

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 703(e))
of the Telecommunications Act)
of 1996)
)
Amendment of the Commission's Rules)
and Policies Governing Pole)
Attachments)

CS Docket No. 97-151

REPLY COMMENTS OF GTE

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To: The Commission

REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated telecommunications companies ("GTE"),¹ hereby submits their reply comments in response to the Notice of Proposed Rulemaking in the above-referenced docket.² GTE's comments in this proceeding and those filed in the companion CS Docket 97-98 urge the establishment of an understandable and effective regulatory structure that fosters private negotiation and limits the resources that must be devoted to unnecessary government regulation of pole

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., and GTE Communications Corporation.

² Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151(Aug. 12, 1997) ("NPRM").

attachments. With such a regime in place, industry can move more rapidly to the eventual goal of a complete free market system for these services that will lower costs and improve quality for all consumers.

INTRODUCTION AND SUMMARY

GTE, joined by the vast majority of commenters, strongly supports the primacy of private negotiations in the pole attachment process. It follows that the Commission should take this opportunity to introduce reforms that will increase the incentive to negotiate and ensure that the complaint process is utilized only as a last resort. Consistently, the Commission should seek to create a rate formula that is uniform, transparent and easy to implement so as to facilitate such private negotiations.

In furtherance of these ends, the Commission initially should move to adopt a clear rule defining the application of the cable-only and non-cable rates respectively. Once a cable operator begins offering non-cable services in the service area, the non-cable rate should immediately apply to all of its attachments. Cable operators should be required annually to certify the service mix that is currently being provided over their facilities.

The Commission should also address the concerns expressed by many parties regarding the treatment of overlashing entities. The record supports permitting overlashing subject to four important conditions; prior to overlashing, the party must obtain (1) a pole owner's consent, (2) the existing attached party's consent, (3) a pole attachment agreement, and (4) compliance with all appropriate safety requirements. Third party overlashers should also be assessed the full attachment fee, because the benefits they derive from the overlashing are identical to those enjoyed by traditional

attachments. Moreover, although the use of dark fiber by third parties should not be restricted, it should be made clear that such users do not thereby gain physical access to the poles.

Further, in calculating the pole attachment rate, all parties that utilize the poles for telecommunications, including overlashers, should be counted as "attaching entities" for purposes of distributing the costs of unusable space. Usable space should be calculated using the gross book method because it better assesses the true costs associated with attachments. The one-foot-per-attachment usable space presumption should continue to apply, and the 40-inch safety space should be considered unusable and its costs evenly shared by all parties.

With respect to the remaining issues raised in the NPRM, GTE, based on its experience, supports a conduit formula that assumes each "attacher" occupies a half-duct, each run consists of four ducts, and that one duct is unusable as a maintenance duct. However, due to the wide variations in conduit design and use, these presumptions should be rebuttable based on an adequate showing. Right-of-way disputes should be resolved on a case-by-case basis, but it is important that the Commission's rules respect negotiated right-of-way agreements and private property rights. Finally, the Commission should reject efforts to expand the scope of this proceeding to include non-wireline attachments and to mandate a national identification system for attachers. With these modifications, the Commission should move forward rapidly to implement its new formula.

I. Minor Changes in the Regulatory Process Could Greatly Enhance the Efficiency and Fairness of the Current System while Encouraging Private Negotiations.

Congress, the Commission and the vast majority of commenters agree that private negotiations should be the primary method of setting pole attachment rates.³ Although not the principal focus of the NPRM, the establishment of reasonable pre-complaint processes will encourage private resolution and efficient use of the parties' resources to speed deployment of facilities. The Commission can thereby minimize the need to rely on the burdensome and time-consuming formula and complaint process and, instead, direct the parties' attention to good faith private negotiations.

