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ONTARIO ENERGY BOARD

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26 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE
CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

RP-2003-0249

1

2
IN THE MATTER OF a hearing held on Tuesday, 26 October
2004, in Toronto, Ontario; IN THE MATTER OF the Ontario
Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN
THE MATTER OF an Application pursuant to section 74 of the
Ontario Energy Board Act, 1998 by the Canadian Cable
Television Association for an Order or Orders to amend the
licences of electricity distributors.

3

RP-2003-0249

26 OCTOBER 2004

HEARING HELD AT TORONTO, ONTARIO

APPEARANCES

MIKE LYLE
Board Counsel

TOM BRETT
Canadian Cable Television Association

PETER RUBY
Canadian Electricity Association

KELLY FRIEDMAN
The Electricity Distributors Association

BRIAN DINGWALL
Energy Probe

JENNY CROWE
MTS Allstream Inc.

LJUBA DJURDJEVIC
Toronto Hydro

ANDREW LOKAN
Power Workers' Union

CAROLINE DIGNARD
Cogeco

ADELE PANTUSA
Hydro One

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14

--- Upon commencing at 9:32 a.m.

15

MR. KAISER: Please be seated. Good morning, ladies and gentlemen.
We're here today to hear the
application by the Canadian Cable Television Association to amend
the licences of the
province's LDCs with respect to charges or access fees with respect
to full access.

16

Could I have the appearances, please.

17

APPEARANCES:

18

MR. BRETT: Good morning, Mr. Chairman, Panel. My name is Tom
Brett. I'm acting this morning for
the Canadian Cable Television Association. I'd also like to enter an
appearance, although
he's not here today, for my colleague, Ken Engelhart, who will be
here starting on

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Wednesday, starting tomorrow, with me, to assist me in this. Thank
you.

19
MR. RUBY: Peter Ruby, counsel for the Canadian Electricity Association.

20
MS. FRIEDMAN: Kelly Friedman, counsel for The Electricity
Distributors Association.

21
MR. DINGWALL: Good morning, Panel. Brian Dingwall, counsel for
Energy Probe.

22
MS. CROWE: Hi, Jenny Crowe, regulatory counsel, MTS Allstream
Inc.

23
MS. DJURDJEVIĆ: Ljuba Djurdjević, in-house counsel to
Toronto Hydro.

24
MR. LOKAN: Andrew Lokan, counsel for the Power Workers' Union.
Thank you.

25
MS. DIGNARD: Carolyn Dignard, counsel to Cogeco.

26
MR. KAISER: Sorry, I didn't hear that name?

27
MS. DIGNARD: My last name? Sorry, Dignard, D-i-g-n-a-r-d.

28
MR. KAISER: You represent Cogeco?

29
MS. DIGNARD: Yes.

30
MR. KAISER: Thank you. Anyone else?

31
MS. PANTUSA: Adele Pantusa, counsel for Hydro One.

32
MR. LYLE: Mike Lyle, counsel for Board Staff.

33
MR. KAISER: Thank you, Mr. Lyle.

34
Mr. Brett, do you represent all the cable companies?

35
MR. BRETT: Yes, sir, I represent the Association, all the cable
companies are members of the
Association.

36
MR. KAISER: All the cable companies in Ontario?

37

MR. BRETT: Yes, sir.

38

MS. ASSHETON-SMITH: Sorry, excuse me, there may be one or two
-- it's Lori Assheton-Smith,
The Canadian Cable Television Association. There may be a few
Ontario cable television companies that are not represented by
the
CCTA, and the number is very, very small. And I should add,
just for
clarification, that while Ms. Dignard is here on behalf of
Cogeco, she's
in-house counsel to Cogeco, and Cogeco is represented by the
CCTA.

39

MR. KAISER: Is that correct, that Cogeco will be represented by
Mr. Brett?

40

MS. DIGNARD: Yes, Yes.

41

MR. KAISER: Thank you.

42

Who are the cable companies not represented, Mr. Brett? You said there were cable
companies that are
not members to have association?

43

MR. O'BRIEN: I can't give you a summary of the names, but they are
very small cable companies.

44

MR. KAISER: Can you undertake to advise us?

45

MR. BRETT: We could give you an undertaking on that. It would
probably take us a little time to find
it, but we could get it to you, I'm sure, today.

46

MR. KAISER: I'm sure Mr. O'Brien can find it over the lunch hour.

47

MR. LYLE: We'll mark that as Undertaking F.1.1, Mr. Chair.

48

UNDERTAKING NO. F.1.1: TO PROVIDE A LIST OF CABLE
COMPANIES IN ONTARIO NOT
REPRESENTED BY THE CCTA

49

MR. KAISER: And Ms. Friedman, if I could turn to you on the same
issue, what LDCs do you represent
and what LDCs do you not represent?

50

MS. FRIEDMAN: The EDA represents all the LDCs in Ontario, but for
London Hydro, who is not

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a member, and some LDCs located on native reservations.

MR. KAISER: Can you give me those names? 51

MS. FRIEDMAN: I can undertake to do so. 52

MR. KAISER: All right. 53

MR. LYLE: We'll mark it as Undertaking F.1.2, Mr. Chair. 54

55
ONTARIO NOT UNDERTAKING NO. F.1.2: TO PROVIDE A LIST OF ALL LDCS IN
REPRESENTED BY THE EDA

56
MR. KAISER: And with respect to Toronto Hydro and Hydro One, who
-- do I understand they are separately represented here in these proceedings?

MS. FRIEDMAN: That's correct. 57

58
MR. KAISER: Anyone else separately represented in the LDC
community, of course?

MS. FRIEDMAN: I don't believe so. 59

MR. KAISER: Just those two? 60

MS. FRIEDMAN: Yes. 61

PRELIMINARY MATTERS: 62

63
MR. KAISER: Now, we have a settlement proposal which, in due
course, I'll let Mr. Brett walk us there.

64
Before that, I understand there are some preliminary matters. One I understand, Mr.
Ruby, has to do with you, and this relates to the confidentiality ruling that we made last day. And as I
understand it, there were some notes that related to some of that pricing information, I think it was Great
Lakes Power and Hydro One. Was that correct?

65
MR. RUBY: Yes, Mr. Chair. It's probably not appropriate for me to go into
exactly what was in the confidential filing. I just note that not all of it turned out to be
pricing information.

66
MR. KAISER: No, I understand that. But what we're talking about
are the notes.

67
MR. RUBY: Yes, the non-numeric data.

68
MR. KAISER: Right. You're not talking about the prices.

69
MR. RUBY: Yes.

70
MR. KAISER: And the notes, I think we can say, purported to
describe the state of negotiations; is that
correct?

71
MR. RUBY: Yes, and at least one other factor.

72
MR. KAISER: All right.

73
MR. RUBY: It's a bit difficult to characterize without --

74
MR. KAISER: All right. Mr. Brett.

75
MR. BRETT: Mr. Chairman, maybe I could just be of help here. The
CCTA has agreed -- just agreed
on further thought to consent to release those notes, those two
notes in question that Mr.
Ruby is seeking.

76
MR. KAISER: I thought you might. I do appreciate your
accommodating Mr. Ruby in that regard.

77
MR. RUBY: Thank you, Mr. Chair. Thank you, Mr. Brett.

78
MR. KAISER: Let's move on to the other preliminary matter, which
is the evidence, Ms. Friedman, that
you wish to call, and we note Mr. Brett's objection. Is there some
reason why this was
filed so late?

79
MOTION REGARDING EDA'S FILING OF
EVIDENCE:

80
MS. FRIEDMAN: The EDA's original submission makes a fundamental
point that the LDCs
bargained in good faith and that they're not abusing market power.
In the CCTA's

specific

was at the

interrogatory

response to interrogatories, specific allegations were made against LDCs. My understanding was that the appropriate time to address that hearing and not engage in a paper battle following receipt of the responses.

81

The evidence is consistent with our original submission, which is, we bargained in good faith, and responds specifically to what was said in CCTA interrogatory responses. Mr. Brett has raised concerns about the information being new, and not having time to prepare cross-examination. I've offered Mr. Brett to provide him with -- last week, to provide him with written statements as to what they were going to say so as he could prepare.

82

Mr. Brett suggested instead that what we do is bring my panel on for examination in-chief and then bring the panel back on November 8 for cross-examination. Unfortunately, I have not been able to pull my panel together for November 8. So far only one of the four is available to return. So that's where things stand.

83

MR. KAISER: Before we get to the scheduling, what's the relevance of this evidence?

84

MS. FRIEDMAN: This evidence is simply the LDCs' side of the story that they've bargained in good faith. There's allegations in the interrogatory responses that they have not done so, that they've rebuffed certain rates, that they have rejected access permits. And it's specifically for four LDCs who have seen these allegations made against them just to tell their side of the story.

85

So it's relevant to the question of whether regulation is necessary, that is, whether LDCs have abused market power.

86

MR. KAISER: All right. So you say that the evidence, if it shows that your clients bargained in good faith, let's say it shows that, we're to conclude what from that --

87

CCTA materials MS. FRIEDMAN: Well, you're to conclude that the evidence in the that they have abused market power is incorrect.

88

MR. KAISER: All right. Do you have any response, Mr. Brett?

89

MR. BRETT: Well, yes, I do, Mr. Chairman, Panel.

90

First of all, those allegations that we made that these were monopoly facilities and essential facilities, and also that individual LDCs were abusing their market power were made initially in our original evidence, which was filed in December 16th, 2003, about ten months ago. Now, we made additional -- we enclosed letters at that time, in fact, three letters as an appendix to the original evidence.

91

It's true we made further allegations with our IR responses, attached more letters. But it seems to me the time for the LDCs to make that pitch, if you like, was in their evidence, which they were given an extra month to prepare and they could have laid all that out in their response, or at least laid out a response to what we had said in our evidence filed back in December. So I do think it's out of time.

92

And the other thing is, a second point is, it goes without saying, I believe, but I just wanted to note it, that anybody who appears -- you know, if you don't accept that proposition, anyone who appears on a panel needs to be available for cross-examination, it seems to me. So if Ms. Friedman is not able to collect her panel, assuming that we have some cross-examination at a later date, it seems to me she should pick some new people for the panel so that the same people have to be available.

93

And I think it is new evidence, finally, and we would require some time to prepare to deal with that. Those are my submissions, sir.

94

MR. KAISER: Thank you.

95

I'm not sure I still understand why it's being filed so late.

96

MS. FRIEDMAN: Mr. Chair, it's not being filed late. Perhaps it was my misunderstanding. The allegations against these particular LDCs came up in their interrogatory responses. It's true they made other allegations in their initial evidence, but we chose not to bother to respond to those.

97

MR. KAISER: So there was something that came up in the interrogatories that particularly hurt you and you felt you had to call this panel?

98

MS. FRIEDMAN: Well, that the LDCs in particular wanted to stand up and tell their side to have story, too.

99

MR. KAISER: When did you get those interrogatory responses?

MR. BRETT: They were filed September 30th, I believe, the
responses.

MS. FRIEDMAN: Right. And so there was no procedure --

MR. KAISER: I see.

MS. FRIEDMAN: -- to rebut interrogatory responses.

MR. KAISER: I see.

MS. FRIEDMAN: My understanding is that you do that at the hearing.

MR. KAISER: All right. I understand that point. Let me try to
understand another point, though. Your argument, if I understand it, is that all of this evidence on who
did what and who's the bad guy would somehow lead the Board to conclude not to regulate in
this area; is that correct?

MS. FRIEDMAN: That's my hope.

MR. KAISER: That's your position.

MS. FRIEDMAN: That's right.

MR. KAISER: And this dispute has been going on for months, if not
years; you would agree with that?

MS. FRIEDMAN: Yes.

MR. KAISER: And what is it that's going to change? If the Board
stepped aside, what is it that is suddenly going to happen that is going to cause these two parties to
agree?

MS. FRIEDMAN: What's going to cause them to agree, Mr. Chair, is
the fact that the regulator has spoken and has said, Solve it.

MR. KAISER: I see.

MS. FRIEDMAN: You know, and -- you know, the EDA's submission is
that, what the Board ought

to do is set out some guidelines or principles so that negotiations can take place.

116

MR. KAISER: Is it correct that, as I read the final submissions and the evidence, the only outstanding issue is really the price. The other terms, it looks like you can agree upon; is that correct?

117

MS. FRIEDMAN: I think that's fair, although I'd have to point out that there's an interrelationship between the price and terms.

118

MR. KAISER: All right.

119

MS. FRIEDMAN: So it's hard to say that everything has been solved. There are still outstanding issues between groups of negotiating parties, in addition to price.

120

MR. KAISER: Well, we're going to retire and consider your motion to call this evidence. But over the break, and it will be a short break of ten minutes, I'd like you to talk to Mr. Brett, and I'd like both of you to consider that we have serious doubts about the relevance of what I call the "bun fight." And we're spending a lot of Board time and a lot of your clients' money going through this evidence. And I'd like both of you, as counsel to these associations, to seriously consider whether we can dispense with that and get on with the main issue, which is the price.

121

So if you two would kindly caucus and consider if you can be of assistance to the Board in that regard. We don't know that it's necessary to decide who is the bad guy in a dispute that's been going on for years. We'll come back in ten minutes.

122

--- Break taken at 9:47 a.m.

123

--- On resuming at 9:58 a.m.

124

MR. KAISER: Please be seated. Now, Ms. Friedman, any luck?

125

MS. FRIEDMAN: Mr. Brett and I have discussed the matter. Mr. Brett acknowledges that a basic premise underlying his application is that the LDCs have abused market power, and therefore regulation is necessary. I take it as my responsibility to rebut that premise, and I submit either the Board will allow me or disallow me to submit that evidence in rebuttal, but that it's my obligation to try to undermine that premise, which is a basic foundation of their bringing their

application.

126
With respect to what may or may not change from the evidence, I submit further that the EDA's expert evidence, expert witness, speak to when it's appropriate or not appropriate to regulate, and the issue of whether market power has been abused is fundamental to that and the kind of principles that ought to be set by the regulator. Those are my submissions.

127
MR. KAISER: Mr. Brett.

128
MR. BRETT: Well, Mr. Chairman, we did have a discussion. We are of the view that the fact that these are monopoly facilities and the further fact that we think the LDCs have abused their power with respect to these facilities is an important part of our case, and so we didn't see how we could change or extract anything, any piece of evidence, from our submissions, sir. So we thought about it. We looked at whether it would be appropriate, and decided it wouldn't. So I'm sorry we couldn't make any progress.

129
MR. KAISER: All right. Before I go to the ruling on that issue, are you still looking for interim relief?

130
MR. BRETT: Well, I guess the interim relief is -- some time has passed on that. I'm not sure at the moment whether there would be much of a difference between interim relief and full relief. I think the notion of interim relief was that we would -- we are looking for a relief -- we're looking for expeditious relief, as soon as we can get it, so that we can get on with, you know, get on with our business, essentially.

131
MR. KAISER: No, I understand, but we can take it that that's been abandoned?

132
MR. BRETT: Yes, I think so.

133
MR. KAISER: All right.

134
Ms. Friedman, the panel's considered your submissions and of course those of Mr. Brett. And before I -- before we rule on that, I perhaps omitted to ask Toronto Hydro and Hydro One if they had any submissions on this.

135
MS. DJURDJEVIC: Well, Toronto Hydro had intended not to make independent submissions at this proceeding. We are being represented by the EDA. I would, just

in support of

there is some

witnesses to rebut the

no procedure, as

responses. And it would

fairly fundamental

should be regulation at all.

Ms. Friedman's submissions, state our position that we believe procedural fairness that the EDA should be allowed to call allegations made in the interrogatory responses, as there was Ms. Friedman pointed out, to respond to interrogatory seem only fair that both parties, everybody agrees, this is a issue to -- a threshold issue to this case, whether there should be regulation at all.

136
MS. PANTUSA: And Hydro One fully supports the position just
advocated by Toronto Hydro.
We also support Ms. Friedman's submissions.

137
MR. KAISER: Thank you. The two utilities that are separately
represented here, you'll let me know if
you want to make independent submissions. I'm going to treat, for
the moment, that Ms.
Friedman's representing the whole gang, but you feel free to chime
in if there's something
that doesn't represent the interests of your client.

138
MS. DJURDJEVIC: Thank you, Mr. Chair.

139
DECISION:

140
MR. KAISER: Having heard the submissions, the Board will
hear the
evidence being advanced by Ms. Friedman's client. We will
schedule an appropriate time this week.

141
PRELIMINARY MATTERS:

142
MR. KAISER: Was there some time this week that you wished to call
this panel?

143
MS. FRIEDMAN: Yes. In discussions amongst counsel, we thought that
Thursday would be the day
that we'd probably get to that.

144
MR. KAISER: All right.

145
MS. FRIEDMAN: So they're scheduled, as of now, to attend on
Thursday.

146

MR. KAISER: And Mr. Brett, I'm in your hands on this. We can either deal with the cross-examination on Thursday or we can bring them back on November the 8th. What's your convenience?

147

MR. BRETT: My view would be to bring them back at a later date. We need some time to look at the -- look at that evidence and prepare a proper cross-examination. And as I said to you, I think that -- well, I think -- I'm repeating myself, but we feel that anybody that is on that panel should also be available for cross-examination.

148

MR. KAISER: We are prepared to do the cross-examination on November 8th. Can you have your panel here, or at least somebody here?

149

MS. FRIEDMAN: I'll do my best. Thank you.

150

MR. KAISER: All right. So we'll proceed on November 8th with the cross-examination, however many members of the panel Ms. Friedman can arrange.

151

Is there any -- outside of the -- did I understand you to say that you would be providing Mr. Brett with witness statements?

152

MS. FRIEDMAN: Well, that doesn't appear to be necessary now. What I was trying to accomplish was that they be examined in chief and cross-examined on Thursday. And so I thought to assist Mr. Brett last week I'd provide him with statements of what I expected them to say so he can do any research or preparation he needed to. But now he's got more than a week in between when he hears their evidence, and when he's cross-examining.

153

MR. KAISER: Is there any documentary evidence that you'll be putting in that you should be providing Mr. Brett with?

154

MS. FRIEDMAN: No documents.

155

MR. KAISER: All right.

156

MR. BRETT: Mr. Chairman, just on the point of the evidence, not to beat this, but what Ms. Friedman had suggested she would do is draft, herself, a statement of what she thought the witnesses were going to say. I had been interested in statements

from the witnesses

themselves, the witness statement from the witnesses themselves. Be that as it may, the one point I would emphasize is that, if someone is going to give evidence, these people are, as I understand it -- I don't know whether you know this, but they're four executives from four separate LDCs.

157

Now, if each of these people's going speak to the circumstances of their particular LDCs and its negotiations with the cable company, they will only be able to speak, as I understand it, to the circumstances of their particular LDC. So, if four of them show up on a panel, and only two can come back for cross-examination, seems to me we're pretty severely prejudiced. I mean, if she can't get, if Ms. Friedman can't get, ahead of time, the agreement of four of them or however many she gets, three of them, she's got one she tells me she can't get for the 8th already, my submission would be that one then shouldn't be on the panel on Thursday. There should be a panel of three rather than a panel of four.

158

Because it's not like general evidence. These individuals can only speak to that situation. What we'll be faced with, if we don't have that principle, is, we can't cross-examine at all.

159

MR. KAISER: Is that the situation that on the 8th, are there going to be -- are we going to be absent some witnesses that give evidence on the Thursday?

160

MS. FRIEDMAN: So far I've been advised that one of the four cannot be available on the 8th. I will try again to see if he can shift his commitments.

161

MR. KAISER: Well, the Board has agreed to accommodate you, but I'd like you to accommodate Mr. Brett. I think his point is a fair one. Don't call any evidence that is not going to be available or subject to cross-examination.

162

All right, Mr. Brett, you're up to bat with the settlement agreement, your letter of October 19th.

163

PRESENTATION OF SETTLEMENT PROPOSAL
BY MR. BRETT:

164

MR. BRETT: Yes. Thank you, Mr. Chairman, members of the panel. The parties met for three days with Ms. Gail Morrison serving as facilitator. I think we all have copies -- you have copies of the agreement --

MR. KAISER: Yes. 165

MR. BRETT: -- in front of you. I'll just briefly take you
through this, it's not -- 166

MR. KAISER: Could you just stop there for a minute. Mr. Lyle,
should we be marking this? 167

MR. LYLE: I believe it's already been filed and given an exhibit number,
Mr. Chair. 168

MR. KAISER: It has? What exhibit number? 169

MR. LYLE: I don't see it listed in the prefiled material. 170

MR. KAISER: I didn't see it either. 171

MR. LYLE: So perhaps you're correct, Mr. Chair. We'll make it Exhibit
E.1.1. 172

MR. KAISER: 1.1? 173

MR. LYLE: E.1.1. 174

EXHIBIT NO. E.1.1: COPY OF SETTLEMENT PROPOSAL 175

MR. KAISER: Thank you. Sorry for interrupting you. 176

MR. BRETT: There are five issues, and let me go through each of
the five in turn, and then I'll return to
just one or two particular aspects of the agreement. 177

Issue number 1 was, should the Board set licence conditions for distributors with
respect to joint pole
use, providing for conditions of access, including the charge for such access, and
the answer says, as you
can see there, are straightforward. One group of parties - CCTA, MTS Allstream,
Quebecor Media,
Energy Probe Networks, London Connect -- 360 Networks, London Connect and Energy
Probe - said
yes, and the EDA, CEA, PWU, and Hydro One -- or not the PWU -- 178

MR. KAISER: Looks like -- 179

MR. BRETT: CEA and Hydro One said no. The PWU took a position
which is stated in an addendum 180

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that I sent to the Board dated October 20th. And it's a rather
lengthy addendum, but I'll
read it.

181
MR. KAISER: No, that's all right.

182
MR. BRETT: All right. Okay. I don't think that was any great
surprise that there was no agreement on
that issue.

183
On the second issue, though, we did reach agreement, after some considerable
discussion. And in
general, I think it would be fair to say that the parties reached more agreement
than they thought they
would. There was a genuine effort made, I believe, by both sides, and I believe
Gail Morrison, the
facilitator, assisted the process very ably. So we did reach agreement on certain
issues, and we were able
to provide a framework, or a sort of summary framework for issues that we didn't
agree on, to some
degree.

184
Number 2 is an example of an issue that we did agree on. Number 2 is:

185
"If the Board does set conditions of access, to what types of cable or
telecommunications services
providers should these conditions apply to?"

186
And you can see the answer there is that they should apply to --

187
"These conditions should apply to access to the communication space on an LDC's
poles by Canadian
carriers as defined in the Telecommunications Act, and cable companies, provided,
however" - and this is
an important exception - "that these conditions shall not apply to joint-use
arrangements between
incumbent local exchange carriers and hydro distributors that grant reciprocal
access to each other's
poles."

188
And you will recall that that is really -- that exception is crafted to exempt the
arrangement between Bell
Canada and the hydro companies in Ontario where they have, effectively, an
arrangement where they use
each other's poles.

189
And then the third issue, issue number 3, which kind of gets you into the dollars
and cents and the
structure of the charge. Issue number 3 is:

190
"If the Board does set conditions of access, what is the appropriate charge for
joint pole use? What
principles, elements and methodology should be considered in the calculation of the

charge? How should the charge be applied? Should it be a uniform charge for the entire province?"

191

So what we've done here is outlined the positions of the parties with respect to each of (a), (b), and (c). There wasn't agreement on either of (a), (b), (c). But what we did do is summarize the position, if you like, of two groups. As this has evolved, there are two groups of parties with two different positions throughout a lot of this.

192

So that -- we did agree, though -- I guess I should say, I anticipated that a little bit with respect to issue (a), principles. We did agree on some principles which should apply, and they are the principles of economic efficiency, fairness and competitive neutrality, and the fact that the pole charge should reflect the fact that poles are monopoly assets. That's (a) on page 5. And (b), we agree on a range within which the charge should fall.

193

Two things, really. The principle that one-time costs are recovered through one-time charges, and those are the so-called make-ready charges that you'll hear more of as the proceeding goes along. And secondly, that recurring charges should not be less than incremental costs and not more than stand-alone costs. So that's the range we agree on. Now, granted, it's a broad range, but at least we put the range out.

194

And then (c), recurring charges should provide for full recovery of incremental costs and should contribute toward embedded costs. Incremental costs, I think we agreed, are costs that the pole owner would not have incurred but for the attachment of the poles.

195

And then finally, as we state here, we disagreed upon the method to determine the contribution toward embedded costs, the second part of that.

196

And then we go on to set out the two positions with respect to the method that should be used to determine the contribution of the cable companies and other telecom companies toward embedded costs.

197

First, the position of the CCTA:

198

"The contribution should be determined as a usage-based allocation of fixed costs measured on an embedded basis, as recorded in the books of the utility. The usage-based allocation should reflect the actual usage of the communication space on the pole (the 2 feet immediately above the clearance space) plus a proportional share of the neutral separation space, which is the 3.25 feet between the

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communication space and the power space."

The position of -- and that's the position of CCTA et al. 199

The position of the EDA/CEA et al. is that: 200

"The EDA, CEA, and Hydro One believe that local negotiations should determine the proper contribution. If local negotiations fail, a procedure to be put in place by the Board should be available so that parties could have the matter determined. In the context of that process, whether it be an application to the Board or submissions in some form of ADR process, the LDC would be required to justify the rate it seeks to charge on one or more of the following bases, among others: 201

"(a) take as a departure point a hypothetical joint-use pole where each user has the same requirements. The cost of these requirements would be shared equally and the additional cost of each user's incremental requirements would be borne by each user individually; 202

"(b) allocate shares of total cost based on the relative costs that would be borne by each user on a stand-alone basis; 203

"(c) divide the savings realized from a joint-use pole relative to stand-alone support structures on an equal basis; and 204

(d) a relevant consideration may be relative revenues. 205

"Finally, other allocation methodologies might be appropriate, excluding the CCTA's recommended usable pole space methodology, but in any case -- excluding the CCTA's recommended usable pole space methodology, but in any case, the onus is on the LDC to justify its chosen methodology." 206

And then Energy Probe had their own position on this issue, and it was that: 207

"With respect to the recovery of embedded costs, Energy Probe believes that it is not practicable to determine costs on a utility-by-utility basis in advance of a cost rebasing exercise which is not anticipated in advance of 2008. Energy Probe reserves its position with regard to which methodology best addresses the appropriate cost recovery principles." 208

So that's with respect to principles. 209

210

MR. KAISER: Before you go on, can I ask, is Mr. Dingwall here?

211

MR. DINGWALL: Yes, sir.

212

MR. KAISER: Can you just elaborate on what your position is in this regard? I understand you're reserving your position. What does that mean?

213

MR. DINGWALL: Well, we're reserving our position with respect to which methodology that's being proposed for cost recovery is appropriate. But with respect to the question of whether or not the Board addresses costs on a utility-by-utility basis or on a global basis for the province, we're of the view that it's not practicable for the Board to look at utility-by-utility costs, and that certainly the information would not be available until 2008.

214

So to elaborate on that it's our view that the outcome of this process should be a rate which applies across the province subject -- and we make this -- we elaborate on this further on in the settlement agreement -- subject to a ratepayer protection which enables either LDCs or cable operators to apply to the Board for relief if it turns out that there's a substantial departure between the global rate and what the actual costs are for the LDCs once those become determined in the cost rebasing exercises that are going to follow this year.

215

MR. KAISER: I understand that. But assuming the Board proceeds and hears evidence as to what the appropriate rate is, do you intend to take a position on what the rate should be or not?

216

MR. DINGWALL: We do intend to take a position on what rate and how it would be calculated would be, once, of course, we've had the opportunity to test the evidence of the methodologies put forward.

217

MR. KAISER: Right. Thank you.

218

MR. BRETT: Thank you, Mr. Chairman, Panel.

219

So we now move to the issue of how the charge should be applied, and again, there was no agreement on this. And so what I will summarize here or read to you are the positions of the two groups, well really two groups in addition to Energy Probe, in their own words, as it were.

220

So with regards to the question of how the charge should be applied, the parties have not reached agreement but summarize their positions as follows. Now, the CCTA group, if I could put it that way, believes that because costs are most readily determined on a per-pole basis, the charge should be applied on a per-pole, per-user basis and not on a per-attachment basis. Applying the charge on a per-attachment basis would result in overrecovery of incremental costs and an over-contribution toward fixed costs.

221

Each user, i.e., single corporate entity, entering into a joint-use agreement should only be charged one charge per pole, regardless of the number of attachments on the pole and the number of services offered by the user to its customers. And attachment for these purposes should be defined as agreed in section 1.5, revision number 5, of the Mearie CCTA draft model agreement, and a copy of that is attached at the end of the settlement conference -- of the settlement draft agreement.

222

The position of the EDA, CEA, PWU, and Hydro One is different. They state the way the charge should be applied should be consistent with the methodology chosen by the negotiating parties to underlie their agreement. Where the parties are unable to agree, application to the Board/ADR process could be made and the LDC would be required to justify the method of applying the charge as flowing from a methodology agreed upon by the parties or determined by the Board/ADR process.

223

And then the position of Energy Probe is reserved.

224

And finally, with respect to uniformity, and you've touched on this already, but the CCTA group, parties were unable to agree. The CCTA's group said, yes, there should be a uniform rate for all LDCs based on representative costs of LDCs using CCTA's proposed methodology referred to above, in 3(a) above. And then, notwithstanding the above, this refers to what Mr. Dingwall was saying:

225

"If the application of the uniform rate to a particular LDC would result in a significant under- or overrecovery of costs, either party may seek a different rate from the Board on a case-by-case basis."

226

The position of the EDA group was no, and Energy Probe, as Mr. Dingwall just indicated, said yes, provided -- given the safety valve, if you like, contained in the CCTA position.

