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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. 070301-EI –Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, Florida Administrative Code, submitted by Florida Power & Light 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.


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Thank you for your assistance.

Very truly yours,
Davis Wright Tremaine LLP



Maria T. Browne, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, FAC, submitted by Florida Power & Light Company.

DOCKET NO. Docket No. 070301-EI

Filed: May 30, 2007

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. REGARDING FLORIDA POWER AND LIGHT COMPANY'S INFRASTRUCTURE STORM HARDENING PLANS FILED IN COMPLIANCE WITH RULE 25-6.0342, FLORIDA ADMINISTRATIVE CODE

In response to the Commission Staff's request for comments, the Florida Cable Telecommunications Association, Inc. ("FCTA") hereby submits these comments concerning the Electric Infrastructure Storm Hardening Plan ("Plan") filed by Florida Power & Light Company ("FPL") 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 operators¹ 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

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.

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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 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 utility's storm hardening plan in furtherance of Florida's objectives to cost effectively strengthen the state's 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 2004-2005 hurricane seasons struck, cable operators experienced significant outages and damage to their facilities. Cable companies worked along side the utilities to resolve weather related outages and spent millions of dollars in repairing their own cable facilities and restoring cable service. Accordingly, FCTA's members are committed to ensuring that the state's electric pole infrastructure is hardened to better withstand 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 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 IOUs 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 pole attachments, which gives cable operators federally protected rights to access Florida utility poles upon just and reasonable rates, terms and conditions.

FPL's Plan, while thorough and admirable 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 FPL's Plan to enable them to provide the input contemplated by Rule 25-6.0342. FPL had ninety days from

³ Rule 25-6.0342(6).

⁴ Rule 25-6.0342(2) and 25-6.0342(5).

the adoption of Rule 25-6.0342, to develop its Plan and solicit and incorporate input from third party attachers. The Plan circulated to FCTA members during the 90 day period was missing critical details that were necessary for FCTA to be able to delineate its concerns and provide valuable input. As stated in FPL's Plan at page 7, as filed, FPL's own cost benefit analysis still is "necessarily incomplete and imprecise." FCTA understands that the utilities were under time constraints in developing their storm hardening plans and, as a result, may not have included the level of detail in their draft plans circulated to FCTA as otherwise would have been preferable. Unfortunately, however, the fact that critical details were missing from FPL's Plan made it difficult, if not impossible, for FCTA members to provide specific concerns and feedback.

Moreover, FPL's Plan as filed, still does not provide the level of detail required to enable third party attachers to provide valuable input, which is necessary for FPL to assess the costs and benefits to third party attachers. For example, FPL states that it plans to spend "approximately \$40-70 million" on deploying its hardening plans for its distribution system. Given this \$30 million discrepancy in FPL's costs, and its lack of information about whether or how it intends to recover those costs, it is impossible for FCTA members to assess the cost impact on their operations. Moreover, FPL's Plan still only contains detailed deployment plans for 2007, not for years 2008 and 2009, as required by the Rule. *See* FPL Plan at 6 ("FPL's planning and budgeting process cannot provide equivalent detail at this time about deployment plans for 2008 and 2009.") and at 7 ("Of course, FPL's ability to identify and estimate benefits from storm hardening are necessarily incomplete and imprecise at this time.") And, the Plan still lacks certain critical details about how certain standards and projects will be implemented, thus hindering FCTA members' ability to identify all of their concerns at this time.

While FPL's Plan still lacks certain details that are necessary to assess its full impact on

third party attachers, the Plan, as filed, is likely to have substantial benefits to cable operators in terms of increased plant reliability. However, it is also certain to give rise to substantial increased costs for cable operator attachers and to impose additional steps in the construction process that could significantly impede cable operators' ability to provide prompt service to customers. These potential costs and benefits must be further examined and better developed with input from the cable industry before the Plan is adopted. To that end, FCTA suggests that the stakeholders in this docket continue working together in a series of Commission-sponsored, collaborative workshops in order to explore each utility storm hardening plan in a more comprehensive and thoughtful manner. Only then will the Commission achieve its goals to cost-effectively strengthen the electric infrastructure in Florida to reduce restoration costs and outage time to customers resulting from extreme weather events. Significantly, FPL agrees that a further meeting or workshop would be beneficial. Plan at p. 20.

