

HAND DELIVERED

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November 10, 1997

**425/261-5008**

Steve McLellan, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

Re: GTE Northwest Incorporated's Comments; Docket No. UT-970723

Dear Mr. McLellan:

Enclosed is the original and eleven copies of GTE Northwest's Comments, as well as a formatted disk of the same in WordPerfect version 6.1.

Sincerely,

  
Timothy J. O'Connell  
Attorney

Enclosures  
c: Service List

**DISK  
AVAILABLE**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN RE RULEMAKING TO ADOPT A	)	
METHODOLOGY FOR DETERMINATION	)	DOCKET NO. UT-970723
OF JUST AND REASONABLE RATES	)	
FOR ATTACHMENTS TO	)	COMMENTS OF GTE
TRANSMISSION FACILITIES	)	NORTHWEST INCORPORATED
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GTE Northwest Incorporated ("GTE"), hereby submits its comments in response to the Washington Utilities and Transportation Commission's (Commission) Preproposal Statement of Inquiry issued in the above-referenced docket dated September 15, 1997.

GTE appreciates the Commission's invitation to comment on the appropriate considerations that should be addressed in establishing just and reasonable rates in the State of Washington for parties requesting attachments to poles and occupancy of conduit. GTE's comments herein will include information on the FCC's ongoing rulemaking proceedings regarding the federal pole attachment rate formula mandated by the Telecommunications Act of 1996 (the "Act").<sup>1</sup>

It is important to emphasize, that the rate formula developed in this docket should serve solely as a last resort where private negotiations fail to establish mutually agreed attachment rates. The Commission's goal should be to create a system in which private negotiations

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<sup>1</sup> FCC CS Docket No. 97-98 and 97-151.



remain the primary tool for addressing attachment issues. The most efficient deployment of the Commission's resources would be to intervene only if marketplace forces do not achieve a bargained result.

## INTRODUCTION AND SUMMARY

The goal of this proceeding should be to adopt a methodology for establishment of attachment rates for utilities' poles, ducts, conduits and rights-of-way that will establish an economically reasonable rate formula as a backstop to privately negotiated agreements. For the Commission to do otherwise will undermine such negotiations by creating perverse incentives for attaching parties to hold out for unrealistically low rates that will be non-compensatory to utilities.

The Act has clearly indicated that the FCC cannot preempt the State of Washington from implementing rates, rules and regulations it feels are appropriate for the state.<sup>2</sup> GTE believes that there is much to be gained by adopting portions of the FCC's formula methodology, but the Commission can substantially improve that methodology with a Washington state focus. Toward this end, GTE offers the following recommendations for consideration:

- \* As stated above, private negotiations should always be preferred to mandated rates.
- \* The rate formulas adopted in this proceeding should apply equally to telecommunications and other utilities irrespective of the nature of the attaching party in order to preserve a level playing field.

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<sup>2</sup> Section 242(c)(1)

- \* There should be no difference in the rate formula for CATV and Telecommunications providers.
- \* Pole attachment rates should be set using an investment basis equivalent to Total Element Long Run Incremental Cost (TELRIC), i.e., forward looking cost adjusted for joint and common cost contribution, or, as an interim valuation method, Gross Book could be used as a reasonable alternative.
- \* The Commission should consider adopting the FCC's current pole attachment formula presumptions, (including pole height and usable space assumptions) as rebuttable pricing presumptions, but allow adjustments for company and state specific studies to apply as an alternative.
- \* The proposed conduit rate formula should employ half-duct and maintenance reserve duct presumptions and cost recovery using the same basis as defined for pole attachments, i.e., TELRIC or Gross Book.
- \* The Commission's adopted rates, rules and procedures should be effective upon the issuance of the Commission's Order in this proceeding.

**I. PRIVATE NEGOTIATIONS BETWEEN PARTIES FOR ATTACHMENTS SHOULD ALWAYS BE PREFERRED TO A MANDATED PRESUBSCRIPTION PROCESS AND RATES.**

Determining just and reasonable pole attachment rates are best accomplished by permitting pole owners and attachers to negotiate individual agreements. Congress recognized the importance of this when it passed the Pole Attachment Act of 1978<sup>3</sup>. The legislative history of the Pole Attachment Act illustrates that Congress expects intervention only when the negotiating parties are unable to agree to a mutually acceptable arrangement.<sup>4</sup> Congress

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<sup>3</sup> 47 U.S.C. § 224.

