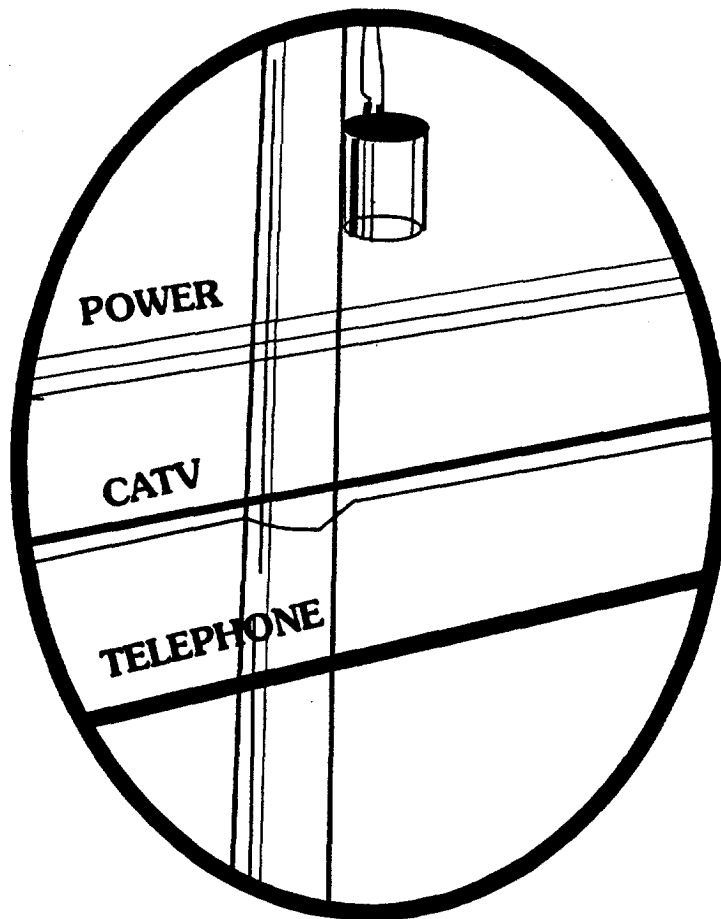




U.S. Department
of Transportation
**Federal Highway
Administration**

PROCEEDINGS OF THE FOURTH NATIONAL JOINT USE CONFERENCE



April 14-15, 1997
Cleveland, Ohio

Publication No. FHWA-PD-98-007

FOREWORD

The Fourth National Joint Use Conference was held in Cleveland, Ohio, on April 14-15, 1997, at the Holiday Inn Lakeside Hotel.

The objective of the conference was to focus attention on highway/utility joint use issues. Speakers representing power, cable television, and telephone were invited to participate on the program. The record of their remarks is contained within these proceedings of the conference.

About 200 professionals attended the conference. In addition to the technical sessions, workshops were conducted

on pertinent highway/utility joint use topics. These workshops provided an opportunity for the conference participants to discuss in detail issues raised in the technical sessions or of particular concern.

The enthusiasm, foresight, dedication, and competence of the conference coordinator; the conference staff members; and those people who participated on the program, on the planning committee, and/or in the conference were instrumental in making the Fourth National Joint Use Conference a success.

MODERATORS, SPEAKERS, AND WORKSHOPS

Conference Coordinator:

Reva Reed
RMR Consulting Services

Robert Legato
Bellcore

Larry Lee
Cincinnati Bell

Moderators:

Don Gordon
Electrical Consultant

Annette Anson
NYNEX

Tom Jackson
Georgia Power

Workshop Moderators:

Speakers:

Shirley Fujimoto
McDermott, Will & Emery

Robert Legato
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Chris Patchouras
Commonwealth Edison

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Puget Power

Mike Davis
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Dennis LaBelle
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Shirley Fujimoto
McDermott, Will & Emery

Ted Williams
General Design, Inc.

Tom Kennedy
Florida Power & Light

Angela Wallace
National Joint Utilities
Notification System

Sylvain Baillargeon
Telebec LTEE

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CONFERENCE COORDINATOR

Reva Reed
RMR Consulting Services

MODERATORS

Don Gordon (Electrical Consultant)
Tom Jackson (Georgia Power)

PRESENTATIONS

**Telecommunications Act of 1996 --
Update on Pole Attachment
Regulatory Developments**
Shirley Fujimoto (McDermott, Will &
Emery)

Notification
Robert Wilson (Cinergy Corporation)

PCS Impact on Utilities
Mike Davis (Duke Power)

Physical Compliance
Dennis LaBelle (M&T Consultants)

Impact on Joint Occupancy
Ted Williams (General Design, Inc.)

**National Joint Utilities Notification
System**
Angela Wallace (NJUNS)

Licensee Attachment Agreements
Robert Legato (Bellcore)

Owners' Responsibility -- Poles
Larry Lee (Cincinnati Bell)

**Owners' Responsibility -- Rights-of-
Way**
Annette Anson (NYNEX -- Vermont)

Municipalities Effect on Joint Use
Annette Anson (NYNEX -- Vermont)

TRAINING WORKSHOPS

**Telecommunications Act: How to
Apply Rate Philosophy**
Shirley Fujimoto (McDermott, Will &
Emery)

**Storm Loading on Joint Occupancy
Poles**
Tom Kennedy (Florida Power & Light)
Sylvain Baillargeon (Telebec LTEE)

SIMULTANEOUS WORKSHOPS

**Joint Occupancy Construction
Practices**
Bob Legato (Bellcore)

Space Allocation on Poles
Chris Patchouras (Commonwealth
Edison)

Common Trench Installations
Robert T. Carlsen (Puget Power)

Timely Coordination of Relocations
Dennis LaBelle (M&T Consultants)

Reva Reed

Good morning. I'm Reva Reed, and I'm the chairperson for this conference.

It's great to see so many faces that we've seen at the past conferences. That tells me we're giving you something that's useful and you want to come back and get some more. And we're real, real glad to see new people. That tells us that the word is getting out that this is a good conference and more people are coming. We're glad to see all of you here.

I have a few announcements before we get started. One of them is there are some changes on your program, so if you'll get your program, we'll go through some of those.

(Miscellaneous changes made to program)

In the packets that you received last night, there were critique sheets. Please fill those out before you leave. Your comments are very important to those of us that plan the conference. We try to incorporate any ideas we can that you give us.

Meal tickets are in your name tag holder. In order to get into the lunches, you must have your meal tickets. We will collect them at the door.

For anyone who is here that's driving, we have validated parking for you. See Ramona at the desk and she will give you a slip for the parking.

During the sessions this morning, if you have any questions, we ask that you hold them until the end of the session. We've allowed an hour, from 11:00 to 12:00, for questions. So, please hold your questions until that time. The reason for this is that we are recording the sessions so we can have proceedings. All of you will get copies of these proceedings in a few months once they are transcribed and printed. When you have a question or comment, please raise your hand, and one of the ladies from the desk, Janice Poston or Liz Gordon, will hand you portable microphones. Please wait until you get the microphone before you begin to talk so we can record everything you say.

So when you have a question or a comment, please raise your hand, stand up or give them some indication that you're going to make a comment so you can talk into the mike. Otherwise, it will not be recorded and we will miss -- all we'll get is the answer and not the question. And so we do ask that all of you please use the mike so that we can get all your comments to get them in the proceedings and also so all of us can hear your comments and benefit from them.

Reva Reed

I'd like to introduce the moderator for this morning's session. He is Don Gordon.

Don was with the Wisconsin Electric Power Company for 42 years. He spent 25 years coordinating joint use. Don is now retired from Wisconsin Electric but is still active in electrical consulting work. He is still a member of the American Public Works Association and the International Right-of-Way Association. He has attended every conference since the very first one.

Even though he is retired, he has been very instrumental in helping us with the programs and I am very thankful for his participation.

So let's all welcome Don this morning to get our program started.

Don Gordon

Thank you, Reva. Good morning. Believe it or not, it was a surprise to me when I was standing in the room next door last night and my wife came up to me and said, "Guess what? You're moderating a session tomorrow." So here I am.

It's almost like it was about 30 years ago, when I found myself suddenly in charge of a group of people responsible for joint use contacts. I didn't know much about joint use at that time. I quickly learned, though, that usable space on a pole was 13-1/2 feet, and that cable companies got one foot of that. I understand that's about to change, and I believe that's the subject of our session this morning on the Telecommunications Act of 1996. And I think we're going to get a little bit into what's beyond that.

Introduction -- Don Gordon

Our first speaker this morning is Shirley Fujimoto. I'm sure many of you know her. She has been an attorney in Washington, D.C. for as long as I can remember. I think the first trip I took to Washington I saw Shirley, and we talked about cable TV attachments on poles.

Shirley did her undergraduate work at Grinnell College and Northwestern University and got her law degree from Antioch School of Law. She is now with McDermott, Will & Emery. She serves as an interface on joint use and telecommunications issues before the FCC, Congress, and Federal courts.

Her subject today is going to give us an introduction to the Telecommunications Act of 1996.

**Telecommunications Act of 1996:
Update on Pole Attachment
Regulatory Developments -- Shirley
Fujimoto**

This is the part where I need to do the disclaimer. What Don didn't mention is that most of my work, in fact, all of my work on joint use matters, has been on behalf of the electric utilities. And I know this is a mixed audience with cable companies, CAPS [competitive access providers], carriers and so on and so forth. So if I seem to have a bias, that's the reason.

This morning I thought we would talk about these issues from what I call the 10,000 foot level, not to get into a whole lot of detail but to give you a sense of how this is all rolling out in Washington, D.C. And that seems to be where most of it's happening right now as far as regulatory events and issues regarding the laws and things that will govern how we move forward.

**Viewgraph #1
Recent Legislative and
Agency Events Affecting
Pole Attachments**

- * Telecommunications Act of 1966
- * Interconnection Rulemaking
- * Pre-2001 Pole Attachment Rate Rulemaking
- * Post-2001 Pole Attachment Rate Rulemaking

We're going to talk a little bit about how the various pieces fit together and then talk a little bit more about each of these particular areas.

The Telecommunications Act of 1996 essentially amended the Pole Attachments Act from 1978. The 1996 Act really functions as the beginning, not the end. It was passed in February of 1996, and so it gives the overall

framework for what the Federal Communications Commission (FCC) and the State commissions can do in the pole attachments area.

The FCC has primary responsibility for implementing the new terms that are in the statute, the amendments, essentially, to the Pole Attachments Act. And they're moving forward on three major fronts. Piece number one is the inter-connection rulemaking proceeding. This is a piece that's in progress.

The basic proceeding is done and it's in the reconsideration phase. There is one other rulemaking, what I call the pre-2001 rulemaking which has just come out.

Essentially, the FCC is soliciting input from various interested parties on its pole attachment rate formula. Those views are being collected in the first round around May 12th, the second round in mid-June, and we have requested an extension of time for that on behalf of several of our clients. And we're hoping that the agency will give us the additional time. But as of this moment, the date remains May 12th for filing comments.

The post-2001 rulemaking is expected out by the end of the month, and this is the one that's going to be looking at the rates and what the rate formula is going to be for the rates that go into effect starting in 2001.

So we've got the 1996 Act which sets

the framework and the three implementing proceedings at the FCC, all of which are at different points in the process. And after that, what we'll probably have are court appeals of any one of these three, and then pole attachment complaints. So all of these events -- the 1996 Act, the rulemaking proceedings, the appeals and the pole attachment complaints -- will all set regulations or rules on various issues.

What I am expecting is that we'll have a quick round, because we have certain rates that are going to be charged in the interim between now and 2001. So you'll have all of this, and then you'll probably have some complaints, and then we'll start 2001 and then probably complaints regarding those rates.

So the bottom line is that this is going to be an extremely active regulatory area for probably, I would say, the next decade, at least.

The period that we're in is essentially the period that we were in, for those of you who have been involved in this area for a while, the late 1970s to the mid 1980s, when there was a lot of activity. That's the era that we're getting ready to enter.

The 1996 Telecommunications Act amendments -- they probably seem a little strange to you if you know anything about the 1996 Act because the Act is pretty much deregulatory in mode: pro-competitive, less regulation, level playing field. And with the pole attachment

portion of the amendments, the FCC believes that Congress seems to be going in the opposite direction: more regulation, not less.

I think the only way that the FCC's interpretation makes sense is if you look at it from a policy perspective of what they think Congress was hoping to achieve. What the FCC wants to ensure is that there will be tons of facilities-based competition in the local exchange. What that means is that they want young upstart companies to come in, not only to offer service to you and others by leasing capacity from existing carriers, but they want new carriers to come in, building their own facilities and providing the services that way.

Part of what the FCC believes Congress had hoped for was to ensure that there would be no impediments to that facilities-based competition. In other words, the new entrants would have access to rights-of-ways, conduits, poles; there would be no impediments; and there would be a level playing field with cable companies.

So that's essentially the FCC's policy viewpoint for why we have what we have, which seems to be different from the direction that Congress was going in with regard to the rest of the 1996 Act.

The 1996 Act took effect, again, on February 1996 and the FCC has to promulgate regulations by February of next year in this area. So, there is a statutory deadline by when they need to

finish up their rulemaking. And seeing as how we're already in April of 1997,

Viewgraph #2

**1996 Telecommunications Act
Amendments to Section 224**

- * Act took effect February 8, 1996
- * FCC must promulgate regulations by February 1998
- * Extends the scope of Section 224 to all "telecommunications carriers" except "incumbent local exchange carriers"
- * Adds access provision
- * Increases in rates are phased-in over 5 years, beginning in February 2001

believe it or not, time is running short for the agency. They really need to move forward on some of these rulemakings in order to meet the congressional deadline, to have things in place by February of next year.

The 1996 Telecommunications Act amendments really left some of the provisions of the old Pole Attachments Act in place, but also added some new terms. With regard to the old part that wasn't changed, Congress left the reverse preemption scheme in place. This, as you know, is the provision

which gives the State public service commissions the right to regulate if they so choose. So they can certify to the FCC that they wish to regulate pole attachments and the FCC has to then take a hands-off policy. That, essentially, remains in place.

The definition of utility also remains in place so that, as far as pole owners, investor-owned electrics and incumbent local exchange carriers are the folks who are covered. Cooperatively-owned and publicly-owned companies are still exempt from the statute. So if you're a CAP or a cable company and you're dealing with, say, a municipality, in that event, you should know that they aren't covered. They're free to charge you market rates. And the same would be true of any rural electric cooperative, for example.

I think the new part that is probably the most significant is that in the old days, the pole attachment statute only applied to cable companies wishing to attach to utility facilities. If you were CAP, you did not get the regulated rate. You were forced to negotiate a market rate. And the new Act is now being interpreted by the FCC to extend that regulated treatment to all telecommunications companies. So, for example, for the first time, CAPS are included by the FCC. Long distance companies are now included. The FCC is including essentially anybody who is a common carrier. That, I think, is the most drastic change in the Act.

The second most important change is that there is a nondiscriminatory access provision in the Act which wasn't there before. The Act says that a specific pole owner, who is an electric utility, can deny access for reasons of safety, reliability, engineering. But, the overwhelming, I guess, prevailing trend is toward nondiscriminatory access, and the FCC has given life to that term, and we're going to talk a little bit about that as we go further on.

The Act also specified a new rate for telecommunications companies. So what it does, according to the FCC, is provide a scheme in which, until the year 2001, if you're a CAP, for example, and you do not have an existing pole attachment agreement, you are to be charged the existing CATV rate, whatever the rate is pursuant to the FCC's existing rate formula for cable.

The 1996 Act then envisions that in the year 2001, there would be a new rate that would phase in over a five-year period, between 2001 and 2006. And that rate is different from the existing rate in that it is to take into account the parties' use of nonusable space. The current rate formula talks about your use of the usable space. And the new statute essentially describes a different rate, presumably a higher rate but perhaps a lower rate, depending on the number of attachers on the pole and the amount of space that they're using.

The Act also describes certain additional requirements regarding rearrangement, replacement costs, and notification if the pole owners are doing any new work on the pole.

Viewgraph #3
The Interconnection
First Report and Order

Mandated nondiscriminatory access

Rules of general applicability and guidelines concerning certain issues

- Accepted industry standards (for safety, capacity, reliability, engineering issues)
- Federal requirements (OSHA/FERC)
- State and local requirements
- Uniform application
- Treatment of affiliates

The interconnection proceeding is the first proceeding in which the FCC started to address these so-called joint use issues. Pole attachments and conduit and infrastructure usage are a very tiny part of what is -- was and is -- an enormous, enormous proceeding. The interconnection rulemaking gets into a lot of other details having nothing to do with poles.

So, if you actually read the report and order, it will be big, many, many pages, and pole attachments are probably less than a dozen pages of it. That particular report and order is on reconsideration right now. This is where parties come in and they say, "FCC, we don't like what you've done in your report and order, and we would like you to change it." And that's the phase that we're in right now, where parties have come in and said, "We don't like it. We would like for you to change it."

I can just get ahead of myself and tell you that just about everything that the agency did is on reconsideration. So, there were lots of things that the electricians liked that the cable companies and CAPs didn't and vice versa.

A part of this proceeding is actually at the Court of Appeals in the Eighth Circuit, but it's all the issues not involving pole issues that are currently on appeal.

So, what we would see with this is once the agency finishes up with reconsideration, then the parties would have a chance to take it to the Court of Appeals if they don't like it, and then onto the Supreme Court if they don't like it then. So, we're looking at probably several years before this all gets settled out in the courts.

In this decision, the FCC, as I mentioned, gave their interpretation of what nondiscriminatory access means, and they have said that it means mandatory access. The FCC means that if you're a

pole owner, you need to permit access, except in cases of safety and reliability to all comers. If you're a CAP or a telecommunications provider, the FCC believes you have the right to ask for that access and assume that in most situations, unless there are special reasons, that you would get it.

The agency also discussed the basis for denying access due to safety. And they said, "Well, we're going to look at State and local requirements, Federal requirements, industry standards, that sort of thing." The FCC also specified that "nondiscriminatory" meant that there had to be uniform application of whatever practices pole owners are engaging in. That means that the FCC says that CAPs get treated the same way as cable companies and others.

The FCC believes that the utilities also cannot in any way favor themselves in this process. They have to treat themselves the same way as they would anybody who is wanting an attachment.

The agency specified that, while it was not going to mandate that pole owners increase capacity if they didn't have any, they felt it was reasonable in most instances to require that.

Utilities also have the right to reserve space for their own usage, pursuant to a bona fide plan. If they have a bona fide plan, they can reserve space. If they do not have a bona fide plan and they think that they may need the space in the future, then they're supposed to let others

use it in the interim and then take it back when they need it.

As I mentioned, in addition to interconnection, we have two rulemakings on rates: the first one addresses pre-2001 rates; the second one addresses post-2001 rates. The one addressing pre-2001 rates, we believe, is probably the most important. Well, put another way, it's the more important of the two, and the reason is, when we call it pre-2001, that's kind of a misnomer.

What this particular rulemaking is going to do is to look at the rate formula that's going to be used between now and 2001. The second one is supposed to get into the post-2001 rate formula. The only difference really being, that the post-2001 rulemaking should be getting into things like how do we share the unusable space, what rate formula, what process are we going to use to determine how we give meaning to the statutory language that talks about attachers sharing or paying for their share of the nonusable space.

But the other parts, for example, the various costs that go into the basic formula, the typical pole size or pole height, the typical amount of usable space in the pole, all of that is being addressed in the pre-2001 rate rulemaking. So this, what's being done now, will certainly affect what gets done post-2001 because the agency is not going to do a totally different formula, I don't think. They may, but I don't think they will for the post-2001.

Viewgraph #4
Upcoming Rulemakings

NPRM #1

**Pre-2001 for All Attaching
Entities; Post-2001 for CATV**

(CS Docket 97-98)

NPRM #2

**Post-2001 for Telecom
Carriers**

Adjust CATV Formula for Poles	New Telecommunications Carrier Formula for Poles
New CATV Formula for Conduit	New Telecommunications Carrier Formula for Conduit

NPRM #1 released March 14, 1997

NPRM #2 expected to be released before April 30, 1997

In the rulemaking that's underway, the agency talks about whether the average pole height should be increased due to the fact that, over time, pole heights have increased. They're looking at maybe modifying the usable space assumption from 13-1/2 feet to something different.

They raise questions about negative depreciation where there is so much depreciation on the poles that you actually get a negative pole investment account. And they're looking at whether or not they should modify the accounts that are included for the various segments of the carrying charge.

Viewgraph #5
CS Docket 97-98

**Proposed Pole Attachment
Formula Adjustments**

- * Increase average pole height
- * Decrease usable space
- * Modify formula to account for negative depreciation
- * Modify FCC accounts included in rate calculation

Proposed Conduit Formula

- * Introduces first FCC conduit formula
- * Proposed formula modeled after current pole formula

For example, for the utilities, there are various accounts for maintenance and A&G, and the agency is opening questions about whether or not those accounts should continue to be used or whether they should be fixed up; are there different accounts that should be substituted; expenses that are being over-included or under-included; and the same question with regard to telephone accounting. So all of those questions are open.

Also, in this particular rulemaking, for the first time the agency asks questions about a conduit rate formula. As most of you know, since 1978, we've only had a pole rate formula. We never have had a conduit rate formula. And, the reason has been -- at least what we've heard in the industry -- is that there hasn't been any need for one. Conduits typically haven't been an area where parties have not been able to reach some kind of a win-win agreement, and so there hasn't needed to be one.

But for some reason, since the passage of the Act, more questions appear to be coming up and the agency is looking at trying to come up with something that they can use. The direction they seem to be leading in is to try and use a formula which is very, very similar to the pole formula. So you have something like a gross investment in conduits and you apply a carrying charge to that. And then you make some allocation regarding the amount of usable space which exists, and then you jumble it all up and you come up with an answer. And that, I think, pole owners find a little problematic because of the way the accounts are handled for conduit. So this is also a biggie.

No news on the second one, on the post-2001, except that it should be out at the end of the month.

If you are a pure CATV provider -- and what does "pure" mean? Well, I think

Viewgraph #6
Summary of Pole Attachment Rate Scheme

Type of Entity	Applicable Rate	Rate After 2001
Pure CATV provider	FCC's current CATV rate	FCC's current CATV rate
CATV provider that also provides telecom services	FCC's current CATV rate	FCC's new telecom rate
Telecom service provider (CAPs, Others) with no existing pole attachment agreement	FCC's current CATV rate	FCC's new telecom rate
Telecom service provider (CAPs, Others) with existing pole attachment agreement	Rate established in existing agreement	FCC's new telecom rate
Incumbent LEC (<u>i.e.</u> , LEC providing service on February 8, 1996)	Market-based rate	Market-based rate
New LEC (<u>i.e.</u> , LEC that was not providing service on February 8, 1996)	FCC's current CATV rate	FCC's new telecom rate

we're going to have a lot of arguments about what "pure" means. Pure is supposed to mean that you are a CATV provider just doing one-way video. So if you're just traditional one-way video, you're considered to be pure.

Well, are you supposed to be pure throughout your system or is it the case

that if you have one segment of your network which is providing data, for example, does that contaminate the entire network? All those questions have yet to be answered.

But for the moment, let's just assume that pure CATV provider means somebody who is providing one-way video,

the traditional CATV company. Right now, under the FCC's current rules, that entity is entitled to the current CATV rate. And, again, a caveat is that what we're talking about here is not necessarily what two willing parties would negotiate. A pole owner and an attacher can negotiate whatever they'd like to, and that would be just fine with the FCC.

What we're looking at here is the default position. What would happen if the parties came to the FCC with a complaint, where would the FCC likely end up? That's what we're talking about on this slide. So you're free to negotiate whatever you like. But if there is an issue, either a seller or a buyer who is unhappy, then we start looking at what's in the chart.

For the pure CATV provider, post-2001, the FCC would probably say that they still get the existing CATV rate. The FCC and Congress are concerned about rate shock to mom-and-pop companies, and they said -- "it's a compromise." They said, "If you're just doing one-way video, post-2001, you will continue to be entitled to the current rate."

The second category, the CATV provider who also provides telecommunications services, you'll notice there that right now the FCC would say they're entitled to the CATV rate. But post-2001, the FCC is likely to treat the CATV entity just like any other telecommunications provider. They're going to be subject to the new telecom rate.

Third category, if you're a telecommunications service provider with no existing pole agreement -- and that's critical -- no-existing pole agreement, meaning you did not have an agreement before the Act was passed in February 1996, then the FCC would say you're entitled to the current CATV rate, pre-2001. Post-2001, the FCC would apply the new telecom rate.

If you're a telecom provider who had an agreement prior to February of 1996, then that contractual agreement stays in place until 2001. Post-2001, if you wish, and I suppose if the parties don't agree to continue the existing agreement, the FCC is likely to say you would be entitled to the new telecom rate.

The incumbent local exchange carriers, folks who are both pole owners as well as attachers, are not included as an attaching entity in the definition of the Act. Therefore, it's a market-base rate for them, meaning that if they attach to electric facilities, the FCC would say that they do not get treated like any of the other telecommunications providers that we talked about above.

There is a new competitor: CLEC. This is somebody who gets into the local exchange business, essentially after the Act. The FCC believes they get treated just like all telecommunications providers. So they get the current CATV rate now and the new telecom rate later, the new telecom rate being the new rate that's specified in the Act, which talks about parties being responsible for the

unusable space. That's sort of the difference between the old and the new rate formulas -- this additional responsibility for the unusable space.

But, because of the way the formula is defined, I don't think anyone is clear on whether that's going to be a higher rate or a lower rate. I think most people are assuming it's going to be slightly higher, but it may not be because of the way the FCC decides to specifically calculate the rate. I think that's an open question.

I know you will have questions later, and Christine Gill and I -- Christine Gill, who is my partner -- we will be at the workshops and you're free to ask questions there, as well, if we don't get to all of them at the Q&A later this afternoon or later in the morning.

I just want to close by saying that whatever new rules or regulations get adopted by the agency will likely be challenged in the courts. We're going to go there whether we like it or not, because there are just too many interested parties. And the agency, I know, is not going to be able to make everybody happy.

And so, going back to the beginning where we looked at the Act and the three rulemakings, we're not going to stop there. We're just going to keep going. We've got the Act. We've got the three rulemakings, and those proceedings will definitely set the rules of the road for the foreseeable future.

They're not going to end there. We'll go to the courts. We'll probably go to multiple courts, actually, before all is said and done. And even when those things are all done and we have the regulations and we have the courts saying, "Yes, the FCC was correct," "No, the FCC was incorrect," then we'll probably be fighting in the complaint proceedings on the little nuances and details that the regulations, for sure, will not cover completely.

Thank you.

[Shirley Fujimoto addresses questions in the Q&A portion of the proceedings]

Introduction -- Don Gordon

Our next speaker this morning is Robert Wilson from Cinergy. He has been with Cinergy for 30 years, 13 years of that in joint use. His title is Joint Use Administrator. He is going to talk to us this morning about notification.

Notification -- Robert Wilson

All of us are joint users -- or at least most of us here are. So everything I'm probably going to talk about, a lot of us already know. But for the ones that maybe don't deal with joint use a whole lot, maybe it will be something you can pick up.

I'm sure that, across the nation, we all do things a little bit different or the end result is the same but we may use different forms, different notification processes.

Notification has always been important but I think it's going to become even more important with the 1996 Telecom Act. They talk about nondiscriminatory notification of modifications of our joint-use structures.

So you're basically talking about some form of documentation. That includes timely notification, which means that if you have a project you have to notify the other parties that are on the pole. It has to be timely because they could possibly restrict when you're going to be able to do your work. Fortunately, the State usually will help us out if we have to get something moving.

Part of that documentation is scheduling of the records so we can get these poles on schedule or rent or whatever, so that we can keep accurate records. And, of course, there's always billing. It could be a matter of making sure that you've got your annual rental billing going out yearly. Or it could be you've got a program in-house where you're possibly transferring attachments for other companies.

This is an area now and in the future where, if you've got a lot of these different providers out there on your poles, they may not even have local people. They may not be able to transfer their attachments. So this is an area where billing could come into play where the pole owner almost becomes a custodian. And the possibility exists where we could actually bill and have to transfer the others.

And, of course, if you don't get the timely notification out there, that could hold up project completion.

In Ohio we've got a proposal form which is really just a paper form that is in four parts, and I'll get to that in a minute. But the idea behind it is, if that everything is on one piece of paper.

[See Attachment #1]

The initial entry area talks about the project, the location, possibly even what type of project it was.

Next on the form you would list the initiating company poles, our pole

numbers and then the other company pole numbers. And then there is a place for other company poles.