To this end, GTE agrees with those commenters who urge the Commission to require parties to include "a brief summary of all steps taken to resolve [the] dispute"⁴ in all complaint filings, whether arising under the telecommunications or the cable rate rules. GTE has likewise proposed requiring the filing of a Notice of Intent to File a Complaint prior to the commencement of a complaint action. Such a Notice would force the parties to clearly identify and hopefully narrow the issues in dispute and, in many cases, obviate the need for filing a complaint altogether. This notice requirement would be further enhanced by requiring the parties filing a complaint to certify that they have previously raised each issue in their complaint with the other party.⁵

³ See, e.g., Comments of Electric Utilities Coalition at 18-19 ("EUC Comments"); Comments of Ohio Edison Co. at 7-8 ("Ohio Edison Comments"); Comments of SBC Communications, Inc. at 9 ("SBC Comments").

⁴ NPRM at ¶ 12.

⁵ SBC Comments at 4, n.9; Comments of United States Telephone Assoc. at 2 ("USTA Comments"). Moreover, ICG's proposal that the parties default to the lowest possible rate if negotiations fail will eliminate any incentive for the attaching party

For similar reasons, GTE endorses a "statute of limitations" of one year for pole attachment rate complaints and the creation of an "amount in controversy" requirement of \$5000 a year.⁶ GTE also does not object to the suggestion of some commenters that parties be required to engage in a pre-complaint negotiation process of at least 180 days. This would encourage the parties to engage in more substantive negotiations and prevent the complaint process from being used as a negotiating tactic.⁷

GTE further believes that the pole attachment process would benefit from an explicit system of penalties for unauthorized attachments.⁸ A penalty system would create a strong incentive for attaching parties to closely monitor their attachment activities and maximize the information that pole owners possess regarding their property. The unauthorized use of poles is a rampant problem that would be mitigated by clear and decisive action in this regard.

However, other recommendations to augment the pre-complaint process with the imposition of unreasonable burdens would in fact prove to be counterproductive. For example, ICG's proposal that parties be permitted to gain access and perform make-

to reach an agreement. Such a result is hardly consistent with the clear congressional preference for private negotiations.

⁶ See SBC Comments in the CS Docket No. 97-98 at 41.

⁷ See, e.g., Joint Comments of the Edison Electric Institute & UTC, The Telecommunications Assoc. at 7 ("EEI Comments"); EUC Comments at 18-19; Comments of Duquesne Light Co. at 18-20 ("Duquesne Comments"); Ohio Edison Comments at 16-18 (no defined period); Comments of Union Electric Co. at 16-18 ("UE Comments"). Similarly GTE does not believe that the statute requires all pole attachment agreements to be identical. EEI Comments at 6; Duquesne Comments at 18-20; Ohio Edison Comments at 16-18; UE Comments at 16-18.

⁸ Comments of American Electric Service Corp. at 35-36 ("AEPS Comments").

ready work prior to gaining permission to attach is misguided.⁹ There is simply no basis for ICG's claims that they have "missed business opportunities" as a result of delays inherent in the current regulatory regime. As the Commission is well aware, its rules provide for a refund of any over- or under-payments made starting at the time the initial complaint is filed.¹⁰ Consequently, under no circumstances should attaching parties suffer any financial detriment from agreeing to pay the utility's initially prescribed rate pending resolution of a complaint.

In addition, the safety risks and administrative quagmire associated with granting access prior to an agreement would be immense. Agreements are necessary so that the pole owner can be fully informed of all of the facilities and equipment on its poles and can take appropriate measures to ensure smooth operations. Thus, it is vital that attaching entities execute a pole attachment agreement prior to performing any make-ready work or installing facilities.¹¹

⁹ Comments of ICG Communications, Inc. at 11-15, 23-25 ("ICG Comments"). While GTE is sympathetic to the idea of encouraging prompt Commission resolution of complaints (see Comments of KMC Telecom Inc. at 5-6 ("KMC Comments") setting 90 day deadline for Commission action), GTE believes that the Commission is best positioned to evaluate the relative importance of resolving these actions. Any absolute deadline would be arbitrary and may well result in delays in other Commission actions of equal or greater importance.

¹⁰ 47 C.F.R. § 1.1410(c).

