

and conduit access can be difficult to locate and enforce even though the issues resolved often recur.

Boxing and Extension Arms

16. Since the passage of the 1996 Act, pole owners, including Verizon and its predecessor, Bell Atlantic, largely have prohibited the use of boxing and extension arms. Because incumbent communications companies in most cases can readily deploy new cables by overlashing them to existing support strand, the prohibition disadvantages only new entrants to the market, who must find new pole space.

17. By contrast, SBC, at least in Connecticut, regularly directs Fibertech to place cables on the field side of its poles (*i.e.*, to box the poles). The availability of boxing has played a significant role in enabling Fibertech to deploy over 1,300 route-miles of fiber-optic cable in Connecticut since 2001.

Survey and Make-Ready Time Periods

18. Utilities often delay access to poles and conduit by failing to perform field surveys within 45 days, and then failing to complete the make-ready work necessary to permit access to poles for four or six months (or longer) after a competitor has paid for the work. Pursuant to pole attachment agreements like Verizon's in New England, for example, pole owners currently are only required to commit to complete make-ready work within 180 days of payment, and they may take even longer. ILECs act much more quickly when installing their own new facilities, thereby achieving an unfair advantage in the competition to sign up customers for fiber-delivered services. Indeed, ILECs typically do not wait 45 days before commencing their own construction, and they pursue such construction expeditiously when it is for their own business purposes.

Use of Utility-Approved Contractors

19. To justify delays in conducting field surveys and make ready work, pole owners often claim that they lack the necessary manpower to perform these functions more quickly. Under current rules, Fibertech can counter these assertions only by filing a complaint against the pole owner. Given the time necessary to resolve any complaint, this remedy offers Fibertech little practical relief. Even if Fibertech is eventually successful in rebutting the owner's claim, it must expend considerable resources to litigate the dispute, and, more importantly, must forgo construction for the duration of the often-lengthy regulatory proceedings.

Drop Lines

20. Cable television companies traditionally have been permitted to attach drop lines (coaxial cable without steel support-strand) to utility poles (using "J-hooks" rather than through-bolts) without first obtaining a license, when necessary to satisfy a specific request for service. The attachment of CATV drop lines to utility poles generally occurs under one or more of three circumstances: (1) when the customer's house is so far from the road that the drop line must be attached to one or more poles located between the road and home; (2) when distribution poles line both sides of the street (typically ILEC poles on one side and electric company poles on the other), the customer's home is across the street from the CATV distribution line, and the drop line therefore is run across the street to a distribution pole and then to the house; and (3) when the customer's home is located inside the boundary of the franchise service area but slightly beyond the terminal point of the cable company's distribution line, so that the drop line must be attached to one or more poles along the roadway in order to reach the residence. In each

of these scenarios, once the drop line is installed, the cable company notifies the pole owner so that the owner can inspect the installation if it so chooses and can commence billing to collect the pole attachment rental fees.⁵

21. In my experience, the vast majority of utility pole-attachment agreements do not recognize a drop-line exception to the general requirement of licensing prior to installation. Fiber-optic drop lines enable a company like Fibertech to quickly respond to a request for service made by customers to whom the company has not previously extended its fiber-optic lines..

Underground Search and Survey Requirements

22. To obtain access to conduit, Fibertech must be able to get accurate information as to the location and status of such conduit. Generally, Fibertech must depend upon utilities to search records and survey manholes to accurately determine the availability of conduit.⁶

23. During Fibertech's 15-month effort to get access to Verizon's conduit in Buffalo, on at least 14 occasions Verizon incorrectly reported, based on physical examinations of manholes, the availability of conduit. Fibertech cannot know how many

⁵ The installation of drop lines without prior licensing is permitted because the absence of either steel support-strand (which places stress on a pole) or through-bolts (which can affect the structural integrity of a pole) renders NESC-compliant drop-line installations free of the risks that pole-owner survey and make-ready functions seek to prevent. A fiber-optic drop line is even freer of risk than telco copper drop lines and cable television coaxial drop lines inasmuch as a fiber-optic line does not conduct electricity and therefore could present no risk even if touched by live electric wires, lightning, or other sources of electricity. (Where conductive materials are used, of course, such risk is addressed by bonding and grounding.)

⁶ Fibertech generally prefers to use conduit owned by an ILEC rather than conduit owned by a power company, because ILEC conduit rental rates typically are lower.

other times Verizon (or any other utility) was wrong and incorrectly reported unavailable conduit.