Second, FCTA members are concerned that certain aspects of FPL's Plan may not be implemented in a prudent, practical or cost effective manner as required by the Rule.⁵ For example, FPL has decided to adopt the National Electric Safety Code ("NESC") standards for extreme wind loading for its entire distribution plant throughout its service territory. While strengthening Florida's pole infrastructure to better withstand extreme weather is the undisputed goal of each Plan, the methodologies for achieving these goals must be closely scrutinized to ensure that they provide cost-effective sustainable solutions for the long term that will actually achieve the desired results of reducing storm related outages and restoration costs.⁶ As

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.

⁶ For example, replacing sound poles and shortening span lengths to 150 feet or less may not be prudent, practical or cost-effective in most existing distribution lines. Among the undesirable effects of these projects are traffic hazards and congestion, damage to existing utilities, damage to highways and right of ways, greatly increased number and

recognized in some of the other utility plans filed May 7, 2007, many proven distribution power system initiatives and storm recovery preparations other than replacing poles and building to standards that exceed the NESC can produce greatly increased electric service reliability, decreased storm damage, and reduced restoration time and expense. FCTA's member operators would like additional time to work with FPL to further develop these areas and explore the use of additional storm hardening alternatives, which are set forth in more detail below.

Finally, some of the standards, procedures and deployment methods set forth in FPL's Plan conflict with or implicate federal laws governing pole attachments and the jurisdiction of the FCC to enforce such laws. Investor owned utilities are obligated under federal pole attachment law to provide cable operators and telecommunications carriers with non-discriminatory access to utility poles that are owned or controlled by such utilities,⁷ and must do so pursuant to just and reasonable rates, terms and conditions.⁸ These laws were developed to promote the competitive deployment of facilities based competition throughout the United States. The FCC has jurisdiction to enforce these laws, including jurisdiction over safety and engineering standards or practices to the extent they are unjust or unreasonable, or interfere with federally protected access rights.⁹

FPL has proposed several standards and procedures in its Plan that implicate the FCC's jurisdiction. For example, FPL requires permits for certain types of overlashing (i.e., where the diameter of the existing attachment is increased) while the FCC has expressly prohibited IOUs from requiring permits for any overlashing. Similarly, FPL requires a complete wind loading

size of poles near roadways, and more non-standard poles to replace when damaged by extreme storms, tornadoes, and vehicular accidents.

⁷ See 47 U.S.C. § 224(f)(1).

⁸ See 47 U.S.C. § 224(b)(1).

⁹ The FCC has jurisdiction to regulate cable operators' access to, and the rates, terms and conditions of pole attachments on, Florida's utility poles pursuant to 47 U.S.C. 224(b)(1).

analysis for attachments, which FPL defines to include overlashing, a requirement that is not just or reasonable under federal law. Moreover, FPL's Plan does not explain whether, how or the extent to which FPL 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, if at all, to third party attachers. The specific items in FPL'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 FPL's Storm Hardening Plan and Attachment Standards And Procedures

Rule 25-6.0342(6) requires FPL 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 of the proposed storm hardening activities to third party attachers.¹¹

FPL provided FCTA member operators with a copy of its Electric Infrastructure Storm Hardening Plan on March 22, 2007. In an email dated April 9, 2007, FCTA requested FPL to provide additional detail about certain aspects of its Plan, as well as an additional week to review the data that had been provided and to compile cost data for input. Specifically, FCTA requested more details about: the cost of each proposed pole hardening activity; the portion, if any, of those costs that FPL seeks to recover from cable operators; the engineering studies for each pole that is impacted, showing among other things the class and height of the pole, and relevant information

¹⁰ Nov. 21, 2006 Staff Recommendation in Dockets 060172-EU and 060173-EU.

