FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

AT&T OHIO,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 06-1509-EL-CSS
	)	
THE DAYTON POWER & LIGHT COMPANY,	)	
	)	
Respondent.	)	

DIRECT TESTIMONY

OF

VERONICA MAHANGER MACPHEE

On Behalf of

AT&T OHIO

AT&T Ex. ____

Dated: August 31, 2007

PUBLIC VERSION

TABLE OF CONTENTS

Page

I. INTRODUCTION

Q1. PLEASE STATE YOUR NAME, BY WHOM YOU ARE EMPLOYED, AND YOUR BUSINESS ADDRESS.

A1. My name is Veronica Mahanger MacPhee, and I am the owner of Mahanger Consulting Associates (MCA). My business address is 21 Heather Lane, Sparta, New Jersey 07871.

Q2. WHAT ARE YOUR JOB RESPONSIBILITIES?

A2. I am responsible for providing MCA's consulting services, and for the general operation of the company.

Q3. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A3. I was graduated from Temple Buell College in Denver, Colorado (previously Colorado Woman's College, now absorbed into Denver University) with a Bachelor of Arts degree, from the University of Calgary Faculty of Law in Calgary, Alberta, Canada with a Bachelor of Laws, and from Duke University School of Law in Durham, North Carolina with a Master of Laws. While a student at Duke Law and then post graduation, I served as Assistant Dean of the School of Law from January 1980 until May 1983. I was admitted to the North Carolina State Bar in March 1983. My résumé is attached as Attachment VMM-1.

Q4. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A4. In December, 1984, after a brief stint in private practice, I joined GTE South Incorporated in Durham, North Carolina, as the attorney in charge of its agreements for the placement and maintenance of its outside plant facilities. Since leaving GTE in June of 1989 I have owned and operated MCA, through which I provide consulting services to telephone and cable television companies in the US and Canada with respect to joint use of poles and conduit and related matters.

Q5. WHAT IS JOINT USE OF POLES?

A5. Historically the term "joint use" referred to shared use by local telephone companies (TelCos) and electric companies (ElCos) in their common operating areas for placement of their respective cable facilities and related equipment. There were two types of agreements that governed such shared pole use: (i) "space rental" agreements, where one utility used a pole owned by the other utility, and (ii) "joint ownership" agreements, where the two companies owned an agreed percentage of each jointly utilized pole. While it is often loosely applied to any shared use of a utility pole, I prefer to use the term "joint use" to apply to TelCo/ElCo space rental agreements, as distinct from "joint ownership" agreements.

Q6. ARE POLES STILL USED TODAY JUST BY LOCAL TELCOS AND ELCOS?

A6. No. Today poles are also occupied by cable television companies and the many new entrants into the telecommunications arena, and contracts governing such usage are not generally called joint use agreements but "pole (attachment) license" agreements, because these entities typically do not own poles. I should add that utility poles are also used by local municipalities for the placement of streetlights, and sometimes by individuals to carry privately owned facilities.

Q7. DESCRIBE YOUR EXPERIENCE WORKING WITH JOINT USE AGREEMENTS AND RELATED MATTERS?

A7. As attorney to GTE's OSP Construction and Engineering Department I negotiated and managed all GTE South's contracts and license agreements governing the construction and maintenance of its outside plant facilities in the eight southeastern states in which it operated, including joint use agreements with power companies for the joint use of poles and conduit, cable television pole and conduit license agreements, public and private

licenses and easements, and later, outside plant (OSP) and central office equipment (COE) engineering and construction contract labor agreements. Since 1989 I have consulted for telephone and cable companies regarding in particular the historical evolution of joint use and joint ownership of poles, and associated rate methodologies.

II. PURPOSE OF TESTIMONY

Q8. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A8. I have been asked to render an opinion as to whether or not the rental rate of $45.00 per pole that Dayton Power and Light (DP&L) has charged AT&T for the net difference in the parties' pole ownership has been developed accurately, and in accordance with their underlying Joint Pole Line Agreement. I have also been asked to render an opinion as to how a rate methodology and resulting rate should be developed.

III. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Q9. WHAT ARE YOUR CONCLUSIONS?

A9. My primary conclusion is that DP&L's proposed rate cannot be imposed upon AT&T because it was not developed in accordance with the parties' Joint Pole Line Agreement, as DP&L contends. Although DP&L's claim is that the rate of $45.00 is a "default rate" directed and justified by the parties' Agreement, this is in fact not the case. DP&L's rate depends upon several assumptions that underlie its component factors, only one of which (a one-half pole cost allocation to AT&T) may be found in the default rate provision of the parties' Agreement. DP&L either could not or would not apply any of the other principles expressed in the default rate provision - those that dictate how pole cost must be determined for the default rate. Instead, DP&L has looked to sources and authorities outside the Agreement in order to develop its pole cost, which it may not legitimately do and still claim that its rate is the default rate produced by the Agreement.

Q10. WHAT ARE YOUR RECOMMENDATIONS?

A10. First, the inherent impossibility of determining the default rate that this Agreement envisioned must be recognized - DP&L and quite possibly AT&T cannot reconstruct their respective pole costs precisely as the default rate clause directs, and thus the clause and its interpretational provisions are obsolete. Secondly, it needs to be recognized that the two-party pole usage conditions that gave rise to a 50/50 default rate clause in the first place in 1930 are also obsolete, and cannot be maintained or sustained in the current environment of multi-party joint pole use. Based on these two realities, my recommendation is two-fold. Pole usage and corresponding ownership percentages need to be developed that reflect these parties' actual respective pole occupancy in today's changed environment, and then these percentages need to be applied to pole costs that reflect the actual costs and benefits of joint pole use - but only of joint pole use, and not such costs as are associated with the parties' respective business requirements.

IV. HISTORY AND EVOLUTION OF JOINT/SHARED USE OF UTILITY POLES

Q11. WHEN WAS THE JOINT USE OR SHARING OF UTILITY POLES INITIATED?

A11. Joint pole use was initiated in the 1920s between local telephone and electric utilities.

Q12. WHAT WAS ITS INTENT?

A12. The intent was to minimize costs and maximize savings by using one joint pole instead of two separate poles for the placement of the two companies' facilities, which had the added aesthetic benefit of minimizing the proliferation of utility poles across the country.

Q13. HOW WOULD YOU DEFINE THE GOVERNING PRINCIPLE OF JOINT POLE USE AT ITS INCEPTION?

A13. There was a simple principle underlying joint pole use - fair and reasonable allocation of the costs and benefits associated with shared use of a "standard" utility pole among its

users, typically identified in early joint use agreements as a 35-foot Class 5 pole made of wood.

Q14. WAS THERE THEN OR IS THERE NOW A SINGLE OR STANDARD CONTRACT OR FORM OF AGREEMENT FOR THE JOINT USE OF POLES?

A14. No. Although joint use agreements address the same issues for the most part - standard pole height, the allocation of pole space, the division of costs, rental payments for occupying the owner's pole, the sharing of liability - there are always variations from agreement to agreement, some small, some significant.

Q15. WHAT TYPICALLY DETERMINES THE VARIATIONS FROM AGREEMENT TO AGREEMENT?

A15. The variations tend to reflect the interests and concerns of the parties as unique and independent contracting entities. For the most part they are a function of when an agreement was signed, and reflect the changing conditions of joint pole usage.

Q16. CAN YOU DESCRIBE SOME OF THE VARIATIONS?

A16. One can compare DP&L's own joint use agreements to discern many variations. Attachment VMM-2, Table of Differences among DP&L Joint Use Agreements, compares DP&L's Agreement with AT&T, which was signed in 1930, with five DP&L agreements with other joint users signed between 1969 and 1973. The DP&L/AT&T 1930 Joint Pole Line Agreement allocated 3 feet of space for attachments to AT&T and 4 feet to DP&L on a standard 35-foot wood pole (for rear lot construction) and a standard 40-foot wood pole (for street construction), and established equal pole rental rates. Compare this with the agreements drafted by DP&L in 1969-1973, some 40 years later.

****

****

****

Q17. WHAT ARE THE MOST NOTABLE DIFFERENCES BETWEEN THE DP&L 1969-73 AGREEMENTS AND ITS 1930 AGREEMENT WITH AT&T?

A17. **********

****

****

****

****

Q18. IS THERE ANY OTHER NOTABLE DIFFERENCE BETWEEN THE DP&L 1969-73 AGREEMENTS AND ITS 1930 AGREEMENT WITH AT&T?

A18. One other noteworthy difference is the fact that under the 1969-73 agreements, ******

****

****

**********.

Q19. ARE THERE ANY PROVISIONS IN THE 1930 DP&L/AT&T AGREEMENT WHICH WERE CARRIED FORWARD AND RETAINED IN THE 1969-73 AGREEMENTS?

A19. **********

****

****

Q20. ARE POLE USAGE CONDITIONS TODAY THE SAME WITH RESPECT TO THE NUMBER OF ATTACHERS AS EXISTED IN 1969-73, WHEN THESE DP&L AGREEMENTS WERE DRAFTED?

A20. No. **********

******* They predated an explosion of multiple pole users that began with the advent of CATV in the 1970s, just after these contracts were drafted, but that has proliferated since

the passage of the 1996 Telecommunications Act. These contracts are now outdated once again with respect to **********.

Q21. HAVE THE CONDITIONS OF SPACE USAGE AS BETWEEN AT&T AND DP&L REMAINED THE SAME OVER THE LIFE OF THEIR AGREEMENT?

A21. No. Since this Agreement was signed the space requirements of the electric and telephone industries have diverged widely. Back in 1930 the space requirements of the two users of a pole were the same or nearly the same for the open (un-insulated) copper wire they both used. But improvements in efficiency achieved by the two industries have been tied directly to space usage, with dramatic change - in opposite directions.

Q22. CAN YOU DESCRIBE THE DRAMATIC CHANGE IN SPACE USAGE IN DIVERGENT DIRECTIONS OF THE ELECTRIC AND TELEPHONE INDUSTRIES?

A22. Over time, to provide the increasingly higher voltages required to serve their customers, electric companies went from Delta construction (without a neutral) to a "Y" configuration (with a neutral), and needed increasing numbers of increasingly larger transformers to step down these higher voltages. Their space usage requirements expanded greatly as a consequence. The reverse happened with telephone companies. As they went from open copper wire to insulated fiber optic cable with infinitely greater pair capacity for serving their customers, their space usage contracted and is continuing to do so.

Q23. DO YOU BELIEVE THE 1969-73 AGREEMENTS WERE DRAFTED BY DP&L?

A23. **********

****

V. METHODOLOGIES FOR SHARING COSTS

Q24. IF THERE IS NOT A SINGLE FORM OF JOINT USE AGREEMENT, IS THERE AT LEAST A STANDARD METHODOLOGY FOR SHARING THE COSTS AND BENEFITS OF JOINT USE?

A24. No. Over the years I have encountered a number of different approaches to the sharing of joint use costs and benefits as between TelCos and ElCos, reflecting differing assumptions and priorities depending on their source.

Q25. HAVE ANY GUIDELINES BEEN PUBLISHED TO PROVIDE RATE DEVELOPMENT GUIDANCE TO JOINT USERS?

A25. I know of two quite different broad-brush approaches to the sharing of joint use costs and benefits by telephone and electric joint users that I tend to categorize or identify according to their title, source and date of publication: (i) the ***Principles and Practices for the Joint Use of Wood Poles of Supply and Communication Companies***, published by the Joint General Committee of the National Electric Light Association (NELA) and Bell Telephone System on October 15, 1926, and reprinted in 1945 by the Edison Electric Institute and Bell Telephone System ("NELA/Bell Publication") (Attachment VMM-3); and (ii) the ***Joint Use of Facilities by REA Borrowers and Telephone Companies***, published by the U.S. Department of Agriculture Rural Electrification Administration (REA) in 1949 ("REA Publication") (Attachment VMM-4).

Q26. HOW DID THE NELA/BELL PUBLICATION APPROACH THE ISSUE OF SHARING THE COSTS AND BENEFITS OF JOINT USE?

A26. The 1926 NELA/Bell System Principles and Practices specifically recognized the two types of shared pole arrangements between TelCos and ElCos I identified above, that is: (i) "Space rental under which form of agreement the licensee rents space on the pole of the Owner and pays a rental per pole which is based on the amount of space reserved"

and (ii) "Joint ownership, under which form of agreement each of the parties owns a half interest in each joint pole and pays one-half the cost in place of the pole."

Q27. HOW DID THE REA PUBLICATION APPROACH THE ISSUE OF SHARING THE COSTS AND BENEFITS OF JOINT USE?

A27. The REA published a "Cost-Based" formula for developing a joint use pole rental rate, which had as its starting point the savings the renting party realized from not having to set a pole of its own, and included a mechanism for returning to each party a share of the savings achieved by the use of a single joint pole rather than two sole-use poles.

Q28. DID EITHER OF THESE PUBLICATIONS PRESCRIBE A SPECIFIC METHODOLOGY FOR DEVELOPING POLE RENTAL RATES?

A28. The NELA/Bell publication did not prescribe a specific methodology, referring generally to "the average annual charges on a pole" as the "standard of reference" for space rental or joint use agreements, and "the cost in place of the pole" as the "standard of reference" for joint ownership agreements. The REA publication did contain a methodology or rental rate formula which is usually reproduced in REA-inspired joint use agreements as *Exhibit B* of the agreement, but this formula did not spell out what costs, precisely, were to be included in developing rates. It applied a factor of 10% as applicable to the pole investment of both the telephone and electric companies to determine the annual cost of a pole. This is analogous to the carrying charge in the FCC's formula.

Q29. ARE THERE ANY OTHER PUBLISHED METHODOLOGIES FOR THE DEVELOPMENT OF POLE ATTACHMENT RATES?

A29. Yes. In 1978 Congress passed 47 U.S.C § 224, an amendment to the Communications Act of 1934, which established a range of minimum and maximum pole attachment rates that existing pole-owning utilities could charge cable television companies (CATVs). Then in 1996 Congress acted again, this time (while retaining the CATV maximum rate

formula) establishing a different range of minimum and maximum pole attachment rates for new telecommunications carriers (Telecoms) generally. These included competitive local exchange carriers (CLECs), as distinct from the companies the Act identified as incumbent local exchange carriers (ILECs) - that is, those local TelCos who were already in place when the Act was passed. Congress specifically exempted ILECs from application of the new formula.

Q30. WERE THE MINIMUM AND MAXIMUM RATES PRESCRIBED BY CONGRESS THE SAME FOR CATV AND TELECOMS?

A30. The two maximum rates that were prescribed were quite different in 1978 and 1996. The minimum rate was the same - the incremental cost to the pole owner of accommodating the attacher's cable on its pole.

Q31. HOW WERE THESE CONGRESSIONAL MANDATES CARRIED OUT?

A31. Pursuant to each of these Congressional mandates, the Federal Communications Commission (FCC) developed and published rules to set out or constrain the maximum permissible CATV and Telecom rental rates. How the minimum rate based on the incremental cost to the pole owner of accommodating a CATV or Telecom should be calculated has not been stipulated by the FCC.

Q32. ARE THERE ANY BROAD CATEGORIES INTO WHICH THE VARIOUS RATE METHODOLOGIES YOU HAVE DESCRIBED MIGHT FALL?

A32. Broadly speaking, there are two types of rate methodologies: (i) "Space-Based" methodologies, where pole costs and benefits are accorded to the parties on the pole based on their comparative allocations of pole space; (ii) "Cost-Based" methodologies, where pole costs and benefits are accorded to the parties on a pole based on their own comparative sole-use costs. I also know of one methodology, established by the Maine Public Utilities Commission, which is a hybrid of these two approaches.

Q33. HOW WOULD YOU CHARACTERIZE THE NELA/BELL APPROACH TO JOINT USE COST SHARING BETWEEN TELCOS AND ELCOS?

A33. The NELA/Bell "space rental" agreement is a Space-Based approach, whereby the "amount of space reserved" determines the rental rate. The NELA/Bell "joint ownership" agreement is a Cost-Based approach, whereby the parties pay a percentage of each pole's cost without reference to space utilization.

Q34. HOW WOULD YOU CHARACTERIZE THE REA APPROACH TO JOINT USE COST SHARING BETWEEN TELCOS AND ELCOS?

A34. The REA methodology is a Cost-Based approach whereby the parties' comparative sole use pole costs provide the standard of reference for determining their share of the cost of a joint pole.

Q35. WHY DO YOU CALL THE MAINE METHODOLOGY A HYBRID APPROACH?

A35. The Maine methodology is a hybrid approach because it accords the cost of a pole's usable space in direct proportion to the parties' occupied space, and the cost of a pole's non-usable space in proportion to the parties' comparative sole use costs.

Q36. HOW WOULD YOU CHARACTERIZE THE TWO MAXIMUM RATE FCC ATTACHMENT FORMULAS FOR CATVS AND TELECOMS?

A36. The two FCC maximum rate formulas are different Space-Based formulas which both allocate a percentage of a pole's cost to an attaching entity based on its use of pole space. In each case the percentage of space use is applied to the "fully allocated" annual cost to a pole Owner of owning and carrying its average pole, developed according to a pole cost mechanism set out by the FCC, resulting in an annual rental rate payable by the attaching entity to the pole owner.