24. Utilities often cause delays and increase costs by requiring that utility personnel perform conduit record searches and manhole surveys, and then claiming that manpower shortages prevent timely completion of those searches and surveys. When deploying their own facilities, however, ILECs typically are not subject to equivalent delays. Fibertech believes that Verizon has completed these steps for its FiOS deployment more quickly than it has in response to Fibertech requests. Generally, ILECs are capable of timely completion of records searches and manhole surveys when they seek to install new facilities as part of a competitive bid.

25. In all its service territories in which Fibertech operates, Verizon issues an estimated charge for a record search and manhole survey that Fibertech must pay before Verizon will perform the search and survey, and Verizon reserves the right to adjust this estimated charge based on actual costs. In response to Fibertech's most recent application for access to conduit in the Springfield, MA, market, Verizon issued Fibertech an estimated charge of **\$65,725.77** for a record search and manhole inspections for a conduit route involving 20 manholes (an estimated fee of **\$3,286.28 per manhole**).⁷ After an unsuccessful protest, and needing Verizon to begin work, Fibertech paid this amount on August 26, 2004.

26. Fibertech tested the reasonableness of Verizon's estimate by assigning an employee to follow the Verizon crew and openly observe the work and time required.

⁷ The relevant factor in determining cost is the number of manholes rather than the conduit footage, because the availability of the conduit is determined from within the manhole by inspecting the point where the conduit emerges from the manhole wall.

With Fibertech observing, a single Verizon crew completed the 20 manhole surveys in a single day, September 15, 2004. On January 20, 2005, Verizon informed Fibertech that the actual cost of the record search and manhole surveys was **\$3,778.67**, or **\$188.93 per manhole**. Verizon returned the \$61,947.10 balance on April 27, 2005 (eight months after Fibertech's payment). The final, actual \$3,778.67 charge included the costs of traffic control by police, aerating manholes, and pumping out manholes, as well as nine hours of engineering time in searching records.

27. Fibertech typically has little choice other than to pay a utility invoice, no matter how high, because the utility will not process Fibertech's application until payment is received. Although, in the example above (and after Fibertech monitored Verizon's work), Verizon identified a lower actual cost and eventually returned Fibertech's overpayment, Verizon more often follows an unreasonably high estimate with an invoice for even higher "actual" costs. Fibertech has repeatedly asked for explanation and documentation of these additional charges, but Verizon rarely provides the requested support for its charges. In the former Bell Atlantic territory, Verizon makes resisting these charges even more difficult by requiring payment of the additional charges before processing unrelated pole and conduit license applications.

28. Further, as these amounts accumulate, Fibertech becomes vulnerable to harsh collection actions. When Verizon refuses to explain or document unreasonable discrepancies between actual and estimated cost outside the former Bell Atlantic territory, Fibertech has withheld payment. Outside of the former Bell Atlantic territory, Verizon has continued processing Fibertech's applications and large balances have accumulated. In the former NYNEX territory, for example, Fibertech has a balance of over \$700,000

representing the difference between estimated costs and alleged higher but undocumented actual costs. Although Verizon has not yet taken action (beyond invoicing) to collect these sums, the mere existence of this purported "debt" puts Fibertech at risk.

29. The nature of this risk was revealed to Fibertech, in a different context, in 2004, when Verizon threatened, absent full payment within ten days, to disconnect Fibertech's cables from Verizon's central offices for failure to pay charges imposed under Verizon's CATT tariff. By issuing bills and ignoring Fibertech requests for clarification and itemization of the charges, Verizon had calculated an outstanding balance "owed" by Fibertech of approximately \$300,000. Only when Fibertech threatened to bring a complaint to this Commission did Verizon agree not to disconnect Fibertech's facilities and to discuss the nature and amounts of the charges. As the result of those discussions, Verizon conceded that it was applying its tariffed rates incorrectly and retracted over \$250,000 in charges. The possibility (which Fibertech considers very real) exists that Verizon may pick a critical juncture, such as when Fibertech seeks to secure additional funding, to pursue collection of Fibertech's "outstanding debt" of \$700,000.

Utility Supervision of CLEC Workers

30. ILECs typically require that Fibertech contractors working in manholes be supervised by ILEC personnel at Fibertech's expense. This requirement delays competitive network deployment and drives up Fibertech's costs. This supervision, however, frequently is not actual supervision of the work and does not require a Verizon supervisor to be present during the entire period Fibertech's crews are working. In fact, in Fibertech's experience, Verizon's supervisor is generally present only a fraction of the time that Fibertech is working. This allows a single supervisor to supervise multiple

projects, or to perform other work, even though Fibertech is being billed for the supervisor's time for the entire period during which work is being performed at each Fibertech worksite, including periods when the supervisor is not present.

