DECISION

NSUARB - P-873
2002 NSUARB 1

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION by **NOVA SCOTIA POWER INCORPORATED** for Approval of an increase in its **Pole Attachment Charge**.

BEFORE: John A. Morash, C.A., Chair
Margaret A. M. Shears, Vice-chair
John L. Harris, Q.C., Member

APPLICANT: **NOVA SCOTIA POWER INCORPORATED**
Peter W. Gurnham, Q.C.

FORMAL INTERVENORS:

COMPETITION BUREAU
William J. Miller, LL.B.
Chuck Stevenson

EASTLINK LIMITED
Mark E. MacDonald, Q.C.

GASWORKS INSTALLATIONS INC.
John H. Reynolds, P.Eng.

HALIFAX REGIONAL MUNICIPALITY
Mary Ellen Donovan, LL.B.

SEASIDE CABLE TV (1984) LTD.
Robin Gogan, LL.B.

WITNESSES:

FOR THE APPLICANT
Christopher Huskilson, P.Eng.
Chief Operating Officer
Nova Scotia Power Inc.

Melvin Whalen, P.Eng.
Director of Regulatory Affairs and Rates
Nova Scotia Power Inc.

FOR THE COMPETITION BUREAU
Donald Ford
Telecommunications Consultant
D.A. Ford and Associates Ltd.

FOR EASTLINK LIMITED
John L. Bragg
Principal Owner, EastLink Limited

J. Lee Bragg
Co-CEO, EastLink Limited

Deborah Shaffner, C.M.A.
Chief Financial Officer

J. F. Fitzgerald, P.Eng.
Senior Director of Operations

Kenneth G. McBay, P.Eng
Director of Technical Planning

FOR SEASIDE CABLE TV (1984) LTD.
Anita Delazzer
General Manager, Seaside Communications

Craig Tweedy
President, First Communications Contractors Limited

OTHER PARTICIPANTS:	**STREATCH COMMUNICATIONS INC.** Steve Streatch
	RuSh COMMUNICATIONS LTD Mark Shannon
	CROSS COUNTRY TV LIMITED Steve Scott
	NORTH NOVA CABLE Dan MacDonald
LETTER OF COMMENT:	Robert G. Lewis, Sydney, NS
	Mayor John Prall Berwick Electric Commission Berwick
BOARD COUNSEL:	Richard J. Melanson
HEARING DATES:	April 23, 24 and 25, 2001
CLOSING SUBMISSIONS:	May 16, 2001
DECISION DATE:	**January 24, 2002**
DECISION:	**Application approved as revised by the Board.**

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INTRODUCTION

This decision is further to a public hearing conducted by the Nova Scotia Utility and Review Board (the Board) from April 23, 2001 to April 25, 2001, in the matter of an application by Nova Scotia Power Inc. (NSPI) for approval of an increase in its Pole Attachment Charge. NSPI's application, which was filed on September 27, 2000, was heard under the authority of **Section 64** of the **Public Utilities Act**, R.S.N.S., 1989, c.380, (the **Act**) which reads as follows:

> ***Approval of Schedule of Rates and Charges of Utility***
>
> ***64(1)*** *No public utility shall charge, demand, collect or receive any compensation for any service performed by it until such public utility has first submitted for the approval of the Board a schedule of rates, tolls and charges and has obtained the approval of the Board thereof.*
>
> ***Filing with Board***
>
> *(2) The schedule of rates, tolls and charges so approved shall be filed with the Board and shall be the only lawful rates, tolls and charges of such public utility until altered, reduced or modified as provided in this Act. R.S., c. 380, s. 64.*

Public notice of the hearing was provided by the Board and a number of Intervenors, both formal and informal, advised the Board of their concerns with respect to the application. Formal Intervenors in this application were the Competition Bureau, EastLink Limited (EastLink), Seaside Cable TV (1984) Ltd. (Seaside), GasWorks Installations Inc. (GasWorks) and Halifax Regional Municipality (HRM).

NSPI is a regulated public utility and is the successor to the Nova Scotia Power Corporation, a crown corporation which was privatized in 1992. As of January 1, 1999, NSPI became the principal subsidiary of NS Power Holdings Incorporated, now know as Emera Incorporated.

NSPI seeks Board approval for an increase in its annual pole attachment charge from $9.60 per pole to $17.22 per pole. The existing charge was approved by the Board pursuant to the hearing of a general rate application by NSPI (NSUARB-P-868) in 1996 and came into effect on March 1, 1996, as follows:

> *All pole attachments for telecommunication common carriers, or broadcasters, exclusive of those under joint use agreements - $9.60 per pole per year.* (NSUARB P-868, Decision, 1996)

In addition to the recurring pole attachment charge, NSPI proposes to begin charging "telecommunication companies", which the Board takes to include MTT/Aliant, an "up-front" capital contribution to cover any additional capital costs required to accommodate their needs for space on new or replacement poles. Carriers subject to the capital contribution would also pay the on-going annual pole attachment charge.

For purposes of this application, NSPI has largely adopted and applied the methodology prescribed by the CRTC in Decision 99-13, dated September 28, 1999. Excerpts from that decision were included as part of NSPI's pre-filed evidence [Exhibit P-1, Appendix D]. The Board notes that following the hearing the Board was advised that CRTC Decision 99-13 has been set aside by the Federal Court of Appeal on the basis that the CRTC lacks the jurisdiction to regulate access to structures owned by electric utilities.

Mr. Donald Ford, of D. A. Ford and Associates Ltd., the expert witness called by the Competition Bureau, pointed out in his pre-filed evidence [Exhibit P-12] that since the CRTC first dealt with pole attachment rates in 1977, the CRTC has been consistent in its approach. It has held that the charge should recover all causally-related or incremental costs arising from the use of space on the pole and in addition make a contribution to the annual fixed capital costs of the pole, based on the space used on the pole. Mr. Ford described the two cost elements as follows at p.3 of his pre-filed evidence:

> *Causally-related costs are those costs that are attributable directly to the presence of the user in the communications space on the pole and include costs for administration (such as contract preparation, permit issuance, inspection, billing and collection) and for loss of productivity (any additional costs incurred by the owner of the pole in carrying out its own construction or maintenance work due to the presence of the user in the communications space.)*

> *Annual fixed common costs of a pole include annual depreciation charges, annual capital carrying costs, annual maintenance costs and annual tree-trimming or brushing costs.* (Competition Bureau, Pre-filed evidence, Exhibit P-12, p.3)

NSPI has followed the CRTC approach in developing its proposed rate in the present proceeding. It asserts, however, that a more appropriate charge would be $29.65 per pole per year based on a fully allocated cost approach. This figure results from an updated cost study attached as Appendix C to NSPI's pre-filed evidence. NSPI indicated at the hearing that in a future application for a revision of the pole attachment charge, it might propose that the costing methodology employed in Appendix C be approved by the Board. In the meantime, it agrees that an increase from $9.60 to $29.65 in one step would have a considerable impact on the communications companies.

The Board does not consider that the relative merits of costing pole attachment service on the basis of incremental costs versus fully allocated costs were examined in sufficient depth at the hearing for it to make a definitive pronouncement on the matter at this time. The Board observes, however, that it was impressed with the common sense underlying Mr. Ford's submission [Transcript p.292] that pole attachment service can hardly be characterized as a basic or core service provided by NSPI, and that an approach based on incremental costs plus a contribution to common costs is preferable where the customers receiving the service do not enjoy the advantages that an ownership interest in the poles would convey.

The principal focus of the hearing was on whether NSPI correctly applied the methodology set out in CRTC Decision 99-13. The Intervenors challenged the amounts proposed by NSPI for many of the components of the overall pole attachment charge. The parties are in agreement with respect to certain of the cost components, but they disagree with respect to the majority of them. With respect to the calculation of the contribution to be made to common costs, over and above NSPI's incremental costs, the principal factors and components requiring consideration are the capital related costs and the determination of the space allocation factor to be applied to those costs. With respect to the incremental costs, there was disagreement regarding both the determination of the loss of productivity costs and administration costs.

In this decision, the Board will review each component of the pole attachment charge and make findings as to the cost of the component. The aggregate of these components will establish a revised total pole attachment charge. The decision also includes discussion of issues that do not bear directly on the aggregate cost but warrant Board comment.

NSPI's Annual Report for the year 2000, filed as a supplement to Undertaking U-3, indicates that its total revenue from electric operations was \$813,300,000. NSPI's revenue from the pole attachment charge in 2000 was \$1,472,000 which represented approximately 0.18% of NSPI's total revenue.

