PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.572 is added to read as follows:

§ 180.572 Bifenazate; tolerance for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* Time limited tolerances are established for combined residues of bifenazate, (hydrazine carboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester) and diazenecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester in connection with use of the pesticide under section 18 emergency exemptions granted by the EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Tomato	0.70	6/30/03

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket Nos. 97–98 and 97–151; FCC 01–170]

Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the Report and Order in CS Docket No. 97–151, and the Report and Order in CS Docket No. 97–98. This document consolidates two reconsideration proceedings raising similar and interrelated issues concerning the rates, terms and conditions of access for attachments by cable operators and telecommunications carriers to utility poles, ducts, conduits and rights-of-way pursuant to section 224 of the Communications Act of 1934, as amended. This document reconsiders affirms and clarifies the pole attachment rate formula for cable attachers as well as the formula for telecommunications attachers.

DATES: Effective July 30, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Costello at (202) 418–7200 or via the Internet at kcostell@fcc.gov, or Cheryl King at (202) 418–2284 or via the Internet at cking@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration,* CS Dkt. Nos. 97–98 and 97–151, FCC 01–170, adopted May 22, 2001; release May 25, 2001. The full text of the Commission's *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via Internet at http://www.fcc.gov/csb/.

Paperwork Reduction Act

The requirements adopted in the *Order on Reconsideration* have been analyzed with respect to the Paperwork Reduction Act of 1995 (''1995 Act'') and found to impose no new or modified information collection requirements on the public.

Synopsis of the Order on Reconsideration

I. Introduction

1. This *Order on Reconsideration* grants in part and denies in part petitions for reconsideration and/or clarification of Report and Order, Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment to the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97–151, FCC 98–20, 63 FR 12013, published March 12, 1998, 13 FCC Rcd 6777 (1998) (''Telecom Order'') and Report and Order, Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97–98, FCC 00–116, 65 FR 31270, published May 17, 2000, corrected 65 FR 34820, May 31, 2000, 15 FCC Rcd 6453 (2000) (''Fee Order''), concerning the rates, terms and conditions of access for attachments by cable operators and telecommunications carriers to utility poles, ducts, conduits and rights-of-way pursuant to Section 224 of the Communications Act of 1934, as amended (''Pole Attachment Act''), 47 U.S.C. 224 and Subpart J of the Commission's Rules, 47 CFR 1.1401–1.1418.

2. This *Order on Reconsideration* affirms our decision not to impose additional regulation on the negotiation process or on the rules for resolution of pole attachment complaints; affirms the continued use, in the pole attachment rate calculation formulas, of specific regulatory accounts maintained by utilities and identify the actual costs incurred by the utilities for the poles, ducts, conduits and rights-of-way that are the subject of the attachment; reconsiders and clarifies the way in which entities are counted for the purpose of allocating and apportioning costs of unusable space for telecommunications attachers after February 8, 2001; reconsiders and clarifies the geographic areas used to determined average numbers of attaching entities for use in calculations of the formulas of telecommunications pole attachment rates, and establish two presumptive averages that may be used in our formulas after February 8, 2001; affirms and clarifies decisions regarding third party overlashing; affirms the presumption that a pole attachment occupies one foot of usable space and that this presumption is rebuttable by either party; affirms that the formula adopted in the Fee Order, for calculating the rate for use of capacity in a conduit, is applicable to telecommunications systems; affirms the use in the formula of the actual percentage of the conduit capacity occupied, with a rebuttable presumption that an attacher occupies one-half duct; affirms that there is no unusable capacity in a conduit; affirms our decision that a utility may not exclude reserved capacity within a conduit system when calculating total capacity upon which the pole attachment rate in a conduit is based; affirms that complaints regarding nondiscriminatory access, rates, terms and conditions for non-traditional pole attachments, such as attachments to

rights-of-way, wireless attachments and transmission facilities attachments, will be considered under our rules on a case-by-case basis; reconsiders and clarifies the methodology for calculating maximum pole maximum pole attachment rates when the net pole investment becomes zero or negative; declines or reconsider at this time and reserves for later review; our decision that Internet service has a neutral affect on an attacher's classification as a cable system or telecommunications system; declines to reconsider at this time and reserves for later review; our decision that providers of wireless telecommunications services are entitled to the benefits and protection of the Pole Attachment Act; and adopts amended rules. Generally, the petitioners and commenters represent the interests of one of the following three categories: (1) Electric utilities; (2) cable operators; and (3) telecommunications carriers.

II. Background

3. In 1978, Congress enacted section 224 of the Communications Act, 47 U.S.C. 224, granting the Commission authority to regulate the rates, terms, and conditions governing pole attachments, requiring that such rates, terms and conditions be just and reasonable. The Commission is authorized to adopt procedures necessary to hear and to resolve complaints concerning such rates, terms, and conditions. Congress sought to constrain the ability of utilities to extract monopoly profits from cable television system operators in need of pole, duct, conduit or right-of-way space for pole attachments.

4. Section 224(d)(1) of the Pole Attachment Act defines a just and reasonable rate as ranging from the statutory minimum based on the additional costs of providing pole attachments, to the statutory maximum based on fully allocated costs. The additional, or incremental, costs are the costs that would not be incurred by the utility but for the pole attachments. The maximum rate, identified as a percentage of fully allocated costs, refers to the portion of operating expenses and capital costs that a utility incurs in owning and maintaining pole attachment infrastructure that is equal to the portion of space on a pole, or capacity of a duct, conduit, or right-of-way, that is occupied by an attacher. The Commission developed a methodology to determine the maximum allowable pole attachment rate under section 224(d)(1) of the Pole Attachment Act, which is referred to as the Cable Formula.

5. Subsequently, Congress enacted the 1996 Act ''to accelerate rapidly private sector deployment of advanced telecommunication and information technologies and services.'' Section 703(6) of the 1996 Act added a new section 224(d)(3), which expanded the scope of section 224 by applying the Cable Formula to rates for pole attachments made by telecommunications carriers, in addition to cable systems, until a separate methodology became effective for telecommunications carriers in 2001. Section 703(7) of the 1996 Act added new sections 224(e)(1–4), which set forth a separate methodology to govern charges for pole attachments used to provide telecommunications services beginning February 8, 2001 (''Telecom Formula''). Further, the 1996 Act gave cable operators and telecommunications carriers a right of nondiscriminatory access to utility poles, ducts, conduit and rights-of-way.

III. Order on Reconsideration

A. Complaint Procedures and Negotiated Agreements

6. Upon consideration of the record, we affirm our decision not to impose additional regulation on either the negotiation process or the rules for resolution of complaints arising out of failed negotiations. Our experience has taught us, and the record gained through these proceedings demonstrates, that without our rules and the use of presumptions in a formula methodology, attaching entities would not be able to challenge any rate offered by a utility. There would be no reasonable negotiation without a benchmark rate against which to compare the utility's proposed rate. We continue to reject arguments by utilities that attaching parties should be required to take exception to terms or conditions when the pole attachment agreement is negotiated or be estopped from filing a complaint about those issues. However, we do require that differences in rates, terms and conditions for pole attachments among attaching entities, be based on legitimate exchanges of consideration and not on discriminatory factors such as favoring an affiliated services provider over an unaffiliated entity. We will carefully scrutinize any differences in rates, terms and conditions in any complaint action, and the burden will be on the utility to demonstrate that any differences are nondiscriminatory.

