savannah Electric, Tampa Electric Company, and Virginia Power, including North Carolina Power, filed Comments in the above-referenced proceeding.

The instant filing serves to correct minor errors in those Comments. First, at page 3, the last line of the paragraph at the top of the page should be amended by omitting the word "are" before "themselves" in the phrase "the rates in this proceeding might be confiscatory and are themselves in violation of the Fifth Amendment" so that the phrase reads as follows:

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> . . . the rates adopted in this proceeding might be confiscatory and themselves in violation of the Fifth Amendment.

Second, footnote 15 on page 13 should be omitted. Replacement pages for both page 3 and page 13 are included herewith.

In addition, the figures attached hereto, which should have been attached to the Comments as "Figure 2" and "Figure 3," and the corresponding footnote references thereto, were inadvertently omitted. To correct these omissions, this Erratum provides missing Figures 2 and 3. Furthermore, page 42 of the Comments should be corrected to include, at the end of the last bullet-point on the page, footnote 55.1 consisting of the following text:

> A graphical representation of the Electric Utilities' proposed allocation of pole space for a 30-foot pole is attached hereto as Figure 2.

Likewise, page 43 of the Comments should be corrected to include, at the end of the last bullet-point on the page, footnote 56.1 consisting of the following text:

> A graphical representation of the Electric Utilities' proposed allocation of pole space for a 40-foot pole is attached hereto as Figure 3.

Replacement pages for both page 42 and page 43 are included herewith.

Please associate the enclosed pages 3, 13, 42 and 43, as well as the attached Figures 2 and 3, with the above-referenced Comments.

Respectfully submitted,

CAROLINA POWER & LIGHT COMPANY
DELMARVA POWER & LIGHT COMPANY
ATLANTIC CITY ELECTRIC COMPANY
ENTERGY SERVICES
- **ENTERGY ARKANSAS, INC.**
- **ENTERGY LOUISIANA, INC**
- **ENTERGY GULF STATES, INC.**
- **ENTERGY NEW ORLEANS, INC.**
- **ENTERGY MISSISSIPPI, INC.**

PACIFIC GAS AND ELECTRIC COMPANY
POTOMAC ELECTRIC POWER COMPANY
PUBLIC SERVICE COMPANY OF COLORADO
SOUTHERN COMPANY
- **GEORGIA POWER**
- **ALABAMA POWER**
- **GULF POWER**
- **MISSISSIPPI POWER**
- **SAVANNAH POWER**

TAMPA ELECTRIC COMPANY
VIRGINIA POWER
- **NORTH CAROLINA POWER**
- **VIRGINIA POWER**

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July 1, 1997

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REPLACEMENT PAGES AND FIGURES

violation of the Fifth Amendment of the U.S. Constitution. While the Electric Utilities do not believe that these provisions of the 1996 Act are constitutional, they also recognize that the Commission does not have the jurisdiction to determine the constitutionality of its organic statute.[4] The Electric Utilities are participating in this proceeding without waiving any arguments relevant to the Florida litigation and are permitted by law to pursue all available arguments in this proceeding without prejudicing their rights in any other proceeding. Moreover, regardless of the outcome of the Florida litigation, the rates adopted in this proceeding might be confiscatory and themselves in violation of the Fifth Amendment.

I. BACKGROUND AND GENERAL POLICY GUIDELINES

A. Policy Objectives of the 1996 Act

Congress adopted the 1996 Act to realign the marketplace for communications services so that, despite its history and past statutes, rules and regulations, the industry could move toward a more fully competitive environment. First Report and Order at ¶ 1 ("In the new regulatory regime, we and the states remove outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by

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4. The Commission has expressly recognized its jurisdictional limitations to determine constitutional issues in other contexts. *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket 96-152, Second Report and Order, 1997 WL 136310 ¶ 24 (1997); *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket 96-152, First Report and Order, 1997 WL 49613 ¶ 37 (1997); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16085-6 (1996) ("First Report and Order"); *Syracuse Peace Council v. Television Station WVTH*, 2 FCC Rcd 5043 at n.63 (1987).

A. Use of a Pricing Formula

1. Regulations should recognize that formula is only presumptively applicable.

The Commission's order, and the regulations arising therefrom, should explicitly recognize that the formula developed in this proceeding establishes only presumptively just and reasonable rates. By definition, a formula is made up of constants and variables. The pole attachment formula is designed to generally apply to many different utilities. For each attachment scenario, each constant or variable must represent one of a vast array of values that may differ as widely as electric facility architectures, regions of the country, or utility accounting systems. As a result, these may often be an imperfect fit between the constants and variables in the formula, and the costs which they are designed to represent.

This imperfect fit is exacerbated by using specific FERC accounts to provide values used in the formula. FERC accounts are not designed to capture the costs that the Commission seeks to capture in its formula. FERC accounts are designed to facilitate electric utility service pricing to end users and were never intended to serves as a basis for communications services or pole attachment costing. As a result, plugging values from FERC accounts into an FCC formula results in an imperfect portrayal of a utility's costs in providing pole attachment service.