The recent history of pole attachment charges in Nova Scotia is described in the direct evidence of Christopher Huskilson, Chief Operating Officer for NSPI, as follows:

> *Pole attachment rates have been regulated in Nova Scotia by the Nova Scotia Utility and Review Board (NSUARB or the Board) since June, 1994, when the Board, by Order NSPI-P-132 approved the rates shown in the attached Schedule "A". Those rates applied only to the provision of cable television services, as attachments by the telephone company (MTT) were covered under a separate joint use agreement between NSPI and MTT.*
>
> *Prior to 1994, attachment rates for cable TV companies had been set by the provincial government, with the exception of a brief period between July 1992 and June 1994 when they were set by mutual agreement between NSPI and the cable companies.*
>
> *The rates approved by the NSUARB in 1994 (as set out in Schedule "A" above) continued in effect until March, 1996 when the Board approved a rate of \$9.60 per pole per year, consistent with the rate that had been approved by the CRTC for MTT in June, 1995. Rates have remained at \$9.60 per pole per year since that time.* (Ex. P-1, pp.1-2)

NSPI provided a useful overview of the number of poles currently in service, their net value and the revenue obtained from the pole attachment charge in its response to EastLink

IR-5. This information, together with the calculation of the net embedded cost per pole, is set out in the following table:

(a)	Approximate number of line poles	310300	
(b)	Approximate number of service poles	62060	
(c)	Approximate total number of poles	372360	
(d)	Net plant value of line poles		$114,022,000
(e)	Net plant value of service poles		$ 13,279,000
(f)	Total net value		$127,301,000
(g)	Total net value per pole[1]		$342.00
(h)	Total annual revenue from pole attachments for the last five years:		
	i) 1996		$1,104,000
	ii) 1997		$1,215,000
	iii) 1998		$1,325,000
	iv) 1999		$1,406,000
	v) 2000		$1,472,000

(Exhibit P-4, EastLink - IR-5)

1.0 COMPONENTS OF POLE ATTACHMENT CHARGE - NET EMBEDDED COST AND DEPRECIATION COST

1.1 Submission - NSPI

During the hearing, NSPI amended certain of its previously filed calculations relating to certain of the components of the pole attachment charge. As a result, the revised elements of the charge as proposed by NSPI are set out in NSPI's post hearing brief as follows:

	NSPI Proposal
Net Embedded Cost per Pole($) (Weighted Average of 40 Foot Line Poles and 30 Foot Service Poles)	$342.00
Depreciation ($/pole)	$23.55
Interest ($/pole)	$47.06
Maintenance ($/pole) (Including Tree Trimming)	$11.55
Administrative Mark-Up	N/A
Total Capital Related Costs ($/pole) (Depreciation + Interest + Maintenance)	$82.16
Cable Distribution Allocation (%) (Space Allocation Factor)	16.5%

[1]Also known as net embedded cost per pole.

Contribution ($/pole) (Total Capital Related Cost x Cable Distribution Allocation)	$13.56
Loss in Productivity ($/pole) (Same as CRTC)	$3.15
Administration Costs ($/pole)	$0.51
Total Annual Cost per Pole (Contribution + Loss in Productivity + Administration Cost)	$17.22

(NSPI - Post-Hearing Brief, p.3)

NSPI submits that each of the proposed components is reasonable and, therefore, the proposed charge of $17.22 should be approved. In his opening statement, Mr. Huskilson elaborated on this proposal as follows:

> *This is an application by Nova Scotia Power to revise the annual pole attachment rate of nine dollars and sixty cents ($9.60) per pole for all pole attachments for communications, common carriers or broadcasters, exclusive of those served under a joint-use agreement. The current rate is set by the -- was set by the Board in the 1996 rate hearing. However, in the 1996 rate case decision, the Board directed Nova Scotia Power to resubmit its cost study. Nova Scotia Power's response to that directive is shown as Appendix "B" of our evidence where Nova Scotia Power calculated the cost per pole per year to be eleven dollars and ninety-nine cents ($11.99) on an incremental basis and twenty-two dollars and thirteen cents ($22.13) on an embedded-cost basis. Despite this, Nova Scotia Power has not applied to the UARB since 1996 to increase the rate, in part because of events transpiring before the courts and the Canadian Radio-Television Communications Commission, in Ontario. However, these events continue to be unresolved and Nova Scotia Power believes that the current rate must be amended for the following reasons. First, the current rate of nine dollars and sixty cents ($9.60) per pole per year is clearly below cost. Companies such as those who use our poles to provide cable TV service are paying less than their fair share of the costs associated with these poles. Secondly, a lot of our costs have gone up in the past few years and yet we have kept our prices to our electric customers stable. We are continuing to work hard to keep our costs down and to keep these prices stable. We do believe, however, that our electric customers should not have to continue to subsidize cable companies. Third, the increased rate we are proposing will bring the price paid more in line with the cost of providing pole-attached services and reduce, but not eliminate, the subsidy. Nova Scotia Power has filed a current cost study with its evidence which shows that a fully-allocated embedded cost rate of twenty-nine dollars and sixty-five cents ($29.65) per pole is appropriate. However, for reasons outlined in this application, Nova Scotia Power has applied for a rate which adopts and applies the methodology adopted by the CRTC in setting a rate in its Decision 99-13. That decision involved certain municipal utilities in the province of Ontario. We believe a proper application of that methodology results in an attachment rate of seventeen dollars and twenty-two cents ($17.22) per year, and Nova Scotia Power respectfully requests approval of that rate.*

(April 23, 2001 - Transcript, pp.11-13)

1.2 Submission - Intervenors

There is agreement among the parties with respect to the net embedded cost per pole of $342 and the depreciation cost of $23.55 per pole.

However, there is significant disagreement with respect to the other components of the charge. Specifically, EastLink and Seaside object to the proposed interest expense, maintenance expense, allocation factor and cost attributable to loss of productivity, as well as administration costs. Other Intervenors take issue with the scale of the proposed increase, stating that the increase sought is too high and will have a negative impact on cable customers, particularly in rural areas. The Competition Bureau, in its evidence, also questioned certain of NSPI's assumptions and calculations.

1.3 Findings

From a review of the submissions, the Board is satisfied that the suggested net embedded cost per pole of $342 is a reasonable and appropriate starting point on which to base the pole attachment charge. The derivation of this figure is shown above on the table at p.5. This amount is, therefore, approved.

The Board notes that NSPI has based its depreciation cost on the following allocation of pole and fixture assets:

Description **Description**	**Electrical (000)**	**Shared (000)**	**Total (000)**
Poles	0	$214,671	$214,671
Guys and Anchors	$35,684	$8,210	$43,894
Electrical Framing	$53,016	0	$53,016
Total	$88,700	$222,881	$311,581
Percentage	28%	72%	100%

(NSPI U-2)

The Board accepts 72% as an appropriate allocation of NSPI's Poles and Fixtures

Account. Applying 72% to NSPI's total depreciation expense applicable to poles and fixtures of $12,178,000 gives a shared depreciation expense of $8,768,160. [NSPI response to EastLink IR-11(e)] Dividing this number by the total number of poles gives a per pole cost of depreciation of $23.55. Accordingly, the Board approves the proposed depreciation component of the pole attachment charge of $23.55 per pole.

2.0 DISPUTED CAPITAL COSTS

Capital related costs are comprised of depreciation, interest [cost of capital] and maintenance costs. These costs are calculated using the net embedded cost per pole of $342 accepted by the Board. The interest cost includes grants in lieu of taxes, preferred dividends and interest, income taxes and return. "Interest" might more accurately be described as the "annual capital carrying cost".

2.1 Interest

2.1.1 Submission - NSPI

In its post-hearing brief, NSPI pointed out that it has actual data regarding the costs which, it argues, should be used to calculate the interest cost. NSPI used the following data for purposes of determining the interest component of the pole attachment charge:

Grants in Lieu of Taxes	$745,000
Preferred Dividend & Interest	$13,313,000
Income Taxes	$1,667,000
Return	$8,613,000
Total Interest	**$24,338,000**

(NSPI - Response to EastLink IR-11(e))

NSPI calculated the interest relating to shared assets as 72% of $24,338,000 or $17,523,360. Dividing this amount by the total number of poles [372,360] results in an interest cost of $47.06 per pole, based on actual costs. This is equivalent to a rate of 13.8% [$47.06/$342.00].

