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May 30, 2007

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 070297-EI –Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, Florida Administrative Code, submitted by Tampa Electric Company

Dear Ms. Cole:

Enclosed for filing in the above captioned docket, please find the original and seven (7) copies of the Comments of the Florida Cable Telecommunications Association. Additionally, pursuant to Rule 25-22.028, please find a disk containing the Comments in electronic form (created by Adobe Acrobat Version 8.0 for Microsoft Windows).

Also enclosed is a **"Stamp and Return"** copy of this filing that we ask be stamped with the PSC's date of filing and then returned in the enclosed envelope.

Thank you for your assistance.

Very truly yours,
Davis Wright Tremaine LLP

Maria T. Browne, Esq.

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Enclosures

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BEFORE THE PUBLIC SERVICE COMMISSION

Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C., submitted by Tampa Electric Company.	DOCKET NO. 070297-EI Filed: May 30, 2007

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. REGARDING TAMPA ELECTRIC COMPANY'S 2007 STORM HARDENING PLAN, IN RESPONSE TO COMMISSION STAFF'S REQUEST FOR COMMENTS.

In response to the Commission Staff's request for comments, the Florida Cable Telecommunications Association, Inc. ("FCTA") hereby submits these comments concerning Tampa Electric Company's 2007 Storm Hardening Plan, ("Plan") filed by Tampa Electric Company ("TECO") on May 7, 2007 in the captioned proceeding pursuant to newly adopted Rule 25-6.0342, of the Florida Administrative Code ("Rule 25-6.0342").

INTRODUCTION

FCTA's member cable operators[1] rely upon Florida's investor owned utility ("IOU") pole infrastructure to distribute video, voice and broadband services to over five million residents throughout the state of Florida.[2] As such, the storm hardening plans being developed in this and related storm hardening dockets, which require new procedures and increased investment to strengthen Florida's pole infrastructure, have the potential to impact significantly FCTA's member operators' ability to service their customers in a timely and cost-effective manner. The storm hardening plans also threaten to undermine FCTA's member operators' federally protected

[1] The FCTA members participating in these comments include Bright House Networks, Comcast Corporation and Cox Communications.

[2] Cable operators currently pass 95 percent of Florida homes and provides services to 78 percent of those homes. *See* William Taylor, Intermodal Competition and Deregulation in Florida, (Feb. 16, 2007), at http://www.purc.ufl.edu/documents/Taylor_presentation.pdf.

rights to access utility poles on non-discriminatory, just and reasonable rates, terms and conditions.

This Commission recognized both the substantial impact that its storm hardening requirements would have on third party attachers, including cable operators, and the Federal Communications Commission's ("FCC") jurisdiction over third party pole attachments, in Rule 25-6.0342. The Commission thus required the IOUs, in developing their plans, to seek input from third party attachers and to address their concerns, and also recognized the limitations on the Commission's jurisdiction over pole attachments. FCTA's member operators thus welcome this opportunity to provide valuable input about each IOU's Storm Hardening Plan, consistent with the Commission's goal to cost effectively strengthen the electric pole infrastructure and reduce storm restoration costs and outage times for Florida residents, in a manner that does not conflict with federal law governing pole attachments.

FCTA and its member cable operators recognize the importance of strengthening the state's electric pole infrastructure against extreme weather conditions and deploying strategies that will reduce storm restoration costs and delays associated with such conditions. Indeed, Florida's cable operators have first-hand experience with storm-related outages. When the 2004 and 2005 hurricane seasons struck, cable operators experienced significant service outages and damaged facilities and worked with Florida's utilities to resolve the outages and repair the damage, spending millions of dollars in the process. FCTA's members are therefore committed to ensuring that the state's electric pole infrastructure is hardened to better withstand storm damage, and in the event that such plant is damaged, that strategies are deployed to rapidly restore electric service as well as valued communication services to Florida residents.

While FCTA members strongly support the Commission's efforts to strengthen Florida's

pole infrastructure, FCTA also wants to ensure that in meeting this objective, the plans filed by the Florida IOUs comply with the requirements of Rule 25-6.0342. Specifically, Rule 25-6.0342 requires each storm hardening plan to describe *in detail* the IOU's construction standards, policies, practices and procedures ("Construction Standards"), as well as its deployment strategy, for the cost effective strengthening of the IOU's distribution and transmission infrastructure against extreme weather conditions and for reducing restoration costs and outages to end-use customers. In addition, the Rule requires each IOU to seek input from and attempt in good faith to address the concerns of third party attachers, and to include in the plan an estimate of the costs and benefits of the utility's plan to third party attachers.[3] Further, in meeting the desired objectives of enhancing reliability and reducing storm restoration costs and outage times, the IOU's were charged with employing *prudent*, *practical* and *cost-effective* standards and procedures.[4] Finally, the standards, procedures and deployment strategies set forth in the Plans must not conflict with firmly established federal law governing the relationship of third party attachers and utilities.

TECO's Plan, while commendable in many respects, does not yet fully comply with the requirements of the Rule.

First, FCTA's members have not yet been provided sufficient detail regarding TECO's Plan in order to provide the level of input contemplated by Rule 25-6.0342. Although FCTA appreciates that TECO held a meeting on March 27, 2007 to provide an initial overview of its Plan and sought input pursuant to a draft Plan circulated to FCTA members on April 11, 2007, these efforts lacked the kind of detail necessary for FCTA to provide meaningful input, particularly regarding the requisite cost/benefit analysis. FCTA understands that the utilities

[3] *See* Rule 25-6.0342(6).

[4] *See* Rule 25-6.0342(2).

were under severe time constraints in developing their storm hardening plans and, as a result, may not have included the kind of detail in their drafts or final plans that might have been possible with more time. Although it is difficult to assess the full impact of TECO's Plan on third parties at this point, and FCTA believes that attachers, in the long run, will likely benefit from the Plan, it is nevertheless clear that the Plan, in its current form, will also result in significant additional costs and delays for cable attachers and their customers. These potential costs and delays must be further examined and better developed with input from the cable industry before any Plan is adopted. FCTA believes that the appropriate place for receiving this input is in Commission sponsored workshops.

Second, although TECO's Plan includes many items that can be characterized as prudent, practical or cost effective as required by the Rule, such as TECO's Vegetation Management Program, other aspects of the Plan, including certain construction standards that exceed the National Electrical Safety Code ("NESC"), will add significant cost without any additional storm hardening benefit.[5] There are many other proven distribution power system initiatives and storm recovery preparations that can produce greatly increased electric service reliability, decreased storm damage, at reduced restoration time and expense. These alternative approaches, which FCTA explains in more detail below, should be further explored and developed for inclusion in the plans during Commission sponsored workshops.

Last, investor owned utilities are obligated under federal pole attachment law to provide cable operators and telecommunications carriers with non-discriminatory access to utility poles

[5] Mr. Michael T. Harrelson, a registered Professional Engineer in the states of Georgia and Florida and a consultant to the cable television, telecommunications and electric utility industries, served as an engineering consultant to FCTA for these comments. A copy of his Curriculum Vitae is attached hereto as Exhibit 3.

that they own or control,[6] and must do so on just and reasonable rates, terms and conditions.[7] The federal Pole Attachment Act was passed to promote the cost-effective and efficient deployment of facilities-based competition throughout the United States. The FCC has the authority, under the Pole Attachment Act, to ensure that attacher rights are fully protected, including to make determinations regarding whether utility safety and engineering standards affecting third party attachers are just and reasonable.[8] Nevertheless, some of the standards, procedures and deployment methods set forth in TECO's Plan conflict with or otherwise implicate federal laws governing pole attachments and the jurisdiction of the FCC to enforce such laws, in violation of the Rule.

