BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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

To: The Commission

AMERICAN ELECTRIC POWER SERVICE CORPORATION
COMMONWEALTH EDISON COMPANY
DUKE POWER COMPANY
FLORIDA POWER AND LIGHT COMPANY
NORTHERN STATES POWER COMPANY

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EXECUTIVE SUMMARY

The 1996 Act effected the most sweeping change in this Nation's telecommunications laws in sixty years. The change is premised on the notion that a deregulated, competitive telecommunications market results in efficiency and innovation and produces the greatest benefits for the American public. These Electric Utilities urge the Commission to adopt such a deregulated, competitive approach with respect to pole and conduit attachment rates. Where regulation is needed, that regulation should be minimal and designed to achieve a specific goal.

To better reflect the realities of the dramatically changed telecommunications market place, the Electric Utilities propose that the Commission adopt a Forward-Looking Economic Cost Pricing Model for both poles and conduit. Such an approach necessitates only one change in the Commission's current and proposed formulas: replace historical embedded costs with forward-looking economic cost and adjust the depreciation account accordingly.

This economic interpretation of the statutory language in 47 U.S.C. § 224(d) is consistent with: (1) the Telecommunications Act of 1996's amendments to the Pole Attachments Act; (2) the goals and policies underlying the 1996 Act; (3) other Commission rulemakings pursuant to the 1996 Act; and (4) the dramatic change in the market for pole and conduit access.

In this proceeding the Commission must re-examine many of its two-decade old assumptions underlying its approach to calculating pole attachment rates. Cable television is no longer in its infancy and, as such, there is no longer any disparity in bargaining power between electric utilities and cable companies. Rather, cable companies are now among the largest and most sophisticated companies in the country,

completely capable of negotiating access agreements with electric utilities. In addition, electric utility practices in regard to pole plant have changed, making many of the Commission's old assumptions contained in the pole rate formulas incorrect. For these compelling reasons, the Commission should adopt the recommended forward-looking economic cost model for pole and conduit rates.

Although these Comments strongly endorse the adoption of a Forward-Looking Economic Cost Pricing Model for electric utility poles and conduit, in the event the Commission rejects this approach, these comments also propose changes to improve the accuracy of the current and proposed formulas. At a minimum, the pole attachment formula must be modified to take into account the prevailing practices in the industry, and to broaden the FERC accounts considered in the formula.

Finally, the Commission must abandon its effort to model the proposed conduit formula on the current pole formula. The proposed formula must be rejected because: (1) the electric utilities do not have the detailed information necessary to apply the proposed formula; (2) the electric utilities cannot share duct space with telecommunications providers; (3) the agency defines the asset too narrowly; and (4) it improperly treats reserve space. Because of the unique nature of conduit, the Commission should adopt a conduit formula that considers conduit on an individual case basis.

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COMMENTS

1. American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power Company, Florida Power and Light Company and Northern States Power Company (collectively referred to as the "Electric Utilities"), through their undersigned counsel and pursuant to § 1.415 of the rules and regulations of the Federal Communications Commission (the "Commission" or "FCC"), hereby submit these comments regarding the calculation of rates to be charged for attachments to their poles, ducts and conduits.

2. The Electric Utilities are utilities engaged in the generation, transmission, distribution and sale of electric energy. Collectively, their service territories span multiple regions of the United States and together they provide electric service to millions of residential and business customers. The Electric Utilities own electric energy distribution systems that include distribution poles, conduit, ducts and rights-of-way, all of which are used to provide electric power service to their customers. Portions of this infrastructure, particularly distribution poles, are used in part, for wire communications. To the extent those facilities are offered voluntarily and used for wire communications and the state has not preempted the FCC's jurisdiction, the Electric Utilities are subject to regulation by the Commission under the Pole Attachments Act.[1/]

3. As a preliminary matter, however, the Electric Utilities note that a number of electric utilities, including some who assisted in the development of these Comments, have filed suit in the federal district court in Pensacola, Florida challenging the constitutional validity of the nondiscriminatory access provisions of § 224(f) of the Pole Attachments Act.[2/] By presenting these Comments, the Electric Utilities are not requesting that the Commission consider or address the constitutional issues raised by

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1/ 47 U.S.C. § 224 (1997), as amended by § 703 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 104 Stat. 56, 149-151, signed February 8, 1996. Some of the Electric Utilities provide energy service in states that have preempted the Commission's jurisdiction under § 224 by making the certification required by 47 U.S.C. § 224(c)(2) and are, therefore, subject to state regulation of pole attachments. Nonetheless, because the federal statute serves as a loose "benchmark" for pole attachment and related issues, all of the Electric Utilities have a significant interest in the Commission's actions concerning such issues.