Q37. DO THE TWO FCC FORMULAS PRODUCE THE SAME OR SIMILAR POLE RENTAL RATES FOR ATTACHERS?

A37. No. The FCC mechanism for developing the pole owner's fully allocated average carrying cost of a pole is the same in both formulas, but since the usage calculations for sharing that cost are different in the two formulas, they result in different rates payable by CATVs and Telecoms.

Q38. DOES EITHER FCC FORMULA APPLY TO DETERMINE RATES FOR AT&T AND OTHER TELCOS?

A38. No. The CATV formula applies only to companies providing television service exclusively. In 1996 Congress specifically exempted the local exchange carriers that were already in place, or ILECs, from application of the Telecom formula. AT&T is one of these exempted ILECs.

VI. COST SHARING UNDER THE PARTIES' AGREEMENT

Q39. ARE YOU FAMILIAR WITH THE JOINT POLE LINE AGREEMENT INITIALLY EXECUTED BETWEEN DP&L AND OHIO BELL, WHICH NOW GOVERNS JOINT USE BETWEEN DP&L AND AT&T AS SUCCESSOR TO OHIO BELL?

A39. Yes, I am familiar with the 1930 Pole Line Agreement which I understand is still in effect between the parties, along with its subsequent amendments and the 1942 Operating Routine.

Q40. WHICH OF THE HISTORICAL RENTAL RATE METHODOLOGIES YOU HAVE DESCRIBED WOULD HAVE GOVERNED THIS PARTICULAR JOINT USE AGREEMENT AT SIGNING?

A40. Based on the date of execution of the Agreement of March 17, 1930, it would have been put in place shortly after the publication of the NELA/Bell Principles and Practices in 1926 and before the publication of the REA form of agreement for use by electric

cooperatives in 1949, or the two FCC formulas published for application to CATVs and Telecoms after 1978 and 1996.

Q41. IS THERE ANY SUPPORT IN THE AGREEMENT FOR THE CONCLUSION THAT THE NELA/BELL PRINCIPLES AND PRACTICES WOULD HAVE GOVERNED THE 1930 AGREEMENT WHEN IT WAS SIGNED?

A41. Yes. Please refer to the NELA/Bell Principles and Practices which I have included here as Attachment VMM-3. The provisions in Article V of the parties' 1930 Agreement replicate the provisions of Section 6 of the Practices in the NELA/Bell Principles and Practices. They are both entitled: "PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED," and some of the language in the Agreement is lifted verbatim from the Practices, such as: "Unless otherwise agreed by the parties, ownership of any new line constructed under the foregoing provision in a new location shall vest in the party for whose use it is constructed." The Agreement proceeds to list the same costs identified in the Practices as the costs to be included when determining the cost of establishing service in the new location.

VII. DP&L'S PROPOSED RENTAL RATE

Q42. WITH RESPECT TO THE CURRENT DISPUTE BETWEEN AT&T AND DP&L, WHAT IS THE POLE RENTAL RATE THAT DP&L IS PROPOSING TO AT&T, ALLEGEDLY PURSUANT TO THE PARTIES' POLE LINE AGREEMENT?

A42. I am not quite sure what DP&L is proposing, exactly. Initially, DP&L proposed a rental rate of $45.00 per pole for 2003, developed according to the methodology it set out in DPL 01398 - DPL 01404. (See Attachment VMM-5 (collecting various documents produced by DP&L.) This calculation, which actually produced a rate of $45.01, included in DP&L's pole cost all of its non-pole-related fixtures (cross-arms, transformer racks, anchors and other facility hardware), or "appurtenances" as they are called by the FCC and which the FCC requires must be removed from a pole Owner's pole cost

calculation. DP&L has since submitted two new calculations in DPL 04193 - DPL 04194 in its responses to AT&T's second set of data requests, which calculate the default rate differently, and produce two different rates without (I believe) specifying which of the two it considers applicable.

Q43. HOW DO DP&L'S TWO NEW RATES FOR 2005 COMPARE WITH ITS PROPOSED RATE FOR 2003?

A43. In the first of its two new rate calculations, DPL 04193, DP&L arrives at a rate of $***** per pole for 2005 **********. In DPL 04194 DP&L reverts to the fixtures-included methodology that produced its 2003 proposed rate of $45.01, and arrives at a rental rate of $**** per pole for 2005. This is an increase of ****% over its equivalent calculation of a fixtures-included rate of $45.01 for 2003. DP&L will need to clarify which of these approaches/rates it believes applies. I would also note that DP&L itself has advocated for a 3% rate increase per year, **********.

Q44. WHAT IS YOUR UNDERSTANDING OF DP&L'S STATED JUSTIFICATION FOR ITS PROPOSED RATE, WHICHEVER IT IS ADVOCATING?

A44. DP&L cites as its purported basis for its proposed rate Article XIII of the 1930 Agreement, which provides for a default rate of "an amount equal to one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement" if the parties fail to agree upon a readjustment of the rental within 60 days after appropriate written notice by either party to the other of its desire to renegotiate the rate, which failure DP&L states has now occurred.

Q45. IN YOUR OPINION, ARE ANY OF THE RATES CALCULATED BY DP&L VALID UNDER THE AGREEMENT WITH AT&T?

A45. No.

Q46. WHY NOT?

A46. Even if we accepted that the provision in the Agreement for a default rate applies because of the parties' failure to agree on new rates, the rate DP&L's now proposes has not been validly developed pursuant to its Joint Pole Line Agreement with AT&T.

Q47. HOW HAVE YOU REACHED THIS CONCLUSION?

A47. DP&L has unilaterally applied a number of erroneous and irreconcilable assumptions to interpret the Agreement's default rate provision which are not contained in or authorized by the Agreement. A rate predicated upon erroneous and irreconcilable assumptions cannot be valid.

Q48. HOW HAS DP&L INTERPRETED THE DEFAULT RATE PROVISION?

A48. DP&L has lifted the default rate provision out of its 1930 context in the parties' Joint Pole Line Agreement, using it to justify its position that pursuant to the "one-half" language in this provision, the parties' 1930 Agreement requires AT&T to pay a rate based on one-half or 50% of DP&L's pole cost. But then, after invoking the parties' 1930 Agreement to justify this 50% allocation, DP&L switches gears. Instead of attempting to determine and be faithful to the intent of the same 1930 Agreement with respect to the remainder of the default rate provision - i.e., what is meant by "average total annual cost," by "providing," by "maintaining," and by "the standard joint poles covered by this agreement" - DP&L has incorporated a "fully allocated annual cost" mechanism articulated decades later by the FCC (and has done so incorrectly, incidentally) to develop the pole cost inputs.

Q49. HAS DP&L INCORPORATED THE ENTIRE FCC METHODOLOGY INTO ITS PROPOSED RATE TO AT&T?

A49. No. There are two separate calculations required by the FCC methodology - calculation of the pole Owner's annual pole cost, and calculation of a pole user's space usage percentage applicable to that cost. In the FCC methodology and its associated formulas these two are inextricably linked - the distribution of cost is inherently dependent on the distribution of space. DP&L has selectively applied the methodology's first calculation (but not fully) for the purpose of constructing its purported annual pole cost as the underlying basis for its rate. However, it completely ignores the second calculation of the FCC methodology - the allocation of that cost to a pole user based on space usage.

Q50. IS DP&L'S SELECTIVE UTILIZATION OF THE FCC METHODOLOGY APPROPRIATE AS A MECHANISM FOR DETERMINING ITS POLE COST?

A50. No.

Q51. WHY NOT?

A51. First, and of primary importance, any rate that purports to be developed under this joint use agreement should reflect the parties' shared intent with respect to such rate development when the agreement was executed. The FCC's mechanism for developing a pole owner's fully-allocated average annual pole cost did not exist as DP&L has applied it until the FCC articulated it in 1978. It fact it was in 1987 that the FCC refined the methodology by publishing the CATV formula in the form it is understood today. Report and Order, *In the Matter of Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles,* CC Docket No. 86-212, 2 F.C.C. Rcd. 4387, 1987 WL 345242 (Rel. July 23, 1987). There is no way that the parties to this joint use agreement, executed in 1930, could have contemplated the use of a methodology that was not formally constructed until 1987. That methodology certainly cannot now be

unilaterally incorporated into the Agreement by one party without the consent of the other.

VIII. THE FCC METHODOLOGY

Q52. WOULD YOU DESCRIBE THE FCC METHODOLOGY?

A52. I have provided a copy of the 1996 Pole Attachment Act here as Attachment VMM-6. I have also reconstructed the FCC maximum rate methodology that was developed pursuant to the Act, including its underlying pole rental rate formula, in Attachment VMM-7, FCC Maximum Rate Methodology. These two Attachments should be read in conjunction with the FCC's *Consolidated Partial Order on Reconsideration,* In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, CS Docket Nos. 97-98, 97-151, FCC 01-170 (rel. May 25, 2001) ("Consolidated Order")

Q53. WOULD YOU DESCRIBE THE RENTAL RATE FORMULA UNDERLYING THE FCC METHODOLOGY?

A53. Expressed in its simplest form, this formula is ***EPC*** times ***ACC*** times ***SU*** equals ***Pole Rental Rate*** (see Attachment VMM-7). The FCC defines ***EPC*** as the pole owner's historical average "embedded" or in-place cost of a "bare" pole (that is, a pole exclusive of non-pole-related hardware or "appurtenances"). The ***ACC*** is the percentage of this historical average cost a pole owner incurs annually to own or "carry" its average pole, composed of the sum of five annually recurring expenses - maintenance, taxes, administration, depreciation and cost of capital. ***EPC*** times ***ACC*** is considered a pole Owner's "fully allocated annual cost" to own and carry a pole. The ***SU*** of the formula is the percentage of a pole Owner's ***EPC*** times ***ACC*** that is allocated to a non-pole-owning

entity on the pole, such as a CATV or Telecom, based on the non-owner's fair and reasonable share of both the usable and the unusable space on an average joint pole, and taking into account all attaching entities on the pole. There are two versions of this formula - one for CATV and one for Telecoms.

Q54. HOW DO THE TWO VERSIONS OF THE FCC METHODOLOGY ALLOCATE COSTS TO POLE USERS?

A54. I have set the two formulas out in Attachment VMM-7. The CATV maximum rate formula is based on the allocation of the average annual carrying cost of both the usable and the unusable space on a pole to a CATV company in direct proportion to its allocation of the pole's usable space. The Telecom maximum rate formula is based on the allocation of the average annual carrying cost of the pole's usable space in direct proportion to its allocation of such usable space, and of 2/3 of the pole's non-usable space in proportion to the number of attaching entities on the pole.

Q55. IS USE OF THE FCC METHODOLOGY, ITS FORMULAS, OR ITS UNDERLYING MECHANISM FOR DEVELOPING POLE COST EITHER MANDATED OR APPROVED BY THE FCC FOR USE BY ELCOS AND TELCOS?

A55. The FCC methodology, including its mechanism for developing fully allocated annual pole cost, does not apply to TelCos and ElCos. Nor does either formula the FCC has developed for application to CATV and Telecoms. And recalling that there is a range of permissible rates for CATVs and Telecoms, it is not even mandated for the CATVs or Telecoms to whom it applies.

IX. DP&L'S MISUSE OF THE FCC METHODOLOGY IN ITS PROPOSED RATE

Q56. HOW HAS DP&L INCORPORATED THE FCC'S MAXIMUM RATE METHODOLOGY INTO ITS PROPOSED RENTAL RATE?

A56. DP&L has incorporated its own variation of ***EPC*** times ***ACC*** - the FCC's concept of "the fully allocated annual carrying cost of a pole" - into its rate as being the same as or equivalent to "the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement," referred to in the Agreement's default rate provision. However, it should be recalled that DP&L's rate of $45.00 DP&L did not reduce its pole cost by the FCC's required reduction for non-pole-related "appurtenances."

Q57. HOW HAS DP&L TREATED THE *SU* COMPONENT OF THE FORMULA IN DEVELOPING ITS RATE TO AT&T?

A57. The ***SU*** component of the formula should be AT&T's allocation of DP&L's purported pole cost based on space usage. For this component DP&L has applied 50% - the "one-half" in the default rate provision. From this cobbling together of two sources or justifications, DP&L has arrived at the rate of $45.00 that it claims the 1930 Agreement's default rate clause requires AT&T to pay.

Q58. WHAT IS WRONG WITH DP&L'S ALLOCATION OF 50% OF ITS POLE COST TO AT&T FROM THE PERSPECTIVE OF THE FCC METHODOLOGY?

A58. DP&L's allocation of 50% of its pole cost to AT&T amounts to an assumption that for AT&T, ***SU*** of the FCC formula - a user's allocation of cost based on space usage - should equal the 1930 default allocation of 50%. This is based on obsolete two-user pole usage conditions that applied when DP&L and AT&T were the only occupants of a joint use pole. DP&L attempts to preserve the fiction that there are still only two parties to be considered (DP&L and AT&T) in developing its rate, ignoring the FCC's clearly

articulated requirement that all entities on the pole be taken into account, and all the while using the rest of the same FCC formula - a formula that was not in place in 1930 - to justify the excessive pole cost to which it has applied this percentage.

Q59. HOW DOES THE FCC REQUIRE THAT MULTIPLE POLE USAGE BE REFLECTED IN ITS METHODOLOGY?

A59. The FCC has determined that subject to rebuttal by means of actual data, the use and application of its methodology will presume that there are five users on a joint pole in "urbanized" settings (population > 50,000), and three users in "non-urbanized" settings (population < 50,000). DP&L disregards this requirement of the FCC maximum rate methodology (and the reality of multiple pole users in today's joint use context) by asserting that the space allocation presumptions of the FCC methodology do not apply under the parties' Joint Pole Line Agreement.

Q60. WHAT IS WRONG WITH DP&L'S ALLOCATION OF 50% OF ITS POLE COST TO AT&T EVEN FROM THE PERSPECTIVE OF THE 1930 AGREEMENT?

A60. If you look to the 1926 NELA/Bell Principles and Practices for guidance, it is clear that a one-half allocation of costs is clearly tied to space used. Therefore a 50% allocation of cost to AT&T can no longer be sustained under this Agreement.

Q61. WHY NOT?

A61. The NELA/Bell Practices very clearly states that under a space rental agreement the licensee rents space on the pole of the Owner and pays a rental per pole "which is based on the amount of space reserved." In 1930 the space that was - and still is or should be - "reserved" for AT&T's "exclusive" use pursuant to this Agreement (see Article I) was set out as 3 feet, with DP&L allocated a near-corresponding 4 feet. However, in the 77 years that have elapsed since this Agreement was signed there have been fundamental changes

in the parties' respective pole space usage, to such a degree that the space now available to AT&T on joint use poles has been significantly reduced as a result of the introduction of additional users in its space, and the space needed by AT&T has been reduced by advances in technology.

X. THE EVOLUTION OF SPACE USAGE BY THE PARTIES

Q62. HOW IS IT KNOWN THAT AT&T'S SPACE UNDER THE AGREEMENT HAS BEEN REDUCED AS A RESULT OF THIRD PARTY ATTACHERS?

A62. DP&L has indicated in conversations with AT&T that it assumes an average of 1.5 additional users on its poles. These additional users are typically located in the communications space on the pole previously reserved to AT&T under Article I of the Agreement.

Q63. WHO ARE THESE ADDITIONAL USERS ON A POLE IN AT&T'S SPACE?

A63. They are the CATVs added to utility poles since 1978, and the new telecommunications carriers, including local exchange carriers in competition with AT&T (CLECs), added since 1996 - the entities to whom the FCC formulas apply. There may be others too, such as municipalities, businesses or individuals with private communications and/or alarm systems, etc.

Q64. HOW DOES THE PRESENCE OF OTHER POLE USERS AFFECT AT&T?

A64. The best way to demonstrate the negative effect or detriment to AT&T of the evolution of the parties' use of a joint pole since 1930 is to provide a sketch (see Attachment VMM-8, Evolution of Pole Space Usage Since 1930: DP&L and AT&T). You will note that in order to accommodate an average of 1.5 additional users on a pole, AT&T's own space usage has been compromised dramatically. The actual space now *available* to AT&T on a DP&L pole is an average of 1.5 feet, not 3 feet as the Pole Line Agreement guarantees.

Q65. HAS THIRD-PARTY USAGE HAD ANY OTHER ADVERSE IMPACTS ON AT&T?

A65. AT&T's ground clearance has also been compromised, as VMM-8 demonstrates. The ground clearance AT&T was guaranteed when there were only two pole users is very different from the reduced ground clearance that inevitably results from the presence of multiple pole users. The ILEC typically is the lowest attaching entity on a pole, and the reality is that AT&T and other ILECs are being forced lower and lower on joint use poles as additional users are added to them, and as ElCos themselves require more and more pole space.

Q66. WHY IS REDUCED GROUND CLEARANCE SO PROBLEMATIC?

