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ORIGINAL

Decision No. 80168

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Community Television Association, Complainant, vs. General Telephone Company of California, a corporation; Southern California Edison Company, a corporation, Defendants.	Case No. 9008 (Filed December 31, 1969)

(Appearances are listed on Page 1 of the attached Proposed Report.)

O P I N I O N

Complainant association seeks an order directing defendant utilities to file tariffs "for all services to be furnished by said defendants to the CATV industry, including pole rental rates, practices and procedures" (Complaint, pp.15, 16). Defendants answered and moved to dismiss the complaint for lack of jurisdiction. The case was heard on an extensive record before Examiner Gregory and submitted on briefs subject to proposed report procedures which have been completed.

The report recommends dismissal of the complaint for lack of this Commission's jurisdiction, under existing California constitutional and statutory provisions, to impose utility-type regulation on defendants' activity of licensing the use of space on their poles to cable television operators, pursuant to individual terminable agreements, for attachment of CATV-owned and operated equipment.

Complainant has excepted to the report in a lengthy document that virtually restates the same arguments it advanced on pages 1-78 of its Opening Brief. Commencing with an "historical" essay, based on material outside the record, concerning certain economic aspects of the telephone and electric power industries alleged to be inimical to the CATV industry (Part I, pp. 1-17), the exceptions proceed with a dissertation on the ominous "foreseeable effects" of the report, if adopted by the Commission, on the CATV industry and the ratepaying customers of pole-owning utilities (Part II, pp. 17-21), followed by a review of the report's "imperfections of logic" in reaching its proposed conclusions (Part III, pp. 21-25). Next is a discussion of the "applicable law" (Part IV, pp. 25-36), in which complainant, after stating its position, proceeds to an expanded reiteration of its former arguments concerning the applicability, to the issue here, of Commercial Communications, Inc. v. PUC, 50 C.2d 512 and California Fireproof Storage v. Brundage, 199 Cal. 185, and of provisions of the State Constitution and the Public Utilities Code discussed in the briefs and the proposed report. The discussion of "applicable law" concludes with the following statement (p.36):

> "Neither Section 217 nor Section 233 of the Code purport, in any way, to define a 'utility service', nor do they, in any manner, purport to delineate the jurisdiction of this Commission over the activities of admittedly public utility corporations such as the Defendants.
>
> "Rather, the jurisdiction of this Commission is governed by Article XII, Section 23, of the State Constitution, and Sections 216(a), 216(b) and 701 of the Code, among others. These provide this Commission with plenary jurisdiction over activities of admittedly public utility corporations, provided there has been a 'dedication'. Neither provision limits the jurisdiction of this Commission to those activities of a 'public utility' that are 'connected with or facilitates' the public utility corporation's primary public duties, i.e., telephone or electrical service."

Conspicuously absent from complainant's discussion of "applicable law" is any reference to the unanimous rejection, by courts and commissions in other jurisdictions, of the assertion of state power to impose utility-type regulation on CATV pole attachment activities of regulated investor-owned telephone and electric utilities. The reasons for such rejection, though variously stated in the contexts of the several proceedings in which the question was raised and considered, are all to the effect, as the report points out (p.26), that such pole attachment activity "is not a use of the utility's poles which involves, or is connected with, the performance of its regulated public service obligations" (citing Cerrache Television Corp. v. Public Service Comm. and New York Telephone Co., 267 N.Y.Supp. 969, 973 (1966) and other cases to the same effect cited by General, Op. Br., pp. 12-14 and by Edison, Op. Br., pp. 8-9). Complainant, after discussing the above citations in its Reply Brief (pp. 8-14), asserts that they "are simply not controlling or persuasive."

We know of no rule of law that requires us to reject the persuasive effect of such unanimity of reasoning on the identical jurisdictional question presented here, merely because enunciated by courts or regulatory commissions sitting in jurisdictions beyond the borders of this State. Those decisions, we note, also are consistent with our decision in Pacific Tel. and Tel. Co. (1965) 64 CPUC 75 and with the basic finding of the court in Commercial Communications, Inc. (supra), both discussed in the report (pp. 28-29, 32-33).

Complainant next excepts to the seven proposed factual findings and the four proposed conclusions (Exceptions, Part V, pp.36-41), but neither proposes substitute or additional findings or conclusions nor specifies the portions of the record relied upon for exceptions to factual findings, as required by the Commission's Rule 80. Instead, after stating the texts of the proposed findings and conclusions, complainant, conceding the correctness of some of them, argues that "the record" shows that they are

"incomplete", "erroneous", "irrelevant", or "contrary to the record", and that "the Examiner erred in failing to find that there was a need for regulation of these services by the provisions [sic] of appropriate tariffs ..." (Part V, p.41).

The final portion of complainant's exceptions consists of objections and arguments concerning 11 "recitations" in the report, which complainant asserts "the record" shows to be either incomplete or erroneous (Part VI, pp. 42-46). Complainant's discussion of the "recitations" simply reiterates some of the material outside the record referred to earlier in its "historical" essay and, otherwise, faults the report for not reciting evidentiary material in a manner consistent with complainant's jurisdictional contentions.

The staff, by letter dated April 18, 1972, advised that it would file no formal exceptions as they would merely reiterate its previous arguments, which had supported complainant's position. Edison, by letter dated May 1, 1972, advised that it would file no formal reply because it believed that its Concurrent Opening and Reply Briefs fully set forth its reasons and legal arguments.

General asserts, in its Reply (pp. 2-3), that complainant's arguments, restated in its Exceptions, were fully discussed and met by General in its Opening Brief (pp. 14-16) and its Reply Brief (pp. 11-15). Answering complainant's contention (Exceptions, pp. 27-28) that the "logic" of the report would allow an electrical company to provide any other utility services without regulation "because the secondary utility services do not 'facilitate' the primary purposes of the company", General points out that dual utility services, such as the gas and electric services of Pacific Gas and Electric Company, are both subject to Commission jurisdiction because those activities (i.e., the distribution of gas and power) are constitutionally and legislatively defined utility services. General states that the test for Commission jurisdiction to regulate a utility is not whether the service provided is "primary"

or "secondary" but whether it is a utility service as defined in the State Constitution and the Public Utilities Code. Complainant's legal analysis, General asserts, fails to grasp this fundamental basis for Commission jurisdiction.

General states (Reply, pp.3-4) that, in any event, complainant's discussion of California Fireproof Storage v. Brundage, supra, and Commercial Communications, Inc. v. Public Utilities Commission, supra (in connection with Commission jurisdiction over services which "facilitate" statutorily defined primary utility services), is simply a restatement of complainant's positions expressed in its Opening Brief (pp. 82, 89, 97-107) and Reply Brief (pp. 1, 4, 5, 6 and 11), using the same quotes from those cases and arriving at the same erroneous conclusions. General notes that it fully discussed those cases (Op.Br., pp. 6-16; Reply Br., pp. 3-10) and "the many others which have unanimously held that rental of pole space by a utility is not a utility service and is not subject to Commission jurisdiction" (Reply, p. 4).

General asserts (Reply, p. 4) that complainant, in its extended reference to Commercial Communications and California Fireproof Storage, supra (Exceptions, pp. 28-36), has misconceived the purport of Section 851 of the Code (relating to sale or other disposition of utility property) in claiming that Section 851 and other regulatory provisions of the Code, mentioned by the court in Commercial Communications, provide an "alternate basis" for this Commission's jurisdiction over defendant's CATV pole attachment rates, terms and conditions. General maintains that though Section 851, when applicable, permits the Commission to approve or disapprove proposed dispositions of property - "the criterion being whether such disposition will have an adverse effect on the rendition of utility service" - that section and the other rate regulatory provisions of the Code cited by complainant do not, of themselves, bestow the rate-making and other utility-type jurisdiction for which complainant contends here. The report rejects complainant's "alternate basis" theory of jurisdiction (Report, pp. 32-33).

General's response (Reply, pp. 5-6) to complainant's enumerated exceptions to the proposed findings and conclusions (Exceptions, Part V, pp. 36-41) need not be repeated here. In substance, General urges that the exceptions be: disregarded as to findings conceded by complainant to be correct (Exceptions Nos. 4, 6); denied as unintelligible (Exception No. 1), or as quibbling with editorial style (Exception No. 5), or denied because the report accurately describes the various facilities referred to and their ownership and use (Exceptions Nos. 2, 3 and 7).

With respect to the proposed conclusions, General urges: that Exceptions Nos. 1 and 2 be denied because based on complainant's misunderstanding of applicable law and statutes; that Exception No. 3 - relating to anti-trust matters - be denied because answered by complainant's own statement disclaiming any anti-trust or anti-competitive posture in presenting its case, and that Exception No. 4 should be denied because it merely restates complainant's position and is erroneous for the reasons set forth in the report.

General, concluding its Reply (p.7), comments on complainant's objections to certain "recitations" in the report, mentioned hereinabove. Noting that complainant did not cite transcript references for its objections, General asserts that the comments are "nothing more than a rehash of arguments and statements of position taken by complainant since the inception of this complaint proceeding, all of which have been thoroughly briefed by the parties and given full consideration by the Examiner in his Proposed Report."

General asks that complainant's exceptions be denied and that the report be adopted by the Commission as its final order in this proceeding.