Mr. Huskilson and Melvin Whalen, Director, Regulatory Affairs and Rates for NSPI, both gave evidence with respect to NSPI's overall cost of capital, before and after tax, during their cross examination by Counsel for EastLink:

> Q. *On a going forward basis, Mr. Whalen, Nova Scotia Power can access capital at a weighted cost of 9.32 percent or something in that order of magnitude subject to market conditions?*
>
> A. *(Whalen) Yeah. That's what we calculate our current rate of weighted average cost to be, yeah.*
>
> A. *(Huskilson) It really depends on whether you're talking about the pre-tax or after-tax cost of capital. Our pre-tax is closer to 11.3. After-tax is in the order that you said.*
>
> Q. *Okay. And 11.3 is the sort of figure you're looking at going forward, Mr. Huskilson?*
>
> A. *(Huskilson) Pre-tax, that's right.*
>
> Q. *And by that, you mean that 11.3 takes into consideration income taxes in addition to debt and equity.*
>
> A. *(Huskilson) Yes, that's right.* (Transcript, Q. 201, p.78)

In its post-hearing brief, NSPI states that if its proposed actual cost methodology is not approved by the Board, then the cost of capital should be 11.3% rather than 13.8%.

> *Using actual rather than estimated charges in the calculation of this rate is consistent with NSPI's normal cost allocation and rate design calculations. While NSPI strongly believes actual interest expense should be used, should the Board choose instead to apply a weighted average cost of capital to the embedded cost per pole, the pretax cost of capital to be employed should be the 11.3% as outlined in Undertaking U-6. That is the appropriate pretax cost of capital number.* (NSPI - Post-Hearing Brief, p.6)

In response to an undertaking, NSPI provided the following table to support the pre-tax weighted average cost of capital of 11.3%:

	% Capital Structure	After-Tax Cost	After-Tax WACC	Pre-Tax Cost	Pre-Tax WACC
Debt	58.0%	4.7%	2.7%	7.6%	4.4%
Preferred	7.0%	6.0%	0.4%	9.7%	0.7%
Common	35.0%	11.0%	3.9%	17.7%	6.2%
Total	**100.0%**		**7.0%**		**11.3%**
Assumed	38.00%				

(NSPI, Undertaking U-6)

The table shows an after-tax weighted average cost of capital of 7.0% rather than the 9.32% used in Appendix D to NSPI's pre-filed evidence and referred to above by Mr. Whalen. The 7.0% figure reflects NSPI's future cost of debt once NSPI becomes taxable in 2003 at an income tax rate of 38%, rather than its average cost of debt.

2.1.2 Submission - Intervenors

Eastlink submits that the weighted average cost of capital after tax should be used. In its written argument, Eastlink notes that in Decision 99-13 the CRTC used a capital rate of 8.5%, which was the rate of return which Ontario Hydro allowed the municipal utilities to earn. EastLink further notes that NSPI initially used a capital rate of 9.32%, which was based on its weighted average cost of capital, and justified this rate in its response to EastLink's Information Request IR-17(c). Using its actual capital related expenses, NSPI subsequently determined that a rate of 13.8% should be used as shown above at p. 10. EastLink contends that this approach is inappropriate, since the methodology used by NSPI, as set out in its response to EastLink's Information Request IR-15(a), implicitly assigns financing costs to the poles category that are unrelated to the net plant value of the poles. EastLink concludes that the capital rate should be based on NSPI's cost of capital of 9.32%.

In its submission, the Competition Bureau notes that its consultant, Mr. Ford, calculated a current cost of capital of 9.62% based on NSPI's 1999 financial statements [Undertaking U-9]. Adding an allowance for payments in lieu of taxes resulted in a annual capital carrying cost of 10.04%. The Bureau did not adopt Mr. Ford's calculation, however, and made the following submission at p.5 of its post-hearing brief:

> *The Bureau also understands that, on a forward-looking basis, the rate of corporate income tax will be approximately the 38% noted in Undertaking U-6. On that basis, and subject to the Board being satisfied that this is a reasonable rate of income tax on a forward-looking basis, the Bureau recommends in principle the use of a pre-tax cost of capital of 11.3%, provided that this figure is subject to the Board's continuous oversight. Inclusive of the grants in lieu of taxes of 0.4%, this would lead to a capital carrying cost of 11.7%. Based on the net embedded cost per pole of $342, this rate of capital carrying cost yields an annual capital carrying cost or "interest" in the amount of $40.01.*
>
> (Competition Bureau - Post-Hearing Brief, p.5)

Seaside Cable submitted that the capital rate should be 10.04%, as calculated by Mr. Ford, and that the appropriate interest component per pole should not exceed $34.34.

2.1.3 Findings

After carefully reviewing the various capital rates suggested, the Board considers that the appropriate capital rate is the weighted average pre-tax cost of capital of 11.3% plus 0.4% for grants in lieu of taxes. In the Board's view, it is more appropriate to use the cost of capital which is applicable to the whole of NSPI's asset base, rather than calculating a number of different capital costs for different segments of the asset base.

NSPI has stated that the use of actual data is consistent with the cost allocation methodology utilized for purposes of setting rates. However, since this proceeding is not a general rate hearing, a full cost of service study has not been filed. The Board may be prepared to revisit this issue if NSPI uses "actual data" to calculate the cost of pole attachments in a cost of service study presented in a future general rate case. At this time, however, the Board finds that a capital rate of 11.3% plus 0.4% for grants in lieu of taxes is reasonable, and, accordingly, approves an interest component of the pole attachment of 11.7% x $342.00 or $40.01 per pole.

2.2 Maintenance

2.2.1 Submission - NSPI

In response to the Board's IR-23(d), NSPI stated that its proposed maintenance cost per pole of $11.55 was determined as follows:

Vegetation Management	$6.49
Emergency Repairs	$1.06
Inspection Surveys & Audits	$2.00
Pole Tests	$2.00
Total	**$11.55**

(Exhibit P-4, Board IR-23(d))

In its response to Board IR-23(d), NSPI also indicated that the vegetation management cost of $6.49 comes from NSPI's accounting system records relating to

"... distribution tree trimmings." (Exhibit P-4, Board IR-23(d))

NSPI submitted that all pole tenants benefit from tree trimming and that tree-trimming, along with inspection surveys and audits, emergency repairs and pole tests, is properly included in the overall cost of maintenance.

Mr. Huskilson elaborated on the purpose of NSPI's vegetation management practices during cross-examination by counsel for HRM as follows:

48 Q. You stated earlier in your evidence that tree clearances have doubled, possibly tripled, since the joint-use agreement was prepared. Correct?

B. (Huskilson) Yes, that's correct.

49 Q. And you also went on to state that these increased clearances as much allow control of costs as they do enhanced reliability. Do you recall that?

> *A.* *(Huskilson) Well, they start out by enhancing reliability, and then if you can create a sustainable environment along the right-of-way, then you can improve your costs through time. But they start out primarily improving reliability.*
>
> (April 24/01 Transcript, Q48, p.198 - A. 49, p.199)

In addition, under cross-examination by counsel for EastLink, NSPI asserted that the vegetation management cost should be included in the rate rather than leaving it to be negotiated by the parties:

> *A.* *(Whalen) We believe it's a whole lot easier, administratively easier to have it included as part of the rate. We believe it's consistent with the CRTC methodology because the maintenance part that we're talking about here is not incremental maintenance that we're talking about. It's total maintenance as are all the other pieces that go into that -- I believe what the CRTC refers to as the capital side. We believe it's more appropriate to put it in there.*
>
> (April 23/01 Transcript, A. 218, p.83)

NSPI provided the methodology supporting the derivation of the cost for inspection surveys and audits of $2.00 per pole as follows:

$$28 \text{ staff} \times \frac{2 \text{ months}}{12 \text{ months}} \times \$80\text{ k} = \$373{,}333$$

Field staff spend an average two months per year on inspections, audits and surveys.

Total # of poles owned by NSPI = 372,360

Since pole inspections are done every two years, only ½of the total are done on an annual basis (372,360 ÷2 = 186,180)

(NSPI, Undertaking U-4)

2.2.2 Submission - Intervenors

The costs associated with vegetation management and inspection surveys and audits were of a considerable concern to the Intervenors.

Seaside questioned whether any of NSPI's maintenance costs are attributable to the presence of cable on the poles. In its closing submission, Seaside states that:

While Seaside does not contest NSPI's annual maintenance costs, it strongly contests that any of these costs are contributed to or required by the presence of cable plant. NSPI carries out vegetation management or tree trimming in accordance with its own requirements and the standards under which it agreed to operate in the Joint Use Agreement. The Joint Use Agreement clearly mandates standards for tree trimming for joint use NSPI poles. Therefore, in the case of Joint Use Poles, the tree trimming requirements are dictated by the Agreement and not by the presence of cable plant.