A66. First, there is the issue of potential liability - reduced ground clearance increases the likelihood of contact between low-lying cable and members of the public leading to injury. Then there is the issue of who must now pay for a pole to be changed out if there is insufficient ground clearance to satisfy NESC and Ohio safety requirements - as typically the lowest entity on the pole this burden most likely will fall on AT&T.

Q67. WHAT HAS HAPPENED TO DP&L'S SPACE USAGE?

A67. The converse has happened to DP&L. Its effective space utilization has increased greatly, from 4 feet in 1930 to 4 feet 10 inches on 35-foot poles, and 9 feet 10 inches on 40-foot poles, as depicted in VMM-8. This expanded space now occupied by DP&L does not include the separation space, which the FCC has clearly ruled also usable by DP&L. See Memorandum Opinion and Second Report and Order, *In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments*, CC Docket No. 78-144, FCC 79-308, 72 F.C.C.2d 59, 1979 WL 44065 (Rel. May 23, 1979) ("Second Report and Order"), at para. 24; Consolidated Order at para. 51.

XI. ADJUSTING AT&T'S SPACE USAGE COMPONENT

Q68. HOW SHOULD SPACE USAGE BY ADDITIONAL PARTIES ON DP&L'S POLES IMPACT THE ONE-HALF FACTOR IN THE DEFAULT RATE PROVISION OF THE PARTIES' 1930 AGREEMENT?

A68. In 1930 the parties' pole space allocations were similar at 3 feet and 4 feet respectively (other contemporary agreements allocated 3 feet to each party), and a one-half allocation, while it surely favored DP&L, was not unreasonable at that time. Given the great disparity of space usage that has since developed between the parties, it would be both unreasonable and inequitable for the one-half cost allocation to be retained to calculate a rate payable by AT&T today. Since the NELA/Bell Practices clearly tie the rental rate to space usage, the default rate provision's allocation of one-half of a pole's cost to AT&T must be adjusted or offset to reflect the loss of at least 50% of AT&T's reserved space and the presence of other users.

Q69. BEYOND THE LOSS OF SPACE, WHAT ARE THE IMPLICATIONS OF ALLOCATING 50% OF DP&L'S POLE COST TO AT&T?

A69. Pursuant to the very same FCC methodology that DP&L is invoking for the purpose of developing its pole cost, DP&L is receiving current and very relevant contributions to that cost from these additional parties on its poles, in the form of annual rental. Since these payments have the effective result of contributing to and therefore offsetting DP&L's cost, DP&L is actually ***not itself*** defraying 50% of the pole's annual pole costs. Even if AT&T were to continue to be responsible for one-half of a pole's cost under this agreement (which it should not be), the inherent corresponding assumption is that DP&L should be paying the other half. This is not the case in light of the pole attachment rental DP&L is collecting from other pole users, and underscores why the default rate provision's obsolete two-user pole usage assumption can no longer be sustained.

Q70. IN MATHEMATICAL TERMS, HOW MUCH DOES DP&L COLLECT FROM OTHER USERS?

A70. Applying the FCC's assumptions of attaching entities set out on page 3 of Attachment VMM-7, there is potential for DP&L to collect 7.4% or 16.9% of its pole cost from one additional attaching entity in a non-urbanized setting (a CATV or a Telcom), and a total of 29.8% of its pole cost from three additional entities (one CATV and two Telecoms) in an urbanized setting.

Q71. HOW SHOULD THIS MATTER BE RESOLVED?

A71. As required by the NELA/Bell practices, and reflecting the FCC methodology, AT&T's pole cost allocation for its current space usage of no more than 1.5 feet should be calculated by reference to space usage by all the occupants of a jointly used pole. In fact, as Ms Sury testifies, AT&T typically utilizes ********** on joint use poles.

Q72. IS THERE AN ALTERNATIVE WAY TO RESOLVE THIS MATTER?

A72. Yes. Article I of the Operating Routine to the parties' Pole Line Agreement specifically provides that AT&T would provide and license third-party attachments in the nature of Signal or Communication Circuits, and that DP&L would provide and license third-party attachments in the nature of Supply Circuits. Based on this provision of the Agreement, AT&T should be allocated all rental revenue from the presence of any communications attachments on joint poles, regardless of the owner. Of course, it will still be necessary to account for the fact that the electric company is using more than 4 feet, including the separation space that the FCC has made clear is usable by the electric company.

XII. ADJUSTING DP&L'S PROPOSED ANNUAL POLE COST

Q73. TURNING TO DP&L'S USE OF THE FCC METHODOLOGY TO DEVELOP ITS POLE COST, PLEASE EXPLAIN HOW THE FCC PERMITS A POLE OWNER TO CALCULATE ITS AVERAGE COST OF A POLE.

A73. The FCC methodology permits a pole Owner to utilize ***all*** the poles in its distribution pole line account - all heights, all classes, and all material types - to determine its average pole cost. For power companies, including DP&L, the account that is utilized for this purpose is its Federal Energy Regulatory Commission (FERC) distribution pole line Account 364. (For ease of reference I have included the accounts used for the FCC methodology here as Attachment VMM-9, Breakdown of Items in FERC Accounts 593, 364, 365 and 369). Account 364 includes the historical capital costs associated with the placement of ***all*** of a power company's poles - all the way from 25 feet tall (some stub poles may be shorter) to 85 feet or taller. DP&L has acknowledged that all of its poles have been included in its rate development. Furthermore, Account 364 includes costs well beyond those incurred to provide a 35- or 40-foot wood pole for shared use (see list of included costs).

Q74. DO YOU AGREE WITH DP&L'S USE OF ITS 364 ACCOUNT FOR THIS PURPOSE, AS PERMITTED BY THE FCC?

A74. No. The FCC mechanism providing that the cost of all DP&L's poles may be included in its average bare pole cost, the ***EPC*** Component of the rate formula, cannot be applied under the parties' Joint Pole Line Agreement because its use is flatly contradicted by the terms of the Agreement itself. Its proposed utilization by DP&L is actually contrary to and inconsistent with certain express provisions of the Agreement as it applies to the division of capital pole costs.

Q75. WHY IS IT CONTRARY TO THE PARTIES' AGREEMENT FOR DP&L TO INCLUDE ALL ITS POLES IN ACCOUNT 364 IN DEVELOPING AT&T'S POLE RENTAL RATE?

A75. Article I of the parties' Joint Pole Line Agreement defines a "STANDARD JOINT POLE" as a 35-foot wood pole for rear lot construction, and a 40-foot wood pole for street construction. The Class of pole is identified as Class "C," later revised to Class 5 in the 1952 Operating Routine. Since the default rate provision in Article XIII which DP&L is supposedly invoking to calculate its rate expressly restricts the provision's application to "standard joint poles" for purposes of determining the default rate, it is contrary to the parties' Agreement for DP&L to include all its poles from its 364 account - all heights, classes and material types, as the FCC methodology permits - in calculating its pole cost for purposes of the application of the default rate provision. To accord with the parties' Agreement, DP&L must restrict the cost it includes to the cost of its 35- and 40-foot Class 5 wood poles.

Q76. WHAT IS THE UNDERLYING BASIS IN THE PARTIES' AGREEMENT FOR RESTRICTING POLE COST FOR DEVELOPMENT OF THE RENTAL RATE TO THE COST OF STANDARD 35- AND 40-FOOT POLES?

A76. Article VIII (f) of the Agreement, which sets out the Division of Costs of pole construction as between the parties, expressly requires AT&T to pay, ***up front,*** any capital costs for which it is responsible that are associated with poles taller than the standard wood pole provided for under the Agreement (see, e.g., DPL 00467, DPL 00651 (showing associated billing to AT&T)). Since the standard pole has been defined as a 35-foot Class "C" wood pole for rear lot construction, and a 40-foot Class "C" wood pole for street construction, pursuant to Article VIII's terms, AT&T has already reimbursed DP&L for ***any and all*** capital costs AT&T has caused for taller or stronger poles during the life of this Agreement. It would therefore be improper for DP&L to include the cost

of any poles taller than 35-foot and 40-foot poles, or of a class stronger than class 5, in the pole cost upon which its rate to AT&T is to be based.

Q77. CAN YOU POINT TO ANY OTHER PROVISIONS OF THE AGREEMENT TO SUPPORT YOUR POSITION?

A77. Article VIII (h) of the 1930 Pole Line Agreement, which requires the Licensee to pay either all or part of the capital cost for a pole taller or stronger than a standard pole (depending on whether such cost is incurred for its entire or partial benefit) expressly provides: "Any payment made by the Licensee under the foregoing provisions of this Article for poles taller than standard ***are in lieu of increased rentals*** (emphasis added) and do not in any way affect the ownership of said poles." Clearly, what this provision means is that if a 45-foot pole has been installed for AT&T's benefit, and if AT&T has been required to reimburse DP&L for the total capital cost the latter has incurred in excess of a 40-foot pole, then DP&L's effective outlay is the cost of a 40-foot pole. DP&L cannot include any poles taller than standard in its capital pole costs because it has already been reimbursed for any excess costs caused by AT&T for poles in excess of standard poles.

Q78. WHAT WOULD THE EFFECT BE IF DP&L WERE TO INCLUDE ALL OF ITS ACCOUNT 364 POLES IN ITS COSTS?

A78. If DP&L were permitted to include all its Account 364 poles in its pole rental rate development, such inclusion would have DP&L collecting twice for the same expenditure - once when AT&T reimburses it up front for capital expenditures for taller poles for its benefit, and then again when the cost of those same taller poles already paid for by AT&T is included in DP&L's pole cost determination pursuant to the FCC methodology. Because AT&T has already paid all capital cost for any pole taller or stronger placed for

its use, inclusion of them again in DP&L's pole cost in its rental rate calculation constitutes double dipping by DP&L.

Q79. HAS THE FCC ADDRESSED THIS ISSUE?

A79. Yes. This prohibition against double dipping was articulated by the FCC as far back as 1979 in its Second Report and Order respecting CATV pole attachment rates, which stated: "...where a utility has been directly reimbursed by a CATV operator for non-recurring costs, including plant, such costs must be subtracted from the utility's corresponding pole line capital account to insure that CATV operators are not charged twice for the same costs." Second Report and Order, para. 27. These payments are called Contributions in Aid of Construction (CIAC), and the FCC clearly requires that they be backed out of the parties' capital pole line account when pole costs are being developed pursuant to its methodology. This principle was repeated again by the FCC in the 2001 Consolidated Order in Footnote 153, which states: "Gross pole plant should not include costs for pole change-outs or other make-ready costs that were paid by the attacher." Since for AT&T under this Agreement this equates with all costs for poles taller than 35- and 40-foot poles, DP&L's costs for all taller poles ***must*** be backed out of its pole cost development.

Q80. ARE THERE ANY OTHER PROBLEMS YOU PERCEIVE WITH RESPECT TO DP&L'S DEVELOPMENT OF ITS POLE COST?

A80. The FCC methodology provides for electric companies to apply a presumed factor of 15% to remove appurtenances from its Account 364 when actual costs are not known, in order to arrive at its "bare" pole costs, that it, its costs less its own industry-specific non-pole-related "appurtenances," such as crossarms, transformer racks, anchors, and other Owner-specific hardware. The FCC recognizes these as costs that must be removed from

a pole Owner's costs as inappropriate to pass on to other pole users. DP&L's 2003 rate calculation and **********fail to apply the presumptive FCC factor of 15% for this purpose.

Q81. PLEASE EXPLAIN.

A81. DP&L has provided a copy of Appendix E-2 of the Consolidated Order as DPL 01387. You will note that this Appendix does not expressly state the requirement that 15% of the Owner's pole cost be backed out in order to remove the cost of Owner's own facility-related hardware so as to arrive at "bare" pole cost. And it is true that this 15% reduction requirement is expressly included in the corresponding reconstruction of the CATV formula in Appendix D-2. In calculating the rate of $45.00 that DP&L initially demanded from AT&T, DP&L appears to have interpreted this as a license to include these items in its pole cost, and to have AT&T help pay for them, and thus it based its proposed rate of $45.00 upon its entire pole line account, ***including its crossarms, transformer racks, etc.*** However, a reading of the Consolidated Order itself, with its repeated reference to "Net Cost of a Bare Pole" in its reproduction of the Telecom formula at page 24 and again at page 31, makes it very clear that the FCC intended these costs to be removed for the Telecom formula as well. More to the point, DP&L cannot ask AT&T to subsidize the costs associated with its operations.

Q82. HAS DP&L RETRACTED ITS DEMAND THAT AT&T HELP PAY FOR ITS FIXTURES?

A82. I am not sure. ********** ********** - it is not possible for me to know what its present position is with respect to the inclusion of its fixtures in its proposed rate. **

****

****

Q83. DO YOU PERCEIVE ANY OTHER ISSUES WITH RESPECT TO THIS FACTOR?

A83. DP&L's own experience as reflected in the estimate of its costs in DPL 01155 through 01355 would appear to reflect its own use and application of a factor of ***** added to its estimated pole installation costs for minor material. Minor materials are those facility-specific fixtures or "appurtenances" that the FCC factor seeks to remove from a pole Owner's total costs. DP&L's added ***** equates mathematically with ****** when applied to the total of pole plus fixtures. Use of the lower 15% FCC factor would actually result in overstatement of DP&L's pole-related capital expenditures. A factor of at least ****** (rounded) should be used.

Q84. IS THERE ANY WAY TO DETERMINE DP&L'S NET INVESTMENT IN ITS STANDARD 35- AND 40-FOOT POLES AS REQUIRED BY THE PARTIES' AGREEMENT?

A84. DP&L has stated that it does not currently maintain data that would subdivide its pole costs by height, class or material type, even though the separate costs associated with 35- and 40-foot Class 5 standard wood poles are expressly required for use and application of the default rate clause of Article XIII of this Agreement. In my experience over more than twenty years of working with joint use agreements, these data were maintained by telephone and electric companies in prior years; it is therefore not possible to reconstruct the historical average embedded cost of DP&L's 35- and 40-foot Class 5 wood poles from its total investment in all its distribution poles - all heights, all classes and all material types - which is the average cost DP&L has arbitrarily invoked in calculating its $45.00 rate. In fact, it appears that DP&L no longer even sets 40-foot Class 5 poles.

Q85. HOW HAVE YOU DETERMINED THIS?

A85. I have developed Attachment VMM-10, Dayton Power and Light Company, Distribution Capital: Cost Summary Listing (Jan. 3, 2003), from DPL 01155 through 01355. The installation costs associated with 35-foot Class 5 poles are highlighted in bold italics. I was not able to locate any DP&L costs for 40-foot Class 5 poles - the other "standard" poles in the agreement upon which the rental rate is clearly required to be based. I have highlighted the costs for the closest similar pole - 40-foot Class 4.

Q86. HOW HAS DP&L USED THIS TABLE OF COSTS?

A86. From what I can tell the costs in the third column of this Table, representing costs associated with Non-Truck Accessible poles, were used to develop ************** ** **. The Table shows that DP&L's estimated costs to set poles that are Non-Truck Accessible (Column 2) are *********** than those to set Truck-Accessible poles (Column 4). **** ** *** *** ** ********

Q87. DO YOU HAVE ANY SENSE OF THE IMPACT THAT DP&L'S POLE COST OVERSTATEMENTS - FAILURE TO REMOVE OTHER THAN STANDARD POLES FROM ACCOUNT 364, FAILURE TO REMOVE APPURTENANCES, ETC. - WOULD HAVE ON THE RATE IT IS NOW ASKING AT&T TO PAY?

A87. Not with any exactness. For instance, it is only possible to compare the relative cost to DP&L to set 35-and 40-foot poles versus all the other heights and classes of poles it

utilizes. It is quite obvious that including the cost of one 80-foot poles at a cost of $**** would be approximately equivalent to including the cost of ********** 35-foot poles at a cost of ****, thus driving up average cost. Clearly, poles taller than the standard required by the parties' Joint Pole Line Agreement greatly inflate DP&L's purported pole costs over the cost of its standard poles.

Q88. HAS DP&L PROVIDED ANY DATA THAT WOULD FACILITATE THE REMOVAL OF POLES OTHER THAN THE AGREEMENT'S STANDARD POLES FROM ITS ACCOUNT 364?

A88. No. In its answer to Request No. 15 of AT&T's Fifth Set of Data Requests, DP&L indicated that it does not segregate its plant records by size or type of distribution pole.

Q89. DO YOU HAVE ANY OTHER OBJECTIONS TO THE POLE COST COMPONENT OF DP&L'S RATE STRUCTURE?

A89. Yes. The parties' Agreement provides that the default rate, if it applies, is to be based on the standard poles "covered by this agreement." In joint use agreements that articulate a rate methodology, it is typical to find a requirement that the rate be based on both parties' costs. The language of this agreement would dictate that costs associated with AT&T's poles - not just DP&L's poles - must also be included in the development of the default rate. However, DP&L's rate development does not include any costs associated with AT&T's poles.

Q90. DO YOU HAVE ANY FURTHER CONCERNS REGARDING DP&L'S PURPORTED POLE COSTS AS REFLECTED IN ITS RATE METHODOLOGY?