227

So now, then, we get to number 4, which -- where there was an agreement of the parties. And this took some time but it was -- this is the, really, what are the appropriate terms and conditions for a joint-use agreement for access to the poles of electricity distribution companies? And as a subtext, subpoint,

should there be a standard form of agreement for the entire province with the provision for bilateral negotiation of individual terms and conditions? So these are, if you like, the non-financial, bilateral provisions of the agreement or the provisions other than the charge.

228

Positions of the -- and the parties agreed on this, and let me just read it. I think it's straightforward but you need to follow the steps carefully:

229

"The parties agree that the terms and conditions contemplated in issue 4 can be dealt with separately by the parties after the Board makes a determination with respect to the other issues on the issues list. Following the Board's decision with respect to the other issues, and if the Board answers issue number 1 in the affirmative, the parties will, within four months, report to the Board progress to date on their negotiations respecting terms and conditions and may seek such further orders or directions as may be appropriate, including orders or directions respecting: (a) Which terms or conditions, if any, should be mandatory; and (b), which terms are open to individual negotiations between the parties."

230

And then finally:

231

"Pending the outcome of the negotiations referred to above, CCTA, CEA, and EDA have agreed to recommend to their respective members not to deny access or withhold permits for the sole reason that no agreement is in place, provided that the user is paying the rate established by the Board."

232

So effectively, it gives the parties some time to try and reach an agreement, negotiated agreement.

233

And finally, and this is quite short, the last issue, number 5:

234

"How should the new licence conditions be implemented and what should be the impact on existing contracts?"

235

"All parties except, MTS Allstream agree as follows: The new licence conditions should not impact existing contracts except as contemplated in those contracts. The licence conditions will be deemed to apply at the expiry of the current term of each existing contract. Where no contract existed at the time of the decision, the licence conditions will apply immediately."

236

In addition to those -- the treatment of those five issues, you will note that, and I should flag for you, and I believe this is Board practice anyway, but at the top of page 9, we recommend

that the final argument would be presented in writing. And at the beginning of the document, page 4, beginning of the substantive part of the document, in the preamble, I will read this preamble:

237

"The parties agree that this settlement agreement was entered into, under the direction of the facilitator, to assume for purposes of engaging in this settlement process and assisting the OEB that issue number 1 is answered in the affirmative. The positions and/or agreements of the CEA, EDA, and Hydro One in respect of issues 2 through 5 are not to be construed as their acknowledgment or agreement that regulation of access to LDCs' poles in any form should exist."

238

That, sir, is our settlement agreement. And we --

239

MR. KAISER: Now, Mr. Brett, let me ask you a question, just to follow up on that last point you were making. The question of whether the Board should regulate in this area is the threshold issue; correct?

240

MR. BRETT: It is in the sense that if the Board were to recommend -- decide it would not regulate, then these other issues --

241

MR. KAISER: Would go away.

242

MR. BRETT: -- would go away.

243

MR. KAISER: So my question to you is a matter of procedure, and I haven't really discussed this with my fellow Panel members. Should we be hearing evidence and deciding that issue first before we drag all these economists in?

244

MR. BRETT: Well, sir, I would say no. I think in trying to answer the question, it's important to address -- to try to -- I go back, actually, and this is sort of in a way a bit of a rerun of motions day. I go back to my point there that in order to answer that question properly, you do need to also look at the answers to these other questions, because they're interrelated. And the example I used was one of the arguments that parties use against the Board regulating, as it would be incredibly complicated and heavy-handed and so on and so forth.

245

On the other hand, if the Board were to decide that a uniform rate were to apply, with a safety valve in place for some egregious exceptions -- egregious application of the formula, then,

you know, that really is, in our mind at least, a very simple, straightforward thing, and it really simplifies matters rather than complicates them. So in that sense, I think they need to be answered together.

246

And our panel, we have structured our panel to have parties, as a practical matter, with both our professional economists and our business people on the panel, because we feel that all of the issues should be dealt with at once. In other words, we would suggest to you that the most efficacious way to do this is simply to have -- have the issues dealt with together. And we provide a panel that can deal -- can address each of those issues as they relate to one another.

247

MR. KAISER: Well, you're right. We actually did canvass this at Motions Day, really, that issue.

248

Is counsel for MTS Allstream here?

249

MS. CROWE: Yes, I'm present.

250

MR. KAISER: Could you help us with respect to the position of your client on issue number 5 of the settlement agreement? Do you have a copy of the settlement agreement?

251

MS. CROWE: Yes, I do. And our position is that the use or the utility of a regulated rate diminishes if it does not apply across the board. In my contracts -- well, the poles or a monopoly asset. Many contracts were entered into in an environment that did not involve even bargaining power. And so, in the interests of regulatory certainty and minimizing any competitive impacts from uneven rates, if the Board were to determine that it is appropriate to set a standard rate or other terms of access to power distribution poles, that it should apply to all such access by all parties.

252

MR. KAISER: Is it your concern that if the existing contracts were exempted until such time as they expired, that your --

253

MS. CROWE: Sorry to interrupt, but I'm having trouble hearing you.

254

MR. KAISER: Sorry. Is your concern that if the existing contracts were exempted until they expired, that your client would be foreclosed from access in certain cases?

255

MS. CROWE: That could be the case, in certain instances, if all

positions in the communication space
were taken.

256
The other concern is, some of the existing agreements might have a reopener clause
or a renewal clause
that the pole owner could -- could try to use to continue that contract under that
rate into the future. And
it's possible that the contract could extend farther in the future than its normal
termination point.

257
MR. KAISER: Now, as we understand it, you are the only party
who's not in agreement on this point; is
that correct?

258
MS. CROWE: That appears to be the case.

259
MR. KAISER: Were you at the settlement conference?

260
MS. CROWE: Yes yes, I was.

261
MR. KAISER: And do you intend to call any evidence on this issue?

262
MS. CROWE: We had not intended to call evidence. We can make a
witness available to speak to this
matter if you have further questions.

263
MR. KAISER: Well, I think it would be of assistance, if you have
a concern -- I mean, this is an
important issue.

264
MS. CROWE: Okay.

265
MR. KAISER: If you have a concern that somehow exempting existing
contracts is going to
disadvantage your client, we'd like to hear some evidence on it.

266
MS. CROWE: All right. We'll see what we can bring together for
tomorrow.

267
MR. KAISER: Right. The Panel, of course, has had the opportunity
to review the settlement agreement,
as you've filed it, and now marked as exhibit, is it, E1-1 or 1.1?

268
MR. LYLE: 1.1. That's correct, Mr. Chair.

269
MR. KAISER: Before I do that, were there any other submissions on
this, or has Mr. Brett accurately
represented the -- we have the written document. I don't think
there's any mystery as to

270
Anyone else wish to make any comments? Mr. Dingwall?

271
MR. DINGWALL: No, sir, I have no comments.

272
MR. KAISER: Right. In that event, we will accept the settlement
agreement as filed by Mr. Brett on
behalf of all the parties. Thank you for taking the time in the
settlement agreement to
work through this. I know it's a lengthy process and perhaps not
that easy, but it does
accommodate the Board and assist all parties in reducing the
workload here. So thank
you for that.

273
Mr. Brett, I guess you're up to bat.

274
PROCEDURAL MATTERS:

275
MR. LYLE: Perhaps, Mr. Chair, before that we could go through the hearing
schedule.

276
MR. KAISER: Yes, if you wish. Do we have the document that the
Board Secretary filed?

277
MR. LYLE: Yes, Mr. Chair. A draft schedule was circulated to the parties.

278
MR. KAISER: Could we distribute --

279
MR. LYLE: Does the Panel have copies of those, Mr. Chair?

280
MR. KAISER: Yes, we do.

281
MR. LYLE: Yes, Mr. Chair. There's a tentative hearing schedule, and it
indicates that, of course,
today, we're sitting for the full day; tomorrow we're intending to sit
between 12 and 5;
and then on Thursday between 11 and 5; and then another full day on
Friday; and on
November 8th, there will be a full day sitting, if necessary.

282
Perhaps, Mr. Chair, you might want to address the witness panels and the order in
which they will be
appearing.

283
MR. KAISER: Before I do that, Mr. Sommerville has just reminded
Page 26

me, you raised, and I take it it's on agreement of all parties, Mr. Brett, that you wanted to proceed by way of written argument?

284
MR. BRETT: Yes, sir. That was the idea. That was the wish.

285
MR. KAISER: I don't think the Board has any trouble with that. One possibility I wanted to raise with you: Would it be acceptable to the parties, if, in the event the Board has questions on the written argument, we can call you back for questions?

286
MR. BRETT: Yes, sir. I have no issue with that.

287
MR. KAISER: Mr. Ruby?

288
MR. RUBY: Yes, of course, Mr. Chair.

289
MR. KAISER: Ms. Friedman?

290
MS. FRIEDMAN: Yes, that's acceptable.

291
MR. KAISER: I don't know whether it will be necessary but I just wanted to caution you.

292
[Audio feedback]

293
MR. KAISER: Mr. Lyle, did you want to deal with the next issue, as to the order of evidence?

294
MR. LYLE: Yes. Of course, Mr. Chair, the CCTA panel is up first, and I understand from Mr. Brett that this is the only panel that the CCTA will be calling. I understand that Mr. Ruby has a witness who's only available tomorrow.

295
MR. RUBY: Yes, that's right. He's flying in from Manitoba. When we made those arrangements, we were not aware it would be a half day at the time, and that seemed the most likely time when we would need him.

296
MR. LYLE: And I understand that Ms. Crowe's witness is also only available tomorrow.

297
MS. CROWE: Yes, she's available tomorrow. I see that we have November 8th scheduled now. She could also be available that day instead. But those are the two days

that she would be
available.

298
MR. KAISER: Counsel, I take it you have no objection if we have
to shift witnesses around out of order
to accommodate witnesses?

299
MR. BRETT: No, sir. I mean, we would prefer, as much as
possible, to have our narrative go in, but if
it need be, we can adjust.

300
MR. KAISER: Mr. Ruby?

301
MR. RUBY: Yes. We share the same concern, as much as possible, to try and
stick to what's the
natural order. But if it has to be adjusted, of course, that's
appropriate.

302
MR. KAISER: Ms. Friedman, is that acceptable?

303
MS. FRIEDMAN: Yes, I agree.

304
MR. KAISER: Sorry, Mr. Lyle. Go ahead.

305
MR. LYLE: And then I believe, Mr. Chair, that if we're able to complete
the CCTA panel today, then
on Thursday we could commence with the EDA panels. I believe there's two
panels, an
expert witness panel and also the utility executives that were referred
to previously.

306
MR. BRETT: Mr. Chairman, perhaps I did jump a little prematurely
there. I failed to advise you and
Mr. Lyle that two of our expert witnesses do have to finish up
tomorrow. They're here
today and tomorrow, but they would need to finish tomorrow. And one
of our panel is
available -- one other member of our panel, business member of our
panel, is available
today and tomorrow, but not on Thursday.

307
MR. KAISER: Who is that?

308
MR. BRETT: That's Mr. John Armstrong from Rogers Cable. And our
expert witnesses are Mr. Paul
Glist and Ms. Patricia Kravtin, who can't be available beyond
tomorrow. So we're okay
to the end of tomorrow. I don't know how much cross-examination
people have.

309
MR. KAISER: Your experts are here today, you say?

310
MR. BRETT: They are, sir. They're all right here on this panel
now.

311
MR. LYLE: Well, perhaps, Mr. Chair, we could assess where we are by the
end of today.

312
MR. KAISER: Right. Well, I guess we should get on with it if
we're going to get through these
witnesses. Any other scheduling matters?

313
MR. LYLE: No, I don't believe so at this time, Mr. Chair.

314
MR. BRETT: Mr. Chairman and Panel, I'd like to introduce the
CCTA witnesses, after which they
could be sworn. Perhaps I should just go through and name them for
you first, as a group.
And I'll start closest to you on the end, on your right, is Mr. Don
Ford from D.A. Ford &
Associates. He's one of our expert witnesses. Next to Mr. Ford is
Ms. Patricia Kravtin,
an economist and expert witness. Next to Ms. Kravtin is Mr. Paul
Glist, another expert
witness. Next to Mr. Glist is Lori Assheton-Smith, who's the senior
vice-president and
general counsel of The Canadian Cable Television Association, and
she'll serve as a sort
of, informal quarterback of the panel to help questions as to who
might be appropriate to
answer particular questions.

315
Coming along here on the left, Mr. Roy O'Brien, executive director of the Ontario
region of the CCTA.
Next to him, Mr. John Armstrong, director of municipal and industry relations,
Rogers Cable
Communications Inc. And finally, last but not least, just next to me, Mr. Steve
Greenham, who is the
HFC rebuild manager for Cogeco Cable Inc. in Ontario.

316
So that's our panel, and perhaps they could be sworn.

317
CCTA PANEL 1 - FORD, KRAVTIN, GLIST,
ASSHETON-SMITH, O'BRIEN, ARMSTRONG,
GREENHAM:

318
D. FORD; Sworn.

319
P. KRAVTIN; Sworn.

320
P. GLIST; Sworn.

321
L. ASSHETON-SMITH; Sworn.

322
R. O'BRIEN; Sworn.

323
J. ARMSTRONG; Sworn.

324
S. GREENHAM; Sworn.

325
MR. KAISER: Mr. Lyle, has the CCTA evidence been marked?

326
MR. LYLE: You're talking about the curriculum vitae, Mr. Chair?

327
MR. KAISER: No, the prefilled evidence.

328
MR. LYLE: Yes, the prefilled evidence is all received. Tab B.1 in the
exhibit list, and the reply
evidence is at B.3.

329
MR. KAISER: I take it, Mr. Brett, you're going to deal with your
reply evidence at the same time as the
direct evidence?

330
EXAMINATION BY MR. BRETT:

331
MR. BRETT: Yes, I'm going to deal with that at the same time,
and I was going to just take each
witness through the evidence.

332
And starting with you, Mr. Ford, I understand that you prepared your evidence as
Appendix C to the
CCTA's prefilled evidence that was filed last December.

333
MR. FORD: That's correct.

334
MR. BRETT: And you adopt that evidence? Was that evidence
prepared under your direction or
control?

335
MR. FORD: It was.

336
MR. BRETT: And you adopt that in evidence this proceeding?

337
MR. FORD: Yes, I do.

MR. BRETT: And moving to you, Ms. Patricia Kravtin and Mr. Paul Glist, you two collaborated in the preparation of the CCTA reply evidence?

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MR. GLIST: Yes.

340

MS. KRAVTIN: Yes.

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MR. BRETT: And do you adopt that evidence as your in evidence this proceeding?

342

MR. GLIST: Yes, we do.

343

MR. BRETT: Do we have an exhibit number for the reply evidence, Mr. Lyle?

344

MR. KAISER: We do.

345

MR. LYLE: Yes, we do. It's B.3, Mr. Brett.

346

MR. BRETT: Now, Ms. Assheton-Smith, you were responsible, along with the three gentlemen to my left, for the preparation of CCTA's principal evidence and many of the interrogatory responses; is that right?

347

MS. ASSHETON-SMITH: That's correct.

348

MR. BRETT: And that evidence was prepared in collaboration among you and these three individuals?

349

MS. ASSHETON-SMITH: That's correct.

350

MR. BRETT: And you adopt that evidence as the CCTA's evidence in this case?

351

MS. ASSHETON-SMITH: Yes.

352

MR. BRETT: And Mr. O'Brien, you also collaborated in the preparation of the CCTA's evidence-in-chief, including IR responses?

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MR. O'BRIEN: Yes.

354

MR. BRETT: And you adopt that evidence, you adopt that as the CCTA evidence in this case?

MR. O'BRIEN: Yes.

355

preparation of MR. BRETT: Mr. Armstrong, you too collaborated in the the CCTA principal evidence, including the IR responses?

356

MR. ARMSTRONG: That's correct.

357

this case? MR. BRETT: And you adopt that evidence as the CCTA's evidence in

358

MR. ARMSTRONG: Yes.

359

preparation of MR. BRETT: And finally, Mr. Greenham, you collaborated in the the CCTA's principal evidence, including IR responses?

360

MR. GREENHAM: Yes.

361

this case? MR. BRETT: And you adopt that evidence as the CCTA's evidence in

362

MR. GREENHAM: Yes, I do.

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MR. BRETT: Thank you very much.

364

Ms. Smith, would you please state for the Board a summary overview of the CCTA's evidence, please.

365

MS. ASSHETON-SMITH: Thank you.

366

Mr. Chair, Board members, and Staff, on behalf of the CCTA I'd like to thank you for the opportunity to appear before you today. With your indulgence, I'd like to make a few brief introductory remarks to assist the Board, Staff, and intervenors in understanding our position and proposal.

367

Essentially, CCTA's position in this proceeding can be summarized in three points. One, LDCs are monopoly suppliers of essential facilities. As such, regulated access to these facilities is both appropriate and necessary. Two, CCTA members are fully prepared to pay their fair share of the costs of a pole, but in our view a charge represents a fair share if it is cost-based, if it reflects our actual use of the communication space plus our proportionate share of the buried and clearance space, and if it is applied on a per-pole basis. Three, a uniform charge is fair, administratively efficient, and appropriate in the

368

circumstances of this case. Now, I'd like to briefly address each of these three points.

369

First, I want to emphasize that CCTA and its members have been negotiating pole access with LDCs for almost a decade, with little or no success in reaching final agreement on an appropriate pole usage charge. That's not to say that we haven't made great strides in reaching agreement on other terms and conditions, and I'm pleased to say that we have, thanks to the efforts of our respective negotiating teams. But we're here today because negotiating a usage charge with a monopoly supplier is a difficult and ultimately losing proposition.

370

In light of the unequal bargaining power between the two parties, and given the demonstrated ability of the LDCs to abuse their market power, we submit that this Board's intervention is warranted and, indeed, required. Mr. Armstrong, Mr. Greenham, and Mr. O'Brien, have all been directly involved with LDC negotiations for a number of years, and are here to answer any questions about those negotiations as well as any industry-specific questions.

371

Second, I'd like to make it clear that CCTA members are fully committed to paying a fair share of the cost of the pole. But in our view, this effectively means three things: A, it means a charge that is cost-based which provides for the full recovery of incremental costs and a contribution toward common costs; B, it means that our contribution toward common costs reflects our actual use of the communication space plus our proportionate share of the buried and clearance spaces. Under this approach, the entire cost of the pole is recovered.

372

(c) It means that the pole usage charge is applied on a per-pole, per-user basis. This is necessary because this is how costs have been determined. To apply the per-user charge to each attachment, which is what the LDCs are suggesting that you do, would result in a significant overrecovery of costs. A per-attachment charge could, of course, be calculated if costs were allocated in such a fashion, but this data is not on the record of this proceeding, and collecting it would be an onerous and time-consuming task, likely requiring a pole-by-pole audit of existing pole usage. Mr. Ford, Ms. Kravtin, and Mr. Glist will speak to questions related to these and related issues.

373

Finally, Mr. Chair, it is CCTA's position that this Board should fix a charge-per-pole usage that would apply uniformly across the province to all LDCs. We believe this is appropriate in light of the significant transaction costs associated with negotiating multiple charges on a system-by-system basis. These costs would impose a substantial administrative burden both on the parties and on the

Staff and the Board. It would also require more frequent intervention by the Board to resolve disputes where data is unavailable or unreliable.

374

Moreover, it is apparent from a review of the evidence in this proceeding that the available pole cost data is, in fact, unreliable and incomplete. In the absence of consistent and reliable individual LDC cost data, we submit that the appropriate approach is to use representative cost data derived from the best available evidence to calculate a uniform charge.

375

In short, we believe a uniform charge is the fairest, most efficient, and, in fact, most light-handed approach in the circumstances. At the same time, where the application of a uniform charge would result in significant, under- or overrecovery of costs, our recommended approach would permit either party to seek a different charge on a case-by-case basis. Of course, this assumes that reliable costing data would be available to justify a departure from the uniform charge.

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We would all be pleased to respond to questions related to this aspect of our application.

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So, to recap, our position in this proceeding is really quite simple and is based on three fundamental submissions. Poles are monopoly assets and must be regulated. Costs of pole usage should be shared among all users on the basis of actual use of the usable space, and proportionate share of the buried and clearance spaces. And finally, a uniform charge based on representative data is fair and administratively efficient.

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Thank you for the opportunity to outline our position, and we look forward to your questions.

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MR. BRETT: Thank you very much, Ms. Assheton-Smith.

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Mr. Chairman, our panel is now available for cross-examination.

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MR. KAISER: Thank you.

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MR. LYLE: Mr. Chair, perhaps it would be an opportune moment to take the morning break. I understand that some participants in the hearing are pregnant and would need the break.

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MR. KAISER: Thank you. We'll take the morning break. Back in 15 minutes, if that's acceptable.

--- Recess taken at 10:52 a.m.

--- On resuming at 11:22 a.m.

MR. KAISER: Please be seated. Did we have any agreement as to the order of cross-examination?

MS. FRIEDMAN: Yes, I believe we did. I'm going to proceed first, followed by Mr. Ruby for the CEA, then followed by Mr. Dingwall on behalf of Energy Probe, and then I believe Mr. Lokan. No questions? Mr. Lokan won't have any cross-examination questions.

MR. KAISER: Fine. Proceed.

CROSS-EXAMINATION BY MS. FRIEDMAN:

MS. FRIEDMAN: Good morning, panel. My name is Kelly Friedman, and I'm counsel to the Electricity Distributors Association. In an effort to keep the transcript as clean as possible, I intend to direct questions to a particular witness. Of course, if for some reason you don't feel like you're the appropriate person to answer, I'm happy for Ms. Assheton-Smith to rejig who will answer. I just thought that it would be easiest for transcript purposes that I direct the question to a particular witness.

I'm going start my discussion this morning discussing economic concepts with Ms. Kravtin. So, until I indicate otherwise, the questions are going to be for you, Ms. Kravtin. And I'd like to begin with a few questions just to understand your background.

Ms. Kravtin, you've consulted on electricity and regulator matters for many years; is that correct?

MS. KRAVTIN: Yes, although my primary area of expertise is in telecommunications and cable matters.

MS. FRIEDMAN: And you've testified in various proceedings in various parts of the United States and elsewhere.

MS. KRAVTIN: Yes, that is correct. I've testified extensively before, close to, I think, 30 state jurisdiction, as well as the FCC, and I've also put in testimony

before the CRTC

and I believe the Manitoba Board as well.

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MS. FRIEDMAN: And you're familiar, to some degree, with electricity markets in various parts of the United States and elsewhere?

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MS. KRAVTIN: I have served as an expert witness in some electricity matters, yes, although the subject of my testimony dealt with use of certain facilities by telecommunications companies, in particular. I've done some work, I should say, in cost benchmarking of electric utilities as well.

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MS. FRIEDMAN: You're aware, no doubt, that the United Kingdom has gone through electricity deregulation.

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MS. KRAVTIN: Yes, I am aware generally of the moves toward electricity deregulation throughout the U.S. and other countries, yes.

400

MS. FRIEDMAN: Okay. Are you aware of a Mr. Stephen Littlechild who was the chief regulator in the United Kingdom during the course of that deregulation?

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MS. KRAVTIN: I'm familiar with his name, although I've not had encounters, you know, with him personally. So if you could clarify, perhaps, the nature of my familiarity that you're asking for that would be helpful.

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MS. FRIEDMAN: Certainly. You might know him as Professor Littlechild from your economics training. Do you understand him to be a regulatory economist and then a regulator? Professor Littlechild? Or you're simply not familiar with him, with his work?

403

MS. KRAVTIN: If you could identify maybe, perhaps, certain pieces of his work? Again, I'm familiar with the name, but -- I can't say that I could be familiar with all his work, no.

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MS. FRIEDMAN: Perhaps you would be familiar with his work on price cap regulation? He was one of the originators of price cap regulation in the performance-based regulation context for electricity and telecom.

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MS. KRAVTIN: Yes, I am familiar that he's done some work in that

area.

406

MS. FRIEDMAN: Okay. Would you agree with me, Ms. Kravtin, that problems of cost allocation have received considerable attention from economists.

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MS. KRAVTIN: Yes, I would agree, certainly, that cost allocation, particularly in the regulatory field, has been something that economists have looked at throughout the years, yes.

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MS. FRIEDMAN: And would you agree that game theory is the larger area of economics which deals with bargaining and negotiation in cost allocation?

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MS. KRAVTIN: Well, I would agree that certainly game theory is relevant to that subject, but I think there is a host of other institutional and regulatory historical matters that have borne on the issue as well. I wouldn't limit it just to game theory.

410

MS. FRIEDMAN: Given that you're familiar with game theory, I take it you would agree that some of the central ideas in co-operative game theory started out in the theoretical literature on cost allocation. Are you familiar with any of the theoretical literature on cost allocation, as it has been applied by regulators?

411

MS. KRAVTIN: Yes, certainly throughout my education in economics I've had my share of theoretical study. So I am aware of, you know, all aspects of economic theory that bear upon the issue of regulation. Again, I don't think it's just game theory, but a host of other economic regulation of industry that was certainly come to bear on the regulatory process.

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MS. FRIEDMAN: In your report, particularly at page 2, you stated, I'll quote, it's at lines 2 to 4, that:

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"Drs. Mitchell and Yatchew take issue with this approach, not in the name of economics but in the name of fairness."

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I just want to touch on that concept of fairness for a moment. Do you agree that leading economists in the field of cost allocation have identified three major themes, those themes being efficiency, equity, and incentives, being closely intertwined with cost-allocation principles?

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MS. KRAVTIN: Yes, I would agree that those factors you've
identified certainly come into play in
evaluating cost allocation.

416
MS. FRIEDMAN: So, just to confirm with you, you agree that cost
allocation can involve
consideration for fairness?

417
MS. KRAVTIN: Yes, I would agree. Although, as a economist, I think
that we really need to look
at, first, the benchmark of efficiency, and then consider the other
issues, because those issues are more subject to subjective interpretation. So I
believe that first
you look at -- as an economist, what we have to offer, I think, is
to look at pure economic principles of efficiency, and then move on to consider the
other aspects which we economists can address, but as well as others from
other disciplines.

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MS. FRIEDMAN: Are you familiar with a text entitled: "The Handbook
of Game Theory"?

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MS. KRAVTIN: I can't say that I'm familiar with that particular
text, no.

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MS. FRIEDMAN: Okay. What about just one other text by way of
background: "Handbooks in
Economics," published by Elsevier/North-Holland. Are you familiar
with that series of handbooks? Handbooks in economics?

421
MS. KRAVTIN: No, I can't say that I have. It could be, if you
presented the book, I'm sure at some
point during my education I may have perused it, but it's not one of
the ones on my shelf at the moment.

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MS. FRIEDMAN: Thank you. Moving from your background, a point made
-- and going specifically to cable attachments. A point made in your report at
page 3 is that:

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"Electric utility facilities make far greater use of poles, and thus have far
greater impact on poles than
cable facilities."

424
And I'd like to just talk to you a little bit about the impact of electricity
versus cable facilities on poles.
While you state that electric utilities make far greater use of poles, would you

agree that the cable company attachments require some height above minimum grade? So they require some clearance space? Perhaps Mr. Glist could speak to that, it's not a economics question per se.

425

MR. GLIST: Yes, I'm happy to take that. We did collaborate on the report, so -- in this area, there's no doubt that everyone is trying to work towards the sharing of the pole. And it is correct that communications users and electric users require certain clearances. I think the point that we were trying to make at this page of the testimony that you're citing is that the relative use made of the pole by electric facilities is greater than that of cable television facilities, in that power lines need to be higher above roadsides than cable, they need to be higher above pedestrians than cable. You've got to rack your primary above your secondary. They're heavier. That leads to higher poles, deeper poles, higher class of poles, more cost. And so we were -- we were trying -- this, of course, is the summary of the testimony. But we were trying to introduce the concept that one looks to relative use of the pole rather than the single fact that people need to elevate facilities above ground.

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MS. KRAVTIN: I think I could add to that from the economic perspective, and what -- again, as Mr. Glist mentioned, this is a summary, so we could go further into the text later on.

427

But we're trying to frame this from the economics perspective, again, in terms of applying principles of efficiency and cost causation to the development of a rate formula to apply here. And from the standpoint of economics and efficiency, you try to look to those costs that can be identified as relating to the cost causation, costs that would not be incurred but for the presence of the attacher. And so you start looking at criteria as to identifying who you can attribute the cost to.

428

And I think that's what we are looking at here, that electric you can say, and there's a history in regulation that says these costs are really incurred for the purpose of supplying the core utility service, not for the additional attachers. And that's what economics looks at in terms of the efficiency and cost-causation aspect.

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And when that happens, then you can assure that the utility and its customers are no worse off because they're bearing the costs that their use and utility customers cause, and the other attachers can then be attributed based on their use.

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MS. FRIEDMAN: Thank you. And perhaps I could stay with Mr. Glist for the next few questions.

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Just to understand the relative uses of the pole, or the relative impact on the poles that we started with. If a cable company's requirements are 15 percent of the dedicated space on the pole, so if 15 percent of the above-ground space is for their cable attachments, does that mean that a pole can be put up that's 15 percent the height of a power pole, if it was just for cable?

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MR. GLIST: Well, actually, what I've been trying to say is that the poles are existing facilities that have been erected to meet the needs of an LDC and its joint owner, ILEC; and that when a cable operator comes along, if there's surplus space, then that surplus space is utilized for the cable attachment. That could be measured at 15 percent. If the space is not available, then the cable applicant goes through the make-ready process to pay for a new pole, taller pole, that can accommodate the needs of the cable company, and the title to that pole is ceded over to the utility pole owner, and then the cable operator pays rent, okay?

433

So, up front, you're addressing the incremental costs, which is sort of the economically efficient, no-subsidy point. And now we're talking about, what more should be in a recurring charge in order to make a full and fair contribution towards common costs. And what we're trying to say is that, if you measure the use of the -- the space used on the pole for horizontal communications and power conductors as 15 percent assigned to cable, and we know that cable is attaching one strand of a communications line and there's a lot more power facilities than that, then you take that proportionate use and you use that as a allocator for common costs.

