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National Cable Television Association

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February 3, 1997

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, DC 20554

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FEB - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Telecommunications Pole Attachments CS Docket No. 97-151**

Dear Ms. Salas:

The attached letter and documents sent today to Michael Riordan of the Office of Plans & Policy are to be included in the record for the above captioned proceeding.

Sincerely



Daniel Brenner

DLB:ldh

Attachements

cc: Michael Riordan

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National Cable Television Association

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Vice President for Law &
Regulatory Policy

1724 Massachusetts Avenue, Northwest
Washington, D.C. 20036-1969
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February 3, 1998

EX PARTE

Mr. Michael Riordan
Chief Economist, Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W.-Rm.822
Washington, D.C. 20554

BY HAND
URGENT

Re: **CS Docket No. 97-151 (Telecommunications Pole Attachments)**

Dear Mr. Riordan:

At our January 29, 1998 meeting, we discussed the potential impact on local telephone competition of pricing telecommunications pole attachments on the basis of forward looking cost.

Utilities argue that pricing pole attachments on the basis of forward looking cost will result in a more efficient allocation of scarce pole space. But for the foreseeable future, the supply of pole space will not be a significant issue. Cable companies are already attached to the poles, and require no additional space to offer telecommunications services. There is, moreover, no record support in the comments of other CLECs for the proposition that forward looking cost pricing of poles will increase the supply of pole space to potential users or that there is a shortage of available pole space.

As we pointed out at our meeting, any further notice to explore whether there is a shortage of space will only aggravate the long-standing efforts of electric utilities and others to raise rates. Cable operators are current attachers and are actual or likely CLECs. A proposal to raise attachment costs to help "potential" CLECs -- who have not complained thus far of any shortage -- will make it exceedingly difficult for real CLECs like cable and other current attachers to compete -- exactly the opposite of what such a proposal is supposed to achieve!

In fact, the far greater concern of commenters is that pole rates be set at levels that foster competition. The consequence of forward looking cost treatment of poles will be to line the pockets of utilities at the expense of telecommunications competition.

Mr. Michael Riordan
February 3, 1998
Page 2

The following materials, which you requested, further show historic cost treatment of poles is proper, and demonstrate that forward-looking cost treatment is not justified:

- a decision by the Michigan PSC in which that state rejected the reproduction cost method for calculating pole rates;
- utility testimony in a Michigan proceeding admitting that attaching parties have no incentive to overconsume pole space;
- a section of NCTA comments in CS Docket No. 97-98 showing that utilities have increased the size of poles to serve their own needs; and
- a section of AT&T comments in CS Docket No. 97-98 and ICG Communications comments in CS Docket No. 97-151, supporting the proposition that poles are essential inputs to the provision of telecommunications services.

If you have any questions concerning this matter, please contact the undersigned.

Sincerely,



Daniel L. Brenner

DLB/ldh

Attachments

cc: Patrick DeGraba, Deputy Chief Economist
Tom Power, Advisor, Office of Chairman Kennard
Helgi Walker, Legal Advisor, Office of Commissioner Furchtgott-Roth
Anita Wallgren, Legal Advisor, Office of Commissioner Ness
Rick Chessen, Senior Legal Advisor, Office of Commissioner Tristani
Jane Mago, Senior Legal Advisor, Office of Commissioner Powell
Magalie R. Salas, Secretary

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FEB - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

| | | |
|---------------------------------------|---|------------------|
| In the matter of the application of |) | |
| CONSUMERS POWER COMPANY for |) | |
| authority to modify tariffs governing |) | Case No. U-10741 |
| attachments to poles. |) | |

| | | |
|---------------------------------------|---|------------------|
| In the matter of the application of |) | |
| THE DETROIT EDISON COMPANY for |) | |
| authority to modify tariffs governing |) | Case No. U-10816 |
| attachments to poles. |) | |

| | | |
|---|---|------------------|
| In the matter of the proceeding, on the |) | |
| Commission's own motion, to examine setting |) | |
| just and reasonable rates for attachments to |) | Case No. U-10831 |
| utility poles, ducts, and conduits, pursuant to |) | |
| MCL 460.6g; MSA 22.13(6g). |) | |

At the February 11, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On November 30, 1994, Consumers Power Company (Consumers) filed an application, docketed as Case No. U-10741, to increase its Rate PA, which addresses pole attachments and

Because embedded costs have been the basis for setting regulated electric rates in Michigan, it would create a mismatch to set pole attachment rates for the same utilities on a different basis. Combining inconsistent methodologies for different services could obfuscate issues of whether one type of service is cross-subsidizing others. It is also difficult to find any reasoned basis for applying a different approach to the pole attachments that electric utilities offer by using the same facilities that they use to provide electric service.

