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2 New Brunswick Board of Commissioners of Public Utilities  
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4 In the Matter of an application by the NBP Distribution &  
5 Customer Service Corporation (DISCO) for changes to its  
6 Charges, Rates and Tolls - Rogers Issue  
7  
8 Delta Hotel, Saint John, N.B.  
9 March 1st 2006

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13 CHAIRMAN: David C. Nicholson, Q.C.

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16 COMMISSIONERS: Jacques A. Dumont  
17 Patricia LeBlanc-Bird  
18 H. Brian Tingley  
19 Diana Ferguson Sonier  
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BOARD COUNSEL: Peter MacNutt, Q.C.

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BOARD STAFF: Doug Goss  
John Lawton

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BOARD SECRETARY: Lorraine Légère

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33 CHAIRMAN: Good morning, ladies and gentlemen. Could I have  
34 appearances please for the Distribution Company?

35 MR. RUBY: Thank you, Mr. Chairman. Peter Ruby and Clare  
36 Roughneen, as counsel together at the front table with  
37 Tony O'Hara and Bridger Mitchell.

38 And the same crew behind me, Lillian Gilbert, Lori Clark,  
39 Brian Duplessis. And David Hashey and Michael Gorman here  
40 as well.

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CHAIRMAN: That is three rows. That is too much. Thanks,  
Mr. Ruby.

Canadian Manufacturers? Not here. Conservation Council?  
No. Enbridge Gas New Brunswick? The Irving Group of  
companies?

MR. MERCIER: Sylvain Mercier from Hydro Quebec.

CHAIRMAN: Would you hold up your hand so we know where you  
are? Way back there. Okay. Welcome.

Mr. Gillis is not here. And Rogers Cable?

MS. MILTON: Leslie Milton and Christiane Vaillancourt.

CHAIRMAN: Thank you, Ms. Milton. Self-represented  
individuals have abandoned us. Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman and Commissioners.  
See if we can outdo Disco for numbers. Raymond Gorman  
appearing on behalf of the Municipal Utilities. I have  
with me today Richard Burpee, Eric Marr, Dana Young,  
Darren Lamont, Bob Bernard and Dan Dionne.

And just for the information, I would like to note that  
Helen Sam from the Canadian Electricity Association is  
here. And I think Mr. Mercier from Hydro Quebec already  
indicated his presence.

CHAIRMAN: Well, if you didn't you are close. I note with  
approval that Mr. Burpee has a table all to himself.  
Public Intervenor? He is in the building, we know that.

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2 And I'm sorry. I forgot Mr. Peacock. Vibrant  
3 Communities? He is not here. Okay.

4 And Mr. MacNutt, who is accompanying you today?

5 MR. MACNUTT: I have with me today, Mr. Chairman, Doug Goss,  
6 Senior Adviser, John Lawton, Adviser and Jim Easson,  
7 Consultant.

8 CHAIRMAN: Thanks, Mr. MacNutt. Any preliminary matters?

9 MR. HASHEY: No preliminary matters from the Applicant.

10 CHAIRMAN: Mr. Ruby, what is your best estimate? We keep  
11 score on these things, you know. Mr. MacNutt leads the  
12 pack in accuracy. But that is all right.

13 MR. RUBY: Well, my best estimate is to leave sufficient  
14 time for Board staff, any other Intervenors who want to  
15 question in the Board's questions today and still all be  
16 done by 3:00 o'clock.

17 CHAIRMAN: Oh, that sounds like an hour to me. Go ahead,  
18 Mr. Ruby.

19 MR. RUBY: Thank you. How is that for not quite committing  
20 to any particular time frame?

21 CHAIRMAN: You sound aggressively neutral to me.

22 MR. RUBY: Good morning, panel.

23 CROSS EXAMINATION BY MR. RUBY:

24 Q.422 - Mr. Armstrong, since the light on your microphone is  
25 on already, why don't we start with you.

2       MR. ARMSTRONG:   Just before we start I wonder if I might --

3           I did have sort of a preliminary matter.   But I'm kind of  
4           out of my element here because I wasn't able to speak to  
5           counsel over the break.   May I raise it?

6       CHAIRMAN:   Certainly.

7       MR. ARMSTRONG:   Yesterday -- I just wanted to clear up  
8           something regarding a question that Mr. Ruby asked me  
9           yesterday.

10       Mr. Ruby asked me about Rogers' payments for clearance  
11       poles with Toronto Hydro.   And I responded by saying that  
12       we paid 33 percent of the full rate.   And I wanted to  
13       confirm that what I had reported to this Board was  
14       accurate.

15       So I asked that a copy of the agreement that Rogers has  
16       signed with Toronto Hydro be faxed to me here.   And the  
17       number that I reported was actually incorrect.   It's  
18       actually less than 33 percent.   But I'm sort of bound  
19       because the contract also has a confidentiality provision  
20       in it.

21       I would be happy to provide a copy of that contract to the  
22       Board and to Disco provided that it be kept in confidence  
23       and used for this hearing and be kept in confidence post  
24       this hearing, I suppose, if that helps the Board.

2 CHAIRMAN: Well, that is your solicitor's choice. If it is  
3 it has to be put on pink paper. So perhaps we will just  
4 accept what you said. But again that is up to Ms. Milton.  
5 Thank you.

6 MR. RUBY: Mr. Chairman, maybe Ms. Milton and I can have a  
7 little chat at the break. And we will figure out a way to  
8 deal with this.

9 CHAIRMAN: Okay.

10 MR. RUBY: Thank you.

11 CHAIRMAN: Thank you.

12 Q.423 - So Mr. Armstrong, for each joint use pole there is a  
13 risk of an accident happening in association with that  
14 pole, isn't there? People bump into poles and so on?

15 MR. ARMSTRONG: I believe that happens.

16 Q.424 - And there is an associated risk of liability  
17 associated with joint use poles in that regard, right?

18 MR. ARMSTRONG: Yes.

19 Q.425 - And when there is an accident, there is a risk of an  
20 investigation happening?

21 MR. ARMSTRONG: I imagine investigation happens.

22 Q.426 - And the risk that liability with respect to that pole  
23 will be assessed against the pole owner in the event of an  
24 accident?

25 MR. ARMSTRONG: That could be. It could be against the pole

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owner. It could be against the person that caused the accident.

Q.427 - Right. But if there is something wrong with the pole, it is the pole owner that bears the liability, right, not the tenant?

MR. ARMSTRONG: Well, I think if we were to go to the liability provisions that are in the proposed contract that Disco has provided to us, that liability or that -- Rogers is required to ensure that we indemnify the owner against any damages. We have to carry the insurance to ensure that that happens, so --

Q.428 - Right. That is damages Rogers causes, right?

MR. ARMSTRONG: And damages that Disco causes to Rogers' equipment.

Q.429 - Okay. But if there is an accident and a court determines that the pole for example was planted too close to the roadway, there was some negligence involved in where the pole was located, the owner would absorb that liability, right, not the tenant?

MR. ARMSTRONG: The owner would absorb that liability.

Q.430 - Thank you. Rogers can't tell which of its individual subscribers are served by Disco facilities versus Aliant facilities, is that right?

MR. ARMSTRONG: Well, I think as I mentioned yesterday, I



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don't think that either Rogers or Disco or Aliant has a real handle on where Rogers -- which poles or who owns which poles Rogers' equipment is attached to.

And I think, as Mr. O'Hara said in his evidence and as we have said in ours, we are prepared to do an audit with Disco of all or a sample of the poles in New Brunswick to determine exactly which poles are which.

Q.431 - Now you say in your evidence that there is a \$21 increase in rates as between the rate Disco is seeking in this proceeding and the rate Rogers is seeking in this proceeding, right?

MR. ARMSTRONG: No. There is a \$21 increase between what Rogers is currently paying and what Disco is seeking in this proceeding.

Q.432 - That is the \$9.60?

MR. ARMSTRONG: That's correct.

Q.433 - Okay. And that is 95 cents per month if you spread it over every Rogers subscriber in New Brunswick?