A90. Yes. I have no way to verify whether or not DP&L's capital pole line account has been reduced by reimbursements it has received from parties for whom it has placed poles or provided extra height at their expense, including AT&T. DP&L's response to Request No. 20 of AT&T's Fifth Set of Data Requests has not clarified this issue for me and no light was shed on this issue by Dona Seger-Lawson during her deposition. Note that the

requirement that reimbursements for CIAC be credited to a pole Owner's pole line account is the same principle, articulated by the FCC, which I alluded to above as directing that DP&L's pole cost be based only on its 35- and 40-foot Class 5 poles pursuant to its Joint Pole Line Agreement with AT&T.

Q91. TURNING AGAIN TO THE FCC RENTAL RATE FORMULA, PLEASE EXPLAIN HOW A POLE OWNER'S TOTAL ANNUAL POLE-RELATED EXPENSES ARE DETERMINED.

A91. A pole Owner's annual pole-related expenses are developed by multiplying its net average bare pole cost (***EPC***) by its average annual charge percentage (***ACC***). The ***ACC*** is a composite percentage made up of five factors: administration, maintenance, depreciation, taxes and cost of capital (see Attachment VMM-7).

Q92. DO YOU HAVE ANY OBJECTIONS TO DP&L'S DEVELOPMENT OF ITS COMPOSITE ANNUAL CARRYING CHARGE COMPONENT?

A92. Yes. My primary concern is with DP&L's utilization of the FCC methodology to develop the maintenance factor or percentage of its ***ACC***. I have not been asked to specifically evaluate the other factors. I understand that Tim Zeldenrust addresses some of those factors in his testimony.

Q93. HOW IS THE MAINTENANCE FACTOR CALCULATED IN THE FCC METHODOLOGY?

A93. The FCC maintenance factor is the percentage of an ElCo's total net investment in accounts 364, 365 and 369 that it spends each year, that is, the amount booked to its Account 593. In other words, the factor is 593 / (364 + 365 + 369) (all net).

Q94. WHAT PROBLEMS DO YOU PERCEIVE WITH DP&L'S USE OF THE FCC METHOD TO CALCULATE ITS MAINTENANCE FACTOR?

A94. Reference to the list of expenses that are included in Account 593 (see Attachment VMM-9) makes it very clear that most of the expenses that are booked to Account 593 are associated with an electric company's overhead conductors, not its poles.

Q95. CAN YOU PROVIDE AN EXAMPLE?

A95. Take for instance DP&L's recurring annual right-of-way clearing and tree-trimming expense that is included in Account 593. This expense not only should be excluded from the rental rate formula as unrelated to poles, but its exclusion is also mandated by the parties' Joint Pole Line Agreement.

Q96. WHY IS IT NOT PERMISSIBLE FOR DP&L TO INCLUDE TREE-TRIMMING EXPENSES IN ITS DEVELOPMENT OF A POLE RENTAL RATE?

A96. It is not permissible for two reasons. The first is that as with all electric companies, DP&L must keep its right-of-way clear in order for the safety and insulation of its energized conductors. To ask AT&T to help defray these costs could require AT&T to help pay for an expense it does not need and did not cause. These expenses should be backed out of Account 593, even according to the FCC's own judgment.

Q97. WHAT HAS THE FCC SAID ON THE ISSUE?

A97. Speaking in reference to the capital right of way costs included in Account 365, the FCC has said: "...tree-trimming in that account is related to the overhead conductors which relate to the core business function of the utility" (Consolidated Order, pp. 61-62). Correspondingly, tree-trimming in Account 593 is also not a pole-related expense, and AT&T should not be required to help pay for an expense that is fundamentally associated with DP&L's core business function. This is a massive electric utility expense, and the FCC recognizes it as such.

Q98. WHAT IS THE SECOND REASON?

A98. The second is that Article VII of the Joint Pole Line Agreement clearly mandates that "...each party shall, at its own expense, place, maintain, rearrange, transfer and remove its own attachments," and in this regard, Article I specifically provides that transferring and rearranging include "any tree cutting or trimming incidental thereto and the obtaining of all necessary rights or permits therefor." This means that each party is required to clear for its own purposes on ***all*** joint use poles. This requirement is reconfirmed in Article IX, which provides that each party shall, "at its own expense," maintain all of its attachments. Since under this Agreement AT&T is already incurring and is responsible for its own right-of-way expenses on both its own and DP&L's poles, it cannot be asked to pay half of DP&L's right-of-way expenses as well. To do so, once again, would be to require AT&T to subsidize DP&L's business operations.

Q99. WHAT IS YOUR CONCLUSION FROM YOUR ANALYSIS OF THE FOREGOING FACTS AND CONSIDERATIONS?

A99. My conclusion is that DP&L's rate of $45.00 applies so many erroneous facts and figures that it cannot be the pole rental rate that is directed by this Joint Pole Line Agreement.

Q100. DO YOU HAVE ANY OTHER REASONS FOR REACHING THIS CONCLUSION?

A100. I would point out first of all that if the parties thought the FCC formula applied to govern development of a rate under this particular Joint Pole Line Agreement, they would have applied it in 1995 to develop a new rate. By 1995 the FCC methodology had been in place for years, but given the opportunity to do so in 1995, the parties made no reference to this methodology, and did not incorporate it into this Agreement either expressly or indirectly.

Q101. WHAT WOULD THE INEVITABLE CONCLUSION HAVE TO BE REGARDING POLE COST IF THE PARTIES DID IN FACT UTILIZE THE FCC METHODOLOGY IN 1995?

A101. If the FCC methodology was indeed applied in 1995 to calculate the parties' new rate of $3.50, then the rate of $45.00 DP&L now proposes would signify that the average annual pole cost underlying the pole rental rate rose from $7.00 in 1995 (producing a rate of $3.50 per pole) to $90.00 in 2003 (producing a rate of $45.00 per pole) - an increase of $83.00, or 1186%, in merely eight years. I think it is safe to conclude that the FCC formula was not considered a part of this Agreement by the parties in 1995.

Q102. WHAT PARALLEL CONCLUSION DOES THIS LEAD TO?

A102. Referring again to Attachment VMM-2, you will note that DP&L had already established rates of ***** as far back as 1969-73 with other TelCos. While we do not know the underlying basis for the rate of $3.50 that DP&L established with AT&T some 25 years later, the inescapable conclusion has to be that $3.50 was the rate the parties thought this Agreement produced in 1995. If DP&L was already receiving a rate of ***** per pole, and had been doing so for over 20 years, the establishment of a rate of $3.50 with AT&T in 1995 is an express negation of that rate - or any rate ***** than $3.50.

Q103. WHY WAS THE AT&T RATE SO LOW COMPARED WITH THE RATES ESTABLISHED BY DP&L WITH OTHER TELCOS 25 YEARS EARLIER?

A103. It is not clear. One hypothesis is that the poles in joint use with AT&T are **** than those in use generally by DP&L in Ohio. In DPL 00461 - DPL 00469, dated April 15, 2002, and particularly the handwritten notes on the last page, DPL 00469, DP&L appears to enumerate the DP&L poles AT&T was attached to as of March 2002, along with a determination that AT&T would have to pay ******** to DP&L, for ****** poles at an average cost of ******, in order to bring its ownership to 50% of the poles. The

document would seem to indicate that as of 2002 the DP&L poles actually utilized by AT&T were **** poles, with an average value (even taking all poles into account) of ******. (The document lists the ********** *********.) This would explain the rate of $3.50 established in 1995. A low average pole cost would correspondingly direct a low rental rate. It would also indicate that the actual pole numbers and heights of DP&L poles in joint use with AT&T were known at that time.

XIII. ADJUSTING DP&L'S PROPOSED RENTAL RATE

Q104. TO SUM UP, DO YOU HAVE AN OPINION AS TO HOW THE PARTIES SHOULD GO ABOUT DEVELOPING A RENTAL RATE UNDER THIS AGREEMENT?

A104. I can identify some of the steps that would need to be taken, but I do not have all the data needed to correct the overstated DP&L calculations that have produced its proposed rate of $45.00, or the other rates it calculated.

Q105. IF THE *EPC* OF THE FCC FORMULA WERE TO BE ADAPTED IN ORDER TO DEVELOP THE POLE COST COMPONENT OF DP&L'S RATE METHODOLOGY, HOW WOULD IT NEED TO BE CORRECTED TO REFLECT THE REQUIREMENTS OF THE DEFAULT RATE PROVISION?

A105. To give effect to the parties' Joint Pole Line Agreement, the ***EPC*** Component of the rental rate equation as developed by the FCC would have to be adjusted to remove the cost of all poles taller than a weighted blend of both parties' 35- and 40-foot poles. In addition, an accurate percentage of that cost for reflecting non-pole-related appurtenances must be removed from the cost component of the methodology, perhaps ***** as discussed. This is the minimum adjustment, since it does not reflect other potential overstatements we have identified, such as possible inclusion of CIAC paid by AT&T and others in the account.

Q106. HOW ARE THE DATA IN DPL 00461-DPL 00469 HELPFUL FOR DETERMINING A NEW RATE FOR THESE PARTIES?

A106. I have reproduced the data in this document as Attachment VMM-11, Values of Poles in Joint Use with DP&L: 2002 Data. My calculation based on this data yields an average value of ****** for 35- and 40-foot poles. Applying the then current CPI of 2.28% would bring the average value of DP&L's 35- and 40-foot poles in joint use with AT&T to ****** in 2003, and would constitute DP&L's ***EPC*** for purposes of the rate formula. (Please note here that for all purposes, I have used the year 2003 to drive my calculations, since this is the year DP&L used for its putative $45.00 rate.) Alternatively, application of DP&L's suggested increase of 3% would bring this value to ******.

Q107. WHY IS THIS A REASONABLE DOCUMENT TO UTILIZE FOR THIS PURPOSE BASED ON THE PARTIES' JOINT POLE LINE AGREEMENT?

A107. The Agreement requires that the cost of "providing" the standard 35- and 40-foot Class 5 joint wood poles covered by this Agreement be utilized for the rate. This is the closest I have come to a document which identifies DP&L's average cost of 35- and 40-foot poles.

Q108. WHY IS THIS ALSO A REASONABLE CONCLUSION BASED ON THE PROGRESSION OF THE PARTIES' RATE INCREASES?

A108. Please see Attachment VMM-12, Increases in DP&L / AT&T Pole Rental Rates: Historical and Proposed. This Attachment calculates the rates of increase in the parties' rental rate over time. After a total increase of 75% in the parties' pole rental rate from 1930 to 1995, DP&L is demanding an increase from 1995 to 2003 of 2,471% if the Agreement is interpreted precisely as it is written - that is, that the rental rate should apply to poles in excess of one-half the total poles. Even if the rate were applied to the net difference in the parties' pole ownership, the historical error the parties have made,

the increase demanded would still be 1,186%. This is clearly out of line insofar as any logical interpretation of the Agreement's intent is concerned.

Q109. HOW SHOULD THE ANNUAL CHARGE COMPONENT OF DP&L'S METHODOLOGY, *ACC* OF THE FCC FORMULA, BE CORRECTED?

A109. At a minimum, all recurring annual expenses specific to DP&L's conduct of its electric business, such as the maintenance of a width of 4 feet 10 inches to 9 feet 10 inches of cleared trees along the length of its overhead conductors, must be removed from the ***ACC*** Component of the equation. Mr. Zeldenrust addresses several other necessary adjustments as well.

Q110. DO YOU HAVE AN OPINION AS TO WHAT RECURRING ANNUAL EXPENSES *SHOULD* BE INCLUDED IN A POLE OWNER'S *ACC* PURSUANT TO THE PARTIES' JOINT POLE LINE AGREEMENT?

A110. The default rate clause of the Joint Pole Line Agreement refers to the cost of "maintaining" the standard poles under the agreement as the appropriate cost for determining the rate. This should mean exactly what it says - that only the annual charges associated with pole maintenance may validly be included in a pole Owner's *ACC* of the rate formula. At the very least, every effort needs to be made to restrict the costs that are included in this component to demonstrably pole-related annual expenses.

Q111. DO YOU HAVE AN OPINION AS TO HOW THE SPACE ALLOCATION COMPONENT OF DP&L'S METHODOLOGY, THE *SU* COMPONENT OF THE FCC FORMULA, SHOULD BE CORRECTED TO REFLECT AN EQUITABLE ALLOCATION OF COST BASED ON SPACE USED TO AT&T?

A111. AT&T's space usage factor must be corrected to reflect the loss of one-half of its guaranteed or "exclusive" 3 feet of reserved space, as well as the presence in today's environment of multiple attaching entities. There are several ways this may be accomplished, including developing comparative space allocation ratios for all parties on a pole, as the NELA/Bell Practices direct.

Q112. HAVE YOU ATTEMPTED TO RECONSTRUCT APPROPRIATE RATES UNDER THIS AGREEMENT TAKING THESE CORRECTIONS INTO ACCOUNT?

A112. Please refer to Attachment VMM-13, Correction of Proposed DP&L Rate, which recreates Attachment VMM-7 with specific reference to DP&L and AT&T. I have attempted first of all in Part A of this Attachment (see page 1) to develop a rate that is consistent with the meaning and intent of the parties' Pole Line Agreement, utilizing the average cost of 35- and 40-foot poles from Attachment VMM-11. Recognizing that the FCC fully allocated cost methodology does not apply, and that we have no data on how the parties interpreted the meaning of "maintaining," for this purpose, I have applied a reasonable *ACC* of 15% based on the parties' 1995 rate. The resulting 2003 rate is $4.47.

Q113. HOW CAN WE KNOW THAT THE COST RECONSTRUCTIONS IN PART A OF ATTACHMENT VMM-13 ARE REASONABLE?

A113. The cost reconstructions are reasonable because the cost components are reasonable. In 1995 a rate of $3.50 would have resulted from a pole cost of $7.00. An ***EPC*** Component of ***** *times* an ***ACC*** Component of 12% *equals* $6.94 - a close approximation. This amount *times* an ***SU*** Component of 50% to each party pursuant to the existing Agreement would produce a rate of approximately $3.50, the rate the parties agreed to in 1995 ($6.94 *X* 50% = $3.47).

Q114. ALTERNATIVELY, HAVE YOU ADJUSTED DP&L'S RATE TO BETTER COMPORT WITH THE FCC METHODOLOGY?

A114. I have. In Part B of Attachment VMM-13 I have also developed alternative rates that assume DP&L's bare cost were developed appropriately according to the FCC methodology (see page 2 of the Attachment). To do so I developed AT&T's ***SU*** according to the principle of proportionate space usage underlying the FCC CATV formula, and according to the FCC Telecom formula developed in 1996 (see page 3 of

the Attachment). The resulting AT&T rates in Part B are $8.39 per pole applying the first FCC formula, and $11.64 per pole applying the second FCC formula.

Q115. HOW DOES AT&T'S SPACE ALLOCATIONS UNDER THE TWO FORMULAS COMPARE WITH THE FCC'S ALLOCATIONS TO CATVS AND TELECOMS?

A115. AT&T is allocated either a proportionate ***SU*** Component of 11.1%, or a weighted ***SU*** of 15.4% of DP&L's pole cost for 1.5 feet of space. The FCC's allocations are 7.4% to CATV, 11.2% to Telecoms on poles with 5 users, and 16.9% to Telecoms on poles with 3 users, for 1 foot of space in each case.

Q116. CAN THEIR CURRENT RELATIVE USE OF SPACE ON A POLE BE UTILIZED TO FORM THE UNDERPINNINGS OF A NEW JOINT ARRANGEMENT BETWEEN DP&L AND AT&T?

A116. Yes. In fact, I would recommend the implementation of a ratio of pole ownership between these parties that reflects their actual use of pole space in today's environment. It seems to me that DP&L's stated inability to isolate the cost of its standard 35- and 40-foot poles, let alone its poles in joint use with AT&T - a process that is required to comply with the pole cost directives of the parties' Joint Pole Line Agreement - presents an insurmountable difficulty for applying this Agreement. Establishing a ratio of pole ownership might obviate the need to talk about pole costs at all.

Q117. WHAT SHOULD THE RATIO OF OBJECTIVE POLE OWNERSHIP BE AS BETWEEN DP&L AND AT&T AS THE ONLY CURRENT POLE OWNERS?

A117. The ratio should be based, as stated back in 1926 by the NELA/Bell practices, on the space reserved for the use of AT&T and DP&L in today's pole environment; that is, it should consider just their relative usage as the only pole Owners. Looking again at Attachment VMM-13, we find average (Non-Urbanized and Urbanized) use of 2 feet by AT&T and 9.5 feet by DP&L, **********. See VMM-5 and Attachment GS 11.1-11.3 to Grace Sury's testimony. This

determination allocates the separation space to DP&L, which is consistent with actual usage. (In fact, the FCC has repeatedly characterized the separation space on a pole as usable by the electric company.) This results in relative average space usage allocations ***as between these parties alone*** of 17% to AT&T and 83% to DP&L. This would be the adjusted current allocation of pole cost as between these two parties alone, and would also be their objective pole ownership ratio.