There is another common element that favors using the same approach for both types of ratemaking. Both pole attachment and electric services are provided with facilities that are not readily available in a competitive market to most of the public. Because there is at present no functional market of competing sellers of pole space, the embedded cost standard is an appropriate means of placing a value on utility poles and providing a fair return on utility investment. Setting rates for both pole attachments and other utility services on the basis of embedded costs should enable the utility to recover all, and no more than, its historical investment in its pole network. The utilities presumably made the investment with the expectation that it would be used to provide a public service, would be financed by ratepayers, and would be recovered in rates based on the cost of service. Reproduction cost pricing would overrecover the utility's actual expenditures incurred to finance, build, and maintain the pole network. Incremental cost pricing would not enable the utility to recoup all of its costs.

The Commission recognizes that changes in competitive market structures and the regulatory environment may cause some of these principles to be reconsidered in the future. However, no compelling showing has been made in these cases that existing circumstances justify a departure from those principles. There was no showing that Michigan electric utilities currently compete

as providers of communication or cable TV service or that they are now using their control of the pole networks to take unfair advantage of current business opportunities. There is little evidence in Michigan of head-to-head competition between established utilities and competitive providers of cable TV, telephone service, or any of the communication technologies that rely on wires attached to poles. Thus, it cannot be said that embedded cost pricing undervalues the utilities' present-day opportunity costs of the resources that are devoted to providing pole attachments.

For the present, the most pertinent inquiry may be how best to effectuate competition in communication services. As of now, embedded cost pricing appears to be the optimal approach. It would not make economic sense to send cost signals that encourage new market entrants to invest in duplicative pole networks or to seek other, more expensive alternatives for access to an infrastructure that is capable of delivering their services. Moreover, duplicate facilities might exacerbate aesthetic and safety concerns in communities that are saddled with competing pole networks.

The claims of some utilities that embedded costs are inadequate to capture the value of pole attachments might have been more compelling if there had been a showing that existing pole networks lack the capacity to accommodate the combined needs of utilities and attaching parties. However, the record is silent in this regard. In instances where more capacity is needed to accommodate attaching parties, the record shows that those parties are required to pay the costs of making the poles ready or replacing them with longer poles.

The Commission finds that embedded cost pricing will affect rates in a manner that is reasonable in light of the current statewide rate of \$4.95 per pole.¹² It further finds that embedded cost pricing will not impose a financial disruption on the customers of either the utilities that own the poles or the attaching parties.¹³

The Commission also agrees with the MCTA that, by adopting an embedded cost approach, it achieves a desirable degree of consistency with both the the FCC standard described in 47 CFR § 1.1401 et seq. and the Michigan Legislature's telecommunication standard set forth in Section 361 of the Michigan Telecommunications Act. Implementing the FCC standard should align pole attachment rates in Michigan more closely with other states that already adhere to this standard. Moreover, it appears that the Legislature borrowed the FCC standard in enacting Section 361. In comparing telecommunication and electric poles in Michigan, it is difficult to justify different pricing schemes for pole attachments. It is preferable to adopt a standard that allows both telecommunication and electric pole attachments to be priced on a comparable basis.

Electric Grounding Systems

Detroit Edison takes exception to the ALJ's finding that the cost of overhead grounding systems should be excluded from pole investment. It says that grounding is an operational

¹²Detroit Edison's exceptions state that, unlike its proposed reproduction cost depreciated methodology, the ALJ adopted the Staff approach based on reproduction costs without any reduction for accumulated depreciation. See also Staff replies to exceptions, p.11. It further indicates that it now supports reproduction costs without a depreciation offset. In light of its decision not to use a reproduction cost approach, the Commission need not address this exception.

¹³Federal law requires the Commission to consider the interests of both the utility's consumers and the attaching party's subscribers if it is to retain its authority under state law to regulate pole attachments. 47 USC 224(c)(2); 47 CFR § 1.1414(a)(2). See also MCL 460.6g(2); MSA 22.13(6g)(2).

STATE OF MICHIGAN

FEB - 3 1998

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of the Application)
of Consumers Power Company for) Case No. U-10741
Authority to Modify Tariffs)
Governing Attachments to Poles.)

