BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 060173-EU

PROPOSED AMENDMENTS TO RULES REGARDING OVERHEAD ELECTRIC FACILITIES TO ALLOW MORE STRINGENT CONSTRUCTION STANDARDS THAN REQUIRED BY NATIONAL ELECTRIC SAFETY CODE.

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PROCEEDINGS:	STAFF RULE DEVELOPMENT WORKSHOP
DATE:	Thursday, July 13, 2006
TIME:	Commenced at 9:30 a.m. Concluded at 12:49 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Chief, Hearing Reporter Services Section (850) 413-6732

PRESENTATIONS BY:

P R O C E E D I N G S

MR. HARRIS: Good morning, everybody. This is a staff rule workshop for Docket 060173-EU, proposed rules for strengthening electrical infrastructure. My name is Larry Harris, I'm a senior attorney here at the Public Service Commission. Up here at the bench we also have from my left, Carl Vinson, who is with our Division of Competitive Markets and Enforcement; Rick Moses, same division. To my right, Bob Trapp, who you all know, and Craig Hewitt, who is basically in charge of our economic impact statements.

And so, as I understand the purpose of today, and, of course, we can sort of modify from this, but really what we are here for is to get some input from telecommunications and cable companies regarding the economic impacts of the rules the Commission proposed. You all know they have been published in the Florida Administrative Weekly as of, I believe it is July 7th, and that means we are in the 21-day comment and/or request for hearing period.

At this point we have a workshop today to get information and there is an agenda that has been published, and if you all don't have a copy -- and we might have some copies sitting around somewhere. If you do, we are going to try to sort of stick to that. It has a number of questions we're asking people to answer.

If you have presentations, make sure that Jim Breman

over there has an electronic copy of it if you want it to go on the screen. Because if we don't have it, we can't get it up here projected. If you have got handouts, you might want to put them somewhere where people can get copies of them. And we will go from there.

At this point, a hearing has been scheduled, a Commission hearing for -- it was August 22nd, we filed a notice of change of that date yesterday morning. It now will be August 31st. The Commissioners have determined that August 31st works better, so an FAW notice will be published whenever it comes out that the hearing that had been noticed for August 22nd will be moved to August 31st. And that hearing, again, as you all know, was just for two of the rules. So the others are still out there. If no request for hearing or comments are filed, then they will be filed with the Secretary of State for adoption.

So the purpose of today's workshop is for entities to give us some information, mainly cost information and impact information on the impact of proposed Rules 25-6.0341 and 25-6.0342. The agenda that we sent out for today's workshop has a number of questions, and we would really like for you all to answer those. We are here to get information from you all about the impact of these rules on your companies. Today is a good opportunity for you to tell us these things and get staff the data we need to be able to understand the positions that

you are taking.

I don't have any type of list of people who want to speak. I see people are sitting at the table, and following the usual Commission practice, I will go ahead and start on my left, which is to you guys' far right, and we will go down the line. And we will give you all the time you need to speak. And as the Chairman asks frequently, you know, if you can try to consolidate comments and not repeat things other people have said, that is good. Unless you need to, in which case feel free to go ahead. Bob, do you have any comments?

MR. TRAPP: I just wanted to ask Larry whether or not there were any electronic presentations. We have asked that they be submitted in advance, but I'm not aware that we have received any. If anybody has a chip plug-in or a CD that they need to run, we need to know about it so that staff can gear it up over here at the electronics table. And also if there is hard copies, we want to make sure there is an abundant number of copies of any hard copy material that you want to leave with us. And if you will coordinate that with Mr. Breman, we would appreciate it.

MR. HARRIS: And one last thing. This is being transcribed, so I will ask everyone who speaks to identify yourself and who you are representing when you begin your comments. It gets difficult for the court reporter sometimes when people go back and forth. And I assume she knows that I'm

Larry Harris. So if you would introduce yourselves and the company you are speaking for, and every time you have a comment, that would be helpful.

Before we get started, I think it would help me, I'm going to make a list. If we could sort of go down the line and find out who is here and who they represent and who plans to speak. So if you are not at the table and you want to speak, if you could sort of find a microphone and let me know that you are going to want to make a presentation or address the Commission -- I'm sorry, address staff, that would be helpful. Thank you.

MS. DENBURG: Dorian Denburg, Chief Rights-of-Way Counsel with BellSouth.

MR. SMITH: My name is Kirk Smith, I'm a manager on the BellSouth network operations staff with the BellSouth region.

MR. REHWINKEL: Charles Rehwinkel, State Vice President for Embarq.

MR. O'ROARK: De O'Roark, counsel for Verizon Florida, Inc. With me today are Dave Christian and Steve Lindsay, who will be making the presentation.

MR. GROSS: Michael Gross, counsel for the FCTA. And with me today I would like to introduce Mickey Harrelson who will be our consultant and primary presenter today.

MR. HARRIS: Okay. There will be an opportunity for

more presentations later, but I wanted to get a good idea of who we had to start with.

We do have a sign-up sheet. And I have been asked to ask you all to sign into the sign-in sheet, so we can have an idea. There is lot of people here and not many people who are indicating they are going to speak, so if we could have people sign in. I think there should be at least one on this side of the room, there might be another one on the other side of the room. Just one, I'm sorry. So there is one over here to my right.

With that, BellSouth, if you all want to get started, we would appreciate it.

MS. DENBURG: Thank you. Good morning. My name is Dorian Denburg. I'm the Chief Rights-of-Way Counsel with BellSouth Corporation. BellSouth is very appreciative of the opportunity to be here today. We would like you to consider as you move forward that BellSouth owns 40 percent of the poles in our region, approximately 459,000 poles in Florida. Consequently, because pole rentals are based on a formula comprised of average historical pole costs times the carry costs, including a space factor, as the age of poles goes down and poles are taller or stronger, in addition to which electric companies undertake certain steps to comply with mandates of the Commission, BellSouth and other telecommunications companies will be forced to pay higher rental rates.

We believe that the amendments and rules that you are considering are premature because the Commission has ordered electrics and telecommunications companies to inspect our poles every eight years in addition to conducting remaining strength assessments and pole loading assessments, and you've required the parties to report the data. And tomorrow, in fact, you will be reviewing the storm preparedness plans.

You are proposing these rules without the benefit of having had the opportunity to analyze any of the data collected, or, in fact, even had the first report submitted. And the rules presuppose that third-party attachments cause safety and reliability problems. Yet, again, you have not had the first report submitted or had the opportunity to analyze any of the data of the telecom or electric companies.

BellSouth disputes that the Commission has jurisdiction over pole attachments. Notwithstanding our jurisdictional concerns, BellSouth has made a good faith effort to respond to the staff's requests regarding the cost impacts. BellSouth has very real concerns about the cost impacts because electrics and telecom are two very different types of companies, as you know. Electrics are rate of return regulated, BellSouth is price regulated. The electrics are utilities guaranteed to recover their costs due to their monopoly environment and can pass on any increased costs to their customers. Telecom, BellSouth is a highly competitive

environment with providers, including some subsidiaries of the electric companies, who offer the same services utilizing different technologies and will not incur these costs. Consequently, we will be competitively and economically disadvantaged by these changes.

Thank you.

At this time I would like to introduce BellSouth's expert, Kirk Smith.

MR. SMITH: Again, as Dorian said, we appreciate the opportunity to try to address these issues in this forum. The approach that we have taken after we reviewed the rules were to make some general assumptions on what the impact of these proposes rules would mean to us. Very quickly, on the second page of our presentation, these are our assumptions. That each electric company will ultimately develop its own construction standards that meet or exceed the 2002 NESC guidelines. That each electric company will develop construction standards that will incorporate, if applicable, extreme wind load conditions for new build construction, major planned work, targeted critical infrastructure, and major thoroughfares. In addition, each electric company will develop construction standards that will deter damage resulting from flooding and storm surge and that each electric company shall seek from other entities regarding the development of these standards.

Now, this is the framework. Of course, we understand

that the rulemaking was much more extensive than that, but as it applies to our issues, our concerns, those are the assumptions we made as we prepared the feedback for you today.

When we looked at the agenda that was sent for today's workshop, what we attempted to do was try to address each one of the questions specifically. As we saw and analyzed and assessed the impact to BellSouth, we saw two likely scenarios developing, so we will address those scenarios rather than a line item response, if you will, to the agenda.

On the third page of our presentation, the first scenario that we saw that would develop would be a potential of an aerial-to-aerial conversion on the part of the electric company. We would have two choices to make should we see that type of conversion. The first choice we would assess if the electric company abandoned a rear lot construction and replaced facilities with new streetside aerial facilities, we may elect from an economic standpoint to remain on the existing pole line. At that point, there are provisions within our joint use agreements with the various electric companies that we would assume at a cost the ownership of that old pole. Quite frankly, this does not happen very often, as we have never been in the market for used poles. But if you look at potentially what some of the cost differentials would be, you would have to see why we would have to assess that as a possibility.

The cost for us to assume the ownership of a

previously owned electric company pole may run us between 250 to $300 per pole. Accompanying that particular issue is the premise of the acquisition of the easement for the electric company to have been there in the first place. It would not be a safe assumption on our part that that particular easement could be assigned to us as the new owner of that pole. It could be that we would be in the position of having to work to secure an easement for the poles that we would now own. But that is such a variable and such an unknown we couldn't even come up with a reasonable cost estimate to try to put on the table with you today.

As we assume the ownership of these older poles, of course our pole inspection costs would be increasing. This would be an incremental lift to the number of poles that we will own in our forecast of the pole inspection cost. We forecasted our going forward rate of the number of poles that we would add to our inventory versus the number of poles that we would remove by virtue of the fact that the standards that the electrics may come up with are, at this time, very, very vague and unknown to us. We would be unable to quantify what this additional lift to our pole inspection costs would be. If we assume that we could accomplish this for 25 or $30 on a pole, then the delta would be 25 to $30 on a pole times some number. We don't know what that number would be.

When we assume ownership of those poles, then we put

into motion an administrative effort or process, if you will, in terms of BellSouth to actually transfer the ownership of those poles to us and to incorporate those poles into our land base. It is not unlike the effort that is associated with a BellSouth engineer going out and performing a job for a new facility altogether. That effort is there, as well.

The other option that we saw that would exist on an aerial-to-aerial conversion is if we opt not to avail ourselves of the opportunity to purchase the old poles and stay in place, and that would be if we decided to follow the new electric company route to the front property line. At that point in time, we estimate that our cost of providing that new facility is going to be anywhere between 25 to $40 per foot.

And let me speak just very, very briefly on the methodology we use to look at this and to make that estimate. That is a fairly wide range, as you can see, very dependent on the type of facility that we would be using. Are we moving or having to move possibly a remote terminal, some of our electronics, or would it be a simple matter of just relocating a small facility in a residential area. We simply do not know until we get a better idea of what these electric company standards would be.

In looking at trying to come up with this estimate and give you this range, we looked at probably no less than about 20 different work authorizations that we have completed

within BellSouth within the last year that are doing this same type of work to try to be able to come to you with some type of validity, if you will, on some of these costs that we are passing along to you here today, and that is how we established these numbers that we are looking at here.

If you look at, on the second page, the other scenario we saw developing was a removal of an electric company facility from a rear property line to a new buried facility on the street side, okay. Be it right-of-way, be it applicant-provided easement, that was the general work content that we saw. At that point in time, BellSouth would have the same assessment that we would make. If we have a reliable facility, we may opt to assume ownership of the poles that are being abandoned. So as you see here, one of our first options in that scenario was exactly like we would have on the aerial-to-aerial conversion.

However, if we opt to abandon that route and follow the new electric company route on the street side, and remove our aerial facilities and bury our facilities, again, the cost of what we saw in some of our most recently completed work authorization could go up as much as $10 a foot. Those are not insignificant costs. I wish we could do something a little bit better to give you an overall impact to BellSouth of what these would be. These are -- a commonly used term, they are activity-based costs, okay. We just clearly, again, do not

have a clue at this point as to what the order of magnitude may be until we know what those standards are.

On our next page, these are costs that are probably not as clearly defined as some of our incremental costs for assuming an ownership of poles for looking at a range of installation on aerial or buried cable, but they are very, very real costs that will impact us significantly.

Training on standards. We have thousands of employees across Florida. What these standards are, we have joint use agreements with 40-plus electric companies. The potential is there that we may be dealing with 40 different sets of standards. And, again, not knowing what those standards are, by the simple fact that we are going to have to communicate to our thousands of employees, our engineers, our technicians, our management people what these various standards are going to be will absorb an internal cost simply for trying to communicate and train our people.

It is not unreasonable to think as we place a facility, be it an aerial facility or a buried facility, primarily an aerial environment, we could be moving from one electric company's serving area into another. That happens regularly. At that point in time, with the technicians that we have got that are placing an aerial facility, they could be dealing from the standpoint that poles one through five may be one set of standards and poles six through ten may be

altogether different. Now, that is a great concern of ours in how do we effectively communicate what these standards will be to keep us in compliance with what those may be.

Facility damages. Our buried facilities in Florida have been damaged to the tune of about 2,500 times this year already. Seventy-five percent of the buried and underground damages that we incur happen on street-side environments. That has totalled a cost to BellSouth in 2006 alone in excess of $3 million. We will not back off from the standpoint that we work very diligently through a claims process to try to recover those costs, but they are costs that are associated with facility damage that we simply cannot and work very, very diligently to avoid. We can't project manpower requirements for facility damages when we have somebody that's working on facility damage that is taken away from another task that we may be utilizing that technician to perform.

We have seen in other cases where you move into what I would call an overbuild type environment that damages, in fact, are increased over business as usual. It's the environment that you are working in when you have crowded easements that are loaded with not only telco facilities, cable TV facilities, water lines, gas lines, everybody historically that has used the buried environment for the placement of their facilities. When we see these type of activities starting to develop, we mobilize our damage prevention activities. Damage

prevention activities generally impact us with increased costs in the sense of providing route surveillance, trying to do additional education for whoever is doing the excavation, making daily if sometime hourly visits to these excavation sites to protect our facilities.

We see an increase in the number of locate costs, locate tickets you have for people calling in to say locate your BellSouth facility. Now, this is an expense that is in many ways encouraged because we get out and we try to lobby, if you will, and we try to educate the public to call before you dig. But, again, this increase in activity here, we see a cost to our expenses from a locate standpoint. Again, to be able to quantify how much, unknown at this point in time.