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So no one is saying that there is a pole that's, you know, five feet high, you know, and that that's theoretically a pole for one party and there's a pole that's ten feet high and that's theoretically a pole for another party. We're trying to work with the reality on the ground, that there's a pole there. It's got surplus space or it doesn't. If it doesn't have surplus space, we pay to make it.

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MS. FRIEDMAN: But if there wasn't a pole in a position where a cable company needed one, you're not saying, are you, that the pole that they could erect, if they had the permission to do so, could be 15 percent the size of a power pole?

436

MR. GLIST: Well, actually, we're not in a real position to erect

that hypothetical pole to begin with.

We start from the same premise that CEA starts from in their testimony, that no one really wants to have multiplication of poles or to have cable start building their own poles. So the capital contribution that we're making up front for make-ready is a way of erecting that pole.

437

Am I answering the question?

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MS. FRIEDMAN: Okay. You do agree, though, that poles have to be replaced eventually?

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MR. GLIST: If a pole can get -- a pole can get hit by a car. It could need to be renewed at the end of its life. Sure.

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MS. FRIEDMAN: Right. And not going too much --

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MR. GLIST: It's true with or without the presence of a third party attachment.

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MS. FRIEDMAN: That's right. And there could be a situation where a cable company needs a pole but there isn't a pole currently there?

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MR. GLIST: In almost all cases, there is a pole there. And my understanding is that, sort of, the reality of this hearing is that we're talking about charges for this vast suite of embedded poles out there, rather than the hypothetically non-existent pole.

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MS. FRIEDMAN: On page 3 of your report, you discuss a real estate analogy. And I'd like to put a real estate example to you to get your reaction, Mr. Glist and/or Ms. Kravtin, and you're both welcome to comment on this.

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And it's just the example of a shopping centre. If Sears, for example, occupies 15 percent of the floor space of a shopping centre, would you agree with me that it might be reasonable that Sears would use about 15 percent of the parking spaces of the shopping centre?

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MR. GLIST: I actually wouldn't know that. And I think the reason that we used the elevator example was, we were working from situations that we actually knew; that if you've got -- you know, if you're renting one floor of an 11-storey building and ten floors are for another party, you don't expect to pay one-half the cost of the elevator.

447

MS. FRIEDMAN: Okay. So, Mr. Glist, just in the course of your legal practice and the business advise you give, I take it you're not familiar with how commercial real estate leases deal with dividing the expense of a parking lot, for example, among tenants?

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MR. GLIST: No, I can't say that I'm familiar with parking lot allocation.

449

MS. FRIEDMAN: Okay. Mr. Glist, would you agree that cable companies, in order to accommodate their attachments, require some part of the pole to be buried? And that's just a given.

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MR. GLIST: Well, any pole that is erected would typically have 10 percent of its length plus 2 feet buried for stability, so that's true no matter who owns or sets the pole. But the taller poles used to accommodate the secondary and primary line have to be set more deeply than shorter poles that would satisfy communications needs.

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MS. FRIEDMAN: Okay. But the communications -- the poles for communications lines has to have a buried portion.

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MR. GLIST: Any pole --

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MS. FRIEDMAN: Any pole.

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MR. GLIST: -- would need a buried portion.

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MS. FRIEDMAN: Ms. Kravtin, from the economics side, given that a cable company needs the pole to be buried and requires some clearance, which I think Mr. Glist has just made clear, from an economics perspective, would you agree that a cable company causes some of the cost of the buried or clearance space?

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MS. KRAVTIN: No, I would not. As a general proposition, again, what we're talking about is use of embedded facilities that have been placed historically to serve the core utility businesses of the joint owners, the electric and telephone industries. So, again, we're looking at it from the perspective of the reality that exists and trying to examine cost causation, based on that existing -- that's what economics, you

457

And the issue of subcosts and cost causation, you know, those are integral concepts of economic theory. And that underlies why, for economic efficiency, and as your own economic experts have realized, that it is efficient from an economic standpoint that the incremental costs be covered when you have an existing facility in place.

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MS. FRIEDMAN: Can we agree, Ms. Kravtin, at minimum, that at least some of the costs of the buried portions are common to both the electricity attacher and the cable attacher, or the electricity owner of the pole and the cable of the buried and clearance portions are common links?

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MS. KRAVTIN: Well, I think we can agree that those types of costs are classified as common costs, which are then subject to appropriate allocation, which I believe is the subject of this hearing.

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MS. FRIEDMAN: Staying with you, Ms. Kravtin, I'd like to discuss a little bit the economies of scope issues, and I'll try not to use too many economics catch phrases. Do you agree that, in economic terms, the provision of pole services to two or more companies from a single pole is less costly than the use of separate poles by each company, or from an overall societal perspective? The cost of one pole is less than the cost of two poles, if each company did it separately.

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MS. KRAVTIN: Well, I think it's hard to answer in the abstract your hypothetical, but I certainly can agree in principle that there are economies from sharing those resources, and that's part of what I believe underlies the policy to try to avoid the duplication of facilities. In fact, the reality of the market is that, for all intents and purposes, a third party such as cable could not go out and duplicate those facilities. So, separate and apart from, you know, the economic theory, we have to address the practical reality that they could not duplicate those poles. And again, I think that's a big issue in this case, and that has to enter into the allocation formula. That they're not in a position to go out and duplicate and build those facilities.

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MS. FRIEDMAN: Okay. Do you agree that -- let's look at the concept for a second of incremental

total costs of costs -- that the incremental costs of cable attachments equals the pole serving just the pole serving both electricity and cable, less the costs of the attachments? electricity? Would that give us the incremental cost of cable

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MS. KRAVTIN: I think you've left off the other joint owner, which is the telephone utility, as I understand it, which has an existing joint-use agreement, and historically was considered in the build-out of those poles. So if you're trying to look at a definition of the incremental costs to cable, generally you look at all the potential occupiers of that pole.

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MR. GLIST: And I'd also add that, at least I didn't hear in your question, a recognition of the make-ready phase of attachment. Where if the pole does not have surplus space, in other words, if the embedded facility built for utility and other purposes did not have surplus to accommodate cable, if it wasn't equal to the same cost of one -- for cable, then the cable company pays to upgrade that facility to the one that meet its needs.

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MS. FRIEDMAN: Right, and you consider, Mr. Glist, that make-ready cost an incremental cost?

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MR. GLIST: Yes, I do.

467
MS. KRAVTIN: Or it should be. In theory, it should be an incremental cost. In practice, what we've seen over the years is that utilities have made some attempts to flow-through indirect costs as part of that calculation. But in theory, that's what they should be limited to cover.

468
MS. FRIEDMAN: Okay. So just so we can simplify it, Ms. Kravtin, forgetting about any telephone attachment, suppose there is simply electricity and cable on a pole. The incremental costs of the cable attachments would be, then, the total costs of the pole serving both the electricity and cable less the costs of the electricity, and that way you would get incremental costs for cable, whether you deal with them in terms of make-ready costs or otherwise?

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MS. KRAVTIN: Excuse me, please.

470

Again, let's try to clarify that what we're talking about, now, is trying to look at a theoretical definition that you would find in the economics literature about how to define incremental costs when there are multiple entities involved. Because there are particulars, as some of my colleagues may wish to address. Mr. Glist talked about make-ready, Mr. Ford is talking about the existence of support structures, so if we confine our discussion right now to the theory, and then let my colleagues perhaps talk about the realities, which I think is of interest to the Board as well.

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You know, generally when you have, you know, multiple parties involved in trying to isolate what the pure incremental cost is of a second or third or fourth entity, then you would look at the total costs and then you would subtract the costs, basically, that would exist but for the other attachers, and that's an important concept. I think it underlies the formula that we are proposing, is trying to isolate the "but for" costs of cable, the costs that would not exist but for cable looking to occupy existing facilities.

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MS. FRIEDMAN: You mentioned one of the realities on the ground is that poles tend to be there. The question is, how cable can get access and at what cost? So if a company builds and installs a pole with the expectation of subsequent tenants coming along, do you agree that some of the costs of serving those tenants are incurred whether or not a tenant ever arrives?

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MS. KRAVTIN: Excuse me for a minute.

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Again, in a hypothetical situation where an entity is billing out, you know, in the case of a shopping centre or some other, you know, apartment building, where the business is to take on tenants, certainly that's part of their business plan. But again, to bring it back to what we're discussing here, which is the existence of this infrastructure that was built to provide the core utility services to the electric and the telephone companies, where they have joint-ownership agreements, and now cable is looking to come and, consistent with policy recommendations that duplicate poles are not a practical reality or in any way desirable to the society, that, you know, we're looking to see what their efficient and fair share of the costs would be.

475

So I disagree with the premise of your question that these poles were built for tenancy purposes, because that's not what the reality and history demonstrates.

476

MR. GLIST: And I would just add, sort of, that the practical reality that I'm familiar with is that the

poles come in 5-foot increments. And so it's common that there is surplus space just as an incident to the use of standard heights of poles. But the fact that the cable industry has to spend millions of dollars, I think that's the number from the interrogatory responses, in make-ready is a clear indication that their needs are not sought -- they're not accommodated up-front in anticipation.

477

And I would also add that I don't see this situation as one presenting risk to the pole owners, because the cable operators don't really have anywhere else to go. The municipal authorities don't want them to build their parallel pole plant, that's why we're, sort of, married at the hip with you.

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MS. FRIEDMAN: Ms. Kravtin, again a question, and I'd appreciate an answer from an economics perspective. If an LDC today is deciding to or is rebuilding its pole line, or into a new development, is it preferable -- from an economics perspective, is it preferable to society to have the LDC build the pole now, tall and strong enough in the first instance to accommodate tenants, or to wait until the tenant arrives and deal with it in terms of make-ready?

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MS. KRAVTIN: Well, I think, and I think another member of the panel may address this operationally, that it's in the distributor's interest and need to serve its core utility customers to build the pole tall enough and strong enough to accommodate the provision of its own services in a safe manner.

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MS. FRIEDMAN: But what about the LDC who's making the decision: Should they add an extra five feet to accommodate a potential tenant? Is it preferable from a societal perspective for the LDC to put that five feet up initially or to simply wait to see if a tenant comes along and needs an extra five feet?

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MS. KRAVTIN: Well, you know it's interesting you raise that because this ties back to the reality of make-ready.

482

I think from the electric distribution company's perspective, since it can subject the cable company to make-ready, I'm not sure from its perspective that it really matters. Now, if you're looking from a societal perspective, you know, I think, for a host of reasons, you know, it might be better to put that pole in.

483

But again, I think they're looking, as I understand it, to satisfy their own core

utility requirements, which would involve certain height and weight requirements. They will get recovery from the cable companies through the formula we are proposing, and with the addition of make-ready, if it turns out to be the case. And again, you're talking about the subset of new poles. We're really dealing here with recovery for the overwhelming majority of poles that are embedded and in place.

484

MR. GLIST: And I would also suggest that -- I would expect that the utility might have joint ownership obligations to ILEC, to place communications space on that pole for the ILEC's purposes in new construction.

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MR. FORD: I was going to chime in on that point exactly. I would expect that with the joint-use arrangements that are in place between the LDCs and the incumbent telephone companies, which we acknowledge are not the subject matter before this Board, nevertheless they have an obligation, in order to maintain their ratio of ownership under those arrangements and subject to those agreements, to provide for a space on the pole for use by the incumbent telephone company; and, of course, it works vice versa, so that the incumbent telephone company can maintain its ratio as agreed.

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MS. FRIEDMAN: Perhaps I can put the question -- I apologize, I can't really see their faces. Mr. Greenham and Mr. Armstrong are representatives from Cogeco and Rogers.

487

So from -- I can get, perhaps, the perspective of, the point of view of the cable companies themselves. From the perspective of the cable companies themselves, would it be preferable for the LDCs to build a pole of sufficient height to accommodate the cable attachments, or would you prefer to have a pole which isn't big enough and then pay make-ready costs?

488

MR. GREENHAM: I think it's a business decision by the LDCs as to whether or not they're going to allow that space -- I believe it's a business decision as to whether or not that space would be available on behalf of the LDC.

489

I have a specific example of a crossing at the 407 highway in Burlington where the Burlington Hydro did not build sufficient space, and as a result we ended up paralleling that section with a crossing. And that was about three years ago. That is in evidence as well.

490

MS. FRIEDMAN: Okay. And if you don't have a view on this, that's fine. What I'd like to

perspective as to understand is, if there's a preference from the cable company's
whatever to whether the pole is already there, high enough, strong enough, with
preferable, which is to you need to accommodate your needs, or the alternative is
your needs have a pole which simply accommodates electricity and you pay for
preference? by way of make-ready costs. Does the cable company have a

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customer on a timely basis, MR. GREENHAM: Our preference would be to supply services to our
to be able to and having that space already available would certainly provide us
safety service customers, assuming that there's no make-ready costs for any
satisfy the needs of issues or anything like that, that we would be able to timely
our customers.

492

It's kind of -- you ask what our MS. ASSHETON-SMITH: I'd like to just chime in on this point.
usually given preference is on these matters, but the reality is we're not
pole that option. We're not asked whether we would prefer to have a
make-ready. built to our specifications or whether we'd prefer to have
gaining That issue is usually given to us as a de facto requirement of
here. access to the pole. And I think that's really the key issue

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understand the position taken by MS. FRIEDMAN: Okay. Well, perhaps it will become clearer. I
cases, poles the members of the panel with respect to -- in the vast majority of
are there, and we're dealing with poles that are there.

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What I'd like to talk about now is incenting the behaviour of LDCs going forward,
because every pole has a certain lifespan, poles have to be replaced, and LDCs, over the coming years, are
going to have to make decisions as to what poles they put up. And I understand, from your position, that
might be a little bit theoretical, because your focus is on poles that are currently in place. But
there's no question that LDCs have to make investment decisions with respect to purchasing pole assets. So I'm
going to ask a few questions about that, and maybe where I'm getting at will become clearer.

495

Ms. Kravtin, one of the things you say at page 2 of your report, and I think this
is consistent with what you've been telling the Board here, is that -- I'll quote it for you:

496

"There is no market for pole space, nor any need for economic cues to guide optimal

pole investment.

Even at far lower pole rental rates, electric utilities have not been deterred from investing in the optimal amount of pole plant for their own uses, and cable operators have not overconsumed pole space."

497

That being said, Ms. Kravtin, do you accept that when an LDC is deciding to install a pole - it's replacing a pole line, perhaps, that has deteriorated over the years - and it's deciding how high to build the pole, that it might consider whether or not it will recover the costs of a higher pole?

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MS. KRAVTIN: Well, again, I think this has been discussed by myself and other members of the panel. I believe the LDC makes that decision based on its own provision of services to its own, you know, core utility services, as well as the other -- the joint owner in this case, Bell Canada. So it's unclear to me, and based on the evidence that I've seen and my experience with cable operators over the year, I don't think the decision-making framework of the LDC is based on the cable company at all.

499

MR. GLIST: And I would add that, at least in my experience, what I've been told by electric utility companies in the U.S., is that their needs for higher loads and to drop in more transformers and even to create space for their telecom affiliates has driven them to grow the pole for their own needs, so that routinely they would place a 45 or a 50, whereas, if you rolled the clock back, they might have used a 40, 30 years ago. But that's not for the needs of the cable company.

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MS. FRIEDMAN: You do understand, though, that in this province, there are poles which are owned solely by LDCs and not jointly owned with the telephone companies? Do you agree with me there?

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MS. KRAVTIN: It certainly may be the case. I have not seen those exact numbers. I know that generally the 60/40 joint-use arrangement with the incumbent local exchange company is in place. But certainly there may be situations where there are electric-owned poles solely, and telephone-owned poles.

502

MS. FRIEDMAN: When this Board is setting a rate or a methodology for determining a rate, is it your position that the Board should not consider the possibility that an LDC's investment decision, when it's deciding what pole to put in the

ground, might be affected by its perceived ability to recover the costs of that pole?
That this Board ought not to consider incenting LDC behaviour?

503

MS. KRAVTIN: Well, I think certainly the Board should take into account the impacts of its decision on the LDCs, its customers, and I think the larger Canadian citizenry.
But I think that's not -- I think the issues that we address in terms of our recommendation for the formula certainly would provide the correct -- the correct incentives. I think the formula proposed by the distributors provides an incentive to basically extract monopoly rents. And I think that is the core reason for economic regulation, and why we're here is that the distributors are in the position to extract those rents, and those have very perverse incentives for all stakeholders and really should not be permitted as a matter of economic and public policy.

504

MR. GLIST: And if I could add. I don't mean to be overly practical here, but the presence of the make-ready regime is the answer to any concern that you might have over-incentives, because if you made the business decision as an LDC to invest in a pole that might be five foot lower, you would still be able to accommodate that next applicant for the make-ready process. So I don't think that -- I mean, there has been no dysfunction in the incentives to install poles that I've ever encountered, and I don't think there's anything in our proposal that would serve as a disincentive for you to meet your business needs, and for us to continue to share surplus space.

505

And so, if I go back to your first principles, since the proposal is well above incremental costs, which is the efficient economic one, and it is based on proportionate use, which is our view of fairness and equity, and the incentives are already taken care of through the terms and conditions that have been agreed upon, to me that says, you know, we're there. You do a proportional use allocation of common costs and you're done.

506

MS. KRAVTIN: And I might clarify, that I think the quote to our report that was at the foundation of this line of cross-examination was certainly, in part, based on our experience in the States where the pole rental rates are considerably lower than exist, or certainly than as proposed by the LDCs. And we're certainly observing, you

part of the know, well-functioning, I think, pole deployment decisions on the LDCs.

507

MS. FRIEDMAN: This Board, in setting out for the first time in Ontario a regulatory framework for access to take place to LDC poles, should this Board be ensuring that there is an incentive for LDCs to construct smaller poles so that it will be assured of recovering its costs through make-ready costs when a cable company wants to attach? Should the Board be creating that incentive for the LDCs to build smaller poles?

508

MR. GLIST: Frankly, I think that there is a great deal to be learned from the example of sister regulatory tribunals that have concluded that the allocation of common costs based on proportional use satisfy all of the concerns, including appropriate cues or incentives and appropriate cost recovery.

509

So I don't think that it is -- that regime has been developed by, you know, a dozen North American regulators over 20 years and hundreds of cases and it works. And because it works, there's a good reason for CCTA to recommend its adoption here. And I don't think that it could be faulted for sending the wrong cues or setting the wrong incentives.

510

MS. KRAVTIN: And again, I think this was addressed earlier, you know, that the LDCs are incented by the need to serve their own core customers as well as their joint-use arrangements with Bell Canada, as well as their own business plans to enter into telecommunications. So I don't see a concern in terms of the LDCs not getting the appropriate incentive when the formula we propose does provide for reasonable cost recovery by a third-party attacher.

511

MS. FRIEDMAN: Okay. But I think from what you're saying, you both do agree with me that this Board, in considering what regulatory framework it's going to put in place, should look at what incentives are provided to the LDC. Is that not a consideration at all for this Board to worry about incentives to the LDC?

512

MR. GLIST: I thought that both the LDCs' experts and we started from the same premise, that incremental costs are the economically efficient rate.

513
MS. FRIEDMAN: With the greatest of respect, that's not my question.
I just want to know if this Board should be considering, if it's putting -- if it's laying down
three different methodologies against one another, should one of its considerations
be the incentives provided for LDC investment of one versus the other?

514
MR. FORD: Perhaps I could just say that I imagine the Board might be
concerned if one of those methodologies provided a disincentive to the LDC.

515
MS. KRAVTIN: Well, again, getting back to Paul's comments, and I
think there was some look that you weren't sure why he was talking about incremental costs at
that point. From the situation of incentives, that's really an efficiency
concept. And as your experts acknowledge from an efficiency standpoint, as long as the
rate recovered by the LDC from incremental attachers is set to recover their
incremental costs, then the situation should be efficient and avoid cross-subsidy. So
from an incentive perspective, I think the incremental cost as the lower
rate standard, you know, would take care of that.

516
MS. FRIEDMAN: Let's move on, then, to discuss a bit of the
efficiency versus equity of rates issue.

517
Ms. Kravtin, you just referred to the cross-subsidy issue. I take it you would
agree with me that there are a range of pole rates that are free of cross-subsidies, not just one rate?

518
MS. KRAVTIN: Well, certainly there would be a range of rates that
would be free of cross-subsidy in that the requirement for proving that no
cross-subsidy exists would be that a rate covers incremental costs. So it's kind of a
threshold recovery as far as cross-subsidy.

519
MS. FRIEDMAN: All right. So there's more than one rate that would
be cross-subsidy free, in other words?

520
MS. KRAVTIN: Yes. But that rate may not be efficient, or fair, or
appropriate.

521
MS. FRIEDMAN: That's right. So what you're saying, I take it, Ms.
Kravtin, it's not enough for them to be economically efficient or cross-subsidy-free, in addition
to that they

522
MS. KRAVTIN: Well, if I'm wearing my economist's hat, I might be inclined to say that as long as we satisfy, you know, efficiency, you know, from a pure economics perspective, that might be sufficient. And for certain industrial policy decisions, that might be considered appropriate.

523
MS. FRIEDMAN: Perhaps I could just put to you and Mr. Glist, he's welcome to comment as well, of course. At page 8 of your report, you talk about the economic and policy rationale underlying the CRTC's decision. It says the following:

524
"The economic and policy rationale underlying the CRTC's policy decision to allow cable company access to telephone poles at a fair and reasonable rate and its inherent applicability to electricity poles ..."

525
So in this proceeding, in any event, the CCTA's position is that the rate also has to be fair and reasonable, not just efficient?

526
MR. GLIST: Well, please remember that we were asked to reply to the submission of the LDCs' experts. And as we read that submission, it said, incremental cost is the economically efficient path, but one should also, in the interests of fairness or Rawlsian justice, as a matter of philosophy, go above that.

527
And so we're saying, okay, first of all, even without getting to philosophy, pure economic costing principles gets you to proportionate use. But that there are also a host of other policies that could inform that decision, and say there are actually customer benefits, consumer welfare, societal benefits, that are also achieved by using a proportional-use formula. Is that a fair way of putting it?

528
MS. KRAVTIN: Yes, that's fair.

529
MS. FRIEDMAN: Perhaps, then, I can take you to some of your other criticisms, and I understand your role as a reply expert witness was to look critically at Drs. Mitchell and Yatchew's report, so perhaps I can understand a bit of your criticisms to that report.

530
On page 3 of your report, I'll quote again, and perhaps you can find it while I'm reading --

531
MR. BRETT: Sorry to interrupt, Ms. Friedman. Would you mind
flagging, or Mr. Chairman, through
you, could you ask Ms. Friedman to flag the lines she's quoting
from. It helps the
witnesses to just --

532
MR. KAISER: Thank you.

533
MR. BRETT: Sorry.

534
MS. FRIEDMAN: No problem.

535
If we go to the second paragraph, starting at line 25 is the part I'd like to draw
to your attention, Ms.
Kravtin. It reads -- the middle of line 25 reads:

536
"But if the cable attachment will take up less space on a pole, more space will be
available on the pole for
other uses and/or users, and the creator of the innovative miniaturized attachments
would be
appropriately rewarded."

537
So you're talking about a situation here where the cable company is innovative and
needs less space on
the pole, and rewards that should go to that innovator. I take it you would agree
that the creator of that, of
a miniaturized attachment, would require less dedicated space on a pole?

538
MS. KRAVTIN: Yes, but I'd like to clarify that in -- again, this
is a summary referring to text that
details a discussion in more detail.

539
I am really rebutting here a hypothetical concern raised in the Mitchell and
Yatchew report as to, but
what if the, you know, third party attacher, cable, comes up with some miniaturized
version? I'm not
putting that forward as my evidence, that they have done that, would have done
that, are considering that.
I'm just trying to respond to their hypothetical, because the LDCs are both saying,
We have to build these
poles higher and heavier to accommodate cable, but at the same time they're also
saying, Oh, but they
could get so miniature that, you know, there would be no use.

540
So I'm responding to their hypothetical as opposed to presenting this as any sort
of, you know, realistic or
definite condition that the cable operators are working towards.

541
MS. FRIEDMAN: Okay. Would you agree that any methodology that
assigns the cost of dedicated
space to the user of that dedicated space would reward the

miniaturizer/innovator

their charge for reducing its needs for debt indicated space? In other words, charged would become less as they required less space, as long as the model them for dedicated space?

542

MS. KRAVTIN: Well, in theory yes. But in practice, the regulators have assigned a standard presumptive benchmark to the attacher, so that in practice, where the formula we have proposed, it has been applied in other jurisdictions where such formulas are used, you know, there is a minimum standard, and, you know, that's what is applied.

543

MS. FRIEDMAN: Okay. If this Board --

544

MS. KRAVTIN: Did you want to add to that?

545

MR. GLIST: I would just -- so, for example, the miniaturization, in a sense, all that's on is a -- is a three-inch bracket and a through-bolt. But the methodology that Mr. Ford has put forward says we will take several feet of cost assignment even though the actual device can be measured in inches.

546

MS. FRIEDMAN: We're talking about a situation now, and I understand your reference to other regulatory frameworks and to Mr. Ford's model. But what if this Board were to put in place a methodology whereby one of the elements of the charge comes from the actual amount of dedicated space they use? Then clearly, if they use less dedicated space, their charge would be less, if that was the methodology. It's not Mr. Ford's methodology and it's not a methodology you're familiar with from the States, but it's a methodology that says, as one element, you pay for the dedicated space you use, in inches?

547

MS. KRAVTIN: Would the LDCs like to propose that? In all seriousness, I mean, that's not the way -- we have taken, I think, the theoretical aspects of the discussion, and ultimately the proposal is for a formula that is proposed, you know, by Mr. Ford, and that does, you know, require the benchmark space allocated to a third party attacher.

548

MS. FRIEDMAN: You do appreciate, however, though, that Mr. Ford's

model is not the only benchmark, fairness benchmark, before this Panel; that Drs. Mitchell and Yatchew have proposed other benchmarks.

549
MS. KRAVTIN: They have proposed other benchmarks, but I would submit that their benchmarks are not useful in that they are predicated on two basic conditions, neither of which exist. And it's very clearly set forth in their report that those conditions are: The parties to the case have equal bargaining power, and that the parties have similar opportunities to build the essential-use facilities. And those conditions don't exist.

550
And, you know, I would submit that the formula that CCTA has put forward is designed for the realities, the practical realities that is facing these industries, not the theoretical model, where equal bargaining and equal opportunities to build exist, because they don't. I think the record's clear on that.

551
MS. FRIEDMAN: Okay. I'll leave, of course, our expert witnesses to deal with their positions on that.

552
But you do appreciate that one of the benchmarking -- one of the benchmarks they put forward says that:

553
"The buried and clearance space would be shared equally, and costs of dedicated space would be borne by the users of that dedicated space."

554
Do you understand that from their paper, that that's one of the benchmarks they propose?

555
MS. KRAVTIN: Yes, I do. And I also understand, as I just repeated, that the equal or proportionate sharing of those common costs is appropriate under conditions where there exists equal bargaining power and similar opportunities to build the essential facility as planned.

556
MS. FRIEDMAN: Okay. Now, under their benchmarking formula, the charge to this innovator of a miniaturized attachment would go down as their dedicated space use goes down; do you understand that?

557
MR. GLIST: I thought that the purpose of their example was to say, Don't go there, because

558

MS. FRIEDMAN: Would it --

559

MR. GLIST: Did I misunderstand?

560

MS. FRIEDMAN: Sorry, let me take you back. I'm not going to what
the purpose of their example
Board imposed was. I'm giving you one of their methodologies. And let's say this
space costs, that methodology, which is, they share equally buried and clearance
like that, a and each user bears its own costs of dedicated space. In a situation
because cable company could innovate and would be appropriately rewarded
down. Do you they would see their charge go down as their dedicated space goes
agree with that?

561

MR. GLIST: No, I don't, because -- again, not to be overly
practical. I look at the math, and the math is
telling me that if you start from the false premise that the support
space and the buried space is to be allocated equally, then you are laying the
theoretical foundation for pole charges that have been found unreasonable all across North America.
And so it's not a question of, well, couldn't that provide the right rewards to
third-party attachers? No.
Because it's starting from a punitive position that is based on
false premises.

562

MS. FRIEDMAN: If I'm a cable company, though, and I won't harp on
this, my charge is made up of
mean, that's A plus B. And A goes down. My charge goes down. Is that correct? I
simple math.

563

MS. KRAVTIN: Right, I guess I'm not seeing under the formulas
proposed that A would
the formula necessarily go down. If, again, the numbers that are plugged into
ask this to would performance stay at their benchmark level, I'm not -- and I'll
sought to pay Paul. Have there been any situations where a cable attacher has
less than the 1-foot attachment that's been established by the FCC?

564

MR. GLIST: That's been established that the physical attachment
is a lot less than one foot. But the
space than the proportionate use allocator is assigned a greater proportion of
physical space actually consumed.

565

MS. FRIEDMAN: If I have a model where I'm paying per inch, and I have innovated such that I go from using 5 inches to one inch, my charge will go down, will it not? We could move on.

566
MS. KRAVTIN: She's just asking about a theoretical, hypothetical model that doesn't relate to the application of the proposals, that issue in this proceeding. I mean, it certainly could be -- you know, would be true, as you've defined it.

567
MS. FRIEDMAN: To be clear for the record, what we are talking about is one of the methodologies that Drs. Mitchell and Yatchew do put before this Board in the evidence.

568
MS. KRAVTIN: Well, again, they talk about theoretical constructs. I don't believe they translated those theoretical constructs into a specific rate proposal or application. Actually, if I could confer with Mr. Ford for a minute.