31. Historically, in New York (and perhaps elsewhere) Verizon permitted licensees to use approved contractors to install innerduct and cable without supervision and subject only to an inspection.⁸ Verizon has since altered this practice, however, to prohibit contractors hired by Fibertech from working in its manholes without supervision by a Verizon "inspector."⁹

32. Verizon has explained its new supervisor requirement by citing a need to protect its own and other companies' facilities from damage caused by contractors. To Fibertech's knowledge, however, there is no history of damage to underground facilities caused by Fibertech or other CLEC contractors, and Verizon has cited no specific examples in adopting its new policy. Moreover, through its standard conduit occupancy agreements, Verizon protects itself against risk relating to any potential damage that could be caused by a contractor hired by a competitor. Before Fibertech is entitled to install facilities in Verizon conduit or manholes in any of Fibertech's markets, it must agree to indemnify Verizon from any and all damages or costs it might suffer as the result of the presence of Fibertech's facilities or any actions by it or its agents or contractors. To enforce the indemnification obligation, Verizon requires Fibertech to procure and

⁸ The inspection simply ensured that the facilities were placed in the assigned locations (the underground equivalent of standard post-construction inspections of aerial installations).

⁹ The requirement that a supervisor be present does not apply to work *on* a manhole itself, such as drilling the wall to install additional conduit. (The ILEC performs such work itself, either by its own employees or contractors it hires.) The supervisor requirement applies only to work *within* the manhole necessary to install CLEC facilities in the manhole and in conduit accessible from the manhole.

maintain insurance in the amount of at least \$1 million per occurrence protecting Verizon from liability for any such damage.

33. Further, despite the alleged risk of damage, other facility owners have employed approaches different from Verizon's. As recently as 2004 Consolidated Edison allowed (and may still allow) qualified CLEC-hired contractors to work in its telecommunications manholes without the presence of a supervisor. Until 2001 Frontier Telephone of Rochester allowed CLEC's to work in its manholes without supervisors. Empire City Subway historically permitted communications workers for all competitors in New York City to work in its manholes without supervision, and Fibertech has no reason to believe that Empire City's practice has changed.¹⁰ In addition, as noted earlier, Rochester Gas & Electric allows qualified Fibertech employees to work in its manholes without supervision.

34. Contractors used by CLECs typically perform work for ILECs and CLECs alike. Nevertheless, it is Fibertech's understanding that only when a contractor's work is performed at a CLEC's behest is it subject to additional and costly supervision.¹¹

35. Strategically timed delays can impose competitive harm. Verizon once nearly delayed by two months Fibertech's receipt of revenue from its 110-mile Albany,

¹⁰ During the period of initial construction of the cable television plant in New York City, cable television workers were permitted to open and work in Empire City Subway manholes without outside supervision and subject to standard work rules. Work could be shut down if an Empire City Subway inspector came upon the site and discovered work rule violations. Fibertech is unaware that this policy has changed.

¹¹ Notably, Verizon does not reciprocally permit CLECs to supervise (or charge for supervision of) Verizon's employees or contractors working in the presence of the CLECs' facilities, although these workers are presumably at least as likely to cause damage to others' facilities as CLEC contractors. (An ILEC employee or contractor may feel less pressure to avoid damaging another company's facilities due to the fact that his presence in the manhole will be known to no company but the ILEC.)

New York, backbone network by pulling its supervisor at noon on the last day before Saratoga Springs' eight-week racing-season moratorium on work in city streets. When Verizon pulled its supervisor, Fibertech had only a few hours of work left to perform in a single manhole to complete its network, which would, in turn, enable Fibertech to offer service and collect revenue. Only after heated objections by Fibertech did Verizon allow Fibertech to complete its work.

36. Verizon billed Fibertech more than \$269,000 for supervising installation of the underground portion of Fibertech's backbone network in Buffalo, New York, in 2001. Verizon has since charged Fibertech for underground supervisors in all its markets. To put these costs in perspective, a single Verizon supervisor typically costs Fibertech substantially more than the entire Fibertech crew being supervised (including vehicle and equipment costs). In upstate New York, for example, Verizon charges \$142 per hour for an inspector. Fibertech's hourly costs of a splicing crew, including two employees, their vehicle, and all required equipment, is \$84 per hour.

Reasonable Access to Building-Entry Conduit

37. Entry points into commercial buildings typically are limited to several conduit placed through the foundation wall of the building. Because landlords are extremely reluctant to permit the drilling of additional holes in building foundations to accommodate new conduit, access to the existing conduit is critical to a competitor's ability to serve the building occupants.