So what that does, it allows you to list the pole numbers that some action is going to take place on, and then the action, whatever it would be, would be to propose work. It could be as simple as replacing poles and they need to transfer attachments. But this would be the official notification document that they would receive.

There is also an area for the billing information. Most of you probably know, with the electric and telephone companies, we all have agreements or operating routines which call for both of our companies to be made whole, so we've got sacrifice life sometimes on poles. We've got cost of removal.

Since our gas and electric are Cinergy B and somewhat of a metropolitan area and, with Cincinnati Bell, we have a lot of programs down there because we are so localized and we're able to streamline a lot of the processes. So billing becomes even more critical for ourselves at Cincinnati Bell. If they need a pole replaced and its energized primary, we do it. We bill them.

Also there is an area on the form so you can reply if there's a problem or if you need a larger pole. You also have some existing pole information where you can share with them what was there, what year it was, the size. And then, of course, at the end, there's a

scheduling, whether you're plus-one in a pole -- if it's a brand new pole in the lead or if there is no action at all, it would be blank.

And then down at the bottom, we've got the initiating company contact. That's where we would actually fill it out when we're complete, and then the other company could concur and complete.

So, it's kind of an all encompassing form. We use it with most of our telephone companies in our area. I think other companies in Ohio do the same. And you all probably have different types of forms. They all basically arrive at the same result.

This proposal form, when it's sent out, it's a four-carbon form so that the number one copy is the answer copy or the "will comply" copy. That allows the cable or telephone company to get the information back to you within 10 days. Does that happen? Okay. They also receive a field check copy which is the number two, and then they receive a number three which is the other company completion.

We'll retain the four and, when we're done, that's our completion and we send it back. So every time these proposals go out, they go out with construction drawings and it goes out in the mail. Then they send it back in the mail. Then we send it in the mail and they send it back in the mail. I think the only one that really wins is the U.S. Mail.

This is my next topic. We've got a joint venture between Cinergy and Cincinnati Bell, and we basically went electronic with this notification process. The application is in Lotus Notes release. It was 4.0. We're up to 4.5 now.

We modeled it over the existing paper process I just went over. Basically, what we did in this system, we've got authors and approvers. The concept is, with downsizing we can no longer afford to have everything come into joint use operations and be sent out. We may have to monitor and track, but we need to get it down to the engineers, the technicians, the designers, the clerical support.

So this is actually at the technician's laptop. He prepares the proposal. He attaches the drawings. He submits it. That's what an author does.

Basically, like I said, the author would create the joint use request. Once he does that, that's in kind of like a draft, not yet submitted. So it gives him some time to get his project in order. He attaches his construction drawings electronically and submits for approval.

When he submits for approval, it goes into a folder called awaiting approval. Basically all that is, is an area where someone that may have a little more knowledge in joint use can ensure that the billing is correct, it's accurate, and that scheduling is going to take place on that electronic form.

If the author has the training or the knowledge, he can be the approver. Or if your company is set up where you actually have to have supervisory approval, you can use it that way, too.

Basically, this is the first screen that you see in Lotus-Notes. [See Attachment #2] Like I mentioned, it's online. It's set up so that both companies have their own data base, which allows a security so that even though this can speak with the other companies within our area, right now they're not online so we have to print hard copy. Eventually, they will be, so there are security issues where Notes will actually take and accept only your company's data.

Shirley mentioned written notification. That's true but if you can agree you can do this electronically, okay? May take a letter or whatever, and will the cable and telephone companies agree? Well, there are some advantages to the electronic, of course. It's same day. As soon as you approve it, they got it within one hour.

The Internet capability is there, of course. So that's maybe some of the other smaller companies that would not have Lotus Notes, they could at least reply and receive these requests somewhat like E-mail. There is no paper, so forget about all these file drawers of all these joint use proposals. There's no mail. There's no in-box. This thing has history tags so when they talk about the notification process, if you want to know whether or not they received it, when

they answered it, when it was approved, who approved it, it's got all the history tags to it.

Automated billing, net billing, so if you're billing back and forth, you do it on a monthly basis or semiannually, whatever, and then automated scheduling, there's an output text data that would actually drop out of this system and maybe go into your mainframe for your joint use records.

And, of course, there is a time stamp. So, you know, there are some advantages to the cable and telephone companies, mainly for getting the work done quicker.

In the first view you will see, just click on an icon to create a request, and there are all the folders that they drop into, based on what you're doing. The first one is the draft not yet submitted. Then it goes to awaiting approval by your company. Once it's approved, it goes to the other company such as Cincinnati Bell. It goes into their folder called awaiting concurrence. Once they concur, it's a matter of both companies completing.

This is basically just an initial entry screen [See Attachment #2] which is the initial project info. Also have a provision where you've got your wire centers. Maybe you want to key all your wire centers in here or, if you've got a construction district or a cost center, you actually earmark your construction district or cost center in here also.

The second part [See Attachment #3], just as the paper form was, there's a line item which is adding pole information. This is the pole data entry screen which allows you to enter the pole numbers, existing height, the year set. If you're placing or replacing a pole, you could put in 45, 50, whatever you're doing.

Next is the billing screen [See Attachment #4]. In the future release, based on the initiator, the billing will be automatic so that if it knows that you or telephone companies are asking electric to replace some of their poles, it will automatically calculate sac life and cost removal, based on your operating routine or tables that you build in the system so that some of the engineers or designers out there don't really need to know about joint use. The system will take care of it, hopefully.

Of course, there is an area for proposed work and we're basically going to have codes set up so that they can put in a one-letter code, and it will populate the field. And, of course, there is an area to reply, the other company reply. Next step that the designer does after he puts in the pole numbers, at the bottom of the proposal form, there's an icon called "attach file." He clicks on that. It brings up his hard drive, or it can go out to his server, however you all are set up. And you can grab a tif-file which is a scanned image or a DGM which is a micro-station or some of you may be on AutoCAD. And then your files are attached.

You've got an action button which allows you to add a message, cancel the request, or send a memo to the originator. There's another icon for messages. It gets you to the same path. But this is in the area where, if you wanted to document that you've notified somebody about something critical -- maybe it's a road project and you need to let them know this job has to start no later than or has to be completed by whatever -- so all those little crazy details that you'd like to document can go in here. And it continually builds, as many messages as you want. You put a message in. The next company puts a message in. It just keeps rolling right on down.

Basically, that's it for the engineer or the designer. He just fills out the proposal, attaches these drawings, and submits it. He's done. He really should have ownership in it, though. He should be watching his project which he can go in and monitor.

Basically, once he submits it, that project goes into awaiting approval by his company. As to submitting, there are two areas from the initial project at the top of a form. In the paper process, we had the two blocks at the bottom.

We moved the initiating block and the concur or completion by the other company block up to the top of the form which basically allows someone to go in and find out if the job has been submitted, who submitted it and whether or not the other company has concurred.

Sample project response due: As soon as this thing is approved, it time stamps it. Based on your agreements or operating routines, if the other company has to respond within 10 days, it stamps it 10 days.

It's got a history where you could actually go in and see who created it, who authored it, who approved it. And you can assign. If you get projects from other companies, you can click-click and have it assigned to whoever. It winds up into their folder to take care of that project.

Of course, there are all kinds of views. The project status folder tells you what stage of the game that project is in, whether it's been approved, whether the companies concurred or not concurred. And there are little symbols that kind of tell you a little bit about the project without actually getting into it. That means that there is a message attached. A paper clip tells you that there is an attached drawing, so if there is no paper clip there, there are no attached drawings. There is a folder by company status. It has a search button, put in a pole number or whatever you need to search for and it's pretty fast. It finds every hit, so I'm anxious to see how this works down the road, whether we archive the data or whatever, because if you're in a joint use office and someone calls, that's the hardest part to find out where the project is, who has it and what they are talking about.

Where are you going to get the information? If they can give you a pole number or road name or something, hopefully, once you build this system in and you've got enough data in there, you can put your pole number in and you're going to find the project. You may find every project that there was some joint use operation happening.

Now, this doesn't take care of our normal operating business. You know, if we're out there putting switches on our poles or anything like that, it wouldn't be in this system. This is strictly for communications to those other companies that are on our poles.

There is also a view by proposal ID. It's just numerical. The system actually drops the number down so that you don't have to worry about assigning a number or going to a book to get a number. It actually drops in the next number automatically for you.

There is a topics area where you can put in your reciprocal prices. Maybe you've got a reciprocal price sheet and you need to share this with the other people throughout your company. They can go into the topics area and they can hold down the reciprocal charge schedule. There are help screens in here. Kind of talks about how the program operates, if they run into a problem.

There is also an area where you can change the year so that if you've got yearly prices you have to update, this is the area where you would go in and

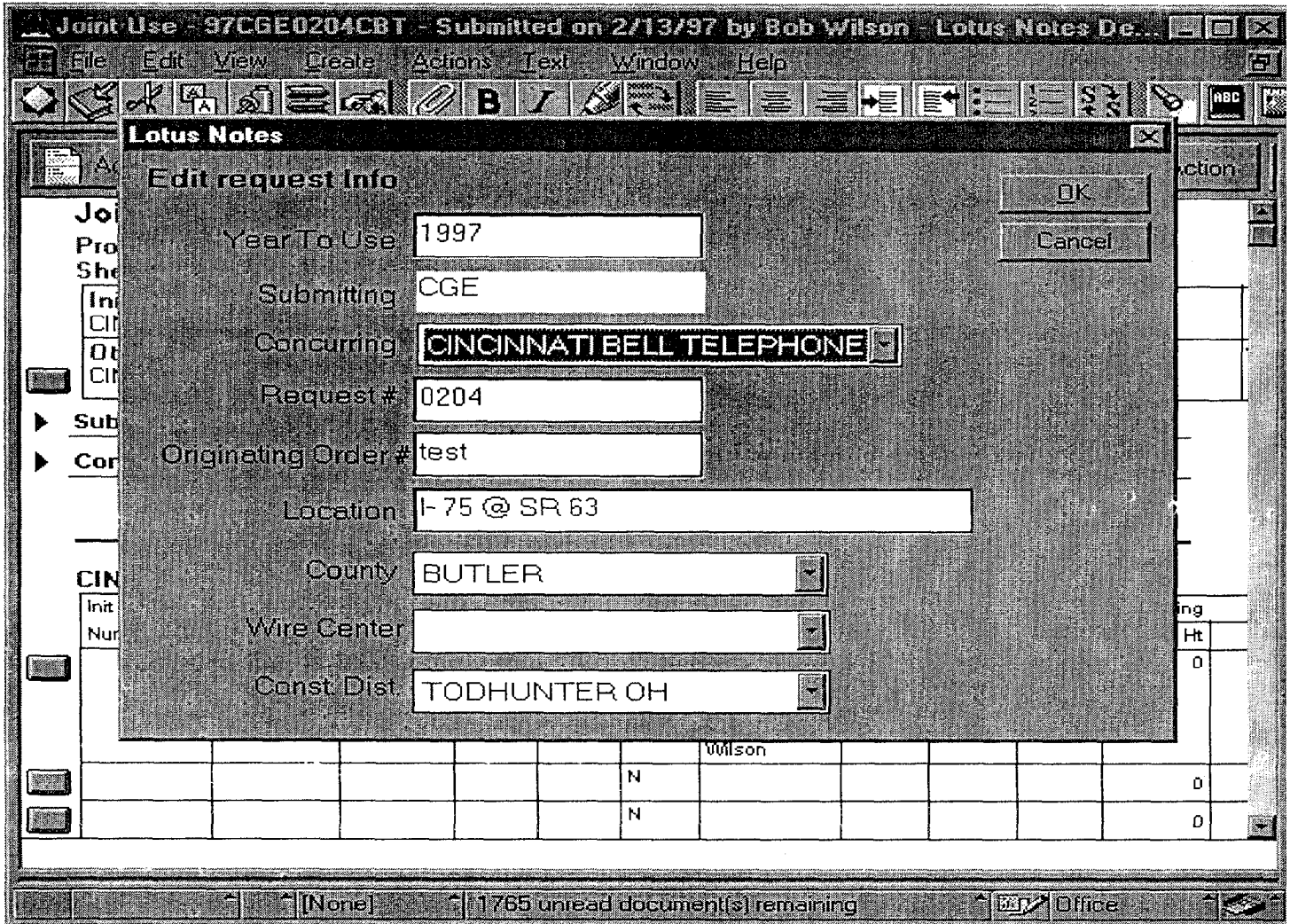
update those prices so that when the system becomes automated, it will actually go in and grab those numbers and then populate the field.

These are company abbreviations that we use locally for the people we deal with. And our reciprocal prices so that you can actually build your table. If you place anchors for people or you raise your rack a certain price or you do whatever, you can come up with that's already predetermined reciprocal prices, you can build it in here. That way, all they've got to do is select a menu item. It kind of takes the guesswork out for the people in the field.

Okay. That's about it. Thank you.

ATTACHMENT #2

Initial Entry Screen



ATTACHMENT #3

POLE DATA ENTRY

Lotus Notes

Initiating Company Pole
Initiated By CINCINNATI GAS & ELECTRIC

Pole
Initiating Co.
Other Co.
Sh/Dwg Number

Existing
Height and Class
Year Set
Now Joint? Y N

Place/Replace
Height
Class
Feet Ext. Ht.

Billing
Excess Height
SAC Life
Cost of Removal

Proposed Work
 Code
J
P
PL
R

Misc. Item

Misc + Other Misc = Tot Misc

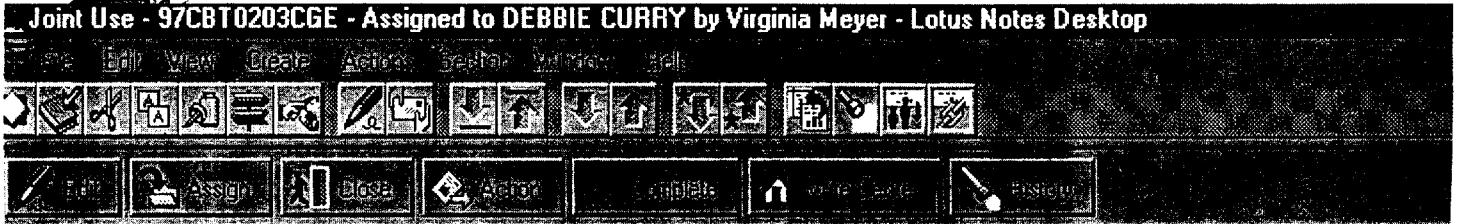
Rentals
+ -

Reply

OK
Cancel

ATTACHMENT #4

Sample project



Joint Use Proposal

Current Status: Assigned to DEBBIE CURRY by Virginia Meyer

Proposal ID: 97CBT0203CGE

Attn: DEBBIE CURRY

Sheet#: 1 of 1

Initiating Company CINCINNATI BELL TELEPHONE	Initiating Company Order Number M8533F	County / State CAMPBELL / KENTUCKY
Other Company CINCINNATI GAS & ELECTRIC	Location Tippenbauer Rd., Shaw Rd., Maddox Rd.	Wire Center AL

▶ **Submitting Company**

▶ **Concurring Company**

Scheduling Date:

Response Due By: 03/24/97

Billing date:

CINCINNATI BELL TELEPHONE Poles/Billing

Init Co Num	Other Num	SH/Dwg Number	Exist. Poles			Proposed Work	Place/ Repl		Ex Ht Oth Co	Billing		Amnt		Other Remv	Co. Misc	Reply
			Ht	Cl	Yr		Joint	Ht		Cl	Ht	Sac				
CA13245RT		2				Y	TRANSFER ATT.				0	0	0	0	0	Will comply per Drg. FK-14391
CA21399RT		2				Y	TRANSFER ATT.				0	0	0	0	0	WILL COMPLY PER DRG. FK-14402
CA19990RT		2				Y	TRANSFER ATT.				0	0	0	0	0	WILL COMPLY PER DRG. FK-14402
						N									0	

Introduction -- Don Gordon

Our next speaker is Mike Davis. Mike is Director of Contracts for Duke Power Company. He is a graduate of Greenville Tech and has been with Duke Power for 21 years.

He has worked in such areas as engineering, resources allocation, marketing and joint use contracts. He presently administers joint use and pole attachment agreements relating to cable companies, local exchange carriers, competitive access providers, and new telecommunications providers.

He is Vice-Chairman of both the National Joint Utilities Notification System and the North Carolina Utilities Coordinating Committee.

PCS Impact on Utilities -- Mike Davis

I'm from the South, which I believe you can tell in three sentences, or probably three words. I work for a boss that is nicknamed The Preacher. The reason I'm in a suit is because his idea of casual dress is if your jacket and your pants don't match, that's casual.

I came into Cleveland Saturday, and it was amazing. Everywhere I went, I didn't get three words out of my mouth and they'd say, "Where are you from?" And then I and my whole family would proceed to tell them, "We're from Charlotte, North Carolina, home of the Panthers," and on and on and on. My two boys wanted to wear their Braves jackets so bad they couldn't stand it, but I

told them it wouldn't be advisable in Cleveland Indian territory. I did want to get home.

Viewgraph #1

**DUKE POWER:
OFFERING AN
ALTERNATIVE TO
WIRELESS PROVIDERS IN
THE CAROLINAS**

I'm going to talk to you a minute about a kind of a conceptual thing. We've been into some detail about notification. We've talked a lot about the Telecommunications Act. But one thing that happened to Duke Power -- and for all practical purposes it kind of fell in our lap -- we had some folks come to us and say, "Can we put antennas on your transmission towers?" Our first response was, "You mean that sacred piece of steel that stands out there on that right-of-way, and no one touches it, not even our own distribution?"

You know that, everyone of you being a power company, you protect that like if that thing goes away, the whole company goes out of business. And, to some extent, I guess that's probably true.

So they come along and they said,

"Well, what can we do? We want to put an antenna on your tower." We get to thinking about re-regulation and revenue streams and the fact is that the electric utility industry, as far as energy goes, is not really growing very fast. You're going to have to be a little creative.

Viewgraph #2
What Initiated Duke's Interest?

- * Personal Communications System (PCS) networks began to be deployed in the Carolinas needing a large number of tower sites
- * Duke was approached by a wireless provider to place their equipment on transmission towers
- * Duke visited Germany and BG&E territory to look at existing examples of antennas on transmission towers

So here's something -- let's put some thought into it and negotiate with these folks and see if we can come up with some terms and conditions that are suitable to both. All right. So long about 1995, September, I believe it was, we had our first folks come to us. They were needing a lot of tower sites.

Now, can you imagine? I know in your community you have digital, cellular sites now going up, and then you need

these personal communication systems (PCS) sites, and everybody is against them in a sense. They don't want to sell the land. It's ugly. It's intrusive. It's on and on, and can I get a buck out of it?

So we said, "Well, we'll go and look around a little bit and see who's doing this." BG&E had already done some of this, Baltimore Gas and Electric. We went to Germany. We learned another lesson in the travel industry, that you can decide on Thursday that you're going to Germany and you can get there Saturday without a passport. Not having a passport in your possession on Thursday, you can have one on Saturday. I didn't think the government could work that fast but apparently they do. That doesn't say that they do it for free. It cost a little bit.

So we went over to Germany and we looked around a little bit over there to see how they physically put these on the towers and how do they account for safety and space and who owns what, where and why and when. The basic concepts behind our contracts, we're the providers. We said, "We'll have to own everything. That right-of-way is still going to be sacred. The transmission tower is still going to be sacred to the extent I don't want anyone else on it."

And there is an extreme concern. We haven't found very many telecommunication workers that are very interested in crawling up in between 100,000 to 230,000 volts. They tend to want to

Viewgraph #3
Basic Concepts Behind Duke Power's Contract With Providers

- * Duke owns and controls all facilities on its transmission towers and rights-of-way
- * Duke designs, constructs, installs, maintains, and repairs sites
- * Only duke employees climb transmission towers
- * Only one wireless provider can put equipment on each transmission tower

shy away from that. We design, construct and install, and we maintain and repair the sites. Only Duke employees climb the transmission towers and only one wireless provider per tower. I think you could probably make a case that you could physically put more than one on a tower but we've decided that only one will go on there. And the reality is just a short distance away from a transmission tower perspective, if this tower is good, the next one is probably good, too. So it's not really necessary that more than one gets on one transmission tower. We do not allow any on our 500 kV, mostly because of its construction -- its design.

It's a single-circuit-type tower whereas most of the 100s and 230s are double-

circuit-type towers. And if you're doing a lot of joint use with poles and other things, you'll find out that it's kind of the same process. They submit a request for a specific tower and site. We approve it or reject it. We still retain that sacredness, if you will, in saying, "I know that's the tower you want to be on, but that's not the one I'm going to let you on. For whatever reason, I'm not comfortable with the antenna on that tower."

Viewgraph #4
Application Process

- * Applicant submits request for a specific tower, plus application fee
- * Duke approves/rejects requested tower sites based on structural analysis review, environmental review, access review, etc.
- * Flow chart and application process developed to present with application

That hasn't happened often, but I still want that right. And there are a flow chart and an application process developed and presented with it, and the flow chart really has to do with more that if it's approved, how are we going to get all of the pieces of the puzzle together.

Viewgraph #5
Types of Fees

- * All Make-Ready work reimbursed with a one-time payment to Duke
- * Annual lease fee
- * Maintenance fees

And the key issue is a utility, or at least Duke, has said, "I've got to be made whole. I can't subsidize this new entry on my tower." So once again, just like in poles, we have a make-ready with a one-time payment. We've got an annual lease fee and some maintenance fees. You'll remember early on I told you that we took care of the site. I'll go ahead and add, that part of that make-ready and part of this agreement includes the dot: I actually own this stuff but they give it to me. I don't go out and physically purchase the antennas, the cables, the towers, the equipment on the ground. They provide all that but they relinquish the ownership to me, and there are contractual things in there that make all that legal and good. In the event that they decide to get out of the business or whatever it is, they don't want to be on that tower any longer and they're going to go back, once it's removed off the tower, then the ownership goes back to them because I don't want it sitting on my yard. So I guess while it's on the right-of-way, you have to understand through the agreement that

it belongs to me, and there are terms that make it that way. When it comes off the right-of-way, it goes back to them.

Well, it wasn't too long after we got this first tower up and the first one was to -- I apologize. I'm fighting allergies and everything else. And every time I go to Washington, it seems I come out of there with a cold. I'm not sure what McDermott, Will & Emery is doing to me but, nonetheless, I leave there with a cold, it seems like. But anyway, getting back to the towers, it didn't take us too long to figure out that, you know, we've got 32,000 towers. We've got several hundred. None of that sounds like a small number but you've got to think where most of these towers are. They are not exactly roaming the Interstates. They're across country. But there are several hundred in that area that they are potential candidates for antennas. So we developed a brochure for the cities and the counties, wireless providers, and our plan was to be an alternative to tower sites. Their first choice was to build their own tower site because they can more specifically place it. And the reality is that it gives them better height. My towers are just high enough to be suitable, and a lot of that is to do with the terrain. But I could be a good alternative in some cases.

We had a booth at the Duke Power 1996 tech expo in Charlotte, North Carolina, in which we educated a lot of

Viewgraph #6

Marketing

- * Brochures developed for cities, communities, and wireless providers

- * Communications with local governments
 - Meet with city managers, planners, etc.
 - Strategy -- personal visits to large towns, written communications delivered by District Managers/Community Relations Managers to smaller locations
 - Received enthusiastically by city/county managers and zoning administrators
 - Several cities now recommend Duke's facilities when receiving requests for new sites

- * Tower location diskettes
 - Lists latitude, longitude, and height of transmission towers in service area for possible use by wireless providers
 - Some wireless providers are able to import into their RF planning program
 - Some local governments have overlaid information into their Geographical Information systems (GIS)

- * Messages
 - Growing need for infrastructure to support wireless telecommunications
 - Growing opposition in communities to new towers
 - Duke's alternative minimizes environmental impacts (fewer new towers)
 - By providing turnkey service, Duke assists wireless providers in getting to market faster
 - Duke can assist in bringing communities the benefits of wireless technology

our own folks in-house to where they'd understand that we haven't gone completely crazy, that, yes, we will work out arrangements to have another piece of equipment on a transmission tower besides conductors and insulators.

We got our marketing folks involved, or

we got folks involved to market the product. Let's put it that way. We didn't exactly go to our traditional marketing folks. We won't talk about that. We met with the city managers and planners. We made personal visits to the large towns of Charlotte, Greenville, Winston-Salem, Greensboro. In our

smaller towns, we have district managers that made personal visits and communications. And the cities and counties received this thought rather enthusiastically because they viewed it as, "Here's an alternative that I don't have to get into all the in-between stuff of zoning and permitting and that kind of stuff." There may be an alternative here that kind of takes care of all of that. And the cities now actually market our towers better than we do. We hardly spend any time on it at all. It comes to us from the cities and the counties that say, "I've got a company that's wanting to do something in this area, and I want you to look at them."

One other thing we did -- I'll assure you that I didn't have a whole big part in this -- we had a programmer on staff at the time that managed to get a listing, if you will, of every tower that we have by longitude and latitude and height of every transmission tower in our service area. And then the wireless providers were able to import that in some of their RF planning programs. And then some of the local governments actually imported that into their GIS system.

So it was a good tool for them to use. They could just kind of key in a few commands or something, and it would give them if that's a suitable tower site by its height and where it's located.

There is a growing need for more infrastructure to support wireless communications. Quite frankly, if we can get all this wireless communication going and

maybe some low-level satellites, you won't have to worry about pole attachments anymore anyway. We have one engineer in our standards group that stays on me all the time about why I am worried about pole attachments. He said there's not going to be any pole attachments in 10 years anyhow with low level satellites and wireless.

Obviously, the communities don't want any more towers. It minimizes the environmental impact by being few towers and construction. We give a turnkey service. Obviously, the first one was a real pill to do and the second one was a little easier. But by the time we got three, four, five, six, seven and eight, this had become a plug and chug. We knew what to do, how to do it. Our folks are already trained. They went to school. They've learned. Materials show up on the job site. They put it up. Then we felt like we were good stewards in the community, that we were assisting them to get wireless technology.

Here are some of the issues, and we're still torn with some of these. As Shirley mentioned earlier, there's the strong possibility of legislation imposing open access to transmission right-of-ways. We feel like we've taken care of that in the sense that we have not really done anything that we don't own on our own right-of-ways. There is technically no telecommunications that is owned by someone else on our right-of-ways or transmission structures.

**Viewgraph #7
Issues**

- * Possibility of future legislation imposing open access of transmission facilities and rights-of-way
- * Local zoning ordinances
- * Possibility of heightened EMF concerns
- * Ensure structural integrity of towers when adding wireless equipment

You've got your local zoning ordinances that you've got to work around. And then any time you touch a transmission tower, these issues have kind of died away for a while but you do kind of re-ignite them under the EMF concerns. You know, I was worried about it when it was a power line. Now it's got an antenna on it and a power line. Are you microwaving me in my house? No, and we have some teams in place that will go out and personally take care of investigations and take readings and give them reports and things that assures them that that's not the case.

And by all means, you've got to ensure the structural integrity of the tower. The last thing you want is your 230 KV system going down because of an antenna stuck on the top of it.

**Viewgraph #8
Stumbling Blocks**

- * Duke's ownership of equipment
- * Land acquisition -- who acquires additional easements or land?
- * coordination of material delivery by wireless provider

The stumbling block was that the telecommunications provider had a real tough time relinquishing ownership of their facilities to us on the transmission tower. Most of the towers were okay but we had to go back and make sure that everything was okay with the land owners. And then the material delivery. Like many joint projects. Your crews show up to install it and the material is not there. The material is there, no crew, on and on and on.

**Viewgraph #9
Benefits To The Utility**

- * New source of revenue for utility
- * Leverages existing transmission assets
- * Positive community reaction

As I said earlier, this gives us a new revenue stream for the utility. It leverages your existing transmission assets and provides the community a positive community reaction.

Viewgraph #10

**Other Suitable Utility Sites
That Have Been Leased**

- * Water towers
- * Duke telecommunications towers
- * Office building roofs
- * Ground leases

Now, there are other facilities which antennas can be put on. Although we really haven't gotten into that, Duke actually has some telecommunication towers we built around our operating centers for our microwave dishes and things of that nature, that we've come along and said, well, now that the microwave dishes are gone, why not lease that out? It doesn't have any transmission facilities on it. It looks like a transmission tower sort of because those are the guys that built it, but it has no conductors. It's just a structure.

Depending on where you are, your office buildings, your roof tops, ground leases, things of that nature may be in the picture. And, quite frankly, a lot of

things are already on these. I've seen water towers with these antenna sites, all of them not belonging to Duke by any means, but rooftops, cities that have tall buildings, and things of that nature. Once again, they may not be Duke buildings but these are other infrastructures that antennas could be attached.