In the Matter of the Application)
of The Detroit Edison Company) Case No. U-10816
for Authority to Modify Tariffs)
Governing Attachments to Poles.)

In the Matter of the Proceeding,)
on Commission's Own Motion to) Case No. U-10831
Examine Setting Just and)
Reasonable Rates for Attachments) Volume 6
to Utility Poles, Ducts and)
Conduits, Pursuant to MCL 460.6g)

Proceedings held in the
above-entitled matter before Administrative Law Judge
Robert L. Shankland on Monday, January 8, 1996, at
the Michigan Public Service Commission, 6545
Mercantile Way, Lansing, Michigan, commencing at or
about 9:00 a.m.

APPEARANCES:

BRUCE R. MATERS, J.D. (P-28080)
608 Walker Cisler Building
2000 Second Avenue
Detroit, Michigan 48226-1203

Appearing on behalf of
The Detroit Edison Company.

1 attachment?

2 A Well, if it's our pole that the cable attaching party
3 is attaching to, it would be -- the cost would be
4 borne by Detroit Edison.

5 Q In all cases.

6 A If we own the pole, yes.

7 Q And so you believe that there is -- Detroit Edison
8 always bears the capital cost of plant required to
9 accommodate the cable attachment.

10 A Can you define what you mean by "capital cost?"

11 Q The cost of purchasing and installing a pole of
12 sufficient height to accommodate cable attachment.

13 A That is my belief.

14 Q In preparing your recommendation for methodology, did
15 you have occasion to review the terms and conditions
16 under which cable operators make attachments to DE
17 poles?

18 A I believe that would be more Mr. Spence's area.

19 MR. GLIST: Would you read back
20 the question, please?

21 (Whereupon, the court
22 reporter read back from
23 the record as requested.)

24 THE WITNESS: No.

25 Q (BY MR. GLIST, CONTINUING) Much of your testimony is

1 devoted to a recommendation that reproduction costs
2 depreciated be utilized as the investment base for
3 calculating pole rates; is that correct?

4 A Yes.

5 Q The basis for your advocacy of reproduction costs is
6 that it would promote economic efficiency?

7 A I do state that, yes.

8 Q And that you think that would create more of a market
9 priced arrangement?

10 A Yes.

11 Q And would you agree that one economic premise of
12 reproduction cost advocacy is that it avoids the
13 misallocation of resources?

14 A I would agree with that.

15 Q Indeed, you express some concern about sending
16 improper price signals, don't you?

17 A Yes.

18 Q To your knowledge, are there practical alternatives
19 to a cable operator to attaching its plant to utility
20 poles?

21 A I think you're going to have to define what you mean
22 by practical application.

23 Q Economically viable.

24 A I'm really not sure if I could answer that or not.

25 Q So you don't know whether there are practical

1 alternatives or not?

2 A I think if you're asking me if there are substitute
3 products that could be used, you know, with the new
4 technologies that present themselves, there may be
5 new technologies that would serve as a substitute
6 product to using those poles.

7 Q There's a new technology that is a surrogate for
8 existing utility poles?

9 A No, there is not. Not that I know of.

10 Q And do you know of any other providers of pole space
11 apart from regulated utilities?

12 A Not that I'm aware of.

13 Q Are you aware of any free market in pole space among
14 competitive providers of pole space?

15 A Not off the top of my head, I can't think of any, no.

16 Q Let's suppose for a moment that DE was not successful
17 in getting a methodology that produced a pole rent
18 that you think sends the right price signal. And
19 let's suppose that the price signal that is sent is
20 lower than your optimal price. Is it likely that
21 cable television operators can over-consume pole
22 space in some way?

23 A I guess you have to rephrase the question, because
24 I'm not sure exactly what you're asking.

25 Q Well, maybe I don't understand what you mean by

1 improper price signals. When I read it, I thought
2 you meant you needed to send a price to some kind of
3 competitive marketplace so that resources would be
4 allocated in an efficient manner. And so is that a
5 fair understanding of your words?

6 A I believe that's a fair understanding.

7 Q So with that understanding, if the wrong price signal
8 is sent, I'm asking is it likely that cable operators
9 can over-consume pole space?

10 A I would say that they probably would not over-consume
11 pole space.

12 Q And --

13 A Because it would not be in their economic best
14 interest to do something like that.

15 Q And if a price signal was sent in such a way that
16 attracted additional parties to seek attachments to
17 DE poles, I guess you've already said you don't know
18 who pays the capital costs for accommodating those
19 people, do you?