B. Basic Concepts Used in the Formula

1. Use of Actual Costs

7. Electric utilities continue to urge that we abandon our use of regulatory accounts based on historical costs. Petitioners assert that pricing methodologies for use in pole attachment formulas should reflect replacement costs or the rates calculated are not constitutional because they cannot provide just compensation. We affirm our decision that the Cable Formula, which includes regulatory accounts maintained using historical costs, encompasses the statutory directive to provide just and reasonable rates for pole attachments, adding certainty and clarity to negotiations. We have been presented with no persuasive evidence that utility owners do not recover a just and reasonable compensation for pole attachments from use of the Cable Formula. Congressional intent to rely on existing regulatory accounts and avoid a prolonged rate making process is realized in the Commission's regulations.

8. We have recognized that the continued use of the historical cost based pole attachment formula brings certainty to the regulatory process. For more than two decades, the pole attachment formula has provided a stable and certain regulatory framework, which may be applied ''simply and expeditiously'' requiring ''a minimum of staff, paperwork and procedures consistent with fair and efficient regulation.'' We have found that switching to a methodology based on forward-looking economic costs would significantly change and burden the Commission's processes, requiring the Commission to develop a new formula, which would necessitate a protracted rulemaking proceeding involving complicated pricing investigation. We have acknowledged that, in certain contexts, setting prices on the basis of forward-looking economic costs has advantages, such as giving the appropriate signal for new entrants to invest in network facilities; but these advantages are less pronounced in the pole attachment context because pole attachers are less likely to build, or may be prohibited from building, their own poles and conduit. We have concluded and continue to find that, in the context of pole attachments, the continued use of historical costs accomplishes the key objectives of assuring just and reasonable rates to both the utility and the attaching parties, establishing accountability for prior cost recoveries, and encouraging negotiation among the parties by providing regulatory certainty. We will continue to calculate

maximum pole attachment rates under the Pole Attachment Act using regulatory accounts based on historical costs.

2. When Net Pole Investment Is Zero or Negative

9. Under Section 224(d)(1), fully allocated costs refer to the portion of operating expenses and capital costs that a utility incurs in owning and maintaining poles that are associated with the space occupied by pole attachments. Carrying charges are the costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. The carrying charges include the utility's administrative, maintenance, and depreciation expenses, a return on investment, and associated income taxes. To help calculate the carrying charge rate, we developed formulas that relate each of these components to the utility's net pole investment.

10. The pole attachment formulas rely on the investment and expense data utilities maintain in, or derive from, their accounting records. The investment data take two forms: ''gross'' data, which provide the original cost of the plant being considered; and ''net'' data, which adjust the gross data to reflect accumulated depreciation and deferred income taxes associated with that plant. The pole attachment formulas generally allocate the costs of owning and maintaining poles on the basis of net pole or net plant investment. In the Fee Order, we affirmed our long practice of calculating pole attachment rates using net book costs, continuing to allow the use of gross book costs if all parties agreed to that usage. We concluded that the important goal is to ensure that like figures are used, whether not or gross. We affirm our continued use of net figures in the formulas unless the parties agree otherwise, with the following limited exception.

11. In certain cases, negative net asset values for poles may occur as a result of the way the Commission calculates depreciation rates. As accumulated depreciation rises, for plant with high removal costs such as poles, the application of the depreciation rate formula can lead to a net asset value becoming negative. This is because, in computing the net pole investment, the formula subtracts from gross pole investment an accumulated depreciation that includes both a recovery of original investment and a recovery of costs of removal (less salvage). Because gross pole investment only includes the original cost of the poles, subtracting both components from the gross pole investment may lead to a zero or negative net pole investment. The carrying charge formulas compute percentages for each element (administrative, maintenance, and depreciation expenses, taxes, and rate of return) which are added and then multiplied against the net pole investment. For example, if the carrying charge formulas yield 10% for each element, the carrying charge rate would be 50%. This rate would then be multiplied by net pole investment (expressed on a per pole basis as net cost of a bare pole) and the percentage of usable pole space occupied by the attachment, to determine the maximum just and reasonable rate per pole. When the net pole investment is zero or negative, the formula cannot be calculated properly. In those instances, our pole attachment formula, using net figures, cannot be used to calculate a maximum rate based on fully allocated costs.

12. On reconsideration of this matter, we modify and clarify our guidance to utilities and attaching entities on how to apply the formula in those cases where the net pole investment is zero or negative. We have determined that the most reasonable and efficient method is to apply the formula using gross figures rather than net figures, with the exception of the rate of return element of the carrying charges which is always a net calculation. For example, we currently allocate administrative expenses by dividing total administrative and general expenses by net plant investment. This yields a percentage that is applied against the net cost of a bare pole. In contrast, a gross approach to allocation would, for example, divide total administrative and general expenses by gross plant investment.

13. With the exception of the maintenance component, the expense accounts upon which the pole attachment rates rely are not kept by type of plant. Because utilities cannot directly measure the amount of administrative expenses or taxes that are incurred because of poles, we must allocate administrative expenses and taxes to poles on some rational basis. We have previously determined that allocation of expenses based on net pole investment is reasonable. We continue to agree that the appropriate figures to use in the normal situation are the net figures. However, in the unusual situations where net pole investment is zero or negative, we find application of the formula using gross figures, with the noted net adjustment to the return element, to be appropriate.

14. In proposing this methodology, we acknowledge that only the administrative and tax elements of the carrying charges are affected by the change. The maintenance, depreciation and return elements yield the same maximum rate whether net or gross figures are used. The administrative and tax elements may be higher or lower due to the different ratios of accumulated depreciation and accumulated deferred taxes to gross total plant as opposed to gross pole plant. The rate of return element will be negative and is subtracted from the positive elements of the carrying charge. We believe this result is reasonable because the utility has, in effect, already recovered more than the original cost of its pole plant through depreciation charges. While this ''over-recovery'' is necessary to defray the costs of disposing of the poles when they are retired from service, the utility has the use of any ''over-recovered'' amounts throughout the poles' useful lives. Our conclusion that the utility's pole attachment rates should reflect the over-recovery in the form of a negative rate of return carrying charge properly recognizes this fact.

15. The formula using the gross approach yields the following calculation:

(A). Gross Plant (Poles)
(B). Net Plant (Poles)
(C). Depreciation Rate (Poles)
(D). Maintenance Expense (Poles)
(E). Quantity of Poles
(F). Authorized Rate of Return
(G). Administrative Expenses (Total)
(H). Taxes (Total)
(I). Gross Plant (Total)
(J). Net Plant (Total)
(K). Usable Space Factor (.074)
(L). Bare Pole Factor (.85 or .95)

Maintenance = Maintenance Expense (Poles) ÷ Gross Plant (Poles)
Element = (D) ÷ (A)
Depreciation = Depreciation Rate (Poles)
Element = (C)
Return Element = Rate of Return × Net Plant (Poles) ÷ Gross Plant (Poles) = [(F) × (B)] ÷ (A)
Administrative = Administrative Expenses (Total) ÷ Gross Plant (Total)
Element = (G) ÷ (I)
Tax Element = Taxes (Total) ÷ Gross Plant (Total) = (H) ÷ (I)
Total Carrying Charge = Sum of Maint., Depr., Ret. (−), Admin. and Tax Elements
Max Rate = Space Factor × Bare Pole Factor × Gross Plant (Poles) × Total Carrying Charges ÷ Quantity of Poles = [(K) × (L) × (A) × Total Carrying Charges] ÷ (E)

We reiterate that in all other cases, where the net pole investment is

positive, the appropriate figures to use in the formula continue to be the net figures, unless the parties agree otherwise.