For example, TECO requires full-blown permitting for overlashing, even though the FCC has repeatedly ruled that permitting for overlashing is an unjust and unreasonable term and condition of attachment. TECO also requires a complete loading analysis for any type of activity an attacher seeks to perform on its pole, including overlashing, regardless of whether the overlash increases the size or weight of the existing bundle, a requirement that is not just or reasonable under federal law.[9] TECO's permitting process is also discriminatory under federal law, and favors joint use parties, such as Verizon and Embarq over FCTA members. Moreover, TECO does not adequately explain how it intends to allocate the costs of its Storm Hardening Plan to third party attachers. Federal law prescribes the manner in which costs must be allocated,

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[6] *See* 47 U.S.C. § 224(f)(1).

[7] *See* 47 U.S.C. § 224(b)(1).

[8] Indeed, just last year, the FCC "confirmed that is has jurisdiction to review and reject [] challenged engineering standard[s] or practice[s] as unjust or unreasonable under section 224, even where the standard or practice complies with state and local engineering standards that are inconsistent with [the FCC's] rules and policies." *Arkansas Cable Telecomm. Ass'n v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, ¶¶ 8-11 & n. 37 (2006) (internal citations omitted).

[9] In contrast, engineering guidelines similar to those included in Florida Power and Lights's storm hardening plan allow for pole strength design without the need for a detailed loading analysis on each pole.

if at all, to third party attachers. The specific items in TECO's Plan that conflict, or potentially conflict, with FCC jurisdiction are enumerated below. These areas of conflict, and how they should be navigated in developing utility storm hardening plans, could be addressed and possibly resolved in Commission sponsored workshops.

I. FCTA's Member Operators Must Have A Further Opportunity To Provide Input Concerning TECO's Storm Hardening Plan and Attachment Standards And Procedures

Rule 25-6.0342(6) requires TECO to seek input from and attempt in good faith to accommodate concerns raised by third party attachers. "The new rules envision both the IOUs and third-party attachers working together in good faith on the front end to establish the storm hardening plans."[10] In addition, each storm hardening plan must utilize such input to estimate the costs and benefits to third party attachers. Rule 25-6.0342(4)(e).

Florida IOUs had ninety days from the adoption of Rule 25-6.0342 to develop their storm hardening plans and solicit and incorporate input from third party attachers. During this relatively short ninety day period, on March 27, 2007, TECO conducted a meeting with third party attachers, including FCTA members, during which it gave a brief overview of its proposed plan. Following the meeting, TECO provided a draft of its Plan to third party attachers on April 11 for review and input. In response, FCTA members "provided some initial feedback" on the draft, but informed TECO that "the lack of certain detailed information in the Plan has made it difficult, and in some instances impossible, for FCTA's members to provide specific cost and benefit information. . . . ."[11] In any event, it does not appear that TECO incorporated any of FCTA's feedback into the final Plan. As a result, TECO's Plan does not include the kind of input required by the Rule. The FCTA has, however, assured TECO that the "members [would]

[10] Staff Recommendation, issued Nov. 21, 2006, in Dockets Nos. 060172-EU and 060173-EU.

[11] Letter dated April 27, 2007 to Mr. Howard T. Bryan from Maria Browne.

work with TECO in further developing its Plan . . . after the May 2, 2007 deadline."[12]

Florida's cable operators are mature, well-established multi-state corporations with over forty years of experience in attaching their facilities to utility poles in the State of Florida. FCTA's member cable operators have attachments on tens of thousands of TECO poles alone. Pursuant to TECO's Plan, the utility proposes to invest millions of dollars in hardening its distribution and transmission infrastructure, including joint use poles to which cable operators are attached. While TECO's Plan does not explain whether, how or to what extent it will seek to recover this investment from third party attachers, it appears that TECO's storm hardening efforts will result in increased costs for cable operators. For example, the investment and carrying charges upon which cable operator pole attachment rents are based may increase resulting in an increase in the annual pole attachment and rental fees. Moreover, cable operators anticipate that as inspections and loading analyses are completed, utilities will assign responsibility for non-compliance to third party attachers (whether or not they are in fact responsible) and seek to allocate certain direct charges to cable operators, perhaps in ways that conflict with established federal pole attachment law. In addition, the application processes being proposed could add significant time to the attachment process, and thus result in delays in the provision of service to cable subscribers.

Pursuant to Rule 25-6.0342(3), each plan must show the extent to which it complies with the NESC, adopts extreme wind standards, mitigates damage from flooding and storm surges and provides for placement of new and replacement distribution facilities. Rule 25-6.0342(4) further requires that each plan shall describe the facilities, including joint-use facilities, affected, the communities and critical infrastructure impacted, and estimate the costs and benefits to the

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[12] *Id.*

utility and to third party attachers. FCTA member input into the utilities' storm hardening plans is essential to ensure that the plans achieve the Commission's goals in this proceeding in a manner that is practical and cost-effective, and, thus, sustainable for the long term.

In this case, TECO's Plan does not include certain critical information that is necessary for third party attachers to provide input. For example:

- TECO plans to utilize Grade B construction for "new construction, major planned work, expansions, rebuilds and relocations on the overhead distribution system," a standard that exceeds NESC requirements and will thus add to joint-use costs. TECO has not yet indicated, however, whether it plans to apply Grade B construction in its comprehensive pole inspection. Without that information, it is difficult for attachers to comment in this regard.
- Section 6.1.2.2 references TECO's underground distribution construction standards, as far as FCTA can determine, however, TECO has not included them in the Plan, despite FCTA's prior request.[13] In addition, although TECO has provided some overhead construction standards in Attachment A to the Plan, Attachment A is not comprehensive and does not cover several important NESC clearance requirements.
- In Section 6.1.2.3 of its Plan, TECO states that in the event of a major storm, it "will evaluate opportunities that may present themselves to relocate rear lot facilities to the front of property as a better alternative than attempting to replace downed facilities in the original rear lot easement." Before the Commission can determine whether this type of contingency plan is cost-effective, practical and prudent, it would need to see very detailed guidelines, including input from attachers. At this point, the Plan does not

[13] *See id.* ("We need to see TECO underground distribution construction standards.").

provide that kind of detail. In its April 27, 2007 letter to TECO, FCTA had asked to see further details. In any event, it is seldom practical or cost-effective to relocate a large line segment even after a major storm.

- According to Section 7.3.5 of its Plan, TECO "plans to implement a formal process to randomly sample system damage following a major weather event in a statistically significant manner. This information will be used to perform forensic analysis in an attempt to categorize the root cause of equipment failure." While FCTA members agree that this type of data collection and analysis may be very helpful and would like to be involved in this process, as FCTA mentioned in its April 27, 2007 letter, there is not enough information in TECO's Plan for FCTA members to provide the requisite input at this time.
- While FCTA agrees that TECO's extreme wind pilot project will aid in protecting TECO's plant against the damaging effects of storms, FCTA cannot provide input at this time because detailed plans about this project have not been provided. Therefore, as the project proceeds, FCTA would like to see detailed information pursuant to the pilot program when information is available so that it may provide the degree of input required by the Rule.
- FCTA also fully supports TECO's plans to incorporate an enhanced vegetation management initiative in its Plan. That said, there is no indication in the Plan regarding how or whether TECO intends to charge attachers for its vegetation management initiative.
- It is not clear the extent to which TECO has developed an improved procedure to avoid the cutting of fiber optic cables by debris clearing and electric repair crews. In many

instances fiber optic circuits have survived hurricanes, but are damaged by others during restoration efforts.

These are just a few examples of information that is both missing and necessary for third party attachers to provide meaningful input about TECO's Plan.