MR. ARMSTRONG: Approximately, yes.

Q.434 - Okay. Now can you raise your prices for cable television subscription in New Brunswick?

MR. ARMSTRONG: Yes, we can.

Q.435 - And in fact I notice that as of today that is exactly what Rogers has done, right? It has raised its prices in

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New Brunswick and elsewhere?

MR. ARMSTRONG: I'm not sure on the date. But I believe that there is a price increase coming, yes.

Q.436 - Okay. Well, my information is that the price is going up today by about a dollar on basic service. I won't go into the digital cable prices.

Can you confirm for me that that is correct, basic cable is going up by a dollar?

MR. ARMSTRONG: I can confirm that for you. I can check into that. But that sounds correct.

Q.437 - Okay. Thank you. And that rate increase has nothing to do with poles, does it?

MR. ARMSTRONG: It has to do with the cost of doing business both here in New Brunswick and elsewhere.

Q.438 - Let me ask it another way. You are not anticipating this Board giving Disco a \$21 increase in the rate that has just gone up today?

MR. ARMSTRONG: No. That's correct.

Q.439 - Okay. What services can Rogers customers get over the facility supported by Disco's poles?

MR. ARMSTRONG: Presently Rogers customers can get digital - analog cable and digital cable and high-speed Internet.

Q.440 - And if over all those services the 95 cents per pole you have spoken about in your evidence is all passed on to

2 the customers, you would be able to collect that money from  
3 the customers, right?

4 MR. ARMSTRONG: I'm sorry?

5 Q.441 - If you added 95 cents to everybody's bill, Rogers bill  
6 in New Brunswick, they would pay it, right? That is not  
7 such a large charge that you would have trouble collecting  
8 the money?

9 MR. ARMSTRONG: Well, I think that the way that we look at  
10 rate increases is if we were to -- if you look at the cost  
11 for basic cable, which I suppose is in the neighborhood of  
12 \$26 today, a large -- a very significant portion of that  
13 is passed right through Rogers and into the service  
14 providers.

15 I would say in the neighborhood of 15 or \$16. So a dollar  
16 against the remaining \$20 is about a 5 percent increase in  
17 our operating cost. And I would say that's pretty  
18 significant.

19 We are also dealing with a very competitive environment  
20 here in New Brunswick. We have got Star Choice, a  
21 satellite provider. Bell Express View is a satellite  
22 provider.

23 We also have Aliant who has now applied for and in certain  
24 cities has received a terrestrial video distribution  
25 licence. So it's pretty important to Rogers

1  
2 that we are able to manage the costs that we have.

3 Q.442 - If this Board decides that the rate sought by Disco is  
4 a just and reasonable rate, you will agree with me I take  
5 it that the competitive pressures you face in the cable  
6 market should have no bearing on what Disco's pole  
7 attachment rate should be?

8 MR. ARMSTRONG: I'm not sure I follow your question.

9 Q.443 - If this Board says \$30.61 is just and reasonable or  
10 fair, I want to confirm with you that the fact that you  
11 face competition should not be a factor this Board should  
12 take into account in setting a rate?

13 MR. ARMSTRONG: I think what we are asking this Board to do  
14 is on the evidence find a just and reasonable rate for  
15 Rogers or for cable access to poles owned by Disco just as  
16 I expect that this Board will set a fair and reasonable  
17 rate increase for Disco in its electricity service.

18 Q.444 - So are you asking this Board to take into account  
19 communications competition policy factors in determining  
20 the pole attachment rate?

21 MR. ARMSTRONG: I think that this Board needs to take into  
22 consideration the factors that it needs to look at in  
23 order to come up with a just and reasonable rate. If this  
24 Board in its wisdom decides that it's positive for  
25 communications competition in this province, then that's

2 entirely up to the Board.

3 Q.445 - Subject to its jurisdiction, right?

4 MR. ARMSTRONG: Sure.

5 Q.446 - Thank you. Now, Dr. Ware, you have proposed a fully  
6 distributed costing model, is that right?

7 DR. WARE: Yes, that's correct.

8 Q.447 - And it's the same model as Mr. Ford proposed in his  
9 evidence?

10 DR. WARE: It yields the same percentage of the cost, the  
11 same 15.5 percentage allocation.

12 Q.448 - So do you disagree with how Mr. Ford made his  
13 calculation?

14 DR. WARE: No, I do not.

15 Q.449 - So I'm not sure why you are qualifying your answer.  
16 Is your model the same as Mr. Ford's or not?

17 DR. WARE: I'm qualifying my answer for exactly the same  
18 reason that I made the qualification in my presentation  
19 yesterday, which is that there is a distinction, but not a  
20 disagreement, between Mr. Ford's use of the term  
21 incremental cost and my use of the term incremental cost.

22 Q.450 - So it's just a terminology issue from your point of  
23 view?

24 DR. WARE: That's correct.

25 Q.451 - Okay. Thank you. Mr. Ford, do you agree that your

2 cost allocation model is a fully distributed costing model?

3 MR. FORD: Yes, I do.

4 Q.452 - And I think you told us yesterday that you testified  
5 in the joint use proceeding in front of the Ontario Energy  
6 Board, is that right?

7 MR. FORD: Yes, I did.

8 Q.453 - Now you told the Ontario Energy Board, didn't you,  
9 that a fully distributed costing model is not appropriate  
10 for pole attachment costing?

11 MR. FORD: I don't believe that's what I told them, sir.

12 Q.454 - Okay. Well let's take a look at your evidence. If I  
13 may, Mr. Chairman, we have got an excerpt from the Ontario  
14 Energy Board transcript.

15 CHAIRMAN: Have you shown that to counsel opposite?

16 MR. RUBY: We sent over the whole transcript.

17 MS. MILTON: No, you did not.

18 MR. RUBY: Pardon me. If I could just have a moment I will  
19 check with --

20 CHAIRMAN: All right. But I think it's appropriate that Ms.  
21 Milton has an opportunity to review that before you  
22 approach the Board with it.

23 MR. RUBY: Pardon me. It's my mistake. Ms. Roughneen has  
24 corrected me. What I would like to show the witness is

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the decision of the Board which has been referred to in the evidence.

CHAIRMAN: Well again share that with counsel opposite and I'm sure she will confirm --

MR. RUBY: It was in her evidence.

CHAIRMAN: All right. If that's it then refer to the evidence and have the witnesses look at it.

MR. RUBY: Right. We can do that or we have got the excerpt which may be easier instead of flipping through the binders.

CHAIRMAN: All right. I just don't want argument as to whether or not it is an appropriate excerpt or if it has been taken out of context.

MR. RUBY: We will get you the exhibit number so that there is no --

MR. FORD: Well if I could be of assistance here, it's RCC-1, Appendix C. It's the OEB decision and order RD 2003-249 dated March 7th 2005. That's the document that Mr. Ruby is referring to. Again that's RCC-1, evidence of Donald Ford, Appendix C.

MR. RUBY: Mr. Chairman, instead of wasting the Board's time, maybe we will sort this out and come back after a break and deal with this. My apologies.

Q.455 - Now, Mr. Ford, you mentioned in your evidence the FCC.

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MR. FORD: Yes, I did.

Q.456 - Can you tell the Board what that stands for?

MR. FORD: Federal Communications Commission, meaning the  
U.S. Federal Communications Commission.

Q.457 - And it with respect to joint use applies the U.S.  
Federal Telecommunications Act, is that right?

MR. FORD: That's my understanding, but I would just caution  
the Board that that's not a legal interpretation. But my  
understanding is the legislation under which they operate  
is -- for purposes of regulating pole access rates is that  
legislation, yes.

Q.458 - Now, Mr. Ford, do you have a copy of the transcript  
there from yesterday?

MR. FORD: No, I do not.

Q.459 - If you don't mind we are going to hand one up to you.

I have a couple of questions flowing from your evidence  
from yesterday. Can you turn to page 4776. Mr. Chairman,  
I'm not sure if the Board gets provided with the same  
transcript that we do?