¹¹ GTE also rejects the position of KMC that in order for an agreement to be non-discriminatory, it must be identical to all other such agreements to which the facilities owner is a party. KMC Comments at 3-4. Any such requirement would fail to recognize the unique business needs of each attaching party and potentially lead to a constant renegotiation of agreements. Such a system cannot be consistent with the Congressional intent favoring private negotiations.

II. Attachment Space Use

A. The Commission Should Clearly Define the Circumstances Under Which Each Rate Calculation Applies.

As set out in GTE's initial comments, the Act applies the attachment rate formulas to those attaching parties who are "telecommunications carriers" or who operate "cable television systems," regardless of the types of services provided over their facilities.¹² Within this jurisdiction, however, Congress has developed two different formulas: (1) the old Section 224 formula which applies only to "pole attachment[s] used by a cable television system solely to provide cable service";¹³ (2) and the new formula which applies to all other cable television systems and telecommunications carriers. Under this construction, once a cable system offers any non-cable services, the new Section 224 formula will apply. Thus, GTE and many other commenters correctly concluded that the holding of Heritage has, in effect, been statutorily superseded.¹⁴

The Commission must nonetheless address the scope and timing of the transition from the cable-only rate to the non-cable rate for cable operators providing non-cable services over their attachments. To this end, some commenters suggest that the Commission should adopt a system whereby cable operators are charged the non-cable rate for a certain percentage of their attachments, while the balance of the

¹² Therefore entities that provide neither cable nor telecommunications services (such as internet service providers) are outside of the scope of the Commission's rate regulation authority.

¹³ 47 U.S.C. § 224(d)(3) (emphasis added).

¹⁴ See, e.g., Comments of Ameritech at 3-4 ("Ameritech Comments"); AEPS Comments at 9-10.

attachments are still charged the cable-only rate. These commenters suggest apportionments based on the percentage of cable customers offered or receiving non-cable services,¹⁵ or the percentage of poles with non-cable attachments.¹⁶ It is evident, however, that such proposals would create an administrative nightmare, not the least of which because the relative percentages would have to be adjusted and certified on an annual basis, resulting, no doubt, in constant disputes over survey techniques and tracking systems.

The far better solution would be to provide a bright line test for the application of the formulas, consistent with the dichotomy established in the Act. Once a cable operator offers non-cable services, they would be required to pay the non-cable rate set in this proceeding for all of their attachments in that jurisdiction. To simplify this assessment, GTE supports the proposal of some commenters to require cable systems annually to certify the types of services they are providing over their facilities (including dark fiber).¹⁷ Cable providers are clearly in the best position to provide this information, and a certification system will be easy to implement and sustain. Such a system advances the goals of simplicity and clarity in the pole attachment rate calculation process.

¹⁵ See, e.g., Comments of Comcast Corp. et al. At 15, 17 ("Comcast Comments"); Comments of National Cable Television Assoc. at 24 ("NCTA Comments").

¹⁶ See, e.g., Comments of Adelphia Communications, Corp. at 10 ("Adelphia Comments").

¹⁷ See, e.g., Duquesne Comments at 23-24, EEI Comments at 9-10, ICG Comments at 27. GTE would also support penalties for noncompliance or violations of this certification requirement. See EEI Comments at 9-11.

GTE also wishes to clarify the role of information service and enhanced service providers in this regime. Contrary to the suggestion of Comcast, these services merely transported over cable facilities are not somehow transformed into "cable services" eligible for the reduced cable rate.¹⁸ Rather, only in cases where the cable service provider is actually *providing* the enhanced or information service does the cable-only rate apply.¹⁹ In cases where the cable provider is merely *transporting* the signals of enhanced service or information service providers, the non-cable rate would apply. This is analogous to the role of a telephone company, which does not become an information service provider simply by transporting Internet services. The Commission should reject Comcast's efforts to gain a subsidized rate and unfair market advantage by means of an overbroad reading of the statute.

B. The Commission Should Establish Overlapping Rules That Respect the Safety and Administrative Concerns of All Parties and Require Parties To Pay Their Fair Share of Pole Costs.