In sum, FCTA appreciates the monumental task undertaken by TECO, and other Florida IOUs, in seeking to develop detailed storm hardening plans for their electric system in a relatively short period of time. As a result of the time constraints, however, the plans do not include certain key information; and many details need to be more fully developed. Consequently, FCTA's member operators have found it difficult, if not impossible in some instances, to provide specific cost and benefit information and other crucial feedback with regard to the plans, which further exacerbates the undeveloped, elemental nature of the plans themselves. FCTA has engaged (and will continue to engage) in dialogue with each of the IOUs regarding their plans. Generally, this type of dialogue has been beneficial, and FCTA fervently believes that additional gains can be made by maintaining and facilitating continued, open discussions on storm hardening. Accordingly, FCTA recommends that the Commission delay approving any of the plans and allow the parties to continue their dialogue in Commission sponsored workshops.

II. TECO's Plan Should Continue To Be Developed To Ensure That Its Construction Standards, Deployment Strategies And Attachment Standards And Procedures Are Prudent, Practical And Cost Effective.

Pursuant to Rule 25-6.0342(2), IOU storm hardening plans must meet the desired objectives of enhancing reliability and reducing storm restoration costs and outage times in a *prudent, practical* and *cost effective* manner to the affected parties. While it might be attractive on the surface that a utility is requiring joint-use construction standards that exceed the National

Electric Safety Code ("NESC"), this fact alone will not ensure that its pole infrastructure is more likely to better withstand hurricane conditions.

For example, Section 250C of the 2007 NESC prescribes extreme wind loading standards only for poles that are over 60 feet tall.[14] Applying these standards to shorter poles has not been demonstrated to be effective for sustaining reliability in hurricane conditions. Consider the remarks of Mr. Nelson G. Bingell of Osmose Utility Services and a member of the 2007 NESC standards subcommittee on overhead lines strength and loading. At the April 17, 2006 Rule Development Workshop, which considered the issue of extreme wind loading, Mr. Bingell concluded that extending these standards to poles shorter than 60 feet could not be justified because of the "uncertainty of the improved reliability" and that many of the failures that occurred in the 2004-2005 hurricane seasons were the result of trees and flying debris hitting the lines – a situation which would not be improved by increased resistance to sustained wind gusts.[15] Commenting further on his meeting with the NESC subcommittee evaluating wind loading, Mr. Bingell noted that "the general feeling was that once debris starts flying around in a storm, that's when the wind-only loading criteria kind of aren't adequate. It's hard to design for tool sheds running into lines."[16]

At the same workshop, David McDonald, director of Distribution Asset Management and System Storm Coordinator for Progress Energy, noted that the 2007 NESC subcommittee responsible for evaluating loading considered and recommended against extreme wind loading on poles under 60 feet.[17] Mr. Regan Haines, director of Energy Delivery Engineering and Field

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[14] NESC Rule 250C and Tables 250-2 (a) through (d) (2007 ed.).

[15] Transcript of April 17, 2006 Rule Development Workshop, at 53-54 (hereinafter "Transcript").

[16] Transcript at 53.

[17] Transcript at 45. *See also* Remarks of Nelson Bingell, Transcript at 53 ("So that was the effort of the [NESC task force on wind loading], to say, hey, if we really want to increase reliability and safety, we can only go up to the

Services for Tampa Electric Company at the same workshop, stated that "improving the vegetation management program that we have and our maintenance program is probably dollars better spent than investing in a higher construction standard."[18]

Similarly, NESC prescribed standards for clearances should be the standard by which decisions to replace poles are measured. The NESC required clearances between power and communications attachments should be the ultimate *minimum* spacing acceptable. While it may be prudent to require greater clearances on new or existing poles when space is available, clearances may be reduced to NESC standards as the pole gets filled up when, for example, power companies add attachments such as transformers, electric services and street light fixtures. Using NESC clearances as a minimum standard will ensure that attachments are not unnecessarily relocated or poles unnecessarily changed out, and thus is a more cost effective and practical result.

In addition, many other proven distribution power system initiatives and storm recovery preparations can produce greatly increased electric service reliability, decreased storm damage, and reduced restoration time and expense. Storm hardening initiatives for overhead electric power distribution lines which are prudent, practical and cost effective should include:

- Small conductor replacement projects to decrease line breakage during storms. Indeed, many more outages in hurricanes involve broken wires than broken poles, especially in the impacted areas outside the central path of strong storms. These projects should be coordinated with pole inspections and vegetation management and include major maintenance and guying improvements.
- Right of way access improvement projects for lines which are inaccessible, including

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point where debris starts to fly around, because it would be very difficult to design for those conditions.").

[18] Transcript at 68.

removing or providing access across strategic obstacles to line sections.

- The use of specialized equipment and or contractors for work in difficult right of way conditions such as back lot line, off road or swampy area lines for more efficient restoration.
- Pole inspection with strengthening or replacement or guying of deteriorated or overloaded poles. All deteriorated, broken or missing guys should be replaced. All buried anchor heads should be extended to above grade or water levels to prevent guy wires from rusting off.
- Installation of storm guying projects for line segments where it is feasible, including lines where poles are subject to lean over in soft soil during high winds. Larger poles do little to solve the problem of leaning in soft soil without guying.
- Adding line segment sectionalizing switches, breakers and fuses as needed to isolate sections of line which sustain heavy storm damage. This can greatly improve time to restore power to lightly damaged main line segments before all major storm damage in an area is repaired.
- Updating automatic electric primary circuit coordination of breakers and line sectionalizing fuses, and adding devices as appropriate to assure automatic line sectionalizing and facilitate power restoration after storms pass.
- Converting selected distribution systems' voltage from 12 or 13 kV to 25 kV. Four times the electric power can be delivered by the same circuit if the voltage is doubled. Higher distribution voltage decreases the need for larger primary wire sizes and multiple circuits as electric system load grows. The long-term effect on wind loading is positive, and there are many other economic benefits of 25 kV systems.

- Develop an improved procedure to avoid cutting of fiber optic cables by debris clearing and electric repair crews. In many instances fiber optic circuits have survived the hurricanes, still functional, but on the ground in places only to be cut repeatedly by others' restoration efforts.

These types of specific engineering issues could and should be addressed in Commission sponsored workshops.

Although FCTA agrees with many aspects of TECO's Plan, such as TECO's decision to (1) conduct experimental pilot projects involving only distribution lines that have been upgraded to extreme wind design criteria, (2) increase its pole ground line inspections and (3) enhance its vegetation management process, certain other elements of the Plan are not prudent, practical or cost effective. For example:

- TECO plans to utilize Grade B construction for "new construction, major planned work, expansions, rebuilds and relocations on the overhead distribution system," a standard that exceeds NESC requirements. Plan at 6.1.2.1 (Pole Loading). While FCTA does not necessarily disagree that under certain circumstances Grade B construction may be reasonable, FCTA does not believe it is cost-effective, prudent or practical to change out existing and otherwise sound Grade C poles in the process. Poles that fall in to this category should be replaced only when they require replacement for a valid reason such as relocation, line upgrade or deterioration below Grade C. Instead, a far more cost-effect and practical approach to strengthen such poles (if at all) is to improve guying or reinforce the pole near the ground line where practical.
- According to Section 7.3.4 of TECO's Plan, TECO intends to convert several overhead interstate crossings to underground because TECO's "current preferred standard requires

all distribution line interstate crossings to be underground." A much more cost-effective approach would be to storm guy the existing crossing where practical. FCTA needs to see details of each crossing to provide adequate input.

- In Plate #3-31, Note 6 of Attachment A, it is not necessary to place TECO communications cable 16 inches below power or 40 inches above the cable attachment. TECO's communications cable may be 30 inches above cable. There is no distance specified in the NESC between an electric company's communications cable and the lowest power line. *See* NESC Rule 230 F.1 and Table 235-5, footnote 5. Exceeding the NESC Rule in this case is not cost-effective, practical or prudent and will only result in increased costs to TECO and attachers, without any further reliability benefit.
- Similarly, in Plate #3-32, TECO requires a 40 inch clearance between the bottom of a grounded transformer tank and the communications cable, when only 30 inches is required by NESC Rule 238 B. Again, there is no storm hardening advantage that will be gained from exceeding the NESC in this case.