3. Case by Case Applications

16. In the Telecom Order, we stated that the record was not sufficient to enable us to adopt detailed standards that would govern all of these situations. We believe our basic rate methodology is adaptable to attachments that fit these categories. A complaint involving a dispute about these attachments would be treated as any other pole attachment complaint. We recognize guiding principles based on the Pole Attachment Act to be used in determining rates for pole attachments, including attachments to rights-of-way, wireless attachments and transmission facilities attachments. Guiding principles include the congressionally mandated methodology, preference for publicly available records when available, and an acceptable range of just and reasonable rates. We continue to believe it prudent to gain experience through case by case adjudication to determine whether additional guiding principles or presumptions are necessary or appropriate, and this will be accomplished through our existing complaint procedures. We will continue to address complaints about just and reasonable rates, terms and conditions, and nondiscriminatory access for non-traditional attachments on a case-by-case basis.

C. The Space Factor

17. The basic Cable Formula can be stated as follows:

$$\text{Maximum Rate} = \frac{\text{Space Occupied}}{\text{Total Usable Space}} \times \text{Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

18. We define total usable space as the space on the utility pole above the minimum grade level that is usable for the attachment of wires, cables, and related equipment. In the Fee Order, we affirmed the use of various presumptions that lead to 13.5 feet as the presumptive average usable space on a pole. The Cable Formula uses a 37.5 foot presumptive pole height, an 18 foot average minimum ground clearance, allocation of the 40-inch safety space to usable space, and the inclusion of poles of 30 feet or less when calculating the costs of a bare pole. No persuasive evidence or arguments have been presented which challenge our long-standing presumptions resulting in 13.5 feet as the presumptive usable space. Application of these presumptions results in 7.4% as the percentage of usable space occupied by a pole attachment.

1. Average Pole Height

19. The record in this proceeding confirms the prevalent use of 30-foot poles and reflects that exclusion of such poles from the Cable Formula calculations could distort the resulting rate by excluding a significant portion of local exchange carrier (''LEC'') utility plant investment from the rate calculation. We affirm our position that a distorted inventory of poles would be reflected if utilities were allowed to ''opt out'' or exclude their poles of 30 feet or less when calculating their pole attachment rates.

2. Safety Space

20. No new arguments or evidence was presented in the filings and based on our previous reasoning, the 40-inch safety space that exists to minimize the likelihood of physical contact between employees working on cable television or telephone lines and the potentially lethal voltage carried by the electric lines, as well as to prevent electrical contact between such cables, is usable and used by the electric utility, and we reject arguments to reduce the presumptive usable space of 13.5 feet by 40 inches.

3. Minimum Ground Clearance

21. Ground clearance requirements in the National Electric Safety Code (''NESC'') include an average amount of sag for cable lines. No new evidence or arguments were provided that would persuade us to abandon our long-standing reliance on the presumptive average minimum ground clearance based on NESC standards.

4. Telecom Formula Space Factor

a. Counting Attaching Entities

22. Under the Cable Formula, the costs of unusable space are allocated based on the portion of usable space an attachment occupies, the space factor. Our formula is stated as follows:

$$\text{Maximum Rate} = \frac{\text{Space Occupied}}{\text{Total Usable Space}} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

23. Using the presumptions in the Cable Formula, this results in a space factor of 1/13.5 or .074, multiplied by the net cost of a bare pole and the carrying charge rate:

$$\text{Maximum Rate} = .074 \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

24. Under the Telecom Formula, pursuant to the specific requirements of the Pole Attachment Act, the costs of unusable space are separated from the costs of usable space are allocated based on the number of attaching entities. The costs of usable space are still calculated based on the portion of usable space occupied. In the Telecom Order, we adopted separate formulas for determining the unusable space factor maximum rate and the usable space factor maximum rate which, when added together, calculate a maximum rate under section 224(e) of the Pole Attachment Act. We now simplify the two formulas into one combined formula as follows:

$$\text{Maximum Rate} = \left[\frac{\left(\text{Space Occupied}\right) + \left(\frac{2}{3} \times \frac{\text{Usable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right] \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

25. Using our presumptions in the Telecom Formula, this calculation can be stated as:

$$\text{Maximum Rate} = \left[\frac{(1) + \left(\frac{16}{\text{No. of Attaching Entities}}\right)}{37.5}\right] \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

which results in a combined (usable and unusable) space factor of between .24 and 2 attachers and .098 for 6 attachers for telecommunications attachers, as opposed to .074 for cable attachers. The difference between the two rate calculations is then phased in over five years, pursuant to the provisions of the Pole Attachment Act.

26. In the Telecom Order, we recognized that the number of attaching entities is a significant factor in determining he maximum rate. We concluded that certain entities should be counted as attaching entities pursuant to the Pole Attachment Act. We now reconsider and clarify our methodology for counting the number of attaching entities used in the Telecom Formula. We clarify our position that all utilities should be counted as attaching entities. In addition, we further reconsider and clarify that any entity with a physical attachment to the pole should be counted as an attaching entity. We will continue to exclude a government's temporary or seasonal attachments from this category. We also reconsider our inclusion of third party overlashers as separate entities and conclude that they are not to be counted as separate attaching entities. This is consistent with our conclusion that an overlashing entity does not occupy additional space on a pole. An overlashed cable is still only attached to the pole by the original single attachment.

27. The term ''attaching entities'' includes, without limitation, and consistent with the Pole Attachment Act, any telecommunications carrier, incumbent or other local exchange carrier, cable operator, government agency, and any electric or other utility, whether or not the utility provides a telecommunications service to the public, as well as any other entity with a physical attachment to the pole. This is consistent with the language of the statute and with Congress' intent to count all attaching entities when allocating the costs of unusable space. Therefore, we include the utility pole owner in the count, resulting in a minimum of two attaching entities being counted.

28. Upon reconsideration, we find that third party overlashers should not be counted as separate entities because they are not occupying separately segregated pole space. This conclusion is consistent with our finding that overlashing does not constitute a separate attachment and our conclusion that all entities with a physical attachment should be counted. Our review of the Pole Attachment Act leads us to reconsider our previous decision and conclude that the term ''attaching entity'' as it is used in the Pole Attachment Act is not limited to entities with attachments that met the definition of pole attachment as it is used in the Pole Attachment Act. Rather, we conclude that any entity with a physical attachment to the pole should be counted. Our rule for counting attaching entities will allow parties to pole attachment agreements to calculate an average number of attaching entities for use in the Telecom Formula.

b. *Average Number of Attaching Entities:* 29. In the Telecom Order, we determined that the most efficient and expeditious manner to identify an average number of attaching entities, was for each utility to develop its own average number of attaching entities.

i. Geographic Areas. 30. Upon presentation of additional information and consideration of the record in this proceeding, we modify the geographic areas on which a utility will base its average numbers of attaching entities. Some utilities assert it will not be feasible to determine averages in any cost-efficient manner, so we will provide default averages for urbanized and non-urbanized areas, for use in the absence of utility developed averages.