Q118. WHY DOES THE RATIO OF ALLOCATED POLE COST EQUATE WITH THE OBJECTIVE POLE OWNERSHIP RATIO?

A118. The two are the same because it is when the ratio of ownership equals the ratio of the rates that the parties' joint use relationship would be in balance and no rental would be due from either party to the other.

Q119. WHAT IS DP&L'S TARIFFED RATE TO OTHER POLE USERS IN OHIO?

A119. DP&L's tariffed rate is $3.50 for the use of one foot of space.

Q120. PLEASE SUMMARIZE WHY DP&L'S PROPOSED POLE RENTAL RATE TO AT&T IS UNFAIR AND UNREASONABLE.

A120. DP&L's rental rate approach is unfair and unreasonable because it is not only inherently contradictory, but it also fails to take all relevant factors into account. It is contradictory because DP&L has lifted one critical component of its rate development mechanism - the 50%/50% pole usage "default" allocation percentage - from a contract provision that was written in and applied in the context of 1930, when there were only two pole users (the local power and telephone companies). Ignoring the fact that its Agreement with AT&T directs it to use the cost of the poles these parties actually share, DP&L applies this obsolete two-user percentage to the supposed "fully allocated cost" of its average pole as developed according to its (imperfect) reconstruction of an FCC formula designed for application to three users since 1978, and a presumptive three to five users since 1996.

But at the same time that it invokes the present to determine its pole costs, DP&L rejects the present as it applies to pole usage by multiple parties. There is no way to rationalize or reconcile such internal inconsistency inherent in DP&L's rate methodology.

XIV. CONCLUSIONS AND RECOMMENDATIONS

Q121. WHAT METHODOLOGY DO YOU CONSIDER APPROPRIATE FOR DEVELOPING NEW RATES FOR AT&T AND DP&L?

A121. A space-based formula methodology utilizing the ***EPC*** times ***ACC*** times ***SU*** formula could by adopted, but all three components of the formula must be developed fairly, reasonably, and accurately.

Q122. HOW SHOULD THE PARTIES DEVELOP REVISED COST ALLOCATIONS, *SU* OF THE FORMULA, THAT REFLECT TODAY'S POLE USAGE ENVIRONMENT?

A122. I would suggest that the FCC CATV formula, which allocates costs in direct proportion to space used by the parties, is the fairest means of doing so. First, it reproduces most faithfully the theoretical approach respecting reserved space usage that was directed by the NELA/Bell Practices when this Agreement was signed in 1930. Given the vast disparity of space usage today by the electric companies on a pole, it is also the fairest allocation of pole costs based on comparative space usage in today's joint pole usage environment. This calculation could be used to develop each pole user's ***SU***.

Q123. WHAT ANNUAL POLE COST (*EPC* X *ACC*) SHOULD THIS *SU* BE APPLIED TO IN ORDER TO DEVELOP A POLE USER'S RESULTING RATE?

A123. The pole Owner's annual pole cost must reflect only fair and accurate joint use costs, that is, costs that directly benefit all of the joint users on a pole. Looking first at the ***EPC***, every effort must be made to ensure that a joint user is assessed no costs in excess of those incurred by a pole Owner in direct relation to the truly shared structural asset. That shared structural asset is a pole that is a blend of 35- and 40-foot poles with the cost of

Owner's own non-pole-related fixtures removed. Therefore all costs associated with pole Owner's taller poles and its fixtures must be removed from its ***EPC***, in order to arrive at an annual pole cost that truly reflects the joint or shared pole cost to which the ***SU*** should apply.

Q124. HOW SHOULD FIXTURES BE REMOVED FROM THE *EPC*?

A124. The FCC has used a presumptive factor of 15% applied to a pole Owner's gross pole investment to remove fixtures. It has also stated that in all cases, actual data is preferred to its presumptions. Perhaps DP&L has performed some follow-up studies to show if its estimate of an added ***** for minor materials (fixtures), which equates with ***** if applied to gross cost, is accurate. If so, ********** ********** **********.

Q125. HOW MIGHT POLES TALLER THAN 35- AND 40-FOOT POLES BE REMOVED FROM THE *EPC*?

A125. Perhaps a similar factor might be developed to reduce pole costs to 35- and 40-foot poles, the only poles a pole Owner actually sets for joint use. This is imperative, since inclusion of taller poles represents a subsidy for the pole Owner. And a similar factor should also be developed to remove Owner-specific annual expenses such as tree-trimming, for the same reason. This could be accomplished in a compliance phase of this proceeding.

Q126. DO YOU HAVE ANY SENSE OF WHAT THIS COST REDUCTION FACTOR TO REMOVE TALLER POLES MIGHT BE?

A126. The FCC heard testimony in order to develop its fixture or "appurtenance" factor. The same process is probably needed in order to develop an additional factor for removing poles inappropriate for the joint use rate calculation from the mix.

Q127. HOW SHOULD DP&L'S *ACC* BE CORRECTED TO REFLECT ONLY FAIR AND ACCURATE JOINT USE COSTS?

A127. At the very least, the tree-trimming costs that DP&L incurs to protect its energized electric facilities cannot be included in its *ACC* calculation. The FCC recognized that capital right of way costs incurred by an electric utility, as reflected in its FERC account 365, were impermissible inclusions in the rate formula. The recurring annual costs associated with right of way clearing are no less so when those costs are effectively driving an electric utility's maintenance factor. These costs are known, and must be excluded. Mr. Zeldenrust also addresses several other adjustments to the ACC.

Q128. DO YOU HAVE ANY SENSE OF WHAT THE RESULTING AT&T RATE MIGHT BE ONCE THESE CORRECTIONS ARE MADE?

A128. Please refer again to VMM-13, page 2. Even with all DP&L's excessively tall poles included in its pole cost, and with its excessive tree-trimming costs included in its annual expenses, the AT&T rate produced by application of its corrected space usage component is $8.39. With appropriate factors applied to remove these DP&L-specific costs, the resulting rate would be some amount less than this.

Q129. ARE THE DOCUMENTS UPON WHICH YOU RELIED IN FORMING YOUR OPINIONS IDENTIFIED IN THIS TESTIMONY?

A129. Yes.

Q130. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A130. Yes.

MAHANGER CONSULTING ASSOCIATES, LLC

VERONICA M. MAHANGER MACPHEE
21 HEATHER LANE, SPARTA, NJ 07871, USA
TEL: (973) 729-5551 FAX: (973) 726-9637 E-MAIL: MAHANGER@PTD.NET

COMMUNICATIONS CONSULTANCY ESTABLISHED IN 1989

MCA provides consulting services to telephone and cable TV companies in the United States and Canada regarding contracts for shared (joint) use of structural facilities (poles, underground conduit) and rights of way (federal or municipal land, railroad property, private easements), and associated regulatory issues.

MCA consults primarily as a subject matter expert on joint use of poles. Services include:

- Analysis and negotiation of joint use contracts and drafting of alternative provisions
- Representation of clients before federal, state or provincial regulatory commissions
- Preparation and presentation of oral and/or written expert opinions and/or testimony
- Lectures and panel appearances by invitation before companies and professional associations

RESUME OF PRINCIPAL

PROFESSIONAL EXPERIENCE

Principal and Consultant, Mahanger Consulting Associates
June, 1989 to Present

Joint Use Appearances: Subject Matter Expert

- Federal Communications Commission (2005, Article submitted by BellSouth, RM No. 11293)
- Oregon Public Utility Commission (2004, Written testimony, UM 1087)
- Vermont Public Service Board (2000, Written testimony, In Re. Rule 3.700)
- Federal Communications Commission (1997: Comments, CS Docket 97-151)
- Trial Court of South Carolina, Greenwood County (1997: Expert witness, Duke v. United, Case No. 92-CP-24-614)
- New York Public Service Commission (1996, Oral testimony, Case 95-C-0341)
- Vermont Public Service Board (1995, Written testimony, Docket 5743)
- Maine Public Utilities Commission (1993, Oral testimony, Docket 93-087)

Attorney to the Engineering Department, GTE South Incorporated, Durham, NC
December, 1984 to June, 1989

Negotiated and managed GTE's contracts governing the construction and maintenance of its cable facilities in eight southeastern states. Responsibilities included the development of contracts, establishment and negotiation of related rates and fees, analysis of legal and industry developments, and preparation of written arguments and supporting documentation for presentation to public service/utility commissions (Virginia, 1988; Alabama, 1986). Contracts managed included:

- Facility joint use agreements, including cable television pole and conduit leases
- State, federal, railroad and private right-of-way easements and licenses
- OSP (initially) and COE (added later) engineering and construction contract labor agreements

PROFESSIONAL EXPERIENCE (Continued)

Attorney, Private General Practice, Durham, NC, May, 1983 to December, 1984
Legal Practice: Contract, Property, Criminal, and Domestic Relations Law

Assistant Dean, Duke University School of Law, Durham, NC, January, 1980 to May, 1983
Dean of Students, and Director of Student Affairs and Financial Aid
(Acting position concurrent with LLM to May, 1981)

EDUCATION

LLM, Duke University School of Law, Durham, NC, May, 1981
Concentration in Comparative Legal Studies: United States, Canada and Russia

LLB, University of Calgary Faculty of Law, Calgary, Alberta, Canada, May, 1979
Concentrations in Contract, Administrative and Criminal Law

BAR MEMBERSHIP

North Carolina State Bar, March, 1983

JOINT USE PUBLICATIONS, LECTURES AND PANEL APPEARANCES

December, 2005	"Two Wrongs Don't Make a Right: The Electric Industry's Exploitation of its Captive Pole User Market," Article, with Mark Simonson. (Included with BellSouth's Comments to the FCC dated December 2, 2005, in support of U. S. Telecom Association's Petition in RM No. 11293)
October, 2001	Panelist, Legal and Economic Joint Use Issues: Power, Telecom, and CATV, National Highway /Utility Educational Conference, Arizona.
April & May, 1998	"After the Act: Joint Use in a Time of Angst," Lecturer and Panelist, Western & Eastern Joint Use Conferences, California and Massachusetts
April, 1996	"Poles and the New Telecommunications Order: The Telecommunications Act of 1996," Article, in Outside Plant, Volume 14, No. 4, April, 1996.
July, 1993	"Crisis in Joint Use," Lecturer, Outside Plant Tri-State Conference, New York.
January, 1993	"Leasing Space on Power Company Poles - Highway Robbery?" Article, in Outside Plant, Volume 11, No. 1, January, 1993.
August, 1991	"Facility Sharing Agreements: A New Phase and a New Face," Lecturer, Outside Plant Tri-State Conference, Pennsylvania.

ATTACHMENT VMM-3

PRINCIPLES AND PRACTICES

FOR THE

JOINT USE OF WOOD POLES

PUBLISHED IN 1926

BY THE

JOINT GENERAL COMMITTEE

OF THE

NATIONAL ELECTRIC LIGHT ASSOCIATION

AND THE

BELL TELEPHONE SYSTEM

PRINCIPLES AND PRACTICES FOR THE JOINT USE OF WOOD POLES BY SUPPLY AND COMMUNICATION COMPANIES

INTRODUCTORY

These Principles and Practices cover the general engineering and operating features involved in the joint use of wood poles and are intended to be in conformity with the broad principles heretofore mutually agreed upon by the Joint General Committee.

The Principles set forth in a broad and general manner the basic fundamentals involved in the intercompany relationships on joint use of poles. The two groups of utilities recognize their responsibility to serve the public safely, adequately and economically. It is therefore essential that any arrangement entered into be such as to best facilitate the present and future rendering of both classes of service.

Practices are recommendations which cover in a more specific way the general ground included in the Principles and are based on an analysis of practical operating experience with joint use of poles. It is recommended that they be used as a guide in the preparation of new agreements for the joint use of poles and in the modification of existing agreements where it is desired by either party to bring such existing agreements into conformity with these Principles and Practices.

PRINCIPLES

1. Duties

Each party should:

(a) Be the judge of the quality and requirements of its own service, including the character and design of its own facilities.

(b) Provide and maintain facilities adequate to meet the service requirements including such future modifications in these facilities as changing conditions indicate to be necessary and proper.

(c) Determine the character of its own circuits and structures to be placed or continued in joint use, and determine the character of the circuits and structures of others with which it will enter into or continue in joint use.

(d) Cooperate with the other party so that in carrying out the foregoing duties, proper consideration will be given to the mutual problems which may arise and so that the parties can jointly determine the best engineering solution in situations where the facilities of both are involved.

2. Establishing, Maintaining and Terminating Joint Use.

Joint consideration by both parties of safety, service, economy, convenience and the trend toward higher distribution voltages should determine:

(a) When joint use should be employed, taking into account present conditions and those which can be reasonably foreseen, including the possibility of reverting to separate lines.

(b) The best engineering solution for the coordinated arrangement and design of facilities in joint use.

(c) The administrative methods for entering into, carrying on and terminating joint use.

3. Local Contact.

All parties at interest in a locality should maintain close cooperation and each notify the others of any intent to build new lines or to reconstruct existing lines, as an aid to orderly planning and the utilization of joint use where advantageous.

4. Contracts.

General contracts for joint use, if entered into, should define conditions for entering into joint use, for operating in joint use, for terminating joint use and for a practical procedure for modifying facilities in joint use from time to time.

In either general or specific contracts, any provisions treating of the character of circuits on poles for joint use should be so drawn as not to restrict changes in the character of the circuits of either party, except that it should be recognized that such changes may involve the modification or abandonment of joint use in specific cases.

Each specific instance of contemplated initial or modified joint use, whether embracing a single pole, a group of poles or an entire line, should be considered, as to acceptance, as a separate and distinct case, with the right of refusal by either party, and if accepted should be in writing.

Joint use now exists and gives satisfaction in many localities under one of two general plans, one a "Space Rental Plan" and the other a "Joint Ownership Plan." In addition, joint use is sometimes effected on an "Attachment" or "Contact Rental" basis, and sometimes under a "Permanent Rights" agreement, which is a modification of the "Joint Ownership Plan." The Joint Ownership Plan and the Space Rental Plan have in general proved the more simple and convenient working arrangements.

5. Costs.

The allocation of costs between the parties at interest should be prima facia, reasonable and equitable, taking into account all factors involved.

6. Legal Considerations.

Legal questions, including the sufficiency of right-of-way grants held by the parties and the protection of title or property of both parties in the case of mortgages, sales, mergers or consolidations entered into by either party should be given due consideration in the preparation of contracts.

In any terms of the contract dealing with liability for personal or property damage, care should be taken that such terms are not disadvantageous to either party.

7. Periodical Readjustment of Contracts.

Provision should be made for review and revision from time to time of those stipulations of a contract treating of conditions of a varying nature and particularly of items of expense to be apportioned between the parties, such as the cost of poles and rentals which are dependent on material and labor prices.

The construction and inductive coordination employed in joint use should be in accordance with mutually acceptable practices and in conformity with such recommendations of the Joint General Committee as are issued from time to time.

PRACTICES

1. Territory Covered by Agreement.

Agreements should preferably cover all existing wood poles of each of the parties and any other wood poles hereafter erected or acquired by either of them within a certain described territory, except those which carry circuits of a character that the parties wish to keep out of joint use.

Note: It is recognized that there are exceptional situations where it may not be desirable to make general agreements covering a given territory, as, for example, where the major portion of the poles of one of the parties carry circuits for which joint use is not generally advantageous. Such cases may be more satisfactorily handled by agreements covering a specific line or certain specific poles.

2. Types of Joint Use Agreements.

Joint use agreement should preferably be of a type under which each of the parties shares equitably in the cost of joint poles. This may be accomplished in either of the following ways:

(a) Space rental under which form of agreement the licensee rents space on the pole of the Owner and pays a rental per pole which is based on the amount of space reserved. A much used form of this is the so called "flat rental per pole" where the division is practically equal and the rental is approximately equal to one-half the average annual charges on a pole which is stipulated as the standard of reference.

(b) Joint ownership, under which form of agreement each of the parties owns a half interest in each joint pole and pays one-half the cost in place of the pole which is stipulated as the standard of reference.

Note: A permanent rights agreement is a modification of the joint ownership agreement which has been used occasionally under which each of the parties retains sole ownership of certain of the poles and the other party purchases a permanent right of occupancy. The other arrangements are the same as in a joint ownership agreement.

Rentals based on individual contacts or attachments are not generally recommended for joint pole agreements, as such a basis involves the expense and obligations arising from periodical inventories of the attachments. It is also difficult to establish rental rates for the many kinds of individual attachments which will continue to be equitable and mutually satisfactory. Furthermore, this basis does not have the advantage of providing a suitable space for the present and future requirements of each party. However, such a basis may sometimes be found satisfactory for an individual agreement where only a small number of poles is involved.

3. Conditions Relating to Joint Use of Poles.

It is recognized that there are very substantial advantages to both utilities in the employment of jointly occupied poles where the conditions and character of circuits permit. The conditions determining the necessity or desirability of joint use depends upon the service requirements to be met by both parties including considerations of safety and economy. Each party is the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

(a) It is recommended that joint use should be entered into in preference to separate pole lines on the same street or highway where the combination of circuits is such as to make further cooperative study of the problem unnecessary and in other cases where a cooperative study shows that joint use is economical and is the best engineering solution.