The Commission, on consideration of this record, is of the opinion and finds that the proposed report herein adequately

discusses and correctly states and resolves the jurisdictional issue raised by the pleadings herein. Accordingly, we conclude that the Exceptions to said report filed by complainant and the arguments referred to in the staff's letter, dated April 18, 1972, should be disallowed, and that said report, attached to and hereby made a part of this decision, should be adopted as the opinion, findings, conclusions and order of the Commission in this proceeding.

O R D E R

IT IS HEREBY ORDERED that:

1. The Exceptions filed by complainant to the proposed report herein and the staff's arguments referred to in its advice dated April 18, 1972 are, and each of them is, disallowed.

2. The proposed report of Examiner John M. Gregory, dated March 9, 1972, as attached hereto, is adopted as the opinion, findings, conclusions and order of the Commission in this proceeding.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 20th day of JUNE, 1972.

Chairman

William Symons Jr.

Thomas P. Stinger

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

VO/NB

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Community Television Association, Complainant, vs. General Telephone Company of California, a corporation, Southern California Edison Company, a corporation, Defendants.	Case No. 9008 (Filed December 31, 1969)

Harold R. Farrow and Ralph M. Segura, Attorneys at Law, and Walter Kaitz, for California Community Television Association, complainant.
A. M. Hart and H. Ralph Snyder, Jr., Attorneys at Law, for General Telephone Company of California; R. E. Woodbury, H. W. Sturgis, H. C. Tinker, L. C. Hauck, by H. C. Tinker and L. C. Hauck, Attorneys at Law, for Southern California Edison Company, defendants.
S. M. Boikan and Janice E. Kerr, Attorneys at Law, and J. G. Shields, for the Commission staff, intervener.

PROPOSED REPORT OF EXAMINER JOHN M. GREGORY

Complainant, an association of a majority of the independent cable television companies (CATVs) in California, alleging prejudice from defendants' pole attachment policies, practices and charges, asks that this Commission order defendants to file tariffs "for all services to be furnished by said defendants to the CATV industry, including pole rental rates, practices and procedures" (Complaint, pp. 15, 16).[1/] Defendants answered and moved to dismiss the complaint for lack of jurisdiction.

1/ Complainant contemporaneously filed a similar complaint with the Federal Communications Commission. That agency, as of January 29, 1970, had "under active consideration" the pole attachment practices of the Bell and General System operating companies (Ex. 34). This record does not disclose whether dispositive action has been taken by the FCC on the association's complaint or in then-pending pole attachment status dockets.

After hearings in February, 1970 on complainant's request for injunctive relief and oral argument in March on the motions to dismiss, the Commission ordered defendants, pendente lite, to segregate CATV pole rental revenues and to continue processing pole use applications under policies in effect prior to defendants' unilateral announcements (Edison, July 30, 1969; General, December 1, 1969) of increased rates and other changes in contract terms. The revisions were to become effective on January 1, 1970 (Edison) and at various times during the first half of 1970 (General). The motions to dismiss were denied pending evidentiary hearings ordered to be held on the jurisdictional issue. (See Decision No. 76782, dated February 10, 1970 - Order to Show Cause and Temporary Restraining Order; Decision No. 77185, dated May 5, 1970 - Interim Order.)

The case was submitted, subject to briefs and proposed report procedures, after 15 days of evidentiary hearings on the jurisdictional issue before Examiner Gregory during the period April 15 - July 19, 1971, preceded by several months of data gathering by the Commission staff and extensive use by complainant of civil discovery procedures directed to defendants' officers and employees.

The Commission's staff, participating as intervener (Decision No. 76850, dated February 27, 1970), did not formally disclose its position on the jurisdictional issue until directed to do so by the examiner after conclusion of the hearings. It then opted for complainant's views in a letter to the examiner and the other parties, dated August 13, 1971, followed by a brief in support of complainant's position; viz., that defendants' CATV pole attachment activities constitute a "dedicated public utility service" for which they should be required to file tariffs and to submit to the full regulatory processes of this Commission.

Complainant alleges, in substance, that defendants' "arbitrary", "capricious" and "unreasonable" policies, charges, contracts and practices for CATV pole attachments, over the past

several years, have caused baffling construction and operating problems and unwarranted financial hazards for locally franchised CATV operators in defendants' respective utility service areas; that the CATVs have no "viable alternative" to the use of defendants' poles for stringing their coaxial cables and other equipment used for service to their subscribers, and that defendants' "monopoly" over their pole plant and the CATVs' "economic need" for a relatively inexpensive cable route have combined to produce a "public utility" service which defendants, by their conduct, have "dedicated" to the CATV industry.

Complainant asks this Commission to order defendants to file tariffs for their CATV pole attachment activity and to submit to full utility-type regulation of that activity, in order to prevent abuse by defendants of their pole "monopoly position" to the detriment of the CATV industry.2/

Complainant argues that once jurisdiction of the "person" of a utility is established, as it has been here, the scope of the Commission's regulatory powers "is limited only by the question of dedication, and the question of whether or not the subject activity is a public utility service of any nature" (Reply Br., p.5). Complainant asserts, in effect, that the Commission's regulatory authority over defendants' activities is not limited to their "primary" telephone or electric power services or to services which are connected with or which facilitate such primary utility services, but extends in full measure to any of defendants' corporate activities "if in fact they possess the two essentials of a 'public utility' service -- a monopoly service and a necessity service" (Reply Br., p. 4).

2/ Defendants' practice - though varying in some respects prior to 1970 - is to permit attachment of the cables and related equipment of "qualified" CATVs to surplus space on their poles pursuant to individual terminable license agreements, of which a number are included in this record. Exhibits 3 and 6 are illustrative of those currently in use.

Complainant also contends that, in any event:

> "...CATV pole-lease agreements are subject to regulation by this Commission regardless of whether or not dedication has taken place and regardless of the fact that the service can properly be designated as a 'public utility' service and further that this Commission should in fact regulate these agreements because of the abuses of both defendants and because it will serve the public interest." (Op. Br., p. 79.)

Complainant, in short, argues that existing California constitutional and statutory provisions (specifically cited in its briefs) provide ample authority for this Commission to regulate fully the property, rates and service involved in defendants' activity of making pole space available for attachment of CATV cables and related equipment, regardless of whether such activity may properly be designated a "public utility" service or whether "dedication" thereof has occurred.

Defendants deny that their pole attachment activities are a "public utility service" or that they have been "dedicated" to the CATV industry or anyone else. They assert that as the use of surplus pole space by "qualified" CATV operators, under terminable licenses, is neither connected with nor does it facilitate their public communications or electric power services, they are entitled, as owners of the poles, to conduct such "non-utility" activities free from State regulation as long as they do not burden utility ratepayers or impair utility service obligations.

Defendants concede that this Commission has authority to protect utility ratepayers from burdensome contracts for non-utility service. All parties, no doubt, would also agree that the Commission can and does prescribe and enforce safety regulations for construction of overhead and underground electric supply and communication lines, including CATV lines (General Orders Nos. 95 and 128; Public Utilities Code, Section 768.5). General suggests, tentatively, that the Commission may also require that non-utility services, if

undertaken by a utility, be provided without discrimination. Defendants contend, however, that this Commission cannot require a utility to perform a non-utility service and cannot set or modify terms and conditions of that service once the utility has undertaken it.

Defendants' position appears to be that the constitutional and legislative authority conferred on this Commission to regulate the property, rates and service involved in their public communications or electric power undertakings, including services connected with or which facilitate such public services, does not extend to permit the uncompensated taking, under the guise of regulation, of their privately owned poles for the private use and profit of cable television operators or anyone else.

The staff, in its brief, asserts that previous decisions by this Commission have held CATV pole attachments to be a public utility service subject to regulation if publicly offered.[3/] This record, the staff argues, demonstrates a "classic example of public offer and dedication of service". Therefore, the staff concludes, "the Commission should find that pole attachment service is a utility service which has been devoted to public use by defendants General and Edison; and that defendants should be required to cease and desist from the setting of new rates for said service pending determination by the Commission of the reasonableness thereof". (Br., p. 11.) Complainant agrees with the staff.

3/ Pacific Tel. & Tel. Co., 53 CPUC 275, 320 (1954). That decision was later modified to require only informational filing of Pacific's contracts for a variety of non-tariff services, including CATV pole attachments. (Ibid., pp. 662, 664). As to General's informational filings, see, to the same effect, Decision No. 63883, dated July 2, 1962, Case No. 7083.
International Cable T.V. Corp. v. All Metal Fabricators, Inc. and Pacific Tel. & Tel. Co., 66 CPUC 366 (1966).

Complainant developed its evidentiary showing at the 1970 show cause hearing through testimony from cable television operators in defendants' service areas and other parts of California. That evidence, briefly summarized in the interim opinion (Decision No. 77185, supra, p. 4), dealt mainly with relative costs of overhead and underground construction of CATV cable routes, and with construction and financial problems experienced by some CATVs while attempting to obtain expeditious handling or final clearance of their pole attachment applications.

Complainant's evidence at the 1971 jurisdictional hearings was elicited from cable television operators in General's and Edison's operating territories, from defendants' officers and employees in response to subpoenas and civil discovery procedures, and from an economist who offered an economic study advocating utility-type regulation of defendants' CATV pole license activities.