These are just some of the items that FCTA believes do not meet the Commission's cost-effective, prudent and practical standard. Indeed, some of these measures, if approved, are likely to cost attachers (and ratepayers) significant expense without an increased safety or reliability benefit.

III. TECO's Plan Should Be Further Developed To Ensure That It Does Not Conflict With Federal Laws Governing Pole Attachments

While each IOU's Storm Hardening Plan will inevitably impact third party attachers, the Commission must ensure that the Plans do not "conflict with Title 47 U.S.C. Section 224, relating to Federal Communications Commission jurisdiction over pole attachments," consistent with Rule 25-6.0342(8). As the FCTA explained in a comprehensive memorandum of law

submitted August 31, 2006, 47 U.S.C. § 224 authorizes the FCC "to regulate pole attachment matters, including denials of access for safety related reasons, as well as the rates, terms and conditions of attachments. . . ."[19] Pursuant to this authority, over the past 30 years, the FCC has developed a comprehensive set of pole attachment rules, in the form of regulations,[20] pole attachment orders[21] and case law, involving a wide variety of joint-use issues, including engineering and safety issues.[22]

Despite the FCC's comprehensive authority over pole attachments, some aspects of TECO's Plan directly conflict with significant FCC precedent or otherwise undermine FCTA members' Section 224 rights.[23] For example:

- *Overlashing*

TECO requires full permitting for overlashing, contrary to a number of FCC rulings. *See* Plan at 8.2. Specifically, with regard to overlashing, the FCC has ruled "that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment."[24] Indeed,

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[19] Memorandum of Law in Support of the Florida Cable Telecommunications Associations' Suggested Rule Changes, In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, address effects of extreme weather events, Docket No. 060172-EU, In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code, Docket No. 060173-E (August 31, 2006).

[20] 47 C.F.R. § 1401, *et seq.*

[21] *See, e.g., Amendment of Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12,130 (2001) (hereinafter "*May 25th Order*"), *aff'd Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002).

[22] *See Arkansas Cable Telecomm. Ass'n*, 21 FCC Rcd at ¶¶ 8-11 & n. 37.

[23] *See also Tampa Elec. Co. v. Bright House Network, LLC,* Case No. 06-00819 (Fla. Cir. Ct.) (Requesting state court to assert jurisdiction over whether Bright House Networks must pay the FCC "telecommunications" pole attachment rental rate versus the FCC "cable" rate for Voice over Internet Protocol pole attachments)

[24] *May 25th Order* at ¶ 75 (2001); *aff'd Southern Company Serv., Inc. v. FCC*, 313 F.3d 574,582 (D.C. Cir. 2002) ("Overlashers are not required to give prior notice to utilities before overlashing. However, FCC rules do not preclude owners from negotiating with pole users to require notice before overlashing . . . . In short, the [FCC's] overlashing rules show due consideration for the utilities' statutory rights and financial concerns. The record shows

the FCC considers overlashing to be a cost-effective way to deploy cable plant.[25] Consequently, while FCTA members agree that any overlashing must be NESC compliant, overlashing terms and conditions must accord with FCC precedent and cannot be unilaterally imposed—they must be negotiated by the parties.

In order to ensure that poles to be overlashed are not over-loaded or otherwise out of compliance, FCTA members suggest that the stakeholders work together to develop an overlash standard, similar to the one adopted in a recent New York State Public Service Commission ("NYPSC") pole attachment rulemaking. In that case, the NYPSC ruled that "a predetermined limited amount of overlashing, that is not a substantial increase to existing facilities, shall be allowed," without notification and allows the attacher itself to make the determination.[26] Specifically, "[a]n Attacher, [sic] whose facility has a pre-existing NESC calculated span tension of no more than 1,750 lbs., shall be allowed to overlash a pre-determined maximum load of not more than 20% to the existing communications facility. Existing facilities with an NESC calculated span tension of less than 1,000 lbs. shall be allowed a pre-determined overlash of up

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that these matters played a role in the FCC's decision, but petitioner's concerns were balanced with the efficiency gains that overlashing brings the industry."). *See also Cable Television Ass'n of Ga. v. Ga. Power Co.*, 18 FCC Rcd. 16,333, ¶ 13 (2003) (rejecting a pole attachment agreement provision that required the utility's "written consent to overlashing, which the utility may take up to 30 days to grant or deny" as "unjust and unreasonable on its face" and ordering the "to negotiate in good faith a reasonable provision consistent with FCC precedent.") (hereinafter "*Georgia Power*").

[25] *May 25th Order* at ¶ 73 ("Cable companies have, through overlashing, been able for decades to replace deteriorated cables or expand capacity of existing communications facilities, by tying communications conductors to existing, supportive strands of cable on poles. The 1996 Act was designed to accelerate rapid deployment of telecommunications and other services, and to increase competition among providers of these services. Overlashing existing cables reduces construction disruption and associated expense."); *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶ 62 (1998) ("We believe overlashing is important to implementing the 1996 Act as it facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities. Overlashing promotes competition [and helps] provide diversity of services over existing facilities, fostering the availability of telecommunications services to communities, and increasing opportunities for competition in the marketplace.")

[26] *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachment, 2004 N.Y. P.U.C. LEXIS 306, *28-31 (N.Y. P.U.C. rel. Aug., 6, 2004).

to 40% of such pre-existing facilities."[27] If the attacher "determines that the addition of equipment and loading is greater than the pre-determined limits, further assessment of the overlashed facility for its impact on the overall pole loading is required to assure that the pole limits are not exceed."[28] In those cases, the attacher would be required to "provide the pole Owner with a 'worst case' pole analysis from the area to be overlashed, to be sure that the additional facilities will not excessively burden the pole structures."[29] FCTA is hopeful that the workshops will allow the parties to develop a similar, reasonable standard that would accord with FCC precedent.

- *Pole Loading Analysis*

According to Section 8.2.2 of the Plan, TECO intends to conduct a full-blown pole loading analysis for every proposed new pole attachment and overlashing, whether or not such a study is warranted by field conditions. Notwithstanding that attachers are not required to seek the pole owner's approval prior to overlashing at all, FCTA does not believe that pole loading studies are necessary or reasonable in every case even for new attachments. In most cases, make-ready issues that do arise pursuant to a request for attachment involve clearance issues, not loading issues, and can be identified without costly studies. Indeed, the FCC would consider the requirement to perform a pole loading study for every new attachment and overlashing as unnecessary engineering and would prohibit TECO from forcing the attacher to incur these costs.[30]

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[27] *Id.* at *30.

[28] *Id.*

[29] *Id.*

[30] *See, e.g., Knology, Inc. v. Ga. Power Co.*, 18 FCC Rcd 24,615, ¶ 26 (2003) ("Utilities are entitled to recover their costs from attachers for reasonable make-ready work necessitated by requests for attachments.") (hereinafter "Knology").

- *Permitting*

Moreover, TECO's permitting process discriminates against non-joint-use attachers, in violation of Section 224, which obligates utilities to provide "nondiscriminatory access." For example, according to Section 8.2 of TECO's Plan, cable attachers are required to submit pole applications 90 days in advance of their expected installation date (including to account for the 45 days it may take TECO to perform the load study). On the other hand, for "joint use parties (*e.g.*, Verizon, Embarq), Tampa Electric will determine whether joint use is excluded on any pole application within 10 days." The FCC prohibits utilities from favoring one set of attachers over another.[31]

- *Make-Ready Requirements*

TECO also reserves the right to require a "[d]eposit fee in the amount of $200.00 per pole" to pay "for the performance of the engineering study and any make ready construction activities." The FCC has held, however, that it is "unreasonable" for a utility to require "up-front make-ready fee[s] . . . ."[32] Instead, [the utility] should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs."[33] Furthermore, a utility may not require an attacher who seeks access to TECO's poles to contact third party attachers and negotiate make-ready work schedules and costs with third parties. Rather, pole owners themselves are "responsible for managing attachments to the pole [and] notifying attachers when

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[31] *See, e.g., Cavalier Tel., LLC v. Va. Elec. and Power Co.*, 15 FCC Rcd 9563, ¶ 19 (2000) ("[The utility] cannot discriminate against [the attacher] in favor of other attachers or itself. That premise is at the heart of the 1996 [Telecommunications] Act. [The utility] has already agreed to allow temporary attachments. [The utility] uses extension arms and boxing for its own attachments and must allow other attachers to do the same."), *vacated by settlement, Cavalier Tel. Settlement Order*, 17 FCC Rcd 24,412 (2002) (stating the vacateur did "not reflect any disagreement with or reconsideration of any of the findings or conclusions contained" in the original order issued in 2000.") (hereinafter "*Cavalier*").