As we assume ownership of an abandoned pole from a power company, we may then be in the position of having to renegotiate or to amend, if you will, our agreements with cable TV companies and with CLECs, as well. If they are attached to that pole, then the rental fees that are being paid to that pole at this point are going to the electric company. The attachment fees at the point that we would assume the ownership would then become BellSouth rental fees. At that point we are going to have to, again, renegotiate, or amend, or append to multiple agreements and, again, order of magnitude, can't speak to that.

Updates or changes to standards, a great concern to

us. We see nothing that is in the rulemaking that has any period, if you will, of gestation for any type of change to the rules. That is of great concern in that should an electric company decide that they want to take a different direction on some part of these guidelines, how quickly would they do that, how quickly would it be expected that BellSouth would need to comply to that change.

As an additional concern to this, I know the rule states that the current rulemaking is applicable for the (noise) -- nobody was throwing anything at me, were they? Please let me know and I will stop. We understand that the rules are based on the 2002 NESC guidelines. We also understand that the NESC guidelines are updated on a five-year cycle. That would mean that 2007 is the next update to the NESC guidelines. Would we expect a change in the rules based on the 2007 guidelines? This is 2006, and as we understand, if these rules are adopted the electrics have six months to form these guidelines. It doesn't seem as if it is an efficient thing to do until we know, unless somebody does that can speak to it, do we expect any changes in the 2007 NESC guidelines that would impact these rules.

Additional manpower requirements. Again, this is an order of magnitude that we can't address at this time. We feel very, very confident across the state of Florida that we are sized to our forecasted workloads. Should this be a

substantial increase to our workload, we will be adding additional management people, nonmanagement people, vehicles, equipment, you name it. And, like I said, this is an unanticipated lift in work content for us, again, to be defined when these guidelines are firmed up.

Use of non-wood poles. BellSouth is not in the market at this point in time to be a non-wood pole user. There has not been a need developed at this point in time that that is the right thing to do to support the type of infrastructure that we place. However, in these guidelines, should an electric company decide to go to a steel pole, fiberglass pole, concrete pole, we are going to have to tool up to match to that. We have limited resource at this point in time to provide attachments to concrete poles. I will tell you that on a pole-by-pole basis that could lift our cost as much as 50 or $60 per attachment just on material and time it takes to do that. But, again, an unknown that is in front of us.

Increase in pole rental fees. Dorian touched on that, and we will try to circle back on that in a few minutes, but in its most simplistic form, as an electric company would add to the value of their infrastructure, that impacts the rental fees that we pay on a yearly basis to the 40-some-odd electric companies that we do business with in the state of Florida.

From a very high level, there is a concern on our

part that as we assess the various and sundry conversions that may come through from the electric companies, we will be replacing perfectly good facilities. We may have facilities that are there now that are sized correctly, they are serviceable, relatively maintenance free, and we would have to -- you know, not given the implication of the conversion, we would choose to leave that facility alone. And in its purest form that doesn't make a lot of good business sense to be replacing a perfectly good facility.

The pole inspection process we have already talked about. We have worked very successfully with several of the major electric companies to approach this in a joint manner as we talked about in the workshop on the pole inspections. We are seeing some of the early results of some of those inspections coming in. Quite frankly, we just saw the first good sizeable sample come into my office this week. We have not had an opportunity to assess that yet, but we feel very, very comfortable that it's going to be giving us some very, very good data on how we ought to approach the treatment of our infrastructure.

Again, we feel that we have not had the opportunity and, of course, I would obviously let the other companies speak for themselves, to assess this and see what it means. And I think we felt like the intent of the pole inspection process was to do just that, help us internally develop some guidelines

on how to treat our infrastructure. So from that standpoint, the rulemaking does seem premature.

The bottom line, and I'll ask a colleague of ours from BellSouth, Mr. Stan Greer, to address some of the finer points of the following issue. In all of this, we don't see BellSouth as being a cost-causer, okay, but with very little activity at all, our increment lift to costs are going to be significant.

Stan.

MR. MOSES: Could I ask you one question before we move on?

MR. SMITH: Yes, sir.

MR. MOSES: You had made a statement about differing electric companies may have different construction standards, and in one pole line of ten poles, five might be in one and five in the other.

MR. SMITH: Correct.

MR. MOSES: Could you give us an example of the differing standards that would cause you harm in trying to attach to those poles?

MR. SMITH: If I were following a route that -- let's use Electric Company A, and Electric Company A was primarily serving a coastal type environment, and their construction standards may be for extreme wind load conditions X, and that would require me to possibly use a stronger type supporting

strand, different types of hardware for the attachments. If you know what I am talking about, we provide straps, if you will, on the attachment clamps for our strand.

MR. MOSES: Uh-huh.

MR. SMITH: That may be a standard for Company A. As you move to Company B, they may not adopt that same standard. So in the middle of that job, I may have a situation where I would have to use a certain size strand on five poles, a certain type of strand on the other five poles. I might have to use straps and different types of hardware to attach on these, I wouldn't have to use it on these. It could be very confusing.

MR. MOSES: Would it be that economically damaging to you just to use the stronger of the two and that way you would exceed the specifications of the weaker one?

MR. SMITH: I have an incremental cost as the size of the material goes up. So, again, to answer your question, would there be an incremental lift in my material costs, yes, there would be. There be would a less than significant cost in the labor content because I'm going to be climbing the pole to make that attachment anyway. But, again, it is an order of magnitude. How many times would that happen, and we simply do not know.

MR. MOSES: Thank you.

MR. TRAPP: Could I follow up on Rick's questions and

ask you doesn't that situation exist today? I mean, we have municipals, we have cooperatives, we have investor-owned utilities, each of which have a fairly clearly defined service territory. I mean, the Commission has a practice of trying to keep them from duplicating facilities and overlapping, so presumably there is a demarcation between the electric utilities' service territories. But I'm aware that under current construction standards today, the utilities -- differences between investor-owned and municipal and investor-owned and co-op and co-op and municipal exist today. Is that not the case?

MR. SMITH: That would be -- and I will give you to the best of my ability to address that. There are not wide differences in standards today among the electrics that we deal with that we perceive, okay. The NESC guidelines are pretty much the rule of thumb. You know, our issue is, as we address this particular point, there is a definition in the rulemaking that says they will build to extreme wind load conditions if it is a major thoroughfare, critical infrastructure, new build. Those are, quite frankly, as we have tried to assess this, those are somewhat ill-defined. I don't know what a critical infrastructure is.

Now, in the case of Electric Company A and Electric Company B, if their standards are different for what a critical infrastructure is, that particular route that I'm placing may

or may not pass a critical infrastructure, and the definition may be different among the two electrics. We just simply do not know.

MR. TRAPP: Well, we do know in Florida Power and Light's service territory that at least four have been defined. There have been two hospitals and two port areas that have been targeted as hardened areas that the company has already converted to, I think, concrete poles. I believe that is also BellSouth's service territory.

MR. SMITH: That is correct, and we have --

MR. TRAPP: What has been your experience with that hardening exercise?

MR. SMITH: We did not have the equipment, nor the manpower, or the tools necessary to make the attachments at the point in time that we would like to to some of the non-wood poles that they used.

MR. TRAPP: Were you coordinated? I mean, were you contacted by the company in advance?

MR. SMITH: Yes, sir, we were.

MR. TRAPP: And so there was an opportunity for coordination there?

MR. SMITH: There was an opportunity for coordination. The point we're trying to make today is, as you pointed out, their decision was it was a couple of hospitals. You know, what is our assumption at this point is a critical

infrastructure all hospitals? And that is really, I think, the kind of point we are trying to drive to here. You know, we appreciate the fact that we were, in fact, coordinated with on the hardening of those four instances. We were, we addressed it. It was not without an increased cost to BellSouth that we did that, but, in fact, the coordination was there.

MR. TRAPP: Would you agree that hospitals need telephone service as much as they need electric service?

MR. SMITH: Absolutely.

MR. TRAPP: And ports, major ports?

MR. SMITH: There is no argument there.

MR. TRAPP: So there seems to me some benefit to BellSouth in providing quality continuity service to those critical areas in preparation for storms.

MR. SMITH: Our network is increasingly reliant on the availability of commercial power. As we move to some of the advanced electronics we have, if power is readily available and serviceable, I will not tell you, yes, that is a benefit for BellSouth. Now, the issue that we were trying to address here today is what cost impact this is going to have to BellSouth, and there will be a significant cost associated with this effort.

MR. TRAPP: I think it is important, though, as we discuss cost impacts that we also look at benefits, as well, because the two have to be weighed together. And I haven't

heard anything in your presentation that addresses possible benefits of, for instance, you talk some time on rear lot to front lot conversions and undergrounding situations. Do you not experience any maintenance benefits associated with easier access to off-road versus rear lot?

MR. SMITH: Our experience has been that we have exposed ourselves quite a bit more when we are in a front lot line situation. One of the issues that I failed to address because we didn't want to come off being -- claiming that the sky was falling, if you will. But vehicles, on occasion, have a tendency to leave the traveled portion of the road. We have --

MR. TRAPP: Only when my teenager drives the car.

MR. SMITH: Our preference would be to be able to protect our critical facilities, such as cross boxes, such as remote terminals, such as units that store our expensive electronics, not necessarily in a street-side type environment. Now, if that means that the access to those is rear lot line, and that is the best way to protect that critical type facility, that might even be our preference rather than a street-side type facility.

MR. TRAPP: In a situation where you're leasing a pole, a rear lot pole to an electric utility company, you're not contending that they are obligated to stay there forever, are you?

MR. SMITH: That the electric company would be obliged to stay there forever?

MR. TRAPP: Yes. I mean --

MR. SMITH: No, sir, not in the least.

MR. TRAPP: They can choose if it is in their best interest once they have done their analysis to move to the front lot.

MR. SMITH: Absolutely. As any good business would do, you look at the impact to your business based on historical trends and what you know to be as factual as you can anticipate on a going-forward basis. Simply put, this particular rulemaking throws that into high gear, our assumption.

MR. TRAPP: In the opposite case, where you're attaching to an electric facility, again, you can elect to move with the movement of that facility or you can elect to redesign or reconstruct your facilities in the back, and there's where I see a real potential for cost impact. But I would note, and I would like some assessment from you as to the value and impact of Section 25-6.0341(4). And I don't know if everybody has the same copy of the rule, so I will just give you the rule number.

But reading that it says where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from, and to the extent practical, coordinate the construction of its facilities with a third-party attacher.

What problem do you have with that?

MR. SMITH: The concern that we would have with that comes back somewhat to Dorian's earlier comment in that we own 40 percent of the poles in our serving area. We would feel comfortable with stronger language, if you will, that would incent the electrics to work in a more collaborative manner. It seems as if the wording stops short of that. We feel that the wording basically supports that we be given an audience, that we be given consideration, but there is really nothing definitive there that says, quite frankly, that they will work in a more collaborative manner than what is absolutely necessary.

MR. TRAPP: Well, again, you prefaced your sentence with the situations where you own the pole. And, again, I don't think that's the case. I think you just agreed that where you own the pole, if they want to get off of it, they can. My point really goes back to the point where they own the pole and you're attached to it. You don't trust that they will give you proper consideration in the coordination language included in this rule?

MS. DENBURG: Respectfully, and I'm not the expert, I'm just the lawyer, but it comes back to the same point. If the power company owns the pole and BellSouth is attached to the pole, the standards that would be implicated here will have a direct impact on BellSouth's costs. We are not disputing at

all that an electric company has the right to be on a pole, to move its poles, to be underground, and to make those decisions. But the point is that if it puts in different poles, if it moves, it has a direct cost impact to BellSouth.

MR. TRAPP: And I guess the point that I was trying to make -- and we welcome lawyers here. We like to talk with you all, too. We are here to dialogue, and so I'm not expecting you to play law, and I don't intend to either. But, I guess the point I was trying to make is that if an electric utility decides to relocate some facilities, they have done it for a reason, and that reason is that they have done an analysis hopefully using research from our universities, and hopefully using forensic data that they have collected, and hopefully assessing the impact of storm and hurricane damage on their facilities, and they have come to a conclusion that this particular area is at risk. And because of that risk, it imposes the high potential for us to interrupt service to our services, make it difficult for us to get that service back up, and costs money. And it seems to me that those three factors also affect telephone service.

MS. DENBURG: Respectfully, BellSouth only lost two percent of its poles.

MR. TRAPP: Well, Florida Power and Light only lost one percent of theirs.

MS. DENBURG: I'm sorry, I didn't hear you.

MR. TRAPP: Florida Power and Light only lost one percent of theirs, and they have adopted a new corporate strategy of hardening. So you're not concerned about losing two percent of your poles?

MS. DENBURG: I would say that the company felt very good about the service that it maintained and that the chief concern -- well, I shouldn't say the chief concern, but one of our chief concerns is that the standards that are being considered are chiefly for the benefit of the electric companies and that BellSouth and the other telecommunications companies are not the cause of the costs, and that we shouldn't be required to absorb the costs.

MR. TRAPP: Well, we could get into a debate about competitive industries versus regulated industries and who has the best advantage over who and all of that kind of stuff. I do want to take issue with the word guaranteed return, though, that you used earlier. We don't guarantee anything. I think, you know, when you all were regulated you certainly recognized that you had to come and demonstrate and justify --

MS. DENBURG: Fair point.

MR. TRAPP: -- your return, and I think the same still exists with the regulated electrics. But that is just an aside. I want to turn to the other rule, 25-6.0342. And I'm just, again, wanting to ask, Section 3 of that rule has language in it that says in establishing the attachment

standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. It goes on to say, then, that any dispute arising from the implementation of this rule shall be resolved by the Commission. Now, what's wrong with that?

MS. DENBURG: BellSouth, respectfully, does not believe that the Florida Public Service Commission has jurisdiction over pole attachments.

MR. TRAPP: Even with regard to safety and reliability?

MS. DENBURG: We believe that the Commission has jurisdiction over safety and reliability, but that to the point previously made you have not afforded the opportunity to the companies to submit the data, to analyze the data that is being collected, and that consequently, and respectfully, you are making a leap that third-party attachments are the cause of the safety and reliability problems.