569
MS. FRIEDMAN: I'd like to move on, now, to the question of competitive neutrality, Ms. Kravtin. I think, as we heard this morning, that the concept of competitive neutrality, all parties agree is important, and I'd like to discuss it with you because I'm not sure that everyone involved in the hearing agrees on what it means. So just to get a sense of what competitive neutrality means to you. So I'd like to just ask you a few questions in that regard.

570
Does competitive neutrality mean to you that all competitors should face the same rate for access to the support structures?

571
MS. KRAVTIN: No, it does not. If I could expand on that, because I've done quite a bit of work in the area of competitive neutrality. Generally, as that phrase has been used in the regulatory arena as referring to fair and balanced legal regulatory and economic operating environments for the competitors, and that would take into account certain practical realities of how and where they're operating their businesses or their business plans. So it's not necessarily equal as much as balanced, and the creation of a level playing field. Paul, did you want to add to that?

572
MR. GLIST: No.

573

MS. FRIEDMAN: You have suggested in your report that electricity utilities, albeit through affiliates, compete with cable companies; is that correct?

574

MS. KRAVTIN: Yes. Compete or potentially could compete, yes.

575

MS. FRIEDMAN: Okay. So taking your definition or your expansion on what competitive neutrality means, I take it that if an electricity distributor competes with a cable company, they should face balanced terms of access to the shared support structure? That, as a competitor, they don't have to face the same rate of access to a support structure, but -- I'm not sure the words you used were balanced or even-handed access conditions. Is that fair? I'm trying to understand your position.

576

MS. KRAVTIN: Yes, but to clarify, the competitors would -- well, would be the telecom providers and what would be the, I guess, telecommunications affiliate of the distribution company. Because the distribution company -- and I must say I'm not closely familiar with the rules of affiliate relations here in Canada. I would hope there would be rules similar to in the States that seek to separate the regulated and non-regulated portions of the utility larger utility holding companies' business.

577

MS. FRIEDMAN: Would you agree that when one telecom supplier achieves lower prices only because it faces lower attachment rates and not because it's become a more efficient supplier, consumers' choices would be biased away from the more efficient supplier? In other words, they have lower prices because they face lower access rates not because they're more efficient.

578

MS. KRAVTIN: Excuse me. I'd like to confer with Mr. Glist for a minute.

579

Yes. As I was going to say, I think that -- I could not answer yes to the question as you've posed it because it's looking at, you know, one element of the attachment issue. Because there are a host of other factors relating to that attachment in terms of access to the poles and permitting that would affect the LDCs' affiliate differently from a third-party attacher. So I think we'd have -- in terms of disadvantaging or advantaging, we get into a larger discussion of competitive advantage, I would

submit that the affiliate of the LDC is in a position to have a significant competitive advantage over that of a third-party attacher.

580
MS. FRIEDMAN: To sum up, is it fair to say that companies that compete directly in markets for final services should face even-handed terms of access to support structures?

581
MS. KRAVTIN: Yes.

582
MS. FRIEDMAN: I'd like to turn, now, Ms. Kravtin, to just a brief discussion on marginal cost pricing. I understand that the CCTA is not recommending a marginal cost pricing approach here, in that they are recommending a contribution to embedded costs. I'm going to find you the line. Thank you. On page 13 of your report, you briefly discuss the issue of marginal cost pricing, at line 32 of page 13. The report states as follows:

583
"From an economic standpoint, there is nothing the least bit problematic with a user who causes little or no additional cost being charged a price close to zero."

584
Ms. Kravtin, when this type of pricing model is applied, that's known as marginal cost pricing; is that correct?

585
MS. KRAVTIN: When the rates set are based on incremental costs.

586
MS. FRIEDMAN: That's right. And so, if someone causes little or no additional costs, then their price should be close to zero?

587
MS. KRAVTIN: Yes.

588
MS. FRIEDMAN: Would you agree that the incremental cost of providing cable service to an additional tenant in an apartment building is small? You've got an apartment building fully wired for cable, a new tenant comes in, is there a small incremental cost of supplying cable to that customer? And I'm happy for someone else to respond to that question.

589
MR. GLIST: It depends on a lot of things, as you would expect. You would ordinarily have additional programming costs in order to supply service to that new customer. You would probably

incur customer service costs in servicing the account, both the installation and trouble-shooting, setup, questions. If the -- the physical plant may or may not be ready and it might require a technician in order to get you from the junction box to the right wall plate. So I don't know if there's a single answer that covers all cases.

590

MS. FRIEDMAN: Can we agree, though, that the cost for cable services in such a situation is not based on a marginal cost pricing model? The cable company -- and I'm happy if the cable company representatives answer this. The price is not determined based on a marginal -- looking at the marginal costs of serving that tenant. It's not used in that circumstance.

591

MS. ASSHETON-SMITH: If I understand your question correctly, I think perhaps what you were suggesting is, those incremental costs of the truck roll, the installation, I think those would be the equivalent of make-ready charges. They are not factored into, necessarily, the price of the service -- ongoing administration costs are, but the installation charge itself would be an upfront cost to the customer at the time the service is deployed.

592

MS. FRIEDMAN: I think just to bypass that line of questioning, if we can, that you would agree with me that marginal cost pricing is not used in every circumstance where incremental costs are small or close to zero. There are times when marginal-cost pricing is used in certain markets and times where it's not.

593

MR. GLIST: There is ...

594

MR. GREENHAM: I'm sorry, if I could speak to that just a little bit.

595

MS. FRIEDMAN: Sure.

596

MR. GREENHAM: The costs typically in price ranges that we deploy are what the market will bear. And in a free market, that's where everything goes. But in the situation with pole rentals, it's not a free market, it's a monopoly.

597

MR. GLIST: In that the apartment owner, the homeowner, can go to DirecTV, or its equivalent here.

598

MS. ASSHETON-SMITH: Bell ExpressVu.

599

MR. GLIST: Bell ExpressVu, which serves as the constraining influence and the source of many promotional rates and discounts.

600

MS. FRIEDMAN: In any event, perhaps Ms. Assheton-Smith can just confirm. The CCTA is not advocating a marginal cost pricing approach to setting the access rate in this case.

601

MS. ASSHETON-SMITH: I don't believe that's reflected in our proposed methodology. Let me confer. Mr. Ford, perhaps --

602

MR. FORD: Well, that's correct. And perhaps I can relate that to something I said earlier in terms of disincentives. And I think this Board might be providing a disincentive, in the sense I used that term earlier, if access rates, access charges were recovering less than their incremental costs.

603

But all parties have agreed, and it was in section 3(a) of the settlement conference document, that the recurring charges should provide for the full recovery of incremental costs, plus provide a contribution towards common costs over and above that. So I think this Board should have no concern that, as long as the rate is above incremental costs, it would be provide -- it would not be providing a disincentive.

604

MR. KAISER: Ms. Friedman, would this be a convenient time to break for lunch?

605

MS. FRIEDMAN: Absolutely.

606

MR. KAISER: We'll come back in an hour.

607

--- Recess taken at 12:35 p.m.

608

--- On resuming at 1:38 p.m.

609

MR. KAISER: Please be seated.

610

MR. KAISER: Ms. Friedman.

611

MR. LYLE: Mr. Chair, perhaps I could address just a couple of preliminary matters first.

MR. KAISER: Yes, sir.

PRELIMINARY MATTERS:

MR. LYLE: With respect to scheduling, Ms. Friedman has indicated that she believes her full witness panel would be available for cross-examination on November 10th. I understand from the Board's internal schedule that the panel would be available on the afternoon of the 10th. I also understand from Ms. Crowe that her client would be available either on the 8th or the 10th, if we were not able to hear from her client tomorrow.

MR. KAISER: All right. We'll get back to you after the afternoon break on that, if we can.

MR. LYLE: Thank you, Mr. Chair. And I just want to indicate one other thing. I understand from counsel that Ms. Friedman is expecting to take an extra hour and Mr. Ruby anticipates he'll be the rest of the afternoon.

MR. KAISER: Thank you.

MR. LYLE: And I believe, Ms. Friedman, you have an answer to an undertaking?

MS. FRIEDMAN: That's right. In addition to London Hydro, the other electricity distributors not represented by the EDA are the following: Attawapiskat Power Corporation, Fort Albany Power Corporation, and Kashechewan Power Corporation.

MR. KAISER: Now, I know that you're not representing these utilities. Is there a possibility, though, that you could inquire if they have any position on this matter?

MS. FRIEDMAN: We don't have -- we are in regular contact with London Hydro, even though they're not a member, so that's not a concern. And we don't have regular contact with the other three, but we can contact them.

MR. KAISER: All right. I appreciate that.

MR. LYLE: We'll make that Undertaking F.1.3.

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MR. KAISER: Thank you.

625
CORPORATION, FORT UNDERTAKING NO. F.1.3: TO INQUIRE OF ATTAWAPISKAT POWER
ALBANY POWER CORPORATION AND KASHECHEWAN POWER
CORPORATION AS TO THEIR POSITION ON THE MATTER AT
HAND

626
MR. KAISER: Proceed whenever you're ready.

627
CCTA PANEL 1 - FORD, KRAVTIN, GLIST,
ASSHETON-SMITH, O'BRIEN, ARMSTRONG,
GREENHAM:

628
D. FORD; Previously sworn.

629
P. KRAVTIN; Previously sworn.

630
P. GLIST; Previously sworn.

631
L. ASSHETON-SMITH; Previously sworn.

632
R. O'BRIEN; Previously sworn.

633
J. ARMSTRONG; Previously sworn.

634
S. GREENHAM; Previously sworn.

635
CROSS-EXAMINATION BY MS. FRIEDMAN:

636
MS. FRIEDMAN: Thank you.

637
Ms. Kravtin, Mr. Glist, I just have a couple more questions for you. At page 10 of
your report, and it's
line 25, and this is just the heading of a section appearing on page 10, it says:
"Increased pole costs will
harm deployment of advanced information-age services and technologies."

638
And then in that section you go on to discuss the potential effects of higher pole
charges -- higher pole
costs on cable services. My question is this: Have you similarly opined on the
impact of various pole
rents on electricity services?

639
MR. GLIST: In this report, I don't believe we have explicitly
done it. But it is my view that adopting

the approach to the charges that Mr. Ford has proposed would not impose a hardship on the LDCs. It would, in fact, represent a contribution by cable companies to the LDCs over and above incremental costs and so would be a benefit.

640
MS. FRIEDMAN: In your view, is the impact on electricity services a relevant factor for this Board to consider in setting a methodology?

641
MR. GLIST: I think it is a fair avenue of inquiry.

642
MS. FRIEDMAN: In the CCTA's response to an EDA interrogatory, its interrogatory 2(e), and it's at page 8 of 21 of the CCTA's responses to the EDA's interrogatories, it says the following:

643
"The impact on retail cable service prices is not a relevant factor in determining a just and reasonable rate for access to electricity distributor poles. As stated in response to EDA number 2(b), pole charges must be based on transparent and appropriate costing methodologies and rate-setting principles. The price of retail cable service has no bearing on the cost of accessing the pole."

644
Given that position with respect to retail cable service prices, is it also your view that the impact on electricity prices is not a relevant factor for this Board?

645
MR. GLIST: I think that my prior answer with respect to the deleterious impact of pole rents on services offered by cable companies is a relevant consideration in refuting the approach by Mitchell. In terms of just coming in and evaluating what the right costing method is, I think you can get to the right costing method just by looking at the underlying costs and proportionate use.

646
MS. FRIEDMAN: Okay. I'm just going to take you to one more reference in your report. And that's at page 16, line 32. Sorry. I have a double reference here in my notes. Let me just confirm. Oh, sorry. Sorry. The reference is page 16, line 38, the last line. And it continues on to the next page -- page 17, to line 5. And I'll read it into the record:

647
"Regulatory intervention is needed to help ensure the negotiation process produces an outcome that effectively and efficiently balances the interests of the two parties and at the same time promotes the public policy goals of a competitive telecommunications market and the widespread deployment of

advanced, information-age services and technologies. Application of the CRTC methodology to electric poles will achieve these twin goals."

648

Are you suggesting, with that statement, that this Board give no consideration to other public policy goals? Is it just the twin goals that are relevant?

649

MR. GLIST: You know, I think that -- I don't want us to dispute over nomenclature. What I'm trying to say is very similar to what EDA has said: That in the absence of specific policy directives to the contrary from the Government, the Board should consider that its mandate is to ensure that pole attachment rates fully and fairly allocate costs to all users. And what I'm saying is that if you follow the proportional-use approach to costing that we are proposing, that you will serve those goals and you will have the incidental effect of also serving some telecommunications social goals that have been identified as one aspect of fairness that one can look at, if you're looking at fairness at all.

650

MS. KRAVTIN: Right. I would add to that, in the context of a discussion in that entire section, which is addressing the justification for regulatory intervention, where there is a situation of a monopoly control of essential facilities. So it's within that context that we're saying, if anything, regulatory intervention will facilitate negotiation, not retard it. And that, obviously, primarily we're looking for an outcome that effectively and efficiently balances the interests of the two parties, but at the same time, serves these other public policy goals which Paul and I, obviously, have done a lot of work in those areas. But the most primary goal, which we state in the context of the section, is effectively and efficiently balancing the interests of the two parties where there is unequal bargaining power and opportunities to build those facilities.

651

MS. FRIEDMAN: Thank you. I think Mr. Ford has been feeling left out, so I'll just have a couple of questions for him. Just to encapsulate, hopefully, if I can, your model, is it fair to say your model is that total pole costs -- sorry, the total pole is divided into usable and unusable space, and then the total pole costs are then allocated to a tenant in the same proportion as the usable pole space it occupies?

652

MR. FORD: For the most part, yes. If I could just put one small qualifier

on that, and that is that the separation space, which is technically not used by cable - it is sometimes, by the way, used for other uses, such as streetlights or traffic lights or things like this, but which is not used for cable - is nevertheless, accordingly to the proposal that I developed for CCTA, considered to be usable space in terms of that allocation to cable, so that that would be divided between two users of the communication space.

653

So, effectively, then, for a cable user, it would be the one foot of space that it is deemed to use. And I use the term "deemed," because, as Mr. Glist was saying this morning, the attachment may be a bolt and a clamp that could be three inches high. But by convention, the spacing of those is one foot, so that you could say a cable attachment -- a cable user makes use of one foot of the pole. But there is also considered, in the model that I have described here, an additional 1.6 feet, which is half of the separation space, for a total of 2.6 feet. So, yes, that would be considered, then, the usable space for cable.

654

The total usable space would be the communication space plus the separation space plus the power space, and the costs of the common portions of the pole, the clearance and the buried, are allocated to users based on their usage, proportionate usage, of that total of usable space that I just described.

655

MS. FRIEDMAN: And so, while this model refers to the buried and clearance space as unusable, it's still used, in part?

656

MR. FORD: It's not -- it's not occupied uniquely --

657

MS. FRIEDMAN: That's right. It's common.

658

MR. FORD: -- by any user. It is required by all users, and we recognize that. And that is why we propose that the cost that is allocated to that common space be allocated to each user based on the proportion of usable space that it uses.

659

Now, I've been throwing around little terms here, and I may have -- so I'll check and see if Paul believes I said that correctly. I think he's quite familiar with it.

660

MR. GLIST: I think so. Just my shorthand is that you take the space above minimum grade north, and you say, How much of that am I going to assign to cable? And you get a ratio. And then you apply that ratio to the common -- the costs of the pole for the clearance space and the

661
MS. FRIEDMAN: Mr. Ford, if a pole is already built with the height and strength that would be required for power attachments, is it reasonable, in such circumstances where the pole does not have to be replaced, for the cable company to bear costs in relation to that greater height already built into the pole? So that was completely unclear.
Let me just rephrase that.

662
The cable company comes to the pole, and it already is -- it's ready for their use. In your view, then, it's fair for the cable company to bear costs in relation to the greater height and strength of the pole that's been built for them, or ready for them?

663
MR. FORD: I don't think that there's ever been a suggestion that one would look at anything other than the embedded costs. And if I've interpreted your question correctly, I think you were asking me if we would suggest that, if the pole were 65 feet high, for power requirements, that somehow a smaller -- the costs of a smaller pole should be substituted in determining the costs. And the answer -- if that was your question, the answer would be no. We are suggesting that the poles be taken as they are, and that the embedded costs of that pole are what should be used, again, of course, across the entire population of poles because there would be an averaging process.

664
I would hasten to add, however, that the case you've described is probably not the case all that often, and that in many cases make-ready costs are required before the pole can accommodate the needs of the cable user.

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MS. FRIEDMAN: Has your usable pole space model been published in any refereed journals where economists have been able to criticize it or comment on it?

666
MR. FORD: Not to my knowledge.

667
MR. GLIST: Well, let me just say that the proportionate-use method of allocating pole costs has been the subject of mountains of testimony in the United States, at the FCC, before Public Service Commissions, at the CRTC, and has been quite well vetted.

668
MS. FRIEDMAN: By regulators in regulatory proceedings, you're saying?

669

MR. GLIST: By regulators in regulatory proceedings who have considered input from panels like this, and economists, and so forth. So to me, the difference is that Mr. Ford's allocation of space to cable is far more generous than many -- in other words, he's saying, take 2.6 feet, whereas many regulators would say, Take 1 foot.

670

MS. FRIEDMAN: I appreciate that. And you appreciate I was asking about in the economic literature, whether it has been criticized or been opined upon.

671

Perhaps Ms. Kravtin knows if the usable pole space model has been published in any of the refereed journals in the economic academia context.

672

MS. KRAVTIN: Not that I am aware of, but I will say that representatives of the economic academia population have certainly, in various instances, given their input into the regulatory sphere. So to the extent they would do so, it would be more in the context of participation in the regulatory arenas in which those issues are being discussed, as opposed to in a purely theoretical basis, because that's the context in which these issues have been raised.

673

MS. FRIEDMAN: Mr. Ford, just turning for a moment to the issue of pole ownership. You say in your report that there are benefits to pole ownership. Do you acknowledge as well that the chance that the owner may not recover the full costs of the asset is a risk of ownership?

674

MR. FORD: I would acknowledge that under certain circumstances it could be a risk of ownership. However, looking again at the realities of the situation here, in the first place, the vast majority of the poles that we're discussing, the existing pole population, are constructed with the joint-use arrangement between the power utilities and the incumbent telephone companies in mind. So, in many cases, the sizing of the pole and the suitability for use of a power pole by a telecommunications carrier, the incumbent telephone company, is taken care of in order to meet each utility's requirements and responsibilities under the joint-use arrangement.

675

Again, you've heard the term "make-ready costs" a few times, so that, of course, is often a factor again where, in order to make the pole suitable for use, in cases where that has not been done.

676
But again, getting back to your question of risk, so the poles are sized appropriately in order to meet the reciprocal access aspects of the joint-use arrangement. Moreover, each utility's costs of poles are included in the rate base on which a regulator will often, and usually does, permit a return. And so therefore the circumstances are not all that frequent where there would really be a risk or an exposure of non-recovery of costs.

677
MS. FRIEDMAN: Pole ownership, while you say there are benefits to it, it's not so determinative, is it, that a tenant should pay nothing? I mean, that's clear from the model.

678
MR. FORD: I think it's clear that that is not our proposal.

679
MS. FRIEDMAN: That's right. And it's clear as well that you're not even saying they should pay marginal costs. So pole ownership doesn't confer such a great benefit that tenants should only pay marginal costs.

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MR. FORD: I point again, as I did before lunch, to the settlement agreement where all parties agreed that the incremental costs plus an element of contribution was the appropriate way to develop a charge.

681
MS. FRIEDMAN: Let me ask you this about pole ownership. If the parties entered into an access agreement where the terms of the agreement significantly reduces the owner's power and control over the poles, so the terms of the agreement constrain owner in terms of their planning, for example, would it be reasonable that the attacher pay a higher rate in those circumstances because the owner's giving up some control over its asset?

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MS. ASSHETON-SMITH: Perhaps --

683
MR. FORD: Well, let me just, let me just first of all -- I think what you're suggesting, and I want to make sure we understand the question. And I'm not sure I'm in a position to answer, but at least I want to understand the question before I try to answer it. And it seems to me that you are asking if something other than cost-based rates would be appropriate if the asset were not a monopoly asset?

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MS. ASSHETON-SMITH: Actually, can I just take a stab at this?

685

MR. FORD: Good.

686

MS. ASSHETON-SMITH: It seems to me that you're suggesting that there might be a circumstance where, in the course of a negotiation, the LDC would voluntarily give up its significant ownership rights in terms of its ultimate right of ownership, which is to control the asset, and ultimately to deny access or use of that asset. In a bargaining position where there is no equal bargaining power, it strikes me that that sort of situation would almost never occur, and I'm not aware of any situation where an LDC has, in fact, voluntarily agreed to give up its ownership rights.

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MS. FRIEDMAN: You'll appreciate what I'm trying to get a handle on, the pole ownership issue, comes up quite a bit in the CCTA evidence. And I'm just trying to get a handle on how important it is. So, in a situation, I mean, is it so determinative -- so in a situation where the parties would agree, all right, I'll give you some rights of ownership, you just have to pay for it, could there be that give and take? And I think I understand Ms. Assheton-Smith as saying she doesn't think that's realistic, but that's really where I was going with the question, Mr. Ford.

688

MR. GLIST: I don't think it's real realistic in that the actual contractual relationship requires the cable company to apply for an individual or discrete permit for attaching to discrete space, pole-by-pole. And so that the pace of the deployment is controlled by the owner of the pole. I think it's clear so far what we're dealing is a set of embedded poles that are essential facilities owned by the pole owner.

689

And that in terms of surrender of those rights of ownership, it never comes up. On the rare occasions when a pole is decommissioned and the utility company transfers title to the cable company, they cut the top off the pole to make it unusable for electric attachments, so unhappy are they with the concept of attaching to somebody else's pole. So you can tell I'm troubled by the premise of the question, because it's divorced from our real-world experience.

690

MS. FRIEDMAN: You'll appreciate, though, in this hearing, we're talking about regulating afresh. So there's no regulated terms of access yet, nor is there a

regulated methodology,
there an
the cable
pole lines,
put forward by

nor is there a uniform rate. So what I'm just putting to you is, is
interplay? For example, would you agree that if, in the agreement,
company was provided rights to be involved in the planning of new
might they be willing to pay more in terms of access than the rate
the Ford model?

691

MR. GLIST: The actual subordinated rights afforded to cable
companies in the real world, by all
rights, would actually drive you down to an incremental-cost model.
It is because of the
assumption by this industry that it still wants to contribute
towards common costs that
you even get to the kind of proportionate-use allocation that we're
talking about.

692

The hypothetical of negotiations turning out differently than the last ten years,
it's just bizarre. I mean,
we're here where the parties, I think, agreed on terms and conditions. The only
thing outstanding is the
price.

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MS. FRIEDMAN: I'm not sure that that's what the evidence will show,
but we'll leave that as it
stands.

694

Let's turn, Mr. Ford, to the CCTA's recommendation for a uniform rate. At page 26
of your report you
include the chart which shows, essentially, how the CRTC -- and how one would come
to an annual pole
rental charge of \$15.65. And there's the chart you've broken down for us how that
happens. The net
embedded costs per pole used there, in that chart, from the data you had available
at the time was \$478
for Milton Hydro in 1995.

695

To the extent that there is a large variance in Ontario in the net embedded costs
per pole, so suppose one
LDC has a \$200 net embedded cost and another LDC has a \$1500 net embedded cost,
would you agree
that a uniform rate, based on the average, would result in one LDC overrecovering
their costs and one
LDC underrecovering their costs?

696

MR. FORD: If what you stated was, in fact, true, then I think the
proposal of CCTA provides a safety
valve where if the rates would, really, result in a significant over- or
underrecovery,
either party could come to the Board. But it's interesting you raise
that. We did ask
forward -- I'd like to be able to give you a definitive answer as to
whether or not there
was a wide variance, rather than being theoretical about it. And as you

might not be surprised to hear, I was one of the architects of the question which asked EDA for the cost data in order that we could determine whether or not there was a wide variance, and what would be representative costs in order to make a more definitive proposal.

697

And as you know, because you, in fact, provided the data, that the data was not in the form, in most cases, that, unfortunately, would give us an answer to that. However, I will take you to tab, I believe it's 36, of the data that was provided by EDA to the Board, dated October 20, 2004. And this is the submission of Hamilton Hydro. Now, I admit there were some problems in the data. For example, one company, Hawkesbury Hydro at tab 39, had the value in account U.S. of A. account, number 1380, as zero, but in Hamilton Hydro's submission in addition to filling out the table they provided what, at my initial glance, was a fairly thorough and internally consistent approach to determining the net embedded pole costs.

698

Now, I acknowledge that I do not concur with the space allocation factor of 30 percent that they put forward. However, I would note that their figure for the net embedded cost of poles with fixtures -- the pages aren't numbered but it is really on the first page of their document entitled: "Pole attachment licence fee calculator: Capital-related costs calculator," dated October 15, 2004. And the net embedded cost of pole with fixtures is shown there as \$477.

699

Now, this is a utility which is approximately four times the size of Milton in terms of the number of poles in its pole population, if I remember correctly, it's something of the order of three to four times, and yet the net-embedded cost, which is a major driver of many of the costs - the capital carrying cost, for example - is different from the number that I used by \$1. Actually, \$0.53, if we want to go to pennies. And so these numbers may not have as broad a variance as one would expect, and certainly probably not as broad a variance as you suggested in your question.

700

I would note just in passing, perhaps, that the figures for depreciation again are not that dissimilar, and those are two of the major capital-related costs.

701

MS. FRIEDMAN: So you've taken me to Hamilton's data, but I take it you haven't done that analysis for each -- looked at the data for each LDC and tried to figure out the variance as between them?

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MR. FORD: I can assure you I would have loved to have been in a position

to do that, and as I indicated earlier, I was one of the architects of the question that asked for the data. And unfortunately -- and I did look through -- quickly through every one of the filings that was provided, and in -- this filing was unique in terms of providing not only a number but a methodology. And that certainly wasn't the case in any other.

703

MS. FRIEDMAN: Have you undertaken an analysis of what would be an acceptable level of variance to use a uniform rate?

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MR. FORD: No, I haven't. And I think it would be, perhaps, presumptuous of me to do so, because I think the safety valve, and we've used that term in a way I think we all understand, in terms of the CCTA's proposal, is to provide for relief where either of the parties believed that the recovery was -- there was significant over- or underrecovery. And I think that is very judgmental, and, in fact, it would probably be this Board that would decide what the meaning of "significant" in that context is. And it would be presumptuous of me to suggest it, I think.

705

MS. ASSHETON-SMITH: I could perhaps add some help on that a little bit.

706

Assuming that we actually had reliable and accurate cost data that was subject to testing, I think at any variance that perhaps exceeded 20 percent on either direction might be a good starting point. Just in terms of comparison, under the CRTC bill and keep rules for exchange of traffic, anything over 20 percent is considered something that needs to be settled. So perhaps, if that's helpful to the Board and to EDA, that's a number that -- I should premise that by the fact that we have not done a lot of thinking on it, but I think that might be a good starting point to think about.

707

MS. FRIEDMAN: In the CCTA's response to an interrogatory, and it was EDA's Interrogatory No. 5A, the CCTA explained the rationale for the uniform rate, in its view. And in addition to administrative efficiency and regulatory burden concerns, the CCTA stated the following:

708

"If the OEB establishes upper and lower bounds on rental charges, or provides LDCs with any discretion to set or negotiate final rates, LDCs would exercise market power to demand the highest available rate. Establishing a uniform pole rate based on transparent and appropriate costing methodologies and rate-setting principles is the only approach that would mitigate against the

ability of the LDCs to exercise market power."

709

My question is this, and perhaps, Ms. Assheton-Smith, you can answer this: But would you agree that the establishment by this Board of a uniform methodology would also mitigate against the ability of the LDCs to exercise market power?

710

MS. ASSHETON-SMITH: The problem with the uniform methodology, without up-to-date, accurate and reliable costing data, is a practical one. And I think what we proposed -- the basis for a uniform rate, in many respects, is the fact that there is no other practical approach in the -- at least in the short term, as I think Mr. Dingwall pointed that out this morning. In the absence of the cost-based exercise being undertaken, there just isn't that data to plug into the methodology. So, in the absence of that data, yes, we would submit that this is a requirement to mitigate against the ability of LDCs to charge those rates.

711

MS. FRIEDMAN: But you're not saying that if this Board set a methodology and set guidelines for what numbers the LDCs should plug into that methodology, that they can't be trusted to plug in the numbers to a formula?

712

MS. ASSHETON-SMITH: It's not a matter of trusting the LDCs, it's a matter of testing the evidence. And what we're suggesting is that the rates should be based on the best available evidence to the Board in this proceeding, which we would maintain is the Milton Hydro evidence that was referred to by Mr. Ford in his evidence, and which was corroborated by the Hamilton Hydro evidence.

713

So I think that's our position. And I'll ask if any of my colleagues have anything else to add to that.

714

MS. FRIEDMAN: I'm going to turn to speak, hopefully, to Messrs. Armstrong and Greenham, if I could see them. Not that you want to see me, but you'll hear me, in any event.

715

I take it, sir, that each of you provided input into the CCTA's interrogatory responses; is that correct?

MR. ARMSTRONG: Yes.

716

MS. FRIEDMAN: And in particular, with respect to the details about
behaviour of specific LDCs
vis-a-vis your companies in negotiations.

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MR. ARMSTRONG: Correct.

718

MS. FRIEDMAN: Mr. Armstrong, I'll start with you, and I'd like to
ask you a few questions in
relation to Guelph Hydro, if I may.

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Rogers wires or equipment is currently attached to Guelph poles; is that correct?

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MR. ARMSTRONG: Rogers Cable is attached?

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MS. FRIEDMAN: Rogers Cable, sorry.

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MR. ARMSTRONG: Yes.