(Seaside Closing Submissions - p. 12)

Seaside also submitted that:

. . . *NSPI's formula does not take into account the average cost per attachment and therefore overstates that portion of the cost which they attribute to the presence of cable plant.* (Seaside, Closing Submissions, pp.14-15)

EastLink submitted that there is little, if any, incremental vegetation management required as a result of communication attachments. EastLink, in its response to NSPI IR-11(a) and (b), stated:

(a) *Yes, in paragraph 212 of Decision 99-13, the Commission indicated:*

The Commission considers that maintenance costs should exclude tree trimming. Rather, the power utilities should be permitted to levy a separate charge on cable companies to reflect tree trimming activities. The Commission considers that this matter is best left to be resolved by the parties in the first instance. Furthermore, the Commission notes that in the Milton Hydro study, pole maintenance costs, excluding tree trimming, are $6.47 ($5.00 for pole testing and $1.47 for straightening). Consistent with the Commission's determination that the Milton Hydro data should be used in the rate calculation, maintenance costs of $6.47 will be included in the monthly pole rental rate.

(c) *EastLink currently pays for tree-trimming for EastLink's construction activity for its own attachments.*

A distinction needs to be made between tree-trimming for plant/wires and tree trimming for poles. NSPI trims for plant, not poles. NSPI *conducts tree-trimming primarily to keep conductors and other NSPI plant free from obstructions that could result in power service disruptions. Cable plant does not require the same clearance and is rarely affected unless tree limbs are directly weighing down the line. EastLink is prepared to undertake any clearance necessitated by this itself.*

(EastLink response to NSPI IR-11(a) and (b))

As a result, EastLink believes that a cost of $6.49 for vegetation management is too high. In addition, EastLink took issue with the annual cost of $80,000 per staff member that is included in the annual maintenance charge for inspections and surveys. Instead, EastLink suggests an amount of $50,000 per fully burdened staff member which would translate into $1.00 per pole. EastLink states that its proposed changes result in a maintenance cost of $3.06 per pole, rather than the $11.55 proposed by NSPI.

2.2.3 Findings

The Board has reviewed the submissions of all parties with respect to whether the maintenance cost elements proposed by NSPI are properly part of the pole attachment charge calculation. The Intervenors take particular issue with the vegetation management cost of $6.49. The Board accepts NSPI's position that the vegetation management program is an essential part of maintaining the integrity of NSPI's overhead distribution system infrastructure. In the Board's view, it is also reasonable to conclude that the telecommunications companies benefit from this program. The Board finds a cost of $6.49 to be acceptable. Accordingly, the Board concurs with the appropriateness of assigning a portion of these costs to the telecommunications companies. The Board agrees with NSPI that the costs used to determine the inspection portion of the maintenance cost component reflect the cost of monitoring the condition of the poles and not the costs of verifying the number of attachments on the poles which are recovered directly from the individual cable companies. The Board finds that the other maintenance costs should be allocated to the telecommunications companies using the poles in the amounts proposed. Accordingly, the Board approves a total maintenance cost of $11.55 per pole for purposes of determining the pole attachment charge.

3.0 SPACE ALLOCATION FACTOR

3.1 Submission - NSPI

The purpose of the space allocation factor is to assign an appropriate amount of the total annual capital related costs per pole to the customers who will pay the pole attachment charge.

Consistent with the methodology used by CRTC in Decision 99-13, NSPI has proposed that the "usable space" on a typical 40 foot pole be defined as power space, separations space and communications space. When measured in meters, the usable space consists of 4.86 meters. One-half of the communications space and the separations space is assigned to pole attachment customers. This distance is 0.80 meters. Dividing 0.80 by 4.86 gives a space allocation factor of 16.5%.

In its response to Board IR-23(e), NSPI provided the measurements for the pole usage components from which the 16.5% allocation factor was derived:

This comes from NSPI Pole Attachment Cost Study dated Sept. 7, 2000. The calculation utilizes NSPI data and the CRTC philosophy. Please see the following table which shows the basis of the calculation of the cable distribution allocation of 16.5% for CATV. These figures are in meters:

	NSPI	**MTT**	**CATV**	**Total**
Power	3.26			3.26
Separation		0.5	0.5	1
Communications		0.3	0.3	0.6
Clearance	n/a	n/a	n/a	n/a
Burial	n/a	n/a	n/a	n/a
Total	3.26	0.8	0.8	4.86

%	67.0%	16.5%	16.5%	100.0%

(Exhibit P-4, Board IR-23(e))

NSPI notes in its post-hearing brief that the CRTC found at paragraph 222 of Decision 99-13 that "The expectation that all power utility poles will accommodate two communication users is reasonable". NSPI points out that in fact,

. . . the average number of attachments to an NSPI pole in Nova Scotia is slightly less than 2, in a range of 1.7 to 1.8 attachments per pole on average.

(NSPI - Post-Hearing Brief, pp.11-12)

Mr. Huskilson also stated that approximately 50,000 or one-third of the NSPI poles to which the cable companies attach are not joint-use poles [Tr. p.19, 23], meaning that the cable companies are the exclusive users of the communications space. NSPI submits that this fact weakens the Intervenors' argument that considerably less than 50% of the communications and separation space should be assigned to them.

NSPI also pointed out that under the Joint-Use Agreement, the cost to MTT for using NSPI joint-use poles is "in the area of" $30 to $35 per pole, which is considerably higher than the rate being proposed for the cable companies.

Further, NSPI took issue with the suggestion that the control exercised by MTT over the placement of cable on poles pursuant to the Joint-Use Agreement should be reflected in a reduction of the proposed space allocation to communications companies. This is illustrated in the following exchange between Mr. Huskilson and Counsel for EastLink:

Q 277. You have to in comparing rates look at the hierarchy within the communications space, do you not, and who is there and who controls the space?

A. (Huskilson) I don't -- you keep talking about the hierarchy and the control of the communications space, and I can't for the life of me understand what that has to do with the bolt once it's on the pole. And, in fact, since you can't demonstrate here today that there is any circumstance where EastLink has been unable to attach to a pole, and you also can't demonstrate that there isn't going to be -- there isn't a situation in the future that disadvantages your organization by having the planning and control done by one entity or another, I don't understand what the point of the discussion about the control is. And I don't understand what the point of advantage versus disadvantage is when what we're talking about is a bolt on the side of a pole where the conductor hangs.

(Transcript - Q&A277 pp.108-109)

3.2 Submission - Intervenors

GasWorks, in its closing submission, notes that:

. . . the pole 'is there anyway' because the other customers of NSPI pay through their rates to have it there. In paying to have it there these other customers must contribute to the carrying charges on that asset. It is not unreasonable to suggest that a tenant attachment should also contribute their fair share of those carrying charges.

(GasWorks, Closing Submission, p.1)

The Competition Bureau, in its post-hearing submission, recommended a space allocation factor in the range of 11% to 15.5%:

In light of the evidence adduced during the hearing, such as control of the communications space, the joint use pole agreement, the relative weight of the cables, the relative amount of space used by Aliant/MTT and other users, the 6.6% figure proposed by EastLink and the 7.4% used by the Federal Communications Commission, Mr. Ford proposed a 2/3, 1/3 split for Aliant/MTT and other users, respectively (Ford, Transcript p.282, Q68). *On the basis of this evidence, the Bureau recommends the Board adopt a cable distribution allocation in the range of 11% to 15.5% .* (Competition Bureau - Post-Hearing Submission, p.5-6)

Seaside makes the following argument in its closing submissions:

NSPI claims a space allocation factor of 16.5%. This allocation factor is based upon the assumption that there are two (2) equal users of the communication space. Seaside contests this allocation on the basis that it is limited in its use of and access to the communications space. Seaside is of the view that the appropriate allocation factor should weigh the presence of MTT consistent with the Joint Use Agreement and considers the impact of Seaside's lack of ownership or control of the poles. . .