20 A I believe I stated that if it's a Detroit Edison
21 pole, that Detroit Edison pays to accommodate those
22 people.

23 Q Oh, that's right. You think that DE carries the
24 capital costs for anyone who comes along. That's
25 your understanding?

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEB - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Rules and Policies
Governing Pole Attachments

CS Docket No. 97-98

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION, *ET AL.*

The National Cable Television Association, Cable Telecommunications Association, Texas Cable & Telecommunications Association, Cable Television Association of Georgia, South Carolina Cable Television Association, Cable Television Association of Maryland, Delaware and the District of Columbia, Mississippi Cable Telecommunications Association, Mid-America Cable Telecommunications Association, Kansas Cable Telecommunications Association, Jones Intercable, Inc., Charter Communications, Greater Media, Inc., Prime Cable, Rifkin & Associates, TCA Cable TV, Inc., and The Helicon Corporation respectfully submit these Comments in the above-captioned rulemaking proceeding.

As set forth in detail below, because of the extensive and important benefits that the current pole attachment formula has generated in advancement of facilities-based competition, there is a weighty presumption *against* making adjustments to the formula which has evolved over the nearly twenty years of pole attachment regulation. The Commission seeks comment on a variety of issues which the utilities have attempted unsuccessfully time and again to reverse legislatively, and before this Commission, most recently through the special advocacy contained in their so-called August 28, 1996 "White Paper." These matters range from presumptions of pole space allocations, to the inclusion of grounding systems in rate base, to including new and

They pursue this course while moving aggressively into telecommunications and video services.²⁵

II PROPOSED ADJUSTMENT TO POLE SPACE ALLOCATIONS

The electric utility "White Paper" raises three claims relating to usable space on which the Commission is seeking comment. First, the utilities claim that the height of the average utility pole has increased in size since the Commission last visited the issue. Second, they claim that the usable space on such poles has decreased. Third, they claim that 30' poles are no longer suitable for joint use, and should be eliminated from the calculation of pole rents.

We can concur that the average height of poles has increased, for reasons on which the utilities conspicuously are silent. But it is inherently self-contradictory and factually incorrect to claim that the corresponding amount of usable space is *decreasing*. It is also incorrect to assert that 30' poles are not susceptible to joint use.

A. Usable Space Has Increased On Utility Poles, Not Decreased As The Utilities Claim

Poles do appear to be "growing" as the utilities claim. When the Commission adopted its presumptions in 1979, it was fair to conclude from the record that poles used for

²⁵ See, e.g. Alan Breznick, *Charged Up, Electric Utilities Seeing Bright Prospect in Building Broadband Networks*, Cable World, May 20, 1996 at 8. This trend led one electric industry spokesman to comment recently that "[t]here are some utilities that are going to invest very aggressively in telecommunications, and they are going to surprise a lot of people with their speed and determination." Lane Cooper, *Utilities Open the Door on a New Market -- Law Entices Gas and Electric Companies Into Telecommunications*, Communications Week, T33 (Oct. 28, 1996) (Comments of UTC (electric utility trade association) counsel, Sean Stokes). Even prior to the passage of the 1996 Act, single-state electrics, exempt from Securities and Exchange Commission ("SEC") prohibitions on telecommunications ventures, had already begun to offer such services. Numerous utilities which have never been restricted by the Public Utility Holding Company Act ("PUHCA"), including Baltimore Electric & Gas, Duke Power, Montana Power Company, and Pacific Gas and Electric, are now providing communications services. With the lifting of PUHCA restrictions under the 1996 Telecommunications Act, this Commission began receiving applications from electric utilities scarcely two months after the passage of the 1996 Act. See, e.g., *Applications of Entergy Technology Holding Co.*, File Nos. ETC-96-2; ETC-96-3 (Apr. 9, 1996); *CSW Communications, Application of CSW Communications*, File No. ETC-96-1 (Apr. 4, 1996). The stream of such applications continues unabated to this day. See, e.g., *Application of EUA Telecommunications Corp.*, File No-ETC-97-7 (May 23, 1997); *Application of Entergy ETHC Merger Co.*, File No. ETC-97-8 (May 23, 1997); *Application of Sonitrol Southeast, Inc.*, File No. ETC-97-9 (May 23, 1997).

cable attachments were evenly split between 35' and 40' poles. When later subjected to review, the Commission confirmed the presumption through study of four pole surveys conducted under state PSC auspices.²⁶