[32] *Georgia Power* at ¶ 20.

[33] *Id.*

safety violations must be corrected or when make-ready or other work which may affect the attachments is going to be performed."[34]

- *Post-Construction Inspections*

TECO intends to perform post-construction inspections on every new installation and overlash, at the attacher's cost. *See* Plan at 8.4. TECO includes no details regarding when these post-constructions will occur following installation or what type of information will be gathered. While the FCC does not prohibit the performance of post-construction inspections, they must be conducted in a just and reasonable manner in accordance with Section 224. Moreover, the FCC prohibits a utility from charging an attacher for any post-construction inspection that does not relate solely to that attacher's attachment and for untimely post-construction inspections.[35] These are essential details that are normally worked out during pole attachment agreement negotiations, but could be worked out during the workshops.

- *Pole Inspections*

TECO not only plans to perform pole loading studies pursuant to pole attachment applications, "[p]ole loading calculations will be conducted as part of [TECO's] pole inspection program on any joint use pole to ensure that each pole is not overloaded or approaching overloading." Plan at 7.5.1. TECO has not indicated, however, how much this program will cost or how these costs will be allocated. While the FCTA supports a reasonable pole inspection program, performing load calculations on every joint use pole is unnecessary and will be extremely costly. Moreover, the costs attendant to any type of inspection must be allocated in

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[34] *Cavalier* at ¶ 17.

[35] *Knology at* ¶¶ 34-35. ("[W]e conclude that the post-attachment inspection of Knology's attachments occurred (at least in part) more than one year after Knology installed its cables and equipment on Georgia Power's poles. We further conclude . . . that Georgia Power's post-attachment inspection was not related solely to Knology's attachments, but, instead, constituted a routine inspection. . . . Consequently, we find that charging Knology the cost of a post-attachment inspection occurring one year or more after installation of Knology's equipment is an unreasonable terms and condition of attachment.")

accordance with FCC rules.

Specifically, the FCC has consistently held that "[a] rate based on fully allocated costs," such as the rental rate paid to Florida pole owners, "by definition encompasses all pole related costs and additional charges are not appropriate."[36] As a result, the "costs attendant to routine inspections of poles, which benefit all attachers, should be included in the maintenance costs account and allocated to each attacher in accordance with the [FCC's rent] formula."[37] For example, FERC Account 593 includes the expenses for inspection and maintenance of overhead distribution lines and is factored into the carrying charges that make up an electric utility's annual rent, including tree-trimming expenses.[38] Therefore, any costs for TECO's inspection program must likewise be allocated to each attacher through the rental rate formula, if at all.

Moreover, it remains to be seen whether, how and to what extent TECO might attempt to assign responsibility (and thus correction costs) for non-compliant poles or attachments discovered pursuant to its inspection program. Although TECO claims its "[c]omprehensive loading analysis results will indicate the percent of utilization by each attaching entity," it does not explain how this will demonstrate who caused the pole to become overloaded. Further, if it is determined that TECO caused the pole to be overloaded, the pole will be replaced and the attaching entities will be required to pay to transfer their attachments. Plan at 7.5.1. This is not permitted by federal law. Utilities are "prohibited from holding [the cable attacher] responsible for costs arising from the correction of safety violation of attachers [including the pole owner]

[36] *Texas Cable & Telecomm. Ass'n v. Entergy Servs., Inc.*, 14 FCC Rcd 9138, ¶ 10 (1999).
[37] *See, e.g., Georgia Power* at ¶ 16 (2003).
[38] *See* 18 C.F.R. Part 101 (describing Account 593 to include "the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in account 364, Poles, Towers and Fixtures . . . [including] [t]rimming trees and clearing brush.").

other than the [the cable attacher."].[39] These types of issues, which clearly implicate FCC jurisdiction, should be further addressed in workshops so that third party attachers can provide appropriate input to ensure that their federal rights are protected.[40]

- *Audits*

In addition, according to Section 8.8 of the Plan, "TECO will conduct an audit of all pole attachments on an eight-year cycle." According to TECO, "the purpose of this audit of joint use attachments is to identify the location of each pole and the facilities attached and verification that such attachments are pursuant to a current joint use agreement." Such attachment counting audits, however, have no relation to the Commission's Rule and should not remain a part of TECO's Plan. Utilities conduct audits for billing purposes, not safety purposes, and TECO should be prohibited from conflating billing audits with safety inspections as part of this docket. Moreover, if, as TECO indicates, the audit will capture information regarding all attachers, those costs must be recovered in the fully allocated rental rate.[41]

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[39] *Cavalier Tel., LLC v. Va. Elec. and Power Co.*, 15 FCC Rcd 9563, ¶ 17 (2000), *vacated by settlement, Cavalier Tel. Settlement Order*, 17 FCC Rcd 24412 (2002) (stating the vacateur did "not reflect any disagreement with or reconsideration of any of the findings or conclusions contained" in the original order issued in 2000."); *see also Knology* at ¶ 37 (finding that "it is an unjust and unreasonable term and condition of attachment, in violation of Section 224 of the Act, for a utility pole owner to hold an attacher responsible for the costs arising from the correction of other attachers' safety violations."); *see also Kansas City Cable Partners v. Kansas City Power & Light Co.*, 14 FCC Rcd 11,599, 11,606-07, ¶ 19 ("Correction of the pre-existing code violation is reasonably the responsibility of KCPL and only additional expenses incurred to accommodate [the cable attacher's] attachment to keep the pole within NESC standards should be borne by [the cable attacher.]")

[40] The FCC has also ruled "that utilities may not hold attaching entities responsible for sharing in the direct costs of government mandated pole modifications that would be required without the presence of attachers." *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Order on Reconsideration, 14 FCC Rcd 18,049, ¶ 106 (1999) *aff'd Southern Co. v. FCC*, 293 F.3d 1338, 1352 (11th Cir. 2002) ("Finally, it is reasonable to mandate that utilities bear the costs of modifying their facilities in response to local government mandates, given that they would bear these costs in any event. Attaching entities are not given a free ride, as incremental costs associated with moving the attachment can be factored into the standard rent utilities charge to attachers.")

[41] *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11,450, ¶¶ 8-9 (2000). In fact, although TECO has indicated to Bright House Networks that an audit is imminent, it has shared no further details about the audit, including how much it will cost.

TECO also states that if "any unauthorized attachments are found, Tampa Electric reserves the right to true-up its pole attachment count and back bill to the last audit unless the licensee can provide documentation of an approved permit. . . ." Plan at 8.8. TECO also reserves the right to assess unauthorized attachment fees, on top of back rent. *Id.* Again, back billing and penalties for unpermitted attachments are strictly within the purview of the FCC's jurisdiction and have no relevance to this storm hardening docket. In any case, the FCC has held that assessing both a penalty *and* back rent for unpermitted attachments is unjust and unreasonable.[42] The FCC has also ruled that a utility may not assess back rent penalties back to the date of the last audit.[43]

In sum, many of the requirements contained in TECO's Plan violate or otherwise implicate the FCC's jurisdiction. Moreover, with regard to cost allocation issues, the Plan is either void of detail or directly conflicts with FCC precedent.[44] Consequently, these issues must be worked out between the parties either in the workshops or during contract negotiations, but may not be dictated by TECO as part of its Plan.