<sup>4</sup> S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977) ("1977 Senate Report") at p. 3. ("The basic design of S. 1547, as reported, is to empower the Federal Communications Commission to exercise regulatory oversight over the arrangements between utilities and CATV

reaffirmed this expectation in the Joint Explanatory Statement accompanying the Conference Committee Report of the Telecommunications Act of 1996.<sup>5</sup> Since enactment of the Pole Attachment Act, the FCC has maintained a case-by-case dispute resolution process rather than adopting a uniform mandated process, or uniform mandated rates.

GTE believes the Commission should adopt the same approach for Washington state. Accordingly, whether a pole owner and attacher avail themselves of the Commission's pole attachment complaint process or not, if they are subsequently able to reach an agreement on pole attachments rates, the Commission should accede to the attacher's judgement that the rates being charged to it by the pole owner are, in fact, just and reasonable. The pole attachment formula that the Commission defines in this proceeding should only be applied when parties are unable to resolve a dispute concerning what is a just and reasonable rate.

With regards to the development of a complaint process by the Commission, GTE believes the best method for encouraging private negotiations is to create a clear and readily available pole attachment rate formula that informs private negotiations and eliminates any perceived advantage a party may have in seeking Commission intervention in attachment disputes. Toward this end, GTE endorses a proposal that would institute a "statute of limitations" of one year for pole attachment rate complaints and that the Commission create a

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systems in any case where the parties themselves are unable to reach a mutually satisfactory arrangement...")

<sup>5</sup> H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. (1996) ("1996 Conference Report") at p. 207. ("The conference agreement amends section 224 of the Communications Act by adding new subsection (e)(1) to allow parties to negotiate the rates, terms, and conditions for attaching to pole, ducts, conduits, and rights-of-way owned or controlled by utilities.")

“controversy amount” floor (perhaps \$5000 a year) before it permits a complaint to go forward. These requirements would prevent parties from filing frivolously small complaints that consume excessive Commission and private party resources. Moreover, by giving parties one year to file a complaint after new rates go into effect, the system creates “safe harbors” for business planning and lends predictability to the process.

In addition, GTE recommends that prior to filing a complaint with the Commission, the disputing party should be required to make a disclosure regarding its own rate calculation and the basis for its disagreement, list each outstanding issue between the parties and the positions taken by each party by issue. This disclosure should be made in a Notice of Intent to File a Complaint, filed at least 30 days prior to the initiation of a complaint. This would force the parties to narrow the issues, focus and thus expedite negotiations, and ultimately avoid complaints.

If after the 30-day Notice of Intent to File a Complaint the parties still have outstanding issues to resolve, then the disputing party may file with the Commission its complaint which should include “a brief summary of all steps taken to resolve its dispute” including disclosures of the basis of its attachment rate calculation to that of the facility’s owner.

Following this approach will expedite the pole attachment process, facilitate a more rapid deployment of all facilities and minimize timely and costly proceedings.

**II. THE RATE FORMULAS ADOPTED IN THIS PROCEEDING SHOULD APPLY EQUALLY TO TELECOMMUNICATIONS AND OTHER UTILITIES IRRESPECTIVE OF THE NATURE OF THE ATTACHING PARTY IN ORDER TO PRESERVE A LEVEL PLAYING FIELD.**

A key part of the Act is the expansion of a level competitive playing field. Toward that end, the Commission should ensure that the rates utilities charge each other, including public utility districts and cooperatives, are based on the same formula that is used for CATV and other Telecommunication providers. Disparate treatment of ILEC-to-Utility agreements in comparison to CLEC or CATV-to-Utility agreements is not necessary and eliminating the difference furthers the goal of fair competition.

With the prospect of ILECs becoming competitive telecommunications providers and new entrants through expansion into new telecommunications markets, the pro-competitive spirit of the Act demands that a utility's control over its poles, ducts, conduits, or rights-of-way does not stand in the way of fair competition. To the extent that an ILEC does not own or control the poles and conduit, the Commission should require that such attachments be treated under the same provisions that define just and reasonable rates for other negotiating parties.

Therefore, unlike the FCC's process, the Commission should extend the attachment complaint process to include disputes between incumbent LECs and all other utilities.