(b) Each party should retain the right to remain out of joint use with such of its pole lines as are necessary for its own sole use or in other cases where in its judgment the proper rendering of its service now or in the future requires separate lines.

(c) It is recognized that joint use is advisable but that it is necessary that when employed it should meet the service requirements of both parties and that any statement made as to conditions under which joint use is desirable is likely to change as time goes on and as service conditions and the state of the art change.

(d) Based upon the present state of the art, the Supply Unions and the Communication Utilities have stated as to their respective circuits (See appendices 1 and 2) the present limitations within which each group recommends that joint use be entered into.

(e) In any case where it is necessary that the two kinds of lines occupy the same side of the highway joint use is generally preferable to overbuilding.

(f) It is recognized that situations will sometimes arise in rural districts where greater economy can be obtained with separate lines than with a joint line and without sacrificing safety or service. It is also recognized that a utility will find in some cases that it is necessary to construct a line which is to carry such number and weight of attachments that joint use would not be economical or desirable. In such cases it is not intended to recommend joint use of poles in preference to other arrangements which would be more advantageous.

4. Cooperation to Establish Joint Use.

(a) When any party to a joint use agreement is about to erect a new pole line or to extend or reconstruct an existing pole line within the territory covered by the agreement, notice in advance should be given to the other party to the agreement, such notice showing the proposed location and character of the new poles. The parties should then cooperate to determine whether or not joint use of the poles should be established.

(b) When any party to a joint use agreement desires to occupy space on any existing poles of the other party within the territory covered by the agreement, notice should be given the owner of said poles and the parties should then cooperate to determine whether or not joint use of poles should be established.

5. Avoidance of Conflicting Lines.

Where joint use of poles is not to be established or where in accordance with Section 6 of these Practices joint use is to be terminated, the parties should make every reasonable effort to avoid the establishment of conflicting lines.

6. Procedure When Character of Circuits Is Changed

When either party desires to change the character of its circuits on jointly used poles it shall so notify the other party and the parties shall cooperate to determine whether or not joint use of the poles involved shall be continued. If it is not agreed to continue joint use of the said poles, the parties shall then cooperate to determine the most practical and economical method of effectively providing for separate lines. The party whose circuits are to be moved shall promptly carry out the necessary work and the parties shall cooperate to determine the equitable apportionment of the net expense involved in such relocation. In the event of a disagreement as to what constitutes an equitable apportionment of such expense the following arrangements are recommended:

(a) In the case of a space rental agreement, the licensee shall bear the said net expense.

(b) In the case of a joint ownership agreement the said net expense shall be divided equally between the parties.

Unless otherwise agreed by the parties, ownership of any new line constructed under the foregoing provision in a new location shall rest in the party for whose use it is constructed. The net cost of establishing service in the new location should be exclusive of any increased cost due to the substitution for the existing facilities of other facilities of a substantially new or improved type or of increased capacity, but should include the new pole line, the cost of removing attachments from the old poles to the new location and the cost of placing the attachments on the poles in the new location.

7. Ownership of Poles Under a Space Rental Agreement.

In any case where the parties to a space rental agreement shall conclude arrangements for the joint use of any new poles to be erected, the ownership of such new poles should be determined by mutual agreement. In case of failure to agree, the party then owning the smaller number of joint poles under the agreement should erect the poles and be the owner thereof.

Note: It has been found to be of advantage under this form of agreement to have each party own approximately one-half the total number of jointly used poles, as this tends to equalize the investment of the two parties. Furthermore, this has the advantage of reducing the intercompany billing and the exchange of money between the parties. This division of ownership should preferably be accomplished by each party owning certain continuous lines rather than having the ownership of the poles in a given line divided.

8. Joint Fundamental Plan.

An effective way of handling the proper development of joint pole lines in a given territory is through the full application of the principles on cooperation including advance notice, advance planning and the interchange of information. Experience has shown that this can be accomplished through a joint fundamental plan of the present and future developments of the overhead systems of the respective parties. Through such joint planning it will be generally found possible to avoid any difficult situations in locating the lines and the application of these Principles and Practices to both the present and future developments can be carried out in the most effective and economical manner.

9. Specifications for Joint Pole Construction.

It is intended that complete specifications covering recommended practices for joint use of poles under various conditions will be prepared as soon as practicable. Until such time as these specifications are issued, it is recommended that the National Electrical Safety Code be used as a guide to practice.

Existing joint pole construction should be brought into conformity with the recommended practices in an orderly and systematic manner. This may be accomplished by a provision in the agreement that a certain percentage of the existing construction be brought into conformity with the recommended practices each year.

10. Inductive Coordination for Circuits on Jointly Used Poles.

The "Principles and Practices for the Inductive Coordination of Supply and Communication Systems" as issued from time to time by the Joint General Committee should be followed.

ATTACHMENT VMM-4

CONSIDERATIONS INVOLVED IN JOINT USE OF FACILITIES BY REA BORROWERS AND TELEPHONE COMPANIES

PUBLISHED IN 1949

BY THE

U.S. DEPARTMENT OF AGRICULTURE

RURAL ELECTRIFICATION ADMINISTRATION

CONSIDERATIONS INVOLVED IN JOINT USE OF FACILITIES BY REA BORROWERS AND TELEPHONE COMPANIES

TABLE OF CONTENTS

CONSIDERATIONS INVOLVED IN JOINT USE OF FACILITIES BY REA BORROWERS AND TELEPHONE COMPANIES

Introduction

Joint use of facilities by power and telephone systems has been found to be feasible in rural areas with the development of high strength telephone wires that can match rural power line spans and the development of generally accepted construction standards and safety devices to minimize any possible hazards. The power line carrier telephone system, wherein the power wires act as guides for carrier radio waves, is another recent development having application in rural areas.

Joint use raises for REA borrowers questions of policy with respect to (1) protecting and advancing the interests of their members in connection with telephone rates and area coverage, (2) uniform relations with local telephone companies in their areas that may include mutuals, independents and members of the Bell Telephone System, and (3) development of engineering, construction and operating practices in cooperation with the local telephone companies that will make joint use an asset to all. Joint use raises for REA questions with respect to use of loan funds and protection of the Government's interests in borrowers' systems as they may be affected by joint use arrangements.

The joint use contract forms, copies of which were distributed to all borrowers with the Administrator's memorandum of July 3, 1947, were designed to include desirable legal, business and technical factors to provide adequate protection for REA borrowers and to establish a practical working framework for relations between REA borrowers and their local telephone companies when they wish to engage in joint use of facilities.

I. Objective of Joint Use of Facilities

The primary objective of joint use of facilities is to achieve savings in cost by eliminating one pole line. Elimination of structural conflicts as well as local regulations may also require or make joint use desirable.

The costs as well as the savings of joint use construction should be shared equitably by the power and telephone suppliers. Where the savings are appreciable, it can well mean that both services can be extended into areas where construction might not otherwise be economically feasible. Therefore, even though power system poles are already in place and can accommodate telephone facilities with little, if any, extra cost, telephone companies should be required to make payments representing their fair share of the costs of the poles so that savings can accrue to the consumers of electricity as well as to the telephone subscribers. In other words, the power consumers should not be asked to subsidize telephone subscribers.

II. REA Financing as Related to Joint Use Facilities

As a general rule, an REA borrower should not invest REA loan funds in joint use facilities in a given area to a greater extent than would have been required to provide facilities capable of rendering electric service alone in the same given area. This will raise no serious problem since the pole sizes in common use by REA borrowers are capable of accommodating certain telephone facilities and the contracts provide that the telephone companies shall pay any additional capital outlays required as well as rentals for the benefits they secure from the use of REA borrowers' poles and wires. Moreover, since telephone companies may also set and own joint use poles, an REA borrower should actually have a lesser investment in pole plant than would be required for separate line construction considering an area as a whole.

III. Telephone Company Qualifications

The sample forms of contracts and the recommended payments contained therein are predicated on the assumption that the telephone supplier is fully competent to carry its part of responsibility and that the REA borrower will not be put to any additional expense by reason of the telephone supplier's lack of knowledge or competence. Therefore, REA borrowers, before entering joint use agreements, should satisfy themselves that:

A. the telephone company concerned is a financially responsible organization which is fully capable of bearing its proper share of the costs and responsibilities for any possible hazards.

B. the telephone company has available a qualified engineering and construction force to assure that its facilities on joint use lines will be installed in accordance with accepted construction standards and safety practices.

C. the telephone company has a maintenance and operations force capable, where necessary, of maintaining its own facilities when installed jointly with power lines.

IV. Insurance

The contract forms have no clauses concerning insurance coverage on the assumption that each party will carry its usual insurance and that in the event of any claims, liability will be assessed according to the legal responsibility that is determined.

REA borrowers should satisfy themselves that the local telephone companies with which they share joint use facilities either

A. provide adequate reserves for insurance, or

B. carry adequate insurance policies.

The Bell Telephone System, for example, is self insured and sets aside reserves against losses. However, smaller telephone companies should be required to have liability insurance coverage comparable to that carried by REA borrowers.

V. Safety

It cannot be too strongly emphasized that proper precautions should be taken in joint use construction to minimize possible hazards to both telephone and power linemen as well as to consumers. Adequate standards of safety can be established by observation of the proper construction, maintenance and safety practices and installation of power and telephone protective devices. The telephone companies should be held completely responsible for installation and operation of their own facilities (except as otherwise provided for carrier telephone facilities) and borrowers who find it necessary to advise their local telephone companies on proper construction and safety practices would be best advised themselves not to engage in joint use construction with such companies in view of the risks and costs involved.

All wires and appurtenances on joint use poles should be treated as hot when performing line work.

VI. Description of Contracts

A. Power Line Carrier Facilities, REA Form DS-209.

The highlights of this form of contract are

1. The telephone company is given the right to transmit communications over the power lines at frequencies in the 150-500 KC band, but there is to be no interference with the use of frequencies by the REA borrower outside that band.

2. The telephone company is given the right to have attached to the power lines and poles such equipment as is necessary to provide for carrier telephone service. All such equipment is furnished or paid for by and remains the property of the telephone company but for safety reasons most installation and maintenance of equipment installed on power system facilities is to be performed by the REA borrower in behalf of the telephone company.

3. The telephone company will reimburse the REA borrower for all expenses incurred to accommodate the telephone facilities and will pay an annual fee for each pole on which telephone equipment is installed. To simplify billing, unit telephone equipment assemblies have been established and uniform telephone company payments for installation, removal and maintenance work performed by the REA borrower in connection with such units have been suggested in Exhibit B. These payments make allowance for average labor, material, transportation and overhead costs. If experience discloses that they vary too greatly from actual costs in any particular area, either party may request a revision annually.

The annual charge of $1.00 for each pole of the REA borrower upon which the telephone company has attachments amounts to a leasing fee. The fee of

$1.00 is purely nominal in view of the fact that there is no experience with the actual operation of carrier telephone systems on which there could be based an exact determination of any cost savings of this method of providing telephone service that might be shared between the telephone company and REA borrower.

Power consumption payments are based on estimates of the average power losses caused by the various types of telephone company equipment connected to or inserted in the power lines. The maintenance visit payment has been established to cover any work done by the Cooperative on any specific request from the Telephone Company. It is anticipated that maintenance jobs generally will involve single locations and that the work can be done in a single visit. The largest part of the cost of the maintenance visit is in travel time and motor vehicle expense, whether the trip involves replacement of a capacitor fuse or complete replacement of an isolating choke assembly.

4. If work is to be performed by the REA borrower on behalf of the telephone company that is not covered by the unit assemblies and costs set forth in

Exhibit B, additional reimbursement should be agreed upon. This would include, for example, replacement of poles or the initial installation of poles of greater height or class to accommodate the telephone company.

5. The contract term is 5 years and thereafter until terminated by 1 year's notice by either party.

6. All construction must be in accordance with the National Electrical Safety Code. The specifications and schematics of Exhibit A are illustrative only. A separate document entitled "CONSIDERATIONS OF MUTUAL INTEREST TO REA BORROWERS AND TELEPHONE COMPANIES IN INSTALLING AND MAINTAINING EQUIPMENT USED FOR CARRIER TELEPHONE SERVICE" is attached, dated July 9, 1947. This document provides installation drawings and engineering information that can be readily changed when justified without necessitating changes in the basic contract.

B. General Agreement for Joint Use of Wood Poles, REA Form DS-210.

This form of contract is intended to be used in areas where widespread joint use of facilities is contemplated to achieve savings in pole plant costs. This form of

contract provides that:

1. Each party may own joint use poles and license the other to make attachments thereto.

2. Each party reserves the right to exclude any of its facilities from joint use.

3. Each party is responsible for the installation and maintenance of its own facilities on the joint poles. The owner is to maintain its poles.

4. The owner will install a normal joint pole, as defined, which is suggested as a 35-foot, class 6 pole for new construction. If a pole of greater height and class than normal is required, the additional investment in excess of the cost of a normal pole is paid by the party requiring it. A shorter or lighter pole than normal may be installed by mutual agreement when suitable for specific locations.

   NOTE: Class 6 is the suggested strength for a normal pole on the assumption that the normal pole will carry the usual single-phase power circuit plus four (4) telephone wires.

NB

5. Where existing poles must be replaced to make them suitable for joint use, the owner will set new normal poles and assume the cost of transferring its own facilities to the new poles. The licensee will pay the owner the value in place of the replaced poles, plus the cost of removal less salvage, as provided in Article VIII and Appendix A of the contract. If poles more costly than normal poles are required to meet the licensee's needs, the licensee will also pay the excess costs. In addition, where an existing pole must be replaced to accommodate the licensee's service drop, the licensee will also pay the owner the difference between the cost of the new pole and a new pole of the same size as the replaced pole. Appendix A of the contract establishes tables of costs to permit ready calculation of payments due.

6. When poles must be erected between existing poles to make a line suitable for joint use, they will be erected at the sole expense of the licensee but will be the property of the owner. Each party will install its own attachments to such poles.

7. The licensee will pay a standard annual rental fee per pole to the owner for the privilege of occupying joint poles. Poles used for the sole

purpose of providing clearance between the facilities of the two parties, such as secondaries and services, are not considered as joint poles and are not subject to rental fees. To simplify agreement on whether a pole provides clearance or support, the following interpretation is suggested. Where individual services of either party (secondaries for the REA borrower and service wires for the telephone company) are involved, single pole crossover attachments shall be treated as clearance attachments under the provisions of Article VIII without regard to any support which may be supplied by the crossing pole. The term "service wires" for the telephone company means a service to a single subscriber which may consist of either insulated or open wire conductors.

The fees suggested in Appendix B of the contract are designed to reflect and share the savings in cost realized by joint use of poles. The fees are based on average costs per mile of separate and joint pole lines in various sections of the country and make allowance for costs to the owner and licensee of modifying existing line to allow joint use, as well as making allowance for extra costs to the licensee of making arrangements to occupy joint poles.

The rental fees payable by REA borrowers to telephone companies are higher than those they receive because rural telephone systems ordinarily employ smaller poles than power lines and incur a larger increase in cost than power systems in supplying poles suitable for rural joint use. The rental fees may be adjusted by mutual agreement at any time after 5 years from the signing of the contract and at subsequent intervals of not less than 5 years.

8. The first page of Appendix B is self-explanatory in its description of the basic principles followed in arriving at the rental payments suggested in Appendix B. While the telephone cost figures employed were those appropriate to Bell System Companies, the same principles can be used for determining equitable rental payments for joint use with any telephone company.

illustrate the method utilized in arriving at the suggested payments in Appendix B:

Sample Calculations of Telephone Company Rental Payment to REA Borrower

Separate rural telephone pole line (Note 1)	$350 per mile
Separate rural power pole line (Note 1)	$450 per mile
Sum of separate pole line costs	$800 per mile
Power System owned pole line suitable for joint use	$540 per mile
Added Telephone Company costs on joint line (Note 2)	$100 per mile
Added Power System costs on joint line (Note 3)	$ 10 per mile
Total	$650 per mile
Total Savings to both organizations $800 - $650	$150 per mile
Telephone Company's share of savings based on respective cost of separate lines: $\frac{350}{800}$ or 44% (Note 4)	$ 66 per mile
Assumed annual charge (Note 5)	10%

Tel. Rent per mile	Equals	Annual charge saved by Tel. Co. through not having to build a separate line	Less	Telephone Company's share	of	Total savings in annual charges
Tel. Rent per mile	Equals	10% of ($350-100)	Less	44%	of	10% of $150
Tel. Rent per mile	Equals	$25.00	Less	$6.60	Equals	$18.40

At 14 poles per mile, the rental payment is $\frac{\$18.40}{14}$ Equals approximately $1.30 per pole.

Note 1: Per mile costs are those of bare poles in place, including right-of-way, clearing, engineering and overhead in addition to direct installation labor and material costs. Such costs will be mutually agreed upon when joint use contract is executed.