The Commission also seeks comment on the issues raised by overlapping onto existing attachments.²⁰ GTE continues to believe that overlapping should proceed only (1) with the pole owner's informed consent, (2) when the overlapping party has an existing, or executes a new, pole attachment agreement with the pole owner, and (3) if the overlapping complies with all safety standards. In light of the comments in this proceeding, GTE would add a fourth requirement: that the overlapping entity must also

¹⁸ Comcast Comments at 18-20.

¹⁹ See H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. (1996) ("Conference Report") at 169 (requiring the cable provider to make these services available to subscribers).

²⁰ NPRM ¶ 15.

gain approval from the original attaching party prior to overlashing.²¹ This will ensure that the safety and reliability concerns of the underlying attacher are fully accommodated in the overlashing process. In sum, these requirements will assure that a pole owner is aware of (i) the nature and number of facilities on its poles, (ii) the relative stress on the pole caused by the attachments, and (iii) the identities of all of the parties to contact in case service issues arise. Many other parties proposed similar limitations.²²

Overlashers should also be considered "attaching entities" and, therefore, subject to appropriate charges.²³ Parties should be permitted to overlash onto their own facilities at no additional charge (as "attaching entities" they already contribute to the cost of unusable space under Section 224(e)(2)). However, third parties seeking to overlash would be counted as "attaching entities" under Section 224(e)(2) and, therefore, required to pay their fair share of the costs of the unusable space.²⁴ This is consistent with the congressional intent to distribute these costs based on the number of "attaching entities." Thus, each third party overlasher will pay an equal share of the costs of the unusable space.

²¹ See, e.g., Comments of Bell Atlantic at 2 ("Bell Atlantic Comments"); EUC Comments at 10.

²² See, e.g., UE Comments at 22-25; Comments of Texas Utilities Electric Co. at 6 ("TUEC Comments"); SBC Comments at 9-13.

²³ 47 U.S.C. § 224(e)(2).

²⁴ For these purposes, affiliated companies would count as "third parties" for the purposes of assessing overlashing fees.

Moreover, GTE joins other commenters in support of charging overlashing third parties for usable space as well.²⁵ Overlashing entities receive service that is functionally equivalent to that purchased by other parties with attachments. They should not receive a windfall simply because they were fortunate enough to find poles with overlashing opportunities. In addition, charging overlashers some separate overlashing rate based on non-usable space only would be administratively burdensome.²⁶ If this two-tiered billing system were mandated, pole owners would be forced to maintain separate billing rates and systems for these parties. The more reasonable alternative is to distribute the costs of poles among all the parties that enjoy the benefits of these facilities, including third party overlashers.²⁷

C. Use of Dark Fiber Should Not Grant Physical Access to Poles.

GTE and the majority of other commenters agree that there should be no additional charge for carriers that wish to use dark fiber facilities already attached to poles.²⁸ However, GTE joins Ameritech and other commenters in urging the Commission to clarify that use of dark fiber on existing attachments does not grant third parties physical access to these facilities.²⁹ Physical access is simply not a right that

²⁵ See, e.g., Comments of City of Colorado Springs at 2-3 ("Colorado Springs Comments"); AEPS Comments at 46-47.

²⁶ Such a multiple-tiered rate structure would also be inconsistent with Congress' original intent to create a program that would necessitate "a minimum of staff, paperwork, and procedures consistent with fair and efficient regulation." S. Rep. No. 95-580, 95th Cong., 1st Sess. 21 (1977).

²⁷ GTE also supports the proposal to permit utilities to recover make-ready charges from third party overlashing entities that require such work.

²⁸ See, e.g., Ohio Edison Comments at 27-28; NCTA Comments at 8.

²⁹ See, e.g., Ameritech Comments at 7-8; Comments of New York State Investor Owned Electric Utilities at 11 ("ConEd Comments").

attachers can negotiate away on behalf of the pole owner. The pole owner is ultimately responsible for the safety and reliability of its pole infrastructure. As such, the pole owner alone should be responsible for granting and monitoring physical access to these facilities.³⁰

III. Charges for Attaching

A. The Commission Should Adopt Proposals that Fully and Fairly Allocate the Costs of Unusable Space Among All "Attaching Entities."