I realize real quick that I am the only person standing between you and a break. I did want to make a comment, though, that I do have this presentation on Power Point and, at a break or lunch or at some time at your convenience, if you would provide me an E-mail address, I'll be glad to forward it to you. That way you don't have to tote home a ton of paper on your airline or travel with you. I'd like to do questions but we don't have time. I do have some cards and brochures to which I'll give out.

Thank you very much.

Introduction -- Don Gordon

Our next speaker this morning is Dennis LaBelle. Dennis spent 24 years at Florida Power and Light, and I've known him for many of those years. He left there and, for the last couple of years, he's been on his own, doing consulting work. He is doing utility coordination, joint use coordination, design and estimating, wherever he can sell his services in the Florida area. Dennis is going to talk to us this morning on physical compliance.

Physical Compliance -- Dennis LaBelle

When I was asked to make this presentation, I thought for sure by this time, with the Telecommunications Act, that we would have some good rules and regulations. But it seems like from what Shirley has told you earlier, that a lot of it is still up in the air.

And that's what I am going to get into a little bit. Even though it's being challenged, it's still part of the law now and you still have to follow it. So I wanted to kind of go through it a little bit, of what some of the physical compliances you've got to adhere to.

This kind of says the whole thing. That we've got this Telecommunications Act sitting here. What do we do now? What do we have to do to comply with this thing? There's a lot of problems out there with it. There's a lot of challenges. So what I'm going to do is

kind of go through it a little bit, where it is and what you have to do as of today until something gets changed on it.

So if you look at it, it starts off, it says the FCC recognizes that the utilities need to protect their systems out there. They also need to ensure the safety and reliability of their systems. But they've got to do all this in concert with all these people, but also you want to still maintain your system. So they tried to come up with something to kind of help you out on some basic rules that they had for doing this.

They said here are some attachments, standards, philosophies. They're going to give you limited rules on this, some limited rules, but also they're going to supplement it with some guidelines and some presumptions, what you have to do.

These rules and guidelines are to be used as negotiations for coming up with the attachment agreement. And if, for some reason, a lot of this fails or there are still some inconsistencies, at some later date they may come up with some additional rules to clarify some of the problems you've got out there.

So they came up with specific standards, where they've got industry standards and some of the regulations and State and local requirements but also most of these are -- at least within the States, fairly consistent. But, also you have some variable standards, looking at the different utilities and how they

operate, which could be different within a State and probably within different regions of utilities.

Utilities may continue to rely on the industry standards with respect to capacity, safety, reliability and engineering principles, and they mainly talked about just using the NESC [National Electrical Safety Code] and any other types of standards that are out there that's going to impact various attachments. These standards may be incorporated into attachment agreements and usually they are. Agreements usually say that you're going to have to follow NESC requirements. And they do talk about other industry codes that may apply, where applicable.

So I looked at what is in the NESC. If you look at the overhead portion of it, the aboveground stuff, it talks about attachment space requirements, pole loading is in there, working space allocation, clearances, grounding requirements. Basically, it covers just about everything you need to attaching to any type of an object above ground.

So mainly your "guideline" to use is the NESC for the overhead portion. And also, for the underground portion, it kind of goes through the same thing and gives you all the guidelines you need, looking at conductor spacing, the burial depth, the clearances you need, the grounding, manhole/handhold requirements, et cetera. So it covers a lot of material that you need, and that's probably why they singled that one item out.

Then we go on and then we look at the engineering standards. I talked a little bit about this at the last conference. Some of the engineering standards that you look at are your climbing space requirements, and this is usually by utility has this set up as to which way they're going to go. Typically, what they asked is to have the conductors on the same side as the neutral but only use up two faces of the pole, mainly to be able to replace the pole for climbing on the pole. And this they try and get everybody to adhere to, to go on the same side as the neutral for the new attachment so that if you put it up here, then replacing the pole becomes a problem. But you do find some situations out there where the attachments are on the other side of the pole.

So these are some of the engineering requirements that are not specifically in some of the national codes. Then you look at pole height restrictions, and I talked a lot about this last year at the conference, a year and a half ago, that this is going to become a major player in the game there as to what height pole you're going to be able to go to, especially now that you're going to allow these people to attach to your poles. If you allow them to attach to the poles, your working space, your 13-foot that was mentioned is also going to increase by the total number of attacheses you get on a pole. But you do have restrictive elements that are stopping you from going to too big a pole, mainly for transmission-type facilities. Most companies have their trouble trucks and

material handlers, the 40-to-42 foot booms, and a lot of them are going into these bigger ones. So you are kind of restricted. So this is one of the things that probably could pass the test of saying why you don't go to taller poles, go to 60-70 foot poles.

And I also talked a lot the last time about -- I don't know what you would call them -- the lumber, I guess -- the pole producers is what I talked to. I said what some of the problems you have out there in using poles, if we're going to start going with a heavier class pole because of wind-loading requirements, than what we typically use today, or we're going to go with taller poles, what problems do we have out there? Well, it ends up being a problem getting the poles. The lumber company is a competitor. They want the big trees we need for the taller poles to get the lumber out of them. So now when you start getting taller poles and heavier-class poles, you now have a competitor up here who is looking for that same tree out there. So you've got the restriction of the pole height because of the equipment you use; now you've got restrictions here on availability. As the height and class increases, availability decreases.

Okay, it also says you've got to follow FERC and OSHA. Basically, FERC and OSHA doesn't have anything to do with the pole attachment point of view. The FERC covers the accounting part of it, and this is safety and work space which some of this, in conjunction with NESC,

is what you've got to set your basic standards on.

Then, you've got the State and local requirements to consider, and what they put it down was that they would consider these requirements. And the FCC rule is over the State requirement, in a sense. You can be a little bit more restrictive but, if there is some direct conflict, that the FCC policy is going to prevail. So they've said that's the hierarchy right there, that, yes, you can follow these different things. And if a State or a local government comes up with something that's way out of line, that it must be reasonable. That's one of the key things they come up with. If it's not reasonable, then you've got to fall back onto this one down here. So they're not really telling you everything you've got to do. They're kind of making just general guidelines but a lot of this stuff is probably going to end up in court and be resolved there or with disputes with FCC.

The other two portions of it were non-discriminatory rates, the different rates that were going to apply, and also, a non-preference, and this one is a key one. It makes it more competitive rather than a fair Act in a sense. A utility must not favor itself over parties with respect to providing telecommunications. So it's going to impact not the power as much but I think the existing telephone companies, it will be impacted by this more. And so the power companies start getting into a lot of telecommunication, into the business.

Then it talks a little bit about capacity expansion. Utilities must expand their capacity of their physical facilities in order to provide access to telecommunication carriers. That's the mandatory access, and here's the different areas that you cover with getting into poles, conduits, duct banks, also easements are used here. Eminent domain rights, to be able to get bigger easements for them. So they've covered the whole gamut there.

Then let's take a look at the poles, and, you know, what would apply here that you would typically use. And what I tried to put here are some of the factors. If you follow your typical setup now as your make-ready provisions and everything else, you're probably fairly safe without having any major complaints. And I think that you could start using more along the lines of the pole height restrictions. And if you attend the workshop this afternoon, one of the workshops is going to get into different types of variable ways of attaching facilities on the pole so that you don't have to get too tall poles.

The underground ends up being, if all the duct banks are used up, you may be able to use that as one of the factors of not having to expand. The cost effectiveness of expanding versus the new facilities. If you've got to add duct banks in there, it may be cheaper to go out and put new facilities in instead of expanding. Also, you have the capability of using interduct in a lot of the existing ducts for multiple-type use.

Then they talk a little bit about what the new provider has to do first. He can't just turn around and come in there and say, "Hey, build me a new duct bank out there or put me a taller pole in." They ask him to look a little bit into resale, to go into leasing the line rather than putting a new facility up there. And bundling attachments, look at every alternative before you go out there and ask them to try and just change the pole out or put a new duct bank in or something along those lines. And you do all that before you request the modification of existing facilities.

So they did give them a little bit of good guidelines to follow, and we take a look at the reserved space on there. It states in there that the power companies can reserve space, as long as they've got a bona fide development plan out there, that they're going to utilize the space. It must be reasonable and it must be for power delivery. You can't reserve it for telecommunications. You must permit that attachee in the space. And until it's actually needed, you can allow them to use that space that you have there, and then when you do need it, you can go back and do the make-ready work and charge them the cost to do that.

What they did for the telephone companies is they turned around and they came up with this general rule in the sense that a facility owner cannot reserve space to provide telecommunication and video programming service. So when you look at the telephone end

of the business or the existing people that are out there that wanted to reserve space for future use, that they can't do it now. They have to allow these people to go in there and use it. So it's nice for the power but for the telephone, it creates a whole new animal out there, a problem out there they've got to try and resolve.

So that's kind of what it covers. And I started looking at it. I said, "All right, now, in the State of Florida, how many new providers do we have coming in that can provide this telecommunications service?" So what I did is I talked to the Public Service Commission and I got some information from them. And this is kind of what I found out. We have a total of 129 new providers. They called them ALACs, alternative line access carriers. And the majority of them are going to be resellers, not new facilities going in. They're going to go in there and they're going to lease lines from the existing companies and roughly about 17 of them are going to have new facilities. But some of these 17 are existing companies that have facilities in there, like the cable companies and some of the existing telephone companies. And that some of them are going to have both. And the way they talked about facilities also is not just attachments to poles or conduits going into conduits but in actual switches being installed.

We're finding out in Florida, we've got developers going out there, and when they put the development in, they're

putting their own communication system in and asking for a switch to be put at the front end of their development and they're controlling everything from there. So that's a completely new animal coming in. Here you've got a developer doing it and when the facilities start going bad, who is going to maintain that? You know, are they going to end up selling it back to somebody? So there's a lot of things that are unsettled.

But, as you can see, I don't think the problem is going to be as bad as we had thought it was going to be, at least in Florida. So this is the number we've got now that are approved. We've got a total of 129, and we've got approved 105 of them and 24 are new ones coming in. I don't know how many we're going to get here now. You know, what's the saturation point in a State? How many are you going to have out there? For \$250, you can go in there and you can get approved. And then you can go resell it. There's a lot of different things you can do. So we don't know what the limit is going to be for the total number of companies out there in the area and not too sure of how many are going to want to put that money up front to put new facilities in, versus being able to go back and lease the lines where they can.

Taking a look at that there, a couple of questions that have been brought to my attention, and I want to just put a couple of scenarios up. And I'm not saying I know the answers to all these questions here. But, if you take a look at a

scenario where the telephone company is attached to a pole and they allow the new attachee to get on and use up the remaining space -- let's say there was just enough room for one more attachment in the zone that you had on this existing pole so the telephone company can't reserve that spot -- then they turn around and say, "All right, now I'm going to have to allow you to use my spot." And particularly in some of the cases in Florida where the telephone has four feet of space -- let's say they used it all up and there's just one foot left -- then the telephone comes along and wants to put a new attachment on a pole after this guy has put his new facility in. There's no more room. The pole has got to be changed out. Who is going to pay for this stuff? Where does this come about?

These are some of the things that still I guess are up in the air. If you look at it, it turns around and says, these guys are here now. They're the ones causing the pole to be changed out. Are they going to end up paying for everybody on this pole when they originally had that four foot of space contractually in their agreement? And looking at another one, when you get the pole used up and the power wants additional space in there. Who ends up paying for that?

These things are going to start coming up as you start getting into it, and I'm not sure if all these are answered here or not. But I know Shirley will answer all these questions for you at her workshop. Since she has walked out of the

room, I can say that. So ask her to answer these questions for you.

All right. The other one I was taking a look at is the same thing with the duct bank system out there. If you've got one out there and you have one opening out there, and you had a new company coming in and they wanted to use that and you've used that up, now all of a sudden telephone comes along and says, hey, I need to run some more ducts in there. Do I have to go out and build another duct over here onto that now that I've had to give them this access in here? You know, what's the answer to it? Where do we go with this thing?

These are some of the complications that are going to keep a lot of attorneys in business for the next 10 years. So that's kind of my presentation. It was a general overview.

Introduction -- Don Gordon

Our next speaker is Ted Williams.

Ted has spent 34 and some odd years in joint use. He is retired from BellSouth and is presently the president of a consulting firm that provides joint use, CATV, and right-of-way services.

Ted has an electrical engineering degree from Auburn University and a law degree from Cumberland University. He also spent some time in the Army with the Green Berets and drives race cars.

Ted is going to talk today on the impact of the Telecommunications Act of 1996 on joint occupancy. Ted, it's all yours.

**Impact on Joint Occupancy --
Ted Williams**

I enjoy coming to these meetings. You know, it's good to associate with people that are knowledgeable on the subject matter.

You remind me of a story that it seems in Bill Clinton's first administration, his mom was still alive. He walked into the White House one day and walked into Al Gore's office. Said, "Al, if my mother came in and had her child with her, and it wasn't my sister or my brother, who would it be?" And Al Gore pondered and pondered and he says, "I have no idea." And he said, "It would be me." And he said, "Do you understand that, Al?" And Al thought a minute and he said, "Well, it's not your brother or your

sister -- oh, yeah, yeah, I understand. It would be you." So Al thought that was pretty smart. You know, he's a pretty intelligent fellow. So he went home and he walked in. He said, "Tipper, if my mom walked in today and she had her child with her, and it wasn't my sister or my brother, who would it be?" And Tipper said, "I don't know, Al. Who would it be?" And he says, "Bill Clinton."

So, you know, that's the way things are, I guess, around the big city. Keep in mind during my remarks, if you will, that everybody doesn't always agree on new Acts and, especially, people in the legal field. They say where I'm from that one lawyer in a small town will go into bankruptcy. But two in the same town can make a pretty darn good living. So, we don't always agree on things.

I want to talk to you a few minutes about some aspects again of the Telecommunications Act of 1996. I was reminded in looking at this of a saying of Tennyson. He said, "When I dipped into the future as far as human eye could see, I saw the vision of the world and all the wonder that would be." So, I tried to look into the future and one thing I saw was the whole eastern part of a city without landline telecommunications. It seems some State contractor had cut 10 cables on the public right-of-way. Three days later they were still trying to identify the last owner of the last cable. They didn't know who to contact to repair it. They thought the original contract was with the Heaven's Gate Intergalactical Telecommunications Company, doing business as Al

Gore's Superhighway Telecommunications, Inc. But they had been unable to locate either company or their owners. The company, which was a not-for-profit corporation, it seemed their only address when they incorporated was simply Hale Bop Trail, California. The organization was a publicly funded telecommunications corporation because the Act does have some stipulations about subsidizing.

I've also decided, since writing this talk and thinking about it, that perhaps maybe these individuals left their farm, and they've attached 39 farms to a wart hog airplane, and it took off toward Denver, and maybe they've caught up with Hale Bop. I'm not sure. That's one theory.

But into the future, as I looked, I saw absolutely no definitiveness about the Telecommunications Act of 1996. So I will give you my opinion, based on some facts. Everybody has talked about the Telecommunications Act and we're going to talk about it some more tomorrow. But the Telecommunications Act of 1996, Public Law 104-104, is sometimes just referred to as the Act, and sometimes referred to the 1996 Act. I have heard some of you on break refer to it as other things. It became law on February 8, 1996, and it modified the 1978 Act that affected the rates of attachments on poles, conduit and right-of-way.

Sometime, when the statute was put out, in the 1996 Act, people read it and

said, "Oh, for the first time the FCC has mentioned right-of-way." I even saw this in some papers. Well, they mentioned it in 1978, and it has been in the law ever since 1978. Nobody paid any attention to it, thank goodness -- from most perspectives.

The basic strategy of the Act, and again I will reiterate some things that have been said but I think we all need to remind ourselves of these things, is to encourage competition in the telecommunications industry or arena. The tactic chosen by the FCC or the legislators is to remove as much Federal regulation as possible.

I would mention to you and, in fact, I want to read and remind you that section 601C(2) of the Act actually says this Act and amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly provided in such Act or amendment. So Congress set a proviso in there to preserve some of the Federal, State, and local law.

The Act, in keeping with legislative times, is broad and conceptual. Most Acts now, Federal and State, are broad and conceptual. Most Supreme Court rulings today are broad and conceptual. Supreme Court rulings 20 or 30 years ago were two or three pages long. Now they're about 90 pages and they conclude that, for the reasons set out above, we find for the appellant.

You think, well, which reasons? So it

leads us to an interpretation that it didn't use to. Much of the language in this new Act is undefined. Some of the definitions contained in the Act are not only vague but they perhaps contradict terms that are existing in State statutes.

For instance, I've been going around doing some work for the FHWA's National Highway Institute, and have visited about 25 State DOTs in the last 18 months or two years. And one word, the word "utility," is defined and used in the Act. As Shirley said, it's not changed in the Act but many times that definition of the word "utility" is not synonymous with the statutory term "utility" or "public utility" in many State statutes. And people often overlook that.

If you've known me very long, you know I used to like to go back to the look-look-see Jane run status. You know, you've got to go back to the basics and see where you are. And many people say, well, they're a utility.

I asked a company in one State if they were a utility. It's a carrier company, I would call it. And they said they weren't sure. And I said, "Well, utilities have the right of condemnation in your State. Do you have the power of condemnation?" And the answer was, "Evidently." And I said, "Why do you say 'evidently?'" And they said, "Well, we condemned as a test case to see if someone would question our right of condemnation." He said, "Now we're on our fifth condemnation and nobody has questioned our power of condemnation yet.

So, evidently we have the power." Somebody in that State evidently assumed the carrier could condemn and never went back to the basics and asked, "Are they really a utility?"

Those are some questions that are going to come up sooner or later. I'll tell you for certain, as Shirley said, there will be many rules clarifying the Act. There will be a lot of lower court litigation and appeals to those decisions, and not only in the Federal courts but in the State courts, for 10 or 15 years. I find that's about the life of a new Federal statute before people really realize that the statute even exists. That's just normal, I think, for a lot of Federal laws.

Many new companies will attempt to install facilities in State, county, parish and locally-controlled rights-of-way, especially Interstate right-of-way, which would lead us to resource sharing. I won't discuss that but many States, I think, have seen the dollar sign and have looked at gross income on resource sharing rather than net income on resource sharing. And that takes a lot of thought and a lot of study, I think.

State, county and local governments will probably receive no additional funding to handle this onslaught of people wanting on this public right-of-way. One thing we need to be aware of, we've been talking about today the Telecommunications Act only. There are a lot of other utilities involved on public rights-of-way that we don't mention.

So are the other utilities going to be treated similarly by State, local, and county people, or are you going to continue to allow power companies on public right-of-way for free, and charge the telecommunications company in accordance with this Act? Or will the light bulb come on and they say, "Well, if I can charge telecommunications for occupying my right-of-way, why can't I charge everybody? What would preclude me charging for using my right-of-way?"

But these people are going to be on staff-overload. And they've got to balance a lot of governmental responsibilities and interests dealing with the consequences of this Act. And, again, as you see, I'm primarily looking at this aspect, not from the physical thing but the right-of-way aspect of dealing with public rights-of-way.

Your State, county and local people, and you folks that coordinate pole use and conduit use for companies that have structures that are there now or that you're going to build, you're going to face many challenges to your decisions, intercompany, intracompany challenges. And you're going to have many challenges outside your company as to your authority to control the rights of way and structures.

Somebody is going to call you, and some of you have already experienced this, and if you don't know what your policy is, they will tell you. If you're not sure of what the law says, they will

quote it to you or their attorney's interpretation of it, in their favor. And they'll tell you exactly what you should do and how you should do it, and exactly what the rate ought to be for doing it, which was probably around zero.

If you doubt what I'm saying, have a short conversation with any major utility company, or with any pole or conduit coordinator that's in this meeting and that's been around since Section 224 of the Communications Act was amended a few years ago.

So, we have a changing Federal position reflected by the 1996 Act and it's going to require you to go back in a basic examination, as I see it, and probably make changes in State, county, parish and local, right-of-way occupation policies and procedures that apply to the telecommunications industry and others. Because, remember, if they choose to make revenue from the telecommunications industry, they may try to preclude, due to the congestion of the right-of-way, the people that are occupying right-of-way now and have for years, for free. Why should I let the gas company on the right-of-way if I can let a telephone company on and charge them for it?

So, we've got a changing law and we've got a changing telecommunications industry, if you will, that hasn't even been defined. If you watch C-SPAN much or C-SPAN II, you notice last week that Rupert Murdoch and CEOs of

other providers couldn't even agree on a bunch of Must Carry rules, and they couldn't even agree on band widths that would be required in transmission of data. They can't agree on anything. What we're supposed to come up and work with everybody and we've got to. That's a fact of life: We've got to.

Lucent, Fujitsu, NEC and NTT, almost all the same week, announced they developed electronics to put on fiber optic cable that would transmit into 2.6 terabit range, 2.6 trillion bits per second, enough capacity to transmit 12 million normal telephone conversations simultaneously. Of course, that wouldn't handle but two of my step-daughter's conversations. Or 20-digital video signals simultaneously. And, you know, when we go to all digital, you know, that's going to change, you know, the band width is about 6-to-1 over analog. That's going to change a lot of requirements for a lot of CATV companies, or companies in that arena. All that capacity I mentioned is on one fiber.

You put a lot of fibers in a fiber cable but you're going to be able to transmit a lot more. It's going to be tremendous what can happen. You're going to have so much capacity out there that these 10 cables I was talking about that got cut, they're probably all going to be operating at about one percent capacity.

Somewhere, people have got to get together and look at what's economical and good for the public interest and good for their companies. The game, if

you will, has already started. Now we've got to work together and have an orderly game while we determine, to our dismay, what the rules of the game are. We're not sure what game we're playing but the referee has already blown the starting whistle. Now, they've retired to the sidelines. However, if you've got proper representation, you may petition them and they'll be available on an as-needed basis to help us play our game.

In the final iteration of the Act, there was language included to guarantee that local governments could manage their right-of-way and receive fair and reasonable compensation for the use of the public right-of-way by all telecommunications providers (in section 253). Again, that does not mention all the other users of public rights-of-way.

The State or city could have a telecommunications franchise fee and a cable franchise fee, both. In other words if the CATV company gets in the telecommunications business, they could have two fees to pay for the use of the right-of-way. Or a utility franchise fee if that company is not a utility in that particular jurisdiction. That varies from State to State, jurisdiction to jurisdiction. Or you could just have a telecommunications right-of-way fee. All of that is going to be decided differently by different counties and different cities. In some States, county and local right-of-way authority may be limited by State law. Some States don't allow counties to franchise or collect public right-of-way use fees from telecommunications

companies or anybody else. Some States do not give counties control over the right-of-way on the roads in the county. States, counties, and local governments are going to have to go back and examine State statutes and city charters to ascertain their existing rights.

I think experience has shown that if you really go back and look to see the basis of your rights in a county or a city, and a lot of times in many jurisdictions the basis is what somebody with gray hair told them the basis was. They never go back and read the statutes or regulations. They never go back and read the franchise.

We've done research for clients. We often couldn't even find the applicable franchise. Neither the city nor the utility could even find the franchise or what it said it's so old. That's going to change. Because the cities and counties and States are going to have to examine existing utility franchises to determine the rights of the existing utilities. You know, if I can let somebody in my right-of-way for a fee, maybe I want to try to boot out somebody that's not paying a fee. Do I have a right to do that under a franchise? Then to perhaps request State statutory changes, amendment charters for the municipalities from a State standpoint, draft new city ordinances from local standpoints, or new franchise agreements, and create new policies and procedures.

You know, the Intermodal Surface

Transportation Efficiency Act of 1991 (ISTEA) runs out this year. It's going to be rewritten or is being rewritten, you know, and with our bureaucracy in Washington it will come out in a great piece of legislation. They say two things in life you never want to see made are sausage and legislation. Sausage is more palatable at times.

But there are going to be a lot of changes. You've got to know where you are. If you don't go back and do the basics, if you don't look at your franchises, your charters, your existing statutes, Federal regulations. If you don't know where you are, how are you going to know where you are going? And if you don't know where you are, somebody else is going to do their homework and tell you where you are and where you are going.

Everything that happens is going to be extremely urgent. Every letter you get wanting occupancy is going to say time is of the essence, that magical term that means if you delay, we're going to drag you into court, or a nicer term than that. But it is critical to these people. These new companies -- one thing to think of, I think. New companies are funded much better than most State, local, and county governments. They're much better staffed technically than most existing utilities, even large utilities that are right-sizing, downsizing, capsizing, etcetera.

Right-of-way compensation legislation is going to be in the hopper in every State

legislature. Potential users of the right-of-way are going to lobby hard and they're going to lobby long to see that counties, if they can, that counties and local municipalities don't have any jurisdiction in the matter. We got a State rule, so we know what to do all over the State. That will be nice and it will have an appealing flavor to it. Or they're going to lobby for a new State statute that says that the county and municipality have no jurisdiction whatsoever on any of the matters that relate to this Act.

Right-of-way compensation is really analogous to rent, if you will. The rent may be in many forms of compensation, cash or in kind. The Act essentially says that. Nothing says that compensation has got to be the same for all the users. Rent may depend. Now we're talking about the right-of-way, not the poles. So you've got all the definitiveness that was set out earlier. See, it wasn't vague. It was very definitive on conduit occupancy, on pole occupancy, when it's ever defined. And now you've got all this vagueness coming from the other way if you want to occupy public right-of-way because the law says they can charge you. The rent may be based on space provided to the utility, square feet, square meters, cubic feet per rod, per acre. Every-one may decide something different. The number and size of above ground structures used may be the criteria.

Service might be provided to the tenant. Some city may say, "We'll sell you the

right-of-way but you give us pole attachments at no charge." Or they might charge you an arm and a leg for the attachment and give you the right-of-way for free because there is no limit. They're not under the Act. Remember? That was stated earlier. They're exempt from the Act -- muni-owned and cooperatively-owned people.

The length of the lease will be a factor in the rent. The market conditions. What is the fair market of the right-of-way at the time of leasing? Have you ever tried to appraise public right-of-ways? It will be about like railroad property appraisal. Remember, most of this is based -- as I read the Act -- on the premise that there is an assumption that the State, counties, and cities own their right-of-way in fee. Many do not.

One State, I know of, never recorded any right-of-way for any State road until 1960. Many States, when you pin them down, will tell you that right-of-way acquired before a certain date in that State was be easement only, for road purposes only. So you've got to deal in many instances, if you do your homework, with the underlying fee owner.

Structure -- same way. If you've got an easement or telecommunications, telephone and telegraph, can you allow a power company to get on that easement? That's not the easement purpose. That's the landowner's right. If you own an easement for transmission and distribution of power, can you put telephone facilities on that landowner,

underlying fee owner's property, without permission? Those questions are not new. They've been in existence for quite a while but we often tune into the squeaking wheel and we trespass on the underlying fee owner.

The Act says you've got to act in a competitively neutral and nondiscriminatory basis. And keep in mind, only a court -- not the FCC -- only a court may decide if the landlord acted otherwise. And remember, if the landlord does in fact act otherwise, or they discriminate and they are not competitively neutral, then the result is you've got to prove that they have prohibited or had the effect of prohibiting the ability of any entity to provide any intrastate or interstate telecommunications service.

So there is an "and" there, not an "or." Many terms applied are not defined in the Act. Prohibition, a term used, appears to mean to cause actual prevention of market industry but you know, an act or a requirement by the State, county, or city government that a utility utilize a joint trench with competitors, that's not a prohibition. To provide available extra conduit, to require a bond, a cash bond from one company, but not another, that's not a prohibition.

Remember, nondiscrimination doesn't mean everything has to be equal. A lot of people who have analyzed this Act believe that there is no doubt that the rent charge for the right-of-way can be different in many different cases. It's not all the same and doesn't have to be

because of the factors I mentioned earlier.

The term "competitively neutral" is sort of a new term applied in this Act. There is really, as I've found, no legal meaning for it at present. It seems to mean a government entity should not prevent competition on purpose -- purposefully. Some people that have analyzed the Act suggest that the State grant a right to occupy the State or county or city's real property, public right-of-way, rather than to issue a permit or license.

To grant a right-of-way would be to grant you an easement on the public right-of-way but some States cannot do this statutorily. Let's pause to remember the Act deals with public property that belongs to the citizen of the State, county, parish, or city for which the relevant agency employees are responsible and they have to maintain that public right-of-way, manage the public right-of-way in a manner that's best for its citizens and at the same time insuring safe, nondisruptive travel on its streets and roads.

Management of the public right-of-way is a process of balancing essential and competing demands on that same property, and that's an onerous burden. I don't envy you people that have to do that balancing and juggling act. Decisions have got to be made on who can use the right-of-way, for what purpose, and if they can use the right-of-way, who is responsible for coordination.

