

EX PARTE OR LATE FILED

NOT A COPY ORIGINAL

A Partnership Including
Professional Corporations
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
http://www.mwe.com

Boston
Chicago
Los Angeles
Miami
Moscow
Newport Beach
New York
St. Petersburg
Silicon Valley
Vilnius
Washington, D.C.

Shirley S. Fujimoto
Attorney at Law
sfujimoto@mwe.com
202-756-8282

MCDERMOTT, WILL & EMERY

November 20, 1997

RECEIVED
NOV 20 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND-DELIVERED

Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C 20554

Re: Notice of Written Ex Parte Presentation; In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996; CS Docket No. 97-151

Dear Ms. Salas:

Pursuant to § 1.1206 of the FCC's rules, this is to notify the Office of the Secretary that American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power Company and Florida Power and Light Company (the "Electric Utilities") made a written ex parte presentation in the above-mentioned rulemaking to Meredith Jones, Elizabeth Beaty, Margaret Egler, Lynn Crakes, Cheryl King, Andra Cunningham, Marilyn Jones, Priscilla Wu, Michael Lance and Donny Fowler of the Cable Services Bureau. An original and two copies of this notice and the written presentation are being filed with the Secretary's office. In addition, a copy of this notice and its attachments have been hand-delivered to the meeting attendees.

Very truly yours,

Shirley S. Fujimoto

- cc: Meredith Jones
- Elizabeth Beaty
- Lynn Crakes
- Andra Cunningham
- Margaret Egler
- Donny Fowler
- Marilyn Jones
- Cheryl King
- Michael Lance
- Priscilla Wu

No. of Copies rec'd 0+2
DATE FILED

EX PARTE OR LATE FILED

A Partnership Including
Professional Corporations
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
<http://www.mwe.com>

Shirley S. Fujimoto
Attorney at Law
sfujimoto@mwe.com
202-756-8282

Boston
Chicago
Los Angeles
Miami
Moscow
Newport Beach
New York
St. Petersburg
Silicon Valley
Vilnius
Washington, D.C.

MCDERMOTT, WILL & EMERY

November 20, 1997

HAND-DELIVERED

Elizabeth Beaty
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., 9th Floor
Washington, D.C. 20554

RECEIVED
NOV 20 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: In the Matter of Implementation of Section 703(e) of the
Telecommunications Act of 1996; C.S. Docket No. 97-151**

This letter is to follow-up on the November 13, 1997 *ex parte* meeting held with the Cable Service Bureau ("CSB") regarding the above-mentioned proceeding. As a result of that meeting, the Electric Utilities would like to provide the Federal Communications Commission ("FCC") with clarification on certain issues raised during the course of conversation.

Role of Capacity in FCC Rate Regulation

The CSB asked how the capacity arguments presented in the Electric Utilities' comments, as well as those filed by other parties, should be used by the FCC when promulgating rules related to attachment rates. The Electric Utilities have had an opportunity to review current engineering and design standards to determine the average amount of pole capacity consumed by telecommunications and cable wire and fiber attachments. Based on this evaluation, the Electric Utilities believe that the characteristics of each attachment differ. Therefore, it would be difficult to apply a capacity-based formula for all attachments. In the interest of simplicity, the Electric Utilities accept at this point in time the current allocation of one foot of usable space for cable and telecommunications attachments, even though it is not entirely accurate.

However, the Electric Utilities do believe that the Commission must consider capacity in two additional contexts. First, and most relevant to the current proceeding, the Electric Utilities have provided a great detail of engineering information to support their recommendation that capacity considerations justify that parties are charged a full attachment rate for overloading. Despite claims to the contrary, all attachments, whether physically touching the pole or not, consume pole capacity. Furthermore, the one-foot of space allocated historically to telecommunications and cable attachments, at the very least, represents the amount pole capacity consumed by overloading.

The Electric Utilities also suggest that an exception should apply to this general rule. If a current attaching entity is interested in overlashing as a means for upgrading its network and it intends to remove old attachments, such that the overall effect of the modification is to not increase the capacity consumed on a pole, such overlashing should not be subject to an attachment fee. The Electric Utilities believe that it is critical to all parties using utility poles that attachments that are not being used should be removed from the pole. As a result, they are willing to work with attaching entities to develop network upgrade plans that accommodate the ultimate removal of such facilities.

In light of the above information, as well as for the fairness reasons discussed in their comments and reply comments filed in the Pre- and Post-2001 rulemakings, the Electric Utilities urge the Commission to apply a full attachment rate to overlashed facilities. No other commenting party has presented a substantiated reason for charging anything less than a full attachment rate for overlashing. It would be unfair for the Commission to adopt any rule regarding overlashing that ignores the information about capacity consumption presented by the Electric Utilities and would result in utilities being unable to recover their costs.

Certification

The Electric Utilities appreciate that the FCC wishes to adopt rules that are as simple as possible. In light of this understanding, the Electric Utilities propose an additional option for differentiating between "pure" cable and telecommunications attachments.

Congress determined that it was appropriate that cable entities offering "pure" cable services be subject to an attachment rate that differed from cable system operators that offer, carry or deliver telecommunications services. Regardless of the details that the Commission chooses to follow for purposes of implementing Congress's mandate, the most important step that the FCC must implement is to formally establish that cable system operators have an obligation to truthfully and accurately certify to and disclose whether they are offering, carrying or delivering services other than "pure" cable over their pole attachments. A failure to do so constitutes a violation of the laws and regulations of the United States, subject to all appropriate penalties.

This responsibility must extend to representations made directly to the FCC, as well as to those made to a utility in the form of a written declaration or included in a cable system operator's public file. In addition, a failure of a cable system operator to truthfully and accurately certify to and disclose whether they are offering, carrying or delivering services other than "pure" cable over their pole attachments must be found to have occurred if the attaching entity fails within a set period of time established by the FCC to notify the utility and to modify the information in their public file.

Elizabeth Beaty
November 20, 1997
Page 3

Usable and Unusable Conduit Space

Finally, the Electric Utilities would like to reaffirm their recommendations about how the FCC should allocate usable and unusable conduit system space. As discussed in their comments and reply comments filed in the Pre- and Post-2001 Rate Rulemakings, a conduit system is comprised of two parts. The "usable" space in a conduit system consists of the empty space created by the pipes comprising the duct or conduit. This space cannot exist without the manhole, the cement and other stabilizing and reinforcing materials and other components – the unusable conduit system space -- that allows access to and protection of the usable space. While an attaching entity may only be using the empty duct space, this would not be possible without the other elements of the entire system. Just as the usable space on a pole cannot exist without the unusable pole space, the same is true for a conduit system. Therefore, the FCC must reject the positions of other parties that hold that there is no such thing as unusable conduit space.

Following from this argument and in response to the request from the CSB, the Electric Utilities suggest that the FCC should adopt a rebuttable presumption that the costs associated with usable conduit system space represent 10% of the total cost required to construct and maintain a utility conduit system. The remaining 90% of the costs should be allocated as associated with unusable conduit system space.

-o0o-

The Electric Utilities, by their attorneys, respectfully urge the CSB to consider the above information when promulgating its rules in the above mentioned rulemaking.

Very truly yours,



Shirley S. Fujimoto

cc: Meredith Jones
Lynn Crakes
Andra Cunningham
Margaret Egler
Donny Fowler
Marilyn Jones
Cheryl King
Michael Lance
Priscilla Wu