With respect to Joint Use Poles, NSPI has chosen to provide control over communications space to MTT by virtue of the Joint Use Agreement. In those instances, MTT controls both the quantity and quality of access to poles. As the evidence indicates, Seaside is completely at the mercy of NSPI and MTT for pole attachment. As a result of MTT's control, in the vast majority of cases, Seaside's attachments have been relegated to the "field side" of the poles. This has a substantial impact on Seaside's installation and maintenance cost and a consequent effect on Seaside's ability to compete with MTT and others. It is evident from the evidence that Seaside has neither the rights of ownership, nor the advantages of control. The Board, in determining the appropriate attachment rate, must consider this lack of ownership and control and its impact on *telecommunications tenants. . .*

In light of the historical allocation of communications space, Seaside submits [that] an allocation factor of 16.5% is prima facie unfair. Considering the historical allocation as well as the number of available attachment points, Seaside submits that the appropriate allocation is 6.6%. Although the evidence of the Competition Bureau suggested 11%, it is Seaside's view that this allocation did not take into consideration that there are typically 6 attachment points in the communications space. Mr. Ford left it to the Board to determine the appropriate allocation factor, having regard to the Joint Use Agreement and the impact of competitive equity within the communications space. In any event, Seaside submits that the appropriate allocation factor should be no higher than the 11% figure proposed by Mr. Ford. (Seaside - Closing Submissions, pp.15-17)

EastLink, in its written argument, proposes that the space allocation factor should be between 6.6% and 11.0%. It makes the following argument in support of its position:

The allocation factor is used to allocate a reasonable proportion of the total annual fixed common costs as part of the pole attachment rate. In Decision 99-13, the CRTC established an allocation factor of 15.5%, which represented half of the total of usable space allocated to telecommunications tenants. Implicit in this allocation is an equal sharing of the communications space between telecommunications tenants. Since this factor is applied to the total annual fixed common costs, this methodology effectively allocates the "unusable" space on the pole (buried space and clearance) in the same proportion as the allocation of usable space. . .

EastLink proposes an allocation factor of 6.6% which is premised upon the allocation of the communications space which was specifically agreed between NSPI and MTT. Mr. Don Ford, in response to questions from Board counsel, suggested an allocation factor of 11% which is premised upon an allocation of 1/3 of the communications space and the separation space to the cable company. Mr. Ford also referred (in his oral evidence) to an allocation factor of 7.3% used by the FCC in the United States and (in his responses to Information Requests) to an allocation of 1/4 of the communications space to cable in CRTC Decision 86-16 which would translate to an allocation factor of 8.2% in this instance.

EastLink respectfully submits that the allocation factor should, in the circumstances of this proceeding, be in the range of the 6.6% proposed by EastLink and be no higher than the 11% referred to by Mr. Ford. (EastLink - Written Argument, pp.22-23; 26)

EastLink's submission that a space allocation percentage of 6.6% would be appropriate is based on NSPI's response to Board IR-21. NSPI indicated in its response that its joint-use agreement with MTT assumes that approximately 80% of the communications space would be utilized by MTT and 20% by other communications companies. Using NSPI's pole space figures measured in meters, (Board IR-23), 20% of the communications space and separation space is 0.32 meters which is 6.6% of the total usable space of 4.86 meters.

3.3 Findings

The Board has considered the submissions of NSPI and the Intervenors as well as the views expressed by the CRTC in Decision 99-13, excerpts of which were filed as part of NSPI's evidence (Exhibit P-1, Appendix D). While the decision has been set aside for the reasons noted earlier, for the purposes of this decision, the Board finds the CRTC's approach to determining space allocation to be helpful. The CRTC said the following in paragraphs 222 to 224 of Decision 99-13:

> *222. The Commission is of the view that in determining the appropriate costs to be recovered from the cable companies, it is important to consider that they do not have the rights of ownership of the pole. Accordingly, the Commission considers that the fully distributed costing approach proposed by the MEA is not appropriate and that an allocation factor based on the percentage of usable space consumed is more reflective of a user's actual use and therefore is a more appropriate means of allocating costs. Furthermore, in light of increasing competition in broadcasting distribution and telecommunications and the potential for future growth in the number of communications space users, the Commission is of the view that the expectation that all power utility poles will accommodate two communications users is reasonable.*
>
> *223. The Commission considers that the usable space on a 40 foot power utility pole, after allowance for clearance and buried pole, is 16.75 feet. Moreover, the Commission is of the view that the power utilities derive no benefits from the separation space, and that the separation space is necessary only to protect the employees and attachments of the communications companies. The Commission agrees with the MEA's comments that, without communications attachments, the power utilities could use the entire separation and communications space itself. Therefore, the Commission considers the separation space is causal to communications users. Accordingly, the separation space, as well as the communications space, will be allocated equally between two communications users.*
>
> *224. Based on the above, the Commission considers that the cable companies occupy one foot of the communications space and 1.6 feet of the separation space for a total of 2.6 feet of the 16.75 feet of usable space. Therefore the Commission determines that the*

resulting space allocation to cable companies is 15.5%.
(CRTC, Dec. 99-13, para.222,223& 224)

The Board also finds the Competition Bureau's submission with respect to pole space allocation to be helpful. It stated in its post-hearing submission that:

In terms of the cable distribution allocation, under questioning by Board Counsel, Mr. Ford indicated he was reluctant to put forward a specific number (Ford, Tr., page 282, Q68). *In Mr. Ford's evidence, he suggested that the cable distribution allocation should be no higher than the 15.5% used in Telecom Decision CRTC 99-13* (Exhibit P-12, p.11). *In light of the evidence adduced during the hearing, such as control of the communications space, the joint use pole agreement, the relative weight of the cables, the relative amount of space used by Aliant/MTT and other users, the 6.6% figure proposed by EastLink and the 7.4% used by the Federal Communications Commission, Mr. Ford proposed a 2/3,1/3 split for Aliant/MTT and other users, respectively* (Ford, Tr., page 282, Q68). *On the basis of this evidence, the Bureau recommends the Board adopt a cable distribution allocation in the range of 11% to 15.5%.*

(Competition Bureau - Post-Hearing Submission, p.5-6)

As indicated above, NSPI measured the relevant spaces on a 40 foot pole in meters. The use of meters resulted in a space allocation factor of 16.5% rather than 15.5% which the CRTC obtained when the pole spaces were measured in feet. NSPI did not attempt to justify why an allocation factor of 16.5% should be used rather than the 15.5% used by the CRTC. It is apparent that there is no difference in principle between the CRTC and NSPI which would account for the difference. The parties dealt with the space allocation factor in terms of "40 foot poles" rather than "12.2 meter poles". The Board considers that it is appropriate to use imperial units to measure the usage spaces on the pole in the same way the CRTC did and to treat the resulting space allocation factor determined by the CRTC as the relevant one for purposes of this decision.

After considering the evidence and argument, the Board finds that a pole allocation factor of 15.5% is appropriate. Applying this percentage to NSPI's total capital related cost per pole yields a contribution of $11.64 [15.5% of $75.11]. The Board will include this amount in the calculation of the pole attachment charge.

Given the continuing evolution of Nova Scotia cable companies into full communications carriers, the ownership and control concerns expressed by the Intervenors at this hearing with respect to the use of NSPI poles are unlikely to disappear in the near future. If the various parties making use of NSPI poles are unable to overcome these concerns through a process of voluntary negotiation, the Board may find it necessary to revisit the issue of an appropriate pole space allocation factor in a future pole attachment charge application.

4.0 LOSS OF PRODUCTIVITY COST

4.1 Submission - NSPI

NSPI asserts that it should be compensated for the additional costs it incurs relating to the maintenance and servicing of poles as a result of the presence of cable attachments on them. The Competition Bureau explained the rationale for treating loss of productivity as an incremental cost as follows:

> *In the interests of competitive equity, all users of the communications space should pay their proportionate share of any loss in productivity incurred by the power utility as a result of the presence of telecommunications facilities in the communications space, based on their relative usage of the communications space.*
>
> (Competition Bureau, Response to UARB IR-1, para. 2)

In its post-hearing submission, NSPI submits that it is justifiable to include a loss of productivity cost of $3.15 per pole in the calculation of its pole attachment charge for the following reasons:

> *A higher pole is needed to accommodate telecommunication space. It is more difficult and costly to service NSPI equipment that is further off the ground. NSPI needs a bigger boom and therefore a bigger boom truck. A bigger boom truck takes more time to set up and depending on the roadway may need flag persons. NSPI in servicing its poles with communication attachments must be careful to work around the communication wire so as not to damage them. An NSPI lineman climbing the pole would have to get around the communications cables. Pole design to accommodate communications equipment is an additional complication. When the equipment has to be changed from one pole to another additional time and effort on the part of NSPI is required to coordinate other tenants moving their equipment. Sometimes there is a*

> *delay in cable companies moving their equipment. When a wire comes down often a citizen does not know whether it is the electric wire or a cable wire but usually it is the electric company that is called to remedy the problem.* (NSPI - Post-Hearing Brief, p.14)

NSPI notes that its loss of productivity cost of $3.15 per pole is based on 1991 data filed with the CRTC in respect of a proceeding involving the use of the poles of municipal electric utilities. In view of the intervening time span, NSPI considers this number to be conservative, but *". . . a reasonable number for purposes of this application".* (NSPI - Post-Hearing Brief, p.17)

4.2 Submission - Intervenors

Seaside asserts in its closing submission that NSPI has made no effort to assess its actual productivity loss. Seaside further states that:

> *. . . in the case of Joint Use poles, there is no incremental productivity loss. In these cases, cable plant would be present along with MTT plant. The requirement for larger trucks, and for more time to be taken to work around cable plant, are costs incurred as a result of MTT's presence on the pole. This being the case, there are no more costs incurred as a result of the presence of cable plant.* (Seaside - Closing Submissions, p.8)

EastLink states in its written argument that NSPI has not determined its own productivity losses and, as a result, there is insufficient evidence for the Board to consider this cost element.