2/ Gulf Power Co. et al. v. United States, C.A. No. 3:96 CV 381 (N.D. Fla.).

the Pole Attachments Act. Moreover, the comments expressed herein are not intended, and should not be construed, to suggest that the nondiscriminatory access provisions of the Pole Attachments Act are constitutional or that any rate developed pursuant to that statute constitutes "just compensation" in a constitutional sense. The Electric Utilities expressly reserve any legal, equitable or constitutional rights, including, but not limited to, the rights arising under the Fifth Amendment of the Constitution, not to have their property taken without just compensation. Thus, the Electric Utilities reserve any and all legal and equitable relief that may be available to them in a court of law or equity based on constitutional infirmities.

I. Scope Of The NPRM

A. Introduction

4. This Notice of Proposed Rulemaking [3/] seeks comment on proposals to improve the accuracy of the means by which the Commission calculates pole attachment rates and to develop a new conduit formula pursuant to § 224(d) of the Pole Attachments Act, as amended by § 703 ("1996 Act Amendments") of the Telecommunications Act of 1996 (the "1996 Act"). Significantly, however, this rulemaking has also been initiated in anticipation of a second rulemaking to establish post-2001 rates for pole attachments by telecommunications carriers other than

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[3/] Notice of Proposed Rulemaking, In the Matter of Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98 (released Mar. 14, 1997) ("NPRM").

Incumbent Local Exchange Companies ("ILECs") pursuant to § 224(e) of the 1996 Act.[4] Accordingly, although this rulemaking addresses the rate formulas that the Commission proposes pursuant to § 224(d), the Commission should not implement these rules without considering them in the context of the new statutory language in § 224(e), as well as the overall goals and policies of the 1996 Act.

5. In order to be consistent with the 1996 Act Amendments to the Pole Attachments Act as well as the overall goals and policies of the 1996 Act, the Commission should amend its regulations to establish rate formulas that generate rates consistent with competitive market prices. As discussed in detail below, the Commission should implement a forward-looking cost model based on economic capital costs ("Forward-Looking Economic Cost Pricing Model")[5]. The Forward-Looking Economic Cost Pricing Model proposed below provides cable television and telecommunications participants in the pole and conduit access market with the most level playing field, leads to the least market inefficiencies, and results in the greatest overall fairness to these market participants and electric utilities as owners of infrastructure.[6] This pricing model, which considers the economic value of capital investment, is consistent with much of the economic theory already embraced by the Commission in its Local Competition

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[4] NPRM ¶ 5.

[5] As discussed in Section VII infra, the Forward-Looking Economic Cost Pricing Model necessitates only one change in the Commission's current and proposed formulas: replace embedded historical costs with forward-looking economic costs and adjust the depreciation account accordingly.

[6] As indicated below, while the Electric Utilities believe this approach is appropriate in the context of pole attachment rates, they endorse its use only in appropriate circumstances.

Order.[7] Thus, both sound policy considerations and consistency with other Commission decisions support adoption of the Forward-Looking Economic Cost Pricing Model. Moreover, although this forward-looking cost approach differs from the Commission's interpretation of the Pole Attachments Act in the past, the 1996 Act Amendments and the dramatic changes in market conditions compel the Commission to revise its formulas in order to adopt an approach more consistent with these changes.

6. In an effort to provide the Commission with a framework for analyzing the current market for access to poles and conduit and the appropriate pricing standards that should apply to access to an electric utility's poles and conduit, the Electric Utilities offer for the Commission's consideration a Report prepared by Reed Consulting Group ("RCG") (the "Reed Report").[8] RCG is a management consulting firm that specializes in the analysis of competitive energy markets, including economic implications of state and federal regulatory proposals, industry restructuring, planning and organizational studies, and specialized information services.[9] In its report, RCG concludes that a

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[7] First Report and Order, In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996, 11 FCC Rcd 15,499, CC Docket No. 96-98, released August 8, 1996, 61 Fed. Reg. 45,476 (1996), petition for review pending sub nom. and partial stay granted, Iowa Utils. Bd. v. Commission, No. 96-3321 and consolidated cases (8th Cir. Oct. 15, 1996) (the "Local Competition Order"). See discussion infra Section III.