Neither Edison nor the staff presented a direct case. General limited its direct showing to the introduction of three forms of pole licenses and easements used by it for other than CATV pole attachments (Exs. 115, 116 and 117). The non-CATV forms contain substantially different provisions from those found in defendants' standard CATV pole licenses illustrated by Exhibits 3 and 6, footnoted above.

There is no substantial conflict on the underlying facts. Indeed, hindsight suggests that the jurisdictional issue, on the specifics of which the parties are not wholly in accord, might more expeditiously have been submitted on stipulated facts, as the Commission noted in its interim opinion (Decision No. 77185,

supra, p. 13). The parties are in agreement, however, at least on one elementary point - that a legal basis must exist for extending this Commission's rate regulatory jurisdiction to defendants' CATV pole attachment activity.4/

The evidence discloses that there are about 250 CATV operators in California, some 90% of whom are members of complainant association. Although most CATV franchises issued by local governments are on a non-exclusive basis and for fixed terms, there is generally no competition from other CATVs in the same operating area. The extent of CATV saturation in a given area depends largely on the availability of other adequate facilities for TV signal reception. Subscriber rates vary throughout the state, but range generally between $5 and $7 per month and are subject to adjustment by franchising authorities. Typical pole rental costs, related to total CATV operating costs before interest, depreciation and income taxes, were shown by this record to range between 1.3% and 10.9%. Percentages of CATV pole rental costs related to CATV gross revenues were variously indicated as: 7%, 3.2%, 3.02%, 2.03% and 2.6%.5/

4/ The following appears during General's recross-examination of complainant's economic witness, Abed (Tr. 1119):

"Mr. Snyder: Mr. Abed, I think you would agree that any basis for this Commission finding jurisdiction over the subject of pole rental rates would certainly have to have among other things a legal basis for such a decision; would you agree with that?
Mr. Farrow: Well, we would certainly stipulate to it.
Examiner Gregory: All right, the stipulation is noted."

5/ These figures, which reflect operations generally in 1969 or 1970, were not supported by financial studies. They were allowed in the record only as general statements of otherwise competent CATV witnesses to indicate what they purport to show. The examiner did not permit inquiry into the overall financial status of individual CATV companies, as such evidence - of doubtful materiality or relevancy for resolution of the jurisdictional issue - would have unduly burdened an already lengthy record (Tr. 1175, ls. 6-12).

Cable television has had widespread acceptance by the viewing public in recent years and is expected to be available in most communities in the State in the relevant future. Technological developments in the industry suggest that CATV station-originated broadband transmission of a variety of programs and data may be expected, before long, to augment present station-originated and off-the-air programs. This record also indicates that General has given long-range consideration to the possibility of providing such multiple wide-spectrum services as an addition to its conventional telephone and related utility services.

Cable television companies, in California, are not "telephone corporations" (Public Utilities Code, Section 234; Television Transmission, Inc. v. Public Util. Comm. (1956) 47 C. 2d 82, 86), and are not presently subject to the regulatory jurisdiction of this Commission, except, as indicated earlier, with respect to safety standards. The CATV industry in this State has consistently opposed legislation designed to impose utility status on its activities.

A cable television system consists, essentially, of a receiving antenna, control equipment, a power source, coaxial cable and amplifiers for signal transmission and distribution, and drop wires from the cables to the subscriber's premises. The cables and amplifiers may be attached to available space on utility poles or laid in shared utility conduits, or the CATV may, if its franchised authority permits, set its own poles or provide its own conduits.

Some franchising authorities do not permit the cable operator to set his own poles. But where all utilities are required initially to underground their lines, as in newer developed areas, the cable operator can generally arrange to use joint trenches with the utilities. The cost per mile for initial installation of CATV cable underground is about two or three times more than for aerial construction. The evidence indicates that, eventually, cable systems will be entirely underground as all utilities go underground, and that cable operators do, in general, go underground in areas where other facilities are going underground. Also, many cable systems currently have small percentages of their total construction underground.

General, in 1969, had pole license agreements with 45 CATVs for attachments to 101,797 of its total of 699,300 active jointly or solely owned poles, excluding affiliated companies and poles contacted by General itself pursuant to rental agreements. Edison, as of about December 31, 1970, had 1,364,751 jointly and solely owned poles in service, with CATV pole attachments on 24,060 solely owned poles, chiefly in the Saugus-Newhall and Simi Valley areas. Edison, as of June 9, 1969 had pole license agreements with 54 CATV companies. Thirteen of those agreements permitted CATV contacts on jointly owned poles.

Both General and Edison, for many years, have also granted attachment licenses in available pole space to governmental agencies and to corporations and individuals, including farmers, on either a rental or mutual benefit basis, for placement of a variety of circuitry and equipment such as traffic regulating devices; police and fire alarm systems; private communications and power lines and control circuitry. Such licenses, like those granted for CATV attachments, are issued only to the extent that defendants' primary public service obligations, in their judgment, will not thereby be impaired.

General's and Edison's current CATV license agreements, though differing somewhat in detail and verbiage (cf. Ex. 3 - General and Ex. 6 - Edison), are essentially alike in their carefully-worded and comprehensive provisions for pole attachments. These "agreements", which are mere revocable licenses, are actually a set of non-negotiable conditions with which a CATV applicant must comply and, if granted a license, must thereafter observe. Among many other provisions, they require that a CATV applicant be "qualified"; i.e., that he be franchised, financially responsible, bondable and insurable; that he assume all costs and risks, including indemnification of defendants for liability exposure, resulting from his use of their poles; that he pay specified charges for unauthorized attachments and for processing his application and also pay an annual pole rental charge, as well as all charges for rearrangement of defendants' equipment to accommodate CATV attachments on existing poles and for replacement of existing poles by higher poles when required by defendants for accommodation of both CATV and their own equipment.

It is not necessary, for present purposes, to expand on the details of these license agreements. Perusal of their terms reveals that they have been designed with but one principal object - to provide, so far as possible, that attachment to defendants' poles of cables and other equipment owned and operated by CATVs should not result in either technical or economic impairment of defendants' primary public services.

We have decided, for reasons to be discussed later, that this Commission presently lacks authority to impose utility-type regulation on defendants' CATV pole space licensing activity. Hence "economic need" and "dedication" evidence, which accounts for the bulk of complainant's showing, is irrelevant in resolving that dispositive legal issue and need not be reviewed in detail here, other than to indicate evidentiary material stressed by complainant as supporting its jurisdictional contentions.

The "economic need" material concerns: (a) relative costs of aerial and underground construction of CATV cable routes and costs connected with rearrangements on and replacements of defendants' poles to accommodate CATV equipment; (b) defendants' methods for determining rentals and other charges for CATV and other types of pole attachments and their accounting treatment for pole attachment revenues and expenses, and (c) the economic basis advanced by complainant's witness, Abed, for governmental regulation of the questioned activity as a "service" resulting from defendants' asserted "monopoly over a necessity".

The "dedication" material, which complainant asserts also reveals defendants' "abuse of their monopoly position", is mainly an historical - and searching - review of defendants' respective CATV pole attachment policies and practices during the latter half of the 1960's, and of General's public offerings of leased channel facilities to its affiliated and the independent CATV systems in its telephone service area. The evidence shows that both defendants, during 1968 and 1969, were reevaluating the impact on their primary services of the growing demands of the CATV industry for pole space, and that General, during and prior to that period, also was interested in promoting use of its channel facilities, with minimal response, however, from the independent CATV's who, for economic and other reasons, preferred to run their own distribution cables on General's poles. Policy changes by both defendants during that period, culminating in the new policies and increased charges for

CATV pole contacts announced in the latter half of 1969, together with General's indicated preference for use by CATVs of its channel facilities, form the essential evidentiary matrix for complainant's contention that defendants, by their conduct and express declarations, have "dedicated" their poles for CATV attachments and "abused their monopoly position" so as to require this Commission's regulatory interposition. (See summary in complainant's opening brief, pp. 17-25, 30-40.)

Preliminarily, we note - with emphasis - that the events described above were occurring in the context of a complex - and ongoing - controversy before state and federal regulatory agencies and the courts occasioned by the brief but spectacular growth of the CATV industry as a communication and entertainment facility enjoying wide public acceptance. The regulatory implications, both technical and economic, of that controversy have yet to be fully evaluated or resolved. As pertinent here, we note that regulatory jurisdiction over telephone utility channel service for CATV distribution systems, a subject of some interest to this Commission beginning in 1964 (see Staff Br., p. 2, footnote 1), now rests with the FCC (General Telephone Co. of Cal. v. F.C.C., 413 F. 2d 390 (1969), cert. den. 90 S.Ct. 173, 178 (1969)). The FCC, in its decision there on appeal (13 F.C.C. 2d 448 (1968)), stated that its order did not apply to distribution systems provided pursuant to pole attachment contracts. The D.C. Court of Appeals, speaking through Judge Burger, opined that such pole attachment operations do not involve a "common carriage" (Ibid., p. 393). We know of no FCC or court action, as of this writing, that confirms FCC jurisdiction over CATV pole attachment contracts with regulated utilities, which is the activity under consideration here.

The FCC, by recent decisions (Section 214 Certificates, 21 F.C.C. 2d 307; 22 F.C.C. 2d 746 (both 1970), aff'd. 5th Cir. Ct. of App., Sept. 14, 1971,--F.2d--), has forbidden,

subject to a grace period and other conditions, any telephone common carrier wholly or partially subject to the Communications Act from directly or indirectly through an affiliate engaging in the furnishing of CATV service to the viewing public in its telephone service area.