¹¹ Rule 25-6.0342(4)(e).

concerning third party attachments on the pole; the scope of the planned activity (i.e., if the pole is being replaced, will existing facilities be transferred to the new pole or relocated?); and the reason underlying the proposed hardening activity (i.e., if a pole change out is planned, is the reason that the pole is overloaded, lacks sufficient clearance or is cracked). FPL responded in an email dated April 11, 2007, that it was unable to provide this level of detail or grant FCTA's request for additional time, citing its obligation to file its Plan on May 7, 2007.

As such, FCTA provided preliminary comments to FPL in a letter dated April 23, 2007.

There FCTA explained that:

[A]dditional information was not included [in the March 22 Draft Plan] that would greatly aid [it] in providing constructive information to FPL about the costs and benefits of such plans, including the effect on reducing storm restoration costs and customer outages. For example, FPL: provided information only for some example communities not all, only included information about its own attachments to the poles and not those of third party attachers, fails to explain the precise work that will be necessary for third party attachers (i.e., it may state that the pole needs to be replaced but does not further indicate whether the attachments will be transferred to the new pole or re-routed, does not indicate why a particular action is being taken (i.e., whether the pole is being replaced because it is overloaded or rotten), does not indicate the extent to which its storm hardening efforts will delay construction of new third party attachments, and does not give an estimate of the costs for the proposed work or what costs it expects to shift to attaching entities.

In addition to providing a copy of its plan, FPL held one meeting at its general offices in Miami, Florida on April 12, 2007, at which FCTA members participated, and provided feedback. While this meeting was helpful, it really marked only the commencement of a very necessary dialogue among utilities and attaching entities. In sum, while FCTA provided some feedback to FPL at the meeting and in its April 23, 2007 letter, FCTA's member operators were not able to provide input on, or note all of their concerns with, FPL's Plan prior to it being filed with the Commission.

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 thousands of poles in FPL's footprint alone. FPL's Plan proposes to invest \$40 to \$70 million in hardening its distribution infrastructure in 2007, including joint use poles to which cable operators are attached. However, FPL's Plan does not explain whether, how, or to what extent it will seek to recover storm hardening costs from third party attachers. At a minimum, as a result of these enormous expenditures on storm hardening efforts, the investment and carrying charges upon which cable operator rents are based will may increase, resulting in an increase in the annual pole attachment rental fees, FPL may attempt to collect certain costs associated with storm hardening directly from attaching entities, and cable operators may incur costs in transferring their facilities where poles are relocated or replaced.

Moreover, cable operators anticipate that as inspections and loading analyses are completed on joint use poles, utilities may assign responsibility for non-compliance to third party attachers and seek to allocate certain direct charges to cable operators. In addition, the processes being proposed could add significant time to the attachment process, and thus result in delays in the provision of service to cable subscribers. Thus, cable's input into the utilities' storm hardening plans is essential to ensuring that the plans effectively harden the state's pole infrastructure and do so in a manner that is practical and cost-effective and thus, sustainable for the long term.

Moreover, pursuant to Rule 25-6.0342(3), each plan must show the extent to which it complies with NESC, adopts extreme wind standards, mitigates damage from flooding and storm surges and provides for placement of new and replacement distribution facilities. Pursuant to Rule 25-6.0342(4) each plan shall describe the facilities affected, list communities impacted and

critical infrastructure, the extent to which joint use facilities are affected, and estimate the costs and benefits of the plan to the utility and to third party attachers. As set forth above, FPL itself acknowledges that its Plan is still a work in progress. It only provides detailed information for sample communities and then only for 2007. In its own words, its ability to identify and estimate benefits is “necessarily incomplete and imprecise” and its estimated expenditures fluctuate by \$30 million. It also omits specific information about the type of work that will be required of third party attachers (i.e., additional guying or transfers).

