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January 12, 1998

Steve McLellan, Secretary  
Washington Utilities and Transportation Commission  
PO Box 47250  
Olympia, Washington 98504-7250

Re: Docket No. UT-970723, Adopt a methodology for determination of just and reasonable rates for attachments to transmission facilities.

Dear Mr. McLellan:

Washington Water Power is pleased to provide a second set of comments on Docket No. UT-970723. An original and 15 copies are enclosed along with a disk on which the document has been saved as WordPerfect version 5.x for Windows.

Copies of these comments and WWP's earlier comments are being sent to the list of interested persons that you have provided

Sincerely,

A handwritten signature in cursive script that reads "T. Rahman".

Timothy J. Rahman, P.E.  
Joint Use Administrator

Enclosures

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**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

Adopt a methodology for determination of just and reasonable rates for attachments to transmission facilities

Docket No. UT-970723

Comments of the Washington Water Power Company

The Washington Water Power supports non-discrimination and equal access to its poles, ducts and right-of-way -- the primary tenets of the Telecommunications Act of 1996 ("the Act"). However, it does need control over its facilities to provide its customers with necessary services at the lowest cost and highest reliability possible. The FCC recognizes that "in evaluating a request for access, a utility may continue to rely on such codes as the NESC to prescribe standards with respect to capacity, safety, reliability, and general engineering principles."<sup>1</sup>

In exchange for accommodating cable attachments, WWP expects to collect "just and reasonable" rates for such attachments. The resulting cable attachment revenue reduces the cost to serve WWP's retail customers.

In addition to its comments dated November 6, 1997, WWP offers the following comments on topics from the December 3, 1997, workshop and the TCI Briefing Paper for that workshop. Even though the FCC has two outstanding Notices of Proposed Rulemaking,<sup>2</sup> WWP supports continued discussions and development of rules and a formula for pole attachments of TV cables.

**PREEMPTION**

By preempting the FCC, the WUTC established its authority to set joint use "rates, terms and conditions [for] access to poles, ducts, conduits, and rights-of-way"<sup>3</sup> as long as those regulations do not "show a direct conflict with federal policy"<sup>4</sup>. The FCC believes that "the Commission has significant discretion in selecting a methodology for determining just and reasonable pole attachment rates".<sup>5</sup>

**CONTRACTS**

The Act and the FCC clearly support private contracts:

The Act requires that the FCC prescribe regulations to govern charges for pole attachments when the parties fail to resolve a dispute over such charges.<sup>6</sup>

The FCC states that "the cable operator will have the burden of proving that specific contract provisions are unreasonable"<sup>7</sup> and the cable company must analyze "specific contract provisions and the individual utility's actual practices." In addition, the FCC requires the cable company and utility attempt to resolve the issues before filing a complaint with the Commission.<sup>8</sup> It reiterated its preference for negotiated agreements in FCC 97-234 § 12.

WWP recommends that private contracts be given precedence unless a complainant can show that a contract violates current State or Federal law or Federal regulations. WUTC rules should require that the complainant make a reasonable attempt to resolve the issues before going to the Commission.

<sup>1</sup> FCC 96-235 § 1151  
<sup>2</sup> FCC 97-94 and 97-234  
<sup>3</sup> Act 224(c)(1)  
<sup>4</sup> FCC 96-325 §154  
<sup>5</sup> FCC 97-94 § 29  
<sup>6</sup> FCC 97-234 § 9  
<sup>7</sup> FCC 87-209 §76  
<sup>8</sup> FCC 87-209 §77

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## ATTACHMENTS

In the issue of a TV cable company converting gradually or partially to telecommunications, it would seem that to maintain nondiscriminatory access, the utility must charge for the type of attachment. If the TV cable company gets all attachments at the lower rate, it has an unfair advantage over its competitors. However, a mechanism must be in place to require the cable company to report such changes to the utility in a timely manner.

Overlapping must be examined from two aspects. If the overlapping increases the space used by the cable owner, that owner will pay for the additional space under the current FCC rules. Make-ready may also be required to relocate attachments below the overlap to provide adequate separation. The second aspect is the reduction of the mechanical capacity of the pole. While the weight of an additional cable is small, the increase in ground-line moment due to wind loading may be significant. The FCC has sought comments on this in FCC 97-234 § 18. Both space and ground-line loading should determine the portion of the asset being used.