What are the priorities of the users?
Can you reserve right-of-way space?
Can the State, county, or city reserve it?
They can deny people for legitimate purposes. What about access to the facility once it's built? Traffic control plans? Who is going to assure TCP's work on traffic control safety with all these people on and off the right-of-way and on the shoulder on the road?

The maintenance of the right-of-way. Who is going to maintain the dirt? Liabilities involved; relocation requirement; relocation procedures; permitting procedures; environmental matters that are on everyone's mind now. Many of these procedures are already in effect but many are done in a haphazard manner. Most, if done properly because of this Act, are going to have to be reexamined and many of the procedures that are out there are outdated. Counties, cities and States will tell you that. Many regulations and policies no longer fit the current situation.

So somebody that's already understaffed is going to have to redo a lot of that. The landlord is going to have many new tenants. Some will want to be a tenant and never move in. Many of you have dealt with that. You practically go to court because someone wants on your pole or in your conduit. When you finally give in and work out all the details, suddenly they've disappeared or sold out. Some won't pay their rent when they move in. That's not unusual. Some won't leave when they're evicted. If they do leave, they're going to leave

their mess on your property, and you'll have to deal with it because they may leave because they're bankrupt.

Personally, after saying all this, I really don't see this law will have a great effect on the concepts by which public right-of-way has been managed and occupied for years. We've just been lax -- and everybody has -- in managing right-of-way, handling it from a utility and a public entity standpoint. However, the Act does create a great need for owners and occupants of the public right-of-way to examine their present rights -- something that is long overdue.

If you're already there, nobody wants on your facility, in your facility. You're a gas company, water company, you may need to examine to see what your rights are the present time. What does your franchise say? It's time for structure owners to reexamine procedures for applying for the use of right-of-way, for applying parties to use the right-of-way and its structures. That subject is going to be discussed tomorrow, as I recall.

As usual, the success of the industry and the success of the use of this right-of-way, the success of the utility industry, not just the telecommunication end, is going to depend on communication, cooperation, and coordination of folks just like us in this room. We've got to work together.

The problem is to some degree, as I see it and this is a personal opinion, that some of the new players are just out to

win. They're out to succeed in the marketplace. They're accustomed to adversarial relationships and bargaining to negotiate with a lot of bargaining leverage and power. They're interested in a high-profit margin, short-term gain, not the public interest or the public welfare that many of us have been interested in for years and years and years, that's ingrained in our ethics and in our morals.

So how is this going to affect joint use? It depends on which joint use you mean. The joint use of the public right-of-way in general, the joint use of the public highway and private right-of-way, the joint use of public telecommunications right-of-way, the joint use of poles, the joint use of conduit, the joint use of utility right-of-way, the joint use of private right-of-way?

We haven't addressed how the Act will affect -- and it obviously will affect -- private right-of-way use and acquisition, the joint use of cell sites, the joint use of cell towers, the joint use of personal communication service sites and towers, all of these things.

When I dipped into the future, as far as human eye can see, I saw the vision of the world and the wonder that would be. How will the Act affect the public welfare? How will the Act affect the communications industry? How will the Act affect joint use? Only time, a lot of frustration and a lot of litigation is going to tell us that.

Thank you.

Reva Reed

I would like to introduce the moderator for this morning's program, Tom Jackson.

Tom is a 1970 graduate of Georgia Tech and he has worked with Georgia Power Company for 26 years. His present job is supervisor of joint use and department of transportation. Tom has been with us here at the conference from the very beginning. He's been very helpful in putting programs together and very supportive; so let's all welcome Tom this morning.

Tom Jackson

Thank you, Reva. I went to the Last Shepherd School of Dress today. Thanks to Mike, I wore my jacket and pants that matched today. But although you don't know Last Shepherd, you really can't appreciate that.

A lot of us have spent time together. In the last three or four months, I've probably spent more time with Larry than I have in my office. And I don't believe I've seen a day that he didn't have a coat and a tie on. He doesn't know the word casual. But I do and I don't want to wear a tie. I measure my monthly success level by how many days I have to wear a tie.

Introduction -- Tom Jackson

It's our pleasure this morning to start the program off to have Angela Wallace talk to us about NJUNS. NJUNS is the acronym for the National Joint Utilities Notification System. A little bit of background on Angela. She's a graduate of the Southern Institute of Technology in Marietta, Georgia. She was working for a utilities and consultants and engineering firm in Atlanta at a time when Wil Arnett and I made a decision on this software program that we could no longer manage it part time and needed somebody full time. We brought Angela in as a consultant for about three years and then in 1993 -- on the 18th we celebrate her fourth anniversary with us -- we hired her at Jekyll Island standing outside the door of the Buccaneer Hotel. And she's been with us for four years. A lot of time as a manager you're judged by the people you hire and the success of these people, and this is a great success. She's done an excellent job. This program wouldn't be where it is today without her. It's really hers; the rest of us just pay for it. And if you like Dalmatians, talk to Angela. You will notice anywhere you go, she has Dalmatians. With that -- Angela Wallace.

National Joint Utilities Notification System -- Angela Wallace

Thank you. NJUNS, as Tom said, is short for the National Joint Utilities Notification System. We changed our name. Before we had been known as

Electronic Pole Transfer. We were just located in Georgia and it was just a Georgia system. Then, about four years ago we went for our first out-of-state experience and we pulled in North and South Carolina, as well as Florida, at about the same time. That is when we started playing with the name and at first we changed it to Southeastern Pole Transfer, and we decided, you know, that was pretty cool. But then when we started talking with Oregon, we decided, that was excluding them a little bit. So we finally changed the name one last time and we came up with the National Joint Utilities Notification System, NJUNS for short because that's a whole lot easier to remember. It hardly fits on my business card and that's what we go by now.

Most of you have probably heard a little bit about the system. I'll touch on it for those who haven't but what I want to tell you about today is our upgrade to the system which we went through in February of this year. It was a massive upgrade for us. We added things in. We changed the system. We addressed, I think, every issue we'd ever heard from anybody about things they didn't like about the system, things they wished the system would do that it couldn't do and I think we've gotten there at least for the time being. We never want to slow down. We never want to stop but, for right now, I think we're doing pretty well.

First of all, I want to kind of go through and just give you a quick rundown, a

quick lesson, if you will on the Internet. A lot of people are still worrying about what the heck the Internet is in the first place. Well, all it really is is just a conglomeration of computers all over the world and they're all linked together and you can get to any of them. It's pretty much like the telephone system. No one company or one institution or anything owns it. It's kind of open to the whole world and accessible to the whole world. The last figures that I saw were that 30 to 40 million people have access and I'm sure that's growing exponentially every day.

What is the World Wide Web? Well, you can't turn on a TV, you can't turn on a radio, you can't even hardly have a conversation with a person any more without them giving you their web site. You turn on the TV and you see www.cna.com, etc. Everybody's got a something-dot-com. Well we have that too, now. So we're moving on up in the world. But what the Web is, is that it just gets you outside of the old DOS that nobody likes to talk about in computers, that nobody could get around. The Web makes these things very easy. Everything is a picture and everything is a click on this and go to that. So it's an excellent tool.

And to get a little bit more into it, what is an actual Web site? Well, a Web is like a library and the sites are pages within a book and then, of course, the entire collection of these pages, which would be known as a book, is known as your web site. They link off and you can

jump between them. They use the term "jump" or "hyperlink" but, you can move between them quite easily.

Then you hear the term home page. What is a home page? Well, what it is, is it's exactly like the table of contents of a book. If you want to know what this web site has inside of it, you go to the home page and you'll see the different links off of the home page to the other parts of the site and that will tell you what is enclosed in the site itself.

Okay. Then you have to know the term web browser because without a web browser you can't get to anything on the web. You've got to have a web navigating this big web, and so the browsers give you a way to do that. Probably the two most popular ones and the ones that we support on our system are Netscape Navigator and a Microsoft Product, Internet Explorer. Explorer is free; Netscape is cheap. It's 40 or 50 bucks. So neither one of them is very expensive. If you have Windows 95, you have Microsoft Explorer. So it's not hard to get.

We support any version starting at 3.0 or newer. The reason for that is because of some of security sign-ins. The technology did not become available until that particular version. So as long as you have one of those versions, you can access our site.

And this is just kind of thrown in for information for those of you who may or may not know about it. You see web

addresses such as ours, which is www.njuns.com, but, what those really link to is your URL, which is the universal resource locator. That's that number you see right after the HTTP. That's actually what your web address is. The letters and the names that they let us assign to them and actually link back and forth between them is an easy way so that we don't have to remember these numbers all the time. But this is actually what you're doing with it.

Then, of course, the most popular of them all, I'm sure, is the E-mail system. I set my mother up on E-mail this weekend. Everybody has E-mail now. Mom hardly knows how to turn on a computer; but, now she knows how to send E-mail. So it's really cool. All you have to know how to do is if you know somebody's E-mail address, then, of course, you can send a message anywhere in the world. Most of the time it costs you nothing other than, of course, what you're paying for Internet access anyway. So it's a really good deal.

Of course, you can set up distribution lists, mailing lists. For instance, if I want to send a message such as when I send the minutes from our board meeting out, I've got my board on my distribution list and I just click on that, of course, and it sends the message to every single one of our board members with only one key stroke from me. So, I love it.

Okay. Now we'll get on into the meat of the matter. Currently NJUNS has members in seven States. I've already

mentioned Georgia, Florida, North and South Carolina, and Oregon. We also have Mississippi and our latest members have joined from Missouri. We're talking with several other States currently. We've got a lot of interest and we've got a couple that will probably join pretty soon. We're hoping. Come in and join us. But these are the States we cover right now.

With the new Internet program, where all we used to have was the Pole Transfer Program, we have added a couple of new ones in and we're looking at some more to add into the near future. But NJUNS can have the answers to a lot of your joint use puzzle.

Some of the benefits of the new Internet NJUNS are software updates. Used to be under our old system, if we made a change to the software or to the program on the interactive part it really wasn't too bad. People didn't like the way you had to dial up and connect and all of these sort of things because it was kind of slow and tedious, if you will. But once you got in there, since we were an interactive program, at least when we made a change it was online and it was there and you didn't have to send out updates to the software. However, we also had the batch version so that you could send several tickets on one transmission. That one, if we made any change at all, if you changed the character length on a field, I had to send out software updates.

Everybody's gone through software

updates and you know how tedious that can be. It's just something you don't really want to have to do.

Well, on the Internet we don't have to do that. Everything is live on my server. I make a change on my server and the next time you hit my home page and go to one of my programs, you see the change. There is no more sending of software. It's taken care of. The flexibility is the next high point of having a system on the Internet. We can add programs in. In a matter of weeks now where it used to take months or perhaps even years. Now that we have the backbone of the system working and we have all of our functions operational, if you will, throwing in a new program is almost as simple as making a new form.

Of course, my board has to tell me how they want to make it work and who it delivers to when and these sort of things but, outside of that, programming has become very simple. So it is a flexible system. We can add programs when we need to.

Access to data has, of course, become more simple than it's ever been. My data base is on a Windows NT server. It's quite an impressive machine. The data base is written in sequel server which is very wonderful for doing searches and reporting functions and that sort of thing.

So we can search on virtually any field you care to search on with a click of a button. You click into the field, you

type in what you want to search for, what you want to put the limits in for and you hit search and there it is. It's that simple. We don't have one, two, three fields that you can search on. You can search on whatever you want. So that makes the access to your data much better than it was before. And, of course, one that's always near and dear to the board's heart and all of our other members, is that it reduces your costs.

The telecommunication charges have always been one of our fairly significant costs because you had a phone call into my server and however long you were on there if you were interactive, of course, that time could add up because you're on the phone line the whole time. Even if you batched, you still had a phone call. Then we also had a phone call when I delivered that ticket back to you. On the Internet you hit my web site and I send it back to you through E-mail. So we almost eliminate our communication charges.

Of course, we do have the T-1 charge. I mean, we've got our Internet access charge but that's charged by all the member States and that is significantly lower than all of their communication charges lumped into together. So this was very good for us.

We also saved in other ways. Our system is written by Norfield Data Products out of Norwalk, Connecticut. They write and support, I believe, 19 or 20 one-call centers around the nation and actually one in Finland now. So

they're very good at what they do, and delivery is one of their strong points.

But what most of our members received their tickets on in the past was a piece of hardware that Norfield sells, and supports a background ticket receiver, which runs in between your modem and your computer. Well, that is an additional hardware charge. So, you know, you had to buy that. Even though you were on a company network and you're on the land and you've got Internet access and everything, you had to have a modem because this was a dial-up program. Right? Well, now if you're got the Internet access on your machine, you don't need the modem and so you save that charge.

It saves me money which in turn, of course, saves my board money because I don't have to buy all these disks sending everybody else software updates. So there are all sorts of ways that we've managed to reduce our costs by going to the Internet.

Of course, there is the benefit of your connect from anywhere to anywhere. I can sit in my hotel room right now and play on my server half the day, which I've done quite a bit of the last couple of weeks. But anything I can do sitting in my office, I can do sitting in my hotel room quite literally, and that's all because of the Internet and the way it makes access so simple.

As a system now, we're currently running the first three of these pro-

grams. The Georgia DOT permits' project is kind of our flagship project that we're still working on. We were hoping to bring this one out in June. I just found out late last week at our Georgia Utility Coordinating meeting that the DOT is not going to be ready in June; so it's probably going to be more toward the end of the year. But what we're looking at doing on that is putting our Georgia DOT encroachment permits online, sending them back and forth to the District DOT engineers from the various utilities, and having them send their approval back to you in the same manner. You can send sketches; you can scan them in, attach them to your request; so that's where we're headed with that.

The other three programs, of course, pole transfer, we've had all along. We've kind of jazzed it up a little bit. It does things that it didn't do before, it does things that it did do before better.

We do still have modem dial-up access for Pole Transfer because I have so many members that may or may not have Internet access yet and I didn't want to drop anybody that I was currently supporting. That seemed more than a little rude.

So I will support that but we have Internet access to the pole transfer, also. The attachment permits are for your third-party attachments to poles. We've got that as a separate program dedicated to that. Again, you can send your sketches.

We have several different fields -- remarks fields, comment fields, a location field. You've got your height and your class and everything that we can think of that you might possibly need is on the one screen. So it's very easy to use.

We've also got the joint trench program, which is a coordination program more than anything else, for the joint trenching projects. Right up front, as soon as the lead company or the lead agency decides that they're going to try to have a joint trench project in an area, then they can immediately send that notice out to the other companies in the area with a sketch and ask if they're interested in participating, and then those companies can in turn, of course, come back and answer the first company and then you know right up front and hopefully we can get a lot of companies in on this joint trench and save everybody some money.

So those are the programs we're currently working with. Then once again, to try to contrast some of the changes that we have made since, of course, the other programs are all brand new and there have been no changes. But for the pole transfer program, again we went from a modem dial-up only which, of course, a lot of my companies, especially my larger companies weren't very happy with because, of course, network security. You've got your network machine sitting on your desk and nobody wants a direct modem dial-up into your network. So in most cases what we ended up having was a stand

alone machine in the office is what most network security people insisted on. So it was kind of bulky. You know, if you wanted to do a pole transfer or if you wanted to enter one, you had to go over to this computer and 9 times out of 10 there is not a phone in sight. So if you had to ask a question, you'd have to run off somewhere else to give me a call. So we did away with that. It was older programming. It was not a Windows program, and so, therefore, did fall under the category of user friendly that we all have to have now. If it's not point and click, it's not any good, right?

So it was older. It was developed seven to eight years ago and we had added things to it, but the basic program had remained the same. Again, I had to send software to each member. That could get a little bit bulky. You had to go through all the setups. I had to troubleshoot a lot of individual machines because it's individual setups, and so it was kind of tedious. And, of course, we had limited capabilities. We couldn't send the drawings. The search functions were not as flexible certainly as they are now and, of course, the access was not as easy.

On the new system, of course, we do have Internet access. It is point and click. You've got buttons all over the place and in most cases we have three or four different ways that you can actually perform the same operation on the screen so that if you like one more than the other, you're welcome to use it.

No new software to buy as long as you have one of those two browsers and an E-mail program, you're good to go. And, of course, we've got the new exciting capabilities of the Internet. We can link you over and this is something that we plan to do. We're going to put links to our other companies' home pages.

I've already been asked to put a line to our Georgia DOT home page because they'll be doing the permitting on our server and then they've got other things on their server that kind of go with it. So they want it to be seamless for people and it will be, of course, a point and click over to the DOT home page. I will be doing things like that. One of the great things of having it on the Internet is that when I make a change or I add in a new feature, it used to be very difficult to get that information out to everybody. I probably have 1,400 to 1,500 members at this point; so, you know, that wasn't an easy task. Well, now if they're on the Internet which most of them are going to quite quickly -- as soon as they try it for the first time; they don't want to go back -- but, I can put that on my home page and I can explain, we've got this feature, this is how it works, go check it out. So when you sign on, you know that something has changed, you know how to use it and all you have to do is point and click and you're there.

You can reach us on our web site by typing in www.NJUNS.com. If you want to send me an E-mail, if you have a

question, you want to access, I can set you up with a test member code so that you can go in and you can actually try the programs. You can actually submit a ticket.

We have a couple of test members so that you can do that and it doesn't actually create one on the data base but it does everything else. It will do the verification. We've got instant verification of most of the fields and so you know right away if you put in incorrect information. And the rest of the information is verified when you submit, so you again, you know right away if you put something in, that the system is not going to take. So it's not a mystery. You're not going to find out later, a week later, that it didn't work.

But you can click on here. You can send me E-mail requesting that if you've got a question about the system or you know of something that would help us, something that you would like to see on the system, we can work with that. We have before. If you want to send E-mail directly to me, you can send it to NJUNS at NJUNS.com. We've tried to make everything as easy as possible.

Just as an example I've brought a copy of the actual pole transfer screen. It chops a little bit because I just couldn't get it all into one overhead. So you don't see the search area in the bottom but that's all you're really missing here. As you can see, you've got all your various buttons across the top. It's a one-page form and so you don't have to

move around a whole lot. If you want to create a ticket, you hit the create button. It will fill in the next sequential serial number, the date, the time. It picks up your member code as the originator off of your member profile so there is a lot of the typing that you don't have to do; picks up your initials.

We've got a place for the pole owner because we found that what happened a lot of times is if you had an open ticket in the system and for whatever reason that pole was sold, then people were closing out the ticket. Well, that pole was still sitting out there in the field and the customer is not any happier than they were before. So if you go in and you change the pole owner field to the company that you sold the pole to, then it becomes their ticket. It doesn't fall out of the system. It's still in there; but, you don't have to worry about it anymore because it's not yours.

Okay. Then we've got all our dates filled. We've got a place for a DOT. If it's on a DOT project -- we use this a lot in Georgia -- then you can put the DOT project number here. The DOT can go in and search on project number and they know who is holding up their project. Got a place for State, county, place; place being the town or the city, the basic location; and almost unlimited location field on the Internet.

I'm sure there is a limit somewhere but I haven't found it. You can just type and type and it just goes down to the next line. You put in the address, driving

directions, a map number if you're on a grid system and it's common with the people, you're sending the tickets to and then a grid is a great thing to put in here. It's entirely searchable. You can use a wildcard so you don't have to worry about how did I type that in last. What if I put a period in after south; what if I didn't? It doesn't matter. You can wildcard it.

Then you've got the job steps where you indicate what the work is that needs to be done at this location and who needs to perform the work, the number of poles involved for each company because you can put multiple poles on a ticket, if you so wish. I have people that use it both ways. I've got a job ID field that goes down and, of course, reads across for each individual company. If you have to create a job or work order, something that you want to be able to pull up on a search, then you put that on your line and that search works for you. We've got the date that you're asking each step be performed by.

Then as the different companies complete their steps, then you go back in or they go back in and they make a change which triggers my system to redeliver a copy of this updated ticket to the next company in line. So now they know that they're clear to do their work, which should eliminate, if used correctly, all these wasted trips to the field where you go out and somebody is blocking you, and now you think well, surely, they're gone, you know. You go out to the field and they're still there.

So now you've wasted another trip. With this system that doesn't have to happen anymore. We've made it mandatory in the States that are using this that the transfer is literally not done unless it's done on the system, and really, that's the only way it works. You have to be able to trust it. It's like any other system -- trash in and trash out.

Okay. The last three columns over here are filled out by my server. The updated date changes every time that particular job step line is changed. Then by your initials when you create a ticket, as it's updated, it changes to the initials to the person that updates the ticket. Then delivered shows you who it's going to be queued up to deliver to.

Okay. So when you get through the ticket and you're actually down to the end and you can close it out, then you have a running order of when each transfer was done or each job was completed. Again, we've got the remarks field down at the bottom. That's not just one big remarks field, as you can see the remarks four box out there in the corner. You can put either job step number. If you have 10 job steps on a ticket and you put in number three, then you've got basically again unlimited remarks field for the company on job step number three. Then you can put one on five and you can back on four. And then when you get through, of course, it puts under the step number on the far left, it puts a little R out beside it; so that you can see in an instant when you pull up the ticket on screen,

that you've got a remark associated with this job step. Of course, when it prints out, the remarks printout immediately underneath so that it's very easy to read.

The pole transfer program. I can deliver these tickets either to a printer modem set up or I can send them to my people. I can send them to a fax machine or I can send them to E-mail. Of course, the preferred method is E-mail. It's much quicker. It's cleaner. You don't have to reset a modem. It's wonderful and that's where we're moving to.

The other nice thing about E-mail is if one person needs to receive all these tickets within an office, but they may need to get them out to the engineers, for instance, within this department, that becomes very easy. With the E-mail, as well you know, you hit that forward button and there it goes.

So you've got that ticket there. It does not necessarily have to print out. If you see this ticket and you don't need a copy of it right now, you're free to move that to a folder, delete it, print it, whatever you want to do. So the flexibility is better than it's ever been. And all you have to do when you finish filling out that ticket is hit that submit button and it goes out. It queues it up to every member you've indicated on the ticket, regardless of whether they're modem delivery, fax delivery or E-mail delivery. It takes care of all that internally and you never have to worry about it.

We also have another feature on here because of our delivery, the sent copy button on the bottom. One of the things that our Board had voted on a couple of years ago is that they didn't want to see every single copy of every single ticket. Every time something was done, they didn't need to know about it. So what was decided was that you would get a copy initially. Everybody sees what's coming. Then you don't get a copy until its turn. Okay? Including the pole owner because the pole owner didn't want to see every single move either. You can always go in and check if you really want to know but they didn't want to be deluged with these tickets. So what we have now is if you have a problem perhaps with a transfer and there is some reason why you can't do it, it used to be, of course, the only way you could get that back to the pole owner then was to complete your step but that wasn't really right because you weren't really done. Now you can put whatever you want in remarks field and submit that and then hit send/copy and it goes to the pole owner. Or you can send it to one of the other members. It will default to the pole owner but you can change that and send it to whoever you like.

So we put a lot of features in the system that we really didn't have before and we have tried to address all of the complaints that people had, the suggestions that people had. Well, all of our new programs, as a matter of fact, came out of people telling us that they had a need and we tried to find a way to fill it.

So this is where we are now. If again, I stress, if you want to see the rest of the programs, if you want to play with the rest of the programs, send me an E-mail, drop me a line, give me a phone call, however you want to handle it, and I'll set you up with a test member and you can go in and play to heart's content and see how it works.

Question

What does NJUNS cost?

Angela Wallace

The costs associated with the program? We run our program on a per-state basis. Okay? So it's really very inexpensive. You can divide it as many ways within the State as the companies in your State decide and I'll bill it any way you say. All of my States are billed differently. The up-front cost is a \$12,000 initiation fee. It's a one-time charge. Okay? Again, that's per State. As many pay-in members in your State as you want to split that up, that's fine by me. I'll bill it anyway, you tell me. After that, it's \$1,300 a month, per State. I think, in Florida, they're done to \$120 a month a company. So it's very inexpensive. The only other charge that you ever have, if you have people dialing up modem connection, and, of course, that's your option, the pole transfer program is the only program that's available that way, but it is your option, then any communications charges are directly billed back. I don't mark them up. It's a straight cost. We're a nonprofit organization working under the Utilities Protection Center of

Georgia which is our One-Call; so we're just covering our costs and we all share the costs as our member consortium. And we just want to give everybody a program that you can use and as we get more members, then hopefully we can reduce the cost even further but I don't think anybody can argue with the price now. It's very reasonable. Those are our only costs.

Question

Can you tell me what some of the obstacles were that you had with connection with Georgia DOT?

Angela Wallace

Be glad to. First of all, the problem we're having right now is in the fact that the Georgia DOT is a little bit behind the times in getting computers in their offices; and then, of course, getting Internet access for everybody. Then they're going to have to train everybody on how to use the Internet. So we've had a little bit of slowdown there. They thought that would be in place by June. Now they're talking probably December. The other thing that the DOT had concerns about was the fact that they wouldn't have all of the data base on their site because it would be on our site. What we worked out with them on that is we're going to have just that program and that section of the data base will be on time replicated to a server on their site for the phone line. So they will have an exact copy of their data base on their site all the time. Using that Internet, it really didn't make as much sense to me, you know, what

that concern was because you've got access to it 24 hours a day, seven days a week, it's always there but it was a big deal to them. So I worked with Norfield again and we came up with this method and they seemed very happy with that. Really, for the most part, that's the only obstacle we've come up on. We've got some back and forth talking still going on because their districts all do things differently and we really need to come up with one method if we're going to make it electronic, you know. So, we're kind of working out issues with them here and there on that and pretty much for the most part they're going to work that out and let me know how it's going to work but I was amazed at how few obstacles we actually came up with honestly.

Question

Would you be available for a presentation somewhere in New York?

Angela Wallace

Absolutely. Let me know when. As a matter of fact, I'm participating on a conference call for a first contact with Pennsylvania on Thursday. We're hoping to have Virginia join us sometime in the middle of the year. I'm trying to work out an acceptable agreement with Tennessee at the moment. They're very interested. So we've got several States that we're working with right now. And we'd love to branch out to a part of the country that we don't have right now. So that's great.

Tom Jackson

Angela, we appreciate that. You're doing an excellent job. I would like to make one last remark in summary about the system. It is operated by a Board of Directors. Each member State has two members and that Board controls the finances and direction of the program. Any changes that occur or anything they want to do is approved by the Board. So it's a flexible system with Board management.

Introduction -- Tom Jackson

Next, from Bellcore, we have Bob Legato. Bob is a member of the technical staff at Bell Communications Research (Bellcore) where he serves as a consultant on outside plant engineering, specializing in right-of-way and joint use of structures.

He has a B.S. Degree from Georgetown University. He worked for Bell Atlantic for 26 years from 1969 to 1995, and since then has worked for Bellcore. He is a member of the IRWA Liaison Committee and a chapter president-elect. He is also on National Electrical Safety Code (NESC) committees 4 and 7. For those who are not familiar with the NESC committees and how you get there and what it takes, it's an honor to get there. You don't get there just because you want to. It takes years, and once you're there, you continue to stay there. I know in our company we have an employee who retired, and we pay him to do nothing but go to NESC committee meetings because he's on the committees and he's an officer and a chairman of one of the committees.

So we're proud to have you, Bob, and your knowledge, and we'll enjoy your presentation, I'm sure.

Licensee Attachment Agreements -- Bob Legato

I had thought up until just after breakfast this morning -- I do tell times by meals --

I had thought of scrapping this talk and sitting down with a piece of yellow paper and focusing more tightly on what it is you need to hear about license agreements because I'm concerned about wasting your time.

On the other hand, true to my Georgetown background, I'm going to talk a lot of philosophy to you. I'm going to try to stay off particular issues and talk more in general terms as to what the relationship should be with a third party, and what some of the issues might be that arise. It's from the philosophy, I think, that the license agreement or any agreement is generated.

A couple of historical notes. We've had a few wonderful talks here today and yesterday. Many of them have focused on the FCC action. I want to apologize, on the one hand, to our Canadian friends that are here because we do all focus right now on the Telecommunications Act. On the other hand, as we are going, so go you in many cases -- to your benefit and to your detriment, I'm afraid. So it doesn't hurt to hear about this.

In any case, you know that there has been enactment by Congress. The magic date was February 8, 1996. From that date the FCC must take action and promulgate rules to support what Congress has dictated within two years. So, the FCC has until February 8, 1998 to get those rules promulgated.

Now, they put out the notice of propos-

ed rule making on structures and that's what many of us are focusing on right now. They have put out this NPRM, March 14th, I believe, was the effective date, and they want comments back by May 18th or so.

I was interested in what Shirley mentioned yesterday, that some folks have asked for an extension and I don't think anybody is going to object. I think many people will support that request for an extension of time because there are so many complex issues that need to be commented on.