The most recent evidence of pole height of which we are aware comes from surveys and continuing property records of electric utilities in Michigan and New York, compiled as part of the very recent pole attachment rate/methodology proceeding in those two states. Attached as Ex. 3 is a study, based on materials produced by electric utilities in these two state proceedings, showing the aggregate average pole height of three major electric utilities in two different jurisdictions to be 40.17 feet.²⁷

The reason that pole heights are increasing is to allow electric utilities to send higher power loads along distribution routes into increasingly populated areas.²⁸ Ground clearance requirements for electrical conductors increase as the size and electrical current carrying capacity of those conductors increase. That is, the higher the voltages carried on an electric wire, the higher that wire must be above the ground. These taller poles tend to cost more than shorter poles. Thus, coincident with the installation of taller poles, the average net investment for electric poles has risen relative to telephone poles.²⁹ The fact that new construction costs are

²⁶ *Petition to Adopt Rules Concerning Usable Space On Utility Poles*, 56 R.R.2d 707, 711 (1984).

²⁷ Ex. 3.

²⁸ *Consumers Power, et al.*, Mich. Pub. Serv. Case Nos. U-10741, U-10816, U-10831, Direct Testimony of Victor Gates, Plant Engineering and Construction Witness of Michigan Cable Telecommunications Association at 15 (citing discovery response of Edison Sault Electric Company (MCTA-ES-10831-30), which stated that its electric service upgrade from a 25kV to a 35kV system required the changeout to taller poles).

²⁹ For example, attached to these comments are pole attachment rate calculations which show that the average net per-pole investment of a Michigan major electric utility (Detroit Edison) is nearly six times that of the primary local telephone company (Ameritech) operating in the same state. See Exs. 4 and 5.

rising also indicates that electric utilities are installing taller poles. Finally, while in the past joint use arrangements between telephone and electric utilities generally divided the number of poles owned by each more-or-less evenly, telephone companies are migrating away from joint ownership and leaving electricians to set these taller, more costly poles for electric use.

Pole height is directly related to usable space. Under the National Electrical Safety Code ("NESC") which prevailed until 1990,³⁰ a pole could be assumed to need 6' for ground set and 18' to minimum grade clearance, leaving 11' of usable space on a 35' pole and 16' of usable space on a 40' pole.³¹ Because of the assumption that poles were evenly split between 35' and 40' poles, the presumption was that a pole has 13.5' of usable space (the simple average of 11' and 16'). Any utility is permitted to rebut the presumption for its own rate development with evidence from its own pole plant, generally depending on recourse to internal records. If poles are now 40', the most expedient and accurate way to account for this change—in a manner which conforms with FCC practice—is for the Commission to adopt a rebuttable presumption that there exists 16 feet of usable space on electric utility poles.³² Because cable is assigned one foot of space, the allocation would be 1/16 of the applicable costs, or 6.25%.³³ Such an adjustment

³⁰ Attachments made under these prior Codes are still governed by these codes until the pole is rearranged or renewed. See National Electric Safety Code Section ("NESC") O.13B.2 ("Existing installations, including maintenance replacements, that currently comply with prior editions of the Code, need not be modified to comply with these rules except as may be required for safety reasons by the administrative authority").

³¹ In 1990, the NESC changed to permit a minimum ground clearance of 15.5'.

³² This position finds support in the recent pole rate decision of the Michigan Public Service Commission, which found an average pole height of poles with cable TV attachments of 40.8 feet, and usable space of 15.4 feet. *Consumers Power Co., et al.*, Mich. Pub. Serv. Case Nos. U-10741, U-10816, U-10831 at 27 (Feb. 11, 1997), *reh'g denied* (April 24, 1997). Ex. 1.

³³ The Pole Act defines "usable space" as "the space above the minimum grade level which can be used for the attachment of wires, cables and associated equipment." 47 U.S.C. § 224(d)(2). The usable space on utility poles is that space above the lowest point of attachment on the pole, which is presumed to be 18 feet, to the top of the pole. Assuming six feet for below-ground set, and 18 feet to the first communications attachment, on a 40-foot pole

would be particularly equitable, because cable operators have long been paying for the greater investment which electric utilities have been making in these taller poles, without receiving the reciprocal right to have space calculated in accordance with the height of those poles.

B. The Utilities' Claim Of Decreased Usable Space Is Yet Another Attempt To Reassign the Neutral Zone To Attaching Parties

The utilities' claims that usable space is decreasing is not at all consistent with FCC practice, as claimed in the White Paper.³⁴ Instead, the utilities are arguing that the calculation of usable space should be fundamentally changed to exclude the neutral zone. This is a re-hash of long-discredited arguments that the neutral zone is unusable and should not be directly assigned to the electric utilities.

