

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Teleport Communications Atlanta, Inc.	)	
Complainant,	)	
	)	File No. PA 00-005
v.	)	
	)	
Georgia Power Company,	)	
Respondent.	)	

**ORDER DENYING MOTION**

**Adopted: May 31, 2001**

**Released: June 1, 2001**

By the Deputy Chief, Cable Services Bureau:

1. This order addresses the above-captioned Respondent's Motion of Georgia Power Company for Leave to File Response to New Evidence and Arguments Submitted in Teleport's Reply ("Motion"), filed in the above-referenced pole attachment complaint proceeding. On November 14, 2000, the above-captioned Complainant filed a pole attachment complaint ("Complaint") with the Federal Communications Commission ("Commission") against Respondent pursuant to Section 224 of the Communications Act of 1934, *as amended* ("Pole Attachment Act")<sup>1</sup> and Subpart J of the Commission's Rules.<sup>2</sup> Respondent filed its Response on December 14, 2000. Complainant filed its Reply on January 3, 2001. On January 11, 2001, Respondent filed its Motion, requesting leave to supplement its response.<sup>3</sup> On April 26, 2001, Respondent filed a supplemental response. On May 22, 2001, Complainant sought clarification of the time for filing a response to the supplement.<sup>4</sup>

2. Pursuant to the Pole Attachment Act, the Commission has the authority to regulate the rates, terms, and conditions for attachments by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.<sup>5</sup> The Commission shall provide that such rates, terms and conditions are just and reasonable.<sup>6</sup> The Commission is authorized to adopt procedures necessary to hear and to resolve complaints concerning such rates, terms, and conditions.<sup>7</sup>

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<sup>1</sup> 47 U.S.C. §224.

<sup>2</sup> 47 C.F.R. §§1.1401-1.1418.

<sup>3</sup> Complainant filed an opposition to the Motion on January 22, 2001 and Respondent filed its reply to the opposition on February 7, 2001.

<sup>4</sup> See letter dated May 22, 2001 to Cable Services Bureau from J.D. Thomas, counsel for Complainant.

<sup>5</sup> 47 U.S.C. § 224(b)(1) and (2).

<sup>6</sup> 47 U.S.C. §224 (b) (1).

<sup>7</sup> 47 U.S.C. § 224(b)(1). The Commission has developed a formula methodology to determine the maximum allowable pole attachment rate. See *Adoption of Rules for the Regulation of Cable Television Pole Attachments*,

The Commission's rules provide for a response to a complaint and a reply to that response.<sup>8</sup> "[N]o other filings and no motions other than for extension of time will be considered unless authorized by the Commission."<sup>9</sup> The Commission may resolve the complaint based upon the filings, it may meet with the parties to clarify issues, and it may, at its discretion, order evidentiary proceedings.<sup>10</sup> The Commission may also request additional filings or more information.<sup>11</sup>

3. The Commission's pole attachment rate formulas were recently reconsidered and clarified.<sup>12</sup> The Commission also recently concluded in *Alabama Cable Telecommunications Association v. Alabama Power Company* ("*Alabama Power*")<sup>13</sup> that its formulas satisfy the constitutional requirement of just compensation invoked by the mandatory access provisions of the Pole Attachment Act.<sup>14</sup> The Commission concluded that the Cable Services Bureau's task is to determine if a pole attachment rate is just and reasonable in accordance with the Commission's rules.<sup>15</sup> The Commission acknowledged that evidence regarding rebuttable presumptions is only pertinent to a rate calculated using the Commission's formulas.<sup>16</sup> The Commission also concluded that the Cable Services Bureau is not required to revisit the same issues that have already been raised and rejected by the Commission in a rulemaking proceeding when resolving each pole attachment complaint.<sup>17</sup>

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*First Report and Order*, 68 FCC 2d 1585 (1978); *Second Report and Order*, 72 FCC 2d 59 (1979); *Memorandum and Order*, 77 FCC 2d 187 (1980), *aff'd*, *Monongahela Power Co. v. FCC*, 655 F.2d 1254 (D.C. Cir. 1985) (*per curiam*); and *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd 4387 (1987). See also, *Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777 (1998) and *Amendment of Rules and Policies Governing Pole Attachments*, FCC 00-116, 15 FCC Rcd 6453 (2000).

<sup>8</sup> 47 C.F.R. §1.1407(a).

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. §1.1411.

<sup>11</sup> 47 C.F.R. §1.1409(a).

<sup>12</sup> See *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98; *Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-151, FCC 01-170 (released May 25, 2001).

<sup>13</sup> *Alabama Cable Telecommunications Assoc., et al. v. Alabama Power Company*, File No. PA 00-003, FCC 01-181 (released May 25, 2001).

<sup>14</sup> See *Gulf Power v. FCC*, 208 F.3d 1263 (2000), *stayed pending Supreme Court review; petition for cert. granted January 22, 2001* and *Gulf Power v. United States*, 187 F.3d 1324 (1999).

<sup>15</sup> See *Alabama Power* at ¶ 62.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

4. In its supplement, Respondent includes no factual information necessary to a calculation of a just and reasonable pole attachment rate using the Commission's rules and policies. The entire supplement consists of materials that purport to support an alternative methodology for calculating pole attachment rates that has been rejected by the Commission. Respondent has provided no compelling reason why the Commission's procedural rules should be waived to allow this additional filing. Therefore, we will deny Respondent's Motion. Respondent's supplemental response and any reply thereto will be stricken from the record in this proceeding.

5. Accordingly, IT IS ORDERED, pursuant to Sections 0.321 and 1.1401-1.1418 of the Commission's rules, 47 C.F.R. §§ 0.321 and 1.1401-1.1418, that the Motion of Georgia Power Company for Leave to File Response to New Evidence and Arguments Submitted in Teleport's Reply IS DENIED.

6. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 1.1401-1.1418 of the Commission's rules, 47 C.F.R. §§ 0.321 and 1.1401-1.1418, that Respondent's Response of Georgia Power Company to New Evidence Submitted in Teleport's Reply and any response thereto IS STRICKEN FROM THE RECORD OF THIS PROCEEDING.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief  
Cable Services Bureau