The WUTC should recognize this situation by appropriate wording:

"The rate charged for an attachment shall be adjusted proportionately for any use in excess of one foot of space and/or for ground-line loading in excess of \_\_\_\_\_ foot-pounds per attachment at the NESC loading conditions commonly used by the utility in the area of construction."

## UNAUTHORIZED ATTACHMENTS

Unauthorized attachment is a major problem because it is a violation of the agreement between the two parties, circumvents the utility's opportunity to evaluate capacity, safety, reliability and engineering considerations, avoids necessary make-ready and may even be construed as theft of utility assets. Those companies who fail to follow the proper processes should pay for back-rent in accordance with the statute of limitations in the State of Washington -- six years maximum -- unless a shorter time of attachment can be proven or the utility has audited that area more recently. The rate applied should be the current rate as a penalty for not following procedures. This minimum amount should be subject to a punitive factor of up to 3 times for willful acts. All attachments must be subject to evaluation, make-ready and possible removal at the time of discovery.

WWP recommends appropriate wording in the WUTC rules:

"Each unreported attachment shall be subject to a charge of no more than three (3) times the current attachment rate at the time of discovery times the number of years since the last audit of that location, except the number of years shall not exceed the statutory limit for collection of unpaid debts."

## RIGHT-OF-WAY

Where access to private easements require an outlay of labor and expense by the utility in order to accommodate joint use, that cost is permitted by the FCC to be part of make-ready for the joint users enjoying the benefit. Typically, agreements call for each party to acquire their own right-of-way. This allows the party who attaches later to negotiate its own terms for the right-of-way from each private party and to control its own costs. In addition it eliminates the need for additional utility investment that is not immediately recovered through make-ready and eliminates any suspicion of the amount the utility passes on as make-ready.

## MAKE-READY

If the WUTC or FCC approves a "Gross Book Cost" method, TCI can rest easy that the make-ready is taken into account because it is credited against the plant accounts.<sup>9</sup>

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<sup>9</sup> TCI page 6

However, the make-ready and the rent paid by the cable companies do not cover the future cost of the replacement of the taller pole required because of the joint use. The formula should provide for recovery of the cost of that portion of the pole that exists only because of the attachments. The current formula assumes that the rates will catch up as the old plant is replaced with more expensive poles, but the future capital investment has to be paid by the utility and only a portion is recovered from attachments.

#### EMBEDDED COST

TCI implies that the use of embedded cost is voluntary when in fact it is required by regulatory agencies. For instance, the formula for joint ownership rates for agreements between electric and telephone companies established by the FCC is similar to the pole attachment formula and uses many of the same parameters.<sup>10</sup>

Embedded cost is not the only way to develop an attachment rate, but has been the traditional method. The FCC has sought comments on others, including gross book costs.

#### POLE HEIGHT

The need for taller poles is driven by the increased use of those poles by joint users. The ground clearance required for electric utilities crossing roadways has decreased by 2 feet over the last 50 years.

The 1997 NESC requires a clearance of 15.5 feet above roadways for communication conductors and 16 feet for electric secondary conductors with bare messengers. If the pole supported only electric secondary facilities, the minimum pole size for an average urban span would be 30 feet. The addition of one communication cable increases it to 35 feet because of the safety space. Similarly on poles with electric primary and neutral, the minimum pole height is 40 feet without communications and 45 feet with communications. Obviously, the addition of communication cables to the electric poles requires a pole at least five feet taller because of the requirement for a safety space to protect the communication worker.

Boston Edison<sup>11</sup> may be building to the requirements of NESC 220B2 and 235C1 which allow communication cables in supply space as long as supply and communication cables are owned or operated by the same party and meet other restrictions. In all other cases, communication cables are attached below the safety space.

#### USEABLE SPACE

Useable space may be different in various areas of Washington or for different utilities than the rebuttable assumption of 13.5 feet used by the FCC. For WWP, the average pole is 37.8 feet long, has 9 feet of electric space and one attachment for a total useable space of 10 feet.<sup>12</sup>

#### SAFETY ZONE

In FCC 97-94 § 19, the FCC seeks comments on the assignment of the safety space to the utility as part of its useable space. The utilities contend that the space is for the protection of the communication worker. Consider the stated purpose of the NESC: "The purpose of these rules is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and associated equipment."<sup>13</sup> Furthermore, since electric facilities are in place before the attachment of the TV and telecommunications, it falls to the TV and telecommunications companies to provide the safety space by attaching an appropriate distance below the electric conductors and equipment, thereby creating the safety space.