38. ILECs often populate building-entry conduit with cables but no innerduct and assert that no Fibertech cable may occupy the same, undifferentiated space with an ILEC cable. For instance, it is not uncommon for an ILEC – without using innerducts –

to place one or a few cables in each of several conduit entering a building, claim that the conduit are therefore occupied, and effectively deny Fibertech access to the substantial remaining conduit space. Similarly, where an entry conduit contains innerduct and the innerduct is fully occupied, ILECs regularly reject Fibertech requests for permission to pull their fiber cable through the interstices among the innerducts.¹² These ILEC practices prevent Fibertech from reaching customers in many buildings. Even if Fibertech can persuade a landlord to allow drilling for new conduit through the building foundation, this process substantially delays deployment and, in many cases, may render such deployment financially nonviable.

39. Verizon's outside plant managers in Albany, New York, have permitted Fibertech to install significant amounts of fiber using the interstices among innerducts.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2005


Charles Stockdale

¹² The center space formed by three one-inch or 1¼-inch innerducts in a four-inch conduit, for example, is ideal. Placement among innerducts does not endanger existing fiber cables within a conduit, of course, because those cables are safely within innerduct.

Exhibit 2
Connecticut Regulations

commission at least thirty days prior to the proposed date of construction and shall furnish the following information:

- (a) The location of the proposed construction;
- (b) the names of all public service companies and municipalities involved;
- (c) a map showing routes of the television cable;
- (d) the location of amplifiers, power supplies, television tower and all other major components of the television cable system.

(Effective November 25, 1969)

Part IX

Attachment of CATV Systems to Poles

Sec. 16-333-15 Clearances

(a) Vertical runs of CATV cables or wire shall be arranged to avoid interference with safe use of existing pole steps.

(b) Vertical and horizontal runs of CATV cables or wire on poles shall provide a minimum separation of two inches from vertical and horizontal runs of power conductors.

Sec. 16-333-16

Repealed, November 25, 1969.

Sec. 16-333-16a Separation at the pole

(a) CATV equipment located above or within four feet of the highest telephone cable or multiple line wire shall be mounted on extension arms placed perpendicular to the run of the cable. When such CATV equipment is mounted on an extension fixture, it shall be located on the side of the extension fixture away from the pole with a minimum horizontal separation of thirty inches from the pole surface.

(b) CATV equipment located below and at a distance greater than four feet from the highest telephone cable or multiple line wire may be mounted on the pole surface or on an extension arm placed perpendicular to or parallel to the run of cable. Such equipment shall be located outside of the climbing space.

(c) Amplifiers and associated equipment such as couplers, splitters, combiners, equalizers, taps and bridging terminals, etc., may be strand mounted above telephone facilities. A minimum of four inches of clearance shall be maintained between the lowest point of the CATV equipment and the telephone cable, multiple line wire or equipment.

(d) CATV attachments shall have a minimum separation of four inches from telephone attachments except as follows: CATV cable shall be located above and at a minimum distance of twelve inches from the highest telephone cable or multiple line wire. When the CATV cable is attached to an extension arm fixture, such cable may be located at the same level as the highest telephone cable.

(e) CATV drip loops shall have a minimum separation of four inches from telephone cable, multiple line wire or equipment.

(f) CATV pole-to-building cables and drop wires, where they leave the pole surface, shall be at least four inches above the highest telephone cable or multiple line wire attachment.

(g) No through bolt shall be installed with less than four inch separation from a parallel through bolt at the pole. Perpendicular through bolts may be installed with two inch minimum separation.

(h) CATV cables attached to poles supporting telephone facilities shall have a distinctive, readily visible means of identification attached to the CATV cable at each pole.

(i) When it is proposed to place CATV attachments on a pole which supports power attachments only, for the purposes of this docket, said CATV attachments shall be located on the pole with the same clearances that would otherwise be required if a telephone cable were attached to the pole at a distance of four and one-half feet below the lowest power attachment.

(Effective November 25, 1969)

Sec. 16-333-17

Repealed, November 25, 1969.

Sec. 16-333-17a Separation in the span

(a) These clearances apply under the following conditions: Temperature of 60^odgF,

no wind, with the cable or wire at its final unloaded sag.

(b) For the purpose of this section, the span shall be considered as starting four feet from the surface of the pole.

(c) In pole to pole spans, CATV cables, equipment and associated drip loops shall be at least twelve inches from telephone cable or multiple drop wire.