In any case, Congress has delineated what it sees as the need for the telecommunications industry in this country. But there will be ongoing determinations. As Ted and Shirley explained yesterday and as so many of us are aware, this thing will be in court for a long time, not as a body of legislation but people nit-picking it to death.

All we can do for the present is do the best we can with what we read and what we see and formulate agreements, but always with the proviso and the understanding, probably explicitly stated in the agreements, that they are subject to any future legislative amendments, legislative changes, court cases and so on and so forth. So it isn't dead yet, not by a long shot.

All right. Let me get a little philosophical on you. The congressional intent is what is really of interest to the people who are generating license agreements.

Congress intended that there be competition with minimal restriction. I think that probably the easiest way to describe that is that the "haves" should not interfere with the "have-nots." Ain't going to be any turf protection if Congress can help it. Okay? We're going to be asked to compete freely, and by the way, on as broad based an area as we can. That means we will have little geographic restriction. I know that many people are planning to have national development of telecommunications systems.

Some of the strangest combinations are taking place. People who never spoke to each other are now speaking with each other, collaborating with each other, plotting with each other. I mean, it's really interesting. It has been socially a real phenomenon.

The competition also needs to be on a technological basis, as broad a base as it can be and that Congress is fostering wireless competition, they're fostering voice, video, the whole thing, the whole gambit. So you want to keep in mind that you're not going to be able to protect what you now have.

It's been a long time since I have heard companies suggest that they are operating for the public benefit. They're talking about bottom line; they're talking about, perhaps, their employee benefit; they're talking about a lot of things - but to talk about the public benefit is kind of a far-fetched concept these days. And yet I think this is part of Congress'

intent, that the public benefit from this competition. On an economic basis, there is somehow the idea that the more folks you have in the game, the better the benefit to the public or to the subscriber, to the end user.

A fellow by the name of Theodore Vail sold a telephone system to the United States called the Bell System based on the fact that he said -- and people bought it -- that the telephone is an inherent monopoly, that it's cheaper to build one good system and let everybody jump on that than it is to build 12 redundant systems that everybody had to pay for.

My 26 years with Bell Atlantic didn't help a lot with my bias, okay? I am Bell-shaped and I still carry some of those philosophies with me but there is a trade-off between Ma serving the public and everybody serving the public and jumping into the game.

Somehow there has to come a time, and you hope that this works out in the marketplace, when the public can no longer support twelve or fifteen systems but will gradually make its selections and those that are not economic and not viable will fall by the wayside. But for now we're all in the game.

And I am not suggesting that there will be eventually, folks, a great amalgamation and all God's children are going to come under one system again. That's not what I am suggesting. But I am saying that there will be a few

systems, probably, that will survive. There will be a few power systems that will survive in this country, a few pipeline systems, a few telecommunications systems. And the others that are not viable and not economical and not running with the pack will fall by the wayside.

As to service and technology: this whole concept of service, again, is something that can be foreign to those who are interested in the other half of that piece which is technology. And yet service will help determine who among these companies will survive. Those who serve the public, the public interest, will be supported by the public.

Environmentally -- I have some old photographs, in fact, I wish I had thought to bring a slide of it. But I was talking about it in my workshop yesterday. I have a photograph of an 1890's New York City pole, cross-arms and wires from hell to breakfast -- just all over the place. I think that the public will not suffer that kind of situation to occur again.

I think that we have a much more sophisticated public today that knows that within a few fibers you can carry a gazillion conversations and a gazillion subscribers for a gazillion purposes. They know that to darken the sky on a bright June day with wires is somehow offensive to them and they're not going to accept it.

So bear in mind that this will be one of

the pressures that comes to bear on the multiplicity of systems. Environmentally, you have things like, should we make these telecommunications companies put everything underground? Should we make them go to steel poles and stop bothering us with all those pesticides they put into their wood poles? Should we do this? Should we do that?

Environmentally, folks are more and more aware of what we are visiting upon them and they are going to be insisting that we be as scrupulous as possible in that area. They will insist on it.

Legal issues: I'm not a lawyer. Lord knows I've been involved in enough legal wrangles to think that sometimes I should be. But I'm not and I repeat that. I am not. But the Congress has made clear that barriers to entry will not be tolerated. Now, those of us who were involved or those who listened in on, if you will, the wrangles that went on in Michigan with Troy and Roseville, Michigan, and so on, became aware that if a city or a town wants to make hay out of the competition, they may want to turn around and say, "Oh, I would like this kind of service, that kind of service, and the other kind of service, and whoever puts that on the table will eventually get the permits to be in the city streets." Several companies are balking at this and they're saying, "no, this actually constitutes barrier to entry. We cannot do business in this city or that city because you have made it so expensive for us that we're not going to be able to afford to do business there."

And in some cases, as in the Michigan situation, more than one of the companies said we're going to simply go around this city or that city to accomplish what we need to do because we're not going to pay the freight to go through.

This is the barriers to entry deal. Now, that's one way to have barriers to entry but a more seditious and a nastier way to do it is to have the incumbent set up barriers to entry to those who would be competitors and this is going on all the time -- or attempts to do this are being made, even among the competitors.

There are competitors who are coming in and saying I want first priority here. I want the first right. I will tell you how we will -- well, somebody was saying to me this morning, I'll tell you how we want to restore our system. We're going to be there first.

There are also subtle or overt barriers to entry. The right to be there. There was a time when a town could grant a franchise to a cable company. And you cable operators out there can very well attest to the fact that those franchise hearings could become hold-ups by the town. All they needed was a gun.

For example, "Well, if you want your franchise for the next ten, fifteen, however many years, you will do these things for the town or you will do these things for your subscribers. You will rebuild your system, this section or that section of your system. You will over-

haul it completely. You will do this, you will do that. And if you don't do it, you won't get a franchise."

Well, naturally enough, what happened was that they -- I think the cable operators principally were involved with this -- they got to the Congress and the Congress said no more fooling around with local franchises. If the FCC says you're a common carrier, you're a common carrier. That's all you need to do now according to the original document.

How much of that will be borne out in police power is another issue. The local cities, counties, states, still have the police power to say, "Well, you may be here, you may not be there. You're endangering safety; you're endangering access; you're endangering this, that, the other thing. Therefore, you may not bring your cable in this way, that way, the other way." So, there is still leverage by the local jurisdictions. However, it has been curtailed, at least insofar as the franchisers are concerned.

Confiscation of property: Somebody was saying yesterday, "How long do you think this issue is going to stay out of court?" I don't know but I don't think it's going to be very long.

There are two issues of confiscation of property that may be involved here. One is that the pole owners or conduit owners, and by the way if I say pole owners and I include conduit, shame on me because I have a whole issue with

that. Conduit ain't poles. Poles ain't conduit. And somebody in Congress and somebody in the FCC has got to learn that. And I'm doing the best I can to help with that. Anyhow, confiscation of property can occur because the structure owners, if you will, say, "Hey, I'm not being adequately compensated. This amounts to confiscation of my property."

Such issues arose during the original co-location hearings way back when co-location was booming. When I say co-location, I mean co-location within CO's, within central offices of various communication carriers. The owners of those central offices were protesting, "Hey, this is confiscation. I don't have to let the" "Yes, you do have to let the" "Well, no, I don't. This is my property." And those issues never really have come to rest. Multiply that a thousand fold in the structures. "Well, how come I have to let these people on my property, in my structures, on my structures?"

So, that's one way to confiscate property. The other way is to say, "Well, Farmer Jones has a pole line across his field. He has allowed the XYZ Telephone Company to be on that pole line for years and years and years. His grandfather originally gave the permission, and now that young Farmer Jones is the owner of this property, he continues to allow this. He finds, for the sake of discussion, he finds some brand new ruts across his field that were set there by a competitive access provider or

CLEC or however you want to describe it, an "emerging LEC." Their truck is going across the field and they're attaching to the poles. Farmer Jones call the CLEC and the CLEC says, "Hey, Congress says I can be there. You go talk to the original pole owners if you want. Because if they're there, I can be there. That's what the law says."

Farmer Jones goes to the original pole owner and says, "They're out of here and you're out of here." And the original pole owner says, "Holy smoke, let me look up my rights. My rights aren't there. I don't have the rights."

One of the interesting things is to have somebody recording what you're saying and then have it come out on a tape version. You wind up reading the copy as it comes out and you say to yourself, "Good Lord, did I say that?" Or, "Did I really say "okay" that many times in my talk?" Anyhow, I would not quote a number but I would tell you just in case it comes a surprise to any of you, that the rights under which we occupy many pieces of property aren't exactly gold-plated. It's sometimes a handshake. There were times when if you went to Farmer Jones' grandfather and you said, "May I be here?" He said, "Yes." If you said, "I'll be right back, I want to get a piece of paper from my horse and buggy there and I'd like you to sign it," he would throw you out. "My word is my bond. That's the way I do business."

You would insult him to even ask him for a piece of paper. That's the nice side of it. The other side of it is that we were

sometimes too lazy or too busy to get that kind of right. So we went ahead and said, "Yes, we'll occupy it and as long as they don't object, that's it." Well, now Farmer Jones' grandson is throwing us out because he says his property is being confiscated. He, perhaps, doesn't subscribe to the CLEC that is going across his property now or if he does, he now doesn't subscribe to the LEC that was there. He says, "One of you has got to go. If one of you doesn't go, both of you are going."

And so it begins: Fifth Amendment rights. This business about, "I am not now, nor have I ever been a member of the Communist Party and I respectfully refuse to answer on the grounds it may incriminate me." That's the part of the Fifth Amendment that people like to quote. There's another part of the Fifth Amendment that says you will not confiscate property without just compensation. So, that's what many private homeowners are going to go for in terms of confiscation of property.

Liability between the parties: If the ABC Telephone Company, a telecommunications company, has come onto a pole line and they get hurt, they ride a pole to the ground because it was not properly guyed or inspected, any number of things. The shell rots on the pole and they cut out and they fall. Any number of things can happen to you on a pole. There were improper clearances between power and communications and one of their people gets electrocuted and dangles from a bucket. Things like

this do happen. So, between the parties, between the individual applicant and the pole owner or administrator of the pole, however you do it, chances are everybody will be in the court all at once. But between the parties there has to be some kind of liability or some allocation of liability, some notice about liability in the agreements that says if this happens, this is what your process will be and this is what your claims may be entitled to and everybody signs off on that and says, yes, this is how we'll do it.

With regard to a third party there is also that liability issue. If my CLEC guy climbs a pole and he's up there working and he drops a wrench through somebody's windshield, and by the way that car is moving and it goes off the road, what is the liability? Who protects whom from what? Probably we all go to court. But is there somebody who holds the bag for the liability for their own people? This kind of stuff needs to be written into the agreement as well.

I don't mean any offense by this but I think it's clear that joint use in general and the Telecommunications Act in particular is a lawyer's paradise or a nightmare as you see it. From a liability standpoint and from all these other issues, they're going to be a long time settling this stuff.

From a structural standpoint: The safety of the structure -- there I go Bell-shaped again. That has always been of primary interest: that the people who

work the poles, the people who work in the conduits and the manhole systems - - the people who are served by those manholes and conduit systems, the end subscriber -- the safety of them and their property is paramount. We have talked safety so many times and in so many ways that it almost sounds like, "Good Lord, are they back on this again?" Yeah, they're back on this again. Safety is a paramount issue.

Efficiency: It doesn't take a whole lot of arithmetic to figure out that it is more economical, generally, to put three people on one pole than to put one each on three poles. It shouldn't come as much of a shock. What is more important is that you all write into your agreements considerations about access, considerations about who may climb, how may they climb, this kind of thing. So as to promote the efficiency - - you know, simple things like spacing on a pole. The mythical 12-inch spacing between the communications carriers -- if that's to be sacrificed, what happens to efficiency on that pole or in that conduit, for that matter, if you're going to jam too many people in a conduit or use up the last duct, what happens to the efficiency of that system? Do you jeopardize it? Yeah, you do in some ways.

The question of usable space: Of course, this is something that's being hammered out before the FCC right now. Usable space is an interesting term. Back when there were two or, at the most, three parties on a pole, I used

to rave and rant with the power companies that were in my jurisdiction about what was commonly known as the equal pole. I would stand there and say, "Hey, on a 35-foot standard pole, if that's what it was at that time -- on a 35-foot standard pole, we get three feet -- one side of three feet of the pole. You get both sides of 3-1/2 feet or more on that pole -- whatever more can come out of it. If we put a pole extension up there, I can't use it. You use it." And so on, and so forth.

Well, that gets magnified a great deal now. This whole concept of usable space means many dollars to many people. If we're not careful to define the usable space for the FCC, this whole idea of basing the rates on usable space is going to go in the dumper. We have to make sure that we're honest but that we're comprehensive in our consideration of usable space.

Reserving space is another issue and we can talk about the other in particulars later. But reserving space is another issue. Can we reserve space? Ted Williams and Shirley Fujimoto went through a lot of iterations on that yesterday. I think one of the least practical notions out of the many impractical notions that I have seen in the Telecommunications Act proceedings is that, "Well, yeah, you can give up reserved space until you need it and then you can have it back." Come on. Get serious. Politically, socially, anyway you look at it -- you cannot be convinced, I think, that you can simply

say to somebody, "Okay, turn your stuff off. I need the space now." There are going to be a number of angry subscribers out there. There may even be an angry CLEC or an angry telecommunications company. It's just not practical.

This, by the way, happens to be one of the issues that I have with the whole business is that folks who know very little about the machinations of outside plant are the folks who are deciding for us what has to happen. So, I absolutely encourage people to get down to Washington, grab your lobbyist by the stacking swivel and stand him or her up and say, "Listen, this is what you have to tell the Congress. This is what you have to tell the FCC." I absolutely encourage this.

The more information that's fed into these folks, the better the final decisions will be. I'm not suggesting that you've got to get down there and win your case. What I am suggesting is that you've got to go down and feed as much open and earnest and honest information as you can to these folks to enlighten them, not to skew them, but to enlighten them, to make a good decision about what is going to happen. And this reservation of space is another ball of wax.

I'm a power company and I have plans two years down the line to do something, all right? What do I do when the plan becomes that much more expensive because I am no longer able

to say, "That's my space. I'm putting a second rack of primary up there and I need that six feet of that pole." If I can't do that, I've got to now factor in a great deal more expense into my system. Plans get scuttled for this reason.

Now, I'm not pleading the power company's case in this but I think it should be understood that for a power company not to be able to put that second rack of primaries up there means that they're going to have start looking at siting other substations. Prodigiously expensive, all right? And very difficult to get siting permission for. So the substation as an alternative becomes very expensive and very impractical also.

Reservation of space means more than, "Ha, ha, I'm going to keep these guys off my pole." It means real issues and real jeopardy to many planning efforts.

When I first saw the TA-96, I groaned because I realized that Congress has been talking all this time about poles and meaning conduit, easements, rights of way, etc. I said, "Good Lord, they're lumping it all into poles." They think that you can look at a pole and then look at a piece of conduit and administer them the same way. They are inherently different items. Easements and rights of way, certainly, are inherently different from a pole that's standing in the field and can be measured as to height and width and strength and all the other good characteristics.

Poles ain't conduit and conduit ain't poles. When I build a pole system (just to begin with), it's a lot cheaper than a conduit system in terms of per foot cost. I may build a pole line, spending \$1,000 a pole, in place, and if I go at 100 foot spans, which is very short, that's ten dollars a foot. If I build a conduit system and I put twelve ducts into a similar setting where I would have gone at 100 foot spans, I may run \$50 to \$100 or more per foot for that conduit system. So the cost is different. Beyond that, I place a great deal more conduit than I need. I don't place a great deal more pole than I need, generally. Why? Because it's very difficult to replace a reinforced conduit. It's rather much easier -- although, it's not always easy, it's much easier to replace poles for reinforcement needs. I can go out there and place another five foot of stick much quicker and much more readily that I can place another two ducts.

Once I've got a 24-duct system exhausted, it's a little bit of expense to go back there and rip up that road and start reinforcing it in a different area or in the same trench. When you go before a permitting body and you say, "Hey, I'd like to set a pole." You don't have to go very high in the organization. "Yeah, okay. Where are you putting it?" God help us, you may go out there without a permit, you just put it in. That happens too. Let's say you do it -- we'll call it the "right way." You go out there and you get permits to do it. But it's fairly easy to do it.

Now, you go for a conduit permit and you're going to tear up main street. You're into a little different ball game. The first thing the jurisdiction wants to know is, how much are you planning -- what kind of life are you planning for? We're going to bond that street after you guys get done. We're going to pave it and bond it for five years. You best figure you're not going to put any more conduit in that street for at least five years. So, while it's inherently expensive and prohibitive to reinforce conduit, it's also jurisdictionally prohibitive to do that reinforcement. So you say, okay, I'm going to use two ducts -- now, I'm going to have, perhaps, a duct for municipal, I'm going to have a maintenance spare, I'm going to have -- I can foresee two or three other telecommunications carriers coming into my system.

So I'm going to build, say, a twelve duct system because I need, not only those first five or six ducts, but something for the future. I need some growth capacity because I can't go back in there for five or ten or fifteen years. Economically, it's just not feasible.

You know, a lot of folks have done studies on this whole business of what is economical. I think, generally, you will find that conduit systems are built for 35 to 50 years. That's kind of a ballpark number. It isn't feasible economically or socially or legally to do it for any less. Suddenly we are faced with -- especially in the communications industry -- we are faced with having those spare

ducts exhausted very quickly. And you say, well, pull out some of those old lead sheaths that you've got in there. They're not all dinosaurs, folks, some of them are working. (Just like some of us old dinosaurs are still working.) They are difficult sometimes to get out of the duct. They are also difficult -- not only from a sense of pulling them out of the duct where they're frozen in, but they're also difficult to get at. They're at the bottom of the hole. When you start building a cable system, you start at the bottom of the hole and work your way to the top. Well, you've since covered those old dogs with a whole bunch of other facilities -- makes them difficult to get at. So it's not all roses when you turn around and say, "Well, just pull out some of those old dogs you have in there."

It's kind of like this whole idea of bursting pipes. We have an underdrain system in my neighborhood that's about useless now. It's collapsed and it's really miserable. I went to the town engineer and I said, "Why are you waiting." The plan is that they are going to take a three year program and they are going to dig up all the streets in our neighborhood, in our development. Then when they're all done they're going to repave the street. "Why are you waiting all that time? Why don't you try this bursting system where you can go through and track the old drain system, collapsed or not, and just burst new pipes through there?" And he laughs and he said, "No, we looked into it. A -- it's prohibitively expensive in this case, and B -- we

have no assurance that we can do what we need to do, et cetera, et cetera. We have to build a pumping station, we have to do this --" and so on. He gave me a whole bunch of good reasons. What I'm saying is, simple solutions such as pull out those old cables and let's clear them out is not always the answer.

The other things is everybody is saying, "Well, go to fiber optics because that's really the thing of the future." Fiber optics -- there is a good economic breakpoint between copper and fiber. And some of those 2-1/2, 3-inch cables that are in that ground are going to serve the competitive local exchange carrier. Do you all understand that? This copper that's in there will be used by the competitors to reach their subscribers. We don't necessarily want all of that copper out of the ground. The competitor doesn't and the incumbent doesn't want that out of the ground. They're both going to use it.

To prescribe a simple solution to this is to avoid a lot of issues and to ignore a lot of issues that really will come to bear on how we treat reserved space. Now, I'm working on a bit of a thesis right now for our friends on the FCC, trying to help them understand that when you build conduit, you build it with reserve capacity because of all these issues. If you have 24 ducts instead of the six you're using, you don't necessarily divide by 24 and say that's the cost per duct. You have to look at the fact that all the people who are involved in this

conduit system are benefitting from those other 18 ducts. Now, am I a shill for the communications companies that own all these ducts? Yeah. Yeah, Bellcore is still owned by the Bell Companies until the end of this year at least. So am I shilling for them? Yeah, in a sense you could say that I am. On the other hand, somebody's got to make some common sense out of what's going on, all right? Somebody has to say, "Hey, all those spare ducts in there were not put in because people just like to throw duct in the ground." It's because it's economical to do that. And if it's economical for the owner, it's also economical for those who are coming into the system. So that's one of the little projects I've been working on. And I promise I'll get it written tonight. I have promised them that I'll do that.

Aesthetics: The public simply will not suffer a superabundance of poles, conduits and so on. They are not going to want to sit still for constantly ripping up the streets. You know, we have a couple of highways and I'm sure you have too, around our way where it seems it's just a perpetual employment system for the contractors. They put two people on the job in January and in December the same two people are still out there holding up each other's shovel and you say, "What the heck is going on here? It seems to never be done." Well, the public doesn't do well with things like that. They get kind of annoyed when three lanes have gone down to one because these two fellows are standing there, one in each lane,

holding up each other's shovel. So this kind of thing does not lend itself well in the light of public opinion. And you get to a point when you say, "Well, just build your own conduit." Not just build your own conduit. The CLEC is not going to do that. It's not economical. And by the way, the public is not going to put up with it forever. So, it's not an unlimited space. They say that if you pull up the pavement on the streets of New York, you can still walk across the street very well because of all the structures that are beneath it. That's neat but the real picture is that you're not going to tear up the streets of suburbia with every provider or would-be provider that wants to come along and put in more duct. There is a limit to what the people will put up with.

Finally, the cost structure: Well, we've been through that. I guess somebody has to figure out how best to price out conduit and what the rates should be, but if you're going to do it based on this simplistic solution that has been offered so far by the FCC, you're going to ignore -- and by the way, do an injustice to a number of people who own those structures as well as, for that matter, to those who are in there right now and paying for it, all right? There are injustices that you can visit on them too. Somewhere along the line we have got to come to a just decision, not one that favors one company over another.

I am absolutely in favor of open competition and of a level playing field. I am personally in favor of it. But even I can see that there must be issues revisited before this can take place.

Introduction -- Tom Jackson

Our next presenter is Larry Lee. Larry is a technical specialist with the Cincinnati Bell Telephone. He's responsible for standards, procedures, operational support in the areas of: electrical protection, outside plant access and joint use.

He has a B.S. - Electrical Engineering Degree from University of Minnesota. He attended law school and some graduate studies in business and operations management during his twenty-six years involvement with the communications industry.

Larry began working for the Bell System in St. Paul, Minnesota as an employee of Northwestern Bell Telephone, now a part of US West. He spent two years in New York City working with AT&T in the corporate engineering staff. He has been a communications consultant, a CATV operator and designed and installed a long distance service. He is a Professional Engineer in Ohio, Kentucky and Indiana and came to Cincinnati Bell, ready to work, in 1989.

Larry presently serves as Utility Chairman of the Ohio County Engineers/Utility Liaison Committee. He is a member of the IRWA, International ROW Association and the Region 5 representative on the International Liaison Committee. He is also Chairman of the Ohio Telephone Industry Association Joint Use and Liaison Committee.

Let's welcome Larry as he comes to talk to us about the Telecommunications Act of 1996 as it relates to conduit, poles and rights-of way.

Owners' Responsibility -- Poles -- Larry Lee

Thanks, Tom. We have been spending a lot of time the last two days talking about the Telecommunications Act. We've had a lot of fine speakers.

My topic is on operations challenges created by the Telecommunications Act. It is appropriate that the program refers to my subject area as "poles" because, all the areas of outside plant access, "Rights-of Way as they are labeled by the Telecommunications Act, are treated by the Act as extensions of "pole" issues.

Many of us have been frustrated the last few days because we are not receiving clear definitions or specific guidance. The reason is that nobody is able to really say just how these issues will come out. I am no different, and like most of you cannot wait for everything to become perfectly clear. We have all got day jobs to perform.

So what I'm going to try to do this morning is focus on some of the issues as I see them. This analysis is based on where I work, what I have seen and what we find ourselves going through at Cincinnati Bell.

Viewgraph #1
**What is the Impact on
OSP Processes?**

- * Roles
- * Engineering & Construction
- * Technical Standards
- * Joint Use

I believe that what needs to be talked through first involves "roles". What our approach should be as Owners of poles, trenches, conduits and rights-of-way. What our approach needs to become in order to comply with the legislation.

I then plan to address the operational issues involving the engineering and construction processes, some of the technical standards issues, and certainly could not leave here without talking about the impact of all of this on Joint Use.

You have already heard that the Telecommunications Act of 1996 was a big piece of legislation. The part that we are interested in is the part that amends Section 224 of the U.S. Code 47. U.S. Code 47 is actually The Communications Act of 1934, and Section 224 is the codification of the Pole Act of 1978.

Viewgraph #2
**Telecommunications Act
of 1996**

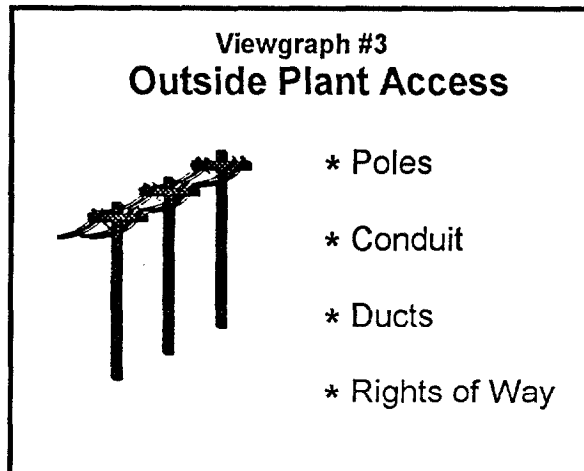
- * Amends Section 224 (47 U.S.C. 224), aka: The Pole Act of 1978
- * Establishes FCC Rulemaking Process
- * Recognizes State/Local Jurisdictions

One of the things that legislation did was to redefine "poles." As far as the Act is concerned, "poles" is a term used to represent all forms of outside plant access. Specifically, this involves: utility poles, conduit, ducts, right-of-way corridors and right-of-way sites.

The law establishes a FCC rule making process which is still being defined. It also recognizes the rights of state and local jurisdictions. Our concern results from the fact that the legislation has a major impact on how we provide outside plant access to others and how we use outside plant access to benefit ourselves as owners.

What's outside plant access? It is poles, it's conduit, ducts and forms of rights of way. We all think that we know what those terms mean. Well, there are people and groups even trying to clarify what those terms mean. These people are working in the background right

now, but they are helping reshape many of the issues and quite a few of them really have not had first hand operational experience with these things.



For example, although poles are usually wooden structures, are there occasions where towers would be treated as poles from an administrative point of view? And what about platform fixtures, H fixtures and so forth? Will they be considered as poles from an administrative and legal perspective? Will they be considered legitimate forms of outside access at all? There are rulemaking activities and negotiations that are going on right now that are trying to bring these kinds of issues into clearer focus.

A lot of the new competitive local exchange companies want very expansive definitions for all of these things. Take conduit for example. Those of us involved with operational and design issues think we have an idea of what the term "conduit" represents and how

conduit relates to "ducts." I tend to think of a duct as a four inch plastic pipe that is long, is installed in the ground and bundled together to form conduit systems.

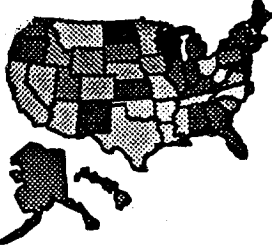
What is being argued is that ducts also include pipes that go up into cabinets, control points, transformers, transformer banks, telephone serving area interfaces, carrier systems, central offices, etc. The basic argument is that if an Owner has any vacant ducts going into anything, they ought to be made available on a non-discriminatory basis to whoever wants to put their cable into those pedestals, closures and other network elements.

We Owners recognize that this duct argument may be an unbundled loop issue, but should not be treated as an outside plant access issue. This difference impacts how the rental rates are determined and the rules of conduct for making the ducts available. Outside plant access continues to be treated in the old regulated accounting methods, while unbundled loops involve forward looking costing for determining rates. Also, unbundled loops issues would be determined more through negotiation with fewer limitations on the options.

A lot of these types of issues are currently being identified. Efforts are being made to resolve them. The FCC rule making process goes on. The courts are also becoming involved. This process of clarification and determination will take some time to accomplish.

Viewgraph #4
Issues are Currently Being Identified and Resolved

- * FCC Rulemaking
- * Individual Interconnection Requests
- * Negotiation/ Arbitration
- * State Rulings



In the mean time, there are individual interconnection requests pending in most major cities. Regarding these, there is a negotiation, arbitration process under way. If the parties cannot resolve their issues satisfactorily within 180 days, the whole matter goes to binding arbitration.

You need to be aware that the people that are ruling on the binding arbitration are appointed and generally do not have operating experience with the issues they are attempting to arbitrate. These negotiations and arbitrations will help define the terms and conditions in real life ways.