MR. TRAPP: Were you at our January workshops? I believe both telephone and electrics were invited to it.

MR. GREER: No, I don't think we were at the January. I think we were at the May, if I remember the month right. Time flies.

MR. TRAPP: Did you hear the discussion we had with Mary Glass, a national consultant?

MR. GREER: No, I don't believe so.

MR. TRAPP: You probably ought to go to our website and look at that, because that's where some of these concerns originated was back in the discussions we had in January. And it was pointed out that nationally, at least it was contended nationally that pole attachments were of concern. And that in particular it wasn't the initial installations necessarily, it was what happens as time goes on and things change on that pole that people may are may not be aware of.

And I would contend that in our further discussions in these workshops that have been publicly noticed and people are free to attend and I have seen a lot of people attend, whether they've signed the sheets or not, they have indicated to us a certain level of discomfort with the practices on the electric utilities side as to whether or not they were actually looking at those poles attachments, whether or not they were actually verifying that what was supposed to be up there was really up there as opposed to some extra stuff or some undisclosed stuff.

And, furthermore, in connection with the pole inspection plan, that maybe they didn't even know how strong the pole was holding all of that pole attachment plus electric. And I give that just as background to let you know where we have been, and, you know, kind of why we are here, and what we are trying to do.

So, again, I guess my rambling point here is that I

would encourage you to help us with this process to understand where the weaknesses in the system are and try to address them. My bottom line question, though, is what's wrong with identifying a procedure, and what is wrong with seeing how that procedure gets implemented by the utilities, and what's wrong with assessing that implementation at that time on an implementation basis as opposed to fighting this rule, which is just a body of simple words that say give us a plan. We need to know you've got a plan to deal with all of these issues. What's wrong with that?

MR. REHWINKEL: Bob, this is Charles Rehwinkel from Embarq. I don't recall that Ms. Glass, I don't recall that she testified that this was a problem in Florida. I think you did say nationally. And we are in a Florida rulemaking. I don't think there is evidence that that is a problem here. And I understand your point about that, but, again, that was not Florida evidence.

Our concern -- I want to echo what BellSouth's attorney indicated -- is there are no standards for how a dispute would be resolved. Normally, when a Commission is going to resolve dispute, you've got a statute, you've got a rule, you've got an order, you have criteria to decide right or wrong on the two parties.

MR. TRAPP: I'm not sure I'm following you, Charlie.

MR. REHWINKEL: Well, the rule said, the language

says any dispute arising from the implementation of this rule shall be resolved by the Commission. And the dispute, I would imagine, under this last rule provision that you cited, would be as to the development of the attachment standards which are to be developed by the electric company under this rule.

MR. TRAPP: That's where it's at in the rule.

MR. REHWINKEL: And today when you are adopting the rule, or whenever it is actually formally adopted, those standards will not be in place. And there is nothing that the Commission has said as to what goes into those standards. So a dispute that comes back to the Commission about those would be governed by nothing at this point in time.

I think it's very clear that the Commission cannot adopt a rule that adopts standards, they can't adopt a rule that adopts by reference, say, FCC, or FERC rules that are not in place as of the time of the adoption. You have to adopt a rule that is -- you have to adopt standards or rules that are in place as of the time of the adoption. You cannot make a prospective adoption of a rule.

The same would go as to the standards that might be adopted by a utility down the road. That's the crux of the issue, both as to this section and the other one is that we don't know what these standards are going to be. They may be entirely fair and we may be very happy with them, we just don't know today. We can't assess the impact of them and we cannot

assess how -- excuse me.

MR. TRAPP: Do you need some water?

MR. REHWINKEL: Everybody that has been on conference calls with me knows this is a problem I have been having the last few weeks. This is not -- thanks, Bob, but it's not going to do me any good -- that is our issue. And I don't mean to speak for Dorian, but that is at least part of the issue, I think.

MR. GREER: Bob, this is Stan Greer with BellSouth. I wasn't at the January meeting, but listening to what you described is part of our point in that we think you ought to let us do the pole inspections. Look at the attachments, see what is there, see what problems we have got, and then assess what you need to do as far as the standards that you're looking at doing. I think it plays right into that.

But I understand what you are saying, though. I'm a little curious, and we have discussed a little bit about what you envision as the process moving forward in this. And I understand the rule says you bring a dispute to the Commission. We are wondering how do you deal with, you know, the split -- I will just use a number, 60/40 in Florida for BellSouth and the electrics. What do you do with the other 40 percent? I mean, if you harden the 60, what is your idea would be the scenario that would take care of the 40? Because, if you do the 60 and you don't do the 40, if there actually is an issue, then doing

the 60 is not going to help you any. Poles are still going to come down.

MR. TRAPP: I can appreciate that, Stan. But when we started this rulemaking process, just to give you some more background, we started out with an absolute, a mandatory rule that says thou shalt harden up to extreme wind standards, and flooding and surge zones for a Category 3 hurricane. And we heard comments from the parties saying, wait a minute, you may be going too far. You may be getting too far ahead of yourself and you may be doing unexpected impact if we have to go in an area, for instance, and put four poles instead of two, that's more potential for poles being impacted by debris and what have you else. You may actually degrade reliability.

So we listened to that. So we came back with the current proposal that has been proposed by the Commission, which basically says, utilities, we are willing to work with you and define as we go what hardening means and what standards need to be in place. And, therefore, we have put in -- you file what you think you need to do with us, and we'll determine whether or not that is right or not.

We have also put in the rule that we want the attachers to be involved in that assessment. But we are doing something. And I guess that may be the difference of opinion. We are actually starting out with a process as opposed to the trust me, we'll take care of it approach. It may be a

difference of opinion.

And, Stan, I did want to address Charles' point, though, about there not being any standards in the standard first and then I can talk to you.

MR. GREER: Sure, no problem.

MR. TRAPP: I kind of disagree with what you said, Charles, with respect to the standard not having a standard in it, because it very specifically says in Part 1 that the attachment standards and procedures shall meet or exceed the applicable edition of the National Electric Safety Code and other applicable standards imposed by state and federal law so as to assure as far as reasonably possible that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, reliability, do not exceed pole loading capacity and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices. That's the standard.

MR. REHWINKEL: There are four words in this rule that cause me a great deal of concern. One is -- well, five. "At a minimum, and/or exceed." And that is where the problem comes in, Bob. I mean, you've got these objective standards that everyone bases their business on, but this at a minimum or exceed indicates that you could go beyond that. To what degree, we don't know. That is where the crux of the problem is. I'm not saying that you have to --

MR. TRAPP: But the legislature told us those words. That's what the legislature told us. They were no longer happy with the National Electric Safety Code being a minimum, go beyond it, and they also changed some other language with respect to our quality of service standards. So, you know, I am not a lawyer and I can't play law with you, you can do that with Larry, but I just don't agree with what you are saying.

MR. REHWINKEL: Well, I'm telling you that is the crux of the problem is those words right there, at least from Embarq's standpoint. I'm not trying to speak for the others here. I didn't mean to jump in line there, but I just wanted to kind of add to what Dorian was saying.

MR. TRAPP: Well, Stan kind of jumped in. Stan was trying to save you from your cough. But did you have anything more you wanted to add, Stan?

MR. GREER: Well, as Kirk and Dorian have mentioned, you know, one of the biggest problems we have is the additional cost associated with it. And you're right, we could debate the monopoly regulated price caps all day, probably, but the fact is, BellSouth doesn't have a mechanism or not a good mechanism to come in and recover those costs under the price cap regulation.

We are in a very competitive environment. Every decision we make as far as increasing rates, it is an internal battle with the various given units that the rate increase is

going into. And, you know, just to recover costs for things that are, at least in our opinion, appear to be -- say the electric company wants to make a pole better or harder under the extreme wind load requirements, that doesn't necessarily mean that it benefits us. I mean, it may stand there, but it may stand there if it stays at the other standard, as well.

So that's really where we are trying to figure out how to deal with the cost issue for us. And, you know, we are willing to work with the electric industries. Personally, I think we would like to see a single standard statewide, if we could get to that, but that's 40 companies, that's probably not going to happen.

MS. SALAK: But that raises the issue -- you raised the 60/40 issue, and that this rule basically takes care of the 60, but not the 40?

MR. GREER: Well, that was my take was how do you plan on looking at the 40 percent now.

MS. SALAK: That was my question. So, if that is true, and we move ahead with the electric rule, should we be doing something similar for telephone, and why not or why?

MR. GREER: Well, should we? We don't think you should, because we don't perceive the problem that you see that you seem to perceive. Is there some -- I don't know how to deal with the 40 in the world we're in, in the price cap world. You know, do you see the electric companies looking at, you

know, some kind of compliance, because I remember in some of the documents for tomorrow, that you are looking at audit of nonelectric poles. I don't know what that means. I guess we will find out more tomorrow. But, you know, are you expecting them to look at us and to ensure some kind of compliance with the electric rule? I don't know. I mean, that's some of the uncertainty that we have.

I didn't answer your question, I know. I just don't know how we deal with it. And having these kind of rules for electric, I mean, for telephone, I don't know that it makes, at least from our perspective, makes a lot of sense.

MS. SALAK: If we take the price cap versus rate base regulated issue off the table and just talk, say, you could get recovery of those costs, would you think that we should do that?

MR. GREER: If we went through some of the pole inspection and saw that there were some issues that needed to be taken care of because of the data that we collected in that inspection, then I don't think we would have a problem with trying to address those in some form or fashion, whether it be rule or some kind of agreement. The fact is, right now we don't have that data, and we don't know whether or not there is a high percentage of poles that have problems. We don't know whether the attachments on our poles are causing problems. We don't know if -- you know, in our opinion we think we've done

pretty well and had a fairly good track record as far as the failure of poles. But if we get the data back and it says, you have, you've got this issue you need to deal with, then, of course, we'll deal with it.

It just seems premature to do it prior to seeing at least some of the data that you have asked us to collect, and attachments are some of the things we are going to be looking at. You know, the loading on the poles, the strength of the poles, all of that kind of stuff is part of the stuff that we are going to look at. And it just doesn't make sense to do that, to start down a rule process prior to seeing at least some of the data.

MS. SALAK: May I ask you a question? You had mentioned the renegotiating of your agreements, and you mentioned joint use cable and CLEC. First of all, how many agreements in total are you talking about by each of those categories? You mentioned 40 awhile ago, but for all of these?

MR. SMITH: Likely I would say 40-plus joint use agreements.

MS. SALAK: Uh-huh.

MR. SMITH: Cable TV agreements. I will probably have to defer to -- about 80 across the state. Facility-based CLECs, likely in the 10 to 12 range.

MS. SALAK: Okay. And how often do you renegotiate them now? It seems like you would always have -- well, from my

perspective it seems like you would always have to be keeping up with them for costs and everything else. So how often do you look at them and renegotiate them?

MR. SMITH: There is not a set time that we would renegotiate any of those in any of those categories. There are some time frames within the joint use agreements where we will jointly sit down and relook at that on about a five-year cycle, okay. The point that I'm making with the cable TV and CLEC agreements, again, in it's most simplistic form, they pay us a pole rental when they attach to a pole.

The process that we ask of a cable TV and/or CLEC company is that they make application to us when they want to attach to our facilities. We dispatch an engineer. We make sure that that facility is capable of the type of attachments that they are talking about. And if there is any subsequent make-ready work that has to be done, any billing that has to be done to make our facility ready for those attachments, then it is performed.

MS. SALAK: And paid for by the attacher.

MR. SMITH: Paid for by the attacher. Now, in the situation that we're talking about here, those attachments are already there, okay. They, being the cable TV company and/or the CLEC, have not made application to us to attach to those poles, so we would have to start almost from scratch, if you will, from that standpoint to say -- we would have to assume

that transaction looks like an application for a new attachment. Add those attachments, if you will, to our data that we use for annual billing, obviously have to dispatch an engineer to make suitable from our standpoint before we take responsibility or liability for that pole that it is suitable for the type of attachments we've got. So it is the same transaction as if the cable TV company or CLEC came to me wanting to attach to our poles on an ongoing basis.

MS. SALAK: Right now if an electric company wants to move a pole for some reason of their own, under your agreements what do you pay for? Like, I don't know, for some reason they need for electric use, so do you pay to move your lines and --

MR. SMITH: Again, there are so many variables there, and I'm not trying to -- I'm trying to give you the best answer we can give you. If it's done for the benefit of the power company or the electric company, generally speaking, then the electric company would pay the cost of our transfer, okay.

If it were a taller, stronger pole that was being required, and it was my pole, and the electric company decided they needed additional height, additional strength on that particular pole, again, if they were, the term we would use, cost-causer, they would incur the cost for that additional height and additional strength of the pole and to pay for my transfer.

MS. SALAK: Okay.

MR. HEWITT: I have a question for Mr. Smith. Back to the facility damages.

MR. SMITH: Yes.

MR. HEWITT: You talked about the damage to underground facilities. How does that compare to the damage to overhead facilities?

MR. SMITH: Ninety percent of the facilities that we have damaged in the state of Florida are buried or underground damages.

MR. HEWITT: Okay. So it sounds to me like it is going to cost you money to move with the electric companies to underground, it is going to cost you if you stay there by yourself. So is your position that you would like the status quo as the least-cost alternative?

MR. SMITH: Given that as the option, I would have to say yes. Because the status quo we don't incur any incremental lift or operating cost.

MR. HEWITT: And you think the benefits of staying exceeds the cost of moving?

MR. SMITH: Excuse me, I didn't hear that.

MR. HEWITT: So the benefits of staying would exceed the cost of moving underground to avoid, say, hurricane damage?

MR. SMITH: From a cost standpoint that would be correct.

MR. HEWITT: And if the electric, you might not be

able to answer this, but if the electric go underground, do you think they are going to have the same sort of damages from digging or whatever that you are having with your underground facilities?

MR. SMITH: The likelihood is, at least from my practical experience, that the electric companies experience less damage than we do by virtue of the fact that generally speaking they are underneath us. As an excavation takes place, be it from a landscape, be it from whoever may be disturbing the ground, they usually come through water lines, cable TV, us, gas, before they get to the electric company. It's not to say that they don't have, I'm just not prepared to say how vulnerable are they.

MR. HEWITT: Okay. Thank you.

MS. HARVEY: My name is Lisa Harvey with staff, and I have a question for Mr. Smith.