**III. UNLIKE THE FCC'S METHOD, THERE SHOULD NOT BE A DIFFERENT RATE FORMULA FOR CATV AND TELECOMMUNICATIONS PROVIDERS.**

The FCC recognizes a difference in rates for attachments made by CATV companies

that provide solely cable services to end users from those companies that provide telecommunication services or combinations of cable and telecommunication services. This distinction is unnecessary since the attachments made by either party, CATV or Telecommunication providers, are substantially the same.

There is no longer a need or justification for continuing a subsidy for cable attachments that are the same as those requested by telecommunication providers. If, in fact, the Commission is going to establish a formula for determining a fair and reasonable rate for disputes, a single rate formula should be adequate for all parties. Should the Commission decide to adopt the FCC formula for determining fair and reasonable rates for Washington state, GTE recommends the Commission only adopt one of the formulas for application to all attachment disputes. However, if the Commission chooses to maintain a separate rate formula between CATV and Telecommunication providers, then GTE strongly recommends that the Commission apply the Telecommunication formula to all attachments of a CATV company once it has chosen to become a telecommunications provider.

#### **IV. ATTACHMENT RATES SHOULD BE SET TO RECOVER THE GROSS BOOK COSTS AT A MINIMUM.**

GTE strongly believes that the Commission's attachment formula for establishing fair and reasonable pole and conduit rates should be equal to the facility owner's incremental cost adjusted to include contributions to joint and common costs. This cost valuation methodology is commonly referred to as forward looking cost valuation or Total Element Long Run Incremental Cost (TELRIC). Use of this methodology is like "Build or Lease" economic decisions businesses make every day when making purchases.



However, should the Commission decide not to rule on the acceptance of TELRIC at this time, GTE would recommend Gross Book as an alternative in this proceeding.

The use of Gross Book costs rather than the net book cost method currently used by the FCC<sup>6</sup> has a number of advantages. First, the gross book cost method would eliminate the problems the FCC formula is currently creating when net investment turns negative for a bare pole. Second, the gross book method would lend consistency, stability, predictability and clarity to a pole attachment rate which will facilitate the business planning practices of both GTE and parties attaching to its poles. Lastly, gross book numbers are readily available to the public through a number of annual reporting documents and lend themselves to easy verification.

**V. THE COMMISSION SHOULD ADOPT THE FCC'S REBUTTABLE FORMULA ASSUMPTIONS AS ITS PRICING CONVENTION FOR POLE RATES.**

The rebuttable presumptions that the FCC has defined in its past CATV formula have served well in the development of attachment rates and GTE would urge the commission to adopt them as reasonable. These presumptions include an average pole height of 37.5 feet, usable space of 13.5 feet and a minimum usable space occupied of one foot as a typical attachment. Please note that these presumptions should be rebuttable by either party and that a facility's owner should be able to reflect its assumptions based on company and state specific information with proper support. GTE proposes the following rate formulas be adopted by

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<sup>6</sup> GTE believes the rationale for adopting the gross book method for poles applies with equal force in the conduit context.

the Commission:

**POLE FORMULA**

Usable Space  
----- times Space Occupied  
Pole Height Total Usable Space

Bare Pole Costs times Carrying Charges equals Usable Space Charge

Unusable Space  
----- times 2/3rds times Bare Pole Costs  
Pole Height Avg. Attachers times Carrying Charges equals Unusable Space Charge

**THUS:**

**POLE ATTACHMENT RATE** Equals Usable Space plus Unusable Space

**VI. THE PROPOSED CONDUIT RATE FORMULA SHOULD EMPLOY HALF-DUCT AND MAINTENANCE RESERVE DUCT PRESUMPTIONS.**

The Commission should adopt a conduit rate formula with a pricing convention which employs a half duct utilization assumption and allows one duct to be reserved for maintenance where facilities are available.

The proposed half-duct presumption should be adopted as a reasonable average utilization factor that simplifies the rate development process. Measuring the actual portion of duct space occupied by an attachment would be unduly burdensome and imprecise. Therefore, a presumptive space allotment is the most efficient method available to calculate rates.