There is no need to speculate on the possible impact of the cited FCC action - or of any final resolution of the CATV pole attachment question by that or this Commission - on our regulatory authority over investor-owned public utilities.[6/] Whether total, or only partial, pre-emption of state authority results from federal action in those areas, we would continue to assert, as we do now, our active regulatory interest in the economic or technical impact on any utility whose rates we regulate, as well as on its ratepayers and investors, of any service or activity in which it may engage, whether under tariffs or by contract.

We have referred to the above-cited FCC decisions primarily because complainant, in its evidentiary efforts to show General's asserted "abuse of its monopoly position", devoted considerable time to that utility's channel facility leasing practices, and to its inclusion, in charges for CATV pole attachments, of a component for "future required telephone uses" of its poles, a five-year budgetary item. On the latter point, complainant's position appears to be that CATV pole space users, by paying such a charge, would be subsidizing General's possible future use of its poles for its own cables and other equipment needed for transmission of multiple broadband programs in competition with the independent CATV systems. Nothing in the FCC's recent orders would appear either to preclude CATV access, subject to FCC authorization, to General's channel facilities, or to permit General or its affiliates to provide multiple broadband services to viewers in telephone company service areas in competition with independent CATVs.

6/ Edison - as an electric utility - does not provide public communication services and is concerned here, so far as this record shows, only with the pole attachment question.

In continuing this rather extended discussion of evidence specially stressed by complainant, we may mention some specifics of what complainant and the staff assert is a "demonstration" (i.e., indubitable proof) in this record of defendants' "dedication" of their pole attachment activity to the CATV industry.

General, prior to October 4, 1968, permitted new qualified CATV applicants, as well as applicants for extensions within franchised areas of existing systems, to attach their equipment to available pole space, subject to negotiation of individual pole lease agreements and under carefully controlled conditions, among which were: (a) only one CATV operator could attach its facilities to a pole; (b) General must be fully compensated for its present and future costs related to provision of pole space for CATV distribution equipment; (c) pole space was to be reserved for known future telephone plant additions (see Ex. 77, pp. 114-116, letter dated December 18, 1967).

On October 4, 1968 General limited the foregoing policy so as to permit no new CATV applicants to attach to its poles, but it continued to allow attachments for extensions of existing systems under essentially the same controlled conditions (Ex. 77, pp. 125-126, letter dated October 4, 1968).

On January 21, 1970 General made effective its current policies for cable distribution facilities (channel service) for CATV operators, subject to FCC authorization, and for pole and duct space for CATV-provided equipment (Ex. 77, pp. 137-138, letter dated January 21, 1970).

General's latest policies for those activities appear to respond to the cited FCC decisions and to a policy statement, attached to a letter dated December 1, 1969 from Theodore F. Brophy, Vice President and General Counsel of General Telephone & Electronics Corporation (General's parent), to FCC Chairman Dean Burch (Ex. 20). That policy statement, regarding CATV pole attachments, reads as follows:

"I. Pole Attachments

(a) Rights will be granted to any duly franchised applicant for the attachment of CATV facilities to telephone company poles upon execution of an appropriate pole attachment agreement.

(b) There will be no contractual restriction on the use of excess capacity in bona fide CATV facilities so long as such excess capacity is used for a lawful purpose."

There has been virtually no change in General's present policy for CATV pole attachments, except for increased contract charges, from its policy and contract terms in effect prior to October 4, 1968. The evidence shows that the "freeze" against new CATV pole space applications, from October, 1968 to January 21, 1970, though resulting in considerable inconvenience to some CATV applicants, occurred in the context of three practically simultaneous and ongoing events, two of which - the increasing CATV demands for pole space and the changing federal regulatory picture affecting channel leases and "wide spectrum" services - we have previously noted. The third event was that General, during that period, was engaged in the largest construction program in its history (Tr. 1521).

With regard to Edison's policies for CATV pole attachments, revisions in which also created problems for some CATV operators, the evidence shows that its basic policy has been and now is to permit, by terminable individual contracts, qualified CATV applicants to attach their equipment only to available space on its solely owned poles. From about 1964 to sometime in 1969, however, Edison accommodated some qualified CATVs in available space on poles it owned jointly with General or Pacific Telephone, in cases where those utilities, for reasons of their own, would not grant CATV attachment licenses in their space on such poles. Edison's current policy, adopted in 1969 after studies and management discussions, was stated by John P. Walker, Edison Joint Pole Administrator for the past nine years, to be as follows (Tr. 742):

> "We will allow the use of our poles for CATV purposes providing there is a valid agreement with all the conditions met, providing the space is available, and providing further that we will rent now to, on solely owned Edison poles, we will not permit contacts to poles supporting 66,000 volts other than for crossings."

Complainant, asserting that while it is apparent that defendants' reasons for changing their policies and charges for CATV pole attachments "were related to other corporate purposes", maintains that, notwithstanding, "it is manifest that both have dedicated their poles to use by CATV operators" and that such changes and their effect on the CATV industry "show a monopoly and abuse" (Op.Br., pp. 25, 30).

Defendants' former and current CATV pole attachment policies - except for contract charges - have been reviewed in the preceding paragraphs. With regard to the substantial upward revision of such charges announced by defendants in the latter part of 1969, the evidence shows that General, during the past decade and despite inflationary pressures, had maintained an annual charge of $3.00 per pole for customer-provided attachments. Its revised charges for CATV attachments (except for the $3.00 charge as to which it has agreed to "hold the line" pending disposition of this case) include, among other contract terms: a charge of $6.00 per pole annually; an unrefundable fee of $4.00 per pole for processing applications; rearrangement costs as applicable and a $5.00 per pole charge for unauthorized attachments plus - retroactively - the above charges and applicable rearrangement costs.

Edison's contract charges for attachment of customer-provided equipment to its poles, stabilized for more than 30 years at $1.00 annually per attachment on any pole (or somewhat more depending on height of any contact above ground level), were revised, effective January 1, 1970, to include - among other contract provisions - an annual charge of $5.00 per pole, plus $2.00 per required anchor,

regardless of the number of contacts on any pole, and a new $4.00 per pole CATV application processing charge, to be retained for approved applications and, to the extent necessary - in Edison's judgment - to recover its processing and engineering expenses, for applications wholly or partially denied as well.

The evidence shows that defendants' respective studies, management discussions and decisions which resulted in the foregoing revised policies and charges were concluded prior to their announcements of the revisions in July and December, 1969.

Complainant has alleged that the revised charges are - or could be - unreasonable, but it offered no studies or other evidence of a nature that would permit us to test that allegation, as related either to defendants' overall operations or the operations of any individual CATV system. In any event, resolution of the jurisdictional question here does not depend on whether defendants' CATV pole attachment policies or charges are reasonable (a pertinent field of inquiry in a general rate case or other appropriate proceeding), but on whether we have power to impose rate and other utility-type regulation on defendants' CATV pole space licensing activities.

The record permits us, however, to observe that the CATV industry is growing and thriving and that, despite inflation during the past decade and testimony of the CATV operators that they had experienced rising labor and material costs, the CATVs - almost without exception - had neither sought nor needed rate increases from their franchising authorities, but when sought the increases had been granted. Furthermore, this record shows that pole rental expenses account for only a small percentage of CATV operating expenses, and that the percentage decreases as market penetration in an area increases. Complainant has not claimed that the revised charges would have an adverse economic effect on the CATV operators (Tr. 1173).

We revert, finally, to consideration of whether defendants' "express declarations and conduct", as disclosed by this record, constitute a "dedication" of their pole attachment service to the use of the CATV industry.

Dedication, as related to devotion of investor-owned public utility property to public service or use, is an elusive concept. Although the indicia of dedication are not uniformly applicable to different utilities nor uniformly useful in answering different questions, it has been said that the scope of dedication is determined "ultimately by the fact that the utility has dedicated its resources to a particular enterprise, venture, or undertaking..." (Greyhound Lines, Inc. v. PUC, 68 C.2d 406, 415).

To constitute dedication, in California, the devotion of public utility property to public service must be plainly manifested by express declarations or other conduct of the owner of the property, and must be of such character that the public generally, or that part of it which has been served and which has accepted the service, has a legal right, commensurate with the utility's undertaking of a public duty, to demand that the service be conducted, so long as it is continued, with reasonable efficiency under reasonable rates (Allen v. Railroad Commission (1918), 179 Cal. 68; California Water & Telephone Co. v. Public Utilities Comm. (1959) 51 C.2d 478, 494).

While the service need not be available to the entire public it must be impartially available to all within the class who have a need for it, as contradistinguished from a "holding out", or offer, to serve only particular individuals as a matter of accommodation or for other reasons peculiar and particular to them (Yucaipa Water Co. No. 1 v. PUC (1960) 54 C.2d 823, 827). Even if the class which has a need for the service comprises but one or a few persons, the provider of the service - if it is of a nature that this Commission otherwise is empowered to regulate - is still subject to regulation if there has been a dedication to all within that particular class (Richfield Oil Corp. v. PUC (1960) 54 C.2d 419, 431).