MR. SMITH: Yes, ma'am.

MS. HARVEY: Going back to your scenarios, and on your abandoned pole cost estimate of 250 to $300 per pole. Could you give me some background in terms of how that number was derived?

MR. SMITH: There are actually some formulas, if you will, in our joint use agreements that talk about the age of the poles, some depreciation, if you will. You know, we had to make some broad brush assessments when we came up with this

particular figure as to what would be the size of the pole, the age of the pole, what should we expect, okay. In some cases we have actually purchased poles from various electric companies and they fall in this particular range, so we felt very comfortable this was a conservative cost estimate.

MS. HARVEY: What's the cost for BellSouth to install a new pole?

MR. SMITH: To install a new pole?

MS. HARVEY: Yes.

MR. SMITH: To install the pole itself, from a labor and material standpoint, in the state of Florida we would probably be in the 500 to $550 range. So from that standpoint you can see that the purchase of a used pole doesn't really make a whole lot of sense for us. Now, that cost that I just gave you for the installation of the pole does not include the installation of any facility on that, that is just strictly the placing of the pole.

MR. HARRIS: I did have one question. Before we got sidetracked, I heard BellSouth say that -- I think I heard BellSouth say they were not sure that the Public Service Commission had jurisdiction over pole attachments, and then it sort of got off a little bit. I would like to sort of go back to that point and clarify. Is it BellSouth's position that the Florida Public Service Commission does not have jurisdiction for safety and reliability in the state of Florida?

MS. DENBURG: No, BellSouth does believe that the Commission has jurisdiction over safety and reliability.

MR. HARRIS: But with respect to these pole attachment rules?

MS. DENBURG: We believe that court decisions have -- that a court decision that has previously examined this issue came to the conclusion that the Commission does not have jurisdiction to regulate pole attachments.

MR. HARRIS: And it's your position that the rule that the Commission proposed, 25-6.0342, is a regulation of pole attachments?

MS. DENBURG: At its heart, yes. And when it says that disputes would be brought before the Commission, then it would put the Commission in the position of deciding disputes over pole attachments, so, yes.

MR. HARRIS: Is it just that language, then, that disputes would be resolved at the Commission?

MS. DENBURG: No. To the extent that the rules would affect the standards, the procedures, the consequent rates that would be charged, the terms and conditions, that that would be the heart of the matter.

MR. HARRIS: I think I also in that conversation heard a comment about up-front input into this. I think it was in the context of the pole inspection order. Is it BellSouth's position that there is a difference in our jurisdiction, the

PSC's jurisdiction over safety and reliability now versus if BellSouth goes out and follows the pole inspection orders and we develop a lot of data as to safety and reliability?

MS. DENBURG: I'm sorry, could you rephrase the question?

MR. HARRIS: Right. Does the Public Service Commission's jurisdiction over the safety and reliability as they impact pole attachments change whether they issue rules today or whether they issue rules a year from now after the development of data as to the safety and reliability impacts of pole attachments?

MS. DENBURG: I think the answer is no. We don't believe that the Commission has jurisdiction over pole attachments.

MR. HARRIS: Okay. Thank you.

MR. MOSES: Could I ask a question about that? When you're talking about jurisdiction of pole attachments, are you talking about the cost of it, or are you talking about the engineering strength of it? Do you think we have jurisdiction to mandate that you increase the strength of a pole attachment in order to comply with the safety and reliability?

MS. DENBURG: Under 47 U.S.C. 224, which is the Federal Pole Attachment Act, the FCC has jurisdiction over the rates, terms, and conditions of pole attachments unless a state certifies that it has jurisdiction. Under this decision that I

was referencing before, Teleprompter versus Hawkins, the Florida Supreme Court looked at this issue and essentially decided that the Commission did not have the jurisdiction.

I don't think you can parse out, if you will, just rates versus a term and condition. So I think that the way the court looked at it, looking at the Florida Legislature and its plan for the Commission in regulating telecommunications came to the conclusion that the Commission did not have that jurisdiction. It's not sort of a Chinese menu, if you will.

MR. MOSES: So if you elected to put up a pole attachment that was too weak in order to meet whatever these standards end up being, you don't think we have the authority to order you to put something stronger?

MS. DENBURG: Do you have the jurisdiction to order us to put in a stronger pole, did you say?

MR. MOSES: A stronger pole attachment.

MS. DENBURG: A stronger pole attachment.

MR. MOSES: In order to meet the safety and reliability standard. We're not setting the price of it, we're just telling you it needs to be stronger to meet the wind things, or whatever it ends up being.

MS. DENBURG: I think that there is a fine line, undoubtedly, and that we are discussing, you know, we are here on that now. And, frankly, I'm not prepared to walk through every step of it. I think that the Commission clearly has

jurisdiction over safety and reliability. I think that -- and perhaps this was some of what you were getting at. I think without the data to understand that there is a safety and reliability issue, that therefore you have a gap in the foundation, if you will, to be looking at the attachments -- excuse me, not to look at the attachments, but to decide disputes over the attachments.

If there is an attachment that causes a safety issue, BellSouth would be responsible for remedying that problem because we have obligations to the public. I'm not sure if that answers your question or not. BellSouth is responsible for its poles and its facilities that are on its poles, and we have an obligation to the public.

MR. TRAPP: But who are you responsible to? I mean, in a regulatory sense, if you have got a safety violation that is not actable by this Commission, are you saying the FCC is going to take care of us?

MS. DENBURG: Well, I believe that the NESC has guidelines that would control that we need to comply with, and those construction standards we're held to.

MR. TRAPP: But who enforces the National Electric Safety Code in Florida?

MR. MEZA: Let me jump in here. This is Jim Meza on behalf of BellSouth. The issue is that you do not have jurisdiction as determined by the Florida Supreme Court to

regulate pole attachments, the rates, terms, and conditions associated with that. That is clear black letter law. And the law that the Supreme Court looked at back in 1984 to determine that you don't have jurisdiction has not changed. And it is our position that there is a very credible argument that by backdooring jurisdiction through safety and reliability you are attempting to assert jurisdiction over the manner in which pole attachers agree with pole owners as to the rates, terms, and conditions associated with those agreements.

If there is a safety and reliability concern, the standard today is the NESC. BellSouth complies with that. If you believe that a specific pole does not meet those standards, I believe you probably have the jurisdiction to tell us to replace it. But that's not regulating the rates, terms, and conditions associated with pole attachments.

MR. BREMAN: One point of clarification. This is Jim Bremen with staff. I just want to make sure I'm hearing you correctly. Did you say the NESC is a reliability standard?

MR. MEZA: No, I'm sorry, it's a construction standard.

MR. BREMAN: Which reliability standard are you referring to in your comments?

MR. MEZA: I'm not sure I understand your question.

MR. BREMAN: You made reference to reliability and safety, and you just clarified that safety, the standard for

safety is the NESC. I'm interested in understanding your basis for saying reliability, and I want to also know what standard that is and who has authority to implement that reliability standard.

MR. MEZA: I believe the authority question lies with the FCC. The Federal Act makes that clear. If it involves regulating rates, terms, and conditions regarding pole attachments, this Commission has to certify to the FCC that it has jurisdiction to do that, and the Florida Supreme Court has said that you don't.

MR. HARRIS: Mr. Meza, you said in your comment that if a particular BellSouth pole did not meet an NESC standard, the PSC could order you to replace that pole, correct?

MR. MEZA: I don't know if I would tie it to a specific standard, but if you believe -- if there was a safety and reliability concern with a pole, I believe you probably have jurisdiction to do that.

MR. HARRIS: Okay. Now, let's say that that is an IOU-owned pole, an investor-owned utility owned pole that BellSouth has attached to, and the Commission decides that that pole needs to be upgraded in order to meet safety and reliability standards. Do we have authority to order the IOU to change that pole to a higher standard?

MR. MEZA: You probably do. But to the extent that that decision affects and determines our relationship with the

electric utility, you run into the jurisdictional problem. Because by default, by making that decision to change the pole, you're changing the parameters by which we attach to that pole.

MR. HARRIS: And so it's your argument that we, we meaning the Public Service Commission, could not require that upgraded pole if it affected your attachment to that pole?

MR. MEZA: Yes.

MR. HARRIS: Thank you. Bob.

MR. TRAPP: Does that opinion hold true even when there is a provision in the joint use agreement that addresses change-outs of that nature?

MR. MEZA: I'm sorry, sir, I didn't mean to interrupt you. Are you finished with the question?

MR. TRAPP: Yes.

MR. MEZA: Thank you. The joint use agreement addresses a situation, and that is the problem, we have a contractual relationship with the electric utilities that sets the rules by which we are going to attach to their poles and they are going to attach to ours. By introducing these rules, that by default probably changed the parameters by which we have agreed to the joint use agreement, you are effectively affecting our contractual rights. So in addition to the jurisdictional argument, we also have a contractual arrangement that we believe may be impacted by these rules.

MR. TRAPP: Well, again, I'm no attorney, but that is

the first time I've heard that a contract can veto, you know, government authority to protect the public from hurricane damage and safety and things. That just doesn't seem to be logical.

MR. MEZA: I'm not sure I follow your point.

MR. TRAPP: Well, it's probably a bad point. I'll just drop it.

MS. SALAK: Mr. Meza.

MR. MEZA: Yes, ma'am.

MS. SALAK: So are you saying that if the electric company decided to upgrade something dealing with your attachments, that they could not do that, or are you saying they couldn't force you to pay for it?

MR. MEZA: They could not use your rule -- my view of the world is that they could not use your rule to make a decision to change a pole or to change their network and then impose the cost on us. Because by using that rule they are altering and using you as a means in which to regulate pole attachments.

MS. SALAK: So is your issue strictly with who pays for it?

MR. MEZA: I mean, that's a primary concern, yes.

MS. SALAK: I mean, if that issues goes away -- well, which it won't, but if it weren't for that issue, major issue, would all of your arguments go away?

MR. MEZA: What you're asking me is a best-case scenario, is that really what you're asking?

MS. SALAK: I'm really asking you is will it all boil down to money? Is that just the whole argument that you're making? Is that the thrust of the argument you're making?

MR. MEZA: Yes. I mean, the world revolves around money. We believe in establishing a reliable network, and we believe we have one. What we don't want to be in a situation is that by attempting to cure a problem that may not actually be a problem that we are actually acceding or allowing the Public Service Commission to circumvent the federal limitations on your jurisdiction.

MS. SALAK: So when you talk about rates, terms, and conditions, though, you are really talking about rates. That's what I'm really trying --

MR. MEZA: Well, but there is also terms and conditions associated with where we can attach, how, yes. I mean, all of that is governed by the FCC.

MR. VINSON: Can I make a quick follow-up to Beth's question, Mr. Meza? This is Carl Vinson with the Commission staff. Does your joint use agreement with an electric IOU, for example, generally address the handling of costs that would be imposed as a result of regulatory action? And, if so, what does it's say?

MR. MEZA: That's a sensitive question, because I

don't want to give my electric friends an avenue to sue me or to use it. But there is a provision in our joint use agreements that could be used by the electric companies to pass off all the costs with their decision to make their network stronger to us. We are not conceding that that is actually going to occur, or that there is an actual -- or that their argument would be correct, but there is a means or a potential for them to use the joint use agreement to pass everything to us.

MR. VINSON: And that provision generally states that if a regulatory body imposes a requirement upon the IOU that that cost would be allocated to the attachers such as BellSouth?

MR. MEZA: What it does is it says if the electric utility itself makes the determination to change a pole, they pay it. If there is -- and, Dorian, correct me with the correct phrase -- a governmental public authority, you know, that the public authority issues a requirement that the pole change, then they can shift some of that cost to the attacher. And the debate would be, well, do these rules constitute public authority; do you really have to change the pole; why should we, as a price-regulated company, have to pay for your cost associated with your decision to replace your facilities? And so that is what we are struggling with, as well.

MR. HARRIS: Great. Did you all have anything else,

BellSouth?

MR. SMITH: No, I think that completes the information I wanted to bring to you today.

MR. HARRIS: Great. Before we move on, I think we are going to take a five-minute break, and then we will move on to the next company.

I wanted to say thank you, BellSouth, thank you for this discussion. I think it is what we were looking for, staff.

(Recess.)

MR. HARRIS: All right. I think we've got a presentation, a PowerPoint presentation by Verizon on the computer. Are you all ready to go?

MR. O'ROARK: We are.

MR. HARRIS: Great. Why don't you go ahead and get started whenever you're ready.

Mr. Breman is on his way. And did you have any copies of your handout on paper at all?

MR. CHRISTIAN: They're up there in front of you guys.

MR. O'ROARK: Good morning, again. My name is De O'Roark. And as I mentioned at the outset, I represent Verizon. We very much appreciate staff holding this workshop to give us an opportunity to address our concerns about the proposed rules.

On the jurisdictional issue that we have just been discussing, our position will line-up pretty closely with BellSouth's. What we would like to do is simply reserve our right to address jurisdictional and other legal issues at a later time. What we would like to do today is present concerns about the proposed rules from Verizon's perspective as a third-party attacher and as a company that is undertaking a massive roll-out of fiber in our service territory around Tampa.

We are going to have two folks making Verizon's presentation today. David Christian will discuss Verizon's network reliability starting with our legacy copper network, but also going on to discuss our fiber roll-out and how our investment in fiber in Florida relates to our concerns about the proposed rules. Next, Steve Lindsay, who is with Verizon's Network Engineering Group, will provide our high level concerns about Rules .341 and .342, and he is also going to touch a little bit on .034.

As others have already discussed, because we don't know what the standards are going to be or how they are going to be applied, we can't tell you exactly today what the cost impact on Verizon will be. What we have tried to do, however, is make some assumptions and at least give you a range of possible cost impacts so you have got some idea of what we will be facing. And, again, Mr. Lindsay will address those. So

with that I will turn it over to David Christian.

MR. CHRISTIAN: Thank you. Go to the next slide, please. We just did this; go to the next slide.

We will start out with our network reliability. We maintain a network that is extremely reliable, and we invest heavily in our network reliability. A substantial portion of our legacy copper network has already been placed underground. Maintaining a sound reliable network is critical in today's highly competitive marketplace, certainly in Tampa.