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MS. FRIEDMAN: And in the CCTA's response to a Board Staff
Interrogatory No. 2, and that was at
Guelph Hydro page 3 of 16, it was stated that at various times in 2003 and 2004,
refused to issue permits to Rogers until a new pole rate had been
determined.

724

Would it surprise you, Mr. Armstrong, to learn that Guelph Hydro's records indicate
that all permits
applied for in 2003 were approved within one to three weeks?

725

MR. ARMSTRONG: It would surprise me. I have spoken with Mr. Stockman
from Guelph Hydro this
morning. He raised this issue with me.

726

In that response, we've said that in various times in 2003 and 2004, Guelph Hydro
and Waterloo North
refused permits. The reference to 2004 probably should have just been limited to
Waterloo North Hydro
as opposed to implicating both Guelph Hydro and Waterloo North Hydro. But my
recollection is that in
2003 there were permits refused or delayed by Guelph Hydro.

727

MS. FRIEDMAN: In 2004, do you know how many permit applications
Rogers Cable made to
Guelph Hydro just this year?

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MR. ARMSTRONG: Well, I guess, subject to the clarification that I
gave in my last response, I'm not

729

sure that I'm asserting that Guelph Hydro didn't -- did or didn't
refuse or delay to
issue permits in 2004.

730
MS. FRIEDMAN: Given that, Mr. Armstrong, then, I take it you
wouldn't be surprised to learn,
then, that Guelph Hydro's records show that the first permit
applications received
from Rogers this year were actually received on October 4th, so just
this month,
and they're currently being considered?

731
MR. ARMSTRONG: Well, I guess there's a couple of responses. Given
the amount of work that
Rogers does in terms of upgrading and working on its networks,
perhaps it is
surprising that the first permit application was filed on October
the 14th.

732
MS. FRIEDMAN: October 4th.

733
MR. ARMSTRONG: October 4th, sorry. But at the same time, I think
what doesn't show up in the
permit records is, when an LDC indicates to a cable company that it
will not
issue any permits, the cable company then has to make a
determination of what it
is going to do with respect to business. And I can say, for example,
in Guelph, at
a time when we were not getting permits from Guelph, we actually had
to say to
certain business customers, I'm sorry, we can't provide service to
you. You'll
have to find your service somewhere else, because we can't get
aerial permits to
feed you. So that wouldn't show up in whether or not -- Guelph Hydro
would
never know whether or not we had planned or intended or wanted to
get permits
in those instances.

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MS. FRIEDMAN: Mr. Greenham, if I could just turn to you just to
discuss a bit about Cogeco's
dealings with Ontario LDCs. And I'd like to start, if I may, just
with Enwin
Powerlines in Windsor. Would you agree with me, Mr. Greenham, that
Cogeco
equipment remains attached to Enwin poles today?

735
MR. GREENHAM: We currently are still attached and Enwin Hydro is
actually still
issuing permits.
getting them
So we've continued to request permits and we continue to enjoy
approved. It's not the case with Oakville Hydro or Grimsby Hydro.
Oakville
Hydro, we haven't had any permits approved since 1997, and we
stopped making

applications. application because it's a waste of resources to continue to make

MR. KAISER: Mr. Brett. 736

MR. BRETT: Sir? 737

MR. KAISER: Before Mr. Greenham goes on, could you inquire of Mr. Armstrong if he could provide the names of the potential customers that were denied service because of the lack of permits? 738

MR. BRETT: Yes, I could. And we could come back, we could -- 739

MR. KAISER: If I could have an undertaking number for that Mr. Lyle? 740

MR. LYLE: That would be F.1.4, Mr. Chair. 741

MR. KAISER: Thank you. 742

CUSTOMERS THAT UNDERTAKING NO. F.1.4: TO PROVIDE THE NAMES OF POTENTIAL WERE DENIED SERVICE BECAUSE OF THE LACK OF PERMITS 743

MS. FRIEDMAN: One of the things, though, that I appreciate your clarification on is what you've said about Enwin. One of the things that's in the CCTA's interrogatory responses, and that's the response to EDA's interrogatory 1(a), Enwin is listed as an LDC that rebuffed a proposal from Cogeco for an access charge of greater than \$15.65 per pole, per year. 744

MR. GREENHAM: Correct. 745

MS. FRIEDMAN: Would it surprise you to learn that, until recently, that the CEO of Enwin has considered that Enwin and Cogeco have had an excellent relationship? 746

MR. GREENHAM: Even since the discussions on the agreement in the rates, we've been able to enter into an agreement where they will transfer our facilities at a flat rate. It's one of the few that I know of with any LDCs where they will do the transfer. So we have a very good relationship with them. We continue to do fibre trades with them. It's just that we did go through a period, and we do have -- 747

we continue to have no progress on signing an interim agreement at an interim rate.

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MS. FRIEDMAN: So you're aware, then, that Cogeco and Enwin began negotiating an agreement about two years ago?

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MR. GREENHAM: It would be at least that, yeah.

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MS. FRIEDMAN: Okay. And I understand that originally Enwin sought a rate of \$45 per pole; is that correct?

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MR. GREENHAM: Yes, that was correct right up until the final negotiating hours.

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MS. FRIEDMAN: Right. And that's higher than any rate Cogeco pays in Ontario; is that correct?

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MR. GREENHAM: It's higher than any rate we pay in Ontario. North Bay Hydro also asked for the \$45. We do, or were asked by North Bay Hydro for the same rate of \$45 a pole.

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MS. FRIEDMAN: And I understand that Cogeco advised that it did not want to set a precedent of paying any greater than \$42 per pole, as to that point that was the highest rate it paid in the province; is that correct?

755
MR. GREENHAM: That's correct. We pay this fiscal year and next fiscal -- or not -- just this fiscal year with Milton Hydro at \$40.92 and with Centre Wellington Hydro at \$40.92.

756
MS. ASSHETON-SMITH: Can I just interrupt for one moment, if I may. I just think we need to make it clear that, in terms of these discussions, we're talking about the application of interim agreement and not a final agreement. That these are rates, even these high, where Cogeco has those, as you call them, policies in place not to pay more than \$42, that is not to enter into an interim agreement with a proviso that there will be a retroactivity clause that would allow them to go retroactively back to an earlier time, if and when the Board sets a regulated rate. So I just think it's important to characterize that policy as not really much of a policy, but rather as a means of doing business with a monopoly provider.

757
MR. GREENHAM: And to clarify also, those agreements were signed
within a month or within
was weeks of when the Supreme Court of Canada ruling came down. So it
probably something that we've been working on again for about a year, and
signed prematurely, based on further applications.

758
MR. KAISER: Mr. Brett, could you clarify whether there's -- this
term retroactivity? If a lower rate is
struck by the Board, is there a refund?

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MR. BRETT: My understanding as to what -- yes. My understanding
of that arrangement, and I stand
subject to being corrected, is that what it says is, the price is X,
but if the Board sets
another price, let's assume for the moment that price is lower than
X, there is a refund. It
goes back to the -- it actually goes back to the time the agreement
was struck.

760
MR. GREENHAM: If I could be so bold, sorry. The settlement
agreement issues that we reviewed
just not this morning, item number 5, specifically spoke to retroactivity but
-- clearly. That was what was implied there, and that's why there was a
somebody that didn't agree with it, because not in all of their
agreements do they
have a retroactive clause in their agreements.

761
MR. KAISER: Yes, I thought that might be the difference. I
couldn't understand for a moment why you
were agreeing to exempt existing contracts, but it's because they
get automatically
amended under their terms as opposed to what MTS's contracts say.

762
MR. GREENHAM: And that's the difficulty we are having with Grimsby
Hydro, they would not
allow us to put in a retroactive clause in there. So that's where
our difference is.

763
MR. KAISER: Just on that point, and I guess this should be
addressed to you, Mr. Brett, on this very
issue, will you be asking or maintaining that all existing contracts
should be exempted or
only those where you'd have the retroactivity clause, i.e., the
Grimsby case, as I
understand it, you don't have that clause.

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MR. GREENHAM: We don't have that clause, but we don't have an
agreement. We haven't paid
anything more than --

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MR. KAISER: I see. So any case where you have agreements you have retroactivity clause; is that correct?

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MR. GREENHAM: Yes.

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MR. KAISER: Right. Thank you.

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MS. FRIEDMAN: Just taking you back, Mr. Greenham, you had told me that \$45 was unacceptable and Cogeco expressed to Enwin that it wouldn't pay more than \$42. I mean, that's where we were.

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MR. GREENHAM: Yes, that's where we were.

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MS. FRIEDMAN: Okay. And Enwin agreed to accept \$42, these are in these recent negotiations we were talking about.

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MR. GREENHAM: Yes, that was approximately last December that we were in those negotiations, and at the time that decision went up to the board of directors with Cogeco, and the decision came back from that that we would not accept any more than an interim rate of \$30 a pole and an interim rate with the retroactive clause.

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MS. FRIEDMAN: Right. So word then went to Enwin that \$30 was it and there was no further discussion on rate.

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MR. GREENHAM: Exactly.

774
MS. FRIEDMAN: If we can turn just for a moment to Chatham-Kent Hydro. If I may, in that same list of LDCs who rebuffed a charge of greater than \$15.65 per pole, Chatham-Kent is included. And I take it that Cogeco equipment remains attached to Chatham-Kent poles today; is that correct?

775
MR. GREENHAM: Yes, that's correct.

776
MS. FRIEDMAN: And were you aware that for the year 2001 Cogeco was invoiced at the rate of \$16.84 per year?

777
MR. GREENHAM: I have all those invoices on my desk.

778
MS. FRIEDMAN: And Cogeco paid those invoices for 2001?

779
MR. GREENHAM: Not to my knowledge.

780
MS. FRIEDMAN: Not for 2001?

781
MR. GREENHAM: Not to my knowledge. I'd have to go back and check
that.

782
MS. FRIEDMAN: Okay. So we'll move on. Maybe it's the more recent
bills that stick in your mind that are crowding your desk. My understanding, if you'll agree with
me, for the years 2002 and 2003, Chatham-Kent sent an explanation to Cogeco that
the 2001 rate would be grossed up for inflation, a rate of return in taxes,
and that the rate would be \$30.06. Is that your understanding?

783
MR. GREENHAM: That figure is familiar.

784
MS. FRIEDMAN: Okay. But Chatham-Kent has received no payments
whatsoever for the years 2002 and 2003.

785
MR. GREENHAM: No, that's correct.

786
MS. FRIEDMAN: That's correct?

787
MR. GREENHAM: There's no retroactive clause in the letter of
understanding that they proposed.

788
MS. FRIEDMAN: So just to confirm. Chatham-Kent has sent invoices at
\$30.06 per pole for 2002 and 2003, but has received no payments?

789
MR. GREENHAM: That's correct.

790
MS. FRIEDMAN: And Cogeco equipment remains attached to the Chatham
Kent poles?

791
MR. GREENHAM: That's correct.

792
MS. FRIEDMAN: One last LDC to ask you about and that's Grimsby,
which you brought up several times. Just to confirm that Cogeco currently has equipment attached
to Grimsby poles; is that correct?

793

MR. GREENHAM: Yes, we do.

794

MS. FRIEDMAN: And you've referred to this evidence, and it's referred to in the written evidence as well, CCTA's response to EDA Interrogatory 2A(1). The CCTA said the following, and I'll quote it:

795

"CCTA attached two letters from Grimsby Power to Cogeco, dated September 11, 2003 and March 22, 2004. Grimsby Power threatens to deny any new attachments, or to deny Cogeco any new pole permits unless Cogeco is willing to negotiate final terms acceptable to Grimsby."

796

That's just a quote from the interrogatory response. Are you aware, Mr. Greenham, that the president of Grimsby Power wrote to this Board on September 24, 2004?

797

MR. GREENHAM: was that included in evidence?

798

MS. FRIEDMAN: It was filed with the Board.

799

MR. KAISER: Is it filed in these proceedings?

800

MR. LYLE: I understand, Mr. Chair, it is in the prefiled evidence.

801

MR. KAISER: Could you give a copy to the witness?

802

MS. FRIEDMAN: I'll just give you a moment to read it. And I'll just -- Mr. Greenham, I'll just read one sentence from that letter that you have before you. What the --

803

MR. BRETT: Chairman, if I could just ask -- I apologize to Ms. Friedman. I just want to make sure that we have the response here. There was a response written to this letter by Cogeco as well.

804

MR. KAISER: Mr. Lyle, do we have that?

805

MR. LYLE: Mr. Chair, I don't believe we have that in the prefiled material.

806

MR. KAISER: I wonder if we could come back to this once we've had copies of the response made. And I think the Board would also like to see this letter. So could we come back to this question after the break?

MS. FRIEDMAN: Sure.

MR. BRETT: We sent copies to everyone.

MR. RUBY: Sorry, go ahead.

MS. FRIEDMAN: Sorry, just quoting from that letter, the September 24 letter you have in front of you, the president of Grimsby Hydro says:

"What the CCTA omits to mention is that after most --"

MR. LYLE: Ms. Friedman, maybe we'll come back to that issue?

MS. FRIEDMAN: This is my last question, so -- I'm sorry.

MR. KAISER: Okay. We'll deal with it on redirect. All right. If you're going to put documents to these witnesses, make sure you give them to counsel ahead of time so we don't have to go through all of this.

MS. FRIEDMAN: Thank you, Mr. Chair.

Mr. Greenham seems very familiar with the relationship between the parties, so perhaps I can just do it this way.

Was it the case, Mr. Greenham, that after the terms were verbally agreed to amongst Grimsby and Cogeco, the CCTA filed this application to the Board? And that caused Cogeco to re-open the terms with Grimsby?

MR. GREENHAM: Actually, what caused us to make this change is, at the same time that we were negotiating Grimsby Hydro, we were negotiating Enwin Hydro. And the decision with the Enwin Hydro went up to the board of directors, and the decision came back that all agreements should be at an interim rate of \$30 a pole and all agreements should have a retroactive clause. And the retroactive clause is the portion of the Grimsby agreement that was missing, and they refused to put it in.

MS. ASSHETON-SMITH: Could I add to that, too, because I think it's important to recognize. In terms of the timing of the CCTA application, it neither was

caused by
particular course.
the
without a

nor caused the -- any individual negotiation to take a
The reason why the application was filed was because, following
Supreme Court decision, the industry was effectively left
regulator to arbitrate disputes.

820
So it was absolutely necessary, from an association point of view, on behalf of all
of our members, and,
in fact, we may not even have been aware of individual negotiations going on
between members and
LDCs, it was our collective decision in 2003, following the Supreme Court decision,
to file this
application. And I would suggest that it shouldn't be seen as causing any
particular behaviour one way or
the other in respect to these individual negotiations.

821
MS. FRIEDMAN: I appreciate, Ms. Assheton-Smith, that the decision
of the association to take
particular steps was independent of what was going on at the local
level, but you
would agree with me that you can't say whether that application
caused or didn't
cause any behaviour at the local level?

822
MS. ASSHETON-SMITH: No. What I would suggest is that what
causes behaviour at
the local are
local conditions and the fact that local cable companies were
faced with
unilateral demands from hydro companies without the opportunity
to
negotiate a fair market rate on those poles.

823
MS. FRIEDMAN: And you'll agree with me that they were also faced --
one of the conditions that
they were faced with was the fact that their industry association
had filed an
application with the Board?

824
MS. ASSHETON-SMITH: I don't think it was a situation they were
faced with. It was --

825
MS. FRIEDMAN: That was a fact.

826
MS. ASSHETON-SMITH: That was a fact, yes.

827
MS. FRIEDMAN: Thank you.

828
Thank you. Those are my questions, Mr. Chair.

829
MR. KAISER: Thank you.

Mr. Ruby? 830

CROSS-EXAMINATION BY MR. RUBY: 831

MR. RUBY: Thank you, Mr. Chair. 832

Panel, my name is Peter Ruby. I'm counsel for the Canadian Electricity Association. 833
As I go through my questions, if you find you can't hear me or you would like me to speak more slowly, just let me know.

Ms. Kravtin, have you ever done any work on pole attachment in Canada before the 834
work you did on this proceeding?

MS. KRAVTIN: No, I don't believe I've testified in a pole 835
attachment case in Canada, no.

MR. RUBY: Okay. Well, have you ever -- 836

MR. GLIST: I have, though. 837

MR. RUBY: -- studied pole attachment -- I promise I'll go down the line, 838
but --

MS. KRAVTIN: Seeing how we've sponsored a joint reply, it might be 839
more efficient and helpful to the Board if Mr. Glist is allowed to answer in combination.

MR. RUBY: I didn't say no. I'm just trying to do this in order. I'm quite 840
happy to start at this end and go counterclockwise as well.

MR. BRETT: The difference here, I think, Mr. Chairman, is it is 841
one piece of evidence that both parties filed.

MR. KAISER: Yes, I understand. 842

MR. RUBY: Well, as I say, I'm quite happy to ask Mr. Glist for his 843
experience as well. I don't mean to preclude him.

MR. KAISER: And he seems anxious to tell you. 844

MR. RUBY: Right. And I promise I'll get to him next. 845

846
So Ms. Kravtin, you mentioned your testimony. Have you ever done any other work
with respect to pole
attachment in Canada?

847
MS. KRAVTIN: No, not specifically with pole attachment.

848
MR. RUBY: Okay. Mr. Glist, have you done any work with respect to pole
attachment in Canada
before this hearing?

849
MR. GLIST: Yes. I was called as a witness at the CRTC many years
ago, I think, at the origin of
CRTC proceedings over establishing a fair rent for pole attachments.
I provided
testimony to the commissioner.

850
MR. RUBY: I take it this was telephone pole attachments?

851
MR. GLIST: The testimony that I was giving was with respect to
the proportional use methodology for
both telephone and the electric utility poles in the United States.

852
MR. RUBY: Okay. I understand that. I'm asking --

853
MR. GLIST: I under -- and honestly, I cannot remember at the
time whether the CRTC's vision
embraced both telephone poles and electric poles or not.

854
MR. RUBY: Okay. Can you tell me what year you did it, you did that work
or gave that testimony?

855
MR. GLIST: I wish I could.

856
MR. RUBY: Okay. In the 1990s?

857
MR. GLIST: As I said, I wish I could tell you the time. We'd
have to go back into CRTC records to be
sure.

858
MR. RUBY: Okay. Have you ever studied pole attachment not in the
regulatory sense of cost
allocation but in the sense of technical and physical aspects of pole
attachment?

859
MR. GLIST: Yes.

860
MR. RUBY: In Canada?

861
MR. GLIST: Yes. The CSA standards are very similar to the
National Electric Safety Code.

862
MR. RUBY: And you've compared the two?

863
MR. GLIST: I've compared the two in pertinent points. I cannot
say that I've gone cover to cover in
CSA's specs. I've also studied the physical plant and spoken with
some of the outside
plant experts to make certain that my understanding was correct.

864
MR. RUBY: I take it, then, you don't have first-hand knowledge? You're
relying on information about
pole attachment in Canada provided to you by members of the CCTA?

865
MR. GLIST: If you consider the study of photographs to be
first-hand, then I have first-hand
information.

866
MR. RUBY: Anything else?

867
MR. GLIST: I have not gone on a ride out in Canada.

868
MR. RUBY: And Mr. Glist, you're a practicing lawyer; is that right?

869
MR. GLIST: Indeed.

870
MR. RUBY: And I take it you make your living, as some of us do, appearing
at regulatory hearings?

871
MR. GLIST: Actually, I had the fortune or misfortune of entering
practice in 1978 when pole
attachment regulation began in the United States. And so I've had
very intimate and
extensive involvement both as an advisor and as a witness in the
proceedings that are in
my CV.

872
MR. RUBY: From the United States, with the exception of the one
proceeding you mentioned at the
CRTC?

873
MR. GLIST: There you go.

874
MR. RUBY: Right. And I'll try to be fair to you. I take it that you're
not claiming to be an expert in
Canadian technical safety and operational aspects of power pole
attachment? That's not

875
MR. GLIST: Well, I have testified to some aspects of that that I think are germane to cost allocation principles, and I considered those issues to be within my expertise. But if you want me to design a utility plant for utility purposes, I'm not your guy.

876
MR. RUBY: So you're an expert on cost allocation, particularly as it's been applied in the United States, I take it? Is that a fair way to state it?

877
MR. GLIST: I know you would like to isolate me to the United States, and I'll let you -- and I appreciate that effort. My knowledge is as I have testified, it crosses the border a little bit. The poles don't look that different than they do in Michigan to Ontario, to New York, you know. The attachment standards, the techniques, the equipment, the national equipment market, international equipment markets in many ways. So there is some border crossing.

878
MR. RUBY: But that's not your area of expertise, any of the things you just mentioned.

879
MR. GLIST: I have testified as an expert in outside plant matters when we get into these joint-use disputes.

880
MR. RUBY: No, I understand that. But you've been comparing the U.S. situation to Canada. You've clearly done some of your homework with respect to Canada, but that's not --

881
MR. GLIST: Thank you.

882
MR. RUBY: You're not claiming expertise in that area.

883
MR. GLIST: We've been back and forth on this, haven't we?

884
MR. RUBY: Well, I haven't got an answer, I don't think.

885
MR. GLIST: You don't think?

886
MR. BRETT: Mr. Chairman, I think the witness has given about as good an answer, as thorough an answer as Mr. Ruby can expect.

887

MR. RUBY: Well, if that's all he can do, I'm content to move on.

888

MR. KAISER: I think that's right, Mr. Ruby. He claims to be an expert with respect to pole attachment.
Do I have it right, Mr. Brett?

889

MR. BRETT: I couldn't hear you, I'm sorry.

890

MR. KAISER: I thought the witness was, in fact, saying, trying to be perhaps a bit too polite, that he did claim to be an expert with respect to Canadian matters. Is that the case or not?

891

MR. GLIST: I consider myself to be an expert. I'm treated as an expert by regulatory tribunals in these matters. As I also tried to say, there may be technical issues in outside plant design that are beyond my expertise, and that's okay.

892

MR. KAISER: I think all Mr. Ruby wants to know is are you claiming to be an expert with respect to this matter in Canada? Is that right?

893

MR. RUBY: I would narrow it. I understand he's claiming to be an expert with respect to allocation of costs. What I just want to be clear on is that -- and I understood from Mr. Glist's answer is he's not claiming to be. Maybe I can put it this way, an engineering type expert about the way pole construction is done, attachment to poles. And I think he's just clarified that for us, that he's not. So I'm quite content to move on.

894

MR. GLIST: It may depend on the question.

895

MR. KAISER: We're here about pricing methodology, aren't we?
We're not here to build telephone poles.

896

MR. RUBY: Well, with respect, Mr. Chair, you price what gets built. So it may be useful, as I go through my questions, we may come back to this if it becomes necessary.

897

MR. KAISER: Right.

898

MR. RUBY: And Ms. Assheton-Smith, I won't put you through the same thing, I'll just say that you're a lawyer; right?

899

MS. ASSHETON-SMITH: Yes, that's correct.

900
MR. KAISER: You shouldn't be so hard on lawyers.

901
MR. RUBY: I'm not. I'm just asking. I can't be too hard on one, being one
myself. And I think it's Mr.
O'Brien at the other end. Mr. O'Brien, I understand your background's in
accounting; is
that right?

902
MR. O'BRIEN: Way back, yes.

903
MR. RUBY: And you're not a, for want of a better shorthand, an
engineering technical pole expert, are
you?

904
MR. O'BRIEN: No, I've been involved in joint-use negotiations on
behalf of the OCTA, which was the
prior association to the CCTA so that's my expertise for being here.

905
MR. RUBY: Thank you. And Mr. Armstrong, I take it you're also a joint-use
negotiator; is that right?

906
MR. ARMSTRONG: That's correct. I've been negotiating joint-use
contracts and the like, municipal
access agreements, for five years for Rogers Cable.

907
MR. RUBY: And you're not claiming technical-type expertise about joint
use in Canada?

908
MR. ARMSTRONG: No.

909
MR. RUBY: Now, Mr. Greenham, I understand that you do have some
experience with the technical
aspects of joint use; is that right?

910
MR. GREENHAM: I understand the makeup of the pole and the
requirements for us to be able to
place attachments on a pole. I started out as a planner and made up
many of the
permits to apply for pole attachments, although I've never made an
actual
attachment, so I've never drilled a pole or climbed a pole.

911
MR. RUBY: Right. Thank you. Mr. Greenham, staying with you for the
moment, you mentioned this
morning some poles in Burlington that your company had put up; is that
right?

912
MR. GREENHAM: I'm sorry?

913

MR. RUBY: You mentioned some poles in Burlington that your company had constructed?

MR. GREENHAM: Yes, we had to construct a pole line across the 407.

MR. RUBY: And how many poles was that?

MR. GREENHAM: I believe it was ten.

MR. RUBY: And who used those poles?

MR. GREENHAM: We're the only users of that pole, of those ten poles.

MR. KAISER: Is that the only case where you've had to put up your own poles?

MR. GREENHAM: It's very few and far between. I think we put in evidence that we probably have. I think it's far less than 2 per cent of the poles that were out there. And the majority of the poles that we are the sole owners of now we've acquired from hydro utilities that no longer required the pole, so they've topped them and left them to our ownership and our responsibility. I am aware, personally, of one other pole besides these ten that we've placed.

MR. KAISER: And those would be the only cases where you faced a refusal and had to put in your own poles?

MR. GREENHAM: No. The ten poles were placed because the LDC did not take into consideration our attachments and our requirement for clearance, and they had already built the line. And we had --

MR. KAISER: So it was a technical issue, it wasn't about a price dispute.

MR. GREENHAM: No it wasn't about the price. They forgot about us.

MR. RUBY: And how much -- well, how high were those poles?

MR. GREENHAM: I'm not -- I have no knowledge of how high those poles -- the ones that we placed or the ones that they --

MR. RUBY: No, your poles, your ten or so poles.

MR. GREENHAM: I believe they were 35-foot poles.

MR. RUBY: And how much did it cost to put them in.

MR. GREENHAM: I believe there's something on record already as to what the costs were.

MR. RUBY: Of those poles?

MR. BRETT: Perhaps we could take an undertaking to get that information.

MR. KAISER: Is that acceptable, Mr. Ruby?

MR. RUBY: It is as long as it gets answered before the completion of my cross-examination.

MR. KAISER: Can you answer that tomorrow, Mr. Brett? Shouldn't be hard to find that information. Probably on your desk.

MR. BRETT: We can answer it tomorrow, sir.

MR. LYLE: We'll mark it as Undertaking F.1.5.

THE TEN
UNDERTAKING NO. F.1.5: TO PROVIDE THE COST OF INSTALLING
INDEPENDENT POLES

MR. RUBY: Thank you. And maybe we can, so I don't have to ask the whole range of questions, if you can flesh out all the cost factors that Mr. Ford has identified in his report are relevant to establishing the cost of a pole. I'm not dealing with allocation, because obviously this is a sole-use pole; right? Just your pole.

MR. GREENHAM: These poles are, yes.

MR. RUBY: So I'd like all the factors that Mr. Ford -- or those that he says have to be considered.

MR. KAISER: And what's the relevance of that?

MR. RUBY: Well, one of the models, Mr. Chair, involves comparing stand-alone power poles and stand-alone communications poles, and the evidence to date in this proceeding has been that the cable companies say, We can't tell you what a stand-alone pole costs; that model's not usable, it's not realistic, there's no such thing. Apparently there is such a thing.

944

MS. ASSHETON-SMITH: Can I please respond to that?

945

I think to suggest that there is a stand-alone cost of ten cable poles to cross the 407 is far from suggesting that there is a stand-alone cost of a pole in a ubiquitous network, which is the pole cost that we were talking about.

946

MR. RUBY: All I'm trying to get is the information. We'll have an opportunity in submissions to deal with what flows from it, but the Chair asked me for the relevance, and that's it.

947

MR. KAISER: Can I just understand your question, because Mr. Brett probably wants to know what information he has to get.

948

MR. BRETT: Yes, that's what I was going to ask.

949

MR. KAISER: When you say "the factors," what do you mean, the wood, the hardware? What do you mean by "factors"?

950

MR. RUBY: No. Mr. Ford, in his report, addresses a number of costs that go into figuring out what the total cost of a pole is. And there's a chart at page 26. This is exhibit -- I'm not sure if it's called appendix C, I think, Mr. Ford's report to the CCTA's original application.

951

MR. BRETT: Mr. Chairman, in just looking at this, first of all, this information is -- some of these ...

952

The 407 information, first of all, is three years ago. And I think that all that Mr. Greenham can give Mr. Ruby is the actual costs of those poles, what it cost them to purchase them and install them. I mean, this piece of material that he's talking about here is Mr. Ford's analysis of how you get from -- this thing goes into all sorts of different issues.

953

MR. KAISER: Are you referring, Mr. Ruby, to page 26?

954
MR. RUBY: I am. And I'm even quite content that some of these items
clearly wouldn't -- may not be
applicable to this particular pole. But, for example, Mr. Ford says:

955
"You need to know the net-embedded costs of the pole."

956
He says:

957
"You need to know the depreciation expense."

958
He needs to know maintenance, capital carrying costs, any indirect costs. And the
rest is just math, it's
allocation, so I don't need those. But those cost factors, I'm just trying for a
shorthand --

959
MR. GREENHAM: Mr. Ruby, we're not in the pole-building business,
and we don't track
depreciation of a pole. Like, we would have gone and gotten a
contractor to go
and source the pole, buy the pole, bring it back, put it in the
ground for us, and I
would have paid a flat sum for the installation.

960
MR. RUBY: If that's the case, then that would be the evidence I'd like.

961
MR. BRETT: We could get that, Mr. Chairman.

962
MR. KAISER: All right.

963
MR. SOMMERVILLE: Is this material in the evidence that has
been filed in the applicant's case?

964
MR. RUBY: To my knowledge, it is not.

965
MS. ASSHETON-SMITH: No, it's not.

966
MR. SOMMERVILLE: The first instance of this, the ten poles
coming up, was this morning in --

967
MS. ASSHETON-SMITH: No, no, no. There is a reference in our
interrogatory response to the CEA
estimating that the members in Ontario collectively own fewer
than 250
poles. Rogers owns approximately 190; Cogeco owning about 20,
including those ten; and other members owning fewer than 30
combined.