In order to implement congressional intent, the Commission must divide the costs of the unusable space equally among the "attaching entities" without regard to the "usable space" occupied by each entity.³¹ Any calculation that includes a usable space factor would be contrary to the congressional requirement for equal apportionment. Congress knows how to allocate costs based on usable space occupied; however, here Congress designated a different allocation mechanism based on the number of attaching entities.³² Similarly, Congress could have, but chose not to, allocate these costs based on the number of attachments. Instead, Congress intended for unusable space to be paid for by the full range of entities enjoying the benefits of the other than usable space. The failure to effectuate this intent would be unlawful.

³⁰ Dark fiber use is only relevant to one narrow issue: whether the cable-only or non-cable attachment rate applies. For this reason, the fiber owner will be responsible for disclosing the types of services provided over these facilities.

³¹ Some parties ignored the plain language of the statute and have argued for distribution of unusable space costs based on space occupied or the number of attachments. See Comments of AT&T Corp. at 15 ("AT&T Comments"); Comments of MCI Telecommunication Corp. at 12 ("MCI Comments") respectively.

³² Compare 47 U.S.C. § 224(e)(2)(allocating costs among "attaching entities") with 47 U.S.C. § 224(e)(3)(allocating costs based on "usable space required").

GTE and other commenters suggested that the pole owner be excluded from this count of "attaching entities."³³ The statutory formula clearly allots one-third of the costs of unusable space to the pole owner. Thus, any additional allocation associated with being an "attaching entity" would amount to double-charging, be overly burdensome, and be inconsistent with the statute.

Moreover, only non-cable attaching entities "count" for purposes of determining the number of "attaching parties" under 47 U.S.C. § 224(e)(2),³⁴ because Subsection (e) of Section 224 applies solely to non-cable attachers. But, as explained above, once a cable operator begins offering non-cable services, the new rate applies and they become "attaching entities" for the purposes of this calculation.³⁵ Since the reference to "attaching entities" in Section 224(e)(2) does not otherwise limit application of the term in any way, all third parties with attachments or overlappings providing non-cable services should be counted in this calculation.³⁶

³³ See, e.g., Ameritech Comments at 11-12; EUC Comments at 4; SBC Comments at 21-23.

³⁴ Counting cable operators would require utilities to further subsidize pure cable attachers. See Ameritech Comments at 11.

³⁵ With respect to the treatment of governmental entities seeking attachments, GTE submits they are few in number. See NPRM ¶ 24. Since these attachers do not pay fees and all parties benefit from the rights of way granted by the governmental entity, GTE believes it is best to ignore these attachers for purposes of calculating the number of attaching entities. Similarly, if a governmental entity were to offer competitive telecommunications service, they too would "count" in this calculation. See EUC Comments at 5.

³⁶ However, if the Commission continues to prohibit ILECs who attach on electric utilities' poles from benefiting from the rate formula, ILECs should not be subjected to charges under this provision. Rates for ILEC attachments are already extremely high and counting these carriers as "attaching entities" would only add to the subsidy ILECs provide to other carriers.

In connection with this policy, GTE supports the use of a presumptive average of three attachments per pole for purposes of calculating the unusable space rate.³⁷ This figure is based on GTE's own business experiences. Other utilities should be free to rebut this presumption with their own data that takes into account their unique conditions based on geography, the state of competition, state regulation, and other factors.³⁸ However, utilities should not be required to develop this data, because doing so would be needlessly expensive for those companies prepared to accept the three attachment presumption. For this reason, GTE strenuously opposes the survey-on-demand proposal of ICG.³⁹ Such a requirement would create a virtual "Sword of Damocles" by requiring the time and expense of a pole survey any time a prospective attaching party requests one. The costs involved in such a survey effort compared to the relatively low costs of pole attachments make this proposal particularly inappropriate. The Commission should, accordingly, unequivocally reject the ICG survey proposal.