(d) Pole to pole or pole to building span crossings involving CATV and telephone facilities on different supports are required to have a minimum clearance of two feet.

(e) In pole to building spans, CATV cable or drop wire shall be at least twelve inches from telephone cable, multiple line wire or drop wire except where within four feet of the surface of the pole the clearance may be reduced to four inches.

(f) In span tap to building spans, CATV cable or drop wire shall be at least twelve inches from telephone cable, multiple line wire or drop wire where the CATV and telephone cable or wire are attached to the same supports.

(Effective November 25, 1969)

Sec. 16-333-18 Attachment to buildings

(a) The minimum separation between the first point of CATV attachment

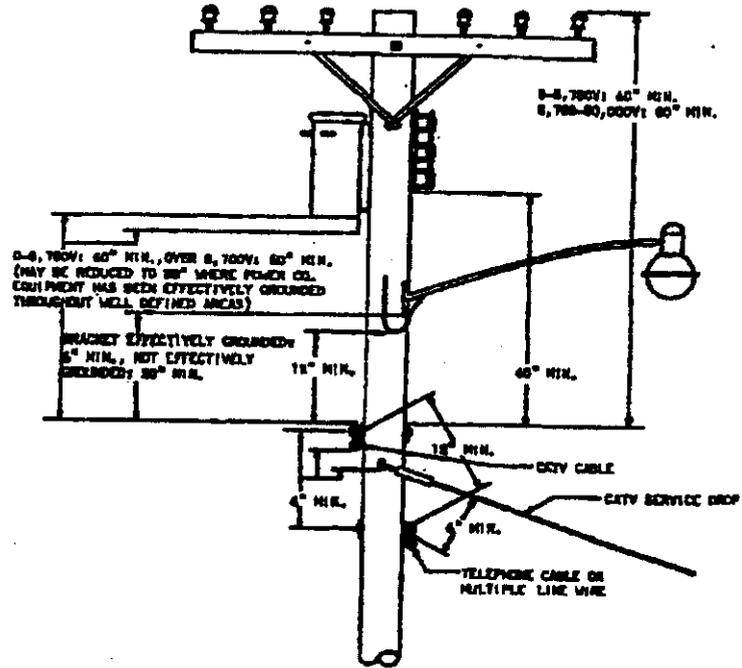


Plate 2

CATV and Telephone Cables on Opposite Sides of Pole

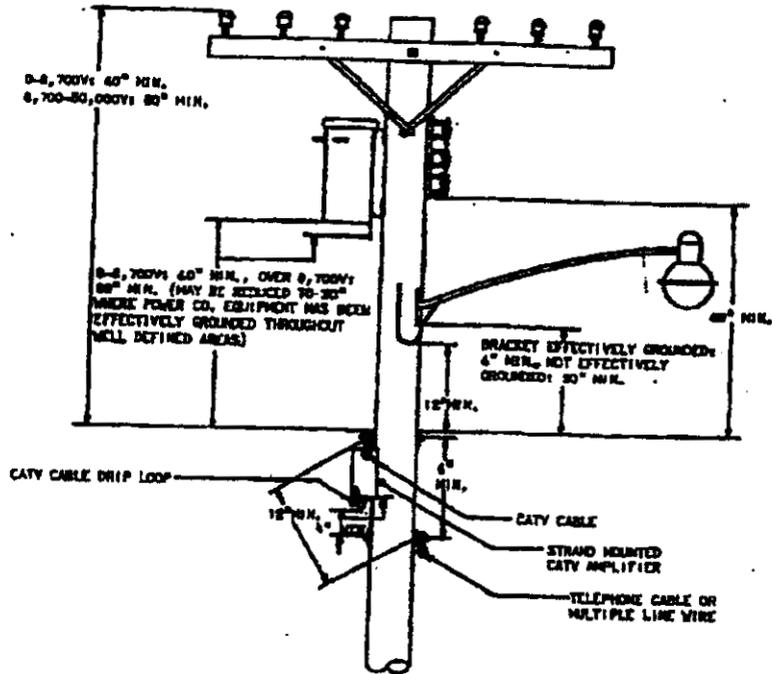


Plate 4

CATV and Telephone Cables on Opposite Sides of Pole with Strand Mounted CATV Equipment