IV. The Commission Should Have Ongoing Workshops To Further Develop Utility Plans

FCTA member operators will benefit from the implementation of effective and prudent storm hardening plans, and would like to continue to work with the IOUs and the Commission towards the development of comprehensive storm hardening plans that increase the ability of IOU distribution pole infrastructure to withstand extreme significant weather events and that improve the coordination of service restoration efforts. Further development and discussion of

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[42] *Id.* at ¶ 14.

[43] *Georgia Power* at ¶ 22.

[44] Attached hereto as Exhibit 2 is list of numerous FCC cases addressing utility collection of costs from attaching entities.

these plans is especially important given the potential cost impact on third party attachers as well as the potential that aspects of these plans will impact FCTA members' federally protected pole attachment rights.

So far, dialogue has been beneficial, and FCTA strongly believes that significant benefit can be gained by maintaining and facilitating continued, open discussions on storm hardening. Thus, the best course of action to address the standards set forth under Storm Hardening Proposals is for the Commission to facilitate this ongoing dialogue between the utilities and interested attaching parties in the form of Commission sponsored workshops.

To date, the FCTA has been proactive in its participation in meetings with the Companies and has provided feedback on all available plans. In accord with the Commission's intent that "the new rules envision both the IOUs and third-party attachers working together in good faith on the front end to establish storm hardening plans," the FCTA has submitted feedback to each utility including TECO at every step of this process.[45] This input is important because third-party attachers have more than forty years of experience in attaching their facilities to utility poles in the state of Florida, are the most knowledgeable about their own attachments, and currently contribute to pole improvements.[46] Furthermore, cable operators provide important services that can be crucial in emergency situations, including 911 services. Thus, the impact that implementation of these plans can and will have on cable operators should not be discounted. By the same token, FCTA's member operators have every incentive and desire to work with the IOUs towards the further development of these plans.

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[45] Staff Recommendation, issued Nov. 21, 2006, in Dockets Nos. 060172-EU and 060173-EU.

[46] Specifically, in making poles ready for attachment, cable operators often guy the pole, or pay to have a pole changed out with a new pole. Even though the new pole is owned by the utility, cable continues to pay rent.

Due to the complexity of the issues and the uncertain amount and level of detail that has been captured by the plans, it is appropriate to contemplate further incremental steps to implement and establish storm hardening standards. To that end, FCTA members strongly recommend that a collaborative process, which would include Commission workshops, is the optimal approach for the development of truly comprehensive storm hardening plans. Through workshops, all stakeholders will have the opportunity to develop and discuss essential details of the storm hardening plans, which will enable third party attachers to provide additional, more detailed input. Such workshops would also allow third party attachers an opportunity to identify any additional facilities that they believe should be included as critical infrastructure and/or targeted poles. The development of such details, as well as the attendant opportunity for more specific input from third party attachers, will result in more comprehensive and effective plans, thereby bolstering the Commission's efforts to ensure the availability of power and communications services for all Florida consumers in extreme weather situations.

The Commission has used workshops in the past to develop infrastructure hardening rules, to assess research in electricity hardening, and to address the role of vegetation management. These workshops have provided appropriate forums for representatives from responsive entities to share ideas, promote shared interests and to receive detailed information. Elsewhere, workshops have provided a forum for addressing similar issues and have yielded positive outcomes through ongoing dialogue and coordination amongst all stakeholders. For instance, after nearly a decade of dispute concerning joint-use in Oregon, in April 2007, the Oregon Public Utilities Commission adopted an Order that established comprehensive pole attachment rules.[47] This successful resolution was due in no small part to multiple workshops

[47] Oregon is certified to regulate pole attachments pursuant to 47 U.S.C. § 224.

and hearings at which many of the most contentious issues were identified and explored by all stakeholders.

Commission approval of the TECO Plan, in its current, incomplete state, would be premature. Workshops would promote the continued development of the TECO Plan and other IOU plans in a productive atmosphere under the guidance of the Commission and its professional staff. Thus, FCTA respectfully suggests that the Commission take action with regard to each of the utility's plans by implementing a collaborative process for the further development of these plans and by scheduling workshops for that purpose. If, however, the Commission determines that it must affirmatively act to approve or reject the plans at this time, FCTA strongly recommends that the Commission consider approving the plans on a limited, experimental basis only, subject to further clarification, input, and revisions, and include a statement that any approval is not intended to conflict with federal pole attachment law. Thereafter, the collaborative process discussed herein should be implemented in order to develop further details and third party attacher input contemplated by Rule 25-6.0342 and the Commission's Order.

Respectfully submitted this 30th day of May, 2007.

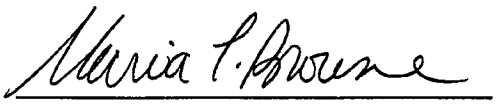

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EXHIBIT 1

History of 224

Utilities possess monopoly ownership of poles on which cable operators must rely to provide their services.[48] Local franchises, environmental restrictions and other legal and economic barriers preclude cable operators and others from placing additional poles in areas where poles already exist. Redundant aerial plant structures (*i.e.*, additional sets of utility poles) are therefore neither permissible nor feasible. Moreover, "in most instances underground installation of necessary cables is impossible or impractical. Utility company poles provide, under such circumstances, virtually the only practical physical medium for the installation of television cables."[49] Indeed, the United States Congress,[50] the Supreme Court,[51] federal courts,[52] the Department of Justice[53] and the Federal Communications Commission ("FCC"),[54] have all recognized the status of poles and conduit as "essential facilities" and thus bottlenecks to

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[48] "About 80 percent of the nation's poles are controlled by [electric] utility companies and the remaining 20 percent by phone companies...." Ted Hearn, *Supreme Court Takes Cable Pole Case*, MULTICHANNEL NEWS, Jan. 29, 2001 at 34. Accordingly, although incumbent local exchange carriers like Qwest and Verizon own poles in Oregon, the state's electric utilities most likely own more poles. Charter is attached to approximately 180,000 poles in the State of Oregon and, as a cable operator, owns virtually no poles.

[49] *F.C.C. v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (hereinafter "*Florida Power*").

[50] *See, e.g.*, 123 Cong. Rec. H35008 (1977) (statement of Rep. Broyhill, co-sponsor of the Pole Attachments Act) ("The cable television industry has traditionally relied on telephone and power companies to provide space on poles for the attachment of CATV cables. Primarily because of environmental concerns, local governments have prohibited cable operators from constructing their own poles. Accordingly, the cable operators are virtually dependent on the telephone and power companies....").

[51] *See Nat'l Cable & Telecomm. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 330 (2002) (hereinafter "*Gulf Power*")(stating that cable companies have "found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles.... Utilities, in turn, have found it convenient to charge monopoly rents.").

[52] *See, e.g., United States v. Western Elec. Co., Inc.* 673 F. Supp. 525, 564 (D.D.C. 1987) (stating that cable television companies "depend on permission from the Regional Companies for attachment of their cables to the telephone companies' poles and the sharing of their conduit space .... In short, there does not exist any meaningful, large-scale alternative to the facilities of the local exchange networks.... ").

[53] *See, e.g., United States v. AT&T*, No. 74-1698, Plaintiff's First Statement of Contentions and Proof, Appendix, Tab 8 (D.D.C. filed Nov. 1, 1978) (cataloguing by the Justice Department of Bell Operating Company dominance of pole and conduit facilities).

