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National Cable Television Association

Daniel L. Brenner
Vice President for
Regulatory Affairs

1100 Massachusetts Avenue, Northwest
Washington, D.C. 20036-1909
202-775-3664 Fax: 202-775-3603

February 2, 1998

EX PARTE

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

BUCKET FILE COPY

Re: Telecommunications Pole Attachments
CS Dkt. No. 97-151

Dear Ms. Salas:

On January 29, 1998, Daniel Brenner and David Nicoll of the National Cable Television Association ("NCTA"), and Paul Glist of Cole, Raywid & Braverman met with:

- Jane Mago, Commissioner Powell's office
- Robert Pepper, Michael Riordan and other OPP staff
- Thomas Power* of Chairman Kennard's office

On January 30, 1998, Daniel Brenner, David Nicoll and Paul Glist met with:

- Anita Wallgren of Commissioner Ness' office
- Rick Chessen* of Commissioner Tristani's office
- Helgi Walker* of Commissioner Furchtgott-Roth's office

NCTA provided a copy of the attached handout for their review. If you have any questions, please contact David Nicoll.

Sincerely,



Daniel L. Brenner

Attachment

cc: Thomas Power
Anita Wallgren
Helgi Walker
Rick Chessen
Jane Mago
Robert Pepper
Michael Riordan

* David Nicoll and Paul Glist attended meeting.

POLE RATES FOR TELECOMMUNICATIONS SERVICES SHOULD BE DETERMINED BASED ON HISTORIC COSTS, NOT REPRODUCTION OR FORWARD LOOKING COSTS

Traditionally, the rates for cable poles are determined based on historic costs. Electric utilities urge the Commission to apply a different method. They maintain that reproduction or forward looking cost (FLC) is a more reasonable basis for calculating the rate for poles used to deliver telecommunications services.

The Commission should reject the utilities' proposals and should continue to base the calculation of pole rates on the basis of historic cost.

Application of reproduction costs to telecommunications poles would achieve draconian results.

--Application of the FLC method will substantially increase pole rates. As cable companies that also provide telecommunications pass these increases along to consumers, cable rates will rise.

--Increasing pole rates above historic cost might satisfy some theoretical objective. It would serve no objective previously identified by the Commission. It wouldn't increase cable or telecommunications competition. It wouldn't enhance efficiency in the delivery of telecommunications or cable services. It wouldn't promote advances in technology.

--In a practical sense, its primary achievement will be to line the pockets of electric utility monopolies. Why would the Commission want to do that?

The historic, legal and economic grounds that support the application of FLC to telecommunications services don't apply to the offering of pole space.

--The offering of pole attachments is not a telecommunications service. It is not rate regulated pursuant to Sections 201-205, or Section 251. Rather, it is separately rate regulated pursuant to Section 224 or state law.

--The courts have recently expressed skepticism regarding the Commission's application of FLC to telecommunications services.

--The economic rationale supporting FLC in telecommunications doesn't apply to poles. Whatever the validity of FLC to telecommunications services, its application to poles would substantial increase pole rates above levels that have been found compensatory in numerous FCC and state proceedings over many years.

States have declined to apply FLC to poles in actual state proceedings, choosing instead to apply historic cost.

--"The basis for computation of annual capital costs shall be historical capital costs less depreciation." (See Cal. Pub. Util. Code, 767.5).

--New York has rejected TSLRIC and reproduction costs for purposes of calculating pole rates in favor of the historic cost method. (See New York Pub. Serv. Comm'n. Case No. 95-C-0341, 1997 N.Y. PUC LEXIS 364 (Jun. 17, 1997), *recons. denied*, 1997 N.Y. PUC 639 (Oct. 7, 1997).

--Michigan has rejected reproduction cost pricing of poles. (See Consumers Power Co., Mich. Pub. Serv. Case Nos. U-10741, U-10816, U-10831 at 27, 1997 Mich. PSC LEXIS 26 (Feb. 11, 1997), *reh'g denied* (Apr. 24, 1997), *appeal pending*, *Detroit Edison Co. v. Michigan Pub. Serv. Comm'n.*, Nos. 203480, 203421 (Mich. Ct. App. filed May 22, 1997).

State proceedings prove that adoption of FLC for utility pole rates will significantly increase pole rates.

--In Georgia, that state approved an historic cost-based rate of \$4.20, rejecting BellSouth's TSLRIC-based rate of \$20.46.

--In Michigan, electric utility witnesses advocated reproduction cost-based rates of \$35.43. The PSC adopted a rate of \$3.74.

--In New York, the electricians sought a reproduction cost-based rate of \$30.43. The PSC adopted \$9.88.

The use of historic cost for pole regulation is consistent with the statute and has been applied by the Commission for nearly 20 years.

--Section 224 (d) requires calculation of pole rates for cable poles on the basis of "actual capital costs."

--The FCC and the states have always interpreted this provision to require calculation of the pole rate based on the utility's historic costs of pole plant. Section 1.1404 (the complaint procedure) requires that "Data and information should be based upon historical or original cost methodology, insofar as possible."

--As early as 1979, the Commission rejected utility proposals for determination of pole rates based on "replacement" costs because these costs are not "reflective of actual costs" as required by Section 224. (See *Regulation of Cable Television Pole Attachments*, 72 FCC 2d 59, 65 (1979).

--In 1985, the Court of Appeals found a pole rate based on historic cost the maximum rate permitted by law. (See *Alabama Power Co. v. F.C.C.*, 773 F.2d 362 (1985).

The bottom line:

--In the 1996 Act, *Congress changed the method for allocating pole space to parties providing telecommunications services*; it did not change the rate base or the carrying charges associated with the pole plant.

--The 1996 Act certainly does not mandate a change in the methodology for calculating the telecommunications pole rate from historic cost to reproduction cost.

--In fact, while the 1996 Act “establishes a new formula charged to telecommunications carriers for the non-useable space of each pole” (See Conf. Rpt., Telecommunications Act of 1996, at 207). It does not take the radical step of changing the rate methodology