CHAIRMAN: Yes, we do. This is day 50.

MR. RUBY: Do you have a copy of the transcript there?

CHAIRMAN: I do now.

MR. RUBY: Thank you, Mr. Chair.

CHAIRMAN: What was that page number again?



1 - 4901 - Cross by Mr. Ruby -

2 MR. RUBY: 4776.

3 MR. FORD: If I look back to the previous page I think this  
4 is Dr. Ware speaking on page 4776?

5 Q.460 - Yes. My -- let me double check but I think that's  
6 correct. It is. Sorry. Mr. Ford, if you could pass the  
7 transcript over to Dr. Ware I will pose the question to  
8 him. Now do you see at line 16 where you say, I would  
9 note that there is evidence on the record that all poles  
10 have been built with a two foot communication space with  
11 no consideration for possibly varying numbers in that  
12 space. You see that?

13 DR. WARE: Yes.

14 Q.461 - Now were you here when Mr. Tony O'Hara testified for  
15 Disco?

16 DR. WARE: Yes, I was.

17 Q.462 - Do you have a copy of the transcript from Mr. O'Hara's  
18 testimony?

19 DR. WARE: Not with me, no.

20 Q.463 - Okay. Well I'm going to give you a few pages I would  
21 like you to refer to. Mr. Chairman, we will provide it to  
22 the Board as well. Now if we can start at question 88,  
23 line 9 on that page.

24 MR. MACNUTT: Just for clarification, the citation and  
25 reference to the transcript you are now dealing with,

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would you give us the source of that?

CHAIRMAN: Mr. MacNutt, I'm sorry but I can't hear you.

MR. MACNUTT: I just wonder if Mr. Ruby could give us the date of the transcript and the reference to the extract he is now referring to.

MR. RUBY: January 24, 2006, page 3002.

MR. MACNUTT: Thank you.

Q.464 - And if we could start at question 88. Do you have that, Dr. Ware?

DR. WARE: Line 9.

Q.465 - Line 9.

DR. WARE: Yes.

Q.466 - So there you will agree with me that the answer to the question Mr. O'Hara says, "Since 1967 all joint use poles that we have put in the ground were designed to accommodate third party attachments."

Now I don't want to read you the whole thing but why don't you take a few seconds and just read questions 88, 89 and 90, and I will tell you in advance what my question is going to be. And it's simply going to be, do you agree with me that there is evidence on the record that joint use poles were designed to accommodate third party attachments?

DR. WARE: I wonder if I could just consult with the panel

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for a moment. Mr. Ruby, first of all, my comments in my presentation yesterday were derived to some degree from the statement by Mr. O'Hara in the response to interrogatory, that would be IR-4, where --

Q.467 - Well let's turn that up then if you are going to refer to it. Can you give us the reference, please?

DR. WARE: Yes. It's Exhibit A-68, Disco Rogers IR-4. And in response to question 2 -- the question, would the poles have been constructed with less than two feet of communication space if Aliant and Disco had decided to build poles to accommodate only the requirements of Disco and Aliant and no other communication service providers? And the answer given by Mr. O'Hara, the answer given here anyway, is that all Disco's joint use poles have been constructed to include two feet of communication space. No thought has ever been given to constructing joint use poles with a communication space of less than two feet. It's my understanding in consultation with my colleagues, and of course you are welcome to amplify with them on this point, is that the accommodation referred to here was not -- referred to by Mr. O'Hara in the transcript here is a combination for Aliant, that is, for the telecommunications attacher, and not for cable attachers, which is consistent with his response to the

2 interrogatory.

3 Q.468 - Well let's look at that. If the answer to question 2

4 -- you are pointing to the second sentence I take it as

5 the key sentence? I can read it to you. It's not very

6 long. No thought has ever been given to constructing

7 joint use poles with a communication space of less than

8 two feet. And your question in the interrogatory was to

9 assume that Disco's joint use poles were in fact

10 constructed with multiple users in mind.

11 So I put to you, sir, that drawing from that a conclusion

12 that Disco's poles were not designed with third party

13 attachment in mind is not correct?

14 DR. WARE: Well my statement was there is no evidence that

15 they constructed the communication space with third party

16 attachers in mind, and that seems to me consistent with

17 what you have just read.

18 Q.469 - Okay. Well taking into account the transcript, will

19 you now agree with me that Mr. O'Hara has given evidence

20 on exactly this point? We don't need to dwell on this.

21 If things have changed since the IR at the very least.

22 MS. MILTON: Mr. Chairman, there was a lot of cross-

23 examination on this point. So this is an excerpt from Mr.

24 O'Hara's direct. There was also cross examination on this

25 issue and I'm finding it a little bit difficult that you

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present a witness with a very excerpted piece of the transcript.

MR. RUBY: Well I have given him three pages. I have not tried to narrow it down. But if there is something else you would like to refer the witness to and maybe we can pick it up over the break, but --

CHAIRMAN: Yes. Why don't you take that up over the break.

Q.470 - Okay. Let me just see if we can make this easy, Dr. Ware. Would you agree with me that in light of the transcript, Mr. O'Hara's evidence that you were here for, that you will now agree that there is evidence on the point that yesterday you told the Board there was no evidence on? I mean you say no evidence, right?

DR. WARE: I'm willing to accept the reading of lines 13, 14 and 15 of the transcript as they are written in the sense that this is what Mr. O'Hara said.

Q.471 - All right. I won't spend more time on this. Can you turn to page 4796 of yesterday's transcript, please. Line 10 through 14. You have it there?

DR. WARE: Are you directing the question to me?

Q.472 - Yes.

DR. WARE: Okay.

Q.473 - Pardon me. This is Mr. Ford's evidence. So to Mr. Ford.

2 MR. FORD: Sorry. The reference again, page 4796, line --  
3 Q.474 - Lines 10 through 14. You say, it assumes -- and here  
4 you are talking about the fixture, taking the pole costs  
5 out of the fixture account or -- excuse me -- the power  
6 costs out of the fixture account --

7 MR. FORD: Correct.

8 Q.475 - -- granted it assumes that the installed cost of  
9 fixtures are proportional to the cost of the fixtures  
10 themselves. There is no evidence on the record that  
11 indicates that this is an inappropriate assumption.  
12 Right, that's what you said?

13 MR. FORD: That's correct. And I went on to say that I  
14 interpreted Mr. O'Hara's example and I said during cross  
15 examination -- I'm not sure if it was direct or cross  
16 examination -- of a simple pin was I didn't believe was  
17 evidence that this was an inappropriate assumption.

18 Q.476 - Okay. If you -- do you have -- if you go and look at  
19 the transcript from -- it's page 2983. It should be  
20 January 24th of this year. I can give you excerpts of it  
21 if you would like instead of flipping back looking for the  
22 transcript. We will do that.

23 I have given you a large excerpt but if you would flip to  
24 the conclusion at 2986, line 16, you will see Mr. O'Hara's  
25 conclusion. So drawing a conclusion that the

2 installation costs of all the materials in that account are  
3 proportionate to what the installed costs would be is  
4 incorrect. And if you put that right next to your page  
5 4796, these two are diametrically opposed, right? You say  
6 there is no evidence of this proportionality.

7 MR. FORD: I said there is no evidence to indicate that my  
8 assumption is inappropriate.

9 Q.477 - Right.

10 MR. FORD: And perhaps -- I was referring to factual  
11 evidence. I would regard that conclusion as opinion  
12 evidence and --

13 Q.478 - Right. And Mr. O'Hara was qualified as an expert,  
14 wasn't he?

15 MR. FORD: I believe he was.

16 Q.479 - Thank you. Mr. Ford, you say that the clearance --

17 MR. FORD: Perhaps I could just -- my colleague has reminded  
18 me that I think Mr. O'Hara was qualified as an expert on  
19 engineering but I'm not sure that it included the area of  
20 costing. And I guess the record will speak for itself on  
21 that.