968
MR. SOMMERVILLE: And that's in an interrogatory response?
Page 95

969
MS. ASSHETON-SMITH: That's a interrogatory response, yeah. It
was CEA No. 2. We did indicate
in our initial application that the total share of pole
ownership in Ontario
would be less than 2 percent of all poles. That was in the
initial
application.

970
MR. SOMMERVILLE: Was there any interrogatory question
directed towards these costs?

971
MR. KAISER: You didn't ask this question in an interrogatory.

972
MR. RUBY: In fact, the question was my question. It was answered in a
general way instead of a
specific way. The question, in fact, that just got answered to is set out
in the
interrogatory responses, but it asks how many poles are owned by each
company.

973
MR. KAISER: Right, which is not this question.

974
MR. RUBY: And some details about that. And it goes on -- or, I don't
know, A to L worth of questions
here.

975
MR. SOMMERVILLE: But you didn't ask about the costs related
--

976
MS. ASSHETON-SMITH: There were some questions describing the
factors affecting the installed
cost of the poles, and in response to that series of questions,
we noted
that, except in very unusual circumstances, cable companies do
not
install their own poles. As such, there is no meaningful cost
information
available regarding the installed cost of a cable pole. And
that was the
response to that question.

977
MR. SOMMERVILLE: Thank you.

978
MR. KAISER: So, Mr. Ruby, the witness has said that, as I
understand it, he'll have a bill on his desk, if
he can find it showing what he paid the contractor for these poles.
Is that acceptable?

979
MR. RUBY: If that's all there is, it is acceptable.

980

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MR. KAISER: Thank you.

981
MR. RUBY: Thank you.

982
Maybe we can start, Mr. Greenham, with talking about communications poles since we're on that topic.

983
I take it that you'll agree with me that how high a communications pole has to be is addressed, at least in part, by the CSA standard that's been referred to repeatedly today and is in the evidence?

984
MR. BRETT: Sorry. I apologize, Mr. Ruby. You say there's a CSA standard in the evidence. You just tell us where that is.

985
MR. RUBY: Well, there's an elaborate reference. The shorthand for it is, it's standard C22.3, no. 1-01, and in the CEA's evidence, there's an extensive reference, a longer name for it.

986
MR. BRETT: But could you give us a page reference or anything for that?

987
MR. RUBY: Well, the standard itself is not contained. It's actually a regulatory document. It's an authority, as opposed to evidence. Power companies are required to follow it.

988
MR. KAISER: Where's the reference, Mr. Ruby, in the CEA evidence?

989
MR. RUBY: In fact, there is an entire -- I hate to call it a chapter, but there's just about a chapter devoted to it, or in part, at tab 3 of the CEA evidence.

990
MR. BRETT: This is labelled schedule 3, "Background Information Concerning Poles"? Is that it?

991
MR. RUBY: Yes. Page 3, title A to the CSA standard, and you'll see at paragraph 9 is the full, proper name of the standard, together with the dates it was approved.

992
MR. KAISER: Does the witness have that reference?

993
MR. GREENHAM: Yeah, I can see it here.

994
MR. RUBY: I take it you'll agree with me that this standard applies to sole-use communication poles?

995

MR. GREENHAM: As well as electric poles, yes.

996

MR. RUBY: Yes. And one of the things that the CSA standard addresses, or contributes to, is determining the height of a pole; is that right?

997

MR. GREENHAM: It will contribute to it because it gives you minimum clearance levels over a road allowance or over a portion of the road allowance that is not travelled. It also gives you clearances for going over top of a pool. It's fairly detailed as to what clearances are supposed to be.

998

MR. RUBY: Okay. And let's maybe do this analysis together.

999

A communications company, if it's building a sole-use pole, for its own use, it decides how much space it needs on the pole; is that right? That's one of the things it does.

1000

MR. GREENHAM: That would be theoretical. Like, I've placed ten poles, and those were specific to get clearance over top of a major highway, so they -- like, we took calculations into effect to determine those poles. But I haven't done it for a lot of other poles to determine what the communication requirements would be to build my own pole line.

1001

MR. RUBY: Okay. Let me ask, because I don't want to exclude anybody, are there any of -- either Mr. O'Brien or Mr. Armstrong, do you have any experience with the construction of power poles? Or excuse me, communications poles?

1002

MR. O'BRIEN: No.

1003

MR. ARMSTRONG: No.

1004

MR. RUBY: Okay. So we'll have to deal, Mr. Greenham, with your ten poles because it's all we have. When you built those poles, did you figure out how much space you would need on the pole for your communications equipment?

1005

MR. GREENHAM: We figured out how much clearance we required over the 407 and what the elevations of the land was on either side of the 407, and then from that determined what the height to have pole was required so that we could maintain

1006
MR. RUBY: All right, and did you figure out how much the wire was going
to sag as it crossed the
407?

1007
MR. GREENHAM: Yes, we did.

1008
MR. RUBY: Right. And how much it was going to sag, that's the amount of
space you needed; right?

1009
MR. GREENHAM: No, the amount of space on the pole is the attachment
of the bolt and the strand
clamps. The requirement is a clearance bay over the highway and the
sag that is
at mid-span is what -- you know, how your calculations are
determined to make
sure that you have the proper clearances.

1010
MR. RUBY: So you need to make sure, is it fair to say, that whatever the
wire you have crossing the
highway, it doesn't sag beyond whatever the minimum ground clearance is?

1011
MR. GREENHAM: That's correct.

1012
MR. RUBY: Right. And it's the CSA standard that tells you how far above
the highway you have to
be?

1013
MR. GREENHAM: Yes, that's correct.

1014
MR. RUBY: And is it fair to say that how much clearance you need varies
depending on what passes
underneath?

1015
MR. GREENHAM: It varies on what passes underneath and what the use
of what's underneath is,
such as a pool.

1016
MR. RUBY: I don't want to belabour the point, but for example, you need
to be higher off a highway
where trucks pass underneath than a driveway; is that right?

1017
MR. GREENHAM: Yes, that's correct.

1018
MR. RUBY: And without getting into the details, there's a standard that
dictates how much a pole has
to be buried under the ground.

1019

MR. GREENHAM: I believe that's true. I've never done that calculation.

MR. RUBY: Right. But it's fair to say all poles have a buried portion.

MR. GREENHAM: Yes.

MR. RUBY: Right, otherwise they'd fall down.

MR. GREENHAM: Well, but I would like to clarify that. You will find some communication poles in the north areas that are on stilts and are not in the ground at all.

MR. RUBY: Okay. You would agree with me that those are relatively rare?

MR. GREENHAM: Not in the northern country.

MR. RUBY: All right. Fair enough. So is it fair to say that when you're buying your 35-foot pole -- which I think is what you told me you have over the 407?

MR. GREENHAM: And that's -- like, I was not personally involved with this build, so that's a generalization.

MR. RUBY: Okay. Sorry. Generalization, I'm not sure what you mean.

MR. GREENHAM: It's a guess.

MR. RUBY: Okay. Well, whatever the length was, you needed some minimum height, right, enough to put under the ground and enough to get over the highway.

MR. GREENHAM: Yes, that's correct.

MR. RUBY: And do you know what those measurements are? That is, how much was underground on those poles?

MR. GREENHAM: I have no recollection. As I said, I was not personally involved with that build.

MR. RUBY: Okay. Let's talk about power poles for a minute, then. The height of them is also partly governed by the same CSA standard; is that right?

MR. GREENHAM: Yes, that's correct.

1036
MR. RUBY: And an electric distribution company has to figure out how much
room it needs on the
pole, the same way you did; is that right?

1037
MR. GREENHAM: Yes.

1038
MR. RUBY: And the same standard tells it how far its wire has to be above
ground; is that right?

1039
MR. GREENHAM: To my understanding. I've never built a hydro line.

1040
MR. RUBY: Right. And they also need a piece of the pole underground,
leaving aside stilts for the
moment.

1041
MR. GREENHAM: Yes.

1042
MR. RUBY: So let's just take an example. So, and you may want to jot this
down, and I'm just going
to try and use round numbers. And it's more for illustration than
anything else, to make
sure I understand this.

1043
If there's 3 and a half metres of space the power companies attaches facilities to
and 6 metres, for
example, to get over a driveway, and one and a half metres to go underground,
that's 11 metres total;
right? Even lawyers can do the occasional bit of math. Is that right, it adds up to
11?

1044
MR. GREENHAM: Yes, that's correct.

1045
MR. RUBY: And on that pole, if we built that pole, there would be no room
for communications
attachments; is that right?

1046
MR. GREENHAM: No.

1047
MR. RUBY: And with a joint-use pole, moving to a pole that uses --

1048
MR. GLIST: Just a minute. You might want to refer to tables,
because minimum grade clearance for
communications conductors can be lower than minimum grade clearance
for power
conductors. In your hypothetical, I'm not saying one way or another,
but --

1049
MR. GREENHAM: Like, over an untravelled portion of highway, I

believe you're allowed 10 feet of clearance, or if you're alongside a highway, so along a farmer's field.

1050
MR. RUBY: No, I understand. These are all assumptions. They can all vary. You agree with me; right? All these things can vary depending on local conditions and what's on the pole; is that right? Is that correct?

1051
MR. GREENHAM: Yes.

1052
MR. RUBY: All I'm asking you is that, if you assume that these things are the case, there's no room for a communications attachment; is that right?

1053
MR. GREENHAM: There is room.

1054
MR. RUBY: So where do you put it?

1055
MR. GREENHAM: You put it in that six metre section, depending on what clearance you require over the untravelled portion of the highway, or the right of way.

1056
MR. RUBY: So you can hang it lower than the minimum clearance because it's a different minimum clearance.

1057
MR. GREENHAM: That's correct.

1058
MR. RUBY: So maybe?

1059
MR. GREENHAM: Possibly.

1060
MR. RUBY: All right. That's fine. So, for a joint-use pole, that is, a pole that can accommodate both communications attachments and power poles, it's the same rules; right? The standards govern how much goes under ground and there's a standard that governs how high up, how much clearance you need above the ground; is that right?

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MR. GREENHAM: Yes.

1062
MR. RUBY: And you still need something buried; right?

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MR. GREENHAM: Yes.

1064

MR. RUBY: And you still need to be up in the air.

1065

MR. GREENHAM: Yes.

1066

MR. RUBY: Right. And so is it fair to say that the difference between a joint-use pole and a sole-use pole is the stuff that occurs on, let's call it, the upper half of the pole? I'm not taking exact measurements, but you've always got some kind of clearance and some kind of buried portion, the differences are up at the top.

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MR. GREENHAM: It's not on the bottom of the pole.

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MR. RUBY: Right.

1069

MR. GREENHAM: Like --

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MR. RUBY: I don't want to quibble with you about whether the top means half of whatever. It's not the bottom.

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MR. GLIST: I would take issue with that.

1072

MR. GREENHAM: It depends on the elevation of land that that pole's being mounted on as well. You need to maintain some clearance from a passer-by to be able to climb the pole and gain access to the strand and cable that's there. But if you're high enough and the next pole is low enough, you could be very low on that pole and still be able to maintain. So you could be close to half.

1073

MR. RUBY: No, the point I'm trying to make is I'm not making any quantitative judgments. I'm just asking you to confirm that the clearance -- let's do it another way -- clearance and the buried portions is always on the bottom of the pole; right? Nothing goes below it? That's obvious.

1074

MR. GREENHAM: Yes.

1075

MR. RUBY: Okay. That's good enough for my purposes. And then you have to make sure that there's space for the electric facilities on that pole.

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MR. GREENHAM: If it's a hydro pole.

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MR. RUBY: Right. Well, it's a joint-use pole.

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MR. GREENHAM: A joint-use pole is also a telephone pole.

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MR. RUBY: Well, when I talk about joint-use, just to be clear, I mean communications and power.

1080

MR. GREENHAM: Okay.

1081

MR. RUBY: And we'll not quibble about whether it's a telecom company or whether it's a cable television company. And I'll just note, Ms. Assheton-Smith may be able to confirm this, the CCTA's actually changed its name recently; hasn't it?

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MS. ASSHETON-SMITH: That's correct.

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MR. RUBY: What did it use to be.

1084

MS. ASSHETON-SMITH: Well, and I should point out too the name change has yet to be formalized, but unofficially we have changed our name to the Canadian Cable Telecommunications Association to reflect the fact that we do provide telecommunications services such as high-speed Internet. Sorry, Canadian Cable Telecommunications Association.

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MR. RUBY: And what did you use to be?

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MS. ASSHETON-SMITH: Canadian Cable Television Association.

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MR. RUBY: Different name, same initials.

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MS. ASSHETON-SMITH: That's correct.

1089

MR. RUBY: Let's look at this, Mr. Greenham, another way. Will you agree with me that there's a large population of power poles that are already taller than they need to be strictly for electricity uses? This is in Ontario.

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MR. GREENHAM: I'm assuming the LDCs, yes, they've built some that are larger than just their requirement.

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MR. RUBY: And there's a lot of them; right? We're not -- this isn't like the stilts; right? It's --

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MR. GREENHAM: I think it's in evidence as to how many there are.

1093

MR. RUBY: And what that means to you, in part, is that, without major changes, those poles can accommodate communications attachments -- you don't have to replace the pole to get access.

1094

MR. GREENHAM: In some cases. In other cases we have to replace the pole.

1095

MR. RUBY: Those would be the ones that are too short to accommodate you.

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MR. GREENHAM: Not necessarily. There could be safety issues with the pole. The pole may -- like, the poles that we were talking about before, and how old the poles are, there was different construction practices with those poles. Some clearances, with the transformer being down lower on the pole instead of above the hydro and neutral, are existing builds that are already out there. Drip loops that come off of the secondary feeds can also go lower than a new build would nowadays.

1097

So you have to deal with what's out there, and what the conditions are out in the field.

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MR. RUBY: Right. And that's what everybody's being calling "make-ready," isn't it?

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MR. GREENHAM: For the most part, yes.

1100

MR. RUBY: Let's just stop there for a moment. So the things you've told me so far are, make-ready includes increasing pole height; is that right?

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MR. GREENHAM: In some cases, yes.

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MR. RUBY: Well, I'm just trying to get -- the things you get charged -- somebody has said, I can't remember who, that cable companies pay in the millions, I think it was --

1103

MR. GREENHAM: Yes, that's correct.

1104

MR. RUBY: -- for make-ready charges. So I'm just trying to figure out what you pay those for.

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MR. GREENHAM: In some cases it's to increase the pole height, and sometimes it's because the transformer encroaches on the separation space; the service wire loops into the separation space; grounding or bonding on the transformers or streetlights is non-existent; the hydro company takes it upon themselves to change the class, the height, or the type of pole as we're going through for new construction. Cleanup of existing third party's uses of the pole is also part of make-ready that gets passed on to us. Replacing or relocating an existing anchor is something that gets passed on to us. And then all safety or clearance issues are addressed at the pole at that time as well.

1106

Just to take us aside here, we had a response to the EDA No. 2(g), and it was a piece of a document from -- to one of our planners from Network Hydro -- Hydro One Networks services, and it was, to quote, anywhere -- there's two issues here, or two locations. And the make-ready costs vary anywhere from just over \$1,000 per pole to \$10,000 a pole for make-ready. So it's very easy for it to get up to millions of dollars of make-ready costs for any cable company.

1107

MR. RUBY: And I'm not contesting that. But it's not just height increases; right? There's all kinds of things you pay for.

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MR. GREENHAM: All kinds of things, yes.

1109

MR. RUBY: Now, can you pull out Mr. Ford's report. Again, I think this will be a useful tool for getting us past what otherwise could take a while. This again is appendix C of the CCTA's original application. And if you'll turn to page 2, you'll see at the top Mr. Ford has listed some figures that, at various points, he's called typical and sometimes normal. Do you see that?

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MR. GREENHAM: Yes, I do.

1111

MR. RUBY: So, for the moment, let's just take Mr. Ford's assumptions, all right? And these are assumptions, aren't they? Not all poles are 40 feet tall.

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MR. GREENHAM: Don, could you speak to that as to where the numbers came from?

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MR. RUBY: Mr. Ford, I'd be quite happy for you to help me here. All poles
aren't 40 feet tall, are they?

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MR. FORD: No; that's correct. And as I think I indicated in the response
to your Interrogatory No. 7,
or CCTA responded the source of that document, and I would just note for
the record
that exactly the same diagram is found in the response by Hamilton Hydro
at tab 36 of
the information that was filed last week, so ...

1115
MR. RUBY: But you'll agree with me they're assumptions; right? You assume
that there's a pole of 40
feet and that so much of it is buried and so much of it is clearance, so
much power space,
so much communication space.

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MR. FORD: That is in evidence in several place, yes.

1117
MR. RUBY: Right. But in your analysis, it's an assumption, those numbers?

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MR. BRETT: Sorry, Mr. Chairman, could Mr. Ruby clarify whether
he's asking about the diagram or
whether he's asking about statements made in Mr. Ford's evidence
about numbers.

1119
MR. RUBY: I'm asking about the paragraph I referred to, the top paragraph
on page 2 of Mr. Ford's
report that talks about a typical distribution pole, and then normally 6
feet is buried
underground. These are --

1120
You've made some assumptions so that you can go ahead and do the things you do in
your report; is that
right?

1121
MR. FORD: I've drawn the same assumptions that a number of other parties
have in the -- I believe I
indicated in the response to CEA No. 7 that that was from evidence that
was filed by the
EDA in the proceeding before the CRTC. So I think they are what I might
call generally
accepted assumptions.

1122
MR. RUBY: Okay. Fair enough. So I'm going to accept for the moment, for
this series of questions,
your assumptions. And the CSA standard deals in metric, so you'll forgive
me if I try to
also deal in metric so we're in the same ballpark.

1123
So my measurement or calculation of a 40-foot pole is that it works out to about

1.2 metres. As we go along, if somebody disagrees, I'm -- 12.2. And that's the number you have as well, I see. So I'll take that.

1124
If you take all the numbers that you've put in, right, and then you take -- so 12.2, and Mr. Ford, you may want to do the math with me to make sure I don't make a mistake. You take 12.2 metres and you take off 3.55 for the electricity facilities, which is what you've got down here on page 2, if you take off 5.25 for the clearance that you've assumed and you bury 1.8 metres, my calculation is that it leaves 1.6 metres; is that right?

1125
MR. FORD: I'm sorry, you lost me at the -- at the clearance. I'm trying to follow along in the evidence here as well, so ...

1126
MR. RUBY: It's 12.2, minus 3.55 for electricity facilities, minus 5.25 --

1127
MR. FORD: 5.25, thank you.

1128
MR. RUBY: -- for clearance, minus 1.8. And I'm just tracking your numbers here.

1129
MR. FORD: Yes.

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MR. RUBY: My lawyer's math comes out with 1.6 metres.

1131
MR. FORD: I arrived at the same number.

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MR. RUBY: All right. And I take it that 1 metre of that has to be separation between communications wires and the power facilities?

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MR. FORD: That is consistent with the typical pole diagrams that our -- have been entered in evidence.

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MR. RUBY: Right. And I gather you'll agree with me that the 1 metre is a minimum and it's a standard requirement, isn't it?

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MR. FORD: That's my understanding, but I -- but I must say, I drew that information from the typical pole descriptions that I -- they came from.

1136
MR. RUBY: Well, maybe, Mr. Greenham, you can help, then.

1137

MR. GREENHAM: From my planning days, there is an exception to that. The transformer, if it encroaches on that separation space, you are allowed a .75 clearance from that transformer bottom to our strand attachment height if the transformer's grounded.

1138

MR. RUBY: But between wires?

1139

MR. GREENHAM: Between wires, between the hydro neutral or the secondary, it's a minimum of 1 metre, yes.

1140

MR. RUBY: Right. And you know that the simple reason for that is so that when a communications worker is working on its facilities, it can't touch the power tables and electrocute him or herself; right?

1141

MR. GREENHAM: Yes, it's a separation safety zone.

1142

MR. GLIST: It has other purposes, though.

1143

MR. RUBY: It does, but that's a minimum --

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MR. GLIST: It allows clearance above grade for primary, which has a higher ground clearance as well, so it's serving power needs.

1145

MR. RUBY: And so, if we take off the 1 metre from the 1.6, Mr. Ford, we just had left, that leaves 600 millimetres.

1146

MR. FORD: Yeah, 0.6 metres, 600 millimetres.

1147

MR. RUBY: Now, turning back to you, Mr. Greenham, since I think you're the closest we have to a technical person, how many -- let me ask this a different way. The communications facilities have to fit inside that 600 millimetres or .6 metres; is that right?

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MR. GREENHAM: Not all of them.

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MR. RUBY: What doesn't have to?

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MR. GREENHAM: The LDCs' communication group can encroach on the power space, because their workers are certified for working in that space.

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MR. RUBY: Okay. What about cable television?

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MR. GREENHAM: Cable television is not allowed in that space the way things stand now because our workers are not qualified for that.

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MR. RUBY: What about the telephone companies?

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MR. GREENHAM: The same with them, as far as I am aware.

1155

MR. RUBY: Okay. And when we say you have to fit inside the communication space, that is you have to fit from the top most point you attach to to the lowest point of the sag; is that right?

1156

MR. GREENHAM: No. The sag is not part of the attachment to the pole. The sag is something -- depending on who's on top and who's on the bottom, hydro -- or, I'm sorry, our cables do not sag quite as much as Bell Canada. Bell Canada's made up of 100 percent copper for the majority, but they do have fibre optics as well now too. But their copper wires definitely sag more than ours. So you have to maintain clearances through the sag and the span, but there's different clearances at the pole that you have to maintain.

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MR. RUBY: But the clearance from the ground is measured at the centre point of the sag.

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MR. GREENHAM: Yes.

1159

MR. RUBY: Not centre point, but the lowest point.

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MR. GREENHAM: Yes, sir.

1161

MR. RUBY: And you would agree with me cables always sag?

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MR. GREENHAM: It may be minimal in some cases but, yes, they all sag.

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MR. RUBY: And that, the exercise we've just went through, that's how you figure out how much room there is on an existing pole; right? You sort of figure out what everybody's using and you see what's left?

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MR. GREENHAM: You measure what everybody else is using, you look at what the existing sag is and what your of the existing utilities, you determine what your minimum sag is and what your sag is going to be with what the cables are that you're going to put on their piece of strand, and then, based on that, you calculate where you can attach on that pole.

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MR. RUBY: Or at all?

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MR. GREENHAM: Or at all.

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MR. RUBY: So, just to be clear, the 2 feet that we all -- that appears frequently in this evidence as being the communications space, that's an assumption too; right? It is very much dependent on what else is on the pole, how much space you get for communications depends on all the other things on the pole, and the CSA and other standards requirements?

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MR. GREENHAM: There's streetlights on the poles, there's business organizations that have signage on poles, there's a lot of things that go on poles. So we have to make sure that we have clearance for all of those things.

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MR. RUBY: So, Mr. Ford, I take it that if the evidence shows the support that the communication space typically was not 2 feet, if it turned out to be, for example, and this is an assumption, it turned out to be 3 feet, that would change your allocation, wouldn't it?

1170

MR. FORD: I would actually have to do the math. I know it sounds like a straightforward question but it's not a straightforward question, because what we have -- what I have assumed is the usage of 1 foot of communication space, which is not really a physical one foot. It is really a -- it's a conventionally accepted 1 foot because the strands are normally spaced at 1 foot. And then we have also assumed a portion, 50 per cent of the clearance - sorry, terminology - the separation space.

1171

And so, to the extent that it would modify the separation space, there's not a clear answer. I would have to -- you know, I can't answer that in the hypothetical. You would have to look at an actual example. But it isn't just based on the 1 foot. It is the 1 foot plus a portion of the separation space that, for purposes of my calculation, is considered to be space used by a cable attachment.

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MR. RUBY: So let me see if I can help you. If you took a metre from the power space, and instead you had 1.6 metres of communication space, that would change your allocation under your model, wouldn't it?

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MR. FORD: Again, sorry, I'm not trying to be difficult, but I don't -- there's not a simple answer to that question. I would have to actually do the calculations to see what impact it would have. It would not change the assumption of 1 foot. It would probably -- I mean, the only reason I can think of why you would do that is if you wanted to provide for more attachments. If you provided for more attachments, then you would be sharing the separation space among more users. And so, if there are more users on the pole, it would probably be 1 foot, but maybe then you would divide the separation space in three instead of two.

1174
So you see why I'm suggesting that it's not a straightforward calculation.

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MR. RUBY: And let's see if Mr. Greenham and I can help you with that. Mr. Greenham, if you increase the distance between poles, would you agree with me that generally speaking the sag increases too?

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MR. GREENHAM: Yes, it does.

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MR. RUBY: So the wire sags lower towards the ground.

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MR. GREENHAM: Yes, it does.

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MR. RUBY: Which means you have to lift the attachment points up to make sure you don't pass the minimum clearance requirements?

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MR. GREENHAM: Depending on the grade of the ground underneath it.

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MR. RUBY: Assuming everything else is constant. Is that right?

1182
MR. GREENHAM: Yes.

1183
MR. RUBY: So, Mr. Ford, you'll agree with me that it's not just a matter of how many attachments --

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MR. GREENHAM: All users of the pole would also have to move up, because the LDC needs to maintain clearances just as much as anybody else.

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MR. RUBY: Right, right. It's the totals in the communications space that matter; is that right? You measure from the bottom of the lowest cable to the top of the highest cable?

1186

MR. GREENHAM: And you're saying they're going to maintain that 11 feet no matter what?

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MR. RUBY: Well, you have to be above the ground by the same amount; is that right?

1188

MR. GREENHAM: Typically, I don't think that an LDC -- and I may be speaking out of turn because I have never built a pole line -- but they use up the space that's available to them.

They don't necessarily restrict to exact locations for everything to attach.

1189

MR. RUBY: No, I understand that, but I'm talking about Mr. Ford's model.

1190

MR. GREENHAM: Okay.

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MR. RUBY: Let's leave that for the moment. Mr. Chair, I don't know if you planned on taking an afternoon break.

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MR. KAISER: Would this be a convenient time to break?

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MR. RUBY: It would. Thank you.

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MR. KAISER: We'll come back in 15 minutes.

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--- Recess taken at 3:27 p.m.

1196

--- On resuming at 3:47 p.m.

1197

MR. KAISER: Please be seated.

1198

Mr. Ruby, before you start, we've had a lot of examination about, I guess, the cost of the poles from these witnesses. Do you not have that cost information? I mean, some of your clients, you represent some of these people who own these poles.

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MR. RUBY: Mr. Chair, I may have misspoken, but I was only asking for -- the only cost information

I've asked for is with respect to the ten poles in Burlington. I haven't asked for anything else, I don't believe.

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MR. KAISER: I'm trying to understand the relevance of this examination that's going on as you try and identify all the pieces of the poles and the proper height and so on. Can you help me?

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MR. RUBY: Yes, Mr. Chair. And I'm happy to tell the Board I think I've completed that part of the examination. The point is simply this: Mr. Ford's model is an allocation based on space.

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MR. KAISER: Yes.

1203

MR. RUBY: If you add up certain bits and compare them to other bits, you end up with the proportion and he applies that to the cost.

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But at risk of being too colloquial, if he has the bits wrong, the amounts, then the 15.5 percent figure he ends up with --

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[Audio feedback]

1206

MR. RUBY: -- I'll be submitting, should not be the figure used by the Board. And, of course, there are -- it's a question of testing his evidence. He's made certain assumptions as an expert. I think the point has been made that, for example, the 2 feet that people talk about, it is just an assumption. And that --

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MR. KAISER: No, I understand where you're going with that, and I understand the reason why. I guess what I'm wondering is, wouldn't an easier way to get to it, you can just call evidence. Your people know what these poles look like and feel like, and what the proper bits are. Are you going to do that?

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MR. RUBY: And I have a witness coming tomorrow who I expect will deal with that.

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MR. KAISER: All right. That's fine. I just ...

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MR. RUBY: I'm just trying to deal with both sides. There's been a position put forward, and I'll respond both in cross-examination and with direct evidence.

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MR. RUBY: Mr. O'Brien, generally speaking, is it fair to say that cable companies pay for the poles they use?

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MR. O'BRIEN: Generally speaking, yes.

1214
MR. RUBY: And the dispute that's been going on for the last few years has been -- to the extent there is a dispute between individual utilities, it's been about the proportion of pole costs that should be paid by the cable company and the quantum of the costs that are being allocated.

1215
MR. O'BRIEN: It's the pole rate that is in dispute.

1216
MR. RUBY: Those are the two components, though, right, the allocation and the total amount of cost?

1217
MR. GREENHAM: We're not disputing the allocation, the space that's being used. We're disputing the rate that's being applied.

1218
MR. RUBY: Okay. Let me put it this way: And it may be -- I see Ms. Assheton-Smith leaning it, actually, so she may have a comment here.

1219
MS. ASSHETON-SMITH: Well, I think our application is clear in what we're asking for. But perhaps in terms of your specific question, if I could pass that to Mr. Ford, because I think it is really a question related to his evidence.

1220
MR. RUBY: Sure.

1221
MS. ASSHETON-SMITH: And perhaps you could repeat the question.

1222
MR. RUBY: I thought it was self-evident, but I'm often wrong about these things.

1223
The nub of the dispute over rates boils down to a disagreement about how much the total cost should be and how much of that total cost cable companies should pay; is that right?

1224
MR. FORD: I'm not sure that there is that much disagreement over the costs. There are some difficulties in certain cases with obtaining the costs, but I'm not sure

that I would

categorize that as -- maybe put that into the category of major disputes.

1225

From my understanding of the process that has gone on, I would certainly say that the difference in methodology -- the major methodological difference would appear to me to be related to the allocation to cable.