31. The purpose of having averages based on geographic areas was to have pole attachment rates reflect an appropriate average number of pole attachments in a particular geographic area as of February 2001, when utilities begin calculating rates for telecommunications carriers. A population of 50,000 or greater (urbanized area) is a reasonable density in which to expect greater penetration of service providers and attachments. The record shows that using urbanized and non-urbanized areas allows a reasonably effective classification of poles based upon the actual characteristics of pole inventory of different utilities.

32. We will require utility pole owners to calculate an average number of attaching entities by service area. Where a utility territory or service area in which an attaching entity seeks to install pole attachments can be identified as either urbanized or non-urbanized, the default averages, or the actual averages if developed by the utility, for that area should be used. However, where a utility territory or service area in which an attaching entity seeks to install pole attachments cannot be identified as either urbanized or non-urbanized because it crosses into both an urbanized and non-urbanized area, and the utility is unable to identify a separate service area as non-urbanized, the default averages, or the actual averages if developed by the utility, for an urbanized area should be used. If any part of a specific service area, as identified by the utility, is urbanized, then all that service area would be considered urbanized for pole attachment purposes. This will facilitate an equitable calculation of pole attachment rates for telecommunications carriers. Utilities that have multiple service areas in a state would classify each service area, as either urbanized or non-urbanized depending on whether any part of the service area is within an area designated by the Bureau of Census as urbanized. Utilities advise this would be equitable because in a service area in which any part is considered urbanized, the

development potential for the entire area to become urbanized is great.

33. We emphasize our preference that each utility use the data it has available in its corporate and regulatory records, and not go to extraordinary lengths to be precise when reasonable estimates will generally provide an equitable process. The utility shall make available its data, information and methodology upon which the averages were developed, unless the default averages are used. We clarify that when a distinct area defined by the Bureau of Census as urban falls within an urbanized area, a separate average number of attaching entities for that urban area is not required. The record demonstrates that in some states, and for some utilities, there may be no significant difference in the number of attaching entities for rural areas and for urban areas that are outside urbanized areas. Therefore, we provide utilities the option of using our presumptive averages presented below, or developing averages for two areas: (1) Urbanized (50,000 or higher population), and (2) non-urbanized (less than 50,000 population).

34. When a utility exercises good faith in determining average numbers of attaching entities upon which to base the costs of providing unusable space, the burden of proof will be on an attaching entity to demonstrate the costs are being unjustly apportioned. In demonstrating its good faith, the utility must make its methodology and data publicly available to the attaching entity, upon request for information sufficient for an attaching entity to project its costs of attaching to that utility's infrastructure. The costs of conducting an exercise to determine average numbers of attaching entities shall not be directly passed on to the attaching entities as make-ready costs. Expenses relating to the exercise necessary to develop these averages will be shared ultimately by all attachers and the utility when, as a reasonable business expense incurred as part of doing business, the expense is reported to the utility's appropriate regulatory accounts and factored into the carrying charge rate of the Cable Formula. We do not believe that such expenses would be within the methodology prescribed by Congress for individual payment by each attaching entity for a pole attachment.

ii. Presumptive Averages. 35. In order to expedite the process of developing average numbers of attaching entities, and allow utilities to avert the expense of developing location specific averages, we provide two rebuttable presumptive averages for use in our Telecom Formula. This gives both small and large utilities the option of not conducting a potentially costly and burdensome exercise necessary to develop averages based on their company specific records. The adoption of presumptive averages should reduce cost and effort by all parties.

36. In the Telecom Order, we did not establish presumptions, but said we believed the most efficient and expeditious manner to calculate a presumptive number of attaching entities would be for each utility to develop its own presumptive average number of attaching entities. We now reconsider that decision and set rebuttable presumptive average numbers of attaching entities for our two categories, urbanized and non-urbanized. We are now persuaded that utilities and attaching entities would benefit from our providing presumptive averages for their use. Our establishment of presumptive averages will expedite the process and allow utilities to avert the expense of developing location specific averages. As with all our presumptions, either party may rebut this presumption with a statistically valid survey or actual data.

37. Based on the expanded record, we establish presumptive average numbers of attaching entities in a non-urbanized (less than 50,000 population) area to be three (3) attaching entities, based on information presented in the record and the expectation that on a pole or in a conduit, for instance, there would be electric, telephone and cable attachers. It is estimated that cable systems now provide access to cable television services to over 97% of all households with a television. Electric power and telephone service is even more universal. The record supports a presumptive average of three attaching entities in non-urbanized areas.

38. In an urbanized area that is more densely populated (50,000 or higher population), more developed commercially than a non-urbanized area, and in which we expect both residential and business commercial competition to flourish, we set a presumptive average number of attaching entities at five (5) to reflect the inclusion of, but not limited to, the following possible attaching entities: electric, telephone, cable, competitive telecommunications service providers and governmental agencies. Advanced telecommunications capability is being deployed throughout the country. As noted above, competitive services are increasing. The record supports a presumptive average number of five attachers in urbanized areas.

D. Overlashing

1. Space Occupied by Third Party Overlashing

39. Cable companies have, through overlashing been able to decades to replace deteriorated cables or expand the capacity of existing communications facilities, by typing communication conductors to existing, supportive strands of cable on poles. The 1996 Act was designed to accelerate rapid deployment of telecommunications and other services, and to increase competition among providers of these services. Overlashing existing cable reduces construction disruption and associated expense. Accordingly, in the Telecom Order, we declared our continued approval of, and support for, third party overlashing, subject to the same safety, reliability, and engineering constraints that apply to overlashing one's own pole attachment.

40. We determined that facilities overlashed by third parties are presumed to share the presumptive one foot of usable space occupied by the host attachment. We did not dictate how the utility, host attaching and third party attaching entities would relate to each other for compensation purposes. We did not require the host attaching entity or the third party overlasher to obtain the consent of the utility beyond the consent already acquired for the host attachment although the utility is entitled to notice of the overlashing. We stated that third party overlashing did not disadvantage the utility's ability to ensure the integrity of its poles.

41. We decline to impose additional regulation and clarify several aspects of our position regarding third party overlashing. Allowing third party overlashing reduces construction disruption and associated expenses which would otherwise be incurred by third parties installing new poles and separate attachments. We clarify that third party overlashing is subject to the same safety, reliability, and engineering constraints that apply to overlashing the host pole attachment. We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.

2. What the Third Party Overlasher Pays

42. Some petitioners urge us to specify, or at least clarify, what the third party telecommunications carrier overlasher pays to the host attacher or the utility pole owner. We decline to attempt to regulate this relationship. However, if the third party overlashing

cable operator's pole attachment is a telecommunications carrier, then the pole attachment will be considered to be used to provide telecommunications services for purposes of calculating the pole attachment rate. The maximum rate for that overlashed pole attachment would then be calculated using the Telecom Formula after February 8, 2001. In some instances, the host attaching entity will pay the utility for a telecommunications carrier pole attachment. We have stated that the third party overlasher is not separately liable to the utility for the usable space which the overlashing shares with the host attachment because there would be no additional usable space occupied. We expect and encourage the overlashing and host attaching entities to negotiate a just and reasonable rate of compensation between them for the overlashing, which will represent some sharing of the usable and unusable space costs. Until our intervention is necessary to facilitate pole attachments for these parties, we will rely on all parties to act in good faith to develop their own just and reasonable compensation.