[8] Attached as Exhibit 1.

[9] RCG's clients include electric and natural gas utilities, energy marketers and retailers, gas pipelines, energy project developers, energy producers, large energy consumers, banks and financial institutions. RCG's staff members have prepared and presented testimony in hundreds of regulatory and civil proceedings before more than 40 different federal and state agencies and courts. Much of this work has involved electric rate proceedings that focused on cost of service, cost allocation, rate of return and rate design issues. Additionally, a significant

negotiated pricing framework should be employed in the market for pole attachments and conduit access.[10] Alternatively, the Reed Report finds that, in the absence of negotiated prices, given the telecommunications market dynamics for access, an appropriate alternative is a Forward-Looking Economic Cost Pricing Model.[11] The Reed Report further explains why there should be no concern over an electric utility's ability to engage in anti-competitive behavior in the market for pole and conduit access.[12]

7. The Electric Utilities believe that in the pole attachment and conduit context the Commission should adopt the Forward-Looking Economic Cost Pricing Model. However, in the event the Commission rejects this approach, the Electric Utilities also propose changes to improve the accuracy of the current and proposed formulas.[13]

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amount of RCG's work has been in the area of market power and electric industry restructuring, including market-based and performance-based ratemaking, divestiture, stranded costs and other issues related to industry deregulation. As part of this work, RCG's principals and consultants have testified in precedent-setting cases involving the adoption of market-based rates for regulated gas and electric services and the establishment of open-access rules and rate design for electric utilities.

[10] Reed Report, Exhibit 1 at 35-44.

[11] Id. at 45-52.

[12] Id. at 35-44.

[13] In the Whitepaper submitted to the Commission on August 28, 1996, several electric utilities recommended that the Commission rely on negotiated rates for pole and conduit access. Just and Reasonable Rates and Charges for Pole Attachments: The Utility Perspective, A Position Paper Presented By American Electric Power Service Corp., et al. (Aug. 28, 1996). To the extent that these Comments differ from the positions taken in the Whitepaper, it is because the

B. Jurisdictional Issues

8. When Congress adopted the Pole Attachments Act, it intended that the Commission's jurisdiction extend to poles, ducts, conduit and rights-of-way.[14] In its initial implementation of the Pole Attachments Act and in all related proceedings, the Commission has dealt solely with distribution poles. In the current rulemaking, the Commission has stated that it is seeking to adopt a new conduit formula.

9. The Electric Utilities argued in their Petition for Reconsideration of the Local Competition Order[15] that the Commission does not have the statutory authority to regulate the rates, terms and conditions for attachment of wireless antennas to electric utility property. Additionally, the Electric Utilities argued that the Commission does not have the statutory authority to regulate the rates, terms and conditions for access to electric utilities' transmission facilities. Accordingly, until the Commission resolves the issues raised in the Local Competition proceeding, the Electric Utilities respectfully urge that this rulemaking only address rates for wireline attachment to utility distribution poles and conduit.[16] To the extent that parties to the proceeding propose that the

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Whitepaper was written with a view toward post-2001 rates. Where the positions in these Comments differ with those presented in the Whitepaper, the Electric Utilities intend these Comments to govern.

[14] 47 U.S.C. § 224(a).

[15] See American Electric Power Service Company, et al.'s Petition for Reconsideration and/or Clarification of the Local Competition Order (filed September 30, 1996).

[16] Cf. NPRM ¶ 5 (stating that "[t]he formula proposed in this Notice will apply to attachments ...within ...rights-of-way"); see also The Initial Regulatory Flexibility Act Analyses, NPRM ¶ 65 (stating that wireless carriers are entitled to affix their equipment to utility poles consistent with the Commission's rules discussed in this

current pole attachment rate formula be applied to other infrastructure elements, such as transmission towers or rights-of-way, the Commission should recognize that a jurisdictional issue exists with regard to regulating these facilities.

10. Assuming arguendo that the Commission has jurisdiction to regulate these facilities, it should resolve such issues by initiating separate rulemakings aimed at developing specific rate formulas for any infrastructure element other than distribution poles or conduit. As such, the discussion in these Comments regarding rate formulas only addresses wireline attachments to distribution poles and conduits.