Apart from the negotiations and arbitrations, there are state rulings which will help boil all this down into written, legal terms.

Viewgraph #5
Public Issues are Involved

- * Rights of Way are Limited Resources
- * The Public and Utilities "jointly use" road rights of way
- * Rights of Way are Costly to Establish
- * Public Safety Can be Involved

I believe the rationale for the part of the legislation which focuses on outside plant access issues stems from the fact that most forms of outside plant access; poles, conduit, sites and corridors are located on public "rights-of-way" and the belief that there is a strong linkage between forms of rights-of-way and the public interest. Fundamentally, there is a strong feeling that a lot of public issues are involved here; that "rights-of-way" are limited resources; that the public and the utilities jointly use road "rights-of-way" already; that "rights-of-way" are costly to establish; and that public safety is involved.

Viewgraph #6
Access is Shared Already

- * Joint Use Agreements
- * Shared use of road rights of way by utilities
- * Joint Trenching Agreements
- * Licensing of "third party" Attachments



the companies involved have been able to reduce their investments.

Viewgraph #7
The Sharing Has Been Successful

- * Sharing of Costs
- Reduced Investments
- * Operating Synergies have been created
- * Reduced Overbuilding

I think there's also a feeling that access is successfully being shared already. For example:

- The electric and telephone utilities have had Joint Use Agreements for poles in place since the '30's.
- We share the use of road "rights of way" with other utilities and with the municipalities and units of government that operate those road "rights of way".
- We have joint trenching agreements.
- We already license third party occupancies.

There definitely are successful precedents to this legislation. For the most part, this sharing has been successful: costs have been shared and

There have been operating synergies which have been created out of these relationships. Duplication of facilities, such as the overbuilding of pole lines, has been reduced.

I think there's generally a perception that these endeavors have been a success so far, and that the owners of ROW / OSP Access have the skills and resources to make all of this work.

My point is that it appears to me that the Telecommunications Act, as it is drafted and as its rules are being established, seems to be an attempt to take the concept of Joint Use to the next level. It would seem to be an affirmation that structures and rights-of-way are strategic resources that are necessary to permit new service providers to gain physical access to their customers. It all seems an attempt to recognize that it

is both safer and efficient, from a public interest point of view, to permit occupants to "piggy-back" onto existing structures and rights of way.

Viewgraph #8
TA96 -- Joint Use Taken to the Next Level

- * Structures and ROW are the physical means for new service providers to access customers
- * It is safer and more efficient for the public to permit occupants to "piggy-back" onto existing structures and rights of way
- * Owners have a responsibility to the public as well as stockholders

In fact, the term "piggy-backing" has begun to be used more and more in a number of documents and communications. I believe the term is intended to convey exactly what the writers of the legislation, or at least the FCC, has in mind.

A problem is that some of the new companies are making arguments which are not consistent with this "piggy-back" concept. One situation involves the use of entrance ducts which I discussed earlier.

Viewgraph #9
Owners Are Responsible for Providing Access

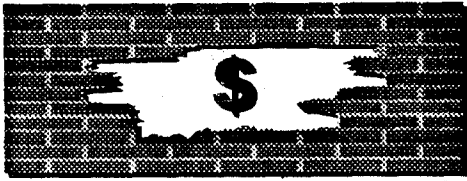
- * In a Fair Manner
- * In keeping with established technical and safety standards

I think it is important to reflect on the reality that the Act provides those of us who own or control structures and rights-of-way with a new set of responsibilities. And that we are accountable to the public as well as to our stockholders for following through on these new responsibilities.

Basically, what is being suggested is that Owners are now responsible for providing access and will be held accountable for providing access. We have always liked to think we have been responsible, but the legislation creates an obligation to provide that access in a fair, non-discriminatory manner which is also in keeping with established technical and safety standards.

Viewgraph #10
How does TA96 Impact Our
"mission" as
Access Administrators?

Owners need to change role as
"manager" to one of "facilitator"



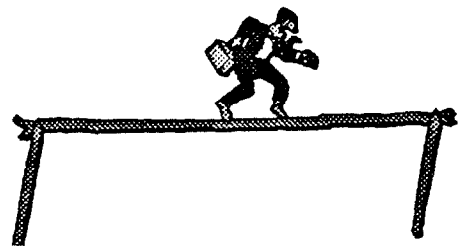
My personal philosophy is that what we are being required to do is to change our roles from those of owners to those of custodians of structures and rights-of-way. This is a radical change. We are being asked to become more like facilitators of the public's interests than managers of private interests. Really what this requires is the breaking down of some walls and the creation of some new perspectives.

Our main task as Owners of structures and rights-of-way is to develop tangible financial benefits to adequately compensate ourselves for our investments in structures and rights-of-way. At present it is an open question as to whether or not we are up to the task. This requires a shift in cultures, attitudes and roles. Especially for the established telecommunications providers. However, I think it will become more and more clear that our job will be to try to

do what we can with what we are being asked to deal with.

Viewgraph #11
There are Upsides If You Can
Reach Them

Owners of Access are Often
Users of Access



I do think there are some significant upsides if they can be reached. To create these benefits, an Owner needs to carefully perform an analysis of its strengths and resources, and of the potential benefits and goals that can realistically be attained. I believe one of the up sides are that, for the most part, those of us who own different forms of access also use different forms of access. That makes these forms of access strategic assets that can be traded in return for tangible benefits of some kind.

In other words, most of us are not all on little islands by ourselves with regards to the use of structures and rights-of-way. Many of us have Joint Use pole Agreements already. Some of us have Joint Trench Agreements. We all have

relationships with local government, state government for highway access to rights-of-way controlled by units of government. All of these relationships can produce cost savings or some other operational benefit.

What I am talking about is leveraging our structures and rights-of-way assets to increase their value. I am convinced that this can be done in such a way that both our obligations to the public, as expressed by the Telecommunications Act, are met, and the overall value of these assets are developed.

Viewgraph #12
**Owners Need To Determine
their Goals**

Optimize (non-cooperative role)?

OR

Increase Value (cooperative role)?

We are all need physical access to our customers. This physical access is provided by poles, conduits and rights-of-way. To a great extent what the Telecommunications Act does is provide a Bill of Rights to users of access. Owners, in return, receive new opportunities to benefit from their investments in new ways. If Owners do not develop

these new approaches it will be because of their own lack of a strategic vision involving these assets. This challenge is not going to go away. We will all need to deal with it in our own ways. It is a new game with new rules, but one that Owners should have the ability to play and play well.

Owners of structures and rights-of way have two clear paths they can follow. The first is to optimize, like we do in consideration of the inability to perform outside plant construction during the winter months. This approach involves minimizing risks, avoiding losses and containing costs. The second involves trying to view these changes as opportunities for increasing the value to our companies of their pole, conduit and rights-of-way investments. Non-cooperation is okay if the first path is selected, but to realize the benefits which are possible along the second path, cooperation is essential.

It is certainly possible to optimize while being noncooperative. But If Owners choose to increase value, they have to cooperate and create new strategic relationships.

Finally, to conclude this part of the presentation, I would just like to point out that, to a great extent, what we are being asked to do is very similar to a highway engineering function. That is, what we have expected highway engineers to do on our behalf for years.

Highway engineers:

- Put together processes for permit applications.
- Certify installations.
- Develop and enforce baseline technical and operational standards.
- Arbitrate, negotiate and facilitate multiple requests.

When you look at what we are being asked to do as a result of this legislation together with the rules, it looks very similar to me. And it closely resembles the public interest issues.

Viewgraph #13
Operational Challenges

- * Occupancies
- * Modifications
- * "Buy-Ins"

For the rest of this presentation, I will try to address some of the operational challenges I see. Basically, these can be viewed to involve initial occupancy requests, modifications and what I just kind of call "buy-ins". I will describe each of these.

As far as initial occupancy requests are concerned, the primary mandate is to provide non-discriminatory access. That means equal terms, equal timing considerations and equal conditions. What I read seems to imply that Owners will not be permitted to reserved space on a preferential basis.

Even maintenance ducts in conduit systems have to be available to all parties on a non-discriminatory basis. So they are not really our maintenance ducts any longer. We administer them on behalf of all occupants. They are permitted for everybody's benefit.

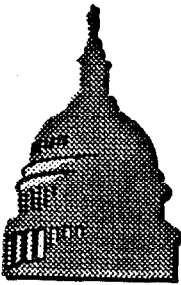
Viewgraph #14
Non-Discriminatory Access

Equal Terms, Timing and Conditions

No permanently "Reserved Space"

Maintenance Ducts/ Space Available to All Parties

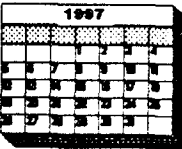
No Preferential Treatment for Owners



It is essential to note that there can be no preferential treatment for owners. All of the new applicants are concerned with this requirement and will be looking

to benefit if they can establish there is some kind of preferential treatment going on.

**Viewgraph #15
New Access**



- * Owner has 45 Days To Deny Access
- * Denials Must be Factually Supported

With regards to requests for access to poles, conduits and rights-of-way, the owner has 45 days to deny the requested access. You will hear a lot of discussion about what that means, but the actual wording is "45 days to deny access". That does not mean you have to provide access in 45 days. It does not mean you have to perform the engineering and do the associated construction in 45 days. However, from a practical point of view, it probably does mean that most of the engineering will need to be performed within the 45 days so a proposal for make ready can be provided in response to the request.

Denials must be factually supported. And they're going to be very rare. They have got to be confirmed within 45 days of the application and have to be non-discriminatory. In fact, the basis for denials are well defined: insufficient capacity and the inability to create

additional capacity for reasons of safety, reliability and generally applicable engineering standards.

Denials will be very rare, I think. The thought is that it will usually be possible at some price to provide the requested access. As owners, we are not left with the decision of what is feasible and what is not feasible. That decision is left to the customer.

**Viewgraph #16
Compliance and Performance
Issues**

- * Scope of Applications
- * Performance of Make Ready
- * Equal Application of Standards

What are the potential problems? First of all, we are going to have people watching us every step of the way on how well we respond to these challenges. I do not believe we will be permitted to limit applications. At least, there seems to be good reason to think that we will not be able to establish arbitrary limitations on applications. Reserving space is not really possible. And engineering and construction intervals, I think, are potential problems because Applicants will not be concerned with peak work levels, service

order activity or how an Owner chooses to organize its personnel, equipment and so forth.

For example, Owners usually want to organize their engineering and construction forces in certain ways to optimize their ability to respond to normal activity and routine day to day business requirements. The problem is that Applicants are entitled to standards of performance that do not depend on an Owner's normal level of activity or day to day business demands. I believe Owners will need to develop force management approaches that address this challenge.

Viewgraph #17
Modifications to
Structures/Rights of Way

- * Owner provides all occupants with the opportunity to "buy into the project."
- * Owner must provide all occupants 60 days advance notice for planning and consideration.

An area that is not clearly defined as yet involves modifications to structures, poles, and conduit systems. The Owner is required to provide all occupants with the opportunity to buy into all projects that add capacity.

What this involves is the Owner providing all licensed occupants with 60 days advance notice for planning and consideration. It is very vague just how this is to take place, but the intent seems to be that the 60 days notice is to give all the occupants time to determine if they want to increase their space by buying into the project. The mechanisms for providing the notification, allocating costs and invoicing the affected parties all need to be developed. Another potential area for opportunity, but only after lots of work to develop workable approaches.

This notification does not involve maintenance situations. For example, if a pole is broken and immediate action is necessary, obviously you cannot provide 60 days advance notice. The intent seems to be to involve all planned projects, planned construction, non-emergencies. If an occupant elects to increase its space by exercising this option, that occupant would be charged a fair share of the costs.

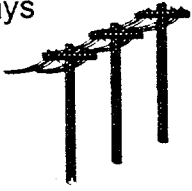
Here is an example: Assume a CATV company is attached to a pole and a competitive, local exchange carrier requests attachment space on the pole. The pole needs to be replaced with a taller pole to accommodate the request. The pole Owner is required to provide 60 days advance notice to the CATV occupant of the replacement. If the CATV company foresaw a need for more space, they could elect to share in the cost of the construction and pay a fair share of the costs. The actual cost

causer, the new occupant, would pay the difference. If the CATV company elects not to participate, but needs a portion of the additional capacity at a later time, the new occupant could seek to recover some of the make ready expense from it at that time.

Complicating this situation, existing occupants are not required to pay for any rearrangement costs to their facilities after they have already been provided access. I believe the exact wording is that an existing occupant should not pay any costs associated with rearrangements needed to provide space for somebody else unless they buy into the project. The cost causer is required to pay for the rearrangement.

Viewgraph #18
Rearrangements of Existing Occupancies

- * Existing Occupants DO NOT pay for rearrangement costs.
- * The "cost causer" pays unless the existing Occupant requests more space.



The pole owner could very well be the cost causer under both of these scenarios.

Viewgraph #19
Modifications to Correct Existing Violations

- * The Party in violation corrects the defect by "buying into" the project.
- * The Party in violation shares in the modification costs.
- * Being an Owner is no defense.

What about existing violations of safety codes, technical standards and the like? This is potentially a large operational concern because there are many of them out there. The party in violation would correct the defect by buying into the project. That party would share in the modifications costs and if it's the owner who is in violation, then the owner would "buy into" the project.

The implications to an Owner are rather onerous when you think about how this issue has been addressed in the past. What it means is that you can have somebody requesting access to your poles for example, and now you end up as the owner being committed to a portion of the make ready because of some past failure to properly specify or inspect a licensee's attachment. This is a new cost burden that Owner's may find difficult to avoid.

With this issue in mind, administrative issues are more important than ever. Inventories of occupancies need to be sound for an Owner to be in a position to know who should be notified. Billing and accounting processes and systems also need to be revisited. Where should the "buy in" money go? How should "charge backs" be determined and handled? Who should the responsible parties be within the Owner's organization, and how should the organization be structured? What is the impact on an Owner's planning processes. The biggest operational challenge facing Owners is the presumption that access processes need to result in equivalent treatment of applicants and Owners. How quickly does an Owner make a pole ready for its own attachments? What is the proper benchmark for service standards involving licensed attachments? What we are seeing are requests for administrative processing, engineering and field performance standards to insure that we, as Owners, are providing Applicants with comparable engineering and construction services. Comparable meaning as good, if not better, than what we provide to our own forces.

Field maintenance issues also need to be clarified in realistic processes. What should be done in an emergency? For example, if a pole gets hit and broken at 2 a.m. in the morning and there are foreign owned fiber cables hanging on it, what should the field forces do? Who should be notified? Does the Owner go ahead and temporarily reattach all those

fibers that don't belong to you? Much of this will require the negotiation of specific operating agreements.

In the area of operations and field maintenance issues, negotiation of formal agreements will most likely be necessary. These will probably look a lot like Joint Use Pole Agreements. In fact, it appears to me that the Telecommunications Act seems to imply that Owner's will need to put together Joint Use agreements with a lot of different parties. At least, these relationships look a lot like Joint Use agreements in content and in scope.

Viewgraph #20
Joint Use Agreements
Need Updating

- * No Reserved Space
- * Notifications and Responses
- * Reciprocal Charges
- * Ownership Percentages
- * Coordination of applications

With Joint Use Agreements in mind, I believe it is appropriate for me to wrap up this discussion back at the focus for the conference. Joint Use relationships and Joint Use Agreements. It would be smart for many of us to spend some time cleaning up our existing agreements. We have had many of these for

years and years, and perhaps yours were last modified in the fifties. It is possible that those same Joint Use agreements, in their own right, might end up being the standards on which your interconnection agreements for poles, conduit and rights-of-way are built.

Joint Use issues that should be looked into involve technical standards, reserved space, notification and response handoffs, reciprocal charges, division of costs and coordination of applications.

Viewgraph #21
Standards Need Clarification

- * Points of Attachment
- * Methods of Attachment
- * Clearance Issues
- * Storm Loading
- * Guying and Anchors
- * Grounding and Bonding
- * Manhole entrances and modifications

Some examples of standards issues are points of attachment, attachment hardware, clearance issues, storm loading issues, guying and anchors, grounding, bonding and manhole entrances.

Viewgraph #22
Access Coordinator

- * Single Point of Contact
- * Certification of Requests
- * Negotiation of Commitments
- * Invoicing
- * Methods and Standards

Some of the implementation options that have been voiced that I am aware of involve establishing an outside plant access coordinator. This access coordinator would be a single point of contact, certify requests, negotiate commitments, handle the invoicing and be responsible for the technical standards issues.

Viewgraph #23
Outsourcing

- * Control of Required Resources
- * Identification of Costs
- * Consistent Application of Standards

Outsourcing gives us some control of resources, and gives us the ability to have a clearer identification of costs than is usually possible relying on internal accounting procedures. So you can actually meet commitments and justify your costs associated with the work.

Cost sharing and revenue producing options can be developed. Make-ready opportunities, installation of facilities, ongoing maintenance arrangements and other service packages would certainly offset costs and save Owners money. Perhaps even make money. These are all potential benefits if Owners are nimble enough to recognize them and jump quick enough to grab them.

Thank-you for your attention.

Introduction -- Tom Jackson

There's a change in the program. It says that we have two presentations remaining, one by Annette Anson, who is here, and another by Dan Florez, who is not here due to an illness in his immediate family that required him to remain home. But Annette will make both presentations.

Annette Anson is a Right of Way Representative. She is Manager of Right of Way for NYNEX in Vermont. She's had 30 years with NYNEX, which used to be known as New England Telephone and Telegraph, and is soon to be Bell Atlantic. Twenty-four of Annette's years with NYNEX have been in right of way. She's a person who you have to admire. She started off as a clerk in the right of way section and has progressed to Manager of the Right of Way Group. She has six people working for her and has the responsibility for managing all the right of way acquisition, and deposition for NYNEX facilities in the State of Vermont. She has continued her education. She has an A.S. Degree in Business Administration from the Community College of Vermont. She has attended courses and completed certifications in Mediation from Woodbury College. She presently serves as Chairman of the IRWA International Liaison Committee and is active in many local, governmental, and conservative issues. She likes to relax while she's canoeing, camping, horseback riding, or doing wilderness travel. We want to welcome

Annette as she talks with us about two topics -- right of way issues and municipalities' effect on joint use. Annette.

Owners' Responsibility -- Right of Way -- Annette Anson

I'm holding a document entitled, Pole Owners' Responsibilities Relating To Joint Use From A Right Of Way Perspective. When asked if there was a topic that I thought needed to be addressed at this year's conference, I did not hesitate. I immediately said "right of way." If you don't have right of way, you aren't going to be building or attaching to anything. You look at the word "responsibility" in this issue. It really jumps out at you. In this day and age of profit and bottom-line, downsizing, restructuring, deregulation, acquisitions, mergers -- we even have new buzz words called customer care. One may ask, who is responsible and what does it mean to be responsible?

I want to take a little bit of time today to talk to you about the layers that I see for pole ownership. A lot of what I will say, you have heard before. We say "pole ownership" but it could be conduit ownership or some other type of facility. It could be the ownership of a right of way.

There are usually two major types of pole ownership. The type of ownership where it's a percent with another entity controlled by an Inter-Company

Operating Procedure (IOP). Or, as we say, "Agreements." Or you can have those owners that have 100 percent interest in their poles and have another major user that they have Inter-Operating Agreements with.

In both cases, the IOP's are very clear as to what happens for the acquisition of right of way. But there are also cases with some of the older agreements where they are very vague. These are the ones that prove to be problematic. Then you have another layer. This is a layer that we have been dealing with for some. This is the layer that is now beginning to change. You have the users and they fall into two major categories.

There are license agreements for the third and fourth parties. Most frequently, you will have a third party that could be, let's say, a cable television company, that would be covered either by State tariffs or franchise agreements. It is clearly stated in these license agreements that the licensee has certain obligations and that the procurement of right of way is one of these.

This is if you have a well-written agreement. You don't always have those. So we have some words here: "right of way, obligations and agreements." I would like to read to you some terminology from one particular agreement. It says the term "joint easement" means a "perpetual easement and land or otherwise, for the

construction, maintenance, repair replacement, or relocation of any poles, lines, conductors, guys, anchors or other appurtenances or equipment necessary therewith for the distribution of electric or telephone service or both."

That's very clearly spelled out. In this particular agreement it continues to go on to spell out who pays for what, who does what and everything else. That's a very well written agreement.

You may have another one that will say only that all rights must be acquired before you can attach to the poles. Or you may have companies that you deal with where there are no agreements, where everything has been done in the following manner. "I've got crews and they're available and we can do it. You have crews, they're available. You can do it."

So now we're going to come the meaning of the word "responsibility." I like words and what they mean. So I went into Webster's and I started looking up the word responsibility. It means "obligation." You see that word in a lot of your license agreements. "Accountability." How many times in life have we heard that we're all accountable for our own actions? "Dependability." Always being able to know it will be as written, no matter the time, the place, or the circumstance. "Quality." Every company, every pole owner strives for this or should. "Able to distinguish right from wrong and act rationally, hence,

being accountable for one's behavior." Simply put: doing the right thing for the right reason.

We say this is the pole owner's responsibility. But, in fact, it should be for all those who work for companies that are pole owners. Again, I use the term "pole owners" loosely. It can be conduit and it could be users. It's anyone who has any connection to the infrastructure for telecommunications, cable, all of the new companies that are coming in.

Everyone has a "personal responsibility to make sure that what they're doing is the right thing for the right reason." So how do we achieve this? There are some simple steps to follow. One of them that I believe is at the top of the list is the IOP's, the Inter-Operating Agreements. There will always be agreements no matter how much the Telecommunications Act changes things. How those agreements are written is going to be the foundation for whether or not it's going to work, whether or not you're going to have a lot of lawsuits.

The documentation should be available for all to view if it's ever needed. It should be written so that both owners and users are responsible for acquiring both public and private right of way. Don't assume, because a pole owner is already there, that they presumably have a right to be there.

I heard it said that there are many

situations across this country where there aren't structures in place, that the right of way was actually a handshake and there's never been any reason to change that over the years. Now may be the time.

Each State or municipality has different regulations and even if an easement is valid before a user is allowed to attach to that pole, all the documentation should be up-to-date and it should be legally correct.

As an owner, it's your duty to find out what those regulations are and then devise ways to see that they are fulfilled. If you put it in your IOPs, then there is less chance that it will be overlooked and you will have a need to enforce it if it should arise.

Let's take a look at a public permit, first of all. What could be called a permit or a license? It's whatever your State or municipality calls it, for occupation and use of the public way. The document can be worded to cover both the owner and user and the contractor. So do your homework. It only takes a bit of creative language and a willingness on the part of the owners and users to follow through with getting the proper signatures on the permit application and sending it to the correct State or municipal entity.

We have an example of something that happened in my State. Vermont, of course, is a small State and we work

very well together with our Agency of Transportation. It is required by State law that anyone using the highway right of way file a permit. The last time this permit was revised was 1989. Most of the major electric companies and phone companies in Vermont always file this permit and we file it as a joint owner/applicant. Those are the words we use, "owner/applicant." We both sign it and it gets filed.

Over the years, as the third parties have started attaching to the pole structure, problems arose. They were working in the highway right of way, no one knew who they were and there were a lot of safety conditions that were in violation. To combat that, the AOT would always call either the local telephone company or the electric company because they never knew which had jurisdiction and complained to us about it. There didn't seem to be anyway we could solve the problem, so they went about solving it for us.

In 1996, they came out with a new permit and it had some very interesting language which we all agreed to disagree on. There was a new term called "co-applicant," which means the party who performs the work if other than the owner/applicant. And it basically said that the owner/applicant would be responsible for all damages to persons or property resulting from any work done under this permit even if the co-applicant performs the work.

All references to owner/applicant also pertained to the co-applicant. The owner/applicant must comply with all Federal and State statutes or regulations, and all local ordinances controlling occupancy of public highways. Then it went to the bottom of the page and it said, "that examples include, but are not limited to, joint ownership or occupancy of a utility pole line, construction of a municipal utility line by a contractor. Both the utility companies, and in the second case, the municipality and the contractors, must be joint applicants."

Well, we didn't take kindly to that wording, so we discussed it with our legal departments and we decided we're going to try to see if we can get the state to change it. As I said, we have a very unique system in our State, where we can go directly to our State AOT and our attorney general as utilities and tell them what we disagree with on agreements in the permit system.

As a consequence, they changed it. The understanding now is that "the owner/applicant shall be responsible for all damages to persons or property resulting from any work done under it's permit even if the applicant's contractor performs the work." What the clarification was, was that the owner/applicant also has separate agreements with their contractors and because of those agreements, that is how they're covered for any damage for any work that's done that is not up to standards with the highway department.

So we took the time to correct this ourselves, rather than to try to litigate it. That's an example of taking an agreement and when there is a problem with it, changing it amongst the parties -- sitting down, finding a solution and not letting it get to the stage of litigation.

"Individual responsibility, going outside the nine dots." That's telephone terminology. Some municipalities have complex zoning regulations. Owners and users must follow them. Nobody has talked about zoning today at this meeting but you're finding more and more municipalities that are trying to create zoning ordinances that will not be in violation of the Telecommunications Act but which will give them more control over what is done in their public right of ways.

Private rights: The telecommunications law, of course, has opened up a lot of discussion. You have heard a lot of that today. In some cases, of course, the owner company does not hold a valid easement but the user company does and it's covered as part of the IOP.

If you put the legalities aside for a minute and talk about responsibility from an ethical point of view or a moral point of view, you have to ask, "who are the property owners?" They are our customers, our rate-payers, our taxpayers, our neighbors, and friends. They are real people and they have rights too. The right to have a say who and how their property is used. Owners

have not always obtained those written agreements for private property but there's no excuse today not to have it in writing so it will stand the test of time.

If we all took the responsibility for seeing that all the owners, users, licensees, permittees, everyone that needed documentation, were in order, there would be less time and dollars wasted on lawsuits and correcting violations when the State and municipal ordinances were not complied with.

Think of the trust the public would have in our companies. I don't think the public has a lot of trust in any of our companies today. I think that they are more confused by what they hear in the media about the Telecommunications Act.

I'm going to leave you with this thought. If you as an individual take responsibility for seeing that both pole owners and users are in compliance with all regulations and expected requirements of using the rights of way, then there would be much less confusion and more order to the process. It doesn't have to be written in an IOP for two companies to form an unspoken, but trusting agreement to watch out for each other. Yes, I know, it defies the principle of "get them before they get me" and "the bottom line is all that counts." But isn't the principle of the greater good for the greater number of people better? If we are all individually responsible for making sure the rights of ways for our

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owner and user companies are valid, it can only be a win/win situation.

As you can see, I took a different slant to all of this. I firmly believe that, no matter who you work for, no matter what your company policy is, no matter what Congress is doing with the Telecommunications Act, that we each, individually, have a responsibility to make sure that we do the right thing.

**Municipalities Effect on Joint Use --
Annette Anson**

Each January at the International Right of Way Association's winter meeting, we have what's called a Federal Agency Update. Last year, I made contact with an organization called International City/County Management Association and we asked them to come and speak to us. Before I tell you about them, I'm going to go over some of the usual problems that come up when municipalities are dealing with joint use.

First of all, in today's society, municipalities are scrambling to make ends meet. People don't want their taxes raised but they want more services. The school aid to education formulas are in turmoil. Many of the State supreme courts are coming down with decisions that say that the present system is unconstitutional and that a portion of taxation is in turmoil. Property owners want tax relief. Municipalities want to treat their constituents

right, so that triggers communities trying to get creative and find ways to get the most from their resources. This leads to things like creative taxation and fees from utilities for the use of municipal streets, forging partnerships with cell or PCS companies for lease space.

In other words, "the ends justify the means, whatever it takes." Let's take poles. Municipalities are having stricter control over them. We'll use aesthetics as one of the reasons. Dual poles -- we all dread that. We all hear residents don't like to see them. They're considered safety hazards. They're ugly. Utilities today have less manpower and dollars to remove poles and wire that is no longer revenue producing.

The result -- CLASH. Municipalities start refusing to permit any more poles, facilities, or any other utility work until the existing problems are taken care of. There have been numerous documented cases throughout the country where this has happened.

They also have been getting very creative at passing ordinances that are very controlling that limit the time that you can have dual poles in place. Utilities usually don't know that this is happening until they're suddenly hit with, "you were supposed to have your poles out of there three months ago."

Some municipalities threaten to remove the old poles and cables themselves. I don't know of any instances where this

has happened but I have sat in on meetings and listened to them threaten this. What is the solution? If you're faced with a situation, you have to sit down face-to-face with the municipalities and share the responsibility for timely removal. Municipalities will no longer accept, "we don't have enough manpower, it's not in the budget."