3. Wind and Weight Load Factors

43. We have reviewed Sections 24 and 26 of the NESC that address loading and structural requirements in detail. Based on our analysis and the record, we continue to believe that an attachment's ''burden on the pole'' relates to an assessment of need for make-ready changes to the pole structure, including pole change-out, to meet the strength requirements of the NESC. For example, if the addition of overlashed wires to an existing attachment causes an excessive weight to be added to the pole requiring additional support or causes the cable sag to increase to a point below safety standards, then the attacher must pay the make-ready charges to increase the height or strength of the pole. Make-ready costs are non-recurring costs. for which the utility is directly compensated and as such are excluded from expenses used in the rate calculation. The statutory language prescribes that we allocate costs based on space occupied, not load capacity.

44. Fee Order petitioners present no new or persuasive evidence that the ''burden on the pole'' due to weight and wind load is an additional factor for consideration in the determination of the amount of space occupied through which some rate increase would be calculated. We affirm our position that the costs of the physical attachments of an attaching entity are normally paid to the pole owner as a condition of attachment, addressing such factors as weight, wind load and safety space. Overlashing does not increase the amount of space actually occupied by the attachment.

4. Shared One-Foot Usable Space

45. In the Telecom Order, we found that the one foot presumption should continue to apply where an attaching entity has overlashed its own pole attachments. We also determined that facilities overlashed by third parties onto existing pole attachments are presumed to share the presumptive one foot of usable space of the host attachment. The one foot presumption is rebuttable by any party. We decline to abandon or redefine our presumption for usable space occupied by a pole attachment, even in instances of overlashing. The record on reconsideration affirms that the sharing and use of the one foot presumption, for usable space occupied by a pole attachment, does not lead to a distortion of the allocation of the costs of the pole in determining a just and reasonable compensation for the utility.

5. Cable Operator Not a Utility Obligated To Provide for Overlashing

46. The Pole Attachment Act does not define utility to include attachers, Section 224(f) of the Pole Attachment Act obligates a utility to provide a cable television system or any telecommunications carrier with nondiscriminatory access for purposes of a pole attachment. Neither a cable system attacher nor a telecommunications attacher has an obligation to act as a host and share its pole attachment with a third party overlasher.

6. Notice to Utility Pole Owner

47. We agree that the utility pole owner has a right to know the character of, and the parties responsible for, attachments on its poles, including third party overlashers. The pole owner is entitled to charge to Telecom Formula rate when a pole attachment previously used to provide only cable services is used to provide telecommunications services, as a result of a third party telecommunications carrier overlashing. When the cable operator's pole attachment provides transmission of telecommunications services, whether for itself or via third party overlashing, it will notify the pole owner. We clarify that it would be reasonable for a pole attachment agreement to require notice of third party overlashing.

48. In the Telecom Order, we concluded that the third party overlashing entity should be classified as a separate attaching entity for purposes of counting entities using the Telecom Formula. We now reconsider that decision, and based on our review of the statute, the record herein and our decision that an overlasher shares space with the host attachment, we believe that the third party overlasher should not be counted as a separate attaching entity.

49. We affirm the requirement that a cable operator notify the utility when the cable operator begins providing telecommunications services itself or via third party overlashing. Cable attachers stress that this notification should not provide utilities with an opportunity to acquire sensitive proprietary and business development, planning, or scheduling information that could result in a competitive disadvantage to the attaching entity. We agree. The record fails to demonstrate any legitimate purpose for a utility to require commercially-sensitive data or information to be provided as a part of this notification of a change of service status by a cable operator.

50. Pole attachment agreements after February 8, 2001 could be expected to include a reasonable mechanism for notification by a cable operator of its change of status to a telecommunications carrier. Pole attachment agreements could also be expected to include a reasonable remedy for a cable operator's failure to so notify. Because we have not explored the issue of a penalty for failure to notify and have no record on the question, we will not make a determination on that issue at this time.

7. Dark Fiber

51. We affirm our holding in the Telecom Order that if an attachment previously used for providing solely cable services would, as a result of the leasing of dark fiber, also be used for providing telecommunications services, the rate for the attachment would be determined using the Telecom Formula. However, attaching entities may lease their dark fiber to third parties without such leases being considered separate attachments and without making an additional payment beyond the host's existing attachment rate. The cable system operator may lease excess fiber capacity within its existing attachment to any party for a negotiated rate without the knowledge or consent of the pole owner because the physical attachment will not be altered. The dark fibers contained within the attaching host have already been taken into account in determining the rent for the attachment. The character and content of the services provided do not affect the amount of space occupied by the

attachment. The type of services provided over the attachment only affect the pole attachment rate if the services are telecommunications services. If the third party leasing the fiber is, or becomes, a telecommunications carrier, then the utility is compensation for the pole attachment based on the Telecom Formula and must be notified.

E. Conduit Issues

52. Conduits are structures that provide physical protection for cables and allow new cables to be added inexpensively along a pathway or route. A conduit consists of one or more ducts, which are the enclosures that carry the cables. Often, when a cable operator's or telecommunications carrier's cables are placed in a duct, three or more inner duct are inserted into the duct allowing ''one duct to be treated more like conduit.'' A collection of conduits, together with their supporting infrastructure, constitutes a conduit system. A conduit system may vary widely among geographic areas, and between LEC and electric utilities.

53. The total capacity of a duct or conduit is the entire volume of available capacity in the conduit system. All costs associated with the construction of the conduit system are considered in determining the cost of this total capacity. Essentially, the lack of any unusable capacity in a conduit makes the practical application of the Pole Attachment Act formulas the same for both cable attachers and telecommunications attachers both before and after February 8, 2001.

54. Cable operators and telecommunications carriers alike will calculate a maximum just and reasonable rate for a pole attachment in a conduit by apportioning the cost of providing capacity among all entities according to the percentage of capacity used by each entity. Calculation of the maximum rate may be simplified by using the presumptions in the formula. The carrying charge rate is calculated for pole attachments in conduit, in the same manner as the carrying charge rate in our pole attachment formula. The conduit formula adopted in the Fee Order and affirmed here is the following:

$$\text{Maximum Rate Per Linear ft./m.} = \text{Percentage of Conduit Capacity Occupied} \times \text{Net Linear Cost of Conduit} \times \text{Carrying Charge Rate}$$

1. Space Factor in Conduit

55. In the Fee Order, we concluded that all costs attributable to utilities' underground conduit systems are costs of providing capacity. The regulatory accounts to which LEC and electric utilities report their gross conduit investment include the costs of installed conduit, original permit, excavation, sewer connections and other costs. All costs associated with the construction of the conduit system are considered in determining the cost of this total capacity.

a. *Total Duct or Conduit Capacity.* 56. In the Fee Order, we clarified that a utility may designate capacity in a duct for maintenance or emergency use, but that a duct so designated is usable in the event it is needed, and therefore is part of the conduit capacity. Where duct capacity is set aside for future municipal use (in the nature of consideration as a condition for a license, franchise, or permit), the utility is compensated for those costs as part of its net conduit investment and/or in the carrying charge rate. Collapsed or otherwise ducts are no longer available for pole attachments, and should not be included in the calculation of total capacity of a conduit or duct in the Cable Formula.