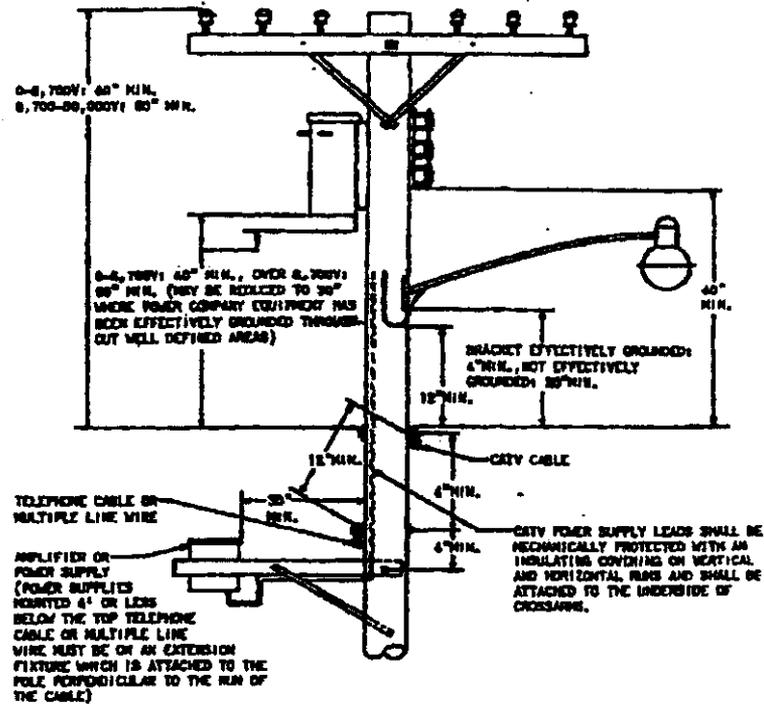


Plate 6

CATV and Telephone Cables on Opposite Sides of Pole
with Crossarm Mounted Amplifier and Power
Supply Less Than 4' Below Telephone Cable

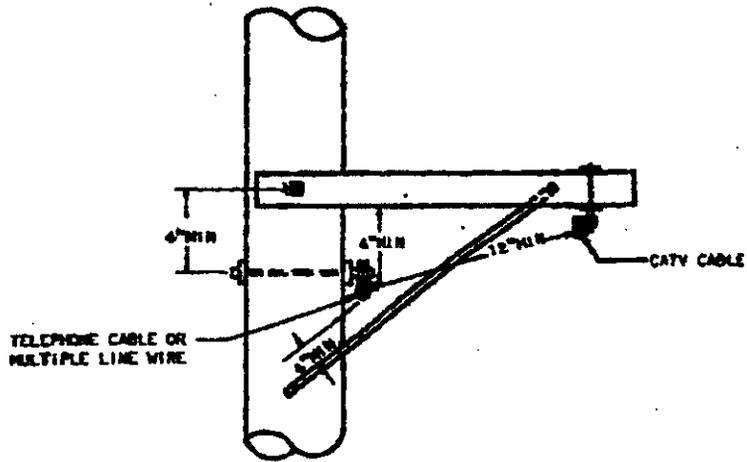


Plate 7

CATV Cable Mounted on Extension Arm
Above Telephone Cable

Exhibit 3
New York Order

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on June 2, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 03-M-0432 -- Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues.

ORDER ADOPTING POLICY STATEMENT
ON POLE ATTACHMENTS

(Issued and Effective August 6, 2004)

BY THE COMMISSION:

BACKGROUND

On March 27, 2003, we initiated a generic proceeding for the purpose of identifying and addressing unresolved issues concerning pole attachments.¹ Our overarching goal was to clarify and where reasonable streamline the process by which attachments to utility poles are made in order to promote the deployment of competitive telecommunications networks. We directed that the following issues, at a minimum, be addressed using a collaborative process: attachment/occupancy practices; access to poles, ducts and conduits; make-ready costs; use of outside contractors and cost control; and limitations on particular attachment techniques.

¹ Case 03-M-0432, Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, Order Instituting Proceeding (issued and effective March 27, 2003).

Collaborative meetings were held during May through July 2003. Parties submitted a joint document listing areas of agreement and disagreement on July 9, 2003 and recommendations on July 25, 2003. After review of the submissions, staff issued proposed recommendations for further comment on September 24, 2003. The parties submitted comments on the recommendations on October 23, 2003. Staff submitted Final Recommendations in February 2004 and parties submitted comments in March 2004.²

The parties were able to reach agreement on some issues. Those resolutions together with our decisions on the remaining unresolved issues are reflected in the attached Policy Statement on Pole Attachments (Appendix A) which we are adopting. The Policy Statement on Pole Attachments should govern the relationship between attachers and utilities, unless they mutually agree otherwise, on a prospective basis.

DISCUSSION

The major issues of parties' disagreement and our resolution of them are set out herein.