B. Usable Space Should Be Allocated Based on the Gross Book Method and the One Foot Space Presumption.

GTE and many other parties, in accordance with their comments in the previous docket, support the general usable space formula, but urge the Commission to adopt a gross book method for valuing the underlying costs.⁴⁰ As set out in those comments,

³⁷ NPRM ¶¶ 26-28.

³⁸ See, e.g., USTA Comments at 13-14, SBC Comments at 26-27.

³⁹ ICG Comments at 37-38.

⁴⁰ See Bell Atlantic Comments at 4; EEI Comments at 25 (gross or net); SBC Comments at 28-29; USTA Comments at 10; GTE Comments at 4-9.

the gross book method has a number of advantages over both the modified net cost proposal and the current cable formula, including more accurate cost allocation, increased transparency, and greater ease of administration. But, any proposal to permit multiple methods of rate calculation (such as gross or modified net) should be rejected.⁴¹ Adoption of such proposals would disrupt predictability for both attaching parties and utilities and undermine the Commission's goals of consistency and clarity in the pole formula.

GTE also joins the vast majority of commenting parties in opposing efforts to alter the one foot usable space presumption. Various parties have proposed that the assumption be changed in cases where extension arms or boxing are used,⁴² or that different usable space presumptions should apply above and below the safety space.⁴³ Even assuming the objective merit of such proposals, changing the usable space presumptions based on the unique circumstances of each attacher would add yet another layer of complexity to the pole attachment rate formula. Moreover, such a refinement would require surveys of the actual space occupied by each attacher, thereby adding even greater costs to the process. Finally, the one foot presumption remains just that, a presumption and, as such, the parties are free to rebut it with their own data. In light of these considerations, it would be unwise to modify the one foot presumption for occupied space.

⁴¹ See, e.g., EEI Comments at 25.

⁴² Comments of RCN Telecom Services, Inc. at 7-8 ("RCN Comments").

⁴³ ICG Comments at 39.

C. The 40-Inch Safety Space Should Be Considered Unusable Space.

As supported by many commenters, GTE believes that the 40-inch safety space should be treated the same as other non-usable space on a given pole: the cost should be shared by all parties with pole attachments consistent with the requirements of the Telecommunications Act.⁴⁴ The 40-inch safety space mandated by the National Electric Safety Code (NESC) is designed to benefit all attaching parties by protecting their workers from the risks of contacting electrical attachments. Because this safety obligation benefits all parties and the general public by providing safe and reliable service, these costs are most appropriately borne by all parties.

Other commenters have proposed apportioning of this space among the various parties.⁴⁵ These proposals would be difficult to implement, distribute costs unfairly, and further muddle the rate calculation process. Instead, the Commission should reduce the overall usable space presumption based on the exclusion of the 40-inch safety space to a total of 10 feet, 2 inches.

IV. Other Pole Attachment Issues

Conduit. Three key presumptions are involved in the setting of conduit attachment rates: space occupied, the number of usable ducts per run and the number of unusable ducts per run. First, GTE and most other commenters support the half duct

⁴⁴ 47 U.S.C. § 224(e)(2); NPRM ¶ 20; see also Colorado Springs Comments at 3; ICG Comments at 30-31; Duquesne Comments at 31; UE Comments at 27-30.

⁴⁵ See, e.g., EUC Comments at 12 (dividing space between cable and telecommunications carriers).

presumption for space occupied by a given attacher.⁴⁶ This is based on a compromise between the positions of some CLECs that support one-third⁴⁷ or even one-fourth⁴⁸ presumptions, and those of electric utilities that argue that their ducts cannot be shared and that the presumption should therefore be one.⁴⁹ Based on its experience, GTE believes that one half represents a reasonable estimate of the space occupied by the average attachment.

Second, GTE estimates that the average run of conduit in its system has four ducts. It is important to stress here that this is a presumption based on GTE's own experience. If the Commission were to adopt this presumption, it should do so with the express understanding that it would be rebuttable upon an adequate showing.