57. We will not allow capacity designated for maintenance, future business plans, or municipal set-asides to be subtracted from the total duct or conduit capacity for rate determination purposes. The record supports our analysis that capacity in a duct or conduit that is usable for any of these purposes is part of the ''total duct or conduit capacity.'' For example, a utility may set-aside capacity for maintenance or emergencies so that unoccupied capacity is available into which a temporary cable may be placed and spliced into a damaged cable. Capacity so designated is usable in the event it is needed, and available for use by the utility at any time for any purpose, and is therefore part of the total available conduit capacity. Such reservation of capacity is not necessarily identified by a specific duct or location, can be created, used, withdrawn or discarded at the sole discretion of the utility, and must be considered part of the total capacity of the conduit. Municipal set-asides are also capacity that may be made available for the use of the local government as a condition in a franchise, license, right-of-way or other agreement.

58. Capacity may be reserved, or kept unused to be available to an electric utility for expansion of its core business services, but that capacity is still part of the total capacity of the duct or conduit system and must be made available for pole attachments until such time as it is needed by the electric utility under a bona fide business plan. Under the policy articulated in the Local Competition Order, an electric utility is allowed to reserve capacity for future business purposes under a bona fide business plan, but must allow that capacity to be used for attachments until an actual business need arises. For whatever reason capacity may be reserved or designated for special uses, by or on behalf of the utility, and regardless of who may benefit directly or indirectly from those uses, the capacity is available for use and therefore remains part of the total capacity of the conduit for rate determination purposes.

b. *Occupied Capacity, the Half-Duct Presumption.* 59. Presumptions are used in the Cable and Telecom Formulas to expedite the calculations of a just and reasonable rate so that complicated surveys, accounting and calculations may be avoided.

60. We affirm our rebuttable presumption that a cable or telecommunications attacher occupies a maximum capacity of one half of a duct, when determining a reasonable conduit attachment rate. The presumption that a communications cable in a conduit system occupies one half of a duct is based on clear evidence that all types of cable—including electric supply cables when controlled by the same party as the communications cable—may share a duct. We affirm our position that, because the NESC rule relied on by the electric utilities does not prohibit the sharing of a duct by electric and communications cables when controlled by the same party or two communications cables, it is reasonable to expect there to be more than one attacher in a duct.

61. The one half duct presumption is rebuttable and the presence of inner duct is adequate rebuttal. Where inner duct is installed, either by the attacher or in a previous installation, the maximum rate will be reduced in proportion to the fraction of the duct occupied. That fraction will be one

divided by the actual number of inner ducts in the duct. We continue to believe that the use of the one half duct rebuttable presumption is a simple, expedient and reasonable approximation of the actual capacity occupied by a cable operator or telecommunications carrier attaching in a conduit system. When the actual percentage of capacity occupied is known, it can and should be used instead of the one half duct presumption.

2. Net Linear Cost of Conduit

62. As stated in the Fee Order, in the conduit context, we use the net linear cost of the conduit, as compared to the net cost of a bare pole, as one factor within the formula for determining a maximum permissible rate for attachment within conduit. As the net cost of a bare pole reflects the total system investment for the above ground pole attachment infrastructure, to arrive at a system investment for use in the conduit formula we identify the net linear cost of the conduit system. To accomplish this, the utility must first establish the Net Conduit Investment.

63. Our goal has always been to adopt a formula which allows the parties to calculate the maximum rate using public data when available, in a fair and expeditious manner. We also have a policy against requiring additional accounting procedures so long as the information is available from the utilities upon reasonable request.

a. *Net Conduit Investment (LEC-Owned Conduit).* 64. Net Conduit Investment for LEC-owned conduit is calculated as follows:

$$\text{Net Conduit Investment} = \text{Gross Conduit Investment (ARMIS Account 2441)} - \text{Accumulated Depreciation (Conduit)} - \text{Accumulated Deferred Taxes (Conduit)}$$

65. Gross Conduit Investment for the LEC consists of Part 32 Account 2441. For LECs, Accumulated Depreciation (Conduit) represents the share of ARMIS Account 3100 that corresponds to Account 2441. Accumulated Depreciation related to conduit is publicly available at the LECs ARMIS Report 43–02. In the Fee Notice we proposed the following formula for the calculation of accumulated deferred income taxes for conduit:

$$\text{Accumulated Deferred Income Taxes (Conduit)} = \frac{\text{Gross Conduit Investment}}{\text{Total Gross Plant Investment}} \times \text{Total Accumulated Deferred Income Taxes}$$

66. LEC conduit owners objected to this formula on the basis that the actual amount of accumulated deferred taxes for conduit is available directly from the LEC's books. BellSouth maintains that because it is required to keep separate and accurate records of accumulated deferred income taxes for poles and conduit, our formula will improperly introduce non-conduit related deferred taxes into rate calculations. NCTA argued that LECs should not use accumulated deferred income tax figures taken from the LEC's books because the information is not publicly available.

67. In the Fee Order, we concluded that if the LEC conduit owner is required to keep this data precisely as required for the formula, we will allow them to use it in the rate calculation, as long as it was reported to and available through our public ARMIS. There is confusion among utilities and attaching entities whether this data is available. Pursuant to our Biennial Regulatory Review, Review of Accounting and Cost Allocation Requirements, FCC 99–106 and Biennial Regulatory Review, Review of ARMIS Reporting Requirements, FCC 99–107 we require the LEC conduit owner to keep this data as required for the formula because we require LECs to use it in the rate calculation. This data will be available at ARMIS Report 43–02 and we will use this data in our formulas. Until ARMIS reports for LECs include this required data after 2001, we will continue to use the proration method to calculate the conduit portion of accumulated deferred taxes for use in the formula to calculate the net linear cost of conduit.

b. *Net Conduit Investment (Electric Utility-Owned Conduit).* 68. Net Conduit Investment for electric utility-owned conduit is calculated as follows:

$$\text{Net Conduit Investment} = \text{Gross Conduit Investment (FERC Account 366)} - \text{Accumulated Depreciation (Conduit)} - \text{Accumulated Deferred Taxes (Conduit)}$$

69. For electric utilities, Gross Conduit Investment is reflected in FERC Part 101 Account 366. Accumulated Depreciation (Conduit) represents the share of FERC Account 108 (Accumulated provision for depreciation of electric utility plant (Major only)—a composite account that is required to be maintained on a subsidiary basis) that corresponds to Account 366. Accumulated Deferred Income Taxes for electric utilities represents the share of FERC Accounts 190, 281, 282, 283 that correspond to Account 366.

70. Upon review, we found no new information presented that would persuade us to abandon the use of system-wide data in the conduit context, as it is used in the pole context. No viable alternate suggestion has been offered and we continue to find that the use of system-wide data is the most efficient and reasonable methodology.

F. FERC and ARMIS Accounts Used in the Formulas

1. Electric Utility Accumulated Deferred Income Taxes Poles (Correction)

71. In the Fee Order, we stated the following formula to determine the net cost of a bare pole for electric utilities:

$$\text{Net Cost of a Bare Pole (Electric)} = 0.85 \times \frac{\text{Account 364} - \text{Accumulated Depreciation (Poles)} - \text{Accumulated Deferred Income Taxes (Poles)}}{\text{Number of Poles}}$$

We stated that the Accumulated Deferred Income Taxes represents the share of composite FERC Account 190 (Accumulated deferred income taxes) that corresponds to Account 364. In error, we neglected to include FERC Accounts 281, 282, and 283 along with Account 190. We now correct this typographical error so that Accumulated Deferred Income Taxes represents the share of composite FERC Accounts 190, 281, 282 and 283 that corresponds to Account 364.