Timelines

The parties disagree about timelines for applications, preconstruction surveys and make-ready work. Throughout the proceedings, Attachers have argued that

² Comments were submitted by: The Cable Telecommunications Association of New York, Inc.; AT&T Communications of New York Inc.; Fibertech Networks, LLC (Attachers); the International Brotherhood of Electrical Workers, Local 97 and Utility Workers Union of America, AFL-CIO, Local 1-2 (Unions), the United Telecom Council; Pole Owners including: Verizon New York Inc.; Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Frontier, a Citizens Communications Company; New York State Electric & Gas Corporation, an Energy East Company; Niagara Mohawk Power Corporation, a National Grid Company; Orange & Rockland Utilities, Inc.; Rochester Gas & Electric Corporation, an Energy East Company; and the New York State Telecommunications Association (Owners or Utilities).

being able to attach to poles in a timely fashion is their greatest concern. Without timely attachments, they are unable to serve new customers and will lose business. Pole Owners, on the other hand, point out that if they are required to meet short deadlines for completing surveys and make-ready work, Attacher's work will take priority over their own utility-related work. Owners claim that the deadlines recommended by staff are unreasonably short.

Under the Policy Statement, preconstruction surveys must be done 45 days after a complete application has been filed with the Pole Owner. After conducting a survey of the poles, the Owner must send a make-ready work estimate to the Attacher within 14 days of completing the survey. Attachers have 14 days from receipt of the estimate to accept and pay for the make-ready work. Owners must perform the make-ready work within 45 days of receiving payment from the Attacher.

For survey work, if an Owner is unable to meet these deadlines, the Attacher may hire an outside contractor to do the survey or perform make-ready work, if the contractor is approved by the Owner.

Some Owners and the Unions object to this procedure, arguing that their collective bargaining agreements may not allow hiring outside contractors. Since time is the critical factor in allowing Attachers to serve new customers, it is reasonable to require the utilities either to have an adequate number of their own workers available to do the requested work, to hire outside contractors themselves to do the work, or to allow Attachers to hire approved outside contractors.

Make-ready Estimates and Charges

Make-ready estimates of the costs of any changes to the pole required for an attachment, including rearrangement of facilities, must be provided to the Attacher within 14 days of completion of the survey. The Attacher may question whether certain make-ready work is necessary. The schedule of charges (unit costs) that the utility uses for make-ready work are only subject to change and review annually.

Make-ready estimates and work have been the subject of some disputes. The parties disagree about whether or not make-ready estimates should be binding on the

parties. An estimate is binding for the work identified. If additional work is required which changes the original estimate the change should be reviewed by the Attacher, who may decide whether or not to go forward with the work.

Since prompt attachments are critical to an Attacher's business, the Utility shall notify the Attacher that make-ready work is complete within three business days of completion.

Rearrangement of Facilities on a Pole and the "But For" Rule

If a legal attachment is made to a pole in compliance with safety standards, the legal Attacher should not be required to pay for rearrangement of its facilities for subsequent attachments. Utilities favor retention of the "but for" rule. The rule requires new attachers to pay the full costs of making utility poles ready for their facilities. Under this rule, the attachers remain liable for subsequent relocation, modification, and replacement costs that would not be incurred but for their presence on the pole. Only during the two-year period following the initial attachment are they not subject to any such additional charges.³ However, in fairness to all Attachers, if an attachment is legal when made, subsequent rearrangements should be paid for by the Attacher that requires the rearrangement and not previous Attachers. Therefore, we will no longer use the "but for" rule in assigning pole modification costs.

Drop Poles

Drop poles are poles placed between the distribution pole line and a customer's building, when a building is located a significant distance from the main distribution pole line and the service drop cables/wires to serve this building require additional support. The cables/wires used for telecommunications service drops for customers do not normally require conventional framing hardware or drilling of the pole for attachment. Generally a smaller and lighter cable/wire is used that can be supported by simpler hardware for attachment to the drop poles. Some drop poles are owned by utilities and some are owned by the landowner. Attachments to drop poles are usually

³ Case 95-C-0341, In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095, Opinion No. 97-10 (issued June 17, 1977) at page 4, fn 1.

made at the time service is requested by a customer. For this reason, quick attachments *are essential to serving the customer. The Attacher should ascertain who owns the drop pole and notify the Owner within 10 business days of the attachment. Owners may bill Attachers a pole attachment fee as with other pole attachments and require a license after the attachment has been made.*

Owners object to this procedure saying Attachers should go through the regular licensing process in advance of attachment. Attachers point out that they may only learn about a drop pole when they visit the customer's premises to provide service. In view of the nature of drop pole attachments, the need for expeditious service outweighs the Owner's desire for the regular advance licensing process. The Owner is free to inspect the drop pole attachment and charge a rental fee for it.