While noting that evidence is lacking upon which to base an opinion, Mr. Ford took issue with the $3.15 proposed by NSPI to reflect the productivity loss. In its post-hearing submission, the Competition Bureau noted that NSPI has not done any studies to support the $3.15 cost. Further, in his response to Board IR-1, Mr. Ford, speaking for the Competition Bureau, made the following comment on NSPI's $3.15 cost of productivity loss:

> *With respect to the application of the CRTC's methodology to NSPI's cost structure, as*

discussed in the evidence of EastLink's Panel beginning on Page 22, I would agree that NSPI has not provided evidence of any studies of productivity loss due to the presence of telecommunications facilities in the communications space on its poles. I would also point out that the figure of $3.15 used by the Commission in Decision 99-13 is much higher than one would expect for power utilities when studies of productivity loss conducted by the telephone companies, who share the communications space on poles with the cable companies, yielded annual costs in the range of $0.25 to $0.75 per pole per year. The cost due to loss in productivity for telephone companies was introduced by the CCTA, as noted at paragraph 188 of Decision 99-13.

However, I disagree with EastLink's proposal that the cost due to loss in productivity should be based only on the incremental productivity loss caused by users of the communications space other than Aliant/MTT. In the interests of competitive equity, all users of the communications space should pay their proportionate share of any loss in productivity incurred by the power utility as a result of the presence of telecommunications facilities in the communications space, based on their relative usage of the communications space. (Competition Bureau, Response to IR-1, para. 2)

The Bureau recommended that a cost of $1.50 to $2.00 per pole per year be adopted pending further study.

Under cross-examination, Mr. Ford, witness for the Competition Bureau, gave the following opinion when asked whether the $3.15 figure is reasonable.

Q. All right. Based on the evidence you've heard at this hearing have you come to any opinion or conclusion with respect to the reasonableness of the three fifteen charge or cost involved with NSPI?

A. Well, as I said earlier when I was discussing this in my direct examination, I -- it's a number that seems to have appeared from nowhere and been attributed to many. And so I'm not really sure what the source of that number is. It was not a CCTA number as is alleged, I'd say inadvertently alleged, I would hasten to add. In Exhibit P-8 it was attributed I think to the MEA which I don't -- by the CRTC which -- and I don't think the MEA ever came up with that number. I think this was the only source of it and they referred to the CCTA number. Based on -- assuming that the telephone companies were correct in their numbers of 25 to 75 cents per pole per year in -- leading up to Decision [99-13], then I would certainly find the number of three fifteen to be considerably higher than I would have expected. But I can't comment further than that because there really isn't any evidence in that regard to comment on. (Transcript, p.284)

4.3 Findings

In the Board's view, it is reasonable to include an incremental cost for loss of productivity in the pole attachment charge. While NSPI has satisfied the Board that, in principle, such a cost is properly included in the pole attachment charge calculation, it has not provided sufficient evidence to support the proposed cost of $3.15. The Board agrees with the Intervenors that, without supporting data, it is not reasonable to simply accept the proposed cost of $3.15 per pole. Pending further study and documentation (which could be presented at the next pole attachment hearing), the Board finds that the Competition Bureau's estimate of $1.50 - $2.00 per pole is a reasonable and acceptable estimate for loss of productivity costs. Accordingly, the Board approves the sum of $2.00 as the productivity loss component of the pole attachment charge.

5.0 ADMINISTRATION COSTS

5.1 Submission - NSPI

NSPI proposes an administration cost of $0.51 per pole. Administration costs are recurring incremental costs incurred by NSPI arising from the placement of attachments on NSPI's poles by cable companies. NSPI bases its proposed administration cost on a calculation of the cost of the Joint-Use Coordinator. The Joint-Use Coordinator's position is cost shared with MTT pursuant to the Joint-Use Agreement between MTT and NSPI. NSPI states that 50% of the Coordinator's time is spent dealing with telecommunications pole tenants.

In response to EastLink IR-12(g), NSPI stated that:

> *NSPI's Joint Use Coordinator is required to spend 50% of his time administering the joint use agreement with Aliant and 50% on functions and activities for other telecommunications tenants. Therefore, NSPI included administrative costs of half his burdened cost, divided by the number of poles.* (Exhibit P-4, EastLink, IR-12(g))

In Undertaking U-1, NSPI set out its derivation of the proposed $0.51 per pole as follows:

As of September, 2000 the calculation for the number of poles that are directly managed by the Joint-Use Coordinator is as follows:

Total Attachments	150591
# of poles with 1 CATV tenant only	50000
# of poles with 1 CATV tenant and Aliant	96591
# of poles with 2 or more CATV tenants and Aliant	2000
therefore, the total # of poles with Attachments	148591
Fully Burdened Cost of Joint Use Co-ordinator: Salary + Fringe +A/O	$132,900
Travel and expense @ $1,500/month	$18,000
Total	$150,900
50% for CATV Attachment Activities	$75,450
Cost/Pole = $75,450 ÷148,591 poles	$0.51 per pole

(NSPI, Undertaking U-1)

In its post-hearing brief, NSPI noted that the Competition Bureau adopted the $0.51 calculation in determining its pole attachment charge and that an administration cost of $0.62 was approved by the CRTC in Decision 99-13.

5.2 Submission - Intervenors

In its closing submission, Seaside argues that the proposed administration cost is "*. . . entirely unreasonable and unsupported by the evidence*". Seaside submits that NSPI has provided no evidence to support its assertion that 50% of the Joint-Use Coordinator's time is spent on non-joint use activities. Seaside points out that the position of the Joint-Use Coordinator was created as a result of the Joint-Use Agreement between NSPI and MTT, and that the Agreement lists 16 specific responsibilities of the Coordinator. Seaside argues that NSPI has failed to prove its proposed administration charge, stating:

> *With respect, Seaside considers this figure entirely unreasonable and unsupported by the evidence. As the evidence indicates, Seaside, as well as the other cable and telecommunications providers pay substantial unregulated cost recovery charges to NSPI, including engineering and administrative charges at $200.00 per hour and $100.00 per hour. As we understand it, NSPI submits that in addition to recovery from the aforementioned charges, it should be permitted to include 50% of the costs*

associated with the Joint Use Coordinator. If this were the case, NSPI would be permitted to double recover all or part of its administrative costs.

NSPI has produced its cost breakdown for the Joint Use Coordinator in NSPI Undertaking 1. This information as well as the remaining NSPI evidence must be considered in context. The position of Joint Use Coordinator was created as a result of the Joint Use Agreement. Under the Joint Use Agreement, both NSPI and MTT are required to employ a Coordinator. The applicable provision provides as follows:

> *1.03.02 Joint Use Co-ordinator*
> *Reporting to the Joint Use Committee will be two Joint Use Co-ordinators - one from each party - whose duties will be to administer day-to-day Joint Use affairs.* (Joint-Use Agreement - Exhibit P-4, p.10)

This provision of the Joint Use Agreement goes on to enumerate no fewer than sixteen (16) specific administrative responsibilities of the Coordinator under the Agreement. Given these responsibilities, and the ratio of cable attachments to MTT and NSPI attachments, Seaside submits that it is unreasonable to allocate 50% of the Coordinators' time to activities outside the scope of the Joint Use Agreement. In addition, if this position is evaluated on an incremental cost basis, it is clear that this position is mandated by the Joint Use Agreement and not by the administration costs associated with cable plant. Moreover the Joint Use Agreement clearly contemplates that the costs of third party requests shall be billed on a cost recovery basis. (Seaside-Closing Submissions, pp.10-11)

EastLink, referring to the information provided by NSPI in Undertaking U-1, states that:

During cross-examination, Mr. Whalen estimated that the burdened cost of the Joint Use Co-ordinator was in the $60-$70K range. (Evidence of Mel Whalen, Q.166, T. p.69-70) *In Undertaking U-1, NSPI provided the supporting calculation for the $0.51 figure. These show a fully burdened cost of $150.9K, a material change from the $60K- $70K range mentioned in evidence. This level of fully burdened costs is unreasonably high given the Joint Use Co-ordinator's position.*

Based on the available information, EastLink believes that it would be appropriate for the Board to apply a fully burdened cost not to exceed $80K, with resulting incremental administration cost of $0.27 per pole calculated based upon an aggregate 150,591 poles. (EastLink - Written Argument, p.19)

The Competition Bureau, in its reply submission, makes the following comment on administration costs:

In its written argument, EastLink takes issue with the proposed annual incremental cost for administration of $0.51, proposing a cost of $0.27 based on a fully burdened annual cost not exceeding $80K. Seaside Cable, in its closing submission, deals with this matter in detail and in particular disagrees with NSPI's proposal to base the cost on 50% of the Joint Use Coordinator's time when administration of the use of communications space by cable companies is outside the scope of the Joint Use Agreement.