We are spending hundreds of millions of dollars -- we're already spent hundreds of millions of dollars to install fiber facilities underground, and our fiber facilities deliver substantial benefits to consumers while increasing our network's ability to withstand storm conditions. Next slide, please.

Here are some statistics about our network investment in the Tampa Bay region, which covers a six-county territory from Sarasota all the way up to Hillsborough and farther north. 99.9 percent of our fiberoptic system is underground. We have placed 600,000 households to date. We have placed greater than 26 million feet of fiber in Florida underground, and we have spent about $550 million by the end of this year so far. And our project is not slowing down, so you'll see the similar statistics carrying over.

What is interesting about our network is that it is a

fiberoptic network that does not have electronics active in the network. Therefore, it is resistant to lightning strikes, storm damage, flooding, other associated things that affects the copper plant in the state of Florida quite substantially. So we think that this is a future-proof storm-proof network that will serve the community that we serve for many decades to come. Next slide, please.

Here is -- if you could go a little bit farther. And one more click. This slide demonstrates how we're conducting our construction project of our fiberoptic network. As you will see on the top we have an overlay environment, and then down below you will see the greenfield environment. And the overlay environment is where we have the existing copper network in place, and we are actually over-building a new network. So we have two networks now in place in our more mature neighborhoods and service area.

In the greenfield environments, obviously the growth in Florida is substantial. We have lots of new developments going in at a rapid rate. We are able to put in the fiberoptic facilities right away. But this is important when you start talking about coordinating plans with power companies. And we believe that there should be advanced notice well in advance of a coordination of a project so that we can see if we are, in fact, scheduled to deploy fiberoptics to a certain area, neighborhood, or development. And perhaps there will be some

cost savings to coordinate with the power companies if they are deciding to go underground. Next slide, please.

Basically that finishes the fiberoptic presentation. But the point we're trying to make here is that we have one foot in the old world of legacy copper and we have one foot in the new world with fiberoptics. And anything that impacts or increases our cost on the old world is certainly going to have an inverse impact on the fiberoptic or the new world of telecommunications that we are trying to get to. And we just wanted to bring that to your attention that there is a very real balancing act going on between our desire to roll out the fiberoptic network as quickly and as widespread as possible with protecting the legacy copper plant.

MR. TRAPP: Could I interrupt with a question?

MR. CHRISTIAN: Yes, sir.

MR. TRAPP: I'm not sure I quite understood. You have got existing copper -- you said the fiber was predominately underground, what is the copper, is it overhead?

MR. CHRISTIAN: It's a mixture, but mostly it's underground.

MR. TRAPP: Mostly cooper is underground.

MR. CHRISTIAN: Yes, sir. So we're attached to about 400,000 poles, and we own about 107,000 poles. So there is still a significant amount of aerial plant out there.

MR. TRAPP: And the point you were trying to make

with the advanced notice is to, what, avoid dig-ins?

MR. CHRISTIAN: Well, it is to avoid the fact that if they are going to go underground under one of the rules that we'll talk about in a little bit, we don't want to put our copper network underground and then have to go back in and put the fiberoptic network underground and bear the cost of undergrounding twice.

You're looking at me like I've got a third eye. Did I --

MR. TRAPP: No.

MR. CHRISTIAN: It's a question of expense.

MR. TRAPP: No. I've got four, and I definitely don't see three.

MR. CHRISTIAN: I just wanted to make myself clear.

Any other questions before we move on to sort of the engineering side?

MR. LINDSAY: Hi. My name is Steve Lindsay. I'm with Verizon. I don't have a legal background, I have an outside plant and joint use background. And we're covering basically some of the same things that BellSouth had covered. If you will look at -- the first issue is -- actually both of those issues having to do with that 6.034, standard of construction. We still have a problem with prospectively applying construction standards to the rule.

I think it would be more beneficial since, you know,

construction standards are fairly standard. And if they go beyond what the NESC does, which is our basic standard or the majority of our -- in the majority of our agreements with electric companies, you know, the standard is the NESC. So once you go beyond that, you have this confusion. So for us, the best thing to do would be to lay out the construction standards first, and let's all agree that those are a sound principle.

So if you look at those two, we're looking at still an uncertainty of how that is going to impact us. And part of this hearing was to say, you know, what kind of costs are we going to incur? Well, we don't know. Until the electrics come out with some plans, we don't know how we're going to be impacted. So for us to tell you here is what the impact is, we can't do it until we see what standards we have to comply to.

We are complying currently to the NESC. That's all three; TECO, Florida Power, Progress Energy, the minimum standard is the NESC. When you go beyond that, you have to call that out.

Where I came from, the northwest, it's not uncommon to have additional construction standards in a contract, but those are negotiated up front, they are understood, they include diagrams, they include detailed construction. So you know up front what you have. So you are asking us to say, well, you have this unknown and a known. The known is the

NESC. The unknown is the open-ended construction standard. And then you add onto that the standard for severe windloading, and then looking at some of the documentation, the way it is applied, it can be applied universally to all distribution electric poles. Which, again, leads us to say, well, are the or aren't they; will they or won't they harden their poles.

So I think with this particular slide, you know, we would like to see that done up front. And I don't think it would be that difficult to do. I think most of the power companies probably know if they have additional construction standards they would like to see implemented whether, you know, you can or you can't. Those are some for the lawyers to discuss. But from an operational point of view, from a construction point of view, I would like to know up front what rules I'm playing under. So this slide really kind of talks to that. I think it can be done. I don't think it is, you know, I don't think it is insurmountable to have that documented up front.

MR. TRAPP: I don't understand your point, I truly don't.

MR. LINDSAY: Well, my point is --

MR. TRAPP: The rule requires the electric investor-owned utilities, and also the munis and co-ops, to provide their construction standards within six months, at which time this Commission is going to review those standards,

and at which time you have an opportunity to review those standards and complain if there are problem areas. Based on my history with the Commission, if you complain, we're going to have some kind of process to look at that complaint and evaluate the merits and move from there. So you're going to have construction standards to look at, you're going to be able to evaluate them, you are going to be able to determine impact, and you're going to have due process before this Commission before they go into effect. What is the problem?

MR. LINDSAY: There is no problem as long as you -- before the rule goes into effect that you have the input.

MR. TRAPP: The rule has nothing to do with it, in my mind. What you're really talking about is you have an implementation problem.

MR. O'ROARK: If I can address that.

MR. TRAPP: The rule is the rule. The rule has to be implemented. The rule has processes for implementation. It says utilities will develop and file. And then everybody is going to have an opportunity to review impact, and if there's problems, we're going to know about them and we're going to work them out.

MR. O'ROARK: If I can --

MR. TRAPP: I keep hearing implementation problems, not rule problems.

MR. O'ROARK: Well, if I can jump in. As I

understand the rule, as we say in the issue, the electric utilities are required to seek input from the attachers, but it doesn't say that they necessarily have to agree with that input.

MR. TRAPP: And why should they? Why should you control what an electric utility has to do to keep the lights on? That's the Commission's job is to judge whether or not a dispute is legitimate or not, and that's provided for in the rule.

MR. O'ROARK: It is. And all we are saying -- you'll see that not only did we set forth an issue, we also set forth a proposed resolution. Our resolution simply, if there is a dispute, and your rule contemplates that there might be, that we ought to address that dispute up front, resolve it, and then resolve it before the rule goes in place, that's all. We're just trying to make sure we have got the process streamlined.

MR. TRAPP: Again, I hear your words, but you are talking about not letting the rule go forward before we have a complaint. You know, it just doesn't make sense to me. You have the rule, the rule sets out the guidelines.

MS. SALAK: Excuse me. The way that's worded there, you mean the rule itself goes in or the standards go in?

MR. O'ROARK: The standards.

MS. SALAK: So the rules goes in place, then before any standards are adopted, any dispute about them would come

here before they go into effect?

MR. O'ROARK: Correct.

MS. SALAK: So the rule can go into effect, its just any standards would have to be reviewed by the Commission and litigated, if that's what had to happen, before they are adopted?

MR. O'ROARK: Basically right. The electric utility would have to come up with a standard and it would have to seek input as the rule currently provides. If there is a dispute concerning one or more of the rules, then that dispute needs to be resolved by the Commission before that rule goes in place. That's our proposed resolution.

MS. SALAK: The rule or the standard?

MR. O'ROARK: The standard, I'm sorry.

MS. SALAK: Okay. So we're talking standards. Okay.

MR. LINDSAY: We can go to the next slide unless we had any other questions. This is concerning Rule .0341. It's more or less to address major construction, relocation projects. And I'm not saying this won't happen. And I think if we team with the electric utility providers that I anticipate that we will be on the same page, but this just allows for any major relocations such as, you know, when you're talking about going from the front to the rear, or adding a significant number of poles that we are able to budget for this activity, we are able to plan for this activity, we are able to

tie it into our fiber build.

It's not easy to just go ahead and say you are going go from aerial to buried, or relocate your facilities and tie it into our major fiber build because you have, you know, all the infrastructure to get to that point to provide the fiber service. So it's not a simple matter. So when you have a major relocation or projects, that we would like to see a decent amount of warning so that we can, you know, plan our construction.

MR. BREMAN: Excuse me, Larry, I have a question if I might interrupt. My name is Jim Breman with staff. I'm curious about the 12-month notification prior to major work. Is that not a term and condition of your joint use agreements that there will be some sort of degree of coordination already? I'm just confused about what is and what isn't a change in the terms and conditions between an investor-owned utility and the attachers to their assets.

MR. LINDSAY: This is a little different than what your joint use agreement would call for in that you don't normally do extensive reconstruction, if you will, going from aerial to buried, which is a part of this, you know, I guess the ultimate good plan is to get aerial facilities out so that you don't have the problems.

For the most part, joint use agreements don't really talk specifically to that, although, you know, as we do talk,

we try to convey those kind of projects. But I don't know if contractually, you know, I would have to look, but I don't recall anything specific to that.

MS. SALAK: I know in telephone we have a rule that if you are going to go underground and you're going to dig, that you are supposed to coordinate that effort. And, I'm assuming that that is happening. How far in advance is that done, I'm sorry, right now, the coordination effort?

MR. LINDSAY: Well, if you are talking about a project where, as far as Verizon is concerned, you're going from, say, a rear easement to a front easement and bury, you know, we can stay on those poles. That was one alternative that BellSouth talked about, and there is a certain cost associated with that, which would be the preferable thing to do until we are ready to actually move. So as far as, you know, coordinating with -- you're talking about two different situations. You're talking about electric doing their thing, and then telephone doing their thing or cable doing their thing. So not necessarily do you have joint projects on existing plant, other than you have to work as far as pole change-outs go, and transferring your facilities, placement of where a pole should go concerning risers and things like that that.

You know, those are operational type issues. You know, if they are going to go buried, that's their plan. What

we are asking for, if they are going to go, and it would benefit, you know, Florida in the reliability, that we give an advance notice so we can plan for it. This is like an eight-year cycle where the inspections are going. I think tied into that is going be an ongoing plans on how to correct, you know, situations that, you know, are susceptible to, you know, extreme wind damage. So, you know, I think as they go and develop plans, as long as we team with it and we're given advance notice, we can react accordingly and maybe build with them to have some cost-savings for both parties.

MS. SALAK: How about those situations where it's just, I'll term, critical. It's just got to happen today. Can there be exceptions to it under your view?

MR. LINDSAY: I think so. I think what you're talking about, the hospitals, and you've got, you know, maybe 30 poles, and they're telling you, hey, we're going to do that today. We want to go that done prior to the hurricane season, and we're going to go. Well, I don't see that to be a major problem unless we don't have the ability to attach to the concrete poles, although if it's concrete or laminate and the power company says we've predrilled the holes, we're all set for you, you know. So, I mean, as you work together, I think you can do that. And I think specifically if you identify critical circuit, you know, that that is worthwhile to team on and to not have a year's notice. I'm just talking more or

less, you know, overall plans and bigger plans that result from the audits that are coming up.

MS. SALAK: Thank you.

MR. LINDSAY: Okay. And then there was the issue, of course, that was brought up before. And you actually mentioned it, when an electric utility is compensated for relocating its facilities, you know, it should be taken into consideration the third-party attachers and their costs associated with that also, as far as relocating. It has been said by probably every ILEC here and CLEC and cable TV company, we're all after the same customer, and it is a very competitive environment. We're losing, we're gaining. And, you know, to add anything to the cost is not helpful to remain competitive. And you're talking about a considerable amount of cost if we are required to relocate. Which, you know, is very, very costly as we will show you in one of the other slides.

Do you want to go to the next slide, please. This deals with, of course, the utilities are not required to provide any specified notice of the relocation of their facilities to attachers -- is that the same one, no, to establish safety, reliability, pole-loading capacity. Again, that goes back to the same issues of standards that we would like to see resolved. Because we do have contracts. The contracts are specific on our safety and our construction standards. And, again, we have already kind of discussed this.

Electric utilities, you know, and I'm not saying this is going to happen, but the next two really bullet points are how are these construction standards going to be applied. You know, I see things like you go to, you know, apply a permit to attach to a pole, a loading is done -- well, is the loading going to be -- analysis going to be extreme when I want to attach, but if you looked at the pole now it's actually overloaded, and I would be responsible to replace the pole in order to attach. You know, there's a lot of -- you know, that is kind of where the standards come in and be universally applied. Because those costs are passed back to the attacher. And, you know, there is some uncertainty as to how it's going to be applied.

So both of those, basically, talk to our joint use agreements and construction standards, and then whether they prevent you from attaching and whether or not you have to incur an unreasonable cost. So, you know, the more clarifying we can do as far as standards and how they are going to be applied and less of, you know, that if it's reasonable and if you want to you can apply it to the distribution poles that are under 60-foot that have, you know, that extreme wind loading, according to the NESC it doesn't apply for poles that have less than 750-volts or Class N construction. You know, there is a lot of variables as to how it can be applied.

The way the Commission rule reads, to me it says you

can apply it if you see that it's a good business decision or if it meets whatever criteria that you decide as an electric pole owner. So we just want to have something that is understandable and is consistent, you know, which is part of the construction standards and the application of the extreme wind loading.

Okay. The next one. This analysis was done just to kind of show you a little bit about if you did a pole hardening by adding additional poles to the network and what the impact to Verizon would be. We currently are attached to 397,000 poles, so one of the methods of pole hardening system would be to add additional poles. So if you add 10 percent, 15, 20, 25, 30 percent more poles it shows the impact to Verizon, you know, by hardening. So this is part of the cost analysis you want to see, possibly one scenario of how it would impact us.