Third, GTE believes that one duct should be assumed to be unusable. Although in GTE's system this unusable duct will most often be reserved for maintenance, many other commenters pointed to equally valid reasons for a duct to fall within the unusable category. These situations include damaged conduit or conduit used by government agencies for public purposes.⁵⁰ It is also important to recognize that ducting and the costs associated with it are only part of the costs associated with unusable space in a

⁴⁶ GTE Comments at 14.

⁴⁷ AT&T Comments at 16-17.

⁴⁸ Comcast Comments at 20.

⁴⁹ See AEPS Comments at 54; Duquesne Comments at 49; EEI Comments at 28.

⁵⁰ See SBC Comments at 33-34; GTE notes that governmental conduit used to provide commercial cable or telecommunications services should be considered usable.

conduit system. Consequently, this calculation should include the costs associated with the entire conduit system.

Finally, Ohio Edison proposed that the first communications company that installs cable in an empty duct should have to pay the costs for installing innerduct.⁵¹ GTE supports this proposal as a fair method of allocating these costs.

Rights-of-Way. GTE, like many other commenters, believes that case-by-case adjudication is best suited to resolving right-of-way disputes. These disputes often involve unique facts that do not lend themselves to blanket rules. However, GTE has concerns about the efforts of some commenters to require utilities to expand rights of way to accommodate third parties.⁵² In many cases, the rights-of-way owned by GTE are non-assignable. As a result, GTE is not in a position to grant these rights to other parties. In addition, any requirement that GTE expand its rights-of-way to accommodate other parties should also permit GTE to pass these and other relevant embedded costs on to the parties that require the additional access.⁵³

Access by PCS and Other Providers to Non-Distribution Facilities. As set out in its Reply Comments in the previous rulemaking, GTE believes that the pole attachment rate formula does not apply to non-wireline pole attachments. Such arrangements simply do not fit within the parameters of that formula. In light of the Commission's decision to exclude any discussion of PCS from its NPRM, GTE believes these issues are best addressed in a separate proceeding.

⁵¹ Ohio Edison Comments at 49.

⁵² Comcast Comments at 24-26.

⁵³ See, e.g., ConEd Comments at 25-26; Bell Atlantic Comments at 9-10.

Nonetheless, some parties have suggested extending the scope of this proceeding to include access and rate regulation for other types of facilities, such as rooftops.⁵⁴ Yet, access to a utility's facilities under the statute is limited to "poles, ducts, conduits or rights of way." Accordingly, requests that the pole attachment regulatory scheme be extended to cover other facilities are beyond the scope of this proceeding and the Commission's authority.⁵⁵ The goal of pole attachment rate regulation is to provide the "essential" distribution facilities needed by new competitors and technologies. The Act was not designed to permit the expropriation of any or every piece of utility property in the field.

National Identification System. GTE also opposes proposals for a national identification process to be used for all attaching entities.⁵⁶ Each company currently has their own tagging requirements. A uniform national system will only create another layer of regulation and require changes in current operating procedures. Therefore, tagging should be left to individual companies.

⁵⁴ Any decision to lease space on these facilities should be purely voluntary and on an individual case basis. Moreover, it is obvious to the most casual observer that the pole attachment rate formula is woefully inadequate to calculate rates on these other types of facilities.

⁵⁵ See Comments of Teligent L.L.C. at 2-10; Comments of Winstar Communications, Inc. at 11-13.

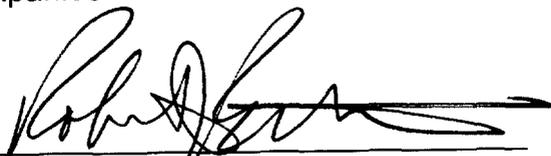
⁵⁶ See AEPS Comments at 32, 36; ICG Comments at 27.

CONCLUSION

With the foregoing modifications, the Commission's proposals for pole attachment rate regulation should be adopted.

Respectfully submitted,

GTE SERVICE CORPORATION,
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