1226

MR. RUBY: Okay. Well, going back to you, Mr. O'Brien, I take it that cable companies in Ontario do not pay for poles to which they do not attach, or they pay no fee with respect to poles to which they do not attach?

1227

MR. O'BRIEN: That is correct.

1228

MR. RUBY: And I was just noting in the spreadsheet that summarizes the material that the LDCs in Ontario were ordered to provide, for example, for Hydro One, there were about 1.4 million poles that cable companies don't pay for; is that right?

1229

Again, I'm quite happy for you to turn up some point spreadsheet.

1230

MS. ASSHETON-SMITH: Which spreadsheet?

1231

MR. RUBY: The first tab, or, excuse me, the second tab that summarizes all that data in the books that the EDA produced.

1232

MR. GLIST: I would remind you, though, that Mr. Ford answered before, the cost elements that go into the pole rental charge for the poles that are contacted are based upon the totality of the pole universe owned by the utility. So that it is a pole-by-pole charge, but the underlying cost elements relate to the mass asset.

1233

MR. FORD: That is correct.

1234

MR. RUBY: But for a pole charge, you divide that by the number of poles to reduce it to a per-pole cost. You reduce that grand asset total to a pole charge by dividing by the number of poles.

1235

MR. GLIST: Well, what I'm saying is that the cost of your 65-footers are in the cost that is charged when they contact a 45-footer.

1236

MR. RUBY: Let's try and do it this way. Maybe it will be simpler.

1237
You agreed with me that there are some poles in Ontario that don't have
communications attachments,
right, Mr. O'Brien?

1238
MR. O'BRIEN: That's correct.

1239
MR. RUBY: And you don't pay for those.

1240
MR. O'BRIEN: That's correct.

1241
MR. RUBY: Okay. And some of them, you'll agree with me, have -- are
sufficiently tall and of
sufficient class to allow communications attachments without replacing
the pole?

1242
MR. O'BRIEN: That's probably right, yes.

1243
MR. GREENHAM: Based on the allocation of allowing space for Bell
Canada, they have space for
communications.

1244
MR. RUBY: There are probably quite a lot of them, I guess you would agree
with me?

1245
MR. GREENHAM: Yeah.

1246
MR. RUBY: Okay. Let's talk about communications attachments for a moment.
1247
From my very limited knowledge, there are three basic kinds of wires that get
attached. And, Mr.
Greenham, I'm quite happy if you help me with this. So fiber would be one,
fiberoptic cable?

1248
MR. GREENHAM: We attach fiberoptic cables, we attach coaxial
cables, and we attach drop cables,
which are also coaxial.

1249
MR. RUBY: And all of those types of cables, you either attach them to a
strand that travels between
poles, or they are self-supporting; is that right?

1250
MR. GREENHAM: In some cases they are self-supporting, yes.

1251
MR. RUBY: Okay. And I take it the ones attached to a strand tend to sag
less than the ones that are
self-supporting?

1252
MR. GREENHAM: The self-supporting cables are just that, they're self-supporting, so you don't need the additional anchorage. You are typically going from the pole to the customer. There may be the odd occurrence where it is going between pole to pole, but that is a substandard practice that we're trying to get out of. And in most cases, our distribution cables are on strand.

1253
MR. RUBY: Could I ask the panel to turn to the answer to the CCTA Interrogatory 5H. It's on page -- of that interrogatory response, sort of the bottom third of that page.

1254
MR. SOMMERVILLE: What was that reference again, please?

1255
MR. RUBY: It's the CEA interrogatory to the CCTA, their response to question 5H.

1256
MR. SOMMERVILLE: Thank you.

1257
MR. RUBY: And maybe any member of the panel can help me. Who had the primary responsibility for answering this question?

1258
MS. ASSHETON-SMITH: That was John Armstrong.

1259
MR. RUBY: Okay. So Mr. Armstrong, this, I take it, is a list of equipment that typically gets attached to cable facilities or -- excuse me, gets attached to either poles or wires, attached on poles with respect to cable facilities.

1260
MR. ARMSTRONG: I believe that's correct, from my limited technical knowledge, yes.

1261
MR. RUBY: Well, I'm quite happy if Mr. Greenham wants to help you with this line of questioning. I notice power supplies are listed here. And again, I mean, we can translate this back and forth, but for simplicity, it looks like power supplies are 2-foot-by-2-foot-by-1-foot boxes; is that fair to call them that?

1262
MR. GREENHAM: It's fair to call them that. And they're not actually placed in the communication space, they're typically placed below the communication space because there's not the same requirement for separation from the public.

1263

MR. RUBY: All right. And it looks like from your answer here, it says, "That's three batteries and sometimes there are six batteries." Does that mean that the box is twice as big?

1264
MR. GREENHAM: With new technologies, that doesn't necessarily mean the box is twice as big, but in some cases it is. Batteries have gotten smaller.

1265
MR. RUBY: Okay. And these batteries, are these used for high-speed Internet service?

1266
MR. GREENHAM: I'm sorry?

1267
MR. RUBY: These batteries, are they used for high-speed Internet services?

1268
MR. GREENHAM: These batteries are used as back-up. If the LDC's power was to go down, the customer would still have cable at their house. The batteries actually back up the entire distribution system so that customers can maintain their existing service. If they had a generator, they could still get cable TV.

1269
MR. RUBY: Okay. And were these in use ten years ago?

1270
MR. GREENHAM: Ten years ago power supplies have always been there to supply the power to our plant so that the plant actually ran. Ten years ago, not in all cases would they have had power -- or batteries with it because the requirement wasn't there as much. If the power went out back then, the TV went out, and that's the way we thought of things. Today, people have modems at their house, and their computers already have a UPS, and they would still want their computers to run. So it works for both the cable TV side of things, it works for the modems as well.

1271
MR. RUBY: They weren't widely used ten years ago, but there might have been some of them.

1272
MR. GREENHAM: Yes, that's right. They would have been smaller at that time. They would have been a foot by a foot instead of 2 feet by 2 feet.

1273
MR. RUBY: Thank you. Some of these other equipment, can you just help me? The optical nodes, and I'm just going down your list here that's at H, are they attached to the

pole or the wire?

1274

MR. GREENHAM: Typically, the optical nodes are attached to the support strand.

1275

MR. RUBY: Okay, and RF amplifiers?

1276

MR. GREENHAM: They're what's attached to the coaxial cables, again, that's on the strand. In some cases there might be some attachments on the poles in the northern systems because they have difficulty accessing them with snow and so forth, so they have an arrangement with the LDC to be able to place it on the pole.

1277

MR. RUBY: And I think you told me power supplies are stuck on the pole?

1278

MR. GREENHAM: Yes, that's correct, below the communications space.

1279

MR. RUBY: And passive components?

1280

MR. GREENHAM: Passive components are also attached on the strand, directly to the coaxial cable.

1281

MR. RUBY: Okay. Then the next couple are the cables themselves, and then an optical cable splice enclosure, that sounds like it's attached to the cable; is that right?

1282

MR. GREENHAM: It's attached to the fiber cable and is supported by the support strand. It's not attached to the pole.

1283

MR. RUBY: So for the items that are attached to either the cable or the support strand, is it fair to say that, particularly in the winter with ice and snow loading, they cause the cable to sag more than it would otherwise?

1284

MR. GREENHAM: Yes, and in those locations where it becomes a clearance issue, those locations are actually -- those pieces of equipment are put underground in pedestals.

1285

MR. RUBY: Now, you mentioned that power supplies actually go in the clearance space, that --

1286

MR. GREENHAM: Well --

1287

MR. RUBY: They go below the communications space.

1288
MR. GREENHAM: They go below the communication space.

1289
MR. RUBY: Right. So if, to use Mr. Ford's assumption, there's two feet of communications space, and there's a 2-by-2-foot box bolted to the pole beneath it, that's, in the direct sense, using 2 more feet of space; isn't it?

1290
MR. GREENHAM: It has a separate attachment or it has a separate permit for that as well. So it's currently with most, if not all, of the LDCs, there's a strand attachment permit, and then there's a power supply permit.

1291
MR. RUBY: In Ontario, do you pay to attach a box like that to a pole?

1292
MR. GREENHAM: Yes.

1293
MR. RUBY: Extra?

1294
MR. GREENHAM: Yes.

1295
MR. RUBY: Okay. And Mr. Ford, does that type of charge -- is that accommodated in your model?

1296
MR. FORD: No, sir, it is not.

1297
MR. GLIST: Well, I think, actually --

1298
MR. RUBY: Well, to --

1299
MR. FORD: No, perhaps Paul wants to disagree with me. I --

1300
MR. GLIST: Well, what I wanted to say is you will recall this morning that I mentioned that Mr. Ford's cost allocation formula assigns 2.6 feet of space to an attachment that actually consumes a few inches in the ordinary course. So we're looking now at the various cases where you go a distance down the road and you find yourself with a battery backup box below the communications space. There's an example where it's more than those few inches. You could take the path of trying to fine-tune the equation, I would submit that it's already subsumed in the 2.6 feet of average space that is being assigned in the base case to a facility that takes a few inches.

1301

MR. FORD: That's fair enough, and I would agree with that.

1302

MR. GREENHAM: If I could add -- I'm sorry, the power supply is basically separated or -- you have one power supply for every 500 customers, so it's not on every pole, it's on a few poles.

1303

MS. ASSHETON-SMITH: I could add too that the need for the battery backup is driven by the fact that the power source is not 100 per cent reliable, and wouldn't need battery backups, of course, if the power source was reliable.

1304

MR. RUBY: So you want a discount from your electricity rate?

1305

Let's talk for a minute, if we can, about the cable television business. And Mr. O'Brien, would you agree with me that the cable TV business is a facilities-intensive business? Is that a fair characterization?

1306

MR. O'BRIEN: I think that's a fair characterization, yes.

1307

MR. RUBY: Cable companies build plants; right?

1308

MR. O'BRIEN: They don't what?

1309

MR. RUBY: They build plants.

1310

MR. O'BRIEN: They don't build plants -- they build plants but they build poles.

1311

MR. RUBY: But they put up wires and all the other things we've seen.

1312

MR. O'BRIEN: It's also very much a programming service.

1313

MR. RUBY: And to put up that plant it takes capital; right?

1314

MR. O'BRIEN: That's correct.

1315

MR. RUBY: And there's a cost to that capital.

1316

MR. O'BRIEN: That's correct.

1317

MR. RUBY: And the less cable companies need to invest in plant, all else being equal, they lower

1318
MR. O'BRIEN: They don't spend the money, they do not service the customers.

1319
MR. RUBY: Let me put it to you this way. The CCTA said, and we've talked about this before, that there are about 250 cable-only poles in Ontario; is that right?

1320
MS. ASSHETON-SMITH: What we said was that we own about, approximately, 250 poles, most of which were previously hydro-owned poles installed by hydro which were then passed -- transferred to cable companies after being decommissioned.

1321
MR. RUBY: For those decommissioned poles, do you pay for them?

1322
MS. ASSHETON-SMITH: We purchase them?

1323
MR. GREENHAM: We purchase them for about a dollar.

1324
MR. RUBY: Okay.

1325
MR. GLIST: And that count doesn't include the poles that are made ready because the title's been invested over in the LDC.

1326
MR. RUBY: That's not included in the 250?

1327
MR. GLIST: Right. No.

1328
MR. RUBY: Right.

1329
MR. GLIST: So, in terms of tracking capital expenses, that's all I'm saying.

1330
MR. RUBY: No, I understand. But the CCTA's answer at number 2(b) to the CEA's interrogatory was that of the 5.5 billion identified in its original application that had been spent in facilities, I think the answer was that there were "virtually none," I think was the wording, on poles.

1331
MS. ASSHETON-SMITH: I'm sorry, can you just point us to where that's coming from?

1332

MR. RUBY: Sure. The reference is paragraph 14 of the original evidence.

1333

MR. BRETT: CEA's evidence?

1334

MR. RUBY: No, the CCTA's, the second to last sentence, it says:

1335

"Cable operators have invested more than 5.5 billion in their distribution systems over the past four years."

1336

And then, at the answer to question 2B, that's where you describe the 250 poles?

1337

MS. ASSHETON-SMITH: That's correct.

1338

MR. RUBY: And I take it, Mr. O'Brien, the cable companies save money by not having to build poles of their own?

1339

MR. O'BRIEN: Capital costs, yes.

1340

MR. RUBY: Right. And they invest that capital in other things, the saved capital?

1341

MR. O'BRIEN: They invest it in plant, yes.

1342

MR. GLIST: These are not actually choices, because --

1343

MR. RUBY: Well, Mr. --

1344

MR. GLIST: -- the option of investing capital in a parallel pole plant is not open to us.

1345

MR. RUBY: Well, Mr. Glist, you've made that point repeatedly, I think, to Ms. Friedman, and I think the Board has an appreciation for that. I don't want to speak for them. I'm just trying to get an understanding of what happens to the money. That's all.

1346

MR. GREENHAM: Okay. But the option of not building our own plant and not going on the LDCs' poles or the joint-use poles with Bell Canada is to go underground, and there are no savings to go underground.

1347

MR. RUBY: Right. I hear what you're saying.

1348

Now, at interrogatory -- or the CCTA's answer to CEA Interrogatory No. 8, this was

a question directed at the tenancy versus ownership portion of the CCTA's original application. You'll tell me if I'm not summarizing this fairly, but it appears that the CCTA is saying that, among other things, that an owner has the advantage of carrying net-embedded costs on its balance sheet and being able to use the poles as collateral. Is that an answer that was provided by the CCTA?

1349

MS. ASSHETON-SMITH: Yes.

1350

MR. RUBY: Okay. So I'm just trying to understand this. Is the CCTA's position that it would rather tie up millions of dollars in capital and poles, that's its preference, rather than have funds for other uses?

1351

MS. ASSHETON-SMITH: I'm sorry, I'm not sure I understand your question. But once again, if you're asking what we prefer, it's not a matter of preferring anything. We don't have an option.

1352

MR. RUBY: Well, I mean, this is the basis, in part, of what the CCTA says is the basis for LDCs having a benefit of ownership versus tenancy. So what I'm trying to get at is, how exactly is it a benefit to have invested all this money in poles when the tenants don't have to? Like, just on the capital cost issue, I have to admit, I just don't get it.

1353

MS. ASSHETON-SMITH: Well, I think the answer, if you read beyond that, there are a number of ownership benefits that are highlighted in this paragraph --

1354

MR. RUBY: Oh, I understand --

1355

MS. ASSHETON-SMITH: -- and --

1356

MR. RUBY: Sorry, I don't mean to cut you off.

1357

MS. ASSHETON-SMITH: You just did.

1358

MR. BRETT: Mr. Chairman, perhaps he can let the witness finish the answer.

1359

MR. RUBY: No, no, please do.

1360

MS. ASSHETON-SMITH: There's two aspects to this question, actually. One is that the ultimate

deny access to
is no risk to
approach.

right of ownership is the ability to control the asset, and
that asset. Moreover, under a rate-of-return regulation, there
the LDCs since it will recover its cost through the rate-base

1361
So, under rate-of-return regulation, there is a benefit to the LDC in building up
its rate base as much as it
can. There absolutely is an ownership benefit to the LDC in these circumstances.

1362
MR. RUBY: If the situation was reversed, though, you wouldn't have that
benefit. You're not
rate-of-return regulated.

1363
MS. ASSHETON-SMITH: We are not regulated at all in Ontario
anymore. But we're not here to set
cable rates.

1364
MR. RUBY: No, I quite agree.

1365
One of the other points I see in the second paragraph that's marked page 14 of 17,
in the same
interrogatory response, is that -- this is sort of midway through the paragraph:

1366
"The owner of a pole can also generate revenue from leasing surplus capacity on the
pole."

1367
Do you know what the net revenues are related to attaching things to a pole?

1368
MS. ASSHETON-SMITH: I believe we asked for that information in
our interrogatory requests
from the EDA for those actual revenues from attachments, and I
think
that information was not available. It is?

1369
MR. RUBY: Well, did you ask what it was for streetlights?

1370
MR. GREENHAM: It's my understanding, in dealing with the Mearie
group, that they don't charge
their shareholder for those attachments. The city owns those
attachments and
they don't charge them back, because they are the owner of the LDC.

1371
MR. RUBY: Okay. So no revenues there. Is their power pole -- okay.

1372
I take it that, and maybe Mr. Greenham, I should direct this to you, I take it that
you accept that there are
safety restrictions that apply to everybody who attaches to a pole. And by
"attaches," I mean in the
broadest possible sense.

1373
MR. GREENHAM: Yes. Does the public know about all of those requirements? I don't think so. But the public does make attachments.

1374
MR. RUBY: But you know about them.

1375
MR. GREENHAM: Yes, I do.

1376
MR. RUBY: Mr. O'Brien, I take it cable companies generally in Ontario know about them.

1377
MR. O'BRIEN: Yes.

1378
MR. RUBY: And they follow them?

1379
MR. O'BRIEN: Yes.

1380
MR. RUBY: And they do that, in part, under the direction of the distributors; isn't that right?

1381
MR. O'BRIEN: Well, they're also governed by any number of federal and provincial safety bodies. And also, the joint-use agreement calls for any number of safety clauses. So, yes, it's any number of factors that the gear to safety rules.

1382
MR. RUBY: And it's the same for technical and operational requirements, everybody just has to follow them. That's right, isn't it?

1383
MR. O'BRIEN: Yes.

1384
MR. RUBY: And can we agree, to keep it simple, that there are some poles located in rural areas of Ontario?

1385
MR. O'BRIEN: Yes.

1386
MR. RUBY: And some located in urban areas?

1387
MR. O'BRIEN: Yes.

1388
MR. RUBY: And let's see if we can further agree that, in urban areas, you typically need more poles closer together?

1389
MR. GREENHAM: I don't think that you need them any closer together
than you do in rural applications. It all depends on the lay of the land and clearances
that you're able to maintain.

1390
MR. RUBY: Do urban poles typically have to be higher than rural poles?

1391
MR. GREENHAM: Again, it depends on the situation.

1392
MR. RUBY: I'm saying typically.

1393
MR. GREENHAM: It also depends on the LDC. If you drive through
Mississauga, you're going to find that a majority of the poles are very big poles, whereas if you
drive through Hamilton, they're not as tall.

1394
MR. RUBY: Right. Is it fair to say that in urban areas, to plant a new
pole, you've got to break through either concrete or asphalt, some kind of surfacing material to put the
pole in?

1395
MR. GREENHAM: Or grass.

1396
MR. RUBY: Or grass. But sometimes or a lot of the time, it's concrete or
asphalt?

1397
MR. GREENHAM: I would not be able to hazard as to if it's 50/50 or
not. But it could be anywhere -- any number.

1398
MR. RUBY: Okay. Well, maybe I can make this simpler. Is it more expensive
to install poles in rural areas than urban areas, generally speaking?

1399
MR. GREENHAM: I would make that assumption, depending on the
ground.

1400
MR. RUBY: Is it fair to say that there are new power poles being
constructed in Ontario all the time?

1401
MR. GREENHAM: I would assume so.

1402
MR. RUBY: Well, you know that's the case, don't you? You've seen it
happen?

1403
MR. GREENHAM: I can say that today, driving here, I didn't see any

poles going in.

1404
MR. RUBY: Maybe not today. You know, I don't think I saw any poles
driving in today, but you can
agree with me that all poles do get replaced over time.

1405
MR. GREENHAM: I would hope so.

1406
MR. RUBY: Okay. Do cable companies typically have municipal access
agreements?

1407
MR. GREENHAM: Not in all cases, and I can only speak for Cogeco,
but not in all cases do we have
it.

1408
MR. RUBY: To the best of your ability, what percentage of the time?

1409
MR. GREENHAM: I have one municipal access agreement that's
executed.

1410
MR. RUBY: Mr. O'Brien, maybe you can help. Does the CCTA help its members
with municipal
access?

1411
MR. O'BRIEN: Not to negotiate them. But most of our members,
certainly the smaller members, do not
have municipal access agreements.

1412
MR. GREENHAM: If I might, sorry. Typically, the requirement for
municipal access agreements, the
push for them died substantially after the CRTC was ruled to have
jurisdiction,
and I have not had any municipality ask me to execute one since
then.

1413
MR. RUBY: Okay. Does Cogeco participate in -- I think they're known as
public utilities
co-ordination committees?

1414
MR. GREENHAM: Yes.

1415
MR. RUBY: Can you tell the Board what this is.

1416
MR. GREENHAM: A PUCC committee is a group where members from all of
the utilities get
together to plan their capital works, others' capital works, and
general use of the
right of way. We have representatives that attend all of the PUCC
meetings
across Ontario, anywhere from Windsor to North Bay to Cornwall. I've

LDC is there, participated on a PUCC in Hamilton, and Bell Canada is there, the
everybody's capital the City is there, the sewer people are there. And we review
that. works for the year and plan the usage of the right of way based on

1417

MR. RUBY: Mr. Armstrong, does Rogers also participate in public utilities
co-ordination committees?

1418

MR. ARMSTRONG: Yes, we do.

1419

MR. RUBY: Thank you. Mr. Greenham, is it fair to say that when major pole
work is being done, that
is, lines are being replaced or moved or upgraded, cable companies are
consulted as to
whether they're going to continue to attach?

1420

MR. GREENHAM: Typically, they are asked if they're going to
continue to attach, yes.

1421

MR. RUBY: And in some cases I gather they are given make-ready options?

1422

MR. GREENHAM: It depends on who's forcing the relocation of the
pole. If it's the municipality
part of their that's widening a road allowance, they will, basically, pick up as
that nature, it's a project all of those relocations. And in most forced instances of
new construction and there is not a lot of make-ready requirements.

1423

MR. RUBY: And Mr. Armstrong, is it the same for Rogers?

1424

MR. ARMSTRONG: Again, I have limited technical knowledge. I'm not
sure that I can really answer
that question.

1425

MR. RUBY: If I can, if we can, let's talk a little bit about the
communication services that are offered,
and I'm happy to take this from Mr. Armstrong or Mr. O'Brien. I take it,
from the evidence that's been put in, that the cable companies offer, roughly
speaking, cable
television, digital cable television, high-speed Internet, high
definition television,
video-on-demand, and pay-per-view. Is that a complete list or have I
missed something?

1426

MS. ASSHETON-SMITH: I should point out, that is, I think, the
complete list of all services that are
offered by some cable companies. Not all cable companies offer
all of
those services.

1427

MR. RUBY: Okay.

1428

MR. GREENHAM: If I may again, Cogeco is getting into the datacom business, again.

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MR. RUBY: Sorry, what's datacom.

1430

MR. GREENHAM: Datacom is more than just high-speed Internet for businesses.

1431

MR. RUBY: Are any of the CCTA members in Ontario intending to provide VoIP services?

1432

MS. ASSHETON-SMITH: I believe there are some public announcements that have been made by the owners of cable companies indicating their intent to enter that business, yes.

1433

MR. RUBY: Well, in that case, Ms. Assheton-Smith, maybe you can explain to the Board what VoIP is.

1434

MS. ASSHETON-SMITH: Actually, I prefer to avoid the use of the term VoIP if at all possible, I prefer to call it digital telephone. It's much more user-friendly. It really is just the ability to make a voice phone call using Internet protocol technology. So as long as you have a high-speed broadband Internet connection, either through your cable company or through a DSL provider, you can make a local phone call virtually anywhere in the world.

1435

MR. RUBY: Just to unpack that for the Board. A DSL provider would be who?

1436

MS. ASSHETON-SMITH: That would be the incumbent telephone companies that provide high-speed Internet services.

1437

MR. RUBY: So, Bell for example?

1438

MS. ASSHETON-SMITH: Bell, for example, yes.

1439

MR. RUBY: And I gather that there are some companies in Canada that already offer the service you don't want to call VoIP?

1440
MS. ASSHETON-SMITH: I believe both Bell and Telus already have
a VoIP or digital telephone
offering as well Primus. There may be some others.

1441
MR. RUBY: And again, I understand that there was a hearing at the CRTC a
few weeks about the
regulation of what you don't want to call VoIP services?

1442
MS. ASSHETON-SMITH: Yes, that's correct.

1443
MR. RUBY: Did the CCTA make any submissions in that proceeding?

1444
MS. ASSHETON-SMITH: Yes, we made extensive submissions in that
proceeding.

1445
MR. RUBY: And did you tell the CRTC that some of the CCTA members hope to
offer VoIP?

1446
MS. ASSHETON-SMITH: I have not reviewed the transcript from our
hearing at the CRTC, nor
was I on the panel, but I assume that's what they told the
Commission,
yes.

1447
MR. RUBY: Okay. Did anybody, on behalf of the CCTA or any of the cable
companies, tell the
CRTC that the rollout of this new service -- because I don't want to say
VoIP again --
depended on how much, ultimately, cable companies were charged for power
pole
access?

1448
MS. ASSHETON-SMITH: As I say, I don't know what was suggested
in the course of that
proceeding.

1449
MR. RUBY: Would you agree with me that you would be surprised if that
came up?

1450
MS. ASSHETON-SMITH: I would acknowledge I would be somewhat
surprised if power pole
access came up in that proceeding.

1451
MR. RUBY: Of the services that we've just talked about, the digital TV
through Internet, were any of
those services offered before 1997?

1452
MR. GREENHAM: Cable modems and high-speed Internet would have been
available before '97.

1453
MS. ASSHETON-SMITH: I believe pay-per-view would have been
available before 1997 as well.

1454
MR. RUBY: Pay-per-view. And to the extent high-speed Internet was
available, would you agree with
me that it would have been on the most minor of scales in 1997?

1455
MS. ASSHETON-SMITH: Roger's wave product had incredible takeup
right from the start. I don't
have the numbers with me in terms of their takeup, but I'm not
sure it
matters.

1456
MR. RUBY: Mr. Armstrong, do you know?

1457
MR. ARMSTRONG: I agree with Ms. Assheton-Smith that there was
incredible takeup of the wave
product. It started in 1995, but again, I don't have that number
right here.

1458
MR. RUBY: Just to we have the timing right, the last CCTA/MEA pole
attachment agreement expired
in 1996; is that right?

1459
MR. GLIST: That's correct.

1460
MS. ASSHETON-SMITH: That's correct.

1461
MR. RUBY: Right. So Mr. O'Brien, how -- I take it cable television -- I
shouldn't say that. The
revenues of the CCTA members in Ontario have increased since 1996; is
that right?

1462
MR. O'BRIEN: Yes.

1463
MR. RUBY: And do you know how many times they've increased?

1464
MR. O'BRIEN: I have no idea.

1465
MR. RUBY: Well, maybe we can do this by focussing on one of the services,
the high-speed Internet
that just got mentioned. I take it at least before 1995 there was no
high-speed Internet
provided by cable companies in Ontario?

1466
MS. ASSHETON-SMITH: Not to my knowledge.

1467

MR. GREENHAM: Prior to that there might have been some direct links. I know that I was part of the build in Markham to build a coaxial line from one Magna office to the other Magna office so that they can have data services between those offices.

1468

MR. RUBY: Okay. Can you turn to the CCTA answer to CEA Interrogatory No. 5, please. And in particular, 5D, "D" as in "David."

1469

The CEA had asked a question about market definition, size of markets and entities of competitors, and the answer provided was that the CRTC could only provide answer on a national basis. So that's the data that I'll use.

1470

Am I reading this right to say that cable companies in Canada made something like 9. -- 930 million, more or less, dollars, from Internet access?

1471

MS. ASSHETON-SMITH: I'm sorry. Can you just repeat?

1472

MR. RUBY: There's two headings here, broadcast distribution revenues --

1473

MS. ASSHETON-SMITH: Yeah.

1474

MR. RUBY: -- and I'm looking at Internet access revenues.

1475

MS. ASSHETON-SMITH: Yes.

1476

MR. RUBY: So I'm just making sure I understand that right, that the CRTC has determined that cable companies made something over \$900 million.

1477

MS. ASSHETON-SMITH: That is a national figure, yes.

1478

MR. RUBY: Right.

1479

MR. FORD: And the term "made" may not be appropriate. They received revenues of. "Made" sounds like a profit figure. That's all I'm -- I'm just trying to distinguish it.

1480

MR. RUBY: I'm not trying to depart from what the CRTC says. It says "revenues" --

1481

MR. FORD: No, fair enough. I just thought I'd emphasize that.

MR. RUBY: And this is a 2003 figure; isn't that right? 1482

MS. ASSHETON-SMITH: Yes. 1483

MR. RUBY: Okay. Do you know how much of that would have been made in Ontario, or was made in Ontario, I should say? 1484

MS. ASSHETON-SMITH: We did not have the total revenues for cable companies on an Ontario breakdown. That information was not available to us. 1485

MR. RUBY: For an assumption purpose, would it be fair to say half? Would you pick a third, two-thirds? 1486

MS. ASSHETON-SMITH: Half would be too much. 1487

MR. RUBY: A third too little? 1488

MS. ASSHETON-SMITH: Without further analysis, I would have to do an analysis of the total number of cable companies in Ontario and divide it by the total amount of revenues. 1489

MR. RUBY: Let's see if we can agree on something. Hundreds of millions, so more than 100 million. 1490

MS. ASSHETON-SMITH: I hate to make assumptions without the actual data in front of me. 1491

MR. RUBY: Okay. That's fine. 1492

And Internet access revenues are made, in part, from wires that are attached to power poles; is that right? 1493

MS. ASSHETON-SMITH: I'm sorry, could you repeat that? 1494

MR. RUBY: And maybe I should ask if there's somebody else here who's better -- 1495

MS. ASSHETON-SMITH: No, and I apologize, I'd like to continue. 1496

MR. RUBY: The Internet access revenues -- 1497

1498

1499
MR. RUBY: -- as the CRTC calls them, are made, at least in part, from
wires and other facilities hung
on power poles?