You have to create a joint committee with a municipal representative, telephone, electric, CATV, whoever else are your attachees on that pole. You set your priorities to take care of the immediate problem and then set a plan in motion that is workable and is agreeable to all parties. It's for the future. You have to follow through with it.

We have another situation in the municipalities. They want to place their own cable attachments for municipal use on our pole structure and in our conduits.

CAUTION: You have to make sure that if this is done, it's done within the guidelines of the Telecommunications Act. Something could happen -- they could put their facilities up and we wouldn't be paying attention and we might never know about it. This has happened.

Let's talk for a minute about undergrounding. This is another sore subject in municipalities. Of course, they're concerned about what's above ground, but they think everything should be

underground. That's for aesthetic reasons. If there is underground structure, they're concerned about any disruption to the surface, primarily because it will cut down on the life expectancy of the roadway but also because it disrupts municipal life.

Many municipalities will enact excavation fees, sometimes very steep. Some require utilities to put up escrow funds or have bonds to cover the work. Most recently, there are cases in litigation processes in a number of States where municipalities are actually trying to charge for use of the public right of way. But towns consider it their Right Of Way and their right to charge even though it's public right of way. The outcome of these cases will be viewed with interest by all.

Joint construction: More and more municipalities are requiring utilities to plan projects so that all users of the right of way can do them together. If it's a municipal project that has municipal funding, then the request goes out to have the utilities upgraded while the streets are open. Cost-sharing is worked out. Often a project coordinator, even an approved engineering firm, is hired by the municipality to oversee the whole project, working with all utilities and the municipality. This is definitely a win/win situation.

Permitting: the paperwork that gives us -- when I say us, I mean all utilities -- the right to occupy. Most municipalities

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have some sort of process that all joint users must go through before they can even begin to work. Scrutinize it more. There might be hidden language that you don't know about. Like I said, they are passing ordinances and a lot of times, we don't know the ordinances are there until we are suddenly hit with them.

Don't let the cooperation fool you. Municipalities are very, very well informed about the Telecommunications Act and how they can benefit by it. They know the technology that is available. They know what utilities do for work and how they work with each other.

The second thing I'm going to tell you about is the organization that is The International City and County Management Association. There's also the National League of Cities and Towns. Lo and behold, when we had our meeting, our speaker pulled out this book. It's called Telecommunications - Planning for the Future. It was a report that they had done which is about the Telecommunications Act and about how to work with the utilities.

I just want to skim over some high points in some of the chapters that show you just how "on the ball" the municipalities are, and then I'll give you the number and the ISBN so that you can acquire this book.

Chapter One is entitled, "What is Telecommunications and Why Should Your

Local Government Care?" You have to do your homework -- this is just one of the things they tell you. "You have creative vision. You have to share the vision. You voice your concerns.

Clearly the policy changes envisioned as the goal of the Telecommunication Act of 1996 are as dramatic as they are evolutionary. There are many opportunities for involving local government as the proceedings and rule makings at the Federal level evolve."

Chapter Two is entitled, "Why Do Telecommunications Planning." Control of the right of way is the number one topic. "A major objective for any local government should be to retain local responsibility for and control over the use of public rights of way, to protect citizens and enhance the quality of their lives." They talk about Denver's public rights of way -- "have an acquisition value of 5.5 billion. The market rental value of Denver's public rights of way is 483 million. However, the city receives from all private utility users, including cable television, telephone and others, a total of only 38 million year in compensation for the use of the rights of way. To make matters worse, the city expends over half a billion dollars a year maintaining these rights of way." In other words, the city leases a property right for only 13 percent of its fair market value while taxpayers fund 500 million a year maintaining that property at no cost to the private user. "The Telecommunications Act of 1996 preserves the right of state and local

government to control the public rights of way and the require fair and reasonable compensation from telecommunication providers on a competitive, neutral and non-discriminatory basis for the use of public rights of way. The new act also affirms local zoning authority over the siting of cellular towers and other telecommunications facilities." And it's all through here. They talk about universal service, local government telecommunications infrastructure.

Chapter Three is entitled, "Markets and Public Policy." They have an item on changing the future. "Local government leaders must educate themselves on the options." They're examining what other governments are doing. They're establishing achievable goals. They have implementation strategies. They talk about wireless telecommunications services. There's a whole section on that, competitive access providers. They discuss telemedicine in action. To be honest with you, they haven't left any stone left unturned.

They actually give you examples in this book of where they have had a collaborative enterprise model for telecommunications planning. Austin, Texas. They talk about teams and partnerships. They have been building a telecommunity in Taos, New Mexico. Citizens planning in Orange County, Florida. Also in there is an appendix that includes a model telecommunication ordinance.

I don't think when the person that came to this meeting brought this book, that she understood really what she was doing by putting it in the hands of all the people that were going to read this. But maybe she did because maybe this is their way of saying, "this is how we view the Telecommunications Act and how it's going to affect us and maybe we want you to read it and then come back to us and work with us."

So what I want to do is to give you that number. That number is an 800 number and this is to order publications. It's 1-800-745-8780. The ISBN number is 0-87326-116-X and it's called "Telecommunications - Planning for the Future" and it was put out by the International City/County Management Association.

This is the end of my presentation.
Thank you.

QUESTIONS & ANSWERS

Monday, April 14, 1997

Question

This question is for Ted Williams. Are there any sections of the Telecommunications Act which specifically address fees for public right-a-way?

Ted Williams

I don't know of any. It's going to be a very gut wrenching thing to come up with rates because, as I said, space and other factors are going to come up. I think what it's going to entail is somebody sitting down with the entity that's going to come up with these rates to look through this thought process. The counties, cities, and States, can't wait 10 years for all the litigation. They're going to have to decide something and go with it; and I think they're going to have to do it on some sound basis, record that, and say that until we're told otherwise, this is how we're going to handle it.

Speaker

What you're saying is that the act opens the doors for governments to charge for the right-of-way?

Ted Williams

Yes, in fact an advisory opinion or letter from an attorney with a governmental organization said there was nothing in the Act that would affect the State, county or local government from continuing to charge for right-of-way. And, like you, my eyebrows went up when I read the word continuing. I didn't know they did now. But that was

the legal opinion. So that kind of surprised me; but, again, it was based on telecommunications. Your next question is going to be, what about all the other utilities? To me, if you can continue to charge, that means the Act didn't affect this. So that means evidently their opinion is you could have been charging everybody for the use of public right-of-way since sometime in the past, which is from a utility standpoint a terrible idea.

Question

I have a question for Dennis LaBelle. It has to do with a preference on poles and the location of telecommunications. If an electric utility put its telecommunications line in the power zone, will that open the door for other nonelectric companies to access into that power zone.

Dennis LaBelle

From what I understand, they can't. The power zone is for the power companies. The power companies can put their communication cables up. They have in some cases. Shirley may be able to add some to this.

Shirley Fujimoto

I guess as an attorney who is familiar with what the FCC may be thinking about, the only thing I would suggest is, aside from the engineering issues, from a regulatory point of view, historically the power zone has been limited for the use of the electric companies. To the extent that the companies do open the power zone for attachments by

telecommunications companies, I think then it becomes a question of why can't others be let into the power zone? There are safety, reliability, and other issues which may lead one to conclude that you can't get in the power zone.

Speaker

From a safety standpoint, the National Electrical Safety Code is what is going to regulate that, and the very good likelihood is that it's not just a historical thing. It becomes a question of if you're going to do that, if you're going to have communications workers, for example, in the supply space, you need to change the code. All right? As it stands now, they may not do it.

Comment

Hire somebody who can do it. They certainly can do that.

Question

John Jernigan from Florida GTE. Shirley had mentioned the States that had elected to establish their own rates where you were not using the FCC. Do you have a list of those or could you give us some examples -- States that have elected to do it themselves?

Shirley Fujimoto

I do. There is such a list and I have it with me. If anyone is interested in taking a look at it or would like for me to send them a copy, give me your address, E-mail address, or fax number. It's probably about a third of the States which have certified that they do regulate pole attachments and in those

situations, the FCC regulations would really not apply. It would be the State regulations that would govern. So, I guess in trying to make a determination about what laws govern your specific situation, you look first to see who is really the proper regulatory body and then go and look at their regulations.

Question

I have a question for Bob Wilson. Could you elaborate on transfers of electronic notification

Bob Wilson

The transfer operations are handled the same way. In fact, that's probably the major portion of the work that we do as far as notifying other companies. As the transfer aspect; it's set up so you just list poles, whatever you're doing, proposed work, and ask them to transfer attachments. Right now we're online with Cincinnati Bell. The other ones we print out and send; and then we have to type that data in, do an entry system. Eventually that will be done through the Internet or they could be online also.

Question

I have a question for Shirley Fujimoto. In your presentation you mentioned the reservation of space by utilities would be allowed if there was a bona fide plan. Is there a definition of a bona fide plan or will there be a definition?

Shirley Fujimoto

There is no definition presently that we know of, of what constitutes a bona fide plan. That's what the FCC has called it.

There have been no discussions that I'm aware of, of what would qualify as a bona fide plan.

Question

Don't you think that's a significant item?

Shirley Fujimoto

It is a very significant item and it's an issue that the electric utilities have raised for reconsideration in the inter-connection proceeding. And what the electric utilities are suggesting is that the plan should be really what the utility decides it is. In other words, if a utility decides that it needs to have reserved space, that in itself should be sufficient for the utility to have that space set aside. Obviously, other parties disagree and feel differently about that. But I think the pole owners feel very strongly, especially with the electric utilities, that that should be something within their sole discretion.

Ted Williams

May I add? Among a lot of telephone companies, there is a hesitancy to let competitors in their conduit or on their own poles for some unknown reason. Usually there is a decision made if there is a plan. It's got to be in writing and it's got to be a three-year plan that was in existence at the time the request was made because if that's not the parameters, suddenly if you are a competitor in a conduit, suddenly you have a plan the day after they want in that duct or the plans just appear. So the requirement originally was three to five year plan in writing and it had to pre-date the request for occupancy.

Question

My question is for Shirley Fujimoto. With regards to the reservations of space, you also said that a pole owner could reserve the space if they had a bona fide plan. If they did not, they had to allow the applicant to attach. However, if they needed the space at some time in the future, they could require the attachee to remove their facility so that they could place their facility on the pole. Does that apply only to electric companies or is that applicable to telecommunications pole owners as well?

Shirley Fujimoto

I believe it's applicable to all pole owners.

Comment

I think that's exactly right because even back in '78 some of the big arguments and petitions were that the CATV industry had no guaranteed right on the pole and that was one of the big arguments they had for not having to pay a lot for their rates because there was no permanency in their occupancy, that if they were given a permanent right to be in conduit their own pole, they would be willing to pay a lot more money than they wound up ending to pay. But their rates are low because they do not have permanency in that space; and that was one of the premises. Now the actuality of getting them out of that space is something different.

Question

This question is for Shirley Fujimoto. The takings issue was addressed in that

if you didn't allow a cable company or anybody else on, you didn't have to allow anybody. So there wasn't really a takings issue because it was really voluntary at that time. It was a decision by the owner of the poles that they were going to allow. If they did allow, then they had to allow everybody. But under the new Telecommunication Act, since it's mandated, isn't there a Fifth Amendment issue here -- takings?

Shirley Fujimoto

The answer is, I think the pole owners believe there is; and indeed, there is litigation going on in Florida in the U.S. District Court in Pensacola on this very issue. It's a facial challenge of the statute that has been lodged by several electric companies. And I believe where it stands procedurally now is that the parties have filed all of their briefs; and I believe there is oral argument that's going to be scheduled in another month or two. It's been interesting what the government's response has been to the utilities argument. The government takes the position that since it's a facial challenge, you do not necessarily need to take into account the FCC's interpretation of nondiscriminatory access. And the FCC takes the position that it's mandatory. So, under the FCC's rules, it's not a voluntary allowing of people attaching on to the pole or right-of-way owners' facilities. However, the government is arguing that the statute itself is written as if access is voluntary without looking at the FCC's implementation of the statute. Thus, facially, there has not been a taking. They have a lot

of reasons for why they don't think it's a taking; and I'm not sure exactly where this is all going to come out, but the issue has been raised and is currently being litigated.

Question

I have a two-part question for Shirley. The first question is: If I am a pipeline owner who has permitted communications utilities to use my pipeline in Houston, must I permit them to use all of my facilities nationwide up to, say, Wisconsin, Pennsylvania, San Diego. The second question is: If I have used my right-of-way only for my own communications use as a pipeline company, must I then allow others to use it as communications?

Shirley Fujimoto

I think those are excellent questions; and we don't have any answers at the moment as to whether the usage that you've described would bring all of your facilities "into play," if you will. Certainly, there are issues with regard to say, rights-of-ways in one State versus another State or if you open up poles, but not conduit, whether or not the FCC's mandatory access rules would require that you open up everything. That, I think, is going to be an issue that will be litigated in the future. We currently don't have any answers in that regard. With regard to your second question on opening up your facilities for communications usage by the company, but not by others, I think to a certain extent, if it's for internal communications, there is a fairly strong

argument that you haven't opened up your facility to third parties, and therefore, do not need to provide access to others. But let's say you have a separate subsidiary. You're an electric company or you're a right-of-way company, and you have a subsidiary which is in the business of providing communications services to third parties. I think in that instance it becomes a little murkier as to whether you need to let others on. I think that people who would want to access your pipeline would maintain that since you do have a company that's in the business of providing telecommunications, that from a competitive standpoint, you should allow them to come in as well. So, I think in my mind your case would be stronger if you only had allowed internal communications to use your facilities rather than third-party commercial communications.

Question

You've referred to mandatory non-discrimination for use of poles and conduits. Does this also apply to easements or do we have a ruling on that yet?

Shirley Fujimoto

I'm not sure what the answer is and the reason is the statute is pretty clear in being applicable to poles, conduits, ducts and rights-of-ways; and therefore, the agency's mandatory nondiscrimination rules would apply to those types of facilities. The right-of-way issues and how they would be affected by the various provisions of the Act I think is still a little unclear. For example, the

agency hasn't looked at any kind of rate formula for rights-of-ways. There really isn't any good definition of what constitutes a right-of-way. You know, what universe of things would fall under that definition. So I think it's yet to be determined exactly whether easements would be included. I think it all depends on where the agency goes in defining what the term right-of-way means.

Ted Williams

The vast, vast majority of private right-of-way to my knowledge that utilities have is nonexclusive right-of-way anyway. So the underlying fee owner still has the right to let somebody on. If Bell has got a 20-foot right-of-way, the underlying fee owner can let 15 other people in that same 20 feet. So there is no onus on you unless you have acquired an exclusive right-of-way for, say, telecommunications services of systems which AT&T has done since divestiture in many ways. You know, that right is not yours to give. They should be referred to the underlying fee owner unless you have an exclusive right-of-way on an easement now, private easement.

Question

I have a question for Mike Davis and then a followup. How many of your towers are inside of State right-of-way, and if they're inside State right-of-way are you given technically an easement to these other companies without going to the State for permission?

Mike Davis

I don't have an answer for how many

are in State right-of-way; but, what I would say is that the towers we have worked on are not in State right-of-way so far. And if they were, then we would be under the guidelines like here of how did we get in that position. Were we there first and the State came along or did I encroach upon the State later? You really have to research your right-of-way well as to how you acquired it.

Comment

The reason I bring that up is in Maryland, Baltimore Gas & Electric has some towers inside of the State highway right-of-way, and we happened to be driving down the roadway and we saw this attachment all of a sudden. So when we started investigating, we found out that BG&E started selling space on their towers. So then we went back to BG&E and asked them by right since we have given them an easement to be inside of our right-of-way, what right do they have to sell that easement or to lend that to a third party. So we're working on financial and/or really in-kind -- an in-kind agreement; and I just wanted to know how you would approach it.

Mike Davis

Well, it would be similar. We would not try to sell off something we don't have the right to do.

Question

This question is for Don Gordon. If the easement the telecommunications company has was granted to the company, its successors and assigns, would that not then give the tele-

communications company the right to allow any other company in that easement? And then would we not be required to allow other telecommunications providers access to that private easement?

Don Gordon

If the easement is not exclusive, the underlying fee owner retains the right to allow others in there. So they've given you a nonexclusive right to put your facilities in there. Assignees to the common law. A successor would be somebody who bought the company. An assignee at common law meant that you assigned every right you have. If you've got 10 feet and try to assign five feet, you have technically at common law apportioned that easement and you have no right to apportion an easement unless you have an exclusive easement. I might add a lot of utilities are beginning to get exclusive easements. AT&T gets an exclusive easement or did and they still do, in my mind, exclusive right to place telecommunication systems. But you can get 10 feet over from their 10 feet from the same fee owner. The big problem I see is when they have the exclusive right for telecommunication systems and all of a sudden another telephone company wants to cross them perpendicularly, they've got a toll gate there now that's 10 or 15 or 20 feet wide. And that's when it may become onerous. It's kind of like the toll gate that was in the movie, Blazing Saddles, that is kind of out in the middle of the desert because somebody acquired an exclusive ease-

ment. I don't think that was the intent of the parties that are acquiring exclusive easements. But I think that if they realize that somebody starts to cross, I may have an easement from the underlying fee owner. But when I get to that perpendicular, there is 10 feet there say that some other party owns for telecommunications services exclusively and the fee owner has no say-so in that. So it's maybe just like a toll bridge.

Question

Ron Norris, Cinergy Corporation. This question is probably for Ted Williams and maybe Shirley Fujimoto. Ted, on the public right-of-way, and your comments on the fees, is there anything now where a group has got together to pursue this on what the cost would be maybe there and how to pursue a challenge to those or to regulate where they would be as a group? Is that going to be each individual company or entity?

Ted Williams

I'm not aware of any group that's working on this. It would certainly seem to be a circumstance it would be conducive to having some group work on it because right now it's going to be left up to each individual State, county and municipality and that's like reinventing the wheel about a million times if those staff people even have time to do that because many municipalities now do not have procedures or rates. I think most were unaware that they could continue to charge for public right-of-way. So I don't know of any group; but, it would certainly behoove some national organization to work on it.

Question

Do you think the challenge will go all the way to the court system if it is challenged in fact or will it be that you see maybe we just accept it and make some payments?

Ted Williams

I think some of them will be challenged locally. I don't foresee that it would be something that would be questioned at the district court level or against the FCC because I think there is enough latitude there they just say compensation and as we know now, compensation could be based on that litany of things I mentioned and that's probably only part of the thing. You could just say, "Okay, we're going to charge so much a square foot and we think land is worth so much an acre;" and therefore, so much a square foot and that's our rate with no more thought than that. Unless it prohibits someone from getting in that business, as I mentioned, the law said you can't prohibit and if it's nondiscriminatory, you're charging everybody the same and you say, well, if you'll write me a check, I'm not prohibiting you. You know, if you came up with something just outrageous, they might question it. But I still think it would be done in a lower court because I don't think it would have any -- the national implication; do you? We may disagree.

Shirley Fujimoto

I don't necessarily disagree with that, Ted. What I do think is that ultimately it's going to be fixed, I think, by Congress because I think that we're just

at the very, very start of some major fighting that is going to go on in this area. Ultimately, I see parties running to Congress to get some boundaries on what, you know, some of the localities can do and that sort of thing.

Question

I think also, Shirley, where will those costs be placed at? If they're placed on existing utilities to pay this, then they have to recover those costs and how the rate payers view that, how do you tie it down to which governmental entity, fair to them and not fair, unfair to others at the same time. And a little bit about the rate payers; how do we make it fair?

Don Gordon

As the guy used to tell me, nobody ever promised it would be fair. Someone on the Supreme Court -- I can't remember who -- once said there is very little logical at law and even less fair; but, I think the concept that was posed in this Telecommunications Act was that the telecommunication industry is no longer like a public utility, if you will. There is private competition now; so they will pay. Now when you get over into other public utilities that's what I was saying. I don't know what the rollover effect will be for gas companies, power companies. I think the intent as I would see down into history is that that would change and they would not be charged because they still served the public and the taxpayer, rate payer, is the one that would pay for that.

Comment

The easement issue versus right-a-way where it's exclusive or nonexclusive, does that really make a difference because it explicitly says that the FCC rules say that the utility will exercise its right of eminent domain. So it seems like even when you have an exclusive private easement and you're not really creating a toll road there because if worse came to worse, you'd have to exercise that.

Don Gordon

On any condemnation you could go with it and condemn that crossing. The problem is are you going to. It's like a lot of the cases now. Are you going to settle out of court or are you going to go to court and condemn just to get across 10 feet or are you going to write somebody a check and get on with it.

Question

In my State we had the tenacity to build a fiber optics system that's owned by the Iowa State Government, and now we have the Telecommunications Act of '96 and the various entities telling right-of-way owners like cities that they have the ability to charge. We have a situation that's developing with a city in my State on a primary road. The underlying fee is held by the city, and the State government wants to put a fiber optic network down a city street which is a primary road. And the city is saying no, that they have to go through their franchise laws and they have to pay a franchise fee and they have to go through the voting process and they have to pay five percent revenue on top

of all that. I have a lot of words to say about that; but, none of which I can repeat here. But is that kind of thing going to be healed nationally as opposed to one by one? It seems to me that this is a patently unfair use of the franchise laws, as I understand it.

Shirley Fujimoto

I think there is a rash of similar occurrences right now and that's what I was referring to earlier about a Congressional solution. I think, at some point, there are going to be enough people mad about this sort of thing that Congress is going to have to intervene. Ted, do you have a different opinion?

Ted Williams

I agree. That's what I was talking about though and my talk is initially somebody is going to have to get on with it until all the litigation settles; and that Shirley mentioned this morning. It might take a decade. You're going to have to get on with it and right now if it's proper in Iowa, if the local people own it in fee and they have procedures set up to charge a franchise fee, you're either going to have to challenge it in court now or you're going to have to pay it and not wait until it's settled on a national basis or something because that's their inherent right. Again, you'd have to go back and look at the State statutes and the charter for that city way back whenever that was done to see when they chartered or incorporated the city if there is some proviso there that would give the State an out. And a lot of people just kind of overlooked the charters and those things.

Question

If a utility holding company forms a telecommunications company, not an operating utility company, or a holding company does and how is that telecommunication or CATV company treated outside of its old traditional franchise territory Does it get regulated treatment and are they treated different inside of their own old franchise territory of the operating company?

Shirley Fujimoto

I'm not sure exactly what the question is. I'll attempt to give an answer to the question I think is being asked. I assume you are asking if a traditional operating company under deregulation in the electric utility industry forms nonregulated entities like telecommunications companies and even potentially CATV companies, how would those companies would be treated? Okay. Let's answer the question this way. Those entities, the subsidiaries that are being formed, the competitive telecommunications providers, they will be treated exactly like their category of provider is treated. In other words, if it's a cable company, it will be treated from a telecommunications regulatory standpoint like a cable company. If it's a competitive access provider, it will be treated just like any other competitive access provider who is operating in a State or in the interstate arena. So, as far as telecommunications regulations, they would be treated just like the animal that they most look like. With regard to their treatment as attachees to the operating utility's facilities, there is a provision in the 1996 Act which

essentially forces the utilities to make sure that they do not treat a sister entity any differently than they would a third party. So you need to treat them the same way that you would treat a cable company or another unrelated entity.

Comment

I have a belated comment from the gentlemen from Cinergy who asked about whether there is any national attempt or any organization trying to guide those local entities in administering the right-of-way and surprisingly enough, yes, there is -- the American Public Works Association has published a guide for city and county governments attempting to advise them as to how they can best make the use of their rights-of-way and what fees to charge and so on and so forth. Whether they're accurate or not in their interpretation of how this thing should progress is ultimately the leading question; but, at least there is yes, some attempt being done.

Question

I'm still a little confused on the reservation of space on a pole. If I'm an electric and I own the pole and I have a design plan for additional space on the pole at some point in time, then I'm allowed to reserve it. If I'm a telecommunications company attaching to or a joint user of that pole, I am not allowed to reserve additional space, say, for a second facility if I had a plan; but, if I am a telecommunications provider that just happens to own that pole, I can. Can I get a little bit of a clarification on that?

Shirley Fujimoto

I think that the reservation of space is applicable to the pole owner. That's really what the FCC's guidelines are designed to address. It doesn't really get into the ability of an attaching entity to reserve space. The real direction is with regard to the pole owner. So the rules don't say anything about the rights of an attaching entity to reserve space for a new attachment. There are no specific rules regarding that.

Comment

Under joint use agreements, we have the traditional three or four feet of space. If I had a written plan for, say, a second attachment, within the next year to 24 months, that gives me absolutely nothing. Within a conduit situation, if I had a written plan for future stuff, I could restrict additional access to my facilities.

Shirley Fujimoto

I am not understanding the basis for your conclusion that it would be applicable on one, but not on the other.

Comment

In Atlanta we have several alternate providers that are attaching. The Georgia DOT has attached a fiber. Several of these poles and naturally the woods are getting shorter every year. A 45-foot pole is not nearly 45 feet any more. The way I read the Act and the way I understand the Act, if I come along in a year and I'm the driving party, if I'm putting up an additional facility and I have to force the replacement of those poles, I have to incur charges from all

the attaches for their movement. If I had that plan in place when the pole line was constructed originally, it would encumber the others to provide me that space that I needed -- or at least that's the impression that I got. Well, from now listening to it from today, it's strictly for the pole owner totally and not for any of the attachees.

Shirley Fujimoto

That's correct. The FCC's regulations, with regard to reservation of capacity, goes to the pole owners' right. It doesn't really affect two parties negotiating between themselves to do something different or similar.

Question

How does the Telecommunications Act differentiate between joint use, meaning one company owns the pole, versus joint ownership where two companies own the pole?

Ted Williams

To my knowledge it does not differentiate joint use attachment agreements nor joint ownership. I think that is one of the misnomers that you find in a lot of legislation, that there is some term used that has various meanings around the country and it's not common to everyone. So you get semantical differences at the very beginning. I was talking with someone this morning from our sister country north of here. Their joint use agreements are really just attachment agreements; but, the common term used is just joint use agreement and even when it's joint ownership, people call them joint use agreements and a lot of

joint ownership agreements, I've found, are called joint use agreements. So again, you've got to be definitive. I don't think there is anything in this law that differentiates any of that. That's what Shirley was saying, I think. If I may, she just mentioned there is nothing that precludes parties from negotiating agreements for use on a pole. With the Act, they've got to allow to certain people on the pole. If the power company owns the pole and they want to negotiate a joint use agreement for some telephone company to reserve 12 feet on a 60-foot pole, that's fine. But another telecommunication provider comes in, they're going to have to provide them space on that pole. Do you agree?

Shirley Fujimoto

I agree. I would add that the terms "joint use" and "joint ownership" don't even come up in the language of the Act or with regard to any of the regulations being adopted by the FCC. So I would say that you would have to look at the underlying arrangements, apply the FCC's regulations, and then make your own determination because, regardless of whether a pole is solely owned or jointly owned by two different entities, as pole owners the Act would still apply whether it's one or two owners.

Question

Post-2001 the statutory rate formula talks about the sharing of nonusable space by a certain number of attaching entities; and therefore, it would make a difference whether the attaching entities are simply attachees or owner attachees. Is that correct?

Shirley Fujimoto

That's correct.

Question

Does the Act or the commentary itself address the responsibility or liability of the pole owner with regards to joint use? For instance, with the idea of reducing claims during construction and so forth, delays?

Shirley Fujimoto

The Act and the FCC's regulations, I don't believe, have yet gotten into those issues.

Question

But the commentary might?

Shirley Fujimoto

I think that it's possible that the agency might.

Question

Doesn't the Act prohibit the incumbent LEC from treating itself any differently than it would treat any other telecommunications providers requesting to attach to the pole?

Shirley Fujimoto

I'm 99 percent sure that it would apply to both the telcos as well as the electricians. Certainly, if it applies to the electricians, there is even more reason to apply the rule to an incumbent LEC.

Question

Well, if that applies to the incumbent LEC, then, and I thought it only applied to the incumbent LEC and not the

electric companies, how could the incumbent LEC require another attachee to remove their facilities so that the incumbent LEC could place additional facilities at sometime in the future if the space was needed?

Shirley Fujimoto

It really goes to the reservation of space. It depends on whether the attaching entity was allowed on to the pole; and the space that they're in is declared to be reserved space for the company. And I believe that the reservation and the bona fide plan may only apply simply to electricians, not to incumbent LEC's. I'm not a hundred percent certain about that; but, say, for example, if it was an electric utility and somebody came in and the only space available on the pole was declared to be reserved space, and the electricians then let them on until they needed the space, in that event they could come in later on and get the space back. But, if it was not declared to be reserved space pursuant to a bona fide plan, then, of course, the electric company would not be able to take that space over on the same basis. Presumably, if it needed the space, the utility would then have to pay for rearranging everybody and getting the taller pole and all of that. But, with regard to an incumbent LEC, I don't believe they have the same reservation, bona fide plan issue.