22 Q.480 - Thank you. You say the clearance to be used for  
23 calculating the rate should be 17-and-a-quarter feet,  
24 right?

25 MR. FORD: That's correct.

2 Q.481 - From your point of view it's an assumption, right?

3 You are relying on other people's engineering and other  
4 data --

5 MR. FORD: I think we had this same discussion before the  
6 Ontario Energy Board, if I recall correctly. And what I  
7 indicated to you at that time and what my response is the  
8 same today, is that this is a space -- pole space model  
9 that represents a typical pole and was put forward by the  
10 industry in Ontario.

11 And so calling an assumption of mine, I have adopted a  
12 pole space model that has been used by the CRTC, put  
13 forward by the MEA to the CRTC, has been used by the  
14 MEARIE Group which represents a number of the electrical  
15 distributors in Ontario and was also accepted by the  
16 Ontario Energy Board as a typical pole. So I put it  
17 forward as a typical pole and -- on that basis, but it's -  
18 - i'm not sure I would characterize it as an assumption.

19 Q.482 - Okay. If this Board decides that the proper  
20 measurement in New Brunswick is something other than 17-  
21 and-a-quarter feet for clearance space, I take it you  
22 would agree that whatever the Board decides is the right  
23 number should be used in the rate calculation, right?

24 MR. FORD: Yes, of course.

25 Q.483 - The same thing for clearance space, right? 3.25 feet



1  
2 is what you say it is. If the Board decides it's something  
3 else -- it's whatever the New Brunswick number?

4 MR. FORD: Well again it's what I put forward and what I  
5 have used in my proportional space allocation model.

6 Q.484 - But if the Board decides it's a different number, you  
7 are content to use whatever number the Board decides is  
8 correct?

9 MR. FORD: I believe the Board is perfectly capable of  
10 making such a decision based on the evidence before it.

11 Q.485 - Mr. Lawrence, would you agree with me that Rogers  
12 sometimes lifts its drop wires into the communication  
13 space -- excuse me -- into the separation space?

14 MR. LAWRENCE: Yes. There are provisions to do that in the  
15 CSI standards. Also at this point, Mr. Ruby, you asked me  
16 to provide some information yesterday about the issue of  
17 separation. If you recall you asked me a question  
18 regarding new construction as opposed to existing  
19 construction?

20 Q.486 - Yes. Why don't you go ahead and do that now.

21 MR. LAWRENCE: I have that document, if you would like to  
22 have it entered as evidence.

23 Q.487 - Well tell you what. Does your counsel have a copy of  
24 it?

25 MR. LAWRENCE: No. You asked me about it yesterday and I

1 haven't had an opportunity to --

2 Q.488 - I asked you to refer to me in the evidence where you  
3 received that conclusion. If there is another document  
4 you would like to put in evidence why don't you give it to  
5 your counsel during the break and she and I can discuss  
6 whether it should be entered.  
7

8 MR. LAWRENCE: Okay.

9 Q.489 - Thank you.

10 MR. LAWRENCE: Sorry. What was your question again?

11 Q.490 - I think you have actually answered my question. Mr.  
12 Ford, in this proceeding Rogers is calculating a rate  
13 based only on height as the proxy factor for cost, is that  
14 right?

15 MR. FORD: I'm sorry, Mr. Ruby. I didn't understand your  
16 question.

17 Q.491 - In this proceeding height of the pole is being used as  
18 the proxy for cost?

19 MR. FORD: I didn't hear the word height. It's a pole space  
20 model. So the sharing of the cost is based on  
21 calculations that are based on an allocation of the  
22 typical 40-foot pole.

23 So to that extent yes, it would be based on the height of  
24 the various components.

25 Q.492 - The model you are using does not use strength of the

1  
2 pole for example as the basis for the calculation, right?

3 MR. FORD: No, sir, it does not. And I'm not aware -- I'm  
4 not aware that that has ever been done or in fact if it  
5 could be done. But --

6 Q.493 - Right. What we are doing with height is we are  
7 subsuming all the other factors into the height proxy?

8 MR. FORD: Well, again I would note that there is evidence  
9 on the record that as poles get taller and stronger and  
10 larger that the price per foot -- the cost per foot of the  
11 pole does go up. It is not a straight line. It is not an  
12 across the board, across the pole height.

13 But in using the typical 40-foot pole we are allocating  
14 the cost on the basis of the heights of the various  
15 components.

16 But in the costs themselves, in the net embedded costs, it  
17 is certainly our objective to include all poles, to  
18 include the cost of all poles regardless of how high or  
19 how short or how strong or, you know, whatever. It would  
20 be all of those costs.

21 Q.494 - The net embedded cost that Disco has put forward for  
22 its pole population is \$396, right?

23 MR. FORD: I believe that's correct.

24 Q.495 - Okay. And you have made reference in your evidence to  
25 the Nova Scotia net embedded cost, right?

2 MR. FORD: Yes, I did for comparison purposes.

3 Q.496 - Right. And that figure is between the Rogers proposed  
4 net embedded cost on one hand and the Disco \$396 cost,  
5 right?

6 MR. FORD: Well, you say the Rogers proposed. I believe  
7 it's based on a calculation on data put forward by Disco  
8 in a response to a question asking for costing information  
9 on all its poles subject to of course the modification  
10 that we made or I made to the cost of power-specific  
11 fixtures.

12 But it is all based on costing information that was put  
13 forward by Disco. Rogers does not have independent  
14 costing information for Disco's poles.

15 Q.497 - Thank you. Since you have compared the net embedded  
16 cost in New Brunswick to Nova Scotia, should we also be  
17 comparing the New Brunswick cost to the Ontario net  
18 embedded cost of \$478 that the Ontario Energy Board used?

19 MR. FORD: I put forward that information to the Ontario  
20 Energy Board because there was a dearth of information, of  
21 costing information from the industry itself.

22 I believe it was put on the record in Mr. O'Hara's  
23 evidence that the net embedded cost data that was put  
24 forward in Ontario was based on 6,788 poles owned by  
25 Milton Hydro. And I believe the date of the data was

1

2 about 1996.

3 So in making comparisons I believe it's more appropriate  
4 to deal with similar utilities. But we could certainly  
5 look at the number.

6 But I would just note that the data put forward -- and it  
7 was the only data available to me and to the Ontario  
8 Energy Board with the exception of an urban utility,  
9 Hamilton Hydro which also put forward some cost  
10 information.

11 I believe it's more appropriate to deal with similar  
12 utilities. And I would have to think that Nova Scotia  
13 Power and Disco would have a number of similarities.

14 Q.498 - Have you studied the similarities in operations and  
15 costs between the two utilities?

16 MR. FORD: No, sir. Just the fact that they both operate  
17 throughout the provinces, adjacent provinces, Nova Scotia  
18 and New Brunswick. And so it is not one small utility  
19 with 7,000 poles in Ontario.

20 It is a very large utility. I don't recall off the top of  
21 my head how many poles they have. But I know that they  
22 operate throughout the province of Nova Scotia.

23 Q.499 - Will you agree with me though that since you haven't  
24 studied the Nova Scotia system, and you pointed out some  
25 problems with the Ontario data, that for the purpose of

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this proceeding we should stick to the New Brunswick information that we do have in calculating a rate?

MR. FORD: Well, I guess when I'm looking at data my automatic response as an analyst is to say fine, that's the data we have, does it make sense, does it -- and I guess I would refer to it colloquially as a sanity check. And so I would look elsewhere to say is it comparable, should it be comparable? If there are differences do those differences make sense? And is there a reason for them.

And so I would be very reluctant at anytime to take a number in isolation without, as I say, using a sanity check to test its reasonableness.

Q.500 - Thank you. Mr. Ford, you have also recommended to the Board in this evidence that -- I always get this confused -- is it a 25 to 30 percent discount for service poles? Or do you only want to pay 25 to 30 percent on the regular pole rate?

MR. FORD: It is 25 to 33 percent of the full pole rate.

Q.501 - Right. So roughly 75 percent discount and 67 percent --

MR. FORD: 67 to 75 percent.