While the half-duct presumption will generally be accurate, it should be treated solely as a presumption. The rules should permit the presumption to be rebutted where it can be demonstrated that a particular attachment will occupy the entire duct, thus precluding other

attachments. In such cases, the attaching party would be charged a corresponding full duct rate.

In addition, the Commission should adopt a presumption that one duct in each system will be reserved for maintenance and, thereby, removed from the total number of usable ducts available. It is a universal axiom of responsible duct management that a utility should always reserve one duct in each conduit run for maintenance purposes, which will effectively eliminate that duct from consideration as a pathway for attachments. This reserved maintenance duct should be made available to each and every occupant of the conduit for temporary emergency restoration of service. Because the shared reserved maintenance duct would advantage all conduit attachers, its corresponding costs should be borne by all parties.

Finally, as previously explained with respect to attachments in general, the relevant costs to be included in the conduit rate calculation should be TELRIC or Gross Book costs as an interim valuation methodology. GTE proposes the following rate formulas be adopted by the Commission:

**CONDUIT FORMULA**

$$\begin{array}{rcccl}
 1 \text{ Duct} & & 1 & & \text{Usable Space} \\
 \text{-----} & \text{times} & \text{-----} & \text{times} & \text{Conduit Cost} \\
 \text{Avg \# of Ducts} & & 2 & & \text{Per foot} \\
 \text{less reserved} & & & & \\
 \text{ducts} & & & & \\
 & & \text{Unusable Conduit} & & \\
 & & \text{Cost per foot} & & \\
 2/3\text{rds} & \text{times} & \text{-----} & \text{times} & \text{Carrying} \\
 & & \text{Avg. \# of Attachers} & & \text{Charges} \\
 & & & & \text{equals} \\
 & & & & \text{Unusable} \\
 & & & & \text{Space} \\
 & & & & \text{Charge}
 \end{array}$$

**THUS:**

$$\text{CONDUIT OCCUPANCY RATE} \quad \text{Equals} \quad \text{Usable Space} \quad \text{plus} \quad \text{Unusable Space}$$

**VII. THE COMMISSION'S ADOPTED RATES, RULES AND PROCEDURES SHOULD BE EFFECTIVE UPON THE ISSUANCE OF THE COMMISSION'S ORDER IN THIS PROCEEDING.**

GTE believes that once the Commission has defined the rules for pole and conduit attachments, that such rates, terms and conditions should be effective upon issuance of the Commission's Order. Under the Act, the regulations that the FCC defines for telecommunication providers will not take effect until February 2001 with full rate deployment effective in February 2005. GTE believes this is an excessive period over which to implement a ruling and only serves to continue subsidies that are not warranted in a competitive environment. As GTE has suggested previously, there should be only one defined formula that applies to all attaching parties and there is no need for a lengthy implementation phase. If, however, the Commission decides there should be a phase-in period, then GTE believes that it should not exceed a two-year period, maximum.

### VIII. OTHER ISSUES TO BE ADDRESSED AS PART OF THIS PROCEEDING.

The following are other issues that GTE recommends the Commission address as part of this inquiry:

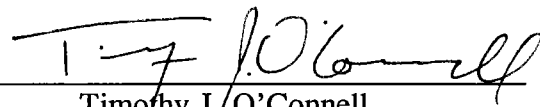
1. Unauthorized attachments by third parties. Assessment of five time the annual licensing fee per attachment per violation which is in addition to the normal licensing fee that applies back to time attachment was made.
2. Whether overlashing should be allowed and if so under what conditions.
3. Whether the rate formula should be defined in terms of a ceiling and floor range of reasonableness.
4. Whether the pole safety space should be treated as usable or unusable space.

### CONCLUSION

With the foregoing recommendation, GTE is confident that attachments by third parties can be accomplished fairly, effectively and on a competitively neutral basis.

DATED this 10th day of November, 1997.

### GTE NORTHWEST INCORPORATED

By   
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## CERTIFICATE OF MAILING

I hereby certify that on this date I mailed a true and correct copy of the foregoing  
GTE NORTHWEST INCORPORATED's Comments to the parties and/or their counsel  
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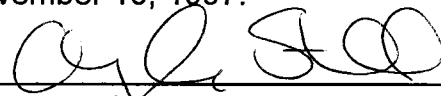
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in a sealed envelope with postage prepaid, addressed as shown above, and deposited

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\_\_\_\_\_  
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