Question

Are utility pole owners obligated to provide joint use space or telecommunication space on poles?

Shirley Fujimoto

I think the answer is that they are not. To answer it very carefully, if the company has never, ever opened up any of its facilities to third-party communications providers, it would then have the prerogative to say "no" in the future if it could stand the public relations heat. If the company has allowed entities on to its facilities, the FCC would take the position that you have opened up your facilities for access; therefore, you need to let all people on on a nondiscriminatory, mandatory basis. But there are other open issues. For example, you've opened up poles in State A, but not in State B, does that affect the poles in State B? If you've allowed people on poles, but not in conduit, does that mean you have to let everybody in your conduit? I think those questions have yet to be answered. But the bottom line answer is nobody has to make their facilities available if they haven't previously done so. But once you open up Pandora's Box, then you get to all these different questions.

Question

If during a pole replacement, pole space comes in increments of five feet, if a telco has precipitated a pole change because they need a foot or two of space. Now there is going to be another two or three feet left over after that pole is replaced. What rights could they claim for that additional space, or does that become the property of the pole owner?

Shirley Fujimoto

I think those are issues that haven't, as yet, been addressed. I think there is some argument that, to the extent the communications attaching entity is only paying for the one foot, then the remaining four feet becomes the responsibility of the pole owner. It will become more critical whether that's considered to be usable or nonusable space and how it gets treated in the rate formula for post-2001. Another possibility would be, "Gee, it only comes in five-foot increments, you need only a foot, gosh, you'll have to pay for the whole additional four feet." I mean, I think it can be handled in different ways.

Question

We've talked about the bona fide plan that companies would have to have in place. Is there any disclosure requirement about that plan at the time of construction?

Shirley Fujimoto

There isn't any language to that effect. We don't have any details. But I think there are some common sense suggestions that one could make about what that plan should be. It is going to look suspicious if, all of a sudden, you have a bona fide need for it the day after you get the request for the space. So the answer is that, in the absence of any specifics, a pole owner should be extremely prudent in trying to identify space that it does need for future use.

Question

We've been talking about utility poles, telephone and power. How does the Act cover poles owned by a cable

company -- poles and conduit? Do we have to provide access to the other utilities?

Shirley Fujimoto

Pursuant to the way the Act is currently written, I think most lawyers would say that you don't need to because you do not fall within the definition of a "utility" pole owner. And the way the 1996 Act is set up, it leads to this odd result.

Question

Suppose we provide telephone service as a LEC?

Shirley Fujimoto

The answer would be whether you would be a competitive local exchange carrier or an incumbent. If you're an incumbent, then you would be treated just like a utility pole owner, an electric utility pole owner, or a Bell pole owner. If you're considered to be a competitive LEC, which you probably are, which means that you started into the local exchange business after the passage of the 1996 Act, then you would be treated like an attaching entity; and therefore, your pole facilities, if you have any, would not be subject to the rules that we're talking about for pole owners.

Question

With all the problems that you've listed today or all the lawsuits that are ongoing or will be coming up, in your opinion where do you think most of the electric and telephone companies are today? Are they beginning to follow the Act or are they sitting back and hoping

and praying that those other companies don't come knocking on the door, waiting for more direction to come?

Shirley Fujimoto

I will speak just for the electricians with whom I'm most familiar. I think the companies are following the statute and the regulations where it's clear the Act is in effect. I would say the majority of the companies are following the regulations which are in effect. Some companies are taking the position with regard to, say, conduit, that if they haven't permitted access previously, they may decide to wait until they see how the rate formula comes out. But I would say it's a mixed bag. Most companies are following the regulations in some fashion, keeping their legal options open if they feel they have arguments for denying access because of takings issues. They certainly are preserving those legal options.

Tuesday, April 15, 1997

Question

I've got a question for Annette Anson. With the municipalities attaching cables to their pole line, what is the general consensus of that? I mean, the municipalities -- usually our grandfather was their ability to attach to your poles, aren't they?

Annette Anson

I believe that is correct. I know in the conduit structure they get one duct from municipal services. Usually what you see is fire signals but more and more

I'm hearing about large municipal complexes running fiber from, for example, the administrative building to the records center, or maybe to the local skating facility that is run by the municipality or something like that. They don't always send the paperwork through though

Bob Legato

I would like to make a couple of comments. First of all, the right to attach by a municipality is ordinarily part of the franchise ordinance that says if you're going to be here, we're going to attach. You have to reserve a space for our stuff. Our stuff is usually spelled out to be fire and police signal circuits. Not communications, not telephone, not video, not coax. We're talking about fire and signal. If the municipality wants to enlarge its right to be on a pole and carry voice data, et cetera, from their administration building to connect to all their schools, et cetera, et cetera, I think you want to check your franchise ordinance to make sure their ordinance is written broadly enough that you must let them do that. Otherwise, I would think of offering them a service and asking them to pay for it. There are in kind services that are being bartered back and forth and that's a different ball game. If, in return for use of a right of way as a new and evolving LEC, if you will, if you want to barter that, super. Do it but realize that you're giving something of value and that it isn't simply an incumbent right or an inherent right that the municipality has because it is the municipality. It's something that you barter away in return for value received.

Question

I have a question for Larry Lee. With regard to the onset of so many alternate access companies using the pole lines now and the availability of space, is there any consideration to ask for Federal dollars in order to offset the superhighway as with a regular road widening project on a regular highway?

Larry Lee

Not that I'm aware of.

Question

Was any consideration given to Federal dollars to help offset that transport corridor that everybody's looking for. If the government is saying that, yes, you must provide the space on the poles for these different access companies -- well, then should the Federal government be responsible for somewhat of widening that information super-highway? In other words, are Federal dollars being set aside to subsidize the broadening of the transmission corridors?

Paul Scott

The answer to that question is no, at least not directly. A lot of the Federal funds are going into Intelligent Transportation Systems and various other transportation related activities, but I'm not of any Federal funds to subsidize a telecommunications corridor, per se.

Question

There are a lot of electric utility industry meetings where the discussion is the Energy Policy Act of 1990 and how

deregulation is impacting electric utilities. Is anyone coordinating the deregulation of the electric utilities and the Energy Policy Act and the Telecommunication Act and how that is impacting electric utilities?

Tom Jackson

I guess being the only electrical utility on the stage, I'll have to address that. The FERC and the deregulation are total different entity for the electrical utility business and there are specific groups that are working in that area to try to manage the process as best we can. We as pole owners and majority of the pole owners, at that, are worried about protecting our assets and our investments that our companies have. So our interest in the Telecommunications Act from a joint use perspective has been to provide for protection of those assets and assure that our stockholders receive adequate compensation for the use of those facilities. So you've really got two different arenas going -- the deregulation of the electrical industry is taking shape different than the telecommunications. It doesn't look like we're going to have a law passed. It looks like FERC is going to do it without a law, or the 1992 Energy Act, until we get down to the wire business, and that's probably going to be left to the States to do individually. There are people working on different areas and we've got a lot of people spending a lot of time on each issue.

Comment

Just a recommendation. In Florida with GTE, we do outsourcing of the make-ready activity for CATV companies today. We have an agreement between the engineering firm and the party coming in, the CATV wanting to attach. All of that activity is handled between those two parties. Then they come back and report to us, we approve it, and let them continue. No monies change hands between GTE and the CATV company for the make ready. It's all paid directly to that engineering company. So we were trying to follow that same format as we were entering in with the new LECs coming in. So that's one of the avenues that we're taking a look at.

Larry Lee

I think that's a very forward-thinking approach because most of us have been going through a downsizing stage and there are some questions about our ability as owners to respond fast enough, certainly, to not get involved and drawn into other problems. And certainly an approach where you wouldn't have to handle the money takes you out of the process and also takes you out of any possible complaint or implication that you were taking advantage of those people in an anti-competitive manner. So it solves some problems. We took a similar approach with our joint trenching agreement in southwestern Ohio a couple of years back. We removed ourselves from the position of billing cable TV companies for trenching and ultimately other telecommunications providers for joint

trenching and that was the same reason.

Question

Larry, you kind of brought this up with the buy-in in your presentation but I suppose it can be answered by any one of your folks. If any utility has a plan to build a new structure, a new pole line or upgrade an existing facility, conduit system, so forth, and you notify whoever you know that is a competitor that you're going to do this but at that time they refuse to buy into this program but come back six months to a year later and ask for access to that, do you have to allow them? And the second part of that question is, during all this notification of these folks, do we have to incur the cost of that administration and coordination?

Larry Lee

You bring up a couple of issues there. Based on my opinion, I think the notification requirement is only really required if somebody is already attached or occupying. But having said that, we're certainly in the process. A number of other companies are in the process of actually hammering out operating agreements with other entities and those look very similar to joint use agreements, and might very well involve us with the burden of notification if there is a new route. Obviously, we have some concerns over that because it might provide that type of planning information that could provide competitive information to a competitor. I mean, is that right? Does that make sense? Are we really obligated to do that? As far as recovering expenses for

that kind of notification, I think it would be difficult unless it were in the agreement. I believe the argument would be made that that's a maintenance operating expense that gets factored into your expenses associated with poles or conduits or rights-of-way and that it would be factored somehow in ways I can't even begin to understand into your annual charges. I think that would be the argument.

Comment

To address the second point that Larry was making, this is the way the government often suggests that we recover our costs, that we simply factor them in. The fact that we are adding a pebble to a mountain and that we won't feel the effect of that for years, and that it won't become an equitable arrangement for years, because of the fact that you're sucking up those costs today and somehow putting them into your rate base and somehow they become reflected over the course of maybe five or 10 years is not of terrible importance. Each of us feels very poignantly the need to add people and to add procedures so that you can do notification. The government doesn't feel quite as poignantly about it. They're saying, "Hey, you've got a rate base out there. You've got an asset base of \$22 billion, or whatever, for your company, and to coin a phrase, suck it up." That's about what it amounts to.

Comment

I'll just add one more thing to that. From the government's point of view, if somebody does respond and take up on the

buy-in offer, that would actually tend to reduce capitalization costs as an owner. You'd have somebody sharing the expense.

Comment

It impacts on long-term planning. Normally, you had mentioned before that you're planning on conduit systems for 30 or 40 years out but it really takes the incentive if you can't reserve any space in your own conduit system. I mean, that brings it down to a short-term plan if you have people coming in after the fact. They don't want to be involved initially and then they come in afterwards. They're going to be taking advantage of your planning. And, really, it throws it out the window. So with municipalities wanting to go out five to 10 years before you get in there, there's really no incentive for the local exchange carrier to put a conduit system in there, other than for immediate needs even though they're the provider of last resort.

Comment

I certainly agree with that. I think that's something that might have to be addressed. Poles are different, once again, than conduits and, certainly, when you're planning conduit, you're talking about such large investments and less flexibility, perhaps, than poles. But that's a real difference.

Comment

Where is your sense of humor, for crying out loud. You can say that, and that's true. There are disincentives to

building additional facilities if you're going to have to only give them up. A couple of things that come to mind that may be worthwhile in this context. Somebody said to me during break that if we don't form these kinds of alliances, if we continue to balk at allowing the use of our structures, the technology will find a way around it. You'll be sitting with your conduits. Not you individually but you as a conduit owner, as a pole owner. You'll have your conduits. You'll have your poles. The technology will bypass you. If you're going to become an absolute road block, they'll get around you. They'll go to wireless or they'll go to broadcast signals of some sort. It will get past you. We have got to realize that there must be alliances among the haves and the have nots. Got to get to a point where we're working out equitable arrangements. And when I say equitable, I mean it can't be just the quick buck. It's got to be genuinely equitable over the long haul. Disincentives, such as the ones you're talking about, have got to be compensated to some degree. But to say, "well, I'm not going to put in any more than two ducts from now on" doesn't make sense. In fact, the thing to do is to figure a way you can fully recover your costs and build a chest to reinforce that duct in the future and reinforce it properly so that you are carrying on the tradition of being the provider of last resort on the one hand. On the other hand, you have a business, and part of it is licensing ducts and you're getting money for that. If you get, for the sake of discussion,

four cents a foot for the duct, that may not be equitable. You've got to work it out among all of us. We've got to work it out. So it is an equitable return. So those disincentive don't occur. But, yeah, these alliances have got to be forged, folks. If we insist on holding onto our facilities and say, "Nah, I'm not going to build anymore," when we as conduit owners, for example, have the know-how, the contacts, the design for facilities, the what have you. If we are capable of doing good conduit work, let's do it. Let's get into that business and do it but make sure the regulators don't run us out of town by saying, "well, from now on you'll get only your depreciated value and you'll get three cents a foot for your conduit." That's ludicrous. That's why you've got to get to Congress. That's why you've got to get the regulators. Okay. But to say, "I'm not going to do it anymore, I've been disincented out of the business," nah, that's not the answer.

Annette Anson

You also want to make sure you remember the municipalities. They're not going to want you to go in there over and over again. You go in there once. You do everything you have to do, all of the entities, and then you put the circuits back in place. Everyone talks about partnering. You've got to remember, you've got to partner with the municipalities or they're going to be a big piece of the puzzle that can do you a lot of harm.

Question

Ron Norris, Cinergy Corporation. My

question is for Annette on the right-of-way management, municipality State, government. Have you seen new fees coming on board, and is the right-of-way group prepared to assess these fees, and then how do we fight the fees if they're unfair?

Annette Anson

I'm not really an expert on this. I know that there are some communities. Michigan is one. There are the communities around Troy, Michigan that have come to support Troy. I do know that the National League of Cities and Towns is advocating that municipalities are able to charge fees. I haven't specifically seen that and I don't have my liaison committee in particular working on it. I don't know if there is really a need. I guess if you people feel there is a need, it's certainly something we can look into and get some information, probably, and feed back to you. I think the test cases and whatever comes out of them are going to set precedent.

Bob Legato

There is a whole batch of creative thinking going on in cities and counties and States and some of its going to happen. Some of it is going to be legislated, and we're going to have to come up with dollars and cents or services in kind of take care of that. On the other hand, I don't think the message that needs to get across to municipalities and other local jurisdictions is that the tax payer and the subscriber are the same. One way or the other, if a county official is going to look good to the public because he's able to gouge

those big utilities or even those oncoming, evolving utilities, for some money, somehow the story has got to get out to the public that whether you pay for it as a taxpayer or whether you pay for it as a subscriber, you're still paying for it. I think that's the story that needs to be carried to local jurisdictions, that they may think that having this or that service set up for them is for free, but it's coming out of that same taxpayer pocket, and we need to carry that story. So I think at a certain point we call a halt to the proceedings and say, "okay, you've gone beyond the bounds of reasonableness, and we're taking this to the newspaper." If you take it to court, you always run the risk of coming up with a bad decision, and then it becomes law. But if you take it to the newspapers, that's a much more sensitive area, I think. Let the public be aware that people are being asked to subsidize certain services that perhaps are not in their general best interest. I think for the knowledge of the group, I'll entertain a thought about what's happened to us, in that we are in one area now being told we are going to be charged for our pole permit. We usually don't pay for pole permit, a fee. But to place a pole in the ground or an anchor to break the earth, there's one municipality that's talking about charging a fee for this. Also street cuts fees. In some areas we pay some inspection fee relating to street cuts. But they are also talking about a deterioration or restoration fee. We have had one proposed, a \$2800 restoration fee. We've done some negotiation. We've got it down to

maybe \$1500. They're basing restoration costs on some studies, one done in San Francisco and one by the University of Cincinnati. So I am just wondering if anybody else has come across these, and fees like this?

Comment

Well, that's really a key. I think there are a host of folks out here who are paying permit fees for poles, for conduit, for whatever. I don't think a fee in and of itself is unjust. What becomes a question is, is it covering expenses for the municipality or the county or whom-ever? Is it covering expenses or is it providing supplemental cash to be used at the jurisdictions's discretion? So I don't have any problem with reimbursing them or compensating them for genuine expenses that they entail. If there is an inspector that must be out there, then somebody has got to pay his or her fee to be out there. Then let's do that. If that's part of the permit and that's part of the restoration fee, then that's fine. It's when that person's salary is being paid for other activities that I'm not involved with that I get a little bit upset. So I want some justification from the jurisdictions that say: These are my expenses and this is what you're covering, okay? Just as, you know, people have asked of us and we are being asked right now to justify the cost of poles, the cost of conduit and so on and so forth. That's part of doing business. I think that covering costs is one thing. I think that a general subsidy and a donation to the local coffers is not part of my game.

Annette Anson

I don't really like to talk about this subject too much but I'll let you in on some information. In 1985, in the city of Burlington, Vermont, we had a socialistic mayor who is now our representative in Congress, Mr. Bernie Sanders, who decided he was going to charge all utilities \$10 and something a linear foot or a square foot, I think, for being in the public right-of-way. NYNEX, then known as New England Telephone, and Vermont Gas took him to court, and there was a decision made. And as a consequence, we, NYNEX, now pay the city of Burlington just over \$5000 a year for the right to do any excavation within 1,000 linear feet. Now, that means I can have 20 projects as long as none of those projects go over 1,000 linear feet. So you'd better believe we've learned how to make our projects stay under 1,000 linear feet. But this was 1985, so this was a long time ago. But this has been the only city in my State that actually came out with a specific fee like that. No one else ever dared to try it afterwards.

Comment

In Boston, in Massachusetts, we have a fee with a restoration. The city does all the restoration at cost per square foot.

Comment

I have a comment -- it may turn into a question about use of pole space by municipalities. Until recently in Connecticut, everybody was allowed to use that space. I think the statute read towns, cities, municipalities, boroughs and fire districts. Excluded specifically

was the Connecticut Department of Transportation. Well, after years of discussion between our company and the Department of Transportation, they just changed the statute. But when they changed the statute, they added a new wrinkle. They said not only do they have a right to use it but each utility will reserve a space for them on every pole in the State. Since the FTA says we can't reserve space for ourselves, is that contrary to the State legislation that says we have to reserve space for them?

Comment

In Stamford, Connecticut, we have a LEC who has asked for access to a number of our poles. We got that request on the same day we got a notice from the city, that they have an interconnect job on those exact same poles, and both notices included a statement from an engineering firm that they sent out there that said, "We think on 400 of the 800 poles we want to attach to, there's adequate space for us." There is nothing in TA-96 that I know of that bans reservation for municipal or other jurisdictions. In fact, there is often reference to the municipal or other jurisdictions reserve duct, and that's generally excluded from formulas and so on and so forth. It's kind of an accepted way of life. I think that the Congress is very reluctant to tread on local jurisdictions, particularly States but also local government, to tread on their rights. So I think that probably the State legislation will usually prevail. As to whether a State should have the right, a DOT should have the right to make it

the law of the land that you reserve a space for them, I think that is within the other legislation. You know, Ted's line yesterday about two things you don't want to see being made, legislation and sausage, is really so. Sometimes it comes out kind of gritty. But the fact is that if some entity is able to get a hold of a legislation process to the degree that they are able to provide a favorable legislation for themselves, the only thing I can suggest is that's where those parties that were interested should have been involved in that legislative process. And if poor legislation is being designed, shame on us, because it's up to us to let people know what the heck is going on and what is really a just decision. Now I realize that political entities are what they are. Political realities haven't gone away. We are not working in some Pollyana world, but I think it behooves us to let people know what the heck it means. For example, that State DOT may use one percent of the poles that you're occupying, that you've now had to reserve space for. Okay? May use one percent of the conduit that you actually are using. In return for that, they have now blocked out a space on all the poles and conduit in the State, technically. I think the subscriber world, the tax-paying population, has got to become aware that that represents a significant waste. That should not be tolerated in legislation. That's the kind of stuff that I'm suggesting that you folks get involved with.

Comment

Bernie Levin, Maryland State Highways. I have a couple of comments. I'm from the state of Maryland. I'm one of those state highway officials that everybody gets mad at. A couple of comments. You mentioned about restorations. We know for a fact that if, when I put a pavement down, it's good for 12-15 years. And once you cut a hole in it, that pavement is going to degenerate. Between Baltimore and Washington, we have a utility corridor of 45 feet for roughly 20 miles, and we have about 4-1/2 million people. So we have a tremendous amount of utilities, underground and overhead. So once you cut the roadway, we know the road is going to deteriorate. So in that one district, when anybody cuts into the pavement, my district utility engineer makes them blacktop or resurface, plus or minus 200 feet in both directions. Now, you may say, "well, he went across, he cut a ditch or a trench three feet wide." But, you know, when you lay a new piece of surface down and all of a sudden, a year later, somebody is cutting it and then people are driving over this bump in the road, they want to know what's happening. So as a state official, we don't want to see cuts in the pavement, but we know it's a fact. It happens. And that's when, in some districts, we make them do a little more than usual. Maryland does not charge any utility to be inside the right-of-way so you guys are getting an advantage. When I say "you guys," I mean utilities, in general. You're getting free use of the land that the tax payers have paid for through their taxes and to acquire rights-of-way.

So you are getting something for nothing from the state. Now, you may share costs between Bell Atlantic and BG&E and whatever the companies are but the state highway itself is not getting anything back. When you put underground systems in the ground or inside my right-of-way, you're not an asset to the state of Maryland or to any state, actually. You become a liability. If I want to take the two-lane roadway and make it a four-lane divided, now I have to relocate that underground system. And now if I'm going to put storm drains and make the system work, sometimes we work around the utility companies, if possible. When we can't work around them, we have to relocate them. It becomes an expense to the job. So we don't want to make utility companies move just for the sake of moving. We try to minimize and mitigate the way we have to do that. And, when we were talking earlier about the Feds participating in costs of the Internet or the superhighway, myself, personally, I don't think the Feds are going to want to participate in something that you're going to be making lots of money on if they're not getting money back. But what Maryland does is for communications. We have gone to a resource sharing system inside access control. The Feds were really down on it at first because we used Federal dollars to buy right-of-way to make it controlled, to keep utilities out. And now here we are opening it back up again. But it's a resource share. An example we did was we allowed MCI to go from York, Pennsylvania, to Washington, DC. with a conduit system through the Interstate

highway system. They installed one conduit for themselves and installed one conduit for us. So with that one conduit for us, we're going to be lighting up a lot of state agencies. So just a general comment. I'm sure a lot of people here are not going to be staying for the rest of the conference which is Wednesday, Thursday, Friday, which is when state highway people get our problems together, trying to deal with utility companies. But for any of you who stay, I think you would be interested.

Comment

I have just one last question to ask Annette Anson. Can you give me a definition of the public right-of-way?

Annette Anson

Public right-of-way, and I quote, is right-of-way of the public access routes such as roads, underground conduits, overhead wires and railroads that are controlled by the local governments. In most States, the State has title and authority to regulate and control rights-of-way, but that authority is usually delegated by statute to local governments."

Reva Reed

Okay, we'll make this wrap-up sort of quick so we can get you out. I'd like for all the moderators that are here to come up to the podium. I want the moderators to just give their impression of their workshops, and then, I would like to hear comments from you folks that are here as to what you thought of the conference, the workshops and anything else.

Dennis LaBelle

My workshop was on utility coordination. We had a very good attendance and good inter-reaction. We mainly discussed identification problems that are out there, looked at the downsizing impact on utilities and what they're going to be able to do in the future, and how they're going to be able to maintain the records as to who is attached to their poles. We also discussed transfer problems, how we're going to get things transferred in the future, and also relocation problems.

There were some innovative ways that were brought up in the meeting. They ranged all the way from getting your LECs (local exchange carriers) on the poles using whoever has the ability to do the work to do the transfer work for them rather than try and locate these people after they install it, all the way down to where the DOT was actually doing some of the relocation work for them, putting it under the prime contractor and actually doing some of the design work. So, there were many

different ways. I think everybody has taken a stab at it to see what they can do.

Another thing that came up in one of the workshops was: the problems we've had in the past were always with poles, but now conduits are becoming a problem. We're going to have joint usage of conduits with power and telephone or the LECs in there. There are going to be multiple different ownerships in conduits. This may amplify the problem. Versus having them move on the pole, you may in the future start seeing underground become the big headache.

Chris Patchouras

I had the space allocation workshop. It's been a hot topic over the years, and I expected this. I expected to be assigned that workshop because Dennis always kept reminding me through phone calls -- that he paid for, of course; he never let me forget it -- that if I had any constructive ideas, at least since he invested in those ideas, to make them known to the rest of the industry.

My workshop involved alternatives to pole replacements, which is the utilization of the old Ameritech or Illinois Bell bracket. And, of course, the bracket enables all parties that are involved to benefit from it, whether it's the power company, the telephone company, or the cable TV company. They all have benefits that derive from the use of the bracket.

So, I found it very rewarding to be moderating a workshop like that. I feel like I am accomplishing something that the industry had the need for and I also find it rewarding for myself because I'm not a public speaker. I usually am good in speaking in the sidelines but not as a public speaker. Thanks for your participation and the opportunity to do the workshop.

Reva Reed

Are there any other moderators of workshops here? (No response.) Okay. Now, I am going to open it up to you folks again. If you have a comment or anything, we want you to use the mikes because we are recording this session and want to get your ideas and comments. So do you have any comments at all about the conference itself or the workshops or anything you would like to say about it? This is your opportunity.

John Jernigan

John Jernigan from GTE of Florida. Just on Chris' comments. We asked him during the sessions, as far as the critique there, if he could have a bracket, actually physically have something there that we could look at it. It was an eight-inch by six-inch bracket. But we went through the same bracket-type scenario in Florida when our GTE media ventures went into the cable business. We wanted to make sure that they had a bracket that would go on a power pole. This looked to be a little

different design than the one that Chris had, so we suggested that perhaps in the next workshops, that they do that same type of scenario, that they use something physical for us to look at, and have handouts. Anything we can take back with us is great. One of the things that I mentioned to Dennis in our workshop was that I was looking for some information on how we're going to administer all the LECs getting onto the poles and how we're going to account for their inventories and how are we going to put them into our records and keep track of all of that movement back and forth. And I really didn't find that. What I found is that everybody is in the same boat that I'm in, and we've all talked about it and nobody really has a concrete answer to it.

Reva Reed

The purpose of having Shirley Fujimoto here to talk about the Telecommunications Act was to give everybody a general overview of what it is and is likely to do. We knew there were really no answers to lots of questions. But there were some folks who had heard about the Telecommunications Act but really didn't even know what it was or did.

And so the purpose of it for this conference was to give people a general idea of just what the Act is and who it might affect and that type of thing. And, hopefully, by the next conference we will have more definite answers.

Bob Legato

We did a lot of good talking in my workshop. It was supposed to be about attachments to poles and conduit, and what I wound up doing was trying to talk a little bit about attachers and about attachments. Had a lot of good input.

One of the things that surfaced that I hadn't intended to talk about was the wireless antennas. There's a good deal of concern, and rightly so, about what we're going to do with these wireless antennas. Of course, it depends on whose ox is being gored. If it's your antenna, it's great. And if it's not your antenna, it's something of a -- a little bit scary. Just generally speaking, I want to express appreciation to those who did come to the workshop and for the input they gave and the interest that they showed. Thanks.

Tom Kennedy

Hi, I'm Tom Kennedy. Sylvain and I moderated the workshop was on storm loading of poles. There were two things we tried to do in this area. One was to give you an idea of why we're doing storm loading; and two was to give you the opportunity to perhaps include more loading on poles, maybe because you might experience different storm conditions than the NESC may recommend for your area. I don't have anything else to say. Thank you, those of you who attended. It made it worth my time coming, and I hope you got something out of it.

Becky Glarrow

Reva, I just want to commend you and your staff for putting together this very excellent seminar the last two days. I came here expecting to get a lot of good information. I got a lot of good information. We learned a lot, I think, about the TeleCom Act. There are a lot of questions that haven't been answered but in our company, which is Bell South, we have State joint use coordinators. And most of those coordinators are at this meeting. We got enough information this afternoon. Instead of attending any of the workshops, which I apologize to you moderators for, we went back to one of the rooms and brainstormed for the afternoon because we've got recommendations that have come out of this meeting that we are sending back to our general managers, hopefully for implementation very soon, just based on the information that we got here just the last two days. And I just want to thank you for that.

Reva Reed

Thank you, Becky. Any other comments, or is everybody just so anxious to get out of here they're just not going to say anything? Anyone? If not, then I want to thank all of you for being here and staying until the bitter end. We've enjoyed having all of you and hope to see you at the next conference. All of you have a safe journey home. And if you're saying for the highway conference, great. We'll see you tonight at 7:00. Thank you.

**NATIONAL JOINT USE CONFERENCE
OCTOBER 14-15, 1997
CLEVELAND, OHIO**

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