Q.502 - All right.

MR. FORD: That's correct.

2 Q.503 - I didn't see any math in your evidence calculating  
3 those two discount numbers. Did I miss it somewhere?

4 MR. FORD: No, sir. What I based that on was the experience  
5 of -- and I believe probably Mr. Armstrong can provide you  
6 with any additional details that might assist the Board in  
7 this area.

8 But what I based it on was very similar situations between  
9 Ontario and New Brunswick in terms of how the rate is  
10 established. The rate in Ontario, the full pole rate was  
11 determined through a costing procedure granted using a  
12 different sharing methodology.

13 But it included costing data -- at least purported to  
14 include costing data on all poles. There was no attempt  
15 to restrict that. Although I have indicated that I was  
16 less than satisfied perhaps with the quality of that data.

17 It was all that was available.

18 And following that a number of the electrical distributors  
19 in Ontario entered negotiations with respect to clearance  
20 poles and knowing full well that the full pole rate was  
21 based on all poles including clearance poles, or at least  
22 purported to be, intended to be. They still agreed to a  
23 discounted rate for service poles.

24 And prior to the most recent negotiations the practice was  
25 in Ontario -- I think a number of the electrical

2 distributors had agreed to rates at 25 percent of the full  
3 pole rate.

4 We know that across Canada telephone companies do not  
5 charge any rate at all. There is no charge. And the item  
6 in the tariff is quite specific for telephone companies,  
7 under the CRTC approved tariff there is no charge for  
8 service poles.

9 Q.504 - Okay.

10 MR. FORD: So it is a matter of negotiations as opposed to  
11 strictly speaking costing data. However, I did point out  
12 I think in my evidence that there is evidence on the  
13 record through Mr. O'Hara's -- and it's an indirect result  
14 of his calculations with respect to the elimination of  
15 power-specific fixtures. He looks at the cost of bare 30-  
16 foot poles and what I understood to be our definition of  
17 bare 40 and 45 and 50-foot poles.

18 And so there was some evidence that I referred to in my  
19 evidence to show that the cost of a 30-foot pole was  
20 significantly less.

21 I don't know if Mr. Armstrong wants to add anything with  
22 respect to -- to confirm the nature of the negotiations in  
23 Ontario. I know you went through with --

24  
25 Q.505 - We went through it with Mr. Armstrong yesterday. I  
26  
27 don't suggest we need to do that again.  
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- 4917 - Cross by Mr. Ruby -  
But just to unpack that slightly, make sure I understand,  
the Ontario Energy Board was not asked for and did not give  
the cable companies a discount for service poles, right?

MR. FORD: They were not asked to set a rate for service  
poles. And they did not set a rate for service poles. It  
was arrived at through negotiation.

Q.506 - All right. Now, sir, can you please turn up Appendix  
C to Mr. O'Hara's prefiled evidence? That is A-63, Mr.  
Chairman.

MR. FORD: I have it.

Q.507 - Thank you. Now let me confirm. As you understand,  
Mr. Ford, the costs for service poles are included in this  
chart, right?

MR. FORD: That is correct.

Q.508 - Okay. And --

CHAIRMAN: I'm sorry, Mr. Ruby. Where are we in A-63?

MR. RUBY: We are in Appendix C. It is the chart with the  
tiny little numbers.

MR. FORD: I should note that yes, some service poles would  
be included. But this is a truncated data set. It does  
not include data on all of Disco's poles.

Q.509 - Right.

MR. FORD: Presumably it doesn't include data on some  
service poles. And it doesn't include some data on full

1 - 4918 - Cross by Mr. Ruby -

2 distribution poles either.

3 Q.510 - I don't want to quibble over this. There is another  
4 version of this chart that goes back to 1967, right?

5 MR. FORD: That is in Appendix A-68, Appendix Q, yes.

6 Q.511 - And that would include all the service poles, right?

7 MR. FORD: I believe it would, sir.

8 Q.512 - Okay. So we have got the principle I think in common.

9 Let me just make sure I'm doing this right. For any  
10 given year, if I want to find out the average cost of the  
11 poles, I just have to divide the total book value by the  
12 number of poles shown on the chart for that year, is that  
13 right?

14 MR. FORD: Well, I think Rogers asked an Interrogatory. And  
15 I think that evidence -- the results of those calculations  
16 is on the record of this proceeding.

17 Q.513 - Right. I'm not asking for any particular numbers. I  
18 just want to make sure that if you use the costs from one  
19 line of this chart to get a per pole number, you have to  
20 divide by the number of poles shown on this chart as well?

21 MR. FORD: But at one point in my evidence I believe I noted  
22 we weren't looking to set a rate for an individual year.  
23 We were looking to set a rate for an average pole which  
24 should be based on the cost -- the average cost of all of  
25 Disco's distribution poles.

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Q.514 - I'm just trying to get the math right. For any given year, to get the per pole cost, you just divide by the number of poles in that year, right?

MR. FORD: You would take -- if you are looking at the embedded cost or the net embedded cost you would take the total of either the embedded cost or the cost less depreciation --

Q.515 - Right.

MR. FORD: -- and divide it by the number of poles.

Q.516 - And if you didn't want to do it by the per year you would do it by the totals on the bottom of the page, right? That would give you the total averages?

MR. FORD: You would do it by the totals which -- that's right. And it results in a weighted average if you do it with the totals.

You don't average -- you don't average the numbers in the last columns or in Appendix Q in the last columns. You do it by the totals at the bottom of the page which therefore gives you a weighted average.

Q.517 - If you can take a look at the column please that is under the number 27 1/2 percent. I think it is I. It is a bit hard to read on my copy. Do you see there it says 27 1/2 percent at the top of one column, column 9?

MR. FORD: Are you in Appendix C?

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Q.518 - I am.

MR. FORD: Because I'm afraid I don't find that in -- unless I'm --

Q.519 - Well, it goes on to say -- it is column 9, Fixture Book Value.

MR. FORD: Oh, mine doesn't have anything. It just says percent. There is no 27 in front of it. But if you are talking about column 9?

Q.520 - Yes.

MR. FORD: Yes.

Q.521 - All right. That is the column that is supposed to show the fixture value without pole-only -- or excuse me, power-only fixtures, right?

MR. FORD: Power-specific fixtures I think is the term we use, Mr. Ruby.

Q.522 - Sure.

MR. FORD: And I think that's what it -- that's my understanding of what it purports to show.

Q.523 - So columns -- that is fine. And it is the book value of the fixtures without -- power-specific fixtures that we need to remove -- sorry, I'm doing this wrong.

It is the fixture's account that we need to remove some percentage from to account for power-specific fixtures, right? We don't take 27 1/2 percent or I think

2 in your case it was 40 something percent out of any account  
3 except the fixture's account?

4 MR. FORD: Based on the data that was available to me,  
5 that's the approach I used. The percentage I determined  
6 was 45.4 percent of the fixtures was an estimate, the best  
7 estimate I could make of the cost of power-specific  
8 fixtures.

9 And therefore I reduced the book value of the dollar  
10 figure in the fixture's account by 45.4 percent.

11 Q.524 - Right. And that is what Disco did too. It reduced --  
12 different percentage but reduced the same account?

13 MR. FORD: That's my understanding of what they did.

14 Q.525 - Okay. So we have got some commonality there. Let's  
15 talk for a minute about the 27 1/2 percent number. That  
16 number, you will agree with me, represents the percentage  
17 increase from what I think Ms. Milton called the stick,  
18 that is the bare pole plus power-only fixtures, right?  
19 That is the difference?

20 MR. FORD: That's what I understood Mr. O'Hara to say in  
21 cross examination.

22 Q.526 - Okay. I just want to make sure we have the  
23 terminology right. You don't seem to agree on what a bare  
24 pole is?