The NESC prescribes a so-called "neutral zone" of 30 - 40 inches between a communications conductor and the first horizontal electrical conductor.³⁵ In 1979, the FCC concluded that the neutral zone is usable space and that no portion of it may be attributed to cable.³⁶ The utilities' claim that the neutral zone is unusable has been rejected, time and again. It was rejected first in CC Docket 78-144; then in the *Monongahela Power* case;³⁷ then again before the Commission in a 1984 rulemaking;³⁸ in subsequent litigated cases;³⁹ in state pole

there would be 16 feet of usable space.

³⁴ White Paper at 10.

³⁵ Under current NESC specifications, the neutral zone may be only 30 inches, instead of 40 inches, where the top communications facility and the electric facilities are bonded to a common ground. See NESC Rules 235C1 (Exception 3), 235C2b(1)(a), and 235C2b(3).

³⁶ *Rules for the Regulation of Cable Television Pole Attachment*, Mem. Op. and Second Report and Order, 72 F.C.C.2d 59, 70 (1979).

³⁷ *Monongahela Power Co., et al. v. FCC*, 655 F.2d 1254 (D.C. Cir. 1981).

³⁸ *Petition to Adopt Rules Concerning Usable Space On Utility Poles*, 56 R.R.2d 707, 710 (1984).

Average Pole Height: Niagara Mohawk, Detroit Edison, Consumers Power

| | Avg. Height | Total Poles | % | Factor | | |
|--|-------------|-------------|---------|----------------|---------------------|--|
| Niagara Mohawk | 36.994 | 492,348 | 17.72% | 6.556353324 | | |
| Detroit Edison | 41.032 | 970,077 | 34.92% | 14.32809844 | | |
| Consumers Power | 40.73 | 1,315,601 | 47.36% | 19.2871323 | | |
| | | 2,778,026 | 100.00% | 40.17 | Aggr. Avg. Pole Ht. | |
| Derivation of Weighted Averages | | | | | | |
| Niagara Mohawk | | | | | | |
| Source: NYPSC Case No. 95-C-0341 | Pole Height | Number | % | Footage Factor | | |
| Ex. 8 (EUP-1) | 20 | 670 | 0.136% | 0.027216522 | | |
| | 25 | 1,409 | 0.286% | 0.071544924 | | |
| | 30 | 72,001 | 14.624% | 4.387201735 | | |
| | 35 | 190,342 | 38.660% | 13.53101871 | | |
| | 40 | 192,493 | 39.097% | 15.63877583 | | |
| | 45 | 29,644 | 6.021% | 2.709425041 | | |
| | 50 | 3,741 | 0.760% | 0.379914207 | | |
| | 55 | 1,016 | 0.206% | 0.113496957 | | |
| | 60 | 556 | 0.113% | 0.067756952 | | |
| | 65 | 247 | 0.050% | 0.032609049 | | |
| | 70 | 115 | 0.023% | 0.016350224 | | |
| | 75 | 65 | 0.013% | 0.009901533 | | |
| | 80 | 28 | 0.006% | 0.004549627 | | |
| | 85 | 10 | 0.002% | 0.001726421 | | |
| | 90 | 2 | 0.000% | 0.000365595 | | |
| | 95 | 9 | 0.002% | 0.001736577 | | |
| | Total | 492,348 | 100% | 36.994 | | |
| Detroit Edison | | | | | | |
| Source Mich. PSC Case No. U-10831 | 25 | 10,218 | 1.053% | 0.263329612 | | |
| 10831-MTDE1.9/9 | 30 | 56,550 | 5.829% | 1.748830247 | | |
| | 35 | 178,065 | 18.356% | 6.424515786 | | |
| | 40 | 464,753 | 47.909% | 19.16355093 | | |
| | 45 | 153,409 | 15.814% | 7.116347465 | | |
| | 50 | 44,747 | 4.613% | 2.306363309 | | |
| | 55 | 20,728 | 2.137% | 1.17520568 | | |
| | 60 | 16,641 | 1.715% | 1.029258502 | | |
| | 65 | 11,510 | 1.187% | 0.771227439 | | |
| | 70 | 6,962 | 0.718% | 0.502372492 | | |
| | 75 | 3,159 | 0.326% | 0.24423319 | | |
| | 80 | 1,978 | 0.204% | 0.163121072 | | |
| | 85 | 850 | 0.088% | 0.074478624 | | |
| | 90 | 327 | 0.034% | 0.030337798 | | |
| | 95 | 66 | 0.007% | 0.006463404 | | |
| | 100 | 94 | 0.010% | 0.009689952 | | |
| | 105 | 5 | 0.001% | 0.000541194 | | |
| | 110 | 9 | 0.0009% | 0.001020538 | | |
| | 115 | 2 | 0.0002% | 0.000237095 | | |
| | 120 | 4 | 0.0004% | 0.000494806 | | |
| | Total | 970,077 | 100.00% | 41.032 | | |