Temporary Attachments, Boxing of Poles and Extension Arms

Attachers favor use of temporary attachments while most Owners oppose their use. Temporary attachments to poles should be used if they meet all safety requirements and if a utility is unable to meet the make-ready work timeline. The Attacher is still required to pay for all make-ready work and replace the temporary attachment with a standard attachment within 30 days of the completion of all make-ready work.

Boxing of telecommunications facilities is common around the State. Boxing involves attaching wires on opposite sides of the pole in order to meet required distances between attachments. Boxing will be allowed in cases where the cost of a conventional attachment would be exorbitant; as long as the boxing complies with safety codes and the utility practices allow boxing. Owners oppose requirements for boxing saying it should not be done for cost reasons. The Unions oppose boxing under any circumstances arguing that it may compromise worker safety. Attachers want boxing to be considered if it will expedite an attachment and/or keep costs down.

Boxing of poles owned by utilities that have a practice of boxing their poles will be allowed provided it is otherwise safe. Since it is a widespread practice, utilities that have boxed poles shall allow it for Attachers. If a utility has not allowed boxing of

its poles, boxing will not be required. We are cognizant of the safety concerns expressed by the Unions. However, since boxing is allowed by some utilities and can be implemented consistent with safety concerns, we will allow boxing when the utility practice permits it.

Extension arm brackets may be used for a permanent attachment if all safety requirements are met, if their use is consistent with utility practices and if standard attachment costs are exorbitant. Extension arms may be used on a temporary basis if a utility is unable to meet the make-ready timelines. Attachers favor the use of extension arms while most utilities oppose their use. Since they are commonly used in some areas of the State, they will be allowed as set out herein.

Overlashing

A primary Attacher is attached to a utility pole and pays rent for occupying one foot of space on the pole. Overlashing is attachment of a wire to the facility of a primary Attacher, but not to the pole itself. Under our existing orders, pole Owners may charge third party overlashers for attaching to an existing facility but not first party overlashers (a primary Attacher attaching a wire to its own facility). Since an Attacher is charged for space on the pole and the overlasher uses no additional space on the pole, our existing rule will be modified. Some cable subsidiaries of telephone companies overlash to their parents' facilities and are charged for the attachment.

Owners want to keep charging third party overlashers arguing that overlashers benefit from the attachment. However, many small telephone companies were required by the Commission to form a separate affiliate for cable operations, and it is only for that reason that the cable company is considered a third party overlasher for which Owners are charging rent.

On balance, since pole rental is paid for space occupied, third party overlashing should not be treated differently from an Attacher lashing more facilities to its own attachment, for which there is no additional charge. No additional space on the pole is used so no rental charge shall be made. Opinion.97-10 is modified accordingly on this issue.

Audits

Both Attachers and Pole Owners arguably have some inaccuracies in their records of what attachments are on the poles. In order to provide a common base line for all future pole audits, all pole Owners and Attachers shall either stipulate as to what attachments are on the poles or conduct an audit to determine what is on the poles to be completed within three years of the date this policy statement is adopted.

Owners and Attachers may choose to agree that their current records will be the baseline. Parties are encouraged to compare current records before choosing to stipulate or conduct audits. If a joint audit is conducted, it will be done at each parties own expense. After the stipulation or completion of the audit, unlicensed attachments found will result in a rate of three times the pole rental per attachment back to the date of the stipulation or audit completion date. This should both discourage unlicensed attachments and provide some compensation for the effort required to police for unlicensed attachments. Until a stipulation is made or audit is completed, provisions in existing pole attachment agreements on unlicensed attachments will remain in effect.

Owners oppose doing audits at their expense, arguing that they are only required to do audits because of the presence of Attachers' facilities on their poles. Attachers favor the audits to verify records of attachments. In view of the need for some point of agreement on lawful attachments, a stipulation or audit is necessary in order to reach a starting point for the future tracking of attachments.

Periodic Inspections

Periodic inspections are conducted to ensure that attachments comply with the National Electric Safety Code (NESC). Currently periodic inspections are conducted by Owners at the Attachers' expense under pole attachment agreements. This procedure should continue. Safety violations must be corrected within 10 days of notification. Attachers oppose paying for periodic inspections, arguing that attachments should be inspected after they are made. However, in light of limitations on utility manpower we are not requiring post construction inspections as set out below. For safety reasons, we will allow periodic inspections as they are currently conducted.