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<sup>10</sup> FCC 97-209

<sup>11</sup> TCI A-3

<sup>12</sup> 1983 study of WWP poles and facilities in Asotin and Nez Perce counties.

<sup>13</sup> NESC 010

The safety space exists only when both electric and communication conductors exist on the same structure.

The electric company is able to use the safety space for the installation of street lights because the clearance requirements to the mast arm (20 in.) and drip loop (12 in.) are less than to the neutral and secondary (48 in.)<sup>14</sup> and the communication space is not compromised.

WWP recommends that the cost of the safety space be shared as it is in practice. The share allocated to communications should be about 2/3 with the remainder allocated to the electric utility. Since the Act requires that the non-useable space be allocated in the same ratio, the safety space can be classified as non-useable space, as it has been in the past.

#### CARRYING CHARGE

TCI erroneously claims that "the current formula contains a panoply of forward looking elements." All calculations are based on historic data and therefore do not even recover current costs.

#### RATE FORMULA

With preemption of the FCC, the WUTC has accepted the authority to establish working rules for the regulated utilities and cable companies in the State of Washington so the formulas and their parameters reflect actual local conditions.

WWP supports the adoption of the existing FCC rate formula for TV cable attachments on distribution poles, but reserves its opinion on those formulas that have been proposed but not yet ordered.<sup>15</sup>

WWP recommends at this writing that the WUTC concentrate on defining the parameters in the pole attachment formula and not attempt to rewrite it. The FCC and courts have spent nearly 20 years defining it; even though it is complicated and a number of parameters are not in FERC Form 1, it is useable.

Regulators should avoid setting pole or duct rents so low that the cable operator can afford to install speculative cable to block others. This could lead to a secondary market where the installer auctions bandwidth to the highest bidder to the detriment of the public and contrary to the intent of the Act.

#### PHASE-IN

According to the FCC,<sup>16</sup> the Act requires that "any increase in the rates...shall be phased in equal annual increments over a period of five years" beginning on the effective date of the new regulations. Clearly this does not allow an immediate change to the new rate. However, it is not clear what is meant by "equal annual increments." A reasonable approach would be to assume that the rate calculations will track each other fairly well and therefore a workable method would be an increase of 20% of the difference each year starting with 2001 (year 1):

$$\begin{aligned} \text{Telecomm rate} &= \text{Cable calculation} \\ &+ (\text{year}-2000) \times 0.2 \times (\text{Telecomm calculation} - \text{Cable calculation}) \end{aligned}$$

where the Cable and Telecomm calculations are the maximum allowable rates per the formula.

<sup>14</sup> WAC 296-44-21265(3) requires 4 feet separation between electric conductors from 0 to 8700 volts to communication conductors.

<sup>15</sup> FCC 97-94 and FCC 97-234

<sup>16</sup> FCC 97-234 § 9

Any discrepancies can be corrected in the final transition year, 2006.

If the telecommunications attachment rate is lower than the TV cable rate, the phase-in should also apply.

#### DUCT ATTACHMENTS

TCI's statement about a "quarter duct methodology" on page 16 of its briefing paper is misleading. In both *Mutimedia Cablevision, Inc. v. Southwestern Bell Telephone Co* and FCC 97-94 §44, reference is made to a half duct methodology. The half duct is also used in the FCC's proposed formula.<sup>17</sup> A rebuttable assumption of 1/2 should be used until the utility or the communication company can demonstrate a more realistic ratio.

The utility is allowed to reserve space but must permit use of the reserved space by a cable operator until it has an actual need for that space.<sup>18</sup>

The argument that the cable companies do not have alternatives needs to be qualified. They sometimes choose to go underground instead of replacing overhead structures, building their own pole lines, or renting a longer route. This is a very realistic alternative where all electric facilities are underground and is a viable way of pricing the rental of ducts. The formula would be similar to the pole formula with the cost of new duct construction replacing the net embedded cost.

#### CLARIFICATION

On page 9 of its December 3, 1997, Briefing Paper, TCI refers to the 1996 Federal Telecommunications Association. I presume they are referring to the Telecommunications Act of 1996.

Respectfully submitted this 12<sup>th</sup> day of January, 1998.

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Timothy J. Rahman, P.E.  
Joint Use Administrator  
Washington Water Power

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<sup>17</sup> FCC 97-94 §45

<sup>18</sup> FCC 96-325 §1169