1500
MS. ASSHETON-SMITH: The service that is provided through
high-speed Internet flows through
the cable attachment that is used to provide other
communications services.

1501
MR. RUBY: And just so we're clear, Internet access revenues, for cable
companies, at least, that must
mean high-speed Internet; right?

1502
MS. ASSHETON-SMITH: Cable companies do not offer dial-up. It's
a pure broadband service. And
I should point out that the capital expenditures required to
upgrade the
evidence, was
plant to provide high-speed service, as pointed out in the
taken place in
in the billions of dollars over the last decade. And this has
captured
a competitive environment in which satellite companies have
almost a quarter of the -- over a quarter of the share of the
market.

1503
And to come back to your earlier question about rate-of-return regulation, cable is
not rate-of-return
regulated because it does operate in a competitive market.

1504
MR. RUBY: Let's talk about that for a minute. Without going to the
references, I gather the CCTA's
evidence is that its price for the services it offers is price-elastic?
Maybe I'll put it this
way, much more simply: There's a lot of competition, and you can't really
raise your
prices in the face of all that competition; is that fair?

1505
MS. ASSHETON-SMITH: The ability of cable companies to increase
their rates to subscribers is
constrained by the competitive market in which they operate,
yes.

1506
MR. RUBY: Is it fair to say heavily constrained?

1507
MS. ASSHETON-SMITH: It's a highly competitive market, yes.

1508
MR. RUBY: And that's the same for the satellite providers you just
mentioned?

1509

MS. ASSHETON-SMITH: They operate in the same market, yes.

1510

example I MR. RUBY: And the same for, I think it's called, wireless cable? The only
can think of is
Look TV.

1511

MS. ASSHETON-SMITH: Yes.

1512

MR. RUBY: And that's the same for Internet access?

1513

MS. ASSHETON-SMITH: Yes, Internet access is also a very highly
competitive retail market.

1514

MR. RUBY: And I take it that means there's a lot of pressure on cable
companies to be efficient --

1515

MS. ASSHETON-SMITH: Absolutely.

1516

MR. RUBY: -- and lower their costs?

1517

MS. ASSHETON-SMITH: That would be correct of any enterprise
operating in a competitive
market, yes.

1518

MR. RUBY: So a reduction in the cost input, if the cost input is not one
that its competitors have,
would be a competitive advantage. Try this again, because I don't mean to
put it as
theoretically as it came out.

1519

Satellite and wireless cable companies don't hang wires on power poles; is that
right?

1520

MS. ASSHETON-SMITH: That's correct.

1521

MR. RUBY: If you reduce the cost of that input to cable company service,
that doesn't reduce the cost
of satellite providers, for example? If the Board lowered rates to a
dollar for power pole
access, that wouldn't reduce the costs of satellite companies?

1522

MS. ASSHETON-SMITH: Satellite companies aren't faced with the
monopoly supply of an
essential facility, except to the extent that they need
transponder space,
which correspondingly wouldn't impact us if the cost of
transponder
space was decreased as well, if that's --

MR. RUBY: They have some cost inputs that you don't share. 1523

MS. ASSHETON-SMITH: And they have some that we don't share. 1524

MR. RUBY: Right. And one of those is power poles. 1525

MS. ASSHETON-SMITH: Right. 1526

MR. RUBY: Are you familiar with the Board's Affiliates Relationship Code? 1527

MS. ASSHETON-SMITH: Unfortunately I am only very superficially familiar with that document. 1528

MR. RUBY: Is there anyone else on the panel who wants to answer a question about that? 1529

Let me try generally and see if anybody steps up to the plate. Does the code apply -- is it the CCTA's position that the code applies to the telecommunications affiliates of distributors? 1530

MS. ASSHETON-SMITH: That's my understanding. 1531

MR. RUBY: Okay. Have any complaints been made by the CCTA members to the Board, under the Affiliates Code, with respect to telecom affiliates of distributors? 1532

MS. ASSHETON-SMITH: CCTA has not made any complaints. As I said, we're only superficially aware of that code. And not only that, I think we were uncertain of the Board's jurisdiction to deal with our issues until very recently. 1533

MR. RUBY: Right. What about Rogers and Cogeco? Any complaints under the Affiliates Relationship Code to the Board? 1534

MR. ARMSTRONG: From Rogers' perspective, I'm not aware of any complaints. 1535

MR. GREENHAM: There's no official complaints that I'm aware of. 1536

MS. ASSHETON-SMITH: I'd have to be honest. I don't think any of us are aware of the complaints mechanism under the Affiliates Relationships Code, which could, perhaps, explain why we haven't made any. I wasn't even aware we could 1537

1538
MR. RUBY: All right. I just wanted to know if it's happened.

1539
Earlier, I can't remember who it was, somebody mentioned ILECs, I think, and just I wanted to clarify to the Board, maybe, Ms. Assheton-Smith, you can tell the Board what an ILEC is.

1540
MS. ASSHETON-SMITH: An ILEC, it's an acronym for an incumbent local exchange carrier, which are the incumbent telephone companies like Bell and Telus, in their own territories.

1541
MR. RUBY: To take Bell as an example, its local telephone business is still regulated by the CRTC with respect to prices?

1542
MS. ASSHETON-SMITH: Yes, it is.

1543
MR. RUBY: And some of the other services it provides to others are also price-regulated?

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MS. ASSHETON-SMITH: That's correct.

1545
MR. RUBY: And not to put too fine a point on it, that's because they have a near monopoly, isn't it?

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MS. ASSHETON-SMITH: I think we'd suggest that 97 plus percent market share would, yes, define them as a monopoly.

1547
MR. RUBY: All right. And Bell owns a lot of poles in Ontario, doesn't it?

1548
MS. ASSHETON-SMITH: I have no knowledge of the number of poles that Bell owns in Ontario. We do know that they have joint-use reciprocal arrangements with Hydro One, but I don't have the number of those poles.

1549
MR. RUBY: And, well, some of those poles are used by cable companies; isn't that right?

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MS. ASSHETON-SMITH: Some of the joint-use poles? Yes.

1551
MR. RUBY: But joint-use with Bell as opposed to joint-use with the power companies.

1552

MS. ASSHETON-SMITH: The Bell/Hydro One joint-use poles are used by the cable companies, yes.

MR. RUBY: And the CRTC regulates the rate for those attachments?

MS. ASSHETON-SMITH: Only with respect to Bell's provision of access to its poles.

MR. RUBY: And I take it then we can agree that telephone poles are a monopoly asset.

MS. ASSHETON-SMITH: Yes, we've argued, and I think it's clear, that they are an essential facility for the provision of our service and access to those telephone poles is required, and those poles are regulated at a tariffed rate, uniform rate, across the country of \$9.60.

MR. RUBY: Thank you.

While we're on this topic maybe we can clear up one thing. The Hydro One/Bell Canada joint ownership agreement that's in evidence in this proceeding, I notice at paragraph 8 of the CCTA application, it says Hydro One has, is it 69 percent of the poles and 31 percent Bell. And the CEA evidence says it's 60/40. I'm happy to give you the references for the two.

MS. ASSHETON-SMITH: If you can correct our information on that, you probably have better access to that percentage than we do. Our understanding was in Ontario it was 60/40 and I think it was in Quebec that it's 69/31.

MR. RUBY: Okay. Will you accept that the CEA figure's correct at 60/40 or do you want to sort of go on with this?

MS. ASSHETON-SMITH: I think we'd accept that.

MR. RUBY: Thank you.

You mentioned a few minutes ago, Ms. Assheton-Smith, that cable companies are no longer price regulated in Ontario.

MS. ASSHETON-SMITH: That's correct.

MR. RUBY: They don't have any legal obligation to serve either anymore, do they?

1566
MS. ASSHETON-SMITH: No, with the rate deregulation the commission also deregulated the requirement to serve.

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MR. RUBY: So they don't have any obligation to hook people up to cable television?

1568
MS. ASSHETON-SMITH: No regulatory obligation, only the need to respond to competitive cues.

1569
MR. RUBY: Right, and they don't have any regulatory obligation or other legal obligation, for that matter, to provide telecommunication service? I mention that only because of the name change.

1570
MS. ASSHETON-SMITH: The regulatory framework under which cable will offer telecommunications, voice telecommunications service, has yet to be determined.

1571
MR. RUBY: At the moment, though, you're not compelled by law to offer it?

1572
MS. ASSHETON-SMITH: No. Because we're not, obviously.

1573
MR. RUBY: Right. And maybe Mr. O'Brien, you may be able to help me with this, telecommunications affiliates of distribution companies have, for want of a better word, wires over which they provide telecommunication services; is that right?

1574
MR. O'BRIEN: That's correct.

1575
MR. RUBY: And those are broadband services or capacity?

1576
MR. GREENHAM: Yes, all of our deliveries are typically considered broadband.

1577
MR. RUBY: I'm talking for the moment about, and I may have been unclear, the telecom affiliates of distributors. They're not offering twisted pair.

1578
MR. GREENHAM: Oh, okay. I'm sorry. They're not twisted pair, and I'm not sure exactly what services they offer. They could offer anywhere from a DS-3 to a full SONET

ring.

1579

MR. RUBY: When you want to provide services to your customers in new areas or areas where you don't have facilities, have either Rogers or Cogeco ever tried to get the telecommunications affiliate of the distributor to carry your services over their facilities?

1580

MR. ARMSTRONG: I can respond from Rogers' perspective. Actually, what we have done is we have swapped fibres with the local distributor's telecommunications affiliate.

1581

MR. GREENHAM: And we have done the same thing with like-for-like exchanges of fibre.

1582

MR. RUBY: Right. And have you ever tried to put services over their facilities?

1583

MR. GREENHAM: Their own facilities? Like, typically, when you do the like-for-like swap, the ownership of those fibres swap as well. So we put our services across the fibres that we acquire, we don't put the services across the fibres that they have existing, but it's running through the same cable in the same sheath.

1584

MR. RUBY: Let me ask you this. When you provide high-speed Internet services, when you connect somebody in Vancouver to somebody in St. John's, and somebody sends a little packet of data from one side of the country to the other, does that packet of data travel over facilities that are entirely owned by Cogeco, for example?

1585

MR. GREENHAM: Definitely not, no.

1586

MR. RUBY: Who else --

1587

MR. GREENHAM: Like, our -- it can go from our facilities into our hub area, and then from our hub it goes out into the worldwide web, and it can go to Singapore before it goes to Vancouver.

1588

MR. RUBY: So to provide the services you provide, you don't have to own every piece of wire and piece of equipment to provide the service?

1589

MR. GREENHAM: To provide the service to our customer -

1590

MR. GLIST: You need --

1591

MR. RUBY: Sorry, Mr. Glist, I'm quite happy to take your answer, but in the same way I don't like to interrupt Mr. Greenham. I don't think anybody should.

1592

MR. GREENHAM: Can you repeat the question.

1593

MR. RUBY: This is the packet that goes from one side of the country to the other.

1594

MR. GREENHAM: Right.

1595

MR. RUBY: A cable company doesn't need to own, to do its business, every wire, every piece of equipment, to get the packet from one place to another.

1596

MR. GREENHAM: We need to own, from our customer to where it hits Worldwide Web, and we do.

1597

MS. ASSHETON-SMITH: And if I could just add, we need a plant to deliver the data to our customers as well. In fact, on cable we need a line that goes from the head end directly to the home.

1598

MR. GREENHAM: Yeah. It's not just for modem or high-speed Internet. We can put all of our digital services or all of our analogue services across that as well.

1599

MR. RUBY: And other people have other facilities? You mentioned DSL earlier, that goes over telephone wire; is that right?

1600

MS. ASSHETON-SMITH: DSL, I am not an expert on DSL. My understanding is that it does travel over the copper pair.

1601

MR. GREENHAM: It also travels over a fibre optic cable. It needs both.

1602

MR. RUBY: The revenues that are derived from cable company or communications company attachments, how do they get allocated between the shareholders of distributors and the customers of distributors is a matter, I take it we can all agree, that is within the Board's control? This Board's?

1603

1604

MR. RUBY: I'll do it a different way.

1605

MS. ASSHETON-SMITH: Sorry, I didn't understand the question.

1606

MR. RUBY: Cable companies pay money to distributors in the form of various kinds of charges and fees for attachments; is that right?

1607

MS. ASSHETON-SMITH: Yes.

1608

MR. RUBY: Yeah. And that money can either go to the shareholder of the company or the distributor, or it can get passed on to the customers in the form of lower rates; is that right? Maybe

Mr. Glist, I see you nodding, you may be able to help here.

1609

MR. GLIST: Well, it depends on your local regulatory structure and whether you're in a freeze period or all of the above. So I don't know that we know what you do with the revenues, nor can we tell the Board what to do with those revenues.

1610

MR. RUBY: Okay. But it's up to the Board, though, this Board, or I should say --

1611

MR. GLIST: Unless the decision has already been made in some proceeding or freeze period.

1612

MR. RUBY: Right. But it's not up to the CRTC, for example.

1613

MS. ASSHETON-SMITH: I think we would all agree on that.

1614

MR. RUBY: And it's not a matter for discretion of the distribution company?

1615

MS. ASSHETON-SMITH: I think we can't, we can't really comment any further on this because it's beyond our area of knowledge.

1616

MR. RUBY: Right. Thank you.

1617

Do cable companies know how many attachments they have in Ontario?

1618

MR. GREENHAM: Attachments or pole useage?

1619

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MR. RUBY: Attachments?

MR. GREENHAM: No. 1620

MR. RUBY: Mr. Armstrong? Can you -- 1621

MR. ARMSTRONG: We know how many hydro poles we get invoiced for. 1622

MS. ASSHETON-SMITH: So we know the number of poles, but my understanding is that we do not know the number of attachments. 1623

And, as John just said, we measured our knowledge of how many poles were on by the number of invoices that we have for those poles. 1624

MR. RUBY: And, Mr. Ford -- you know, let me come back to this. 1625

Mr. Ford, under your model, just so I have this clear, you assume there are two attachments per cable pole; is that right? Per power pole. 1626

MR. FORD: An average of two, yes. 1627

MR. RUBY: And that's the way you allocate -- there's 31 percent you have in your formula for the communications space and you divide that in two, and that's where your 15.5 percent comes from? 1628

MR. FORD: I think it -- that's the number that's arrived at. I'm not sure that's exactly the process. It looks directly at -- the 15.5 percent is not arrived at by 31 percent divided by 2. It's the cable usage that leads -- it's the cable allocation that is calculated directly as the 15.5 percent. But implicit in that is an average of two users on each pole in the communications space. 1629

MR. RUBY: If we assume for the moment that there's only one cable -- only one communications attachment per pole everywhere in Ontario, that would effectively double the price under your model; is that right? Excuse me. It would -- yeah, double the price. 1630

MR. GLIST: Mr. Ford starts with a foot assigned to cable, and then a share of the separation space between secondary and communication, and assigns that to a cable attachment that can be harmonized with the norms of how much communication space there 1631

is. You take the EDA model contract that says it's 600 millimetres, so that's the equivalent of saying, Well, if that's the normal, then you're saying two users of the communications space. Just like -- these are averages, just like 40-foot pole is an average based on the weighted data that's been provided to ...

1632
MR. RUBY: All right. I'm just asking, if we change some of the numbers, I'm trying to figure out what the effect is on the model.

1633
MR. FORD: Well, yeah. You are asking me to make an assumption, which --

1634
MR. RUBY: I'm asking you to change the assumption.

1635
MR. FORD: -- which, of course, then, would ignore the existence of the vast majority of joint-use poles for which telephone companies provide one of the two attachments. They are -- they are the base attacher. It is cable that, in most cases, provides the second.

1636
So if there were only one attachment, if the cable were the only attachment, I'm not sure that poles would be designed the same way, and I'm not sure that -- I mean, that would then mean there would be no joint-use agreements. So you're taking me far away from the existing situation, and I'm not sure that it's --

1637
MR. RUBY: Well, let's try the other way, then.

1638
MR. GLIST: Could I just add, too?

1639
MR. RUBY: Sure.

1640
MR. GLIST: Our reality is that the incumbent LEC has a better than 97 percent take rate on the services, and we're at about 65 percent. So the odds are that, when cables attach to a pole, odds are there's going to be an incumbent LEC.

1641
MR. FORD: So the average of two attachments really applies to poles that are used by cable, because the telephone company is essentially already there on most of them.

1642
MR. RUBY: No, I understand that's what you're saying. Let's try it the other way around, though.

1643
If there were three attachments on all poles, what effect would that have on your

allocation figure for
each attacher?

1644
MR. FORD: If there were an average of three on each pole, then I would --
I would rework the
numbers. There would be two other attachers besides the telephone
company.
Presumably -- it would be hard to assume one foot of communications space
for each.
And obviously, the separation space would have to be apportioned
differently as well.
But that's not what I'm proposing.

1645
MR. RUBY: No, I understand that. Let's do it this way:

1646
If you look at page 2 of your report, Mr. Ford, in the last sentence of the second
paragraph. Are you with
me?

1647
MR. FORD: I am with you.

1648
MR. RUBY: "The most common configuration is three strands occupying the
communications space
on distribution poles in urban areas, and one or two is the norm in rural
areas."

1649
Now, that statement, that's not based on independent third-party research, is it?

1650
MR. FORD: No, it is not.

1651
MR. RUBY: And it's not based on any scientific review of poles in Ontario
that you conducted?

1652
MR. FORD: No, it is a comment, and it was not used in my calculations.

1653
MR. RUBY: You say two. That's the number that's used in your
calculations?

1654
MR. FORD: For purposes of developing the recommended rate, I used two.

1655
MR. RUBY: Okay. And would you agree with me that if there was data that
the Board could depend
on that showed that the number of attachments on average, for example, in
Ontario was
not two, that the Board should be using if it applied your formula,
whatever the number
the data showed was the proper average.

1656
MR. FORD: I'm not sure that the average calculated in that way would give
the number we need. The

issue is the average number of attachments on poles that cable is attached to.

1657

MR. RUBY: Okay.

1658

MR. FORD: Therefore, an average of 1.5 for all poles could mean that 50 percent of the poles have cable attachments and 50 percent of them don't. And we would still be concerned with allocating the costs for a cable attachment only for poles which have cable attachments.

1659

MR. RUBY: All right. Well, thank you.

1660

MR. FORD: And in the example I just gave you, the average number of attachments for poles that have cable attachments is two, even though, if you took a national average -- or a provincial average, again in the example that I gave you, the average would be 1.5 users per pole. We're only concerned about the pole population -- the portion of the joint-use pole population that has cable attachments on it.

1661

[Audio cuts out]

1662

MR. KAISER: Is it back on?

1663

Mr. Ford, can I just follow up on Mr. Ruby's question. You're finished with that line, are you?

1664

MR. RUBY: Yes. Thank you.

1665

MR. KAISER: I thought Mr. Ruby's question was, granted that you're only interested in poles that have cable on it, but we have evidence that there's increasing competition in telecommunications. His question is what happens if the average attachment becomes three? If there are three attachments, what happens to the rate under your proposal.

1666

MR. FORD: If the average became three?

1667

MR. KAISER: Correct.

1668

MR. FORD: Then I indicated there was a little bit of a problem with -- with allocating then a foot of the communications space to three attachers, when -- or three users when there is only 2 feet. But presumably you could allocate two-thirds of a foot of space to

each of the three,
because there is only two -- 2 feet of communications space, as we've
discussed. And
then you would divide the separation space by three.

1669
So the amount of pole space used or allocated as usage to each of the three users
would therefore be less.
The cost recovery, of course, would be the same. The company -- the utility would
be kept whole because
all of those costs --

1670
MR. KAISER: Right.

1671
MR. FORD: -- would be recovered.

1672
MR. KAISER: But the rate would go down, would it not?

1673
MR. FORD: The rate would go down, yes.

1674
MR. KAISER: Thank you.

1675
MR. RUBY: And before the sound went off, Mr. Ford -- and is it on again
or is mine on, Madam
Reporter? I can speak loudly.

1676
Before the sound went off, I'd asked Ms. Assheton-Smith if she wanted to correct
the 69/39 information
that the CEA had provided about the Ontario -- excuse me, Hydro One and Bell Canada
agreement. And I
notice at the bottom of page 2 you've produced the same numbers, and I just wanted
to make sure that
you also accept that the correct figure is 60 percent for the Hydro One and 40
percent for Bell Canada?

1677
MS. ASSHETON-SMITH: I thought that I had already accepted that,
but if it wasn't clear, then --

1678
MR. RUBY: No, I understood you had. I just noticed Mr. Ford had it
independently in his report so I
just want to make sure he's all right with.

1679
MR. FORD: Yes, I am, thank you.

1680
MR. RUBY: If you turn over the page in your report in the next paragraph
you refer to Manitoba, and
will you agree -- there we go. Now I'm suddenly much too loud. Manitoba
Hydro has a
joint-use agreement with cable companies.

1681
MR. FORD: I don't know that for a fact, but if you tell me that is a

fact, I will have no problem
accepting it. It's not something I've looked at recently.

1682

MR. RUBY: And that the party they don't have an agreement with is MTS,
the telephone company. Is
there anybody on the panel that can speak to that?

1683

MS. ASSHETON-SMITH: No.

1684

MR. RUBY: Well, I take it, and we have a witness coming tomorrow from
Manitoba, and perhaps
two, I guess, another one from MTS, that if that is the situation, that
there are cable
agreements but not an MTS agreement, then your first full paragraph on
page 3 is
incorrect.

1685

MR. FORD: That would be correct, yes.

1686

MR. RUBY: Turning over to the next page, page 4, and this appears as well
as an answer that CCTA
gave to Energy Probe question number 2. I gather the point that's made
here is that cable
companies can't get access to rights of way on their own; that they can't
build their own
poles?

1687

MR. FORD: That's my understanding, that the municipalities have been,
well, more than reluctant,
they have basically refused to grant permits when permits have been
applied for to
construct pole lines in municipalities.

1688

MR. RUBY: And Mr. Glist, I think, said this earlier as well. Is that
right? Cable companies cannot
build their own poles.

1689

MR. GLIST: That's correct, as a practical matter. That's right.

1690

MR. GREENHAM: Just for clarity, on the 407 build, it wasn't the
municipality that granted us the
permission to do that it was the Ministry of Transportation.

1691

MR. RUBY: So it's the public authority or municipality that's the
problem, it's the right of way? I take
it you could go out and hire a construction company, that's not the
problem; is that right?

1692

MR. GLIST: But the municipality, which is often the stakeholder
in the LDC, is saying, No, don't
build.

1693
MR. RUBY: Right. Well, Mr. Ford, Mr. Glist, have you reviewed the Federal Telecommunications Act in Canada, in preparation for your testimony?

1694
MR. GLIST: Yes, and I understand that the right is there on the books to do it, as it is in the United States, but that doesn't get you the municipal permit to do it.

1695
MR. RUBY: Okay. I don't want to put this to you without giving you the document. I have a copy of what I'm going to suggest are the relevant sections to have Telecommunications Act for simplicity, and with the Board's permission, I'd like to provide them to whichever witnesses think it's appropriate to answer this question.

1696
MS. ASSHETON-SMITH: I'll deal with telecommunications questions.

1697
MR. RUBY: And perhaps, Mr. Lyle, can -- and a copy for the Board.

1698
MR. LYLE: Mr. Chair, we'll mark that as Exhibit 1.2. E.1.2.

1699
EXHIBIT NO. E.1.2 EXCERPTS FROM THE FEDERAL
TELECOMMUNICATIONS ACT

1700
MR. RUBY: Now, Ms. Assheton-Smith, I take it you'll agree that these are sections 42 and 43 of the Federal Telecommunications Act?

1701
MS. ASSHETON-SMITH: Yes.

1702
MR. RUBY: And Mr. Glist, and Mr. Ford, if you would go down to 43(4). This is what I think is the key provision: "Where a Canadian carrier or distribution undertaking, and I'll stop there. In this context, Ms. Assheton-Smith, I take it distribution undertaking includes cable companies?"

1703
MS. ASSHETON-SMITH: Includes cable companies, that's correct.

1704
MR. RUBY: All right: "... cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line," and I take it transmission line, you would say, includes facilities; is that right?

1705
MS. ASSHETON-SMITH: Yes. That's correct.

1706
MR. RUBY: "... the carrier or distribution undertaking may apply to the
commission," and
Commission's the CRTC.

1707
MS. ASSHETON-SMITH: That's correct.

1708
MR. RUBY: "... for permission to construct it, and the commission may,
having due regard to the use
and enjoyment of the highway or other public place by others," madam
reporter I'll give
you a copy of this, "grant the permission, subject to any conditions that
the commission
determines."

1709
Now, have any carriers or distribution undertakings in Canada sought the permission
of the CRTC under
this provision?

1710
MS. ASSHETON-SMITH: We have sought the permission of the CRTC
to construct buried fiber in
new development under this provision, yes.

1711
MR. RUBY: Okay. And isn't it right that there was a situation that arose
in Vancouver where a
company constructed telecommunications lines and the municipality, I
think, threaten to
cut the wire because permission hadn't been granted?

1712
MS. ASSHETON-SMITH: That was not a cable company, but, yes,
that's correct.

1713
MR. RUBY: And in that situation, if I'm not wrong, the CRTC ultimately
granted the permission on
certain terms; is that right?

1714
MS. ASSHETON-SMITH: Yes, it did.

1715
MR. RUBY: And the municipality's appealed to the Federal Court of Appeal.

1716
MS. ASSHETON-SMITH: Yes, they did.

1717
MR. RUBY: And they lost.

1718
MS. ASSHETON-SMITH: Yes, they did.

1719
MR. RUBY: Then they sought leave to appeal to the Supreme Court of
Canada.

1720

MR. RUBY: And lost there? 1721

MS. ASSHETON-SMITH: Yes. 1722

MR. RUBY: All right. 1723

MS. ASSHETON-SMITH: I should point out, though, that 1724
notwithstanding that, Ledcor, which we've referred to as the Ledcor decision, L-e-d-c-o-r for the
reporter, it was a significant CRTC decision that ensured that
telecommunication carriers, as well as cable companies could get access to rights
of way if they needed to construct transmission facilities.

I should point out, though, that the decision applied only in Vancouver, as the 1725
commission stated in its decision. It was not a general model agreement for all municipalities to sign. In
fact, since that time, a number of disputes continue to appear and subsequent applications have been filed
with the CRTC because access to those rights of way remain an issue. The commission has never, to
my knowledge, set terms and conditions for the construction of cable poles under this section.

MR. RUBY: Has any -- 1726

MS. ASSHETON-SMITH: And I should point out too that one of the 1727
reasons for that has been that it is typically for environmental, aesthetic, and in some cases
specific public policy reasons, the policy either of the municipality or
of the province, not to permit duplicate support structures to be
built. And it's obvious that we don't want telephone companies and hydro
companies and cable companies each to put up a separate set of poles in
any particular municipality. So the fact that no cable company has
sought permission under section 43(4), I should caution, should not be
read in any way to suggest that the theoretical possibility to build is
there.

MR. GREENHAM: I'd like to also point out that the Ledcor cable that 1728
was placed and approved by the CRTC was 100 per cent buried along a railway right of way. The
only location where it needed approval from the CRTC was the road
crossings as it

1729
MS. ASSHETON-SMITH: If I could just add one other thing too.
Your question seems to be
always ask the implying that if we need to expand our services, we could
municipality failed CRTC for permission to build under this section if a
300-plus poles to consent. What that would not address, though, are the
on which on which we already have attachments in Ontario, and -- poles
build a we already have attachments. And in that case, to completely
brand new infrastructure network would be simply unfeasible.

1730
MR. RUBY: Okay. Well, I, of course, never meant to imply anything. I just
ask questions.

1731
MR. KAISER: Mr. Ruby, are you finished with this line of
questions?

1732
MR. RUBY: I have, if I may, two more questions on this point, and I'm
happy if the Board wants to
break for the day at that point.

1733
I take it that there are either Canadian carriers -- cable companies that have
applied to the CRTC after the
Ledcor decision for access?

1734
MS. ASSHETON-SMITH: I'm aware of at least one.

1735
MR. RUBY: And one, at least, involves MTS Allstream; isn't that right?

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MS. ASSHETON-SMITH: Yes, I'm aware of that application.

1737
MR. RUBY: Okay. So maybe we'll wait to deal with that one when they get
here.

1738
Thank you, Mr. Chair. Those are my questions for today.

1739
PROCEDURAL MATTERS:

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MR. KAISER: Thank you, Mr. Ruby.

1741
Mr. Lyle, you raised earlier the question of November 10th.

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MR. LYLE: Yes, Mr. Chair.

1743
MR. KAISER: We have a Board meeting in the morning of that day,
so if we were to sit that day, we
would have to start at 12.

1744
MR. LYLE: That was my understanding, Mr. Chair, yes.

1745
MR. KAISER: And tomorrow we're scheduled to start at 12; is that
correct?

1746
MR. LYLE: I believe it's 11 -- sorry, no, 12 tomorrow, that's correct.

1747
Mr. Chair, does the Board intend, then, to have Ms. Friedman's witnesses attend for
cross-examination on
the 10th, or are you reserving on that?

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MR. KAISER: Well, if the half day's sufficient, then we'll
proceed on that basis.

1749
MR. LYLE: There's also the question of MTS Allstream's witness.

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MR. KAISER: Yes. Do you think we'll be able to get them all in in
the half day?

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MR. LYLE: Well, that witness is also available on the 8th. I don't think
it will take terribly long, but
they could make themselves available on the 8th.

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MR. KAISER: Maybe we'll do both, and out of an abundance of
caution, we could hear the Allstream
witness on the 18th.

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MR. LYLE: Okay.

1754
MR. KAISER: And then we could hear Ms. Friedman's witnesses on
the 10th.

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MR. LYLE: Certainly, Mr. Chair.

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MR. KAISER: All right. We'll stand adjourned.

1757
MR. LYLE: Thank you.

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--- Whereupon the hearing adjourned at 5:11 p.m.