The number of new poles, if you added 10 percent it would be 39,000 estimated, or the attachment cost as to rent we pay to the pole owners which averages out to be $31.00 a pole, times 39,000, equals $1.2 million per year. And, of course, that will be going up because the cost for the electrics to harden their facilities are going to increase their net bare pole cost.

Engineering costs, that's just for us to handle that activity through joint use, through engineering, through whatever procedures we need to put it in our systems.

And then the transfer costs are just an average of one crew, two hours for two guys to make attachments to 39,000 poles. So you can kind of get an idea of what that impact would be if you used that particular method of hardening your pole lines.

You know, we looked a little bit at undergrounding. We had a community, Davis Island, right off of Tampa who had asked that we bury our facilities out there. This went on for a few years because it was a very contentious issue. So, finally, I think, we went out and did a detailed look at it. And for that area, you know, I don't have the figures in front of me, but it stands to be about $10 million, 2,200 customers, average of $4,000 per household.

So then when you are talking about going from rear to front and buried, in the rear you're feeding two houses off of one cable in the back. When you go to redo that you have to circle the block. So, in other words, you are placing twice as much cable, you are placing it in front of the houses, which as the Tampa south folks said, you have gas, you have water, you have sewer, and that is a limited environment. And certainly where people have rear easement, they are not going to allow you to place poles in the front, so buried is really your only alternative. So that cost is $4,000.

You know, honestly, for us, number one, I don't know where we would get the manpower to do it, because right now we

have got everybody in the world working on this fiber build. So, you know, just finding the labor to do it would be one major obstacle. The other would be how are you going to fund it. You know, this is extremely expensive. And then like David said, it's going to take away from the fiber build, which we are really going forward with. It's just going to be a good product for the folks in Florida. That's all I have.

MS. SALAK: On your chart you mentioned how you got your attachment costs and your transfer costs. What were your assumptions for your engineering costs?

MR. LINDSAY: 1.5 hours. I kind of reduced it. Originally it was more. When you're talking about doing anything more than just adding poles, you know, your engineering costs go up higher, your construction costs because, you know, you're adding facilities or moving facilities. So this is just simply adding poles.

MR. CHRISTIAN: Under today's current NESC standards.

MR. LINDSAY: Okay. Thank you.

MR. HARRIS: Thank you. We appreciate that presentation.

Michael, you're next in line, but I think it might make sense to go to Charles, if he has anything. He is pointing at you, so I guess not. I was going to try to lump the telcos together.

Michael, if you're ready to go on.

MR. GROSS: Still good morning, members of the staff. I just want to introduce myself. I'm Michael Gross, I'm regulatory counsel for the FCTA representing the Florida cable industry, and would like to thank you again for scheduling this workshop and giving the FCTA an opportunity to present some information and facts that, in our opinion, are very relevant to this rulemaking, and will be of great value to the staff and the Commission in perfecting these rules.

I just want to make a certain reservation of rights, just for the record, that by participating in this process we are not waiving our position that the state of Florida and the Florida Public Service Commission do not have jurisdiction over pole attachments. Once again, I want to make it clear that the FCTA applauds and praises the Commission and the Florida Legislature for taking these steps to address the protracted power outages and storm damage from the last two hurricane seasons.

I'm going to make some brief comments, and then I will introduce our expert consultant, Mickey Harrelson, who is sitting to my right who will make the FCTA's primary presentation.

Cable operators are no longer purely providers of cable TV, but are now offering voice service and data service both nationally and more importantly in Florida. Accordingly, cable has an equal interest in assuring against downed poles

and outages. The electric distribution system is vital to our plant and feed to our customers also.

And we are in a very competitive environment. During the last hurricane season, satellite trucks were following the downed poles to market residences who formerly had cable TV, but to market those residences for satellite services, as well as power company plans to offer telecommunications and broadband over power line.

So cable operators also provide emergency alerts, which is a contribution to that system which is a vital service that cable provides. So safe and strong poles are in cable's best interest. However, we believe the power companies are waving this safety flag inappropriately in the direction of third-party attaching entities. And Mr. Harrelson will talk more about the reasons why poles generally come down in storm situations.

The FCC has recognized that public welfare depends upon a safe and reliable provision of utility services, but the FCC has also in the same sentence recognized that the 1996 Act reinforces the vital role of telecommunications and cable services. So there is a balancing of those two competing interests that should take place in addressing these issues.

Further, the FCC has emphasized time and again that Section 224, the Pole Attachment Act, reflects Congress' intention that utilities must be prepared to accommodate

requests for attachments by telecommunication carriers and cable operators. Some primary concerns that the FCTA has about the attachment standard rule are that the Legislature has given this Commission the authority to establish construction standards. But, in our opinion, the rule subdelegates that authority to the power companies, and that this, in our opinion, constitutes an unlawful exercise of delegated authority.

While the rule requires the power companies to seek our input, and as you have heard before there is no assurance that our input will not be summarily ignored. There is no recognition in the rules that the FCC has asserted its jurisdiction to hear complaints that utilities are unreasonably using safety and reliability conditions to deny access.

Finally, there are numerous examples today where -- and that have persisted for years, where the power companies, in our opinion, have tried to impose unreasonable construction standards that violate FCC policy which have been in litigation for years. And common sense tells the FCTA that we should be concerned that the power companies will use these same tactics as a template for the construction and attachment standards that they will establish under these rules.

Now, Mr. Harrelson will talk a little bit more in detail about this issue and construction standards and pole attachment contract disputes that are taking place and have

taken place over a period of years. Regarding relocation of facilities, I'm just going to reiterate what you have already heard that cable does not recover the cost of relocating and conversion of its facilities as do the power companies under its rate regulation and these rules.

At this point I would like to introduce Mickey Harrelson. And, Mickey, I'd appreciate it if you would introduce yourself and just give a brief summary of your background. Thank you.

MR. HARRELSON: Thank you.

My name is Mickey Harrelson. I live up in Georgia. I've been doing consulting engineering work for electric power companies and cable TV companies for fourteen years. I have probably twenty years experience as a field engineer with an investor-owned electric utility company. So I feel like I am very familiar with the field application of the joint use of electric utilities and communication companies, particularly on power poles. I have worked extensively in Florida the last fourteen years, and I am a registered engineer in Georgia and Florida.

We'll try to address the questions that were posed, and it's going to be in a general form, because we don't have very much background data to put dollar prices on. So let me start by trying to address the questions regarding the location of the electric utilities' distribution facilities. It's very

difficult to respond to the request for cost impact on cable TV for the proposed Rule .0341 for new overhead or underground lines. We do prefer that new construction be built in accessible locations. So hopefully everyone in the room is in agreement with that, that new construction should avoid, if practical, the back lot line locations.

For relocation of existing lines, the total cost is just an estimate, one and a half to two times the cost of a new line, and the cost of a new line attached to overhead poles for a cable system can range from 35 to $40,000 per mile. I'm sorry, from around 20,000 per mile for overhead, and then individual drops are in the range of $125 to $150 per service drop. So to relocate that existing facility to a different pole line would be, perhaps, $40,000 per mile cost with substantially no additional revenue.

Cost can be 100,000, even $125,000 a mile for underground in new subdivisions; that is, where we don't have to bore under roads, bore under driveways, bore under landscaping. Boring is much more expensive. It runs around anywhere from 9 to $18 per foot for directional boring.

When we have input into the electric construction projects, it will be very much appreciated. We expect it to be productive. We do request that the opportunity for input to these electric projects be timely with respect to the decision-making process. We'd like to have some input into

alternatives, construction alternatives, and we very much need, also, time to do budgeting which corresponds to the please let us know if you can 12 months ahead, or we'll let you know when our budgets are due. And, if possible, large projects then we can request funding.

Moving on to Rule .0342, the third-party attachment standards.

MR. TRAPP: Before you move to the next rule, could I ask you a question about the .0341 rule.

MR. HARRELSON: Please.

MR. TRAPP: These are cable costs, right?

MR. HARRELSON: That is correct.

MR. TRAPP: You mentioned you had an electric background, I want to make sure that we are looking at the cable costs.

MR. HARRELSON: No, I was just trying to approximate. And these are very approximate numbers, just to have something to discuss.

MR. TRAPP: Okay. But would you agree that there are going to be probably even greater costs associated with the electric part of the relocation if one is undertaken?

MR. HARRELSON: That I'm sure would depend on the complexity of the electric circuits. Some electric circuits are so simple as to have one wire for the distribution of the power and services to the homes. But it would depend. If it

is a major feed going down a back lot line, then the costs would be much greater.

MR. TRAPP: Would you think that even a simple distribution secondary would approximate these costs, though, for an electric? I mean, an electric is not going to be lower cost than you, is it, to relocate?

MR. HARRELSON: No, I wouldn't think so.

MR. TRAPP: And my point being -- I go to the rule, and I want to make sure we are not confusing which version of the rule we are talking about. Because, I mean, we did have two workshops and we did have two rule proposals. But the one we took to the Commission, the one that our Commissioners proposed to go forward, all it says in the opening paragraph is in order to facilitate safe and efficient access for installation and maintenance to the extent practicable, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in the front of the customer's premises.

Nowhere in the rule as I read it now does it require them to move anything from back lot to front lot, new, relocated. The rest of the rule just goes on to say that when you are locating facilities, use easements, use road right-of-ways, use easily accessible. So I want to make sure that we are not confusing this rule with the one that we first proposed that did have more language about relocations.

And I also want to point to the emphasis of it has got to be cost-effective to do it before they even think about it, and they have got to coordinate with you. And I just wanted to know does that give you any comfort with respect to the cable side of things.

MR. HARRELSON: Yes, I think it does. And in my statement that we do concur that generally we prefer accessible locations for new lines. So I think that tries to cover the going forward decision-making to let's at least stop placing lines in back lot line positions where there will be conflict with vegetation and residential dog pens and -- a fellow told me one time that they didn't have junk cars in the back yards in Arkansas, they had them in the front yards in Arkansas. So --

MR. TRAPP: We do that in North Florida, too. Or we used to.

MR. HARRELSON: There is a lot of stuff that you really do have impossible, almost, access in some of the back lot line locations. So I think everyone that has experience in the field realizes there are some extreme consequences of building new plant in back lot lines, aerial. So, generally speaking, the people I have spoken with in the cable business would agree that they prefer accessible location for new overhead plant.

But just to cover the possibility, and I think the

expectation that some lines will be brought out. The power companies are, I think, are at least expected to look and see if it's beneficial to the power company to bring some lines out from the back lot lines, then we hope to be asked early enough to say, wait, that's one of our major feeders, and it's going to not be cost-effective at all to perhaps the cable company -- and it is so much on a case-by-case basis.

MR. TRAPP: Thank you.

MR. HARRELSON: So moving on to the second question, and here is where we have some worse experience about the attachment standards and procedures. We agree we have to have attachment standards and procedures, and I'll say, finally, that we hope this affords an opportunity to share best practices between cable companies and different power companies and improve, generally, on those attachment standards as we see them.

But, in trying to answer the questions about cost, I'll start with the implementation of the Rule .0342, third-party attachment standards and procedures could be very helpful to power and communication companies if the individual power companies adopt rules which recognize when it is prudent to exceed NESC requirements for joint use and when, as the pole fills up with attachments, the NESC requirements should then govern as the final authority.

That's my opinion based on years of experience. And

I would just like to be able to share that as frequently as possible, that what I'm speaking of there is some very specific standards in the NESC which require specific separations, at least that separation between communications and power. Now, as you look at all of the different standards that are in effect, some exceed that separation requirement and it is not necessary for safety, in the words of the NESC. So as the pole fills up, we believe, or I believe, that the NESC should become the standard on those issues, not strength.

If you choose to increase the requirement for strength in certain areas of Florida, then we can all understand that. So I think we need to be more clear about what areas the power companies are asked to exceed the NESC, say, strength, rather than just exceed the NESC. And I hope this affords an opportunity going forward to discuss and compare some of the standards that are in use and to share best practices. But let me try to get back to my outline.

The application of extreme wind loading, if adopted, and where it is geographically applied, will be as it is required by the Florida Public Service Commission. But, my opinion, my experience is that thoughtful application of guying to help achieve required strength of poles can be very effective.

The failure of guy wires, splices in guy wires, anchors for the guy wires have caused many pole failures during

hurricanes. And I have worked in three of the hurricanes in the last two years in the field. Critical guys should be inspected and tested as thoroughly as wood poles are required to be. If a guy is important to the structural integrity of a pole during a hurricane, it should be tested and inspected as rigorously as the physical strength of the pole. And we cannot estimate the cost impact of the extreme wind loading on the cable TV industry at this time. We just can't. We could guess, but we couldn't have any realistically estimate, that I've heard of.

To go ahead and advance a few discussion points -- that's a summary. But the discussion points would be power lines, the hardware for attaching the lines, the poles themselves, the power apparatus, such as transformers, switches, lightning arrester assemblies, outdoor lights, and many other things usually account for most of the wind load on a pole. Wind load is a product of the surface area that's exposed to the wind multiplied times the force that the wind is assumed to exert.

So the code presently requires a nine-pound force be assumed in a light loading district, and that's what Florida is. If extreme wind loading is required, you just use a different number, not nine pounds, but a bigger number, depending on the wind speed that's in the code. So it's just a different mathematical formula, but it results in a stronger, a

higher strength requirement for the pole assembly.

But what really causes, in my experience, what causes hurricane-related pole failures is falling trees falling into the lines and the poles, flying building debris, soil so soft that the poles lay over. They don't break, they just lay down. Weak guy assemblies, which are either deteriorated or for some other reason inadequate to hold the strain. Some poles which have deteriorated, they are rotten, and therefore the wind comes along and starts a cascade effect by blowing over a rotten pole. And, finally, wind force on poles, lines, and attachments which, of course, that final scenario would be addressed by an extreme wind loading application.