Average Pole Height: Niagara Mohawk, Detroit Edison, Consumers Power

| Consumers Power (1) | | | | | |
|--|--------------------|------------------|-------------|-----------------------|--|
| Source: Mich. PSC Case No. U-10831 | Pole Height | | % | Footage Factor | |
| 10831-MCTA-CP-9 | 20 | 18,765 | 1.426% | 0.285268862 | |
| | 25 | 18,765 | 1.426% | 0.356586077 | |
| | 30 | 18,764 | 1.426% | 0.42788049 | |
| | 35 | 381,307 | 28.983% | 10.14421926 | |
| | 40 | 381,307 | 28.983% | 11.59339344 | |
| | 45 | 381,306 | 28.983% | 13.04253341 | |
| | 50 | 40,921 | 3.110% | 1.55522077 | |
| | 55 | 40,922 | 3.111% | 1.710784653 | |
| | 60 | 15,176 | 1.154% | 0.69212474 | |
| | 65 | 16,590 | 1.261% | 0.819663409 | |
| | 70 | 1,154 | 0.088% | 0.061401595 | |
| | 75 | 272 | 0.021% | 0.015506221 | |
| | 80 | 152 | 0.012% | 0.009242924 | |
| | 85 | 199 | 0.015% | 0.012857242 | |
| | 90 | 1 | 0.000% | 6.840980E-05 | |
| | Total | 1,315,601 | 100% | 40.73 | |
| <p>(1) Note: For poles below 30 feet, poles from 35 to 45 feet, and 50 to 55 feet, simple per-height averages were used because Detroit Edison information was available only in aggregate groupings (e.g. 1,143,920 poles between 5 and 45 feet.)</p> | | | | | |

Ex. #8

NMPC Distribution Poles
as of 12/31/95

1/15/97

| Pole Height -ft | Sole Owned | Joint Owned | Total | % of total |
|-----------------|----------------|----------------|----------------|---------------|
| 20 | 670 | 340 | 1010 | 0.1% |
| 25 | 1,409 | 1,472 | 2881 | 0.2% |
| 30 | 72,001 | 34,254 | 106255 | 9.1% |
| 35 | 190,342 | 214,883 | 405225 | 34.6% |
| 40 | 192,493 | 347,752 | 540245 | 46.2% |
| 45 | 29,644 | 70,341 | 99985 | 8.5% |
| 50 | 3,741 | 6,662 | 10423 | 0.9% |
| 55 | 1,016 | 1,371 | 2387 | 0.2% |
| 60 | 556 | 500 | 1056 | 0.1% |
| 65 | 247 | 187 | 434 | 0.0% |
| 70 | 115 | 56 | 171 | 0.0% |
| 75 | 65 | 17 | 82 | 0.0% |
| 80 | 28 | 10 | 38 | 0.0% |
| 85 | 10 | 0 | 10 | 0.0% |
| 90 | 2 | 2 | 4 | 0.0% |
| 95 | 9 | 0 | 9 | 0.0% |
| total | 482,348 | 677,867 | 1170215 | 100.0% |

EXHIBIT _____ (EUP - 1)

Case No.: U-10831
Witness: G.R. Spence
Requester: MCTA
Question No.: MTDE1.9/9

Question: 9. How many poles do you own in whole or in part? Please also provide this information in pole equivalents. Identify the number of such poles to which cable TV lines are attached.

Answer: 9. Detroit Edison owned 970,078 poles as of 12/31/94.

25 foot poles - 10,218
30 foot poles - 56,550
35 foot poles - 178,065
40 foot poles - 464,753
45 foot poles - 153,409
50 foot poles - 44,747
55 foot poles - 20,728
60 foot poles - 16,641
65 foot poles - 11,510
70 foot poles - 6,962
75 foot poles - 3,159
80 foot poles - 1,978
85 foot poles - 850
90 foot poles - 327
95 foot poles - 66
100 foot poles - 94
105 foot poles - 5
110 foot poles - 9
115 foot poles - 2
120 foot poles - 4

Refer to the answer to question number MTDE 1.2/2(a) for number of poles to which cable TV lines are attached.