[54] *See Common Carrier Bureau Cautions Owners of Utility Poles*, 1995 FCC LEXIS 193, *1 (Jan. 11, 1995) ("Utility poles, ducts and conduits are regarded as essential facilities, access to which is vital for promoting the deployment of cable television systems.").

facilities-based competition in telecommunications and cable television markets. Effective regulation of these facilities is thus crucial to ensure access at just and reasonable rates, terms and conditions[55] and to promote facilities-based competition.[56]

The federal 1978 Pole Attachment Act ("PAA")[57] was the legislative response to substantial evidence of abuse by monopoly pole-owning utilities, including the imposition of "exorbitant fees and other unfair terms . . . ." on cable operators.[58] Congress recognized that without pole attachment regulation, "utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates."[59] The statute instructs the FCC to adopt procedures necessary to hear and resolve complaints and to ensure just and reasonable rates, terms and conditions for the use of these essential facilities.[60]

> "[T]he predominant legislative goal for Congress in enacting the Pole Attachment Act was 'to establish a mechanism whereby unfair pole attachment practices may come under review and sanction, and to minimize the effect of unjust and unreasonable pole attachment practices on the wider development of cable television service to the public.'"[61]

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[55] *See Ala. Cable Telecomm. Ass'n v. Ala. Power*, 15 FCC Rcd 17,346, ¶ 6 (2000) ("By conferring jurisdiction on the Commission to regulate pole attachments, Congress sought to constrain the ability of telephone and electric utilities to extract monopoly profits from cable television systems operators in need of pole space.").

[56] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, 13 FCC Rcd 1034, 1045 (1998) ("Wireline video and telecommunications competition is heavily dependent on the ability of market participants to obtain access to utility poles, conduits and rights of way at reasonable rates.").

[57] Pub. L. No. 95-234, 92 Stat. 25 (1978), (codified at 47 U.S.C. § 224).

[58] *May 25th Order at* ¶ 21 (citing S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977), reprinted in 1978 U.S.C.C.A.N. 109); *see also* Florida Power, 480 U.S. at 247 (recognizing that Congress enacted the Pole Attachment Act "as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service.").

[59] H.R. Rep. No. 94-1-1630 at 5 (1976).

[60] 47 U.S.C. § 224(b)(1).

[61] *May 25th Order* at ¶ 21 (citing S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977), *reprinted in* 1978 U.S.C.C.A.N. 109).

Principles of nondiscrimination have also been implemented to protect telecommunications providers. The Telecommunications Act of 1996 (hereinafter "the 1996 Act") amended the PAA to expand the FCC's jurisdiction over poles and conduit to cover "telecommunications carriers" along with "cable television systems."[62] As amended, the PAA imposes upon all utilities, the duty to "provide . . . nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[63] This directive ensures that "no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields."[64] The PAA also sets forth a cost-based, pole attachment rent formula that "accomplishes key objectives of assuring, to both the utility and the attaching parties, just and reasonable rates; establishes accountability for prior cost recoveries; and accords with generally accepted accounting principles."[65]

The FCC rate formula, creates a range of compensation, the low end of which is the "incremental costs [or] those costs the utility would not have incurred 'but for' the pole attachments in question," and the high end of which is an allocation of the fully-loaded "operating expenses and capital costs [including a return on investment] that a utility incurs in owning and maintaining poles that are associated with the space occupied by the pole

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[62] For purposes of the PAA, the term "telecommunications carrier" does not include incumbent local exchange carriers, like Qwest and Verizon. *See* 47 U.S.C. § 224(a)(5). Therefore, neither Qwest nor Verizon are protected under the federal PAA.

[63] 47 U.S.C. § 224(f)(1).

[64] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15,499, ¶ 1123 (1996) (hereinafter "*1996 FCC Order*).

[65] *May 25th Order* at ¶ 15. Attachers to poles typically pay an annual rental rate for every pole on which they have an attachment. For cable attachers in FCC states, their annual rent is calculated under the cable rate formula, set forth at 47 U.S.C. § 224(d). There is a separate rate formula for attachments made by competitive local exchange carriers, which is set forth at 47 U.S.C. § 224(e). Specifically, both pole rate formulas rely on historical ("actual" or "embedded") publicly available and reported data reflected in a utility's regulatory accounts: ARMIS 43-01 Reports (for ILECs) and FERC Form 1 Reports (for electric utilities).

attachments."[66] Therefore, anything above incremental costs is a contribution to the utility's overall revenue requirements. In this regard, most utilities recover such out-of-pocket, or incremental costs in advance of any pole attachment through the imposition of "makeready" expenses and therefore receive at least the minimum required by law.[67] Makeready generally refers to the modification of existing plant to accommodate additional facilities. Nevertheless, the FCC has long interpreted the rate formula statute to provide that when application of the formula reduces a contractual pole rental rate, the FCC will only reduce the rate to the statutory maximum.[68]

Application of the FCC's rate formula and the numerous other pole attachment rules and case law,[69] developed in response to Congressional mandate, ensures that facilities-based competition proceeds on fair rates, terms and conditions, notwithstanding monopoly ownership and control of distribution facilities and utilities' "superior bargaining position in pole attachment matters."[70]

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[66] *Implementation of Section 703(e) of the Telecommunications Act of 1996*Report and Order, 13 FCC Rcd 6777, ¶ 96 n. 303 (1998) (hereinafter "*1998 FCC Order*")

[67] *May 25th Order* at ¶ 8.

[68] *See Florida Power*, 480 U.S. at 254.

[69] The FCC has adjudicated approximately 300 complaints. *See 1998 FCC Order* atat ¶ 8, n. 37. All utilities are therefore on notice that the rates, terms and conditions of pole attachments may be scrutinized to ensure they are just and reasonable, as required by the Pole Attachment Act.

[70] *TCA Mgmt v. Southwestern Pub. Serv. Co.*, 10 FCC Rcd 11,832, ¶ 15 (1995) (citing S. Rep. No. 95-580, 95th Cong. 1st Sess. at 13).

Exhibit 2

Cost Recovery Issues Within the FCC's Jurisdiction

1. Billing Standards:

- Discussed the standards for reasonable charges for make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 26 (2003) (identifying examples of engineering errors or other duplicative charges that Georgia Power inappropriately billed to an attacher).

- Clarified the share of indirect utility employee costs attachers must pay. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 53 (2003) (correcting utility billing management and supervisory function expense costing in the pole attachment rate).

- Delineating costs of easement inclusions in rates. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16,333, ¶ 27 (2003) (private easement costs are not recoverable from pole attachment rates).

- Evaluating charges for anchors. *Cox Cable v. Va. Elec. & Power*, Memorandum Opinion & Order, 53 RR 2d 860, ¶¶ 28, 33 (1983) (the pole attachment rate includes costs of anchors). *See also Capital Cities Cable v. Mountain States Tel. & Tel. Co.*, Memorandum Opinion & Order, 56 RR 2d 393, ¶¶ 40-42 (1984).

- Recovery of administrative costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975, ¶ 33 (1999) (billing and pole attachment licensing administration are recovered in the utility pole attachment rate).

2. Billing Overages:

- Charges without itemization. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615 ¶ 50 (2003) (holding utility charge to attacher for vaguely described term was inappropriate).

- Penalties for unauthorized pole attachments. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11,450, ¶¶ 11, 13 (2000) (unauthorized pole attachment penalty charges must be in line with industry standards).

- Markups on make-ready work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (margin of error surcharges must be explained and reasonable).

- Detail on make-ready bills. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (make-ready bills must contain sufficient detail of work performed).

- Providing refunds for make-ready overcharges. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (refunds for make-ready overcharges must be provided).

- Make-ready surcharges tied to underlying work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (make-ready surcharges must be connected to specific work performed).

- Administrative fees relationship to actual costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975, ¶ 33 (1999) (holding administrative charges must represent actual costs).

- Engineering survey fees. *Tex. Cable & Telecomm. Ass'n v. Entergy Serv., Inc.*, Order, 14 FCC Rcd 9138, ¶¶ 6, 10 (1999) (the engineering fee should be based on non-recurring actual costs).