At page 3 of his evidence (Exhibit P-12), Mr. Ford listed some of the administrative activities whose costs would be included in the administrative cost category (contract preparation, permit issuance, inspection, billing and collection). The Bureau did not deal with the magnitude of the proposed incremental cost of administration, believing the magnitude of the proposed annual cost of $0.51 per pole to be reasonable. Indeed, the Bureau would note that the cost to NSPI of its participation in the present proceeding should be considered an incremental or causally-related cost of administration of pole leases. Therefore, while the Bureau does not agree with the methodology used by NSPI to arrive at the estimate (50% of the Joint Use Coordinator's burdened cost), it nevertheless finds the proposed annual cost of $0.51 per pole a reasonable estimate until such time as a more detailed estimate of the cost of the various administrative activities related to leasing pole space has been developed by NSPI.

(Competition Bureau - Reply Submission, p.3)

5.3 Findings

The Board has carefully considered the arguments of the Applicant and the Intervenors on this issue. The Board has found the comments of the Competition Bureau to be helpful. The submissions of Intervenors on this point, (particularly EastLink's suggested $0.27), are not supported by any specific evidence. On the whole, the Board prefers the evidence of NSPI. Accordingly, the Board approves an administrative cost component of $0.51 for inclusion in the aggregate pole attachment charge. The Board notes that $0.51 is lower than the $0.62 approved by the CRTC in Decision 99-13.

6.0 AGGREGATION OF COSTS

6.1 Findings

The total of the various cost components of the proposed pole attachment charge proposed by NSPI is $17.22 per pole per year. The following table compares the components of the pole attachment rate suggested by NSPI and certain of the Intervenors with that approved by the Board.

Pole Attachment Costs	**1**	**2**	**3**	**4**	**5**
Table A	**NSPI Revised Proposal**	**Competition Bureau Modification**	**EastLink**	**Seaside Cable**	**Board Approved**
Net Embedded Cost Per Pole ($) (Weighted Average of 40 ft. Line Poles and 30 ft. Service Poles)	$342	$342	$342	$342	**$342**
Depreciation ($/pole)	$23.55	$23.55	$23.55	$23.55	**$23.55**
Interest ($/pole)	$47.06	$40.01	$31.87	$34.34	**$40.01**
Maintenance ($/pole) (including Tree Trimming)	$11.55	$11.55	$3.06	0	**$11.55**
Administrative Mark-Up	N/A	N/A	N/A	N/A	**N/A**
Total Capital Related Cost ($/pole) (Depreciation + Interest + Maintenance)	$82.16	$75.11	$58.48	$57.89	**$75.11**
Cable Distribution Allocation (%) (Space Allocation Factor)	16.5%	11.0-15.5%	6.6%	6.6%	**15.5%**
Contribution ($/pole) (Total Capital Related Cost x Cable Distribution Allocation)	$13.56	$8.26-$11.64	$3.86	$3.82	**$11.64**
Loss in Productivity ($/pole)	$3.15	$1.50-$2.00	0	0	**$2.00**
Administration Costs ($/pole)	$0.51	$0.51	$0.27	0	**$0.51**
Total Annual Cost Per Pole (Contribution + Loss in Productivity + Administration Cost)	$17.22	$10.27-$14.15	$4.13	$3.82	**$14.15**

Note: Col. (1) from Table A of NSPI Post-hearing brief
Col. (2) derived from information included in Competition Bureau's Closing Submission
Col. (3) from Comparative Attachment Rate Calculations [Exhibit P-7] and Written Argument
Col. (4) based on information in Seaside's Closing Submissions

Seaside submitted that the Board should not approve any increase in the pole attachment charge given the preferred access to NSPI's poles enjoyed by MTT. EastLink submitted in its written argument that the pole attachment rate should not exceed the existing $9.60 rate. The Competition Bureau recommended in its closing submission that the Board approve a pole attachment rate in the range of $10.27 to $14.15.

Based on its findings respecting the various components of the pole attachment charge noted earlier, the Board approves a pole attachment charge of $14.15. The components are set out in the table on the previous page.

7.0 OTHER ISSUES

7.1 Fairness of Access

7.1.1 Submission - NSPI

The issue of the ability of the cable companies to gain access to NSPI's poles and the extent of control over these poles that is exercised by MTT/Aliant was raised by the Intervenors during the hearing. In its post-hearing submission NSPI states that:

> "*It was the evidence of NSPI that cable companies are always able to attach to NSPI poles.* (NSPI - Post-Hearing Brief p.12)

In his evidence, Mr. Whalen stated that:

> ". . . *We do whatever is required to accommodate the cable company on the pole.*"
>
> (Transcript, p.38)

7.1.2 Submission - Intervenors

The Competition Bureau addressed the issue of fairness of access in its post-hearing submission, stating that:

> *It appears that the joint pole agreement between NSPI and Aliant/MTT will not continue*

> (NSPI Panel - Huskilson, Tr. p.119, Q304-305). *Whether the joint use pole agreement does or does not continue, it is important that no party be permitted to deny others access to the communications space on the pole. Moreover, the Bureau believes that any advantages such as those received by Aliant/MTT under the present arrangement between NSPI and Aliant/MTT should be reflected in the rate paid by the user to whom the advantages accrue. In the present case, as discussed above, it is appropriate for Aliant/MTT to be allocated a larger share of the fixed common costs than is allocated to other users of the communications space.*(Competition Bureau - Post-Hearing Submission, p.9)

Seaside submitted that because it controls the communications space on NSPI poles, MTT has been able to discriminate against Seaside by relegating its attachments to the "field" side of the communications space on NSPI's poles. Seaside pointed out that it is more expensive to attach to the field side of the pole. Seaside recommended that the Board consider the preferred position enjoyed by MTT in setting the pole attachment rate and quoted Mr. Ford's testimony in that regard as follows:

> *If the Board wanted to eliminate or even up the score, as it were, in terms of preferential treatment . . . ., it could presumably do so by arriving at what in its judgement is an appropriate rate reflecting those advantages.* (Transcript, p.276-277)

7.1.3 Findings

The Board is not persuaded that the Intervenors are unduly impacted by the present NSPI-MTT joint-use pole agreement. Given NSPI's evidence that the cost to MTT to access NSPI's poles is substantially more than the proposed pole attachment charge, the Board is not prepared to make any adjustment to the rate derived from an application of the CRTC methodology at this time.

7.2 Capital Contribution

7.2.1 Submission - NSPI

In its original submission, NSPI proposed to collect a capital contribution applicable to new poles whose height exceeds that required by the utility for its own use. In addition, NSPI would continue to charge the full pole rate. Mr. Huskilson described NSPI's position in the following exchange with EastLink's Counsel:

> Q. *What is the order of magnitude of the capital contribution that you're talking about, sir?*
>
> A. *(Huskilson) It'd be hard to say that here, but it's hundreds of dollars, I would say.*
>
> Q. *And hundreds of dollars calculated how?*
>
> A. *(Huskilson) The incremental cost of providing a higher pole and a system that is over and above the system for the electricity supply.*
>
> Q. *And in stating your evidence as you have, you assume no joint use agreement going forward?*
>
> A. *(Huskilson) That's what we assume. That's correct.*
>
> Q. *Is this an arrangement which has been discussed in the context of a potential deal with Aliant?*
>
> A. *(Huskilson) This is our view of the most prudent way to move the electricity company forward and has nothing to do with Aliant.*
>
> Q. *And after the cable companies make this kind of contribution, if they are ever required to do so, is it then Nova Scotia Power's intent to charge the cable companies the full pole attachment rate in addition?*
>
> A. *(Huskilson) Yes. That would be correct because that would in fact be appropriate for that circumstance.*
>
> Q. *Is Nova Scotia Power proposing that the regulations in which the pole attachment rate are contained be amended to reflect this new practice on its part, or are you just indicating that this is your intended practice going forward?*
>
> A. *(Huskilson) <u>We don't believe that the regulations have to change in order for us to move forward in this way.</u> You see, Nova Scotia Power has sort of more or less, I think, on its own built plant that was communications ready. And that's something that we have done as part -- as a matter of a standard. And it, I think, has been in line with the kind of past that we've had about ensuring that telecommunications was being provided. And what we're saying here today is that it's important that those telecommunications companies pay their fair share of the cost and that it not be cross subsidized by electricity customers.*
> (Emphasis added) (Transcript p.119-121, Q302 - A307)

NSPI addressed the issue of "double-counting" in its post hearing brief as follows:

NSPI in its evidence indicated that future, new or replacement poles will be designed to meet the needs of NSPI and that additional capital costs will be required through an up-front contribution.