The evidence in this record, viewed in light of the foregoing principles, falls far short of establishing - or even suggesting - that defendants have either expressly or impliedly dedicated surplus space on their poles, or the poles themselves, to use by CATV operators or anyone else for attachment of customer-provided equipment. Only qualified CATV operators and a few others, out of a potentially immense class of those who might need or desire to use defendants' poles, have been granted attachment priviliges, and then only as a matter of accommodation under individual terminable license agreements. Qualifications of licensees, as well as contract terms and conditions, vary significantly as between CATV and non-CATV pole users. The licenses are issued only under carefully controlled conditions and in subordination to defendants' primary public service and franchise obligations. Also, the record shows that defendants, pursuant to required accounting procedures, deduct CATV contributions to their pole costs, including depreciation, from their plant accounts in calculating rate bases used for utility rate-fixing purposes (Tr. 1246, 1250, 1597). Such accounting treatment, as well as defendants' other conduct mentioned above or as otherwise disclosed by this record, in our opinion is inconsistent with an intent to dedicate their poles or their pole attachment activity to the use of CATV operators.

We have included the foregoing summary of evidentiary material primarily because complainant has stressed such concepts as "economic need", "dedication" and "abuse of monopoly position" as justification for its contention that this Commission has, and should now exert, utility-type regulatory authority over defendants' CATV pole attachment activity. Also, because the parties have cooperated in placing that issue before this Commission, for the first time, on a full record of evidence and argument, some discussion of the nature of complainant's wide-ranging - and in some respects novel - evidentiary material seems appropriate.

It is sometimes a question of mixed law and fact as to whether a particular activity of an investor-owned utility is within the regulatory scope of this Commission. In resolving that issue we must look to the nature of the activity - a legal question - as well as to the factual question of dedication (Commercial Communications, Inc. v. PUC (1958) 50 C.2d 512, 518). Such public interest considerations as "economic need" for regulation, or "dedication" of a questioned activity to public use, however, do not arise unless this Commission has been vested by the California Constitution and legislation pursuant thereto with the jurisdiction over defendants' CATV pole attachment activity that complainant asserts (Richfield Oil Corp. v. PUC, supra, at p. 424).

We next turn to a consideration of the nature of defendants' CATV pole attachment activity, which, in our view, is the dispositive issue in this case.

This Commission's delegated authority, under the state's police power, to regulate defendants' activities is set forth in the State Constitution and the Public Utilities Code. The pertinent constitutional and statutory provisions which define the activities of defendants that are subject to such regulation are: Article XII, Section 23 of the State Constitution and Sections 216(a), 216(b), 217, 218, 233 and 234 of the Public Utilities Code.

Article XII, Section 23 of the State Constitution, in pertinent part states:

> "Every private corporation...owning, operating, managing or controlling any...plant or equipment within this State...for the transmission of telephone...messages, or for the production, generation, transmission, delivery or furnishing of heat, light...or power...either directly or indirectly, to or for the public...is hereby declared to be a public utility subject to such control and regulation by the Railroad [now Public Utilities] Commission as may be provided by the Legislature..."

Section 216(a) of the Public Utilities Code, in pertinent part provides:

> "(a) 'Public utility' includes every...electrical corporation, telephone corporation...where the service is performed for or the commodity delivered to the public or any portion thereof."

Section 216(b) of the Code provides, in pertinent part:

> "(b) Whenever any...electrical corporation, telephone corporation...performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such...electrical corporation, telephone corporation...is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

Section 217 of the Code defines an electric plant as follows:

> "'Electric plant' includes all real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power."

Section 218 of the Code defines an electrical corporation as follows:

> "'Electrical corporation' includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation with this State..."

Section 233 of the Code defines a telephone line as follows:

> "'Telephone line' includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires."

Section 234 of the Code defines a telephone corporation as follows:

> "'Telephone corporation' includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this State."

We have referred, in earlier pages, to the substance of the parties' arguments, as well as to certain evidentiary material stressed by complainant as supporting its jurisdictional contentions. Resolution of the dispositive issue, which concerns the nature of defendants' CATV pole attachment activity, requires that we consider that issue in light of the foregoing constitutional and statutory provisions and of other statutory provisions asserted by complainant to provide an "alternative" basis for regulation of the activity in question, as well as of decisions cited by the parties, or of which we can take notice, that may be relevant to that issue.

Complainant argues that Article XII, Section 23 of the Constitution and Section 216 of the Code subject defendants, as "public utilities", to the "plenary jurisdiction" of this Commission, and that "...the terms of both provisions are broad enough to give this Commission authority to regulate the provision of any service or of any commodities by any entity defined by their provisions as a 'public utility' provided there has been a dedication" (Op. Br., p. 82). Citing Commercial Communications, Inc. v. PUC, supra, as support for that all-embracive assertion, complainant argues that there is nothing in that decision which limits this Commission's jurisdiction to services connected with or which facilitate defendants' electric power or telephone services, as defined in Sections 217 and 233 of the Code, because the Court, in that same decision, "recognized that other provisions such as Sections 210, 489, and 701 also provide the Commission with an ample jurisdictional nexus to regulate other activities involving the use of a utility's public utility property" (Op. Br., p. 104). Moreover, so the argument goes,

other provisions of the Code, also referred to in that decision (Sections 851, 455, 728 and 729) likewise provide for regulation of defendants' CATV pole attachment activity "in every respect" (Op. Br., pp. 96, 97).

Complainant argues (Op. Br., pp. 102, 103) that, in any event, this Commission should exercise, in the public interest, its power over CATV pole attachment agreements under Sections 851, 455, 728 and 729 of the Code, because the evidence "establishes conclusively" that:

1. Both defendants have a "monopoly position" over poles necessary to CATV operators, and that such monopoly has been made possible and fostered by governmental action and by defendants' "unique status" as public utilities with franchise powers to use streets and highways to construct their poles.
2. Both defendants have abused their monopoly positions as pole owners.
3. It is in the public interest to foster the growth of the CATV industry.
4. The continued vitality of the CATV industry is dependent on the Commission's regulation of defendants' CATV pole lease agreements "because if defendants are left unregulated they will continue their past practices of abuse".

Finally, complainant asserts, with respect to General, that CATV use of pole plant "facilitates" telephone service by contributing to pole costs and providing additional revenues, thus enhancing General's ability to provide telephone service and permitting a reduction in telephone rates (Reply Br., p. 7). (The same argument could have been - but was not - made with respect to "facilitating" Edison's electric service. We shall consider the point to include both defendants.)

The staff - except to mention Section 216 of the Code in connection with the dedication question (Br., p. 7, footnote 7) - did not discuss the aforementioned constitutional and statutory

provisions or their possible bearing on the nature of defendants' CATV pole attachment activity. The staff, instead, argues that this Commission now has and should exercise full regulatory jurisdiction over defendants' CATV pole attachment activity for the following reasons: (a) this Commission has held CATV pole attachment service "necessarily and lawfully" to be a "public utility service" because it is performed by use of utility property and personnel and is subject to utility-type regulation if publicly offered (citing Pacific Telephone and International Cable T.V., supra, footnote 3); (b) the evidence here "demonstrates" such a public offering; (c) the end result of CATV pole attachment activity (i.e., facilitating the transmission of CATV programs to CATV subscribers for a fee) is identical physically to avowed public CATV channel services offered by communications utilities, and (d) it would be "highly undesirable to allow the utilities' monopoly of pole space to be used as a basis for unreasonable charges or discrimination which would be possible, and even considered good business, in the open market. It is this monopoly characteristic which is the basis of regulation of enterprises affected with a public interest. City of Glendale, 4 CRC 1011 (1914)." (Br., pp. 4-7.)

As defendants have moved to dismiss this complaint for failure to state a cause of action within the regulatory jurisdiction of this Commission, we have carefully considered and weighed all evidence and argument in this record in a light most favorable to the contentions of both complainant and the staff.

The real and, in our opinion, dispositive issue that emerges here is whether or not defendants' accommodation of CATV-provided equipment in their available pole space, in the circumstances disclosed by this record, constitutes use of their pole plant "in connection with or to facilitate" either "the transmission of electricity for light, heat, or power", or "communication by telephone" (Public Util. Code, Secs. 217, 233, supra).

If the CATV pole attachment activity here in question is such a use, and if defendants, under recognized criteria, have in fact dedicated that use impartially to the public or a portion thereof, then they should be ordered to file with this Commission tariffs of rates and conditions for what most certainly would constitute a "dedicated public utility service". If the activity has not, in fact, been so dedicated, but is, nevertheless, a use of defendants' poles "in connection with or to facilitate" their public electric or telephone services and is available only under special or individual contracts, then defendants should be ordered to submit such contracts for authorization by this Commission pursuant to General Order No. 96-A, Sec. X.A.[7/] If, however, defendants' contractual CATV pole attachment activity is not "in connection with or to facilitate" their primary public services, then the question presented here is whether or not defendants may conduct such activity, as owners of the poles and as a proper use of their property, free from this Commission's regulation except in the conceded areas of safety standards and possible adverse effects of non-utility activities on their primary public services and ratepayers.

We hold that defendants' use of their pole space for CATV-provided attachments is not a "public utility" service because such use is not "in connection with or to facilitate" either "the transmission of electricity for light, heat, or power", or "communication by telephone", within the intent and meaning of Sections 217 and 233 of the Public Utilities Code and of Article XII, Section 23 of the California Constitution.