25 MR. FORD: Well, there are other definitions of bare pole.

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But taking a stick in the ground which presumably wouldn't stand up on its own and adding power-specific fixtures would, according to Mr. O'Hara's calculation, yield a number of 27 -- an increase in cost of 27.2 percent. Now I would also note that I reconstructed the spreadsheet that Mr. O'Hara used. And as I indicated in my evidence, the second part of my evidence, Appendix C to that, that the 27.2 percent calculation is incorrect. It was done as -- based -- as a weighted average of percentages. And it should have been done as a weighted average of cost. And in fact the number should be about 34 percent.

Q.527 - You have put all this in an appendix, right, sir?

MR. FORD: I put that in an appendix because of the complexity of it. And I gave a simplified example to show that you can't properly calculate a weighted average increase in costs using percentage increases in costs when you start from a different base.

Q.528 - Right.

MR. FORD: So I redid the spreadsheet. And I calculated it using the cost numbers instead of percentage increases and came up with a larger number. Now I still don't accept the logic but I just want to make sure that the Board understands that I don't accept the number of 27.2 percent

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as a correct result of the calculation that Mr. O'Hara did.  
Q.529 - Okay. And that's all set out in your pre-filed  
evidence.

MR. FORD: That is set out in Appendix C to the second part  
of my evidence.

Q.530 - Can you take a look at IR-12. This is an appendix --

MR. FORD: Sorry. Is this Disco or Rogers' IR-12?

Q.531 - This is Disco and it would be Exhibit A-68, Disco's  
responses to Rogers, Appendix N, as in Nancy.

MR. FORD: Okay. I have the volume. I'm sorry. Could you  
give me the specific reference again?

Q.532 - Appendix N.

MR. FORD: Appendix N.

Q.533 - This is the list of fixture parts.

MR. FORD: Yes.

Q.534 - Now I take it you heard Mr. O'Hara say these are  
material costs?

MR. FORD: That's correct. And that was my understanding.

Q.535 - Okay. So there is no labour or overhead for example  
included in here, you would agree with that?

MR. FORD: There are no installation costs, I guess that --  
is that -- that's my understanding. These are the costs  
of the parts presumably drawn from Disco's books. This is

2 what they pay a supplier when they purchase each of these  
3 components.

4 Q.536 - Now you said in your evidence that you did the best  
5 you could with the available data, right?

6 MR. FORD: What I did say was that ideally we would have for  
7 every year the installed costs of perhaps -- the total  
8 installed costs of fixtures and the total installed costs  
9 of power specific fixtures. We don't have that. It would  
10 be nice if we could have that for one year. We don't have  
11 that. But what we do have is 12 months of parts usage,  
12 and parts meaning parts that are used when they are on the  
13 pole to become fixtures. And there is also a division of  
14 those -- into those that as I understand Appendix N does  
15 as we asked in the interrogatory, tell us which are power  
16 specific and which are not.

17 Q.537 - Right. Rogers did not ask for a list of fixture  
18 installed costs in the interrogatory process, did it?

19 MR. FORD: No, it did not.

20 Q.538 - You will agree with me I take it that labour would be  
21 a significant cost with respect to installing fixtures?

22 MR. FORD: It would be a cost I guess -- I don't have any  
23 basis for saying whether it would be significant cost or  
24 not.

25 Q.539 - Mr. Lawrence, would you agree that it's a significant



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cost?

MR. LAWRENCE: I honestly don't know what it is. So whether or not that's a significant cost I -- I mean it's difficult to determine.

Q.540 - Well then, Mr. Ford, would you agree with me generally speaking that if labour on the fixture items that are not power only is proportionately higher than the labour on power only fixtures, then the percentage that we are calculating goes down, the power only percentage?

MR. FORD: Well I guess what you are saying is if my assumption that the installed cost of fixtures is proportional to the cost of the fixture parts is not appropriate, then one would have to redo the calculation.

I can certainly -- I can certainly tell you that.

Q.541 - It's not just redoing the calculation. You would expect that if the labour costs turn out to be proportionately higher than the material cost, that affects the direction in which that percentage goes, right?

MR. FORD: Only if there was a difference in the proportion of labour to part costs for power specific versus non-power specific. And it could go either way. And I have no basis for saying which way it would be.

Q.542 - Thank you.

2 CHAIRMAN: Mr. Ruby, is this a good spot to take our break?

3 MR. RUBY: Yes. Thank you, Mr. Chair.

4 (Recess)

5 CHAIRMAN: Mr. Ruby, did you and Ms. Milton get some things  
6 straightened out.

7 MR. RUBY: We did. Thank you, Mr. Chairman. We did  
8 circulate in advance what was -- and I just, slip of the  
9 tongue, called it the wrong thing -- Mr. Ford's pre-filed  
10 evidence before the Ontario Energy Board, and we provided  
11 her with that entire set of evidence. What we have here  
12 is excerpts of it for the Board. So if we can hand that  
13 out, please.

14 CHAIRMAN: That should probably be given an exhibit number,  
15 Mr. Ruby.

16 MR. RUBY: Yes. Please.

17 CHAIRMAN: My records indicate this will be A-124.

18 MR. RUBY: Pardon me, Mr. Chair. Our records show A-75, but  
19 I stand to be corrected.

20 CHAIRMAN: Say that again.

21 MR. RUBY: My notes show that Dr. Mitchell's Power Point  
22 presentation slides were A-74.

23 CHAIRMAN: Yes. No. I'm marking this -- all right. My  
24 understanding is the piece of paper I have in front of me  
25 is part of Dr. -- or Mr. Ford's evidence before the OEB,

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is that correct?

MR. RUBY: It is, but it is being introduced by Disco.

CHAIRMAN: Yes. And the next exhibit number for the Applicant on my records is A-124.

MR. RUBY: Pardon me. I just misheard the number. My apologies.

CHAIRMAN: Okay. Anyway, it is A-124.

Q.543 - So, Mr. Ford, do you have a copy of the excerpts of your evidence?

MR. FORD: Yes, I do.

Q.544 - Okay. And I take it you will agree this is from the evidence you pre-filed with the Ontario Energy Board with respect to that joint pole matter we have been talking about?

MR. FORD: That's correct. And just to give it the context that I think it needs, Mr. Ruby, and I -- I don't believe --

Q.545 - Mr. Ford, before you give it context why don't you let me ask the question. I'm happy for you to provide context to the questions but context for the whole document might be a bit of overkill.

MR. FORD: No. I was only going to provide the context for the excerpt that you have highlighted here with a line actually.

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Q.546 - Okay. Well let's just do this first. Right before I had originally intended to introduce this we were talking about how your evidence to this Board is that the model you are proposing is a fully distributed costing model, right, and we agreed that that's what you were telling this Board.

MR. FORD: And I have been so advised in discussions with Dr. Ware.

Q.547 - Well even before Dr. Ware pre-filed evidence in this hearing that was your view, right, that this is a fully distributed costing model?

MR. FORD: That's why I would like to provide you with the context.

Q.548 - Okay.

CHAIRMAN: Go ahead, Mr. Ford.

MR. RUBY: Thank you.

MR. FORD: Thank you, Mr. Chairman. When I filed the evidence -- and I believe you did circulate a full copy of my evidence last Friday to parties -- I stated in characterizing the CRTC approach -- the proportionate use methodology that is -- I stated in my report that was entered in evidence, and this is at page 5, and perhaps I will just read it into the record because I don't believe -- it's not part of the excerpt you provided

2 here --

3 CHAIRMAN: Mr. Ford, help me out. When you entered it into  
4 evidence where, here?

5 MR. FORD: No. This is before the OEB.

6 CHAIRMAN: All right.

7 MR. FORD: I'm saying my report to the OEB -- and that  
8 portion is not included in the excerpt here, and therefore  
9 I will read into the record what I said at that time, and  
10 I said, for example in Decision 99-13, and that is CRTC  
11 Decision 99-13 which was the MEA decision, in rejecting  
12 the fully distributed costing approach proposed by the  
13 then Municipal Electrical Association the Commission  
14 stated that it was of the view that in determining the  
15 appropriate cost to be recovered from the cable companies  
16 it is important to consider that they do not have the  
17 rights of ownership of the pole. And I interpret that as  
18 saying -- the Commission saying that the proportionate use  
19 methodology was not a fully distributed costing  
20 methodology, and I so characterized it at other places in  
21 the evidence.