II. The Market For Pole Attachments Has Changed Dramatically Since 1978

A. The Commission Must Recognize That The Bargaining Relationship Between Electric Utilities And Cable Companies Has Changed

11. In order to implement the appropriate pricing formula, the Commission must consider the change in the bargaining relationship between the key market participants. As of 1977, the percentage of cable subscribers relative to the number of homes was barely 16%.[17] As of 1996, the industry's penetration was an astounding 67%.[18] In addition, cable systems now pass 97% of all television households in the

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rulemaking).

[17] See Reed Report, Exhibit 1 at 3.

[18] In the Matter of Annual Assessment of Status of Competition in the Market for Delivery of Video Programming, CS Docket No. 96-133 ¶ 14 (released Jan. 2, 1997) ("Video Programming Report").

United States, thus implying that access to infrastructure is not limiting access to cable service by consumers. [19]

12. At the time of the 1978 pole attachment legislation, the entire cable industry generated less than $2 billion in revenue. [20] In 1995, the cable industry generated revenues in excess of $25 billion, more than a ten-fold increase. [21] Accordingly, while in 1978, Congress believed that "[c]able television owners d[id] not have the leverage necessary to negotiate for a fair price [for pole access,]"[22] since then, this situation has changed dramatically. Cable companies are now among the largest and most sophisticated companies in the country. As such, any disparity in bargaining position no longer exists.[23]

13. Today, the top 25 cable companies account for 88% of the entire market for cable television. [24] The top six of those cable companies account for almost 65% of the entire market for cable television. [25] As demonstrated in the table below, these

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[19] Id.

[20] See Reed Report, Exhibit 1 at 3.

[21] Video Programming Report ¶¶ 13-14.

[22] 123 Cong. Rec. H35,008 (daily ed. Oct. 25, 1977) (comments of Rep. Luken).

[23] See The Fortune 1 Thousand Ranked Within Industries, Fortune, Apr. 28, 1997, at F-44, F-62 ("Fortune 1000"); see also Special Report: Cable's Top 25 MSOs, Broadcasting & Cable, June 16, 1997, at 36-42 ("MSO Special Report").

[24] MSO Special Report at 36.

[25] See id.

cable companies surely have "the leverage" necessary to negotiate access agreements. Collectively, these six companies have revenue in excess of $37 billion per year.

TABLE 1				
	Revenues[26]	**No. of Employees**	**Subscribers**	**Homes Passed**
US West	12,911,000,000	69,200	5,250,000	8,300,000
Time Warner	10,064,000,000	43,100	12,300,000	18,000,000
Tele-Communications, Inc. (TCI)	8,022,000,000	35,000	14,370,000	23,777,000
Comcast	4,038,000,000	16,400	4,312,000	7,900,000
Cox Communications	1,460,000,000	7,200	3,282,000	5,037,000
Cablevision Systems	1,315,000,000	7,100	2,865,000	4,416,000

14. Although the bargaining position between the market participants is only one element to consider in determining the appropriate pricing mechanism, the Commission must recognize, as Congress intended, that there has been a fundamental change since 1978 in the market dynamics and the nature of the relationships between the negotiating parties. Significantly, today, there is no market failure in negotiations between electric utilities and telecommunications carriers or cable companies over access to electric utility poles and conduit. For example, electric utilities and competitive access

[26] See Fortune 1000 at F-42, F-66. These revenue figures are gross revenue figures that incorporate all revenue derived from operations including revenue derived from the provision of cable services.

providers ("CAPs") have routinely entered into agreements for pole access for fiber facilities since 1978 with no congressional or Commission intervention.

15. The Commission also should recognize that there are other factors which affect the relative bargaining power of the parties to an access agreement. For example, as a practical matter, once telecommunications carriers or cable companies are using a utility's infrastructure, it is extremely difficult to reclaim that capacity. Established telecommunications carriers and cable operators have the ability to apply tremendous political pressure at the local level to maintain service. It is difficult for a utility to insist that attachers leave their facilities should business negotiations between the parties break down. Since a utility normally will not force interruption of service to telecommunications or cable customers, once the telecommunications carriers or cable operators have access to an electric utility's poles or conduits, they have significant leverage for negotiating price terms.

