

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint and petition for)	
hearing of the MICHIGAN CABLE)	
TELECOMMUNICATIONS ASSOCIATION and)	Case No. U-13148
MEDIAONE OF MICHIGAN, INC. , against)	
CONSUMERS ENERGY COMPANY.)	
_____)	

At the November 4, 2003 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On October 16, 2001, the Michigan Cable Telecommunications Association (MCTA) and MediaOne of Michigan, Inc., (AT&T Broadband) filed a complaint and petition for hearing against Consumers Energy Company (Consumers) regarding the terms and conditions applicable to overlashing of pole attachments. On November 13, 2001, Consumers filed an answer to the complaint and requested its dismissal.

A prehearing conference was conducted by Administrative Law Judge James N. Rigas on December 18, 2001. In attendance were representatives from MCTA and AT&T Broadband, Consumers, and the Commission Staff. On October 10, 2003, the parties filed a settlement agreement resolving all issues in this proceeding.

The settlement agreement, attached as Exhibit A, sets forth the following:

1. All pole attachments shall comply with the National Electrical Safety Code (NESC) requirements.
2. Consumers and the cable companies will work cooperatively to facilitate deployment of cable and broadband service.
3. Consumers will conduct an evaluation when overlashing existing pole attachments to assess the need for make-ready changes to the pole structure to ensure NESC compliance.
4. Charges associated with safety evaluations and make-ready work shall be reasonable, cost-based, and allocated fairly among all responsible parties.
5. All new construction activities will locate power supplies only within the unusable space on Consumers' poles. If a power supply unit is presently located in the usable space on a pole, and the space is needed for use by another party, then the attaching party will promptly move the unit out of the usable space and into the unusable space on the pole.
6. The Staff, upon request of any party, agrees to be available to mediate disputes over the implementation of any aspect of the settlement agreement.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. The settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that the October 10, 2003 settlement agreement, attached as Exhibit A, is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of November 4, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of November 4, 2003.

Its Acting Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

The Formal Complaint and Petition for Hearing)
of the Michigan Cable Telecommunications)
Association and MediaOne of Michigan, Inc.)
("AT&T Broadband") Against Consumers)
Energy Company Regarding the Terms)
and Conditions Applicable to Overlashing)
of Pole Attachments)

MPSC Case No. U-13148

SETTLEMENT AGREEMENT

The parties hereby stipulate and agree to the following terms:

I. Overlashing and Other Work on Existing Attachments

- A. All pole attachments must comply with the National Electric Safety Code, as adopted by the MPSC, and Michigan law in order to protect the safety of workers and the public.
- B. Consumers Energy Company and cable companies will work cooperatively with each other to facilitate the expeditious deployment of cable and broadband services to the citizens of Michigan.
- C. Overlashing existing pole attachments requires Consumers Energy Company evaluation of conductor clearances, wind and weight load factors to assess the need for make-ready changes to the pole structure, including pole change-out, to meet safety code requirements prior to overlashing. An attaching party must provide sufficient prior notice to Consumers Energy of the character of, and the parties responsible for overlashing of existing attachments. An attaching party is allowed to overlash an existing attachment on a Consumers pole without obtaining a new permit or paying a permit fee, provided that (1) the existing attachment is in compliance with the NESC and will remain so, and (2) the existing attachment was either previously permitted or is shown on a map prepared in connection with one of Consumers Energy Company's pole attachment audits. Make-ready work evaluation and costs will still apply, as appropriate.
- D. An attaching party is allowed to maintain, repair, replace, or re-lash an existing attachment on a Consumers Energy Company pole without obtaining a new permit or making any payment to Consumers, provided that (1) the existing attachment is in compliance with the NESC and will remain so; (2) the existing attachment was either previously permitted or is shown on a map prepared in connection with one of Consumers Energy

Company's pole attachment audits; and (3) the loading characteristics and height of the final attachment will be substantially the same as or better than the loading characteristics of the pre-existing attachment. An attaching party will provide Consumers with notice of any repair or maintenance construction activity for projects involving installation of more than two miles of cable.

- E. If any proposed maintenance, repair, replacement, or re-lashing of an existing attachment on a Consumers pole will result in a final attachment where the loading characteristics will not be substantially the same as or better than the loading characteristics of the pre-existing attachment, then the attaching party will provide advance notice to Consumers to enable Consumers to promptly evaluate whether any make-ready work will be necessary in order for the proposed new work to meet safety code requirements.
- F. If any make-ready work is required in order for the proposed new work to meet safety code requirements, then that make-ready work must be completed prior to commencement of the new work.
- G. All charges associated with safety evaluations and make-ready work must be reasonable, cost-based and allocated fairly among all responsible parties.

II. Power Supplies

- A. For any pole with respect to which Consumers is collecting an attachment fee from the attaching party, Consumers shall not impose a second attachment fee on that attaching party based on the presence of a power supply unit on that pole.
- B. In those cases where a power supply unit is located within the usable space on a pole, and the power supply unit must be removed in order to make additional usable space available for immediate use by Consumers or another attaching party, then the attaching party will promptly move the power supply unit out of the usable space and into the unusable space at its own expense. The term, "usable space", as defined by the MPSC, means the space that is available for attachments on a pole.
- C. In connection with all new construction activity, an attaching party will attach power supplies only within the unusable space on Consumers' poles.
- D. All power supplies will be attached in compliance with the NESC, as adopted by the MPSC.

III. Dispute Resolution

- A. The parties agree to work cooperatively to implement the terms of this settlement.
- B. The parties acknowledge that all rates, terms, and conditions of pole attachments in Michigan are regulated by the Michigan Public Service Commission pursuant to MCL §460.6g.
- C. If Consumers and an attaching party have a disagreement over the implementation of any aspect of this agreement, the MPSC Staff agrees to make itself available to mediate the dispute, upon the request of any party.
- D. Any party retains the right to pursue other legal remedies if mediation is unsuccessful.

IV. Scope of Agreement

- A. The scope of this agreement is limited to its written terms, as set forth above.
- B. This agreement does not affect the rights of the parties with respect to any issues not addressed herein.
- C. For the sole purpose of submitting this Agreement to the Commission, the parties waive compliance with Section 81 of the Administrative Procedures Act of 1969; MCL 24.281; MSA 3.560(181).

MICHIGAN CABLE TELECOMMUNICATIONS
ASSOCIATION and COMCAST CABLE
COMMUNICATIONS, INC., FOR MEDIAONE
OF MICHIGAN, INC. ("AT&T BROADBAND")

Dated: October 8, 2003

By: David E. Marvin
David E.S. Marvin (P26564)
Fraser Trebilcock Davis & Dunlap, P.C.

CONSUMERS ENERGY COMPANY,

Dated: October 7, 2003

By: Raymond E. McQuillan
Raymond E. McQuillan (P24100)

MICHIGAN PUBLIC SERVICE COMMISSION
STAFF

Dated: October 10, 2003

By: Patricia S. Barone
Patricia S. Barone (P29560)
Assistant Attorney General
Public Service Division