22 In an informal discussion after this proceeding was  
23 completed with economists retained by CCGA, they said, by  
24 the way your characterization of that proportionate use  
25 methodology as not being fully distributed is not correct.

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In fact it is. All of the costs are distributed.

And so you will note that in my evidence in this proceeding, I did not make reference to this methodology as not being a fully distributed costing methodology and in fact I was silent on that. But as I confirmed this morning on the record that is my understanding, that it is a fully distributed costing methodology.

As a matter of fact, when Dr. Ware was retained by Rogers to assist in this project, one of the first items we discussed was -- and I believe Dr. Ware can confirm this -- that the proportionate use methodology is a fully distributed costing methodology.

Q.549 - Thank you for clearing that up. That is exactly what I was hoping you would be able to help us with. Now, Mr. Ford, you listened I think to Mr. O'Hara's analysis of how he calculated his 27-and-a-half percent power specific reduction factor, right?

MR. FORD: Well I certainly reviewed the evidence that he filed on that point in response to interrogatories and, yes, I listened as carefully as I could to further explanations that were adduced during cross examination.

Q.550 - Okay. I don't want to go through it all again but I do want to make sure that we have hopefully some agreement on one point. Sticking just with the numbers for the

2 moment, will you agree with me that using whether it's

3 Appendix C or Appendix Q that we have referred to of the

4 evidence, if you take 27-and-a-half percent of just the

5 fixtures account out, that is numerically turns out to be

6 roughly the same as taking 15 percent out of all of the

7 installed pole costs?

8 MR. FORD: Mathematically that would be the result, but as I

9 indicated even I think earlier this morning, I do not

10 accept the 27.2 percent as being a correct mathematical

11 result of the calculation that he purported to do. And of

12 course, I went further in Appendix C to my evidence to say

13 that even that would not achieve what I believe Mr. O'Hara

14 purported that it would achieve.

15 Q.551 - Right.

16 MR. FORD: But yes, if you use the 27.2. percent you would -

17 - it would result in a reduction in the net embedded cost

18 of the pole by 15 percent, whereas in the methodology that

19 I used, it resulted in a reduction of 26 percent which is

20 essentially identical to the 28 percent that was found

21 reasonable by the Nova Scotia Board.

22 Q.552 - Right. And the total installed pole cost reduction

23 used by the Federal Communications Commission in the

24 United States is 15 percent, right?

25 MR. FORD: Again I should put that into context. Yes, they

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have a rule of thumb and they do not require a precise calculation. They have a rule of thumb that for power poles they deduct about 15 percent.

Now I should note as well that the allocation that is used by the FCC is only 7.4 percent of the capital carrying cost. It's not 15.5 percent or the much larger number that Disco would use. So that -- and the reason is that the FCC does not allocate any portion of the separation space to cable. They deal only with the one foot of space that is deemed to be used within the communication space.

They end up with rates that are in the range of \$4 to \$6, that's pole access rates in the range of \$4 to \$6 U.S. It's likely that for essentially relatively small amounts like that, it probably is not worth going to the effort of trying to isolate the cost of power specific fixtures. They use a rule of thumb. If the difference probably between 85 percent and 74 percent would probably result in something like a 50 cent or less difference in the rates, and therefore it's quite appropriate under those circumstances I would say to use a rule of thumb. But we are dealing with much larger numbers here. And I think it's also fair to say that both Mr. O'Hara and I have agreed in our evidence that it is far preferable to



2 use actual data as opposed to proxies whenever possible.

3 Q.553 - Thank you. You brought up the FCC in your original  
4 evidence, right, the 15 percent?

5 MR. FORD: No, sir. I don't believe it was in my original  
6 evidence. I think it was found in a report that I  
7 prepared for Rogers when I originally looked at the  
8 presentation that Disco had made to Rogers back in July of  
9 2004 and which was filed I believe as an interrogatory  
10 response by Rogers.

11 Q.554 - Well I think -- we will check that but I think you  
12 will find that it was filed as part of your evidence. But  
13 we will pick up on that.

14 MR. FORD: Perhaps -- well -- I'm sorry. You are correct.  
15 It is Appendix F to my evidence.

16 Q.555 - Thank you.

17 MR. FORD: I did provide the -- a copy of the July 13th,  
18 2004, Power Point presentation. However, my report was  
19 filed as an interrogatory response.

20 Q.556 - Thank you. The -- one last point to clear up on the  
21 FCC. The FCC's -- the pole attachment rates that it  
22 mandates are based on a statutory formula, isn't that  
23 right?

24 MR. FORD: I believe that there are upper and lower bounds.  
25 I don't believe that you will find the formula in the

1 statute. My recollection is that they are -- that the upper  
2 and lower limits -- the upper limit is the fully  
3 distributed cost, which would be the 7.4 percent of the  
4 annual capital carrying cost, the lower limit being what  
5 we have termed and what I have used here as short-run  
6 incremental cost, as long as it is between those two, and  
7 in fact they use the upper limit as the rate, but I would  
8 note that they do not add to that. They don't consider  
9 that just a contribution and add to that the incremental  
10 costs. They believe that because essentially the  
11 contribution exceeds the incremental cost, that that is  
12 the rate that is appropriate.

14 Q.557 - Well when you say they --

15 MR. FORD: I'm talking the FCC.

16 Q.558 - Right. And --

17 MR. FORD: And it's their interpretation --

18 Q.559 - Of the legislation?

19 MR. FORD: -- of the -- well the legislation is quite  
20 specific and I'm saying that the formula is based on the  
21 FCC's interpretation of the legislation. That is my  
22 understanding.

23 Q.560 - Thank you. One thing that has always confused me and  
24 maybe you can help me with. Capital carrying cost is not  
25 the same thing as profit, right?

2 MR. FORD: Not at all the same thing, sir.

3 Q.561 - Okay. So, Mr. Armstrong, when you say in your  
4 evidence that Disco reaps the returns from its pole  
5 assets, what you really mean is they recover a portion of  
6 their costs, right?

7 MR. ARMSTRONG: Can you just take me to the cite for that,  
8 please?

9 Q.562 - Sure. It's in your December evidence, RCC-3, question  
10 2, page 2. It's the last sentence of the first paragraph.

11 CHAIRMAN: RCC-3?

12 MR. RUBY: RCC-3, question 2, page 2. And this is Mr.  
13 Armstrong's evidence.

14 MR. ARMSTRONG: What I'm saying is that Disco has the  
15 ability to offer third parties access to the power space  
16 to provide -- or for power distribution, and Aliant has  
17 the right to offer the communication space to other  
18 communications users, subject to the right of either party  
19 to use their own space. And what I'm saying is that is  
20 the return that they can get.

21 Q.563 - Okay. So you are not saying that reap the returns  
22 means they make a profit?

23 MR. FORD: Perhaps I could assist here, Mr. Ruby. The --

24 Q.564 - Sorry. This is Mr. Armstrong's evidence. I'm happy

1  
2 to take yours as soon as he is done.

3 MR. ARMSTRONG: Well it may be that they could reap the  
4 profit.

5 Q.565 - Is anybody proposing to charge a profit margin? Is  
6 that your evidence?

7 MR. ARMSTRONG: No. My evidence -- what I'm saying is that  
8 there are other users that could be charged something  
9 completely different than what we are talking about here  
10 today. I'm not sure.

11 Q.566 - Okay.

12 MR. FORD: Perhaps I --

13 Q.567 - Please.

14 MR. FORD: -- do have something that perhaps might be  
15 helpful here. That there is -- in establishing the rates  
16 in the capital carrying cost, there is a return on capital  
17 portion, and that does represent a profit.