16. Furthermore, the Commission cannot ignore that, in the recent past, many communications technologies and industries have grown up with minimal regulatory intervention. CAPs, satellite, PCS and long distance companies have all developed successfully in an environment where they have negotiated almost every aspect of their business at market rates, including access to sites for the installation of their equipment. For example, eleven interexchange carriers are reported to have 2.7 million fiber miles deployed at the end of 1995.[27] Thirteen CAPs reportedly have deployed 760,640 miles

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[27] Fiber Deployment Update End of Year 1995, Industry Analysis Division, Common Carrier Bureau at 36 (July 1996).

of fiber as of the end of 1995.[28] This massive deployment of fiber has largely been accomplished through market negotiation for access to infrastructure.

17. Accordingly, the Commission should conform its approach to price regulation for pole and conduit access to respond to these changed market dynamics.

B. In Analyzing The Respective Bargaining Positions Of The Parties, The Commission Should Distinguish Between Electric Utilities And ILECs

18. Although § 224 applies equally to electric utilities and ILECs, in assessing the relative bargaining position of the market participants, the Commission should recognize that electric utilities and ILECs occupy fundamentally different positions in the economically relevant market for purposes of cost-of-service ratemaking.[29] As such, the Electric Utilities should not be penalized for any perceived anti-competitive threat that may be posed by the ILECs.

19. As discussed in detail in the Reed Report, in order to impose a more rational pricing framework for access to poles and conduit, the Commission must consider the relevant economic and geographic market for access.[30] Then, as part of the analysis, the Commission must consider the different characteristics and the relevant bargaining positions of the companies capable of providing such service.

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[28] Id. at 35.

[29] Indeed, Congress recognized explicitly the distinction between the two types of utilities by providing in the 1996 Act Amendments that electric utilities have the right to "deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes," while not providing such a right to ILECs. See 47 U.S.C. § 224(f)(2).

[30] See Reed Report, Exhibit 1 at 34.

20. In its Local Competition Order, the Commission stated that ILECs have a clear motivation to act anti-competitively toward new entrants in the telecommunications market,[31] and likewise toward cable system operators. The Commission concluded that the ILECs have a clear motivation to restrict access because, in so doing, they enhance their own competitive position.

21. In contrast, electric utilities that have entered the telecommunications market are new entrants. Equally important, to date, there has been minimal entry by electric utilities into this market. As such, most electric utilities generally do not compete head to head with cable and telecommunications carriers in the relevant geographic market and, therefore, there is less economic incentive to restrict access.[32] To the extent that Electric Utilities do participate in the telecommunications market, as new entrants, they generally lack market power in the relevant market.

22. Indeed, electric utilities have an economic incentive for reaching agreement with attaching entities and have been doing so for years.[33] Unlike ILECs, electric utilities in marketing their infrastructure are not marketing something that will ultimately be used to hurt their competitive position. Rather, they are marketing available capacity.

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[31] See Local Competition Order at ¶ 10.

[32] See Reed Report, Exhibit 1 at 38-40. In fact, there could be an economic incentive for electric utilities to initially build taller distribution pole lines to accommodate expected attaching entities. Because of this economic incentive, electric utilities would have a greater motivation to market available capacity on their distribution poles and in their conduits for non-electric services.

[33] Id. This presumes that the electric utility has already determined that allowing access to a particular facility does not create any safety, reliability or engineering concerns as provided by § 224(f)(2).

Marketing available capacity allows the electric utility to be more cost efficient, which is increasingly important for at least two reasons. First, many electric utilities now operate under performance-based ratemaking programs that allow them to retain some portion of their cost savings.[34] Second, the electric utility industry is well on its way toward deregulated markets.[35] Thus, electric utilities have significant economic incentives for reaching agreement with attaching entities.

III. An Economic Interpretation Of "Actual Capital Costs" Under § 224(d)(1) Is More Consistent With The Policies Of The 1996 Act And Other FCC Interpretations Of The 1996 Act

23. The overall purpose of the 1996 Act was to establish a "pro-competitive, de-regulatory national policy framework."[36] Congress wanted to reduce formal regulation in favor of "market" regulation. "The basic thrust of the bill is clear: competition is the best regulator of the marketplace."[37] For example, regulatory forbearance is the centerpiece of the 1996 Act.[38]

24. As Congress intended, the Commission has adopted competitive market theories for establishing new rate regulation under the 1996 Act. Most notably, the Commission recently adopted Total Element Long Run Incremental Cost ("TELRIC")

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[34] See Reed Report, Exhibit 1 at 39-40.

[35] Id.

[36] S. Conf. Rep. No. 104-230, at 113 (1996).