Note 2: Includes such factors as:

(1) Allowance for Telephone Company's share of costs for additional poles (if required) for Telephone Company's benefit

(2) Allowance for additional cost of stringing telephone wire under energized power circuits

(3) Additional protection features (99A and 104A protectors) on telephone circuits

(4) Allowance for engineering and survey costs.

Note 3: Includes only item (2) of Note 7.

Note 4: An average value of 45% was used in the agreement form.

Note 5: No specific annual charge is fixed in the agreement. In the negotiations with the Bell System, a range of annual charges was considered as well as the appropriateness of a differential between the annual charges that apply to telephone company and REA borrower operations. However, the use of 10% results in rentals approximately equivalent to those in the agreed upon table in Appendix B of the contract form.

Note 6: Includes only item (3) of Note 2

Sample Calculations of REA Borrower Rental Payment to Telephone Company.

Separate rural telephone pole line	$350 per mile
Separate rural power pole line	$450 per mile
Sum of separate pole line costs	$800 per mile
Telephone Company owned pole line suitable for joint use	$540 per mile
Added Telephone Company costs on joint line (Note 6)	$ 20 per mile
Added Power System costs on joint line (Note 7)	$ 90 per mile
Total	$650 per mile
Total Savings to both organizations $800 - $650	$150 per mile
Power System share of savings based on respective cost of separate lines: $\frac{\$450}{\$800}$ or 56% (Note 8)	$ 84 per mile
Assumed annual charge (Note 5)	10%

Power System Rent per mile	Equals	Annual charge saved by Power System through not having to build a separate line	Less	Power System's share	of	Total savings in annual charges
Power System Rent per mile	Equals	10% of ($450-90)	Less	56%	of	10% of $150
Power System Rent per mile	Equals	$36.00	Less	$8.40	Equals	$27.60

At 14 poles per mile, the rental payment is $\frac{\$27.60}{14}$ Equals approximately $2.00 per pole.

Note 7: Includes such factors as:

(1) Allowance for additional cost of placing facilities over telephone wires

(2) Attachments on additional poles

(3) Allowance for engineering and survey costs.

Note 8: An average value of 55% was used in the agreement form.

9. The contract term is 25 years and thereafter until terminated by 3 years' notice by either party.

C. Application -- Permit for Joint Use of Poles, REA Form DS-211.

This form of contract was developed for use where widespread joint use of poles is not contemplated. It will find use in such cases as the elimination of structural difficulties that may arise at crossing points or when common occupancy of a few poles on one side of a highway is necessary. It is also a convenient means of recording those poles that are in joint use. This form of contract provides that:

1. The licensee shall reimburse the owner for any work necessary to make poles suitable for joint occupancy.

2. A nominal fee of $1.00 per pole is established as the annual rental. No differential in rental fees payable

by telephone companies and REA borrowers is warranted here since the owner is reimbursed at the outset for any extra costs.

3. No rental fee is payable for clearance attachments of service drops of either party.

4. The owner may revoke the attachment permit on 60 days' notice and the licensee may terminate the permit on 30 days' notice.

VII. Procedure for Executing Contracts

The contract forms for Power Line Carrier Facilities, Form DS-209, and for Joint Use of Wood Poles, Form DS-210, provide for approval by the Administrator of REA. In accordance with the usual procedures, three copies of a contract signed by the parties thereto should be forwarded to the Engineering Division of REA. Two approved copies will be returned to the borrower, one for the borrower's files and one for the telephone company. If an officer other than the President or Vice-President of a telephone company signs the contract, evidence of the officer's authorization to sign on behalf of the company should be attached unless otherwise filed with REA.

The form of Application-Permit for Joint Use of Specific Poles, Form DS-211, does not call for submission to REA for approval and will be subject only to review in the field by the Engineering Division.

Under the contracts for Power Line Carrier Facilities, Form DS-209, and for Joint Use of Wood Poles, Form DS-210, a specific request and authorization must be made each time it is desired to make attachments to poles and wires. The REA borrower and telephone company should establish procedures complementary to the contracts for establishing working relationships.

VIII. Construction Standards

Any type of joint use of poles should conform to the requirements of the National Electrical Safety Code except as the requirements of local authority may be more stringent.

1. For power line carrier installations, installation drawings and other engineering information are supplied in the attached document dated July 9, 1947, and entitled "Considerations of Mutual Interest to REA Borrowers and Telephone Companies in Installing and Maintaining Equipment Used for Carrier Telephone Service."

2. For joint use of poles, suggested standards based on the National Electrical Safety Code are contained in E.E.I. Publication No. M12, "Joint Pole Practices for Supply and Communication Circuits" and Part 5 thereof entitled "Special Considerations for Long Span Joint

for accounting purposes in accordance with the Manual of Work Order Procedure and Related Instructions. Thus, if a pole is removed and replaced, a retirement and construction work order should be prepared and cost recorded in the appropriate work in progress account in the usual manner. Amounts to be received from the telephone companies in accordance with the terms of the contracts are to be based on the costs as agreed upon in the contracts and will not, therefore, be the same costs as reflected on construction and retirement work orders. Any payments received from the telephone companies in connection with plant changes should be credited to Account 144, Retirement Work in Progress. If the amount received is more than sufficient to cover any balance in this account because of such charges, the difference should be debited to Account 144 and credited to Account 265.1/393, Donations in Aid of Construction.

B. Accounting for Revenues and Expenses

1. Telephone Company Rental Payments.

Revenues to be received from the telephone company for pole rentals should be credited

Use." These are available from Bell System companies and from the Edison Electric Institute, 420 Lexington Avenue, New York 17, N. Y., at a price of $1.25.

IX. Billing and Accounting

Exhibit B of the agreement form for Power Line Carrier Facilities, REA Form DS-209, and Appendix A of the agreement form for Joint Use of Wood Poles, REA Form DS-210, are designed to simplify and expedite the billing procedures for amounts that may be due the owner from the licensee for work done to make facilities suitable for joint use. Any cost figures or values that are left blank in the sample forms should be supplied from locally applicable data. Thus, the billing for work to be done in modifying existing lines can be predetermined and differences of opinion with respect to the charges in individual cases can be minimized. On the average, billings should approximate actual costs even though individual cases may show wide differences.

The internal accounting of REA borrowers need not be complicated by the billing procedures established under the joint use contracts and should be undertaken in the usual manner to reflect actual costs as closely as is warranted.

A. Accounting for Changes in Plant

All changes in size or location of poles owned by REA cooperatives should be handled

to Account 610, Rent from Electric Property and charged to Account 125.2, Other Accounts Receivable. The contract provisions dealing with rental payments require that a complete record be kept of all poles of either party which are in joint use; that any rentals to be billed shall be on a yearly basis according to the number of joint poles in use on the day preceding the specified billing date. The rent per pole will be in accordance with the contract appendices. Payments by borrowers for taxes and assessments on their own property should normally be charged to appropriate tax expense.

2. Installation and Maintenance Work for Telephone Companies.

All revenues and expenses involved in installation, repair or maintenance of the telephone company's attachments to poles, or for other work done for the telephone company on a reimbursable basis as provided for in the contracts, should be included in appropriate separate subaccounts of 520.1 and 520.2. Charges to telephone companies for maintenance service should be debited to Account 125.2, Other Accounts Receivable, when the credit to Account 520.1 is recorded.

3. Energy Sales.

Amounts to be received from the telephone company for electric energy consumed in connection with carrier service should be credited to Account 608, Other Electric Service, and charged to Account 125.2, Other Accounts Receivable.

4. Payments to Telephone Companies.

Payments to a telephone company for rental of its poles or for its plant changes necessitated because of the joint use agreement are to be charged to the appropriate rent expense account, namely, 776, Rents. Payments to telephone companies for tree trimming and other normal operating or maintenance work done by them for a borrower should be charged to appropriate expense accounts.

C. Capital Credits

Any revenues received as pole rentals or for electric energy losses in connection with carrier service should not be included in the base for patronage capital distribution.

U. S. GOVERNMENT PRINTING OFFICE : 1969

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C. - Price 10 cents

JOINT USE of FACILITIES

BY REA BORROWERS AND TELEPHONE COMPANIES

U. S. Department of Agriculture
Rural Electrification Administration

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

AT&T OHIO,	:	CASE NO. 06-1509-EL-CSS
Complainant,	:	
v.	:	
THE DAYTON POWER AND LIGHT COMPANY,	:	
Respondent.	:	

THE DAYTON POWER AND LIGHT COMPANY'S SECOND SUPPLEMENTAL OBJECTIONS AND RESPONSES TO AT&T OHIO'S FIFTH SET OF DATA REQUESTS

Pursuant to Ohio Admin. Code §§ 4901-1-19, 4901-1-20 and 4901-1-22, The Dayton Power and Light Company ("DP&L") supplements its objections and responses to AT&T Ohio's Fifth Set of Data Requests as follows.

GENERAL OBJECTIONS

DP&L incorporates by reference its General Objections to AT&T Ohio's Third Set of Data Requests.

DATA REQUESTS

Interrogatories

15. Please provide the current labor and materials costs to install each category of pole utilized by DP&L, subdivided according to:

a. Height of pole (30-foot, 35-foot, 40-foot, etc.)

b. Class of pole (class 4, class 5, class 6, etc.)

c. Material type (wood, concrete, steel, etc.)

d. Placement in or not in power (i.e. placement of a new pole where electric current is not passing through the lines versus replacement of an existing pole, where electric current is passing through the lines).

RESPONSE: Objection Nos. 2, 3. Subject to all General Objections, DP&L responds: The plant records are not segregated by size or type of distribution pole. Therefore, the costs of installing poles cannot be segregated by this asset type. DP&L has a computer program, Work Estimating System ("WES"), that calculates the cost of labor and materials for installation of poles for particular jobs. The WES, however, does not produce data in the format that AT&T Ohio is requesting in this interrogatory. Further, there are numerous subclasses for each type of pole and each subclass would require a separate calculation; thus, use of the WES to calculate the costs of labor and materials for each pole utilized by DP&L would be time consuming and unduly burdensome. Attached is a document containing historical labor and material costs to install poles, some of which DP&L no longer utilizes, which DP&L prepared while updating Schedule A. The sources for the costs were the WES and the construction project manager's input. The document provides labor and material costs, but does not address the difference between "placement in or not in power."

Witness(es) Responsible: Dona Seger-Lawson; John Kenton

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

AT&T OHIO,	:	CASE NO. 06-1509-EL-CSS
Complainant,	:	
v.	:	
THE DAYTON POWER AND LIGHT COMPANY,	:	
Respondent.	:	

THE DAYTON POWER AND LIGHT COMPANY'S OBJECTIONS AND RESPONSES TO AT&T OHIO'S FIFTH SET OF DATA REQUESTS

The Dayton Power and Light Company ("DP&L") hereby objects and responds to AT&T Ohio's Fifth Set of Data Requests.

GENERAL OBJECTIONS

DP&L incorporates by reference its General Objections to AT&T Ohio's Third Set of Data Requests.

20. Are capital expenditures incurred by DP&L on behalf of entities occupying its poles (contributions in aid of construction, or CIAC), including AT&T, booked to Account 364 (when incurred or at any other time), and if so, explain whether or not reimbursements of those expenditures are credited to Account 364? Describe how and where such expenditures and reimbursements are accounted for in DP&L's accounting system.

RESPONSE: Subject to all General Objections, DP&L responds: All expenditures which are properly capitalizable to Account 364 are first charged to Account 107, Construction Work In-Progress. Account 107 is credited for the amount of any associated monies recovered as CIAC. Upon completion of construction, the remaining net amount is then capitalized under Account 364.

Witness(es) Responsible: Dona Seger-Lawson

Attachment VMM-6

The 1996 Pole Attachment Act

The 1996 Pole Attachment Act

Section 224 of Title 47, United States Code (1994 & Supp. IV 1998), provides:

§ 224. Pole attachments

(a) Definitions

As used in this section:

(1) The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(5) For purposes of this section, the term "telecommunications carrier" (as defined in section 153 of this title) does not include any incumbent local exchange carrier as defined in section 251(h) of this title.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filled with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

(d) Determination of just and reasonable rates; "usable space" defined

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e) of this section, this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

(e) Regulations governing charges; apportionment of costs of providing space

(1) The Commission shall, no later than 2 years after February 8, 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(4) The regulations required under paragraph (1) shall become effective 5 years after February 8, 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

(f) Nondiscriminatory access

(1) A utility shall provide a cable television system or any telecommunications carrier with non-discriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discrimina210a tory[1] basis where there

[1] So in original. Probably should be "nondiscriminatory."

is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

(g) Imputation to costs of pole attachment rate

A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(h) Modification or alteration of pole, duct, conduit, or right-of-way

Whenever the owner of a pole, duct, conduit, or right of- way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

(i) Costs of rearranging or replacing attachment

An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).

FCC Maximum Rate Methodology
and
Associated CATV and Telecom Formulas

Pole Rental Rate Formula Underlying the FCC Maximum Rate Methodology:

PER POLE ATTACHMENT RENTAL RATE

=

EPC* X *ACC* X *SU

***Where*:**

EPC = **Owner's Average Historical Embedded "Bare" Pole Cost**

ACC = **Owner's Annual Carrying Charge Percentage for Poles**

SU = **User's Allocated Percentage of Space Usage or *EPC* X *ACC* ***

*** *EPC* X *ACC* = Owner's annual cost of owning or "carrying" its average pole**

FCC PESUMPTIONS APPLIED IN RENTAL RATE FORMULAS

EPC Component of Formulas: Pole Owner's Average Capital Cost of its "Bare" Poles

$$EPC = \frac{\text{(Total Pole Investment - Accumulated Depreciation - Deferred Taxes) } \textit{less} \text{ Fixtures \%}}{\text{Total Number of Owner's poles}}$$

Distribution Pole Investment:	Total amount in Owner's distribution pole line account
Poles Included to Derive Cost:	All of Owner's distribution poles (All heights, classes, material types)
Calculation of "Bare" Pole Cost:	15% deleted from ELCO costs to remove fixtures* 5% deleted from ILEC costs to remove fixtures*

ACC Component of Formulas: Owner's Annual Expense Percentage to "Carry" Poles

Sum of 5 Annual Expense Factors:	Administration Taxes Depreciation Maintenance Cost of Capital

SU Component of Formulas: Each Pole Occupant's Space Allocation Percentage

Poles Included to Derive Space:	35-foot and 40-foot poles only*[1]
Height of Jointly Used Pole:	37.5-foot blended joint pole (blend of 35- & 40-foot)*
Unusable Space:	24 ft (6 ft in-ground & 18 ft ground clearance)*
Usable Space:	13.5 ft (all remaining space above first attachment)*
Allocation of Usable Space:	1 ft CATV* 1 ft Telecom*
Safety Separation Space:	3 ft 4 in (ruled usable by ELCO for streetlights, etc.)
Number of Entities on a Pole:	3 (rural)* 5 (urban)*

* Note that these FCC presumptions are all rebuttable with actual data.

[1] Note that while Owner is allowed to include all of its poles to determine its ***EPC***, only the composite 37.5-foot pole - a blend of 35- and 40-foot poles - is used to determine a Licensee's ***SU***. This means that the pole Licensees to whom these formulas apply are allocated their resulting share not only of the cost Owner's 35- and 40-foot poles, but also of the cost of all of Owner's taller poles from which they derive no benefit.