FCTA appreciates the monumental task undertaken by FPL, and other Florida utilities, in seeking to develop detailed storm hardening plans for their electric transmission and distribution systems in a relatively short period of time. As a result of the time constraints, the plans do, however, lack certain key information. Many details need to be more fully developed. Consequently, FCTA's member operators have found it difficult, if not impossible in some instances, to relay their concerns or provide specific cost and benefit information about the plans, which further exacerbates the undeveloped, elemental nature of the plans themselves. FCTA has, however, engaged in a dialogue with each of the IOUs regarding their plans. Generally, that dialogue has been beneficial, and FCTA strongly believes that significant benefit can be gained by maintaining and facilitating continued, open discussions on storm hardening. Accordingly, FCTA recommends that the Commission consider the May 7, 2007 plans as a continuation of an ongoing dialogue among attaching entities and order Commission sponsored workshops.

II. FPL'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 to hear that a utility is building to a more stringent standard than is required by the NESC, this fact alone will not ensure that the utility's pole infrastructure is any 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.¹² 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 the fact 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.¹³ 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."¹⁴

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

¹² NESC Rule 250C and Tables 250-2 (a) through (d) (2007 ed.).

¹³ Transcript of April 17, 2006 Rule Development Workshop, at 53-54. (hereinafter "Transcript")

¹⁴ Transcript at 53.

on poles under 60 feet.¹⁵ And as stated by Mr. Regan Haines, director of Energy Delivery Engineering and Field Services for Tampa Electric Company at the same workshop, “improving the vegetation management program that we have and our maintenance program is probably dollars better spent than investing in a higher construction standard.”¹⁶

Similarly, in rendering assessments about clearances, for example to determine whether a pole can accommodate an additional attachment, NESC should be the standard. 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.

FPL’s Plan proposes ultimately to adopt extreme wind strength design for its entire system. The Plan takes a three prong approach but does not support its decision with empirical evidence. While implementation of extreme wind strength design for the entire distribution plant (prong 3) is its ultimate goal, in the interim FPL will apply extreme wind load standards to its existing and new feeders and associated laterals serving critical infrastructure, and apply incremental hardening to existing feeders serving community projects such as grocery stores, gas stations and pharmacies.

¹⁵ 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 point where debris starts to fly around, because it would be very difficult to design for those conditions.”).

¹⁶ Transcript at 68.

FPL's decision to design its entire system for extreme wind is an expansion of the plans it set forth in the Storm Secure Plan it filed with the Commission on January 30, 2006, at which time it only intended to adopt extreme wind strength design for certain distribution projects and to convert overhead lines to underground. In support of its decision, FPL relies heavily on "extensive analyses that FPL conducted either directly, or with the aid of external resources, such as KEMA Incorporated," including forensic observations of how the system performed during Hurricane Wilma. Based on that analysis it concludes that the root cause of pole breakage was wind in Hurricane Wilma, and that FPL's transmission poles built to extreme wind loading, performed well overall. Plan at p. 12.

However, the KEMA report upon which FPL relies is not included in its Plan and was not provided to attaching entities. Rather, FPL only described the plans results at the April 12 meeting in Miami. Moreover, according to the FPL Reliability Report filed with the Commission on March 1, 2007, of the 96,000 FPL poles that were inspected, 3.5 percent did not meet Grade C Strength and 9 percent were non-compliant with Grade B Standards. This suggests that rather than building to extreme wind design criteria, FPL should focus on strengthening these poles which don't conform to its reported Grade B construction standard for distribution poles.

FPL has not demonstrated that adopting extreme wind strength criteria for its entire distribution system will achieve the Commission's storm hardening goals in a cost-effective, prudent and practical way. Indeed, several of FPL's construction standards are likely to cost attachers (and ratepayers) significant expense without an increased safety or reliability benefit and thus should be rejected by the Commission.