7/ Section X.A. of General Order No. 96-A provides, in pertinent part:

> "...no utility of a class specified herein [which includes electric and telephone utilities] shall hereafter make effective any contract, arrangement or deviation for the furnishing of any public utility service at rates or under conditions other than the rates and conditions contained in its tariff schedules on file and in effect at the time, unless it first obtain the authorization of the Commission to carry out the terms of such contract, arrangement or deviation." (Emphasis supplied.)

The parties have cited a number of court and state regulatory commission cases from this and other jurisdictions, which involve CATV pole attachments - or other activities of either a non-utility or utility nature - and the scope of state commission authority over such activities. With respect to CATV pole attachments, the cases - with one California exception - unanimously are to the effect that such activity, by an investor-owned public utility, is not subject to state regulation because it is not a use of the utility's poles which involves, or is connected with, the performance of its regulated public service obligations (Ceracche Television Corp. v. Public Service Comm. and New York Telephone Co., 267 N.Y. Supp. 969, 973 (1966) and other cases to the same effect, cited by General, Op. Br., pp. 12-14 and by Edison, Op. Br., pp. 8-9).

The only exception to the foregoing line of cases of which we are aware is the Pacific Telephone rate case cited by the staff (53 CPUC 275, 320 - supra, footnote 3). This Commission had ordered Pacific to file some 4,750 special service (i.e., non-tariff) contracts, covering a variety of activities - including CATV pole attachments - estimated to have produced associated annual revenues of $950,000. Pacific contended that such "services, facilities and equipment" were of a non-utility character. The Commission, rejecting that contention, stated (53 CPUC, at p. 320):

> "We do not subscribe to this view. These services furnished pursuant to these contracts are performed by the use of operative property and operative personnel of applicant, and necessarily and lawfully constitute public utility service subject to the jurisdiction of this Commission. Any claimed exemption from the provisions of a regulatory statute must be strictly construed" (citing cases as to the last sentence).

The Commission, by its order in that decision, required Pacific, among other matters, to file, in accordance with General Order No. 96 (now 96-A), tariff schedules and contract forms

covering some of the services and facilities involved, and copies of all other contracts covering services or facilities furnished otherwise than under filed tariffs.

On Pacific's petition for rehearing of the above decision, the Commission modified its order to require, among other matters, only informational filing - though still subject to the procedures of General Order No. 96 - of all contracts for services or facilities furnished otherwise than under filed tariffs. The modified order authorized Pacific to include in all such contracts the following paragraph (53 CPUC, at p. 666):

> "The Company declares that the filing of the contract herein with the Public Utilities Commission pursuant to the procedural requirements of General Order No. 96 is not to be construed as a public offering by the Company of the services or facilities hereinabove referred to."

The pertinency here of the foregoing Pacific Telephone decisions is that the Commission considered, in its first order, all of Pacific's contracts for special services or facilities to be subject to its jurisdiction, either under a required tariff filing or by required General Order No. 96 authorization, because such contracts were performed by the use of Pacific's operative property and personnel and thus "necessarily and lawfully" constituted "public utility service".

The possible relevancy of Section 233 of the Code (defining a "telephone line") for determination of the nature of any specific contract service - such as for CATV pole attachments - was not discussed in either decision. As a result, at least until 1965 and thereafter until the International Cable T.V. decision (66 CPUC 366 (1966), supra, footnote 3), all non-tariff service contracts of Pacific were required to be filed for informational purposes in connection with the Commission's rate regulating authority, and were also required to be authorized by General Order

No. 96 procedures as contracts for "public utility service" as defined in the first Pacific decision. The only effect, therefore, of the modified order was to negate a "public offering" of such non-tariff services from the mere filing of the contracts.

In 1965,[8/] this Commission considered the nature of a non-tariff contract service by Pacific Telephone in light both of Section 233 of the Code and of the fact that the channel facilities, including cables and amplifiers, to be provided and routinely installed by Pacific under a contract with a home developer for use in the developer's CATV distribution system, were not attached to Pacific's poles or otherwise associated with Pacific's public utility telephone lines, but were to be installed in conduits and ducts provided by the developer and the homeowners. In determining that the proposed service was not a public utility service, the Commission stated (66 CPUC, at pp. 78-79):

> "Not all charges assessed by a public utility are subject to supervision and regulation by this Commission. Applicant has not made an offer to provide the proposed service to the general public by the filing of tariffs for the service. It cannot be said that applicant will be performing a public utility service to Eichler [the developer] as defined in Sections 233 and 234 of the Public Utilities Code [citing texts of the two sections]. The facilities to be installed...would not be used in connection with any of applicant's plant dedicated to or utilized for public utility service, nor do said facilities facilitate communication by telephone, nor is the proposed service incidental to the furnishing by applicant of common carrier communication service." (Emphasis supplied.)

The staff, commenting on the above decision in connection with its assertion that "An important criterion for determining the status of a nonbasic service by an admitted public utility is the

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8/ Application of Pacific Tel. & Tel. Co. (1965) 64 CPUC 75, cited by the staff (Br., p. 6).

extent to which it makes use of its property dedicated to utility service." (Br., p.6), did not refer to the portion, quoted above, which discusses the nature of Pacific's proposed service in light of Sections 233 and 234 of the Code.

The staff has characterized the International Cable T.V. case (supra, footnote 3) as "The last important case in pole attachment service before this Commission...." (Br., p. 4). The other parties have also discussed the case extensively.

International alleged, in substance, that Pacific Telephone, despite the existence of a prior pole attachment agreement with International, unreasonably discriminated against International by construction of channel facilities for a competitor, defendant All-Metal, in an overlapping service area, and asked for injunctive relief against further construction or use of the channel system within competitive territory. Pacific, at that time, had made a public offering of channel service, but limited its pole attachment service to one CATV customer per franchised area on a "first come, first served" basis.9/

The Commission, in dismissing the complaint, limited its decision to the issue of discrimination and held that Pacific had not violated the discrimination provisions of Section 453 of the Public Utilities Code, because International, as a pole attachment applicant, was not in like circumstances with All-Metal, a channel service applicant, as the two services were substantially different

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9/ Both this and the International records show that, because of the nature of the CATV business and of limitations on availability of communication space on poles, no more than one CATV customer attaches to space on any one pole. General's policy, prior to October 4, 1968, was the same as Pacific's. Its present policy does not expressly limit attachments to one CATV customer per pole as there is no need to do so for the foregoing reason (General, Cl. Br., p. 9).

in important respects. The Commission, contrasting the natures of pole attachment and channel services, stated, with respect to pole attachments (66 CPUC at p. 383):

> "Pacific's willingness, as pertinent to the present controversy, to enter into temporary individual license agreements with CATV operators for use by the latter of vacant space on its poles, is neither an offer nor a providing of 'public utility service', since the utility does not hold out such contracts impartially to the general public or does it thereby provide any 'service' related to the concept of dedication to the public of a communication service or facility which is the hallmark of a public utility calling." (Emphasis supplied.)

The Commission, in the International case, also reviewed the two Pacific Telephone decisions discussed hereinabove (53 CPUC 275 and 53 CPUC 662). Noting that cases from other jurisdictions cited by Pacific (which are also cited by defendants here) were to the effect that the rental to CATV operators of vacant space on utility poles is not part of the public service performed by a telephone utility in the business of telephonic communication, and that the granting or withholding by a telephone utility of CATV pole attachment licenses, absent a public offering, does not involve any question of discrimination whether in competitive CATV territory or not, the Commission stated, with respect to the jurisdictional significance of the required filing of Pacific's non-tariff special service contracts pursuant to General Order No. 96 (66 CPUC, at p. 384):

> "Such procedural requirements do not touch the question of whether the licensing of vacant space on Pacific's poles to CATV operators constitutes, under the circumstances disclosed by this record, a 'public offering' or a 'public utility' service....
>
> "We hold...that in the absence of a public offering the rental or licensing by Pacific of vacant space on its poles to CATV operators does not constitute a 'public utility service'. Therefore, authorization by this Commission of the pole attachment agreement between Pacific and International dated March 28, 1966 is not necessary."

Examination of the two decisions in the 1954 Pacific Telephone rate case fails to disclose that any consideration was given to Section 233 of the Public Utilities Code in arriving at the conclusion that Pacific's non-tariff contract services, because performed by use of operative property and personnel, "necessarily and lawfully" were "public utility" services. Nor does the International Cable decision reveal any consideration of that section of the Code - except as might be implied from its reliance on the reasoning in Ceracche and other out-of-state cases cited by Pacific - in the Commission's statement that "in the absence of a public offering" Pacific's CATV pole licensing activity would not constitute a "public utility service". The International decision, moreover, makes no mention of the 1965 Pacific Telephone case (64 CPUC 75, supra), which cited Section 233 of the Code as one of the reasons for finding Pacific's channel facility installation contract there not to be for "public utility service" because it neither involved nor facilitated "communication by telephone".

The unreliability of such concepts as "use of operative property and personnel", or "dedication", as controlling indicia for subjecting, against a utility's express or implied consent, a particular activity to regulation as a "public utility service", is manifest when it is recognized that a private corporation, though engaged in a regulated public utility business, may under its charter also engage in activities of a non-utility nature (Commercial Communications, Inc. v. PUC, supra, at p. 518), and that this Commission, pursuant to General Order No. 96-A, has power to authorize contracts "for public utility service", even though such services are not "dedicated" (as by a tariff filing or other unequivocal manifestation), but are available only under individual contracts. As noted in the International Cable case, supra, such authorization was found to be unnecessary for Pacific's pole attachment contract with International, because that contract, like those of defendant General here, involved neither an "offer" nor a "providing" of a public communication service or facility.

