

methodology based on forward-looking costs sends the "correct signals for entry, investment and innovation;" in a dynamic, competitive market, "firms take action based not on embedded costs, but on . . . forward-looking economic costs."^{34/} Further, because of the large variations in the costs of conduit systems for highly urbanized areas and other less crowded areas, the Commission should allow forward-looking replacement costs to be determined on a local or project basis, such as for downtown urban areas, city residential areas, or suburban areas, as opposed to a system-wide basis.

Union Electric incorporates by reference and relies upon the entirety of its June 26, 1997 comments with respect to the March 1997 Pole Attachment Notice concerning the Commission's proposed historical-cost methodology for conduit under Section 224(d) of the Act. Union Electric wishes to emphasize, however, the following points in addition to those already emphasized above:

- First, the Commission's proposed half-duct methodology, which emanates from rate cases involving telephone conduit, cannot be applied to electric conduit because electric power supply cables and communication company cables cannot share the same duct even if interduct is installed in the duct. In addition to prohibitions contained in the NESC against such joint use, practical considerations preclude power supply cables and communication cables from sharing the same duct. For example, the failure of a power supply cable by arcing (a common failure mode) would in all likelihood destroy the communication cable. Also, pulling the much larger, heavier electric cable through a duct (necessitated by a cable failure) would likely destroy the

^{34/} Universal Service Order, ¶ 224; Interconnection Order, ¶ 620.

smaller communications cable even if it were separated from the power supply cable by interduct.^{35/}

- Second, electric conduit vaults and manholes are crowded, confined quarters containing extensive high voltage electric equipment and circuits which can pose grave potential dangers to untrained communication workers. Not only are important safety and reliability considerations involved, but the presence of non-utility personnel in electric vaults and manholes -- even if properly trained -- require special procedures and precautions that translate directly into additional costs borne by the utility.
- Third, any methodology adopted by the Commission (whether based on forward-looking or historical costs) should allow the applicable costs to be determined on a local or project basis, such as for downtown urban areas, city residential areas, or suburban areas, as opposed to a system-wide basis. Such an approach is necessary because of the large variations in the costs of conduit systems for highly urbanized areas and other less crowded areas and the fact that access will inevitably be sought in high-cost urbanized areas.
- Fourth, the Commission's methodology (whether based on forward-looking or historical costs) should expressly recognize that the relevant costs for

^{35/} MCI in its Reply Comments for the March 1997 Pole Attachment Notice argues that electric cable can share duct with communications cable and that it has on occasion negotiated such sharing with electric companies. MCI Reply Comments at 42-43. However, the practical considerations discussed above preclude the Commission from adopting a half duct methodology for electric conduit with universal application even assuming that such sharing may be negotiated in certain, limited circumstances.

determining rates under Section 224(e) for access to electric utility conduit include the material and installation costs for the entire conduit system and not just the conduit duct. The conduit system includes the duct, the concrete and other materials surrounding the duct, manholes and vaults for access to the duct and local franchise fees.

- Fifth, the Commission should confirm that the first telecommunications company to install cable in a spare duct should be required to install interduct as part of its make ready costs with subsequent telecommunications companies that utilize the duct paying the installing company their pro rata share for installing the interduct. Such an approach is analogous to that prescribed by the Commission for a telecommunications company that installs a pole attachment which requires the installation of a new, higher utility pole. In those circumstance, the party making the additional attachment requiring the installation of a taller pole is responsible for the entire cost of installing the new pole as a make ready cost, but it can recover portions of this cost from subsequent attachers benefiting from the increased height of the pole.

V. RIGHTS-OF-WAY

The Commission seeks comment on the degree to which right-of-way access issues will arise and on whether it should either adopt a rate methodology for determining a just and reasonable rate or address right-of-way issues on a case-by-case basis.

NPRM ¶ 42-43. Union Electric believes that the Commission should address right-of-way issues on a case-by-case basis. As the Commission notes, its experience in

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addressing issues relating solely to rights-of-way is limited and addressing such issues on a case-by-case basis would allow the Commission to gain experience on these matters. Moreover, some of Union Electric's rights-of-way from private owners authorize electric use only and could not be used by telecommunication companies to provide telecommunication services.

VI. CONCLUSION

For the foregoing reasons, the Commission should adopt negotiated, market-based rates for implementing Section 224(e). If it were to adopt a formulaic-rate methodology, the Commission should adopt methodologies based on forward-looking economic costs as set forth in these comments.

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