Other elements of the Plan exceed the NESC in ways that are not prudent, practical and cost effective. For example:

- Page 8, Clearances of communications cables to FPL. At dimension letter B, a reference should be made to NESC Rule 238D Exception which allows reduction of the 12” clearance to 3” if the loop is covered.
- At dimension letter F the new requirement in the 2007 NESC is 40”. *See* NESC Rule 239G1. (The change was to Exception 1). The FPL 3” requirement should be referenced for grandfathering of facilities installed prior to 2007.
- At dimension letter K, the 12” separation between cable messengers became effective in NESC 2002 with a requirement for 4” separation between cables in the span under the specified conditions. NESC Rule 235H 1. and 2. should be referenced.
- At dimension letter L, the recognition of the NESC exception allowing 30” separation is good. A reference should also be added to NESC Rule 235.2.b.(1)(a). Exception 1. This rule reduces the required clearance between the neutral and cable to 12 inches in the span, not 30.” The rule also applies to separation between fiber optic cable (supply) and communications cables in the communication space.

FCTA members do see a significant benefit from several of the ten initiatives being deployed by FPL including its three year cycle for vegetation management and eight year inspection plan. Ensuring that wires are not endangered by tree limbs and that poles are not rotten or overloaded, should significantly assist in efforts to prevent storm outages and in storm restoration. Rotten poles in particular are a serious problem in high wind situations because they can cause a cascading effect. FCTA also agrees with FPL’s conclusion that “[o]ne way to overcome the load on a pole due to transverse wind load is to add storm guys.” FPL Attachment Standards and Procedures at p. 41. FPL’s planned use of storm guying on interstate crossings is a very good and cost effective method of hardening pole infrastructure. FCTA members believe

that storm guying can be used more frequently by FPL as an alternative means of hardening its infrastructure.

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 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 initially 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.¹⁷
- 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.

It would be extremely beneficial for these types of specific engineering issues to be further discussed and refined in Commission sponsored workshops. FCTA believes that these discussions could lead to prudent, practical and cost effective solutions.

¹⁷ While FCTA members generally support these alternative solutions for storm hardening, FCTA still has concerns about whether, how and to what extent the costs of these proposed activities might be passed on to third party attachers. As set forth below, a full body of federal law exists that governs which costs may be passed on to third party attachers, and where such costs can be imposed, whether they should be collected as direct reimbursements or through the annual rental rates, prescribed by FCC formula.

III. FPL'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. § 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. . . ." ¹⁸ Pursuant to this authority, over the past 30 years, the FCC has developed a extensive set of pole attachment rules, in the form of regulations, ¹⁹ pole attachment orders ²⁰ and case law, involving a wide variety of joint-use issues, including engineering and safety issues. ²¹ A brief history of federal pole attachment law is attached hereto as Exhibit 1.

Despite the FCC's broad authority over pole attachments, some aspects of FPL's Plan directly conflict with FCC precedent or otherwise undermine FCTA members' Section 224 rights. For example:

¹⁸ Memorandum of Law in Support of the Florida Cable Telecommunications Associations' Suggested Rule Changes, filed in 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-EU, (August 31, 2006) ("August 31, 2006 Memo").

¹⁹ 47 C.F.R. 1.401 *et seq.*

²⁰ See, e.g., *Amendment of Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12,103 (2001), *aff'd Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574,582 (D.C. Cir. 2002).

²¹ Indeed, just last year, the FCC "confirmed that it 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). See also August 31, 2006 Memo at 6-7.

- *Construction Standards*

FPL's Attachment Standards and Procedures require third party attachers to comply with governing law and recognized industry standards, but then go on to cite "any additional safety requirements requested by FPL." Attachment Standards and Procedures at 4. Holding attachers responsible for complying with as yet undefined standards is problematic for several reasons. Most significantly, without seeing the standards it is impossible to determine whether they are just, reasonable and non-discriminatory as required by federal law. The FCC has acknowledged that utilities can rely on the NESC in prescribing standards as well as other industry codes that are widely-accepted objective guides for the installation and maintenance of electrical and communications facilities.²² However, in the same Order the FCC made it unequivocally clear that it will preempt standards that are inconsistent with FCC rules and policies, and that a utility may not be the final arbiter of denials based on capacity, safety, reliability or engineering, nor should pole owners' determinations be presumed reasonable.²³