Commercial Communications, Inc. v. PUC, supra, has been cited so extensively as to suggest that it might truly be called a case "for all seasons". The Commission there took jurisdiction over a tariff voluntarily filed by Pacific Telephone relating to the installation, lease and maintenance of private mobile radiotelephone systems, a service which required use of Pacific's employees, vehicles and plant that otherwise would be used in its telephone business. The complainant objected to the Commission's assertion of jurisdiction. The Supreme Court, after reciting Article XII, Section 23 of the State Constitution and Sections 216(a), 216(b), 233 and 234 of the Public Utilities Code, stated, insofar as the issue of the Commission's jurisdiction over the activity was concerned (50 C. 2d at p. 522):

> "The real issue presented is whether the service offered by the proposed tariff is 'for the transmission of telephone messages' or 'in connection with and to facilitate communication by telephone'."

The Court held that provision of a private mobile radiotelephone system did involve the transmission of a telephone message and that the Commission had jurisdiction. Thus, though the company made a dedication of the service by voluntarily filing its tariff, the Court, by stating the issue, had first to find that a utility service was involved before it could permit the Commission to assert jurisdiction.

The staff has referred to Commercial Communications only for the proposition that "...an offer to all of the public is not necessary; merely an offer to those who are eligible to apply for it such as CATV operators" (Br., p. 9). Although we can agree with that statement as an abstract proposition, we fail to see its relevance for determination of whether defendants' CATV pole attachment activity involves the transmission either of a telephone message or of electricity for light, heat, or power, which is the real jurisdictional issue here as it was - with respect to telephone messages - in Commercial Communications.

Complainant has given us an inconsistent appraisal of the Commercial Communications decision. First, having stressed the importance of the Court's reference to certain sections of the Public Utilities Code as conferring, in complainant's view, an "alternate basis" for imposition of jurisdiction over defendant's CATV pole attachment activity (Op. Br., pp. 96-102, mentioned earlier herein), complainant then states (Cl. Br., p. 7): "Properly analyized [sic], it is clear that this case has limited value as to the issues here involved".

We disagree with both of those assertions. The case, "properly analyzed" as we are striving to do here, discloses that the Court, having found the leasing and maintenance of mobile communication facilities to be a service facilitating the "transmission of telephone messages" (Constitution, Art. XII, Sec. 23); i.e., a "utility service", then pointed to the various rate and other procedural provisions of the Code (cited by the Court and by complainant here) as giving the Commission ample powers to regulate that activity as "cognate and germane" to the regulation of public utility telephone companies. In short, what the Court said, we think, is that once an activity has qualified as a "utility service", the cited Code provisions then give this Commission ample authority to regulate its conduct as a member of the utility family. Hence, if defendants' CATV pole attachment activity does not qualify as a "public utility service", because it does not involve or facilitate "transmission of telephone messages", "communication by telephone", or "transmission of electricity for light, heat, or power", the other cited provisions of the Code do not operate to confer such status. (The Staff has not argued for the so-called "alternate basis" for jurisdiction asserted by complainant.)

Do defendants, by licensing pole space to CATV operators, provide a service "in connection with or to facilitate" their public telephone or electric services? This record shows that CATV-provided equipment, except for being attached to defendants' poles, otherwise has no physical or functional connection with defendants' use of their pole plant for telephonic communication or electric service, and is used by CATV operators simply to transmit or distribute off-the-air television signals or CATV station-originated programs to their subscribers. CATV service, as pointed out by the Court in Television Transmission, Inc. v. PUC, supra, at p. 88, "is more akin to that of music halls, theatres and newspapers than it is to that of telephone corporations". In holding CATVs not to be "telephone corporations" and thus not subject to this Commission's jurisdiction as such, the Court said:

> "To be a telephone corporation petitioner must operate a telephone line. (Pub. Util. Code, sec. 234.) Although it may control, operate, or manage 'conduits, ducts, poles, wires, cables, instruments, and appliances...real estate, fixtures, and personal property' (Pub. Util. Code, sec. 233) and do so 'in connection with or to facilitate communication' (Ibid.), it does not operate a telephone line and is therefore not a telephone corporation unless such control, operation, or management are in connection with or to facilitate communication 'by telephone'." (Television Transmission, supra, at p. 86.)

The Court noted at pp. 85 and 86 of its opinion, that the Commission had held it could make no finding that Television Transmission was an "electrical corporation" (citing Pub. Util. Code, secs. 217 and 218), since there was nothing in the record to show that its CATV system was used "...in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power...."

Defendants, citing Television Transmission, assert that in providing pole space for CATV-owned equipment they are neither transmitting nor facilitating the transmission of telephone messages or signals of any kind, or of electricity for light, heat or power, and thus are not, respectively, "telephone" or "electrical" corporations with respect to their CATV pole attachment activity.

Complainant argues that constitutional and statutory definitions of the public utility services over which this Commission has jurisdiction are irrelevant if the services are rendered pursuant to the utility's "monopoly over a necessity", and has cited a number of court cases which, it asserts, support that view (Munn v. Illinois, 94 U.S. 113; 24 L. Ed. 77 (1877) and other cases discussed in its Opening Brief, pp. 82-91). Those cases, in our opinion, do no such thing. Although they recognize, as we do (Commercial Communications, Inc., supra, at p. 522), the potential or actual monopolistic nature of public utility services, the services involved in the cited cases had either already met common law, constitutional or statutory definitions of "public utility service", or were found to be services that were connected with, or which facilitated, the public utility services so defined (see discussion in defendants' briefs - General, Reply Br., pp. 5-6; Edison, Cl. Br., pp. 4-6).

Also, as to the "need" element, linked by complainant with "monopoly" as the asserted basis for determination of the jurisdictional issue here, we have already noted that such public interest questions do not arise unless this Commission has been vested by the California Constitution or legislation pursuant thereto with the jurisdiction over defendants' CATV pole attachment activity for which complainant contends (Richfield Oil Corp., supra, at p. 424). Moreover, as pointed out by Edison (Op. Br., p. 9; Cl. Br., pp. 6-7) it is the nature of the service itself, not the use which a customer makes of it, that determines whether or not it is a "public service" subject to regulation as such by this Commission (Pinney & Boyle Co. v. Los Angeles Gas & Electric Co., 168 Cal. 12, 14 (1914)).

Two other points, one raised by General (Op. Br., pp. 5-6) and the other by Edison (Op. Br., pp. 12-13), which though discounted by complainant and not discussed by the staff, in our view merit consideration in concluding the foregoing discussion of the parties' contentions.

General states that though its telephone lines and plant are subject to regulation to the extent that the company engages in the business of transmitting telephone messages, it still retains the rights of a private owner in the management and control of its property, and that title to the property does not vest in the public, citing from Pacific Telephone and Telegraph Company v. Eshleman (1913) 166 Cal. 640, 655, the landmark case which initially described the nature and scope of this Commission's regulatory jurisdiction over property devoted to public use, as follows:

> "...the devotion to public use by a person or corporation of property held by them in ownership does not destroy their ownership and does not vest title to the property in the public so as to justify, under the exercise of the police power, the taking away of the management and control of the property from its owners without compensation, upon the ground that public convenience would be better served thereby, or that the owners themselves have proven false or derelict in the performance of their public duty. Any law or order seeking to do this passes beyond the ultimate limits of the police power, however vague and undefined those limits may be."

Complainant has dismissed, without discussion, General's contention based on Eshleman as "an attempt to resurrect the old 'substantive due process' doctrine laid permanently to rest in Nebbia v. New York, 291 U.S. 502 (1934)." (Reply Br., p. 2, footnote (1).)

We do not regard General's contention as insubstantial. The Supreme Court, in Nebbia, noting that there was "no closed category" of public services, sustained the New York milk control statute there involved as a reasonable exercise of state legislative

power over a business that affected the public welfare. The decision, as we view it, neither permanently nor even temporarily laid to rest the principle of substantive due process embedded in Eshleman and other decisions of the California Supreme Court that have discussed the nature and scope of this Commission's regulatory jurisdiction (Cf. Del Mar, etc. Co. v. Eshleman (1914) 167 Cal. 666, espec. conc. op. by Shaw, J.; Atchison, etc. Ry. Co. v. Railroad Commission (1916) 173 Cal. 577).

In sum, we are of the opinion that though defendants may be regulated by this Commission in connection with their public undertakings to supply telephone or electric power services, to require them to devote their property to a service which they have never professed to render is to take that property, pro tanto. Such taking cannot be justified except under the power of eminent domain upon payment of just compensation.

Edison points out (Op. Br., pp. 12-13) that as CATVs do not provide utility-type service in California (Television Transmission, Inc., supra) they do not qualify for membership in Joint Pole Committees. Those committees, in Northern and Southern California, administer arrangements for joint ownership or use of pole facilities among entities that provide utility-type services, subject to such terms as the Commission may reasonably direct (Pub. Util. Code, sec. 767). Edison asserts that this Commission has no authority otherwise to order such joint use in a case like the present one, and it points to the demise, in committee, of proposed legislation (California Senate Bill 190 (1971)) which would have remedied the situation by including CATVs as "public utilities" in a new section of the Public Utilities Code (Section 24492) relating to this Commission's authority over joint use of public utility poles and other facilities. Edison states: "The substantial efforts of the CATV industry expended in opposition to S.B. 190 contributed in large measure to its defeat" (Op. Br., p. 13).