2. Carrying Charge Accounts (LECs)

72. The carrying charge rate reflects those costs incurred by the utility in owning and maintaining pole attachment infrastructure regardless of the presence of attachments. The elements of the carrying charge rate are: administrative, maintenance, depreciation, taxes and cost of capital (rate of return). To calculate the carrying charge rate, we developed formulas that relate each element to a utility owner's net investment. The carrying charge rate factor of the Cable Formula is calculated as follows:

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

73. In May 1986, the Commission adopted a new uniform system of accounts for all FCC regulated telephone companies. The Commission's Annual Report Form M was revised on April 27, 1989 to reflect the new accounting system in Part 32 that replaced the accounting system in Part 31, effective January 1, 1988. The Pole Attachment Order provided formulas for determining a maximum just and reasonable pole attachment rate with regulatory accounts identified. The formula for LECs used Part 31 accounts until after adoption of the New USOA-Part 32 Adoption, when the Common Carrier Bureau responded to a request for clarification of what Part 32 accounts would be used in place of the Part 31 accounts specified in the Pole Attachment Order. That guidance was given the understanding that an exact tracking of expenses from Part 31 accounts to Part 32 accounts was not possible. In the Fee Order, we clarified the Part 32 accounts to be used in the Cable Formula for LECs utilities.

74. In the Fee Order, we adopted the following formula to determine the administrative element of the carrying charge rate of the Cable Formula for LEC pole owners:

$$\text{Administrative Element} = \frac{\text{Administrative and General (Accounts 6710} + \text{6720)}}{\text{Gross Plant Investment (Account 2001)} - \text{Accumulated Depreciation (Account 3100)} - \text{Accumulated Deferred Taxes, Plant (Accounts 4100 \& 4340)}}$$

75. The Fee Order did not attempt to establish different accounts to be used in the administrative elements of the carrying charges. The Fee Order merely reconciled the accounts formerly listed in Part 31 to their counterpart accounts in Part 32. This resulted in the identification of Accounts 6710 and 6720 to be included in the administrative element of the carrying charges.

76. We reviewed and considered the record before us regarding the accounts to be used for the administrative element expenses for LECs. We do not believe Congress intended us to discover and aggregate all de minimis expenses which might have some intangible nexus to pole attachments. On the contrary, we believe Congress gave us a clear mandate not to engage in full-scale ratemaking exercises every time we have a pole attachment compliant before us. We have chosen not to disaggregate the major accounts selected for inclusion in our calculations in order to eliminate expenses not directly attributable to administrative costs with a nexus to pole attachments, such as corporate strategic planning. On reconsideration, we decline to draw in more expenses to the administrative element because we already apply a comprehensive set of expenses in conformance with the statutory directive to allocate a percentage of operating expenses attributable to pole attachments.

3. Carrying Charge Accounts (Electric)

77. Account 593 (maintenance of overhead lines (Major only)) includes all the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in Account 364 (poles, towers and fixtures), Account 365 (overhead conductors and devices), and Account 369 (services). In our calculation we include the net investment for all three accounts to determine the portion of Account 593 attributable to Account 364. We have been provided no additional evidence to rebut the description of Account 590 or that ''direct field supervision of specific jobs shall be charged to the appropriate maintenance account,'' in this case Account 593. Fee Order petitioners do not persuade us that there is any significant expense related to poles included in Account 590.

78. This same reasoning applies to Account 594 in the conduit context. Account 594 (maintenance of underground lines (Major only)) includes the cost of labor, materials used and expenses incurred in the maintenance of underground distribution line facilities, the book cost of which is includible in Account 366 (underground conduit), Account 367 (underground conductors and devices), and Account 369 (Services). All expenses associated with Account 366, the account used to determine conduit investment, are reported in Account 594

and no additional accounts should be included as maintenance expenses.

79. Accounts 580, 583, 584, and 588 are operational accounts to which electric utilities report expenses relating to the utility's core regulated business services, and not pole or conduit expenses. Account 598 is the miscellaneous account related generally to maintenance of equipment on customer premises and is not associated with pole or conduit expenses. We will not include any portion of Accounts 580, 583, 584, 588 or 598 in the calculation of the maintenance element of the carrying charge rate for pole or conduit because the costs or expenses reported to these accounts do not reflect a sufficient nexus to the operating expenses and actual capital costs of the utility attributable to the pole or conduit attachment. The pertinent maintenance expenses are reported in Accounts 593 (poles) and 594 (conduit) and we include those in the calculation.

4. Investment Accounts (Electric)

80. We calculate net pole or conduit investment for two purposes in the formula. First, we calculate net investment to identify the portion of net investment that is allocable to the physical attachment. We then apply the rate of return against that portion so that the utility is fully compensated for the capital investment that is being used by the attacher. The only account pertinent to that calculation is the pole or conduit investment account.

81. We measure the capital investment that is used by determining the percentage of physical space occupied by the attachment. For electric utility poles, we use Account 364 (poles, towers and fixtures). Those costs are fully captured in Account 364. The accounts suggested by petitioners include capital expenditures which support the utility's core business function and are not related to the pole cost. To the extent that an attacher wished to place a separate structure (pole, box, etc.) on utility property, we would examine any rate issue on a case by case basis.

82. We do not believe that the Pole Attachment Act envisions a drawn out ratemaking process to determine whether a lightning arrester, whose only function is to protect a piece of equipment which supports the utility's core business function of power distribution, indirectly benefits other attachers on the pole. Neither do we propose a complex ratemaking process to remove every possible cost included in Account 364 that does not benefit the pole attacher.

83. Account 366 (underground conduit), which we include in the investment calculation, includes the cost installed of underground conduit and tunnels used for housing distribution cables or wires. All items associated with the construction of the conduit are included in this account.

84. Based on our extensive review of the record and the description of the accounts, we affirm that only FERC accounts to be included in the investment calculation are Accounts 364 for pole investment and Account 366 for conduit investment. Petitioners failed to provide any new information and their reiteration of the same arguments fail to persuade us to include additional accounts in our calculation of the pole or conduit investment. As we have stated above, any unusual requests involving access to land or rights of way other than for a pole attachment or conduit attachment will be considered on a case by case basis. Our inclusion of unrelated expenses in certain accounts and our exclusion of possible minor expenses in other accounts provides a balanced overall allocation of costs while avoiding a prolonged and contentious ratemaking process.

IV. Final Regulatory Flexibility Certification

85. As required by the Regulatory Flexibility Act (''REA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in both the Fee Order Notice and Telecom Order Notice and a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated in both the Fee Order and Telecom Order. The Commission sought written public comment on the proposals in the Fee Order Notice and Telecom Order Notice, including comment on the IRFAs. No comments were received in response to the IRFA in either the Fee Order Notice or Telecom Order Notice, nor did we receive any petitions for reconsideration of the Fee Order FRFA or Telecom Order FRFA. The RFA requires that an RFA analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''

86. The RFA generally defines a ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term small business concern under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). As we described in the FRFA analyses in the Fee Order and Telecom Order, we estimate that there are small business entities that might be affected by those orders.