18 Q.568 - Sorry. I thought you just told me that capital  
19 carrying cost is not a profit.

20 MR. FORD: No, it is not. There is a profit included in it.  
21 The capital carrying cost includes interest costs and a  
22 return on capital. It's based on Disco's deemed capital  
23 structure. And so when the 9.9 percent that is applied to  
24 the net embedded cost, which we call a capital carrying  
25 cost, includes both an element of interest costs and

1 return on capital.

2 Q.569 - Okay. And you call that a profit?

3 MR. FORD: That definitely is a profit.

4 Q.570 - Okay. Thank you. Mr. Armstrong, does Rogers put out  
5 any money for the construction at the time of construction  
6 of a joint use pole?  
7

8 MR. ARMSTRONG: I think Mr. Lawrence would be better to  
9 answer that question than me.

10 Q.571 - Mr. Lawrence?

11 MR. LAWRENCE: If we are accessing a pole then we pay costs  
12 for constructing our facilities on that pole and permit  
13 costs for attaching our facilities to that pole.

14 Q.572 - Okay. If it costs \$1000 to build a brand new pole --  
15 just assume that for the moment with me. You don't  
16 contribute anything until you start paying an access rate,  
17 right? The owner pays it all?

18 MR. LAWRENCE: Well as a tenant we are assuming those costs  
19 will be built into the rate that we would be charged.

20 Q.573 - Right. But at the time the pole is built up front you  
21 pay nothing.

22 MR. LAWRENCE: As a tenant we would pay nothing, yes.

23 Q.574 - Thank you. Mr. Ford, turning to the maintenance costs  
24 for the moment, if this Board accepts that it should be  
25 using 41 years of cost data, you say I take it that the

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per pole maintenance cost should be \$13.53, do I have that right?

MR. FORD: I think it -- I would rather -- I could answer the question in the affirmative if the question were not based on 41 years or 40 years of cost data, but cost data that is representative of all Disco's poles. And I think it's simply that the Board should be dividing the budgeted maintenance costs over all of Disco's poles.

Q.575 - Okay. Let's make it easier. You want to use the numbers of poles in Appendix Q to -- it's to one of the IRs, Mr. Chairman. I will get you the exact reference for it in a moment. Mr. Ford, do you know which one I'm talking about?

MR. FORD: Yes, I do. And I would note that Appendix Q was put forward by Disco as a response to a question asking for costing data for all of Disco's poles that are currently in use. We did not ask for 41 years or 40 years worth of data. We asked for data on all of Disco's poles that are currently in use and what was provided was Appendix Q.

Q.576 - Which goes back 41 years.

MR. FORD: I'm not sure if it's 40 or 41, but -- and what again applying what I would refer to colloquially this morning as the sanity test, the total number of poles that

2 were included in that sample was essentially identical to  
3 numbers that the CEA put forward on behalf of Disco in the  
4 OEB proceeding, and it made sense to us that these pole  
5 counts were consistent.

6 MR. RUBY: Thank you, Mr. Ford. Mr. Chairman, the reference  
7 that I said I would give you is Disco Rogers IR-9 from  
8 December 16th, A-68. And it's Appendix Q to that IR  
9 response.

10 Q.577 - And, Mr. Ford, if the Board accepts that the pole  
11 numbers it should use are the pole numbers that are on  
12 Appendix C to Mr. O'Hara's evidence, exhibit A-63, will  
13 you agree with me that the proper maintenance cost, using  
14 the calculation of a rate, is \$14.88?

15 MR. FORD: I guess perhaps I could put it this way. If the  
16 Board believes that it is not appropriate to spread the  
17 maintenance costs over all of Disco's poles but to use a  
18 subset of that data being 32 years worth of data, then  
19 that would be the result. If in their wisdom they decide  
20 that, that would be the mathematical result, yes.

21 Q.578 - So leaving aside the characterization the math is  
22 right, right?

23 MR. FORD: I believe I confirmed that in preparing my  
24 evidence and in examining Disco's costing data. And if I  
25 find it's not correct I will so inform you and the Board.

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2 Q.579 - Thank you, Mr. Ford. Can you turn up your evidence

3 RCC-3 I believe? This is your second set of evidence in

4 December please, Question 8.

5 MR. FORD: That would be on page 5?

6 Q.580 - Yes. But if you could flip over to page 6?

7 MR. FORD: Yes, I have that.

8 Q.581 - Now you state in the first full sentence on page 6,

9 "Accordingly, if and only if Rogers' share of vegetation

10 managements costs is in the order of 15 percent of total

11 vegetation management costs per pole would I recommend

12 their inclusion in the pole access rate." Now have you

13 heard Mr. O'Hara's evidence on this point?

14 MR. FORD: I heard it. But I must say, Mr. Chairman, I

15 could not understand it. And I still do not understand

16 it.

17 Q.582 - Okay. Does Rogers accept -- let me put this as easily

18 as I can -- that this 15 percent of total vegetation

19 management costs has been met by Disco's \$8.39 vegetation

20 management rate?

21 MR. FORD: No, sir. I tried to understand in the

22 explanation. I reread it several times in the transcript.

23 I cannot understand mathematically how he arrived at that

24 conclusion.

25 Q.583 - Okay. Do you have any evidence showing that it is



1  
2 more than 15 percent of the total vegetation management cost  
3 per pole?

4 MR. FORD: I believe that is the conclusion I reached. And  
5 I guess it must be because I have come up with a figure of  
6 \$8.39, that is 15.5 percent. So --

7 Q.584 - Let me make this easier. Are you content to using the  
8 rate \$8.39 as part of the rate calculation in this  
9 hearing?

10 MR. FORD: I'm sorry? Could you repeat the question?

11 Q.585 - Disco says the vegetation portion of the rate is  
12 \$8.39, right?

13 MR. FORD: Yes.

14 Q.586 - Are you content to use that number in the calculation  
15 of the overall access rate to a joint use pole?

16 MR. FORD: As I noted in my evidence Rogers would -- and  
17 this is obviously Rogers' view, not my own -- Rogers would  
18 prefer to conduct and pay for its own vegetation  
19 management cost.

20 I believe that -- and just to let Mr. Armstrong confirm  
21 this -- that the \$8.39 figure represented 15 percent and  
22 was considered to be satisfactory. Mr. Armstrong can  
23 confirm that.

24 MR. ARMSTRONG: I believe that's correct.

25 Q.587 - Thank you. So if Rogers does not do its own

2 vegetation management -- and obviously Disco has taken  
3 evidence with that, and I won't go into it -- \$8.39 is the  
4 right number, right, Mr. Armstrong?

5 MR. ARMSTRONG: Yes.

6 MR. FORD: Perhaps -- and again I don't -- what we are  
7 including in the costs for allocation is \$8.39. That  
8 isn't 8.39 per pole that Rogers would pay for vegetation  
9 management.

10 I'm sorry. I began to realize that I think you were  
11 saying something slightly different than our  
12 understanding. So --

13 Q.588 - No. I was saying we have the same understanding. How  
14 is that?

15 MR. FORD: Good.

16 Q.589 - All right. Now, Mr. Ford, did you hear Mr. O'Hara's  
17 explanation of why he says, with respect to loss of  
18 productivity, two minutes per pole is two minutes over the  
19 entire joint use population?

20 MR. FORD: I heard him say that in direct examination. It  
21 certainly wasn't my understanding when I read the much  
22 talked about Interrogatory Response. And I think off the  
23 top of my head it's probably number 17 which dealt with  
24 that.

25 And I would point out that we asked in that

2 Interrogatory, Rogers asked for all of the working papers, all  
3 of the assumptions that were made in arriving at the rate.

4  
5 If in fact Mr. O'Hara had meant to say that the assumption  
6 was one hour per pole, then I think it would have been  
7 appropriate to say that. The number that he put in in the  
8 explanation was two minutes per pole.

9 And I did hear him say that it was two minutes average --  
10 I heard him say in direct evidence that it was two minutes  
11 averaged over all poles. That was not what I understood  
12 from the Interrogatory Response. And we certainly asked  
13 for a detailed response.

14