

12-11-2006 10:00:01 AM
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules)
regarding overhead electric facilities) DOCKET NO. 060173-EU
to allow more stringent construction) FILED: May 3, 2006
standards than required by National)
Electric Safety Code.)
_____)

**COMMENTS OF TIME WARNER TELECOM
ON PROPOSED RULES**

COMES NOW Time Warner Telecom of Florida, L.P. (Time Warner Telecom), and files these proposed Comments to the above-styled rules and would show the following:

1. Commission staff has asked the parties to present data and cost impacts of Proposed Rules 25-6.0341 and 25-6.0342, Florida Administrative Code. Time Warner Telecom asserts that the rule has both direct and indirect economic effects on competitive carriers.

2. Time Warner Telecom has significant numbers of pole attachments both in the Tampa Bay region and in the Orlando service regions. For competitive reasons, Time Warner Telecom has filed a separate confidential attachment listing the exact numbers of pole attachments and approximate mileage of fiber optic cable which it currently uses to service its customers. However, for proprietary reasons, Time Warner Telecom has asked that such disclosure be kept confidential.

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FPSC-COMMISSION CLERK

Should the Commission or the Legislature mandate an undergrounding of all service, Time Warner Telecom would emphatically note that such mandate would pose a significant economic burden on Time Warner Telecom and any other competitive communications carrier that attaches to the poles of the electric utilities. The current estimated price for undergrounding each mile of fiber optic cable is \$65,000 per mile. Since competitive carriers have no rate base nor ability to apply for storm surcharge reconstruction costs, such a huge impact of capital construction cost could make a competitive carrier severely disadvantaged by such a capital outlay – literally an outlay of tens of millions of dollars.

3. With the entry of power companies into competition or a concentrated effort by a competing telephone company which maintains poles, an anti-competitive effort could directly result from a utility suddenly deciding to bury large amounts of its distribution network or convert large amounts of its overhead to underground distribution. Such a move could put competitive carriers at a significant competitive disadvantage by forcing the current pole attachers to move underground and spend mass amounts of capital without the ability to recover these capital costs unless the Commission specifically states the cost of undergrounding these attached utilities are to be borne by the pole owners or their rate payers.

4. In addition to these capital costs, Time Warner estimates that there will be an additional burden of an increase in the number of responses to One Call inquiries which will need to be answered. This will result in either company employees or contracted service employees responding to public requests for location markings of underground utility facilities. While anecdotal evidence suggests that underground utility maintenance may be less, Time Warner Telecom believes through its past experiences that maintenance costs are approximately the same for underground as they are for overhead cable services.

5. Time Warner Telecom is also concerned that there may be additional costs for right of way fees for the use of undergrounding of utilities, other costs for right of way crossings such as now currently charged by railroads or other costs for use of rights of way. These ROW fees, however, could be offset by a reduction in pole attachment fees paid to other utilities.

6. Time Warner Telecom acknowledges that placing utilities underground should provide for a more secure and more stable environment for cable and other utilities. However, the capital costs to convert and move underground potentially has significant anti-competitive effects upon competitive carriers such as Time Warner Telecom. Rule 25-6.0341 for instance, requires that each utility will begin using rights of way along public streets, roads and highways including any rebuild or relocation of facilities whether underground or overhead.

This could result immediately in a large construction expense for competitive carriers who are currently attached to facilities which run along the back edge or alleyway of lots. The only requirement is that the utilities seek input from third party attachers and coordinate the construction of these facilities with the third party attachers. Any cost implications are potentially left for the third party attacher to absorb. It is critical that this rule specifically state that the electric utilities or the pole owners, and not the attachers to the poles, must absorb the costs of converting to underground or moving existing facilities.

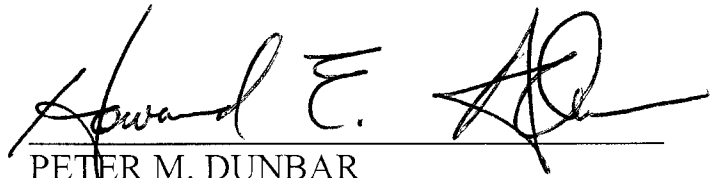
7. Rule 25-6.0342 as proposed provides that the utility is to establish and maintain safety, reliability, pole loading capacity and engineering standards for third-party attachers. These attachment procedures are “to meet or exceed the applicable edition of the National Electric Safety Code.” Time Warner Telecom’s concern as previously stated is that this delegates to each utility an opportunity to set “over” engineering standards and procedures which “exceed” the National Electric Safety Code. The utilities then have the ability under the guise of safety to regulate through costly required engineering standards the competitiveness of carriers such as Time Warner Telecom. While the rule attempts to state that the utility shall seek input from other entities, it does not provide that such input shall be adhered to nor utilized in establishing these standards. While the Commission has retained jurisdiction to resolve any disputes arising from the implementation of

the rule, such development of standards on a case by case and utility by utility basis could take years. The untimely resolution of disputes could favor a variety of utilities including co-ops, municipalities and investor-owned each having its own standards which are set according to rule. Time Warner Telecom submits that in each place where the words "or exceed" are used, that they should be deleted from the rule to provide that the attachment's standards and procedures shall "meet" the applicable edition of the National Electric Safety Code and the Commission should be required to review each plan for conformity with this known standard. To allow each utility to exceed the National Electric Safety Code under its own terms could result in an "over-engineering" standard being imposed upon third-party attachers which could effectively regulate third-party attachers off the poles.

8. Finally, Time Warner Telecom asserts that the benefits to accrue from the proposed rule are potentially the reduction of restoration costs during and after storm and wind-related events. However, many of Time Warner Telecom's outages have occurred when as an attacher, downed poles and wires are cleared from an area for reconstruction during a storm-related repair and cables which had not been severed and were continuing to provide service are severed as a part of the reconstruction event. Customers must then wait for restoration of their telecommunications services while their electricity has already been restored. Time Warner Telecom had approximately \$400,000 total in storm-related costs for the

past 3 years. These costs were absorbed by Time Warner Telecom. Time Warner Telecom, believes the public and the Commission think it will benefit from placing utilities underground: however, Time Warner Telecom's experience would demonstrate that troubleshooting underground utilities can be problematic from time to time; flooding during storms can cause outages and that overall restoration times may in fact be similar whether utilities are underground or overhead.

Respectfully submitted this 12th day of July, 2006.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S.

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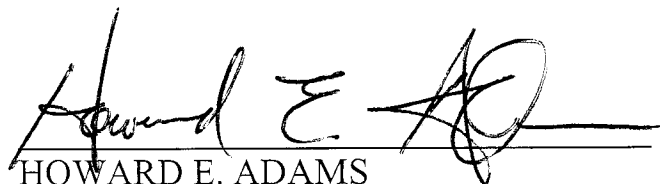
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DOCKET NO. 060173-EU
FILED: July 10, 2006

**CONFIDENTIAL ATTACHMENT TO
COMMENTS OF TIME WARNER TELECOM**

TIME WARNER TELECOM submits the following information with regard
its current physical plant.

1.

[REDACTED]

[REDACTED]

2.

[REDACTED]

[REDACTED]

[REDACTED]

3.

[REDACTED]

[REDACTED]

[REDACTED]