But it wouldn't solve the trees blowing over into the lines, because you can't redesign the tree for extreme wind loading. So a lot of the things that start the poles and the wires coming down is not the strength of the line and pole assembly, but the debris and the other things around it. Additionally, if a tree canopy is taller than the pole line, then it makes no sense at all to spend money on upgrading the pole line strength to extreme wind load standards. The trees are going to shelter the line from the wind if it's an area such as a lot of Tallahassee is, with an old established tree canopy that is much taller than the line. There is no need in increasing the strength of those poles to stand extreme winds. Extreme winds are going to drop the trees on top of the line

anyway. But that would be part of the consideration, I think, of a reasonable and competent engineer to say, well, in this application it's not prudent, it's not practical, and it's not reasonable. So I think for most cases that's covered in the language. You apply the extreme wind loading where it will do you some good.

And then tornadoes. Tornadoes within hurricanes, during Hurricane Wilma, tore down a lot of lines in South Florida. The poles would fall into the field for 15 poles, and then one would be standing, and they would start falling into the road in exactly 180 degrees different direction. So a new line in South Florida about five years old had 42 pole failures, and it was built to extreme wind loading design criteria. But poles went this way, poles went that way, and I honestly believe the wind speed exceeded extreme wind. It was tornado winds. So even so, I mean, stronger poles have a better likelihood of surviving, it just doesn't guarantee that they will all survive.

Okay. Number four topic, rarely -- multiple cables which are attached lower than power facilities on the poles do account for more wind load than the very basic power lines which have maybe two to four small wires and with no electrical apparatus. So there are poles out there where the cables are a very big factor of the wind loading, but it is not normally the case.

And I have attached some photographs that I would like to refer to. Number one is a simple assembly, and these are RUS standards that the electric co-ops generally use. A wooden cross-arm at the top of the pole, three primary wires at the top, a neutral wire under that. That's a basic three-phase electric circuit. This one happens to have a security light or outdoor light on it, and one secondary voltage wire underneath that, and it has one cable TV attached considerably below the power attachments.

So in this case, there is not a lot of things up there to catch the wind, but we did see some of these type poles blow over during Hurricane Wilma in this area because of the intensity of the wind and the lack of trees there to shelter the lines in those sugarcane fields and cattle pastures from intensity of the wind.

The number five point on Page 2, almost all power companies already have construction standards for power lines which specify power line and apparatus configurations for basic power pole assemblies. And the examples are just like the photo we just looked at. If it has one wire up top, they have a drawing for it. If it has two wires, they have a drawing for it. If they want the two wires horizontal, they have another drawing for that. If they want the two wires vertical, they have a drawing for that. So construction standards already exist. And I think what you're asking them to do is adapt

those construction standards to the possible application of a higher wind loading.

So for the most part, the construction standards are already there. In the case of the RUS, those standards are public available documents, and that is very helpful to engineering from a standpoint of designing cable TV systems or changes to cable TV systems if you know and have access to the construction standards of the electric company. If you don't have access to the construction standards of the electric company, then you're working in the dark as far as what they have standard construction that they could apply to help resolve make-ready issues or anything that needs to be designed into a new or modified cable system.

The power company construction standards, though, do not contain drawings depicting the combinations of lines up top, transformers below, lights added to that, underground service laterals to consumers, overhead service laterals. So if we could go back to the photographs, the second photograph is a transformer that has -- it's a simple line, three-phrase power line that has one transformer added, one overhead electric service, and one security light. You won't find that in the standards or in the construction standards, you find them separately on separate pages.

So people in the field have to make experience-based and training-based judgments and applications of combining

different elements of a construction standard. And in practice, a lot of errors get made in doing that. I have seen places where this service, which is in this case placed appropriately, was placed three or four feet below the transformer. It uses up space, it does not comply with the construction standards, and it creates a big problem for joint use. It encroaches on the separation space that is required by the NESC.

So then carrying that to the extreme, and I hope this will be a little bit humorous, and it's certainly not Florida, but Page 3 is how things continue to be added in some extreme cases of power lines, fuses, transformers. In this case three transformers for a three-phased service, electric lines, telephone lines, cable TV lines, fiberoptic signal between traffic signals, and I think a municipal fiberoptic communications network all on the same pole. And I think there is plenty of room there for everyone on that pole to take at least some credit for not upgrading that pole at the proper point in time. So there are some poles in the world, not necessarily in Florida, but that are overloaded through the process of people just adding things without doing the proper engineering.

MR. TRAPP: I like your pictures.

MR. HARRELSON: Thank you.

MR. TRAPP: Isn't that exactly what we are trying to

do with the rule?

MR. HARRELSON: It's from Georgia. And where those type of circumstances exist, they need to be identified and they need to be corrected.

MR. TRAPP: And by requiring utilities to go look for for that kind of thing and have standards addressing that kind of thing and have actual stress calculations performed for these situations where -- you know, I can tell you're a practicing engineer, because the first thing you said was you do things by experience. And that's the way a lot of things are done out in the distribution world. That experience hopefully is based on proper engineering design, proper engineering calculation, but sometimes it get hung wrong.

And isn't that what we are trying accomplish in the rulemaking is to make sure that utilities go back on those experienced-based applications and make sure that the proper stress calculations have been done for situations like this to ensure that this thing is not going to break during a hurricane unnecessarily?

MR. HARRELSON: I agree. And I feel sure that is what you are attempting to do, and that's what we are attempting to be a positive contribution to. And in that we need -- we hope to have influence on making some real improvements in the joint use rules that are in effect.

Now, there are jurisdictional issues and there are

contract issues and a lot of things that concern a lot of people, and I understand part of that. But from a practical standpoint and the application, my experience is the rules need clarification and they need improving.

The attachment rules need to be improved, in my opinion. Not just copied over and then ratified by a government agency. The attachment rules that are in place, you'll see a variety, and some of them are somewhat conflicting. So as, hopefully, we, you and others, have a chance to review those rules when they are submitted to you, the attachment rules --

MR. TRAPP: The standards you are talking about.

MR. HARRELSON: Right.

MR. TRAPP: Let's not get confused between rules and standards. You're talking about --

MR. HARRELSON: The power companies have standards and procedures. I'm sorry.

Hopefully there will be an improvement overall in the attachment rules and procedures. That would be very welcomed.

MR. TRAPP: I don't think we have any dispute so far.

MR. BREMAN: Excuse me. Seeing how you have been interrupted. My name is Jim Breman with staff over here. I just want to indulge myself a little bit in your experience and sort of glean some more information regarding municipal and cooperatives. You have had some experience with them, I take

it?

MR. HARRELSON: I have had a lot of experience with cooperatives. And in years past, a lot of experience with investor-owned, and not a lot of experience with the municipals.

MR. BREMAN: Just recently I was reading the attachment standards of a noninvestor-owned utility, and it actually specifies the number of attachments to a pole. Is that typical in your experience that the pole attachment standards specify the number of attachments?

MR. HARRELSON: No, I have not seen that.

MR. BREMAN: Thank you.

MR. HARRELSON: So power companies already have construction standards. And as I understand it, you are asking them to incorporate some other provisions in their construction standards, perhaps, or at least look at their construction standards and see if they address what you're asking for. Power company construction standards don't combine all of the units, so that's a source of a lot of the difficulties out there. Then I had already mentioned that the RUS standard is available to everyone, and that has a lot of benefits, but I do understand that the investor-owned utilities want to keep their construction standards proprietary. They don't want to share them with anyone other than the Commission staff, would be my take on that. I'm not sure.

Many of the violations of the NESC separation requirements, and here I'm talking about other requirements of the NESC, not the strength requirements. So when you use the term exceed -- equal to or exceed the NESC, I would like to see you carve out somehow these separation standards. Because these separation standards, in my opinion, my experience, need not be exceeded except in certain circumstances. So let me go through that.

Many of the violations of NESC separation requirements between power and communication facilities and many violations of the NESC pole-loading limitations occur as a result of power facilities being added after the initial construction of power and communication lines. The communication companies also have construction standards. The company which requires additional space or pole strength to accommodate its attachments that are added must pay the power company to rearrange facilities or install a new pole, if necessary, and pay the cost of the other attachers to provide such space.

But this rule also applies, as interpreted by the FCC, the rule also applies to the power company when it needs additional space or strength for power facilities, the power company must bear the cost of the additional space of its facilities. The power company must -- it may not take back space from a legal attacher, and it may not add facilities of

power in violation of the NESC. So those are some of the contentious issues that arise between attachers who are frequently audited and held to be accountable for all of the violations.

If the attacher didn't create the violation, the attacher shouldn't be held responsible financially for the violation. If the power company created the violation, then they should correct the violation. And it's frequently very, very difficult to prove who did what the last time.

The National Electric Safety Code is not a construction standard. The National Electric Safety Code is a performance standard. It contain rules for what must be accomplished for safety of power and communication lines. The NESC does not dictate how to accomplish what it requires, so power companies and communication companies must have construction standards which specify how they will accomplish what the NESC requires.

For example, they can use wood poles or they can use concrete poles. They can use tall poles spaced further apart, or they can use shorter poles spaced closer together. There are all sorts of alternatives that an engineer or a company whose engineering staff can establish standards, and I think JEA, for instance, uses concrete poles very extensively. Most of the electric co-ops that I'm familiar with use wood poles still for distribution lines. So the NESC doesn't dictate

construction standards. It dictates performance standards. Your lines shall be a certain height to be safe, as opposed to -- well, and also in the NESC you can place them underground, but you have to comply with the underground construction performance standards.

This is an important point, I believe, Number 11. It is accepted good practice to exceed many of the NESC requirements on initial construction, although it is not necessary for safety. If you need a 35-foot pole for a line today, it makes good sense to put in a 40-foot pole and have room to add a transformer onto it when someone build a business. I mean, it's just good sense to go ahead and exceed the NESC basic requirements on initial construction.

This practice allows enough pole strength and height to accommodate the addition of facilities by power companies, communication companies, and government agencies which often utilize poles for the government agencies putting traffic signals themselves, they are putting communication wires, one traffic signal talks to the next one. They are putting fiber communication loops around town connecting all the schools together. So there's a lot of people attaching things to the pole more than just, for instance, cable companies who in many cases have been on there for twenty years or more.

Most power companies and telephone companies which own poles already have procedures for authorizing attachments

by cable TV and others. They also have specifications for cable attachments, separation from power facilities and other cables, and reliance on NESC requirements between these different companies varies greatly. Some pretty much use the NESC separation requirements. Some have a lot of requirements that exceed NESC requirements.

And I would like to restate, initially on a new pole, a lot of times it does make a lot of sense to exceed the NESC requirements. But as that pole fills up and before someone is held accountable for paying for a replacement pole, then the NESC standards should be what's looked at as the final decision. Okay, well, this pole has no more available room, then a taller pole has to go in, or someone has to get off, or whatever.

So compliance with the NESC requirements is mandatory. There is no need in any of us arguing about that, it's mandatory. But exceeding the NESC requirements should be done with a lot of thought and a lot of consideration and cooperation between the utilities. These procedures are usually covered in existing joint use contracts or license to attach agreements. And there's a lot of difference between, for instance, the joint use contract between Bell Telephone Company and power companies and the license agreement contract between the same power company and the cable company.

Bell owns poles, and they have worked their contract

out over many decades. The cable companies rent space. They have a right to attach based on a number of things that I shouldn't try to talk about, not as an engineer. But, anyway, they do have a right to attach, and it's governed, at least in part, by attachment contract. But it is also governed by the attachment rules that say exceed the NESC here -- it needs work on it.

So I'm here to ask you don't just simply ratify an existing set of rules from a power company because it's in an existing contract. If we could work together for the benefit of all of us, we would relook at those rules and compare between different power companies, some of the better rules and say, hey, this would be great if everyone would realize the benefits of starting out with a higher standard on a brand new pole, and then going to the NESC ultimately before you trash can a good pole and put a taller one in.

It has been argued that a lot of these rules are inconsistent with the FCC rulings. A lot of it is being litigated. One example is one power company requires 40 inches of separation between guy wire attachments and cable TV attachments. Well, the code clearly only requires six inches separation. But one of the best solutions to pole hardening in certain areas in Florida is going to be put in storm guy. You can put in anchors and guys and make a pole line so much more strong. But if you have a requirement that requires cable TV

to be 40 inches below a storm guy when the code only requires six, then that works against all of us. So some of those requirements that are not consistent with the NESC and for whatever reason are still being defended, they should be in a spirit of cooperation looked at for purposes of this hardening of pole lines.

I'll go to Number 14, the common requirements of separation between cable TV which exceed NESC requirements are acceptable for new poles with adequate height and strength. In fact, more separation, six to eight feet separation between the power line and cable TV is in effect with some of the electric cooperatives because their construction standard places their neutral wire much higher on the pole than the construction standard of a lot of the IOUs. So in certain applications it makes good sense to exceed the NESC, but ultimately the NESC should be what is used to decide if a pole has attachments too close together.

And I realize that's not the main issue here, the main issue is strength. But it's a very big problem to the cable industry, some of these separation requirements that are quite likely to be enforced along with the audits for pole strength. A big question when they go to audit the pole strength, are they going to also audit the separations. It might not have much to do with pole strength, but still if you are there looking at one safety issue, the separations which

are, in some cases, whether it was built by the power company or whether it was built by telephone, or cable TV, or a city, if it violates the separation requirements, it's still a violation. So I'm sure some people are going to say we have got to audit the entire pole with respect to any NESC violation.

There are a significant number of poles in Florida. I can't help looking at them. I'm not necessarily paid to look at them, but there are a lot of poles in Florida that have some violations, at least between the separation between power and communications. It's just obvious.

A very important fact is that these violations have been caused by various different agencies, but many of the violations do not present serious safety hazards to workers or the public, this is Topic Number 16. There are violations on the pole. If it requires 40 inches and you don't have but 30, that's a violation. But the same code requires 12 inches separation between the streetlight drip loop and communications. So if a worker can be trained to work safely around 12 inches away from the same wire, the same voltage because it's going into a streetlight, they can and are trained to work safely within 30 inches of a power wire. If it's a different type, the same voltage, they can and are trained to work around that during routine work and during hurricane restoration because they are all tangled up during the

hurricane restoration.

So my point is in Part 4 of the National Electric Safety Code, it has basically the same rules that are contained in OSHA work rules for communications workers, and then a different OSHA rule, but the same part of the NESC for electrical workers, those are the work rules. So if a worker is equipped and trained in those work rules, they can work safely on these poles which do contain certain spacing violations. So what needs to be done whenever there is a safety audit, the serious safety violations need to be identified and corrected promptly.