3. Billing One Attacher for Costs Associated with Another Attacher:

- Charged new attacher for make-ready work to remedy pre-existing safety violations. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 16 (2000) (illustrating VEPCO's attempt to push costs associated with correcting pre-existing safety violations onto Cavalier Telephone).

- Charged new attacher to replace poles to remedy pre-existing safety violations. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 40 (2003) ("Having rejected Georgia Power's defenses regarding pole change-outs, we order Georgia Power to refund Knology the costs of any change-outs necessitated by the safety violations of other attachers. . . .").

4. Attachment Fees In Relation to Particular Attachers:

- Charges to new attacher of inspection that benefits multiple parties. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 34 (2003) (a utility's post attachment inspection is routine to the extent it involves the identification and assessment of multiple parties attachments). *See also Newport News Cablevision, Ltd. Commc'ns, Inc. v. Va. Elec. & Power Co.*, 7 FCC Rcd 2610, ¶¶ 8-14 (1992) (inspection costs must be divided among all parties); *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16,333, ¶ 16 (2003) (cost of routine inspections of poles which benefit all attachers should be accounted for in the pole attachment rate).

- Pre-make-ready inspections that benefit multiple parties. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 43 (2003) (pre-make-ready inspection costs must be shared by the utility and other attachers when they benefit from such inspections).

EXHIBIT 3

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Registered Professional Engineer (Electrical) GA#10724 (1976)
Registered Professional Engineer (Electrical) FL #51788 (1997)

EDUCATION: B.S. Industrial Engineering (Co-op) GA TECH, 1970

WORK EXPERIENCE:

1959-	Worked part-time with Harrelson Electric Co., owned by my father.
1963	W. T. Harrelson, doing residential, commercial, & industrial electrical and repair work in McRae, GA.
Dec. 1963- Mar. 1970	Co-op student of Georgia Power Co. in Electric Distribution Operating, McRae, GA, & Commercial Sales, North Atlanta.
Apr. 1970- Jan. 1972	Lieutenant in U. S. Army Air Defense, Minneapolis, MINN, & Yong Son, KOREA. Served as Battery Commander, Korea. Military Status: Inactive, Army Reserves; Rank: Captain.
Feb. 1972- June 1974	Operating Engineer, Brunswick, Georgia Power Co.; Designing, operating, and maintaining distribution system and operating transmission system.
June 1974- Feb. 1976	Senior Commercial Marketing Engineer, Brunswick. Selling wise use of electricity to new and existing commercial customers in Brunswick area. This included lighting design to I.E.S. standards, and consultations regarding the National Electrical Code.
Feb. 1976- June 1978	Operating Engineer, St. Simons Island, Ga. Power; Designing, operating, & maintaining distribution system & operating transmission system.
June 1978- May 1986	District Engineer; Supervised engineering and operation of Brunswick District of Ga. Power Co., including Kingsland Operating Headquarters.

May 1986- Sept. 1989	Area Manager, McRae, Ga. Power Co; Restructure McRae, Eastman, Hazlehurst into area operation, and supervise and coordinate all company activities in the area.
Sept. 1989- April 1992	District Power Delivery Manager, Milledgeville District; Manager of Engineering, Construction, & Maintenance of the electric distribution system and operation of the transmission & distribution system.

Note: During 28 years with Georgia Power Company, I was involved with claims, damage and accident investigations. From 1978 through 1992, I was in charge of these activities at my location.

April 1,1992	Resigned from Georgia Power Company, Reason for leaving: Early retirement incentive package gave excellent opportunity to pursue independent consulting engineer goals.
April 1,1992 to present	Electric Utility Consulting Engineer. Investigated accidents and testified in matters involving the National Electrical Safety Code, OSHA regulations, utility company safety manuals, employee training courses, accepted good work practices, arid the National Electrical Code. These cases have involved electrical contact, flash, and burn injuries, collisions with poles and guy wires, falls from poles, etc., hydraulic oil fires, crushing injuries, property losses from fires, stray voltage, etc. The companies involved have been electric, telephone, cable TV, and product manufacturing companies. I do management consulting and safety and engineering training for electric cooperatives, engineering consulting companies and private industry I do electric power line inspections for electric cooperatives as required by the Rural Utility Service. I inspect power lines and communications lines built jointly for National Electrical Safety Code compliance. I teach N.E.S.C. compliance and train field engineers and technicians in joint use compliance.

<u>OTHER COURSES AND SEMINARS</u>:

1974	13 weeks Commercial Sales Training by Ga. Power Co., including interior & exterior lighting design, & National Electrical Code.
1975	1 week General Electric Outdoor Lighting School, Hendersonville, NC.
1976	8 weeks Electric Operations Training by Ga. Power Co.
1977	1 week Principles of Leadership Training, Ga. Power Co.
1979	1 week Basic Management Training by Ga. Power Co.
1980-1985	Served as "Leader" of Engineering Dept Quality Circle.

1981	1 week Communications-General Training by Ga. Power Co.
1982	1 week Human Relations Skills Training by Ga. Power Co.
1987	3 days Interpersonal Skills Seminar by Ga. Power Co.
1988	1 week Management Grid School, Mobile, AL, Training by Southern Co.
1988	13 weeks Community Leadership Class sponsored by University of GA Cooperative Extension Service and Telfair County.
1989	1 week Negotiating Edge Seminar, Athens, GA., Training by Ga. Power Co. and Susan Wise
1989	Basic Economic Development Course, GA Institute of Technology
1990	3 months- Committee assignment (met bi-weekly) to formulate Ga. Power Company Guarantee Policy
1991	6 months-Committee assignment (met bi-weekly) to develop "District Operations Performance Measurement" facilitated by Ernst & Young Co.
1991	3 months-Committee assignment (met bi-weekly) to assess Georgia Power Company Marketing Dept Readiness for Incentive pay.
1992	1 week advanced Negotiating Skills Seminar, Peachtree City, Training by Ga. Power Co. & The Executive Speaker, Inc.
1992	1 day IEEE Seminar on 1993 National Electrical Safety Code
1993	2 day NRECA Safety Accreditation Team Training & Testing Seminar
1994	3 day Seminar-The Development & Application of the National Electrical Safety Code by Allen Clapp
1995	2 day ILCI (International Loss Control Institute, Inc.) Seminar on accident investigation
1996	1 day IEEE Seminar - "Changes in me 1997 NESC."
1997	3 day Seminar - "Application of 1997 NESC."

MEMBERSHIPS AND AFFILIATIONS:

1970-present	Member, Georgia Tech Alumni Association
1974-present	Member, Georgia & National Society of Professional Engineers
1978-1986	Member, Glynn County GA Electrical Inspection Board
1992-present	Member, Telfair Co. Chamber of Commerce
1992-present	Member, Institute of Electrical & Electronics Engineers (IEEE)
1993-2002	Board Member, Telfair County Industrial Development Authority
1993-2002	Member, Illuminating Engineering Society of North America (IECNA)
1993-present	Rural Electric Safety Accreditation Program (RESAP) certified accreditation inspector

1994-present Member, National Fire Protection Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Telecommunications Association's Comments has been served upon Lee L. Willis & James D. Beasley, P.O. Box 391, Tallahassee, FL 32302 and that a copy has also been provided via Hand Delivery or US Mail to the persons listed below this 30th day of May, 2007:

Ms. Paula K. Brown
Tampa Electric Company
Regulatory Affairs
P. O. Box 111
Tampa, FL 33601-0111

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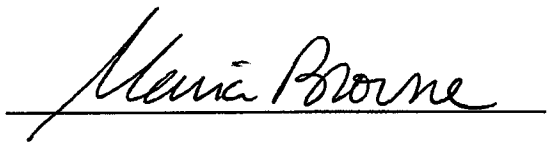
By: 

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