Moreover, FPL also states that in all cases second and third party attachments will be limited to the NESC designated communication space below the electrical supply space on all distribution carried poles with FPL attached. Attachment Standards at 4. However, this is not a reasonable term or condition under federal law. The FCC has expressly stated that electric utilities may not categorically restrict access to supply space for the attachment of communications equipment.²⁴ Indeed, 47 U.S.C. § 224(f)(2) provides that a denial of access to

²² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15,499, ¶¶ 1151-1158 (1996).

²³ *See id.*

²⁴ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Order on Reconsideration*, 14 FCC Rcd 18,049, ¶ 72 (1999); *Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at*

pole tops is permissible only “where there is insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering purposes.” Rule 235(I) of the NESC *expressly permits* the attachment of “communications antennas in the supply space.”²⁵ Accordingly, FPL’s categorical restriction of attachments in the supply space is unreasonable.

- ***Costs Attendant To Building To Higher Standards***

FPL’s Plan does not address what portion of the \$40 to \$70 million in estimated expenses associated with hardening its distribution infrastructure it will seek to collect from third party attachers. Indeed, at its April 12, 2007 meeting in Miami, FPL stated that it did not yet know how it would recover its expenses for its storm hardening activities. However, the types of costs that may be imposed on attaching entities and the manner in which those costs may be allocated has been the subject of numerous cases before the FCC.²⁶ To the extent that FPL seeks to allocate any of its storm hardening costs to attaching entities it must do so in accordance with FCC precedent.

- ***Overlashing***

FPL requires full permitting for overlashing where the resulting bundle is heavier than the existing attachment or has an increased diameter over that of the existing attachment. *See* FPL Attachment Standards and Procedures at 48. The FCC has ruled, however, “that neither the

Reasonable Rates, Public Notice, 19 FCC Rcd 24,930 (2004).

²⁵See NESC Rule 235I and Table 235-6 (row 1b). The National Electric Safety Code (“NESC”) further permits the attachment of an “equipment case that supports a communications antenna” on utility poles. *See* NESC Rule 235I(3) and Table 235-6 (row 4a).

²⁶ Attached hereto as Exhibit 2 is list of numerous FCC cases addressing utility collection of costs from attaching entities. 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.”)

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.”²⁷

FCTA appreciates that FPL recognizes that overlashing does not have any impact on the pole when the resulting bundle size does not increase.²⁸ However, its requirement for “permitting” exceeds what the FCC allows with regard to overlashing. The FCC, which has considered this issue repeatedly, considers overlashing to be a cost-effective way to deploy cable plant.²⁹

FCTA members are certainly not saying that overlashing should be permitted to bring a pole out of compliance. 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

²⁷ *Amendment of Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12,103 ¶ 75 (2001) (hereinafter “*May 25th Order*”); *aff’d Southern Co. Servs., 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 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.”)

²⁸ FPL also appears to have clarified in the latest draft of its Plan that it does not intend to seek permits for power supplies, amplifiers or similar equipment. Attachment Standards at 48. FCTA raised this issue in its April 23 letter and appreciates FPL’s response to its stated concern.

²⁹ *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.”).

facilities, shall be allowed,” without notification and allows the attacher itself to make the determination.³⁰ 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 to 40% of such pre-existing facilities.”³¹ 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 exceeded.”³² 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.”³³

- ***Pole Strength and Loading Calculations***

FPL requires pole strength and loading engineering calculations of worst case poles in a line of poles.³⁴ FCTA’s commends the fact that FPL has developed extensive tables of design guidelines for its engineers to use in extreme wind design rather than doing calculations on every pole. *See* Distribution Design Guidelines; 2007 Hardening Design Guideline; 2007 Distribution Engineering Reference Manual Addendum for Extreme Wind Loading; Power Systems Distribution Construction Standards Addendum to 2005 Edition for 2007 Hardening Applications. These guidelines contain cost effective measures for safely designing pole lines to

³⁰ *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).