FCC DETERMINATIONS OF CATV & TELECOM SPACE USAGE COMPONENTS FOR ALLOCATION OF OWNER'S POLE COST

Usable Space Allocations on a Joint Pole Based on FCC Presumptions:

	Non-Urbanized	Urbanized
CATV/Telecom	1.0 ft	1.0 ft
CATV/Telecom		1.0 ft
CATV/Telecom		1.0 ft
ILEC[2]	2.0 ft	2.0 ft
ELCO	10.5 ft	8.5 ft
Total Usable Space	13.5 ft	13.5 ft

Resulting Space Usage Factor or *SU* applicable to Pole Owner's *EPC* X *ACC*:

CATV Formula

The ***SU*** Component of the CATV formula is derived by expressing a CATV's 1 ft of allocated usable space as a percentage of the 13.5 ft of usable space available on the blended 37.5-foot joint pole, then applying it to Owner's ***EPC* X *ACC***.[3]

CATV *SU*	**1/13.5**	**1/13.5**
	= 7.4%	**= 7.4%**

Telecom Formula

The ***SU*** Component of the Telecom formula is derived by adding Telecom's 1 ft of allocated usable space to its equal share of 16 ft (2/3 of the pole's unusable 24 ft), based on the number of entities on the pole, and expressing this combined usable/unusable space as a percentage of the total height of the blended 37.5-foot joint pole, then applying it to Owner's ***EPC* X *ACC***.[4]

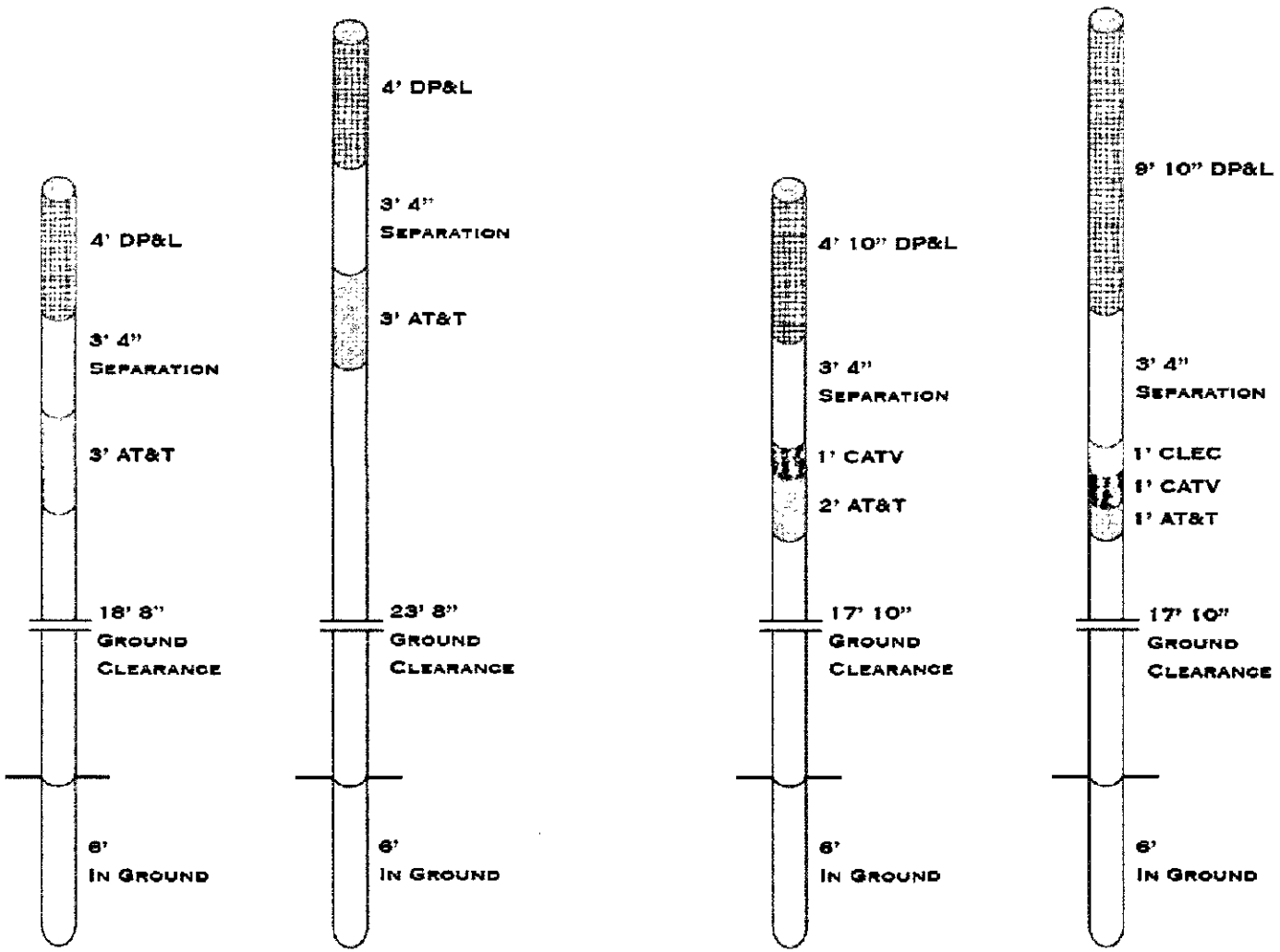
Telecom *SU*	$\frac{1 + (16/3)}{37.5}$	$\frac{1 + (16/5)}{37.5}$
	$= \frac{1 + 5.33}{37.5}$	$= \frac{1 + 3.2}{37.5}$
	= 16.9 %	**= 11.2 %**

[2] Under today's pole usage conditions, this has become the *maximum* usable space that is utilized by ILECs.
[3] Note that under this formula, therefore, a CATV pays 7.4% of both the usable and the unusable space on a pole.
[4] Under the Telecom formula the Pole Owner absorbs the cost of 8 ft of space (the unallocated 1/3 unusable space).

ATTACHMENT
VMM-8

EVOLUTION OF POLE SPACE USAGE SINCE 1930

TYPICAL POLE CONFIGURATIONS: DP&L AND AT&T



35 FOOT CLASS 5 — 40 FOOT CLASS 5

1930

35 FOOT CLASS 5 — 40 FOOT CLASS 5*

2007

*DP&L NOW APPEARS TO SET A 40-FOOT CLASS 4 POLE INSTEAD, WHICH IS STRONGER AND COSTLIER.

Attachment VMM-9

BREAKDOWN OF ITEMS IN FERC ACCOUNTS 593, 364, 365, & 369

Account 593 - Maintenance of overhead lines (Major Only)

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in Account 364, Poles, Towers and Fixtures, Account 365, Overhead Conductors and Devices, and Account 369, Services:

ITEMS

1. Work of the following character on poles, towers and fixtures:

   a. Installing additional clamps or removing clamps or strain insulators on guys in place.
   b. Moving line or guy pole in relocation of pole or section of line.
   c. Painting poles, towers, crossarms, or pole extensions.
   d. Readjusting and changing position of guys or braces.
   e. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.
   f. Reconditioning reclaimed pole fixtures.
   g. Relocating crossarms, racks, brackets, and other fixtures on poles.
   h. Repairing pole-supported platform.
   i. Repairs by others to jointly owned poles.
   j. Shaving, cutting rot, or treating poles or crossarms in use or salvaged for reuse.
   k. Stubbing poles already in service.
   l. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacements.
   m. Maintaining pole signs, stencils, tags etc.

2. Work of the following character on overhead conductors and devices:

   a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.
   b. Cleaning insulators and bushings.
   c. Refusing line cutouts.
   d. Repairing line out circuit breakers and associated relays and control wiring.
   e. Repairing grounds.
   f. Resagging, retying, or rearranging position or spacing of conductors.
   g. Standing by phones, going to calls, cutting faulty lines clear, or similar activities at times of emergency.
   h. Sampling, testing, changing, purifying, and replenishing insulating oil.
   i. Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.
   j. Repairing line testing equipment.
   k. Trimming trees and clearing brush.
   l. Chemical treatment of right of way area when occurring subsequent to construction of line.

3. Work of the following character on overhead services:

   a. Moving position of service either on pole or on customers' premises.
   b. Pulling slack in service wire.
   c. Retying service wire.
   d. Refastening or tightening service brac.

Account 364 - Poles, Towers and Fixtures

This account shall include the cost installed of poles, towers, and appurtenant fixtures used for supporting overhead distribution conductors and service wires:

ITEMS

1. Poles, wood. steel, concrete or other material.
2. Pole steps and ladders.
3. Towers.
4. Transformer racks and platforms.
5. Racks complete with insulators.
6. Insulator pins and suspension bolts.
7. Anchors, head arm and other guys, including guy guards, guy clamps strain insulators, pole plates, etc.
8. Brackets.
9. Crossarms and braces.
10. Extension arms.
11. Excavation and backfill, including disposal of excess excavated material.
12. Foundations.
13. Paving.
14. Permits for construction.
15. Guards.
16. Railings.
17. Reinforcing and stubbing.
18. Settings.
19. Shaving, painting, gaining, roofing, stenciling, and tagging.

Account 365 - Overhead Conductors and Devices

This account shall include the cost installed of overhead conductors and devices used for distribution purposes:

ITEMS

1. Circuit breakers.
2. Conductors, including insulated and bare wires and cables.
3. Ground wires, clamps, etc.
4. Insulators, including pin, suspension and other types, and tie wire or clamps.
5. Lightning arresters.
6. Railroad and highway crossing guards.
7. Splices.
8. Switches.
9. Other line devices.
10. Tree trimming, initial cost including the cost of permits therefor.

Note: The cost of conductors used solely for street lighting or signal systems shall not be included in this account but in Account 373, Street Lighting and Signal Systems.

Account 369 - Services

This account shall include the cost installed of overhead and underground conductors leading from a point where wires leave the last pole of the overhead system or the distribution box or manhole, or the top of the pole of the distribution line, to the point of connection with the customer's outlet or wiring. Conduit used for underground service conductors shall be included herein.

ITEMS

1. Brackets.
2. Cables and wires.
3. Conduit.
4. Insulators.
5. Municipal inspection
6. Overhead to underground, including conduit or standpipe and conductor from last splice on pole to connection with customer's wiring.
7. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
8. Permits.
9. Protection of street openings.
10. Service switch.
11. Suspension wire.

Dayton Power & Light Company
Distribution Capital: Cost Estimate Summary Listing (Jan 3, 2003)*

Pole Type, by Height and Class	Truck Accessible (TAC)		Non-Truck Accessible (NTAC)	
	Cost of Placement by DP&L	Cost of Placement by Contractor	Cost of Placement by DP&L	Cost of Placement by Contractor
30-foot, class 4				
35-foot, class 5				
35-foot, class 2				
40-foot, class 4				
40-foot, class 2				
45-foot, class 4				
45-foot, class 2				
50-foot, class 4				
50-foot, class 2				
55-foot, class 2				
60-foot, class 2			Not Provided	Not Provided
60-foot, class 1			NP	NP
65-foot, class 2		Not Provided	NP	NP
65-foot, class 1		NP	NP	NP
70-foot, class 2		NP	NP	NP
70-foot, class 1		NP	NP	NP
75-foot, class 2		NP	NP	NP
75-foot, class 1		NP	NP	NP
80-foot, class 1		NP	NP	NP

*From DPL-01155 through DPL-01355

VALUES OF DP&L POLES IN JOINT USE WITH AT&T: 2002*

Pole Sizes	Pole Value In $	# of Poles	Average Value of Poles
15			
20			
25			
30			
35			
40			
45			
50			
55			
60			
65			
70			
75			
80			
85			
90			
95			
100			
110			

Average value of poles based on standard 35' and 40' poles only:

35'	
40'	

Average value of poles, including an allowance for inflation at CPI and at flat 3%**

	CPI change to 2003 2.28%	3% change to 2003 3.00%
Average Value		

* Data reproduced from DPL 00461 to DPL 00469
** Average Inflation Rate of 3% was proposed by DP&L (see DPL-01398)

INCREASES IN DP&L / AT&T POLE RENTAL RATES: HISTORICAL AND PROPOSED

	Rate per Pole	
	Implemented	Contractual
Year	Rate	Rate
1930	2.00	2.00
1942	2.00	1.00
1995	3.50	1.75
2003 (Proposed)	45.00	45.00
Average Annual Increases Between:		
1930 and 1942	0.00%	-5.61%
1930 and 1995	0.86%	-0.21%
1942 and 1995	1.06%	1.06%
1995 and 2003 (Proposed)	37.61%	50.06%
Total Aggregate Increase Between:		
1930 and 1942	0.00%	-50.00%
1930 and 1995	75.00%	-12.50%
1942 and 1995	75.00%	75.00%
1995 and 2003 (Proposed)	1185.71%	2471.43%

Projected Pole Rental Rate, including an allowance for inflation at CPI and at flat 3%*

		CPI change to 2003	3% change to 2003
		2.38%	3.00%
1995 Pole Rental Rate	$3.50	$4.22 (8 years)	$4.43 (8 years)

* Average Inflation Rate of 3% was proposed by DP&L (see DPL-01398)

CORRECTION OF PROPOSED DP&L RATE

A: Consistent with the Parties' Pole Line Agreement[1]

Rationale: **If DP&L invokes the Pole Line Agreement to justify the allocation of 50% of its pole cost to AT&T, then it must apply the Agreement to develop that cost.**

PER POLE RENTAL RATE

=

EPC X ACC X SU

Corrected DP&L Rate Calculation per Parties' Pole Line Agreement:

EPC	=	Average Cost per Pole of "Providing" Standard 35- and 40-foot poles
ACC	=	Annual cost percentage for "Maintaining" Standard Poles
SU	=	AT&T's Allocated Default Percentage of 50%

EPC X *ACC* = Combined "Average Total Annual Cost per Pole" of "Providing" and "Maintaining" the "Standard Joint Poles covered by this Agreement"

DP&L's Annual Cost of Providing & Maintaining its Standard Poles per Agreement:

EPC	=	**xxxx**[2]
ACC	=	**15% (Estimated**[3]**)**
EPC x ACC	=	**$xxx**
SU	=	**50%**

AT&T's Rental Rate Based on Agreement = $xxx X 50% = $xxx[4]

---

[1] Applying the terms of the parties' Pole Line Agreement, this rate uses the limited data available to adjust DP&L's pole cost calculations, in order to correct its proposed rate. In fact, the default clause's reciprocal rate should be a blended rate that includes AT&T's poles.

[2] See **Attachment VMM-11, Values of DP&L Poles in Joint Use with AT&T: 2002.**

[3] This is an estimate, and is higher than would have produced the parties' rate of $3.50 in 1995. Actual *ACC* as calculated by the parties in relation to the "maintaining" of poles is not known.

[4] See **Attachment VMM-12, Increases in DP&L / AT&T Pole Rental Rates: Historical and Proposed,** which projects that the parties' 2003 rate should be either $4.22 (applying CPI) or $4.43 (applying DP&L sanctioned 3% rate of increase).

B: Consistent with the FCC Methodology[5]

Rationale: **If DP&L is invoking the FCC methodology to develop its pole cost, then it must apply the methodology to develop the parties' comparative space usage.**

PER POLE RENTAL RATE
=
EPC X ACC X SU

Corrected DP&L Rate Calculation Per FCC Methodology:

EPC	=	DP&L's Capital "Bare" Pole Cost - all heights, classes and materials
ACC	=	DP&L's Annual Charge for Poles
SU	=	Based on the CATV or Telecom Formula
EPC X *ACC*	=	DP&L's Fully Allocated Annual Cost of an average pole

DP&L's Fully Allocated Annual Carrying Cost Based on FCC Methodology:[6]

EPC	=	$160.81[7]
ACC	=	47.018%[8]
EPC x ACC	=	$ 75.61
SU1	=	11.1%
SU2	=	15.4%

AT&T's Rental Rate based on *SU1* = $ 75.61 X 11.1% = $ 8.39
AT&T's Rural Rental based on *SU2*: = $ 75.61 X 15.4% = $ 11.64

(See next page for development of space usage percentages, *SU*)

[5] Applying the FCC Methodology with respect to space usage, this rate adjusts DP&L's erroneous allocation of 50% to AT&T, *SU* of the rate formula, in order to correct the rate DP&L has proposed to AT&T. The same calculations have to be performed to develop AT&T's rate for DP&L's use of its poles.

[6] Please refer to DPL 01398 for DP&L calculations for the costs reproduced here (without application of the FCC fixtures factor, and to DPL 04193 and 04194 for different revised calculations since provided by DP&L (both with and without the FCC fixtures factor).

[7] This calculation accepts DP&L's calculation of a bare pole pursuant to the FCC methodology. However, the FCC presumption of 15% for fixtures should be corrected to 15.5% if this is an actual known DP&L percentage: see DP&L cost estimate data in DP&L 01155 through DPL 01355, the documents underlying **Attachment VMM-10**.

[8] This calculation utilizes DP&L's annual charge based on its actual known rate of return, as the FCC provides.

FCC DETERMINATIONS OF AT&T & DP&L SPACE USAGE COMPONENTS FOR ALLOCATION OF OWNER'S POLE COST

Usable Space Allocations on a Joint Pole Based on FCC Presumptions:

	Non-Urbanized	Urbanized
CATV/Telecom	1.0 ft	1.0 ft
CATV/Telecom		1.0 ft
CATV/Telecom		1.0 ft
AT&T[9]	2.0 ft	2.0 ft
DP&L	10.5 ft	8.5 ft
Total Usable Space	13.5 ft	13.5 ft

Resulting AT&T Space Usage Factor or *SU* applicable to DP&L's *EPC* X *ACC* (*A* X *B*):

AT&T *SU1* Pursuant to CATV Formula

The ***SU*** Component of the formula is derived by expressing AT&T's 1.5 ft of allocated usable space as a percentage of the 13.5 ft of usable space available on the blended 37.5-foot joint pole, then applying it to DP&L's ***EPC*** X ***ACC***.

AT&T *SU* **1.5/13.5** **= 11.1%**

AT&T *SU2* Pursuant to Telecom Formula

The ***SU*** Component of the formula is derived by adding AT&T's 1 ft of allocated usable space to its equal share of 16 ft (2/3 of the pole's unusable 24 ft), based on the number of entities on the pole, and expressing this combined usable/unusable space as a percentage of the total height of the blended 37.5-foot joint pole, then applying it to DP&L's ***EPC*** X ***ACC***.

AT&T *SU*	$\frac{1 + (16/3)}{37.5}$	$\frac{2 + (16/5)}{37.5}$
	$= \frac{1 + 5.33}{37.5}$	$= \frac{2 + 3.2}{37.5}$
	= 16.9 %	**= 13.9 %**

Weighted AT&T *SU* **= 15.4%**

[9] Under today's pole usage conditions, this has become the maximum usable space that is utilized by AT&T.