Questions were raised as to whether that would lead to double counting if the applied for rate stayed in place. The answer is no. Any capital contribution by a customer does not become part of the assets on the books of NSPI upon which costs which go into the rate are calculated. That is the case today with make-ready costs. This was explained by Mr. Whalen:

"109. Q. With respect to -- if I can get you to turn to page 5 of P-1, which is the original application. And I'm particularly looking at the last three lines, 5, 6 and 7, and your comment that you're intending to charge for new poles any incremental cost involved in that process above the allowed rate that would be allowed through this hearing. Can you explain to me why that doesn't involved a sort of double-counting.

A (Whalen) No, it won't involve a double-counting because any contribution that is made by a third party is not -- does not become part of our asset base. So, it won't drive any depreciation charges for us, it won't drive any interest charges for us. It's the same way now when we do work for a customer and the customer makes a capital contribution. If we extend a line and the customer makes a capital contribution, the capital contribution is netted out, if you will, of what actually goes on the books of the company that drives depreciation charges so that it won't be a double-count.

110. Q. But aren't there already components of the cost of putting in a new pole that are included in your calculation to arrive at the rate you're applying for today?

A. (Whalen) And those charges would still be there in putting in a new pole. It's only the net difference that we're asking be made the capital contribution.

. . .

111. A. (Whalen) But what we're saying is that if we, for our own purposes, would have built a 35-foot pole that, let's say, we would have paid, let's say, a thousand dollars ($1,000) for, and in order to accommodate telecommunications we would have, let's say, spent thirteen hundred dollars ($1,300) for a pole. The additional three hundred dollars ($300) is what we're talking about would be the capital contribution and would not on a go-forward basis have an impact on depreciation charges. The initial one thousand of the thirty-five would go in and would impact depreciation charges and so on on a go-forward basis.

(NSPI Post Hearing Brief, p.18-19)

7.2.2 Submission - Intervenors

The Competition Bureau recommended that the pole attachment charge should be reduced for those customers making a capital contribution. The Bureau notes that:

> *In cross-examination by Counsel for the Board, Mr. Ford pointed out that the rate for poles for which an up-front capital contribution had been made should cover only incremental or causal costs and an appropriate share of the pole maintenance costs* (Ford, Tr. pp. 286-287, Q73). *As Mr. Ford explained, by making an up-front capital contribution, the user of the communications space was already making the appropriate contribution to depreciation and capital carrying cost.*
>
> (Competition Bureau -Post-Hearing Submission, p.10)

EastLink argues that the Board should not permit NSPI to implement an up-front capital contribution

> "... *in the absence of the establishment of a new rate applicable to new poles".*
>
> (EastLink - Written Argument, p.37)

EastLink also stated in its reply brief that:

> *It is respectfully submitted that NSPI's proposal will lead to double recovery.*
> *While NSPI is correct that "[a]ny capital contribution by a customer does not become part of the rate base upon which costs which go into the rate are calculated", the base of poles included in the rate base upon which cable companies and others will contribute is based on a pole which is engineered and designed for communications space. These companies will have also paid through the capital contribution charge for a pole which has been designed for communications attachments. This is double counting.*
>
> (EastLink - Reply Submission, p.5)

7.2.3 Findings

The Board dealt with the issue of whether a capital contribution is a rate subject to the approval of the UARB in a 1999 decision on a complaint against the Halifax Regional Water Commission by Armoyan Group Ltd. and Annapolis Basin Pulp and Power Company Ltd. (Armoyan). The Board made the following finding in that decision:

> *It is true that the capital contribution charges levied by utilities do not typically appear in the standard "rates" section of utility tariffs. However, whether they appear in the Rules and Regulations section of a utility's tariff, as in the case of the Bedford South WSD capital cost contribution charge, and in the case of the provisions in the Board-approved Rules and Regulations of Nova Scotia Power Inc. with respect to overhead line and service extensions and underground electric services, or in the form of ad hoc Board orders, as in the case of the 1961 Halifax Public Service Commission decision, the fact*

> *remains that the utility is receiving compensation for the extension of utility service. The charge is collected "up-front", it is true, but it is a charge nonetheless. It lowers the utility's overall cost of extending service and thereby reduces the burden on existing customers who otherwise more likely than not would have to pay higher service rates.*
> (NSUARB-W-HALC-C-95 & W-HFXR-C-96, pp.40-41)

As NSPI has not placed a capital contribution charge proposal before the Board, it would not be appropriate for the Board to take a position on such a charge in this decision. If NSPI wishes to impose a capital contribution charge, it should make an application to the Board. The Board is prepared to hear further submissions with respect to this matter should NSPI bring an application forward. Accordingly, in the interim, poles will continue to be installed in the usual manner and the full approved pole attachment charge will be applied to all users.

7.3 Purchase of MTT Poles

With regard to the possible purchase of MTT poles by NSPI, EastLink noted that because of the limited information provided, the current relationship between MTT and NSPI is unclear. EastLink further stated that should such a purchase occur, the economics of pole ownership and operation would be fundamentally changed. The Board reminds all parties that, under the **Act**, NSPI cannot undertake such a purchase without Board approval. As with all capital acquisitions which are subject to the Board's review, the implications of the proposed capital expenditure are considered as well as whether a hearing on the matter is warranted.

8.0 CONCLUSIONS

For the reasons given above, the Board approves a new pole attachment charge of $14.15 per pole per year effective January 24 , 2002. An amended Schedule of Charges is set forth in Schedule 'A', attached.

An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 24th day of January, 2002.

____
John A. Morash, C.A., Chair

____
Margaret A. M. Shears, Vice-chair

____
John L. Harris, Q.C., Member

NSPI Regulation

7.1 SCHEDULE OF CHARGES

The following charges shall apply:

(a)	Connection or reconnection of electric service, whether metered or unmetered, to any premises during the Company's normal working hours.	$18.00 standard charge
(b)	Connection or reconnection of electric service, whether metered or unmetered, to any premises after the Company's normal working hours, if requested by the Customer and is not a reconnection for non payment.	$18.00 standard charge plus $50.00 charge for additional costs.
(c)	Reconnection of electric service, whether metered or unmetered, to any premises after the Company's normal working hours, if requested by the Customer and is a reconnection associated with non payment.	$18.00 standard charge plus $50.00 charge for additional costs.
(d)	Connection or reconnection of electric service to premises serviced by temporary service in accordance with these Regulations.	$18.00 standard charge plus all other costs incurred by the Company in connecting or reconnecting service
(e)	Collection Charge	$13.00 standard charge
(f)	Disconnection-Seasonal Electric Service	$25.00 standard charge
(g)	Returned Cheque Charge	$15.00
(h)	Late Payment Charge	a one-time charge of 5% of current amount.

7.1 SCHEDULE OF CHARGES - *Continued*

(i)	Interest on Deposits	8% per annum (simple interest)
(j)	Dispute Test Fee re satisfactory meter	$25.00
(k)	Standard Contribution for three-phase service 15 kW and under	$800.00
(l)	Charge for installation of Recording Equipment	
	• 240 volt single phase voltage recorder	$25.00
	• all other recording equipment	Actual Costs incurred by the Company
(m)	Service Charge for any miscellaneous requests.	Actual Costs incurred by the Company
(n)	All pole attachments for telecommunication common carriers, or broadcasters, exclusive of those under joint use agreements.	$14.15 per pole per year
(o)	Access to NSPI Mobile Radio Network	Monthly Charge
	- Basic Dispatch Service	$26.00
	- Individual/Group Call Feature	$21.00
	- Networking Features	$11.00
	- Interconnect Facility (PSTN) Access	$41.00