[37] 142 Cong. Rec. S688 (daily ed. Feb. 1, 1996) (statement of Senator Hollings).

[38] See 47 U.S.C. § 160.

pricing rules for competitive access to ILEC services and facilities.[39] In the Local Competition Order, the Commission interpreted the language of § 252(d)(1) which allows an ILEC to recover a rate for interconnection and unbundled elements based on the "cost" (determined without reference to a rate-of-return or other rate-based proceeding) and "a reasonable profit." Significantly, however, the Commission primarily focused on the proper conception of "cost" for purposes of implementing the proper pricing framework. In this regard, the Commission concluded for the telecommunications industry that "a cost-based pricing methodology based on forward-looking economic costs ...best furthers the goals of the 1996 Act."[40]

25. The Electric Utilities do not agree with all aspects of the forward looking methodology the Commission adopted in TELRIC. For example, there may be situations in which a forward looking methodology like TELRIC would not appropriately allow for recovery of historic costs, such as where utilities are faced with major stranded investments which result from the abandonment of the regulatory compact on which the

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[39] See Local Competition Order ¶ 618. Regardless of whether the TELRIC model is sustained by the U.S. Court of Appeals for the Eighth Circuit, the economic underpinnings of the model should endure in Commission ratemaking.

[40] Id. ¶ 620.

utilities relied in making the investment.[41] Accordingly, there are situations where historic costs should be recognized.[42]

26. While the TELRIC methodology may have distinct drawbacks in the context in which it is being applied, the Commission's reasoning in adopting the TELRIC methodology demonstrates the agency's intent to employ a framework that is logically consistent with established economic theory.[43] The Commission chose a forward-looking economic cost approach because it generated prices most consistent with a competitive market. Accordingly, the Commission concluded that this approach would most efficiently allocate resources in the industry. In the context of a pricing framework for poles and conduits that are being used by entities other than the utility's core business customers, the Electric Utilities believe it is appropriate to adopt rates consistent with these economic principles. The choice of a forward-looking framework

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[41] The ILECs have correctly argued, for example, in the Eighth Circuit that TELRIC fails to recognize recovery of <u>any</u> historic costs and is inappropriately based on a "hypothetical" network instead of actual costs.

[42] The appropriate cost recovery model must be determined by considering all relevant cost considerations for the particular asset at issue. Such considerations include whether there is significant stranded investment by utility that has relied on its regulatory compact with the state to make such investment. For example, with regard to their core electric generation assets, electric utilities, similar to ILECs, have been subject to state regulatory systems designed to provide a return based on historical costs. As part of this regulatory compact, states have strictly controlled the rate at which electric utilities can depreciate certain assets and recover their investments. The situation of each utility in regard to the appropriate model for recovery of these costs is unique, and the Electric Utilities do not believe that TELRIC or any forward-looking cost recovery model that does not address stranded investment is appropriate in other contexts for example energy deregulation.

[43] <u>See</u> Discussion in Reed Report, Section V.

for calculation of a pole or conduit attachment rate is consistent with relevant economic principles and the guiding statute.

27. When Congress originally passed the Pole Attachments Act in 1978, Congress did not intend for the Commission to apply its original interpretation of the statute in perpetuity.[44] Rather, Congress gave the Commission broadly stated guidance which the Commission can use to arrive at appropriate rate methodologies. As such, in order to meet its stated goals of developing an accurate pole and conduit formula, the Commission must now interpret the statutory formula consistent with the overall goals of the 1996 Amendments and the current market for pole and conduit access.

A. A Utility's Actual Capital Costs In The § 224 Context Are Forward-Looking Economic Costs

28. Under § 224(d)(1), the Commission should be guided by the principle of "just and reasonable" in establishing a rate methodology. 47 U.S.C. § 224(d)(1). The statute, of course, does not provide a specific formulaic calculation, but does indicate that the rate shall be determined with reference to the amount of space occupied by the attachment, the operating expenses and actual capital costs incurred by the utility .

29. The utility's actual capital costs for poles and conduits are forward-looking economic costs.[45] The modifier "actual" should be interpreted to include economic capital costs that are based on forward-looking costs. Economists have long made distinctions between accounting and actual or economic profits.[46] Accounting profits

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[44] See discussion infra Section IV.B.

[45] Reed Report, Exhibit 1 at 45.

[46] Id. at 45-46.