Further, there is too much fluidity among utility company accounting practices for each of the variables in the formula to accurately capture every recoverable cost for every utility. Under the FERC accounting system, different utilities may, with approval from

7.5 feet of space assigned to electric utilities already includes the NESC-required clearances between electric conductors. Accordingly, each user pays for the NESC safety zone required to support its use of the pole under our proposal.

Combining these three corrections, and equally sharing the 40 inch safety space with an assumed cable attachment and a telecommunications attachment for each 30 foot pole (which is conservative since not all 30 foot poles contain two attaching entities), results in the following allocation of useable space:

- Useable space is 76 inches (40 inches plus 1 foot each for cable and telephone and 1 foot for the electric)
- The allocation to cable is 32/76, or 42 percent
- The allocation to telephone is 32/76, or 42 percent
- The allocation to the electric supplier is 12/76, or 16 percent.[55.1]

For purposes of establishing a preemptively applicable formula the Electric Utilities have assumed only one other class of pole, a 40-foot pole, although available data shows that with the removal of 30 foot poles from the calculation the average pole size for many of the Electric Utilities is greater than 40 feet. For 40-foot poles, the Electric Utilities accept the Commission's traditional allocation of occupied space for cable, telecommunications and electric service (12 inches for cable, 36 inches for telephone, and 90 inches for electric service). As with the 30-foot poles, the 40 inches of useable space is required by cable and telecommunications providers to protect their workers and to permit compliance with the NESC.[56] The Electric Utilities also propose that an assumption be made that each pole

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55.1 A graphical representation of the Electric Utilities' proposed allocation of pole space for a 30-foot pole is attached hereto as Figure 2.

56. NESC Handbook at 309.

supports one cable, one telephone and one electric service provider. Similarly, and for the same reasons, we assign the 40 inches of safety space equally to the cable and telecommunications service providers. This results in the following allocation of usable space:

- Useable space is 178 inches (40 inches plus 32 inches for cable, 56 inches for telephone and 90 inches for the electric.
- The allocation to cable is 32/178, or 18 percent.
- The allocation to telephone is 56/178, or 31 percent.
- The allocation to the electric supplier is 90/178, or 51 percent.[56.1]

For both 30-foot poles and 40-foot poles, to establish the maximum presumptively applicable annual rental rate, these above-derived factors are applied to the average pole cost (as adjusted by the carrying charge rate), which is the subject of the next section.

I. POLE ATTACHMENTS

The Electric Utilities should recover all costs caused by the presence of the third party attachment. These can be recovered either via the annual rent, as a make ready cost, or as an annual or monthly cost which is directly assigned. Because accounting practices vary from utility to utility, considerable discretion should be allowed in the manner in which these costs are calculated and collected, so long as there is reasonable evidence to support calculations, allocations and methods selected for collecting legitimate costs.

56.1 A graphical representation of the Electric Utilities' proposed allocation of pole space for a 40-foot pole is attached hereto as Figure 3.

FIGURE 2

POLE ALLOCATION ON A THREE PARTY POLE

30 Foot Lift Pole

POLE SPACING ALLOCATION (measured in inches) POWER	TELE.	CATV	30 ft. POLE	POLE SPACING DESCRIPTION
2	2	2	6 in	UNUSABLE POLE
12	0	0	12 in	POWER SPACE
0	20	20	40 in	NESC CODE REQUIREMENT FOR POLE SEPARATION
0	0	12	12 in	CABLE TV SPACE
0	12	0	12 in	TELEPHONE SPACE
72.8	72.8	72.8	18.2 ft	NESC CODE REQUIREMENT FOR GROUND SEPARATION
20	20	20	5 ft	POLE SPACE BELOW GROUND FOR SUPPORT

TOTALS FOR THE ABOVE COLUMNS

106.80	126.80	126.80	INCHES	360
8.90	10.57	10.57	FEET	30
29.63%	35.18%	35.18%	PERCENT	100%

USABLE SPACE

12	32	32	INCHES	76
1.00	2.67	2.67	FEET	6.333
15.79%	42.11%	42.11%	PERCENT	100%

FIGURE 3

POLE ALLOCATION ON A THREE PARTY POLE
40 FOOT MAIN LINE POLE

POLE SPACING ALLOCATION (measured in inches) POWER	TELE.	CATV	40' POLE		POLE SPACING DESCRIPTION
90	0	0	7.5	ft	POWER SPACE
0	20	20	40	in	NESC CODE REQUIREMENT FOR POLE SEPARATION
0	0	12	12	in	CABLE TV SPACE
0	36	0	36	in	TELEPHONE SPACE
76.6	76.6	76.6	19.2	ft	NESC CODE REQUIREMENT FOR GROUND SEPARATION
24	24	24	6	ft	POLE SPACE BELOW GROUND FOR SUPPORT

TOTALS FOR THE ABOVE COLUMNS

190.60	156.60	132.60	INCHES	480
15.88	13.05	11.05	FEET	40
39.72%	32.64%	27.64%	PERCENT	100%

USABLE SPACE

90	56	32	INCHES	178
7.5	4.67	2.67	FEET	14.8
50.56%	31.46%	17.98%	PERCENT	100%