³¹ *Id.* at *30.

³² *Id.*

³³ *Id.*

³⁴ *See* FPL & Alpine Comm. Corp., FPL Directory and Permit Process Manual for use by CATV Companies and Non-LEC Telecom Companies, (May 2005).

the strengths indicated. However, the full cost of these standards and how they will be implemented in practice is still not entirely clear. 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. As set forth above, FPL's loading requirements for overlashing require further modification. Indeed, FPL's Reliability and Storm Hardening Report, filed with the Commission on March 1, 2007, found that only 11 poles (of the 96,090 pole inspected) with third party attachments were overloaded by Grade C standards. In light of these considerations, the FCC would consider the requirement to perform a pole loading study for every new attachment, upgrade and overlashing as unnecessary engineering and would prohibit FPL from forcing the attacher to incur these costs.³⁵

- ***Pole Inspections and Audits***

FCTA members do see a significant benefit from several of the ten initiatives being deployed by FPL including its three year cycle for vegetation management and eight year inspection plan. However, FCTA is concerned about the extent to which FPL will seek to allocate costs associated with these inspections to third party attachers. Costs attendant to any type of inspection must be allocated in accordance with FCC rules.

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

³⁵ See, e.g., *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion and Order, 18 FCC Rcd 24,615 at ¶ 26 (2003) (“Utilities are entitled to recover their costs from attachers for reasonable make-ready work necessitated by requests for attachments.”) (hereinafter “*Knology*”).

³⁶ *Texas Cable & Telecomm. Ass’n v. Entergy Servs., Inc.*, 14 FCC Rcd 9138 ¶ 10 (1999).

allocated to each attacher in accordance with the Commission's 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

Moreover, it remains to be seen whether, how and to what extent FPL might attempt to assign responsibility (and thus correction costs) for non-compliant poles or attachments discovered pursuant to routine inspections. Utilities are "prohibited from holding [an attacher] responsible for costs arising from the correction of safety violation of attachers other than the [the attacher.]"³⁹

In sum, 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.

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 Florida IOU distribution pole infrastructure to better withstand extreme significant weather

³⁷ See, e.g., *Cable Tel. Ass'n of Ga. v. Ga. Power Co.*, 18 FCC Rcd. 16,333, ¶ 16 (2003).

³⁸ See 18 C.F.R. pt. 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.").

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.")

events and that improve the coordination of service restoration efforts. Further development and discussion of 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 between the IOUs and third party attachers 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. FPL agrees that a further meeting or workshop would be beneficial. Plan at p. 20.

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 FPL at every step of this process.⁴⁰ 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.⁴¹ 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.

⁴⁰ Staff Recommendation, issued Nov. 21, 2006, in Dockets Nos. 060172-EU and 060173-EU.

⁴¹ 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.

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.

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 work through 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 utility infrastructure 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

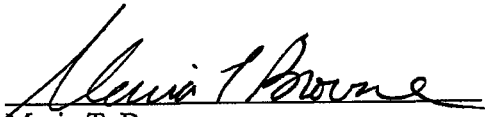
comprehensive pole attachment rules.⁴² This successful resolution was due in no small part to multiple workshops and hearings at which many of the most contentious issues were identified and explored by all stakeholders.

Commission approval of the FPL Plan, in its current, incomplete state, would be premature. Workshops would promote the continued development of the FPL 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 the Rule 25-6.0342 and the Commission's Order.

⁴² Oregon is certified to regulate pole attachments pursuant to 47 U.S.C. § 224.

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.⁴³ 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."⁴⁴ Indeed, the United States Congress,⁴⁵ the Supreme Court,⁴⁶ federal courts,⁴⁷ the Department of Justice⁴⁸ and the Federal Communications Commission ("FCC"),⁴⁹ have all

⁴³ "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.