We think it appropriate to observe that all CATV systems in the United States are now subject to regulation by the Federal Communications Commission as facilities for interstate communication, pursuant to the Communications Act of 1934, as amended (United States v. Southwestern Cable Co., 392 U.S. 157, 88 S.Ct. 1994, 20 L. Ed. 1001 (1968)). Also, several states (among them Connecticut, Nevada and Illinois) have adopted legislation for regulation of CATVs either as public utilities or pursuant to other statutory provisions deemed appropriate by their legislatures.

We have previously noted that the CATV industry, in California, has successfully resisted efforts by this Commission and the State Legislature to impose public utility status on CATV service. Rather than accept such status - and we do not question its right to oppose its imposition - the California CATV industry, here and by its complaint filed simultaneously with the FCC, instead has sought to have both regulatory commissions order defendants to file tariffs for their CATV pole attachment activity, and thereby to impose on defendants an obligation to allow CATVs to use their telephone or electric plant as a matter of right rather than of accommodation.

In the absence of binding judicial or legislative mandate, which we do not find in this record, we are not prepared, as an agency charged with the administration of existing state constitutional and statutory provisions for regulation of public utilities, to extend our regulatory authority over defendants' property in the manner requested by complainant.

We note, with respect, that the Supreme Court of California has directed this Commission to consider and make appropriate findings on federal and state antitrust implications of its action in matters before it for decision, whether or not antitrust issues are raised by the parties (Northern California Power Agency v. Public Util. Com.; Pacific Gas & Electric Co., Real Party in Interest (July 13, 1971) 5C. 3d 370). In that case the Commission granted a

certificate of public convenience and necessity to PG&E for construction and operation of geothermal steam-electricity plants, despite contentions that the contracts under which the utility company planned to purchase steam violated federal and state antitrust laws. The Court, in annulling the Commission's order, stated (5C. 3d, at p. 377):

> "It is no longer open to serious question that in reaching a decision to grant or deny a certificate of public convenience and necessity, the Commission should consider the antitrust implications of the matter before it."

Furthermore, the Court continued (5C. 3d at p. 380):

> "The Commission may and should consider sua sponte every element of public interest affected by the facilities which it is called upon to approve."

The matter presently before us for decision is a jurisdictional issue raised by defendants' motions to dismiss the complaint herein. It does not involve the grant or denial of a certificate of public convenience and necessity. We recognize, however, that we have a duty to consider antitrust implications of matters before us for decision and to make appropriate findings thereon, regardless of whether such issues are raised by the parties and regardless of the nature of the proceeding before us for decision.

Our decision here, as indicated by our previous holding on what, in our opinion, is the dispositive jurisdictional issue, will leave the parties in statu quo ante. The CATV operators will still be able to use defendants' available pole space for attachment of their equipment, subject to the conditions of terminable individual license agreements, as long as defendants are willing to provide pole space to qualified CATV operators for that purpose. The CATVs will still have a choice of other routes for their cables and equipment, either by construction of their own facilities, by sharing underground utility conduits, or by use, in telephone service areas, of telephone utility channel facilities subject to appropriate FCC authorization.

We see no federal or state antitrust implications in this record. Nor do we regard complainant's unfounded and irrelevant allegations of defendants' "abuse of their monopoly position", "monopoly over a necessity", or "dedication" of CATV pole attachment activity, as raising antitrust issues under the federal and California statutes cited by the Court (Sherman and Clayton Acts; Cartwright Act), as such public interest considerations - which doubtless would include antitrust matters - do not arise in this proceeding unless this Commission has been vested by the California Constitution and legislation pursuant thereto with the jurisdiction over defendants' CATV pole attachment activity for which complainant here contends (Richfield Oil Corp. v. PUC, supra).

The denial by a telephone utility (or by an electric utility) of CATV access rights to utility pole plant does not establish violations of antitrust laws (TV Signal Co. of Aberdeen v. American Tel. and Tel. et al. (1971) 324 F. Supp. 725). Nothing shown by this record, concerning the manner in which defendants have granted CATV access rights in their pole space, appears to require a contrary conclusion.

The Commission finds, as facts on this record, that:

1. Cable television operators, in California, provide a service to their subscribers whereby they transmit, over coaxial cable, amplified off-the-air television signals and CATV station-originated signals to their subscribers' premises.

2. All facilities required to transmit such CATV signals are owned by the CATV operator; i.e., cable, "head-end" antenna, amplifiers, drop wires and related equipment.

3. Defendants General and Edison own none of the facilities used to transmit such CATV signals.

4. CATV operators, in rendering their service to their subscribers, have entered into terminable license agreements with General and Edison whereby CATV operators attach their facilities to space on General's and Edison's poles.

5. The only service, or activity, provided by General and Edison to the CATV operator is the rental of surplus pole space pursuant to the aforesaid terminable license agreements.

6. Defendant General is a privately owned public utility "telephone corporation" regulated as such by this Commission within the meaning and intent of Article XII, Section 23 of the California Constitution and of Sections 233 and 234 of the Public Utilities Code of California. Defendant Edison is a privately owned public utility "electrical corporation" regulated as such by this Commission within the meaning and intent of said Article XII, Section 23 of the California Constitution and of Sections 217 and 218 of said Public Utilities Code.

7. General and Edison, in permitting access to their poles by CATV operators for attachment of CATV-provided facilities pursuant to individual terminable license agreements, are not thereby engaged, respectively, in an activity or service which involves, or is connected with, or facilitates the use by defendants of their respective pole plant for the transmission of telephone messages, communication by telephone, or transmission of electricity for light, heat, or power.

Based upon the foregoing findings of fact the Commission concludes, as a matter of law, that:

1. Neither General nor Edison, by furnishing, pursuant to individual terminable license agreements, attachment space on their respective poles to CATV operators for CATV-provided equipment, has thereby furnished or provided, or does thereby furnish or provide, a "public utility service" subject to regulation as such by this Commission pursuant to said Article XII, Section 23 of the California Constitution, or said Sections 233, 234, 217 or 218 of said Public Utilities Code, or Section X.A. of this Commission's General Order No. 96-A.

2. Defendants' motions to dismiss the complaint herein should be granted; said complaint should be dismissed for failure to state a cause of action within the jurisdiction of this Commission and the temporary cease and desist order, heretofore issued by Interim Decision No. 77185 herein, should be dissolved.

3. There is no federal or state antitrust issue or implication, whether of fact or law, in the matter now before us for decision. Should such an issue or implication be considered to inhere in this record, or to arise as a result of our action in dismissing the complaint herein, we conclude, further, that the importance, for the public, of protecting regulated utility property, services and ratepayers from possible adverse effects of legally unsanctioned or otherwise detrimental non-utility activity, would override antitrust issues which we have only the duty to weigh, not the power to decide, in matters before us for decision.

4. There is no issue of fact or law in this record, otherwise than as stated in the findings and conclusions hereinabove enumerated, which is either material or necessary to the order or decision herein.

Defendants General and Edison are hereby placed on notice that though we have found, hereinabove, their CATV pole attachment activities not to be a public utility service and hence not subject to utility-type regulation by this Commission, the economic effect on their respective public telephone and electric services of revenues, expenses and related plant costs associated with their CATV pole attachment activity is a matter of concern to this Commission in the regulation of defendants' public service rates.

Accordingly, we shall require that each said defendant, within 60 days after the date of issuance of this order, shall maintain its revenue and expense accounts, and related plant accounts, in such manner as to make readily accessible and available for this Commission's information all items involved in such CATV pole attachment revenues

and expenses, together with defendants' related plant costs, until further order of this Commission. Furthermore, defendants, in lieu of filing individual CATV pole attachment agreements with the Commission for its information, will be required to file only one copy of their current forms of such agreements and, if such forms be amended from time to time, one copy of any such amended forms. Such contract forms shall not be included in defendants' respective tariff files or schedules on file with this Commission, and may be transmitted by advice letter or other means deemed satisfactory by the Commission.

O R D E R

IT IS HEREBY ORDERED that:

1. Defendants' respective motions to dismiss the complaint herein be and each said motion hereby is granted.

2. The complaint of California Community Television Association, filed herein on December 31, 1969, be and said complaint hereby is dismissed for failure to state a cause of action within the jurisdiction of this Commission.

3. The temporary cease and desist order issued herein by Interim Decision No. 77185, dated May 5, 1970, be and said order hereby is dissolved.

4. Defendants General and Edison, within 60 days after the date of issuance of this decision and continuing thereafter unless otherwise directed by this Commission, shall arrange to maintain their respective books of account in such manner as to make readily available, for this Commission's information, all items of revenue, expense and related plant costs associated with provision of space on their respective poles for CATV-provided attachments.

5. Defendants, within said 60-day period after issuance of this decision and continuing thereafter unless otherwise directed by this Commission, each shall file with this Commission, for its

information, one legible copy of their respective CATV pole attachment agreement forms currently in use, and if such forms be amended, one copy of each such amended form showing the effective date of any such amendment.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 9th day of March, 1972.

John M. Gregory

JOHN M. GREGORY
Examiner