Question:

9. How many poles do you own in whole or in part? Please also provide this information in pole equivalents. Identify the number of such poles to which cable TV lines are attached.

Response:

9. All poles are wholly owned by Consumers Power Company. The number of poles owned as of December 31, 1994, by height, are:

| <u>Size</u> | <u>Number</u> |
|-------------|---------------|
| <35 | 56,924 |
| 35' - 45' | 1,143,920 |
| 50' - 55' | 81,143 |
| 60' | 15,176 |
| 65' | 16,590 |
| 70' | 1,154 |
| 75' | 272 |
| 80' | 152 |
| 85' | 199 |
| 90' | 1 |

A record is not kept of which poles, or by height, that CATV has attachments on.

William C. Bigcraft, being first duly sworn, states that the above response is true and correct to the best of his knowledge, information or belief.

William C. Bigcraft

Sworn before me and subscribed in my presence this 26th day of May, 1995.

Margaret A. Prestler
Margaret A. Prestler
Notary Public, Jackson
County, MI
My Commission Expires:
3/31/97

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

Amendment of Rules and Policies)
Governing Pole Attachments)
_____)

CS Docket No. 97-98

COMMENTS OF AT&T CORP.

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Scott M. Bohannon

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June 27, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Notice of Proposed Rulemaking,¹ AT&T Corp. ("AT&T") hereby submits its comments with respect to the designated issues concerning pole attachment rates.

INTRODUCTORY STATEMENT

Incumbent local exchange carriers and other utilities have strong incentives to abuse their bottleneck monopoly control over poles, conduits and other essential structures. Indeed, it was in direct response to "the overreaching and anti-competitive activities of utilities and telephone companies in providing pole attachments,"² that Congress passed the Pole

¹ Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, Notice of Proposed Rulemaking (released March 14, 1997) ("NPRM").

² Order, Selkirk Communications, Inc. Complainant, v. Florida Power & Light Company, 8 FCC Rcd 387 at n. 11 (1993) ("Selkirk Order").

Attachment Act of 1978, 47 U.S.C. § 224 (1997), which was designed “to constrain the ability of telephone and electric utilities to extract monopoly profits from [those] in need of pole space.”³

In 1978, the targets of these anti-competitive activities were cable companies engaged in entirely different lines of business from their pole and conduit hosts. In 1997, both the target groups and the incentives of structure owners not only to inflate the costs of attachments but to deny them altogether have greatly expanded as changes in both the legal and technological landscapes presage an environment in which incumbent LECs, competitive LECs, cable companies, and even electric utilities will be competing to provide the same services to the same customers.⁴ Accordingly, Congress in the 1996 Act broadened the definition of the “utilities” subject to attachment regulation (47 U.S.C. § 224(a)(1)), as amended by 1996 Act §

³ Opinion and Order, Heritage Cablevision Associates of Dallas, L.P., and Texas Cable TV Association, Inc. Complainants v. Texas Utilities Electric Company, Respondent, 6 FCC Rcd 7099 ¶ 13 (1991) (“Heritage Order I”). Pole owners continue to engage in anticompetitive conduct. See, e.g., Ohio Cable Telecommunications Ass’n v. Ameritech Ohio, 1997 WL 280132, at *22 (Ohio PUC, April 17, 1997) (finding that Ameritech discriminated against third party attachers in favor of its own subsidiary); Opinion and Order, Consumer Power Company, No. U-10741, 1997 WL 107296, at *1, *14 (Michigan PSC, Feb. 11, 1997) (rejecting utility proposal to raise pole attachment rates from \$4.95 to \$33.61 per pole per year (580%), and finding a reduction to \$3.74 more appropriate).

⁴ Even before the 1996 Act, the Commission recognized that “[t]he same anticompetitive concerns which the Senate report referenced with respect to telephone companies are applicable with equal force to electric utilities, which may seek to provide broadband communications services in competition with . . . providers of such services.” Heritage Order I ¶ 13. With the passage of the 1996 Act, all utilities, and particularly those regulated under the Public Utility Holding Company Act, now also have greater opportunities to provide narrowband telecommunications services in competition with potential attachers. See Telecommunications Act of 1996 (104 P.L. 104) at § 103 (amending the Public Utility Holding Company Act of 1935 (15 U.S.C. 79, et seq.).