⁴⁴ *FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (hereinafter "*Florida Power*").

⁴⁵ 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....").

⁴⁶ 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.").

⁴⁷ 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....").

⁴⁸ 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).

⁴⁹ 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

recognized the status of poles and conduit as “essential facilities” and thus bottlenecks to 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 conditions⁵⁰ and to promote facilities-based competition.⁵¹

The federal 1978 Pole Attachment Act (“PAA”)⁵² 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.⁵³ 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.”⁵⁴ 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.⁵⁵

“[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.’”⁵⁶

deployment of cable television systems.”).

⁵⁰ 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.”).

⁵¹ *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 13 FCC Rcd 1034, *1045 (Jan. 13, 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.”).

⁵² Pub. L. No. 95-234, 92 Stat. 25 (1978), (codified at 47 U.S.C. § 224).

⁵³ See *May 25th Order* at ¶ 21 (2001) (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.”).

⁵⁴ H.R. Rep. No. 94-1-1630 at 5 (1976).

⁵⁵ 47 U.S.C. § 224(b)(1).

⁵⁶ *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.”⁵⁷ 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.”⁵⁸ 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.”⁵⁹ 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.”⁶⁰

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

⁵⁷ 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.

⁵⁸ 47 U.S.C. § 224(f)(1).

⁵⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, 11 FCC Rcd 15499, 1123 (1996) (hereinafter “1996 FCC Order”).

⁶⁰ *May 25th Orderr* 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).

owning and maintaining poles that are associated with the space occupied by the pole attachments.”⁶¹ 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.⁶² 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.⁶³

Application of the FCC’s rate formula and the numerous other pole attachment rules and case law,⁶⁴ 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.”⁶⁵

⁶¹ *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, ¶ 96 n. 303 (1998) (hereinafter “1998 FCC Order”).

⁶² *May 25th Order* at ¶ 8.

⁶³ *See Florida Power*, 480 U.S. at 254.

⁶⁴ The FCC has adjudicated approximately 300 complaints. *See 1998 FCC Order* at ¶ 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.

⁶⁵ *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. Communc'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

CURRICULUM VITAE

M. T. (MICKEY) HARRELSON

M. T. (Mickey) Harrelson
P. O. Box 432
McRae, GA 31055

Phone: (912) 568-1504

Cell: (229) 860-1300

Fax: (912) 568-1502

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- Co-op student of Georgia Power Co. in Electric Distribution Operating, McRae, GA, & Commercial Sales, North Atlanta.
- Mar. 1970
- Apr. 1970- Lieutenant in U. S. Army Air Defense, Minneapolis, MINN, & Yong Son, KOREA. Served as Battery Commander, Korea. Military Status: Inactive, Army Reserves; Rank: Captain.
- Jan. 1972
- Feb. 1972- Operating Engineer, Brunswick, Georgia Power Co.; Designing, operating, and June 1974 maintaining distribution system and operating transmission system.
- June 1974- Senior Commercial Marketing Engineer, Brunswick. Selling wise use of Feb. 1976 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- Operating Engineer, St. Simons Island, Ga. Power; Designing, operating, & June 1978 maintaining distribution system & operating transmission system.
- June 1978- District Engineer; Supervised engineering and operation of Brunswick District May 1986 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, and 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.

OTHER COURSES AND SEMINARS:

- 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

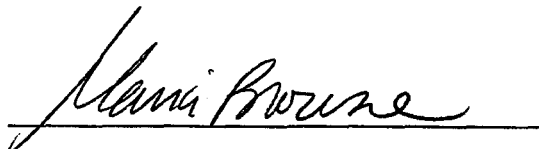
I HEREBY CERTIFY that a true and correct copy of the Florida Telecommunications Association's Comments has been served upon John T. Butler, 700 Universe Boulevard, Juno Beach, FL 33408 and that a copy has also been provided via Hand Delivery or US Mail to the persons listed below this 30th day of May, 2007:

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By:



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