And I have quoted the NESC a little bit in Number 17, which verifies that. It says that if a serious defect is found that is likely or could endanger life or property, it should be promptly corrected. Other violations should at least be cataloged, kept up with until they are corrected.

So we do appreciate the ability to have input into the revision of the power company attachment standards and procedures, and we will work to try to achieve good results.

Thank you.

MR. GROSS: Thank you, Mr. Harrelson.

I would like to make just two quick closing points. And if you have any questions, Mr. Harrelson is available. Early in his presentation he mentioned that the company which required additional space or pole strength to accommodate its

new attachment, this is on Page 2, Paragraph 9, must pay the power company to rearrange facilities or install a new pole if necessary and pay the cost of other attachers to provide such space. But he also pointed out that this also applies to the power company when it needs additional space or strength for power facilities. The power company must bear the cost of additional space for its facilities.

But I just want to point out that we have a cable representative who has reported to us just today, who works in the Central Florida/Gainesville/Ocala area that when the power companies replace a pole, they do not pay the cost of transfer for cable. And I wanted to point that out, because I think we had some earlier statements from one of the ILECs that that is paid for by the power companies in their case. Now, they may have different joint use agreements than we have.

And also I would finally like to say that Mr. Harrelson is not an attorney, as you know, and his comments are not to be construed -- and they're not being offered to address the legal concerns that I, as the FCTA's attorney, have raised.

I mean, I think his information hopefully is very helpful in understanding issues regarding plant and operations in the field and hopefully will have a positive influence on addressing some of the legal issues. Thank you.

MR. LINDSAY: I'd like to address that. Power

companies do not pay for our transfer costs if they replace a pole in a joint use agreement. If I replace a pole and power is on it, they pay their transfer costs. If they replace a pole, I pay for my transfer costs. There really isn't any provision for them to pay for it.

MS. DENBURG: And I will just clarify that with us it depends upon the agreement.

MR. HARRIS: Thank you.

Questions, Bob? Okay. Thank you, Mr. Gross and FCTA. We appreciate your comments.

Charles.

MR. REHWINKEL: Thank you.

From Embarq's standpoint, just to go to the agenda, and the questions in Part 1, with respect to Questions 1 through 4, and in Part 2 with respect to Questions 1 through 2, for many of the reasons that the other companies and the FCTA have indicated today, we don't have cost estimates that we feel at this time are reliable or would be useful in the Commission's effort to do any kind of cost/benefit analysis as might be required by a SERC.

However, BellSouth has laid out a template that we can try to replicate if staff finds it useful as far as the methodology to approach some high level estimates on a per foot basis. In addition, the FCTA has laid out some broad new or straight construction costs that are generally representative

of the costs that Embarq incurs. But at this time we do not have specifics.

With respect to my purpose here today, really, is to address Questions 5. And I said 1 and 2, I meant Part 2 and Part 3. In Part 2, Question 5; and Question 3, in Part 2. I earlier, at a high level, touched upon Embarq's legal position, but I just want to elaborate a little bit more. And I'm not here today to offer an opinion as to the very good points raised by some of the ILECs and the FCTA as to the FPSC's jurisdiction and the FCC's jurisdiction over these matters or the impact that contract conflicts might have as to the Commission's authority. I would rather address the 120 rulemaking authority of the Commission and the process that is being proposed here.

As an initial matter, we do not believe that Senate Bill 888 directed or authorized the Commission to delegate to IOUs the authority to establish construction or standards or procedures -- construction standards or standards or procedures for attachments in excess of the NESC. And I do want to state that standards or procedures that might be adopted or established as the rule provides, in several places it uses the terms establish, any such standards or procedures would, in effect, have the legal effect of a rule. They are rules no different than the NESC is if they are adopted pursuant to the authorization of the rule.

The concern that Embarq has with the process that is put forward, we believe it is well intentioned. There is a phrase that I won't repeat about what road is paved with good intentions. But the intention is good, but we believe the shortcut is legally defective in giving the electric companies the ability to establish these standards, procedures, or construction standards. If these such standards, which we believe are authorized by the Legislature in Senate Bill 888, if the Commission establishes them, if they are done up front as part of the rulemaking process, Florida Administrative Law requires costs and benefits to be evaluated.

I think Mr. Trapp talked about cost and benefits, and I will fully agree with that. But if they are established up front, then the cost impact on third-party attachers would be required to be included in this cost/benefit analysis. However, if they are delegated or subdelegated as the FCTA characterizes it to the IOUs, and disputes are brought to you, then the only consideration that will be done on this ad hoc/post hoc basis will be whether they are practical, feasible, or cost-effective.

As to the IOUs, there will be no opportunity. There are no standards in this rulemaking process that would allow the cost impacts on third-party attachers to be addressed at that point. In my mind, that is a crucial distinction between establishing some standards up front versus reviewing

afterwards.

And as to the review, I note that the rule says that with respect to the construction standards, that upon request the utility shall provide access within two working days to a copy of its construction standards for review by Commission staff at utility offices in Tallahassee. I don't necessarily think that that is a bad thing to do, but that does not have within the rule any mandate that there be any actual review for impact on third-party attachers at that time, nor does it, in fact, mandate a review. But, in fact, it's more of an ad hoc process. Again, not saying that this is a bad situation unnecessarily, it just causes us concern because we don't think it is legally sufficient.

Let me raise one final point that I don't really think has been taken into account here today in not only this process but this rulemaking process as it goes forward. I've been working in this arena for 21 years now, and my experience has been, and this is certainly anecdotal from my perspective, but I've been with the Public Counsel's Office, I've worked in the Commission Suite, and I've worked for a company before the Commission. And my view is that the relationships between electric companies and, at least from what I've seen, telecommunications companies in this arena are very good, very professional, very cordial. We do have disputes about pole attachments and pole attachment rates. Those are part of the

business that we are in.

I am concerned that in chasing an issue that there is still no direct evidence that pole attachments in and of themselves and the NESC by itself are causing the harm that was brought about as a result of the 2004 and 2005 seasons, but as a result of making efforts to address that harm, we are putting in place a process that is, in effect, throwing gasoline on relationships that are, at this point, very good, very professional.

I'm not saying that there is any lack of professionality on either side, but you are creating a forum for disputes to become inflamed. And I would urge that there be some reflection on this and that maybe we take a little bit more time to look at the standards up front rather than post hoc. Because the time is now. If we set this in concrete and go forward with it, I believe that much harm could come about that may be unnecessary.

That's all I have to say from Embarq's standpoint at this time. But I certainly would be open to any requests for further information from staff along the lines as provided by the other companies.

MR. HARRIS: Well, I'm not the one preparing the SERC, but from where I'm sitting, I think that would be very helpful, Charles, if you could get those numbers to us. I mean, we don't have the numbers is a good answer. But we don't

have the exact numbers and here is sort of what the range is is probably a better answer.

Craig can correct me if I'm wrong, but whatever you do have, I think, would be helpful to us, or can put together. And that goes for really everybody in the room. If you don't -- I don't know is fine, but I don't know but here is sort of the range that we would be looking at is better from the staff's perspective, I think.

MR. TRAPP: And that was the glory road he was talking about earlier, wasn't it? The one that was paved, the glory road, the road to glory.

MR. HARRIS: Right. Did anyone have any questions for Charles or Embarq?

No. Okay.

I see that Mr. McCabe is up here. Thank you, sir.

MR. McCABE: Tom McCabe on behalf of TDS Telecom.

We support the comments that have been made by all the parties this morning. I do have a question in terms of my understanding of the rule, that it would apply to municipalities. Because when we had the issue of the pole inspections, there was discussion about whether that was going to be applying to the municipalities, and it was determined that it was not. But the way I'm reading this rule, it would apply to the municipalities to implement standards.

MR. HARRIS: At this point we have Rule 25-6.0343,

which applies the rules we are talking about today to municipalities and rural electric cooperatives. So the intent at this point, and the Commission, in fact, has proposed that the rule would -- these rules, 25-6.034, .0341 and .0342 would, in fact, be applied to the municipals, yes.

MR. TRAPP: And with regard to the pole inspections, the municipals and the cooperatives were invited to voluntarily respond to the same things that were in the order for the investor-owned utilities, and they have responded to that with what they are doing in terms of pole inspections. Staff has been trying to put them on the same type of comparative spreadsheet that we are trying to do for the IOUs to evaluate compliance with what the Commission asked for in terms of pole inspections.

And Bill McNulty is here. I think we have some meetings scheduled with the munis and co-ops on these pole inspection issues and things like that that you may be interested in following.

MR. McNULTY: Yes, we are going to be looking at specifically the investor-owned electric utilities' pole inspection plans, and, if necessary, bringing an item to agenda conference on August 29th. In the process of looking at their plans we are looking, as Bob indicated, at the municipal and cooperatives efforts in these areas. They have responded to us, and they are continuing to respond to us on how they would

inspect their poles on a going-forward basis.

MR. McCABE: From our perspective in terms of responding to a SERC, I mean, needless to say, we'll do the best that we can. It would, obviously, be simply a range of what we anticipate in terms of what the costs associated with us are for transfers and things of that nature is what we would potentially see out of this. But when I looked at the SERC, on Page 3 it indicated that it was going to be a cost of 63 to $199 million. So somewhere along that line I realized that it is going to cost me something. And that is really a difficult part, when you don't know what the cost is going to be until you get into the implementation of things. Thank you.

MR. HARRIS: Thank you. Is there anyone else who would like to make a presentation to the Commission at all, any comments that they want to offer -- I'm sorry, to the staff?

No. Okay.

That concludes pretty much that part of the agenda and mostly the workshop for today. At the beginning of this workshop I announced that the hearing that had been scheduled for August 22nd has been moved to August 31st. For those of you that didn't hear it, the Commission has moved the hearing, so it will be August 31st. I would anticipate that a -- well, from this workshop today there is -- the difficulty we run into is we are in the 21-day comment/request for hearing time frame for the rules, the eight rules that have been proposed. This

is a, sort of, unusual event, this workshop.

I would encourage you all to follow up on this workshop with any cost data that you have. I know that Mr. Rehwinkel said that they might be able to do something like that. If you can, that will be fantastic. It would help us to get a handle on sort of where we are at this point.

I personally would not perceive those as actually being comments/requests for hearing in the rule docket, but I could be wrong about that. But, in my mind, at this point, they are not necessarily the same thing. And so what I guess I'm saying is if an affected person wants to file, you know, APA comments or a request for hearing, I'm not sure, in my mind, that just filing some additional cost data from today's workshop is the same thing. Now, you could say that they are, and that would be fine, but I guess what I'm trying to say is I would encourage you all to protect your rights and make it very clear what you are attempting to do.

Are these comments pursuant to the FAW notice issued; is it a request for hearing; is it a follow-up to today's workshop that are not intended to be Chapter 120 rule comments; that kind of a thing. If you have any questions you can call me or talk about it with your in-house attorneys or whoever.

At this point I would anticipate that the prehearing officer will at some point issue an order establishing procedure for the August 31st hearing. I do not know when that

will come. I do not know what it will contain. I do not know how large it will be. In my mind, it probably will not require formal prefiled testimony. Again, I could be wrong, I don't know what the prehearing officer or the Commission will order. What I would anticipate is it will be, essentially, file any written changes you have to the rule, any alternative proposal, alternate language, to file that, and then follow it up with some type of comments, either written comments or sworn comments, or what we could call testimony.

But in my mind this rule hearing on 31st is probably not going to be the equivalent of the formal hearings that you all are familiar with where we have very strict prefiled testimony and rebuttal testimony and things like that. I think it is a little more legislative at this point. Again, I don't know what the order will say. I anticipate, hopefully, it will come out next week and it will set some times. But at this point I really don't have a lot of information on what it will say exactly.

The other thing is the only two rules that are set for hearing on the 31st at this point are .0341 and .0342. So if no requests for hearing was received on any of the other six rules, they will not be set for hearing on those dates, and the Commission will move forward with filing with the Secretary of State for adoption. So that is sort of a final warning.

Bob, did you have anything?

MR. TRAPP: Well, I was confused. Are you asking for post-workshop comments or not?

MR. HARRIS: I'm asking for you all, if you can put together some numbers -- BellSouth has done a fantastic job, and I really appreciate that. Thank you. If anybody else can do the same type of thing. Verizon has some numbers, and we appreciate those.

MR. TRAPP: Can we put a date on when we might expect that to come back, because staff -- I mean, obviously staff wants to be able to be conversant with this material when the hearing ultimately comes up.

MR. HARRIS: I would think that numbers coming out of today would be done in the near time frame as opposed to being filed the day before the August 31st hearing. But, again, they're not my numbers. So I don't know, Bob. Maybe you have an idea, or Craig, when you need to look at them.

MR. TRAPP: Well, we gave parties a week the last time to come back with their workshop comments, written workshop comments for the workshop. I understand the distinction you are trying to make between responding to this workshop and asking for some kind of legal hearing or whatever and the rules. Is a week too little time to ask --

MR. HARRIS: I would think so. There are some serious --

MR. TRAPP: And I note that I do have three written

products that we were given today to go over. It would be staff's intent to post these to the website as we have other written comments. So if there is any problem with that, let me know. If there is anybody that wants to add written material to the website. We're getting quite an outside following, though, evidently of what we are doing. And I occasionally get an e-mail saying when is the next edition coming out.

MR. HARRIS: I agree. Here is what I will say then, if you all have written comments to today's workshop, numbers, follow-ups, things like that, let's try to get it in within the next two weeks. I think that is maybe a reasonable time period. And that, coincidentally, would be about the time that the FAW 21-day period runs. I believe that runs on July 28th. That's about two weeks from now. So let's go ahead and use that for follow-up to today's workshop, which may be different from the FAW comments to the rules.

Does that work for you, Bob?

MR. TRAPP: Sure. I would ask, Beth, though, my counterpart over there in Telecommunication. Is there anything we need to cover on your end?

MS. SALAK: I think you got it.

MR. HARRIS: Great. If nobody else has anything, thank you all for coming today, I appreciate it. And have a good morning.

Well, it's afternoon now. Have a good afternoon.

(The workshop concluded at 12:49 p.m.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 17th day of July, 2006.

JANE FAUROT, RPR
Official FPSC Hearings Reporter
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