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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 5, 2001

BY HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW – TW-B204F
Washington, DC 20554

Re: Notice of Ex Parte Conference -- CS Dkt. Nos. 97-98, 97-151

Dear Ms. Salas:

The purpose of this letter is to advise the Commission that on Wednesday, April 4, 2001 Paul Glist and James F. Ireland of Cole, Raywid & Braverman, LLP and Neal Goldberg and David Nicholl met separately with David Goodfriend, Legal Advisor to Commissioner Ness; William Friedman, Legal Advisor to Commissioner Tristani; Susan Eid, Legal Advisor to Chairman Powell and Ben Golant, Senior Legal Advisor to Commissioner Furchtgott-Roth. The purpose of this meeting was to discuss issues raised in the Commission's reconsideration of the above referenced dockets which relate to potential revisions to the Commission's pole attachment rate formula. The enclosed materials were discussed at the meeting and left with each of the staff members.

Please contact the undersigned if you have any questions about this matter.

Sincerely,

James F. Ireland

James F. Ireland

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enclosures

cc: David Goodfriend
William Friedman
Susan Eid
Ben Golant
David Nicholl

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Docket 97-151/Docket 97-98

- Counting all "entities" among whom the costs of unusable space are divided.
  - Power companies are entities
  - Power companies affiliates
  - Power companies should not dilute their counts by weighting in poles without third party attachments
  - Effect of miscount
  - "Entities"

- Overlashing does not require advance permit

- No unusable space in conduits

- Basic formula and pole capacity
  - retain expense account
  - retain embedded costs

- Negative Net Salvage: address only where issue arises

- "Just Compensation" Issues in current litigation

POLE ATTACHMENTS

by

John Mann, CPA

Presented at the
2001 NARUC Winter Meetings
in Washington D.C.

February 2001

This report and compilation was prepared by John Mann of the Florida Public Service Commission. The views and opinions expressed herein do not state or reflect the view, opinions or policies of the State of Florida, the Florida Public Service Commission, NARUC, or any NARUC member Commissions.

facilities be monitored. Several States have instituted online reporting of pole problems.[20] See Attachment I for further information on the Florida inspection program.

CONCLUSION

Today, cable and telephone companies face a challenge to their monopoly local exchange market from facilities based competitors that must attain access to poles and conduits. The incentives for incumbents to impede competition, be it through action at the FCC, unreasonable business practice, or court action, has magnified in the last few years.

The purpose of the 1996 Act is to encourage investment in competing facilities. When pole rents are artificially high, the cost of line extensions becomes uneconomic. This can dramatically effect all areas, especially rural areas with lower density of subscribers and greater number of poles per customer. Lower pole attachment rates are an incentive to attract facilities based competition. Lower, yet reasonable, attachment rates will allow cash strapped CLEC's the opportunity to reinvest revenue in facility upgrades instead of paying rent. When determining fair rent for pole attachment, one should always be cognizant of the fact that pole and conduit facilities are frequently already in the rate base of telephone and electric companies. Add to this equation the fact that a vast majority of these poles sit on right-of-way that was either fully contributed to the utility or leased at a discounted rate. Considering these factors, one begins to understand that the general public has an ownership interest in these poles and should benefit accordingly. Be it the benefit of greater facilities based competition, the benefit of rapid deployment of advanced services or be it the public benefit of avoiding expensive litigation costs, a mechanism must be maintained that ascertains a reasonable rate

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[20] http://homepages.go.com/~samait/forms/technology.htm.

for pole attachment and provides an efficient method for complaint resolution. We believe this has already been accomplished at the FCC.

When it comes to pole attachments, why don't the utilities agree? Well, it's because there is a huge incentive for pole owners who want to get into the telecommunications and Internet business to forestall the efforts of others. It's not so much the rate of the rent, but rather how much time can be gained by erecting a cost barrier. For power companies, pole rental income is a rounding error on their financial statements. But, if they can corner a telecommunications market with their monopoly position over the "last mile," they could significantly improve their financials and bottom line. They have every incentive to overprice, delay, file court action and instigate complaints if these tactics will buy them time to develop a broadband business plan. This is fundamentally unfair to those currently implementing a business plan of their own and to the public who is victimized by retarded deployment of advanced services. Stewardship of public resources should be the primary concern of pole owners. Increasing the rent for these resources by as much 600% is neither fair to competitors nor to the public.[21] The potential economic effect of pole attachment rates has been described by some commentators as the "biggest sleeper" issue in telecommunications. If the owners of the estimated 90 million poles[22] in America were able to charge $38 per pole attachment, as requested by Gulf Power in Northwest Florida,[23] instead of the national average of $6, the annual impact could be as great as $3 billion per year. Increased costs such as these could adversely affect economic development, educational opportunities and the quality of life in the

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[21] See Attachment H.

[22] Robert Guy Matthews, The Wall Street Journal. Four million poles per year need to be replaced because of routine maintenance, accidents and construction.

[23] See Attachment H.

entire nation. Quantifying the effects of inhibited competition is difficult, if not impossible to do, but it is easy to understand that issues involving the deployment of advanced services and access to last mile infrastructure are of paramount importance.