87. In this *Order on Reconsideration,* we affirm most of our prior conclusions in the Fee Order and Telecom Order. We have, among other things, amended certain requirements of §§ 1.1401–1.1418 of our rules. These amendments serve to simplify our formulas for calculating pole attachment rates. Specifically, we provide a simplified equation of our formula for telecommunications attachers; we simplify the geographic categories for determining average numbers of attaching entities; and we allow parties to a pole attachment proceeding to substitute presumptive numbers of attaching entities in the formula in order to avoid the expense of establishing numbers based on a survey or compilation of actual data. We also provide a simpler methodology for calculating rates when the net pole investment is negative or zero. These changes do not impose additional compliance burdens on small entities nor do they alter the number or type of small entities possibly affected by the rules published in the Fee Order and Telecom Order. The changes may, in fact, reduce the burden on small entities. Therefore, we certify, pursuant to Section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.

88. Report to Congress: The Commission will send a copy of this *Order on Reconsideration,* including this FRFA certification, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). A copy of this *Order on Reconsideration* (or summary thereof) and this FRFA certification will be published in the **Federal Register**, see 5 U.S.C. 605, will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act of 1995 Analysis

89. The requirements adopted in this *Order on Reconsideration* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose no new or modified information collection requirements on the public.

VI. Ordering Clauses

90. Pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405 and section 1.106 of the Commission's rules, 47 CFR 1.106, the petitions for reconsideration and/or clarification are denied in part and granted in part.

91. Pursuant to sections 1, 4(i), 224 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 224 and 303(r), the Commission's rules are hereby amended as set forth in the Rule Changes.

92. The Commission's rules, as amended in the Rule Changes, will become effective July 30, 2001.

93, The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Order on Reconsideration,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Cable television, Communications common carriers, Conduit, Pole attachments, Poles, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. § 1.1402 is amended by revising paragraph (m) to read as follows:

§ 1.1402 Definitions.

* * * * *

(m) The term *attaching entity* includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities, governmental entities and other entities with a physical attachment to the pole, duct, conduit or right of way. It does not include governmental entities with only seasonal attachments to the pole.

* * * * *

3. § 1.1409 is amended by removing paragraph (e)(4) and revising paragraphs (e)(1), (e)(2), (e)(3) and the first sentence of paragraph (f) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(e) * * *

(1) The following formula shall apply to attachments to poles by cable operators providing cable services. This formula shall also apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}}$$

(2) Subject to paragraph (f) of this section the following formula shall apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services beginning February 8, 2001:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[\text{Carrying Charge Rate}\right]$$

$$\text{Where Space Factor} = \left[\frac{\left(\text{Space Occupied}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$$

(3) The following formula shall apply to attachments to conduit by cable operators and telecommunications carriers:

$$\text{Maximum Rate per Linear ft./m.} = \underbrace{\left[\frac{1}{\text{Number of Ducts}} \times \frac{1\ \text{Duct}}{\text{No. of Inner Ducts}}\right]}_{\text{(Percentage of Conduit Capacity)}} \times \underbrace{\left[\text{No. of Ducts} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right]}_{\text{(Net Linear Cost of a Conduit)}} \times \text{Carrying Charge Rate}$$

simplified as:

$$\text{Maximum Rate Per Linear ft./m.} = \frac{1\ \text{Duct}}{\text{No. of Inner Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \times \text{Carrying Charge Rate}$$

If no inner-duct is installed the fraction, ''1 Duct divided by the No. of Inner-Ducts'' is presumed to be ½.

(f) Paragraph (e)(2) of this section shall become effective February 8, 2001 (i.e., five years after the effective date of the Telecommunications Act of 1996).

* * *

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4. § 1.1417 is amended by revising paragraphs (a), (b), (c), and the introductory text of paragraph (d) to read as follows:

§ 1.1417 Allocation of unusable space costs.

(a) With respect to the formula referenced in § 1.1409(e)(2), a utility shall apportion the cost of providing unusable space on a pole so that such apportionment equals two-thirds of the costs of providing unusable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(b) All attaching entities attached to the pole shall be counted for purposes of apportioning the cost of unusable space.

(c) Utilities may use the following rebuttable presumptive averages when calculating the number of attaching entities with respect to the formula referenced in § 1.1409(e)(2). For non-urbanized service areas (under 50,000 population), a presumptive average number of attaching entities of three (3). For urbanized service areas (50,000 or higher population), a presumptive average number of attaching entities of five (5). If any part of the utility's service area within the state has a designation of urbanized (50,000 or higher population) by the Bureau of Census, United States Department of Commerce, then all of that service area shall be designated as urbanized for purposes of determining the presumptive average number of attaching entities.

(d) A utility may establish its own presumptive average number of attaching entities for its urbanized and non-urbanized service area as follows:

* * *

* * * * *

5. § 1.1418 is revised to read as follows:

§ 1.1418 Use of presumptions in calculating the space factor.

With respect to the formulas referenced in § 1.1409(e)(1) and § 1.1409(e)(2), the space occupied by an attachment is presumed to be one (1) foot. The amount of usable space is presumed to be 13.5 feet. The amount of unusable space is presumed to be 24 feet. The pole height is presumed to be 37.5 feet. These presumptions may be rebutted by either party.

[FR Doc. 01–16038 Filed 6–28–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket Nos. 96–45 and 00–256; FCC 01–157]

Federal-State Joint Board on Universal Service; Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for providing high-cost universal service support to rural telephone companies for the next five years based upon the proposals made by the Rural Task Force. We believe these modifications will strike a fair and reasonable balance among the universal service principles and goals enumerated in the Telecommunications Act. The Fourteenth Report and Order and Twenty-Second Order on Reconsideration in CC Docket No. 96–45, and the Report and Order in CC Docket No. 00–256 was published in the **Federal Register** on June 5, 2001. Some of the rules contained information collection requirements.

DATES: Sections 36.605(c)(2), 36.611, 54.305(f), the amendments to §§ 54.307(b), 54.313(b) and (c), 54.314, and 54.315 published at 66 FR 30080, June 5, 2001, were approved by the Office of Management and Budget (OMB) on June 19, 2001 and became effective on June 19, 2001.

FOR FURTHER INFORMATION CONTACT: Genaro Fullano, Paul Garnett, or Greg Guice, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 23, 2001, the Commission released a Fourteenth Report and Order, Twenty-Second Order on Reconsideration in CC Docket No. 96–45, and Report and order in CC Docket No. 00–256 (Order), 66 FR 30080, June 5, 2001, that took action in response to the Rural Task Force's recommended reforms to rural high-cost universal service support and the proposals made by the Multi-Association Group relating to this universal service support mechanism. Specifically, the revised rules will provide certainty and stability for rural carriers for the next five years, enabling them to continue to provide supported services at affordable rates to American consumers. The Commission believes these modifications will preserve and advance universal service, consistent with the goals and principles set forth in section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and encourage competition in high-cost areas, consistent with the competitive goal of the 1996 Act. A summary of the Order was published in the **Federal Register**. See 66 FR 30080, June 5, 2001. Some of the rules contained information collection requirements that required OMB approval. On June 19, 2001, OMB approved the information collections. See OMB No. 3060–0986. The rule amendments adopted by the Commission in the Order took effect on June 19, 2001. This publication satisfies the statement in the Order that the Commission would publish a document in the **Federal Register** announcing the effective date of the rules.

List of Subjects

47 CFR Part 36

Jurisdictional separations, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16421 Filed 6–28–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–96; FCC 00–417]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues/ Retransmission Consent Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission published a document in the **Federal Register** of January 23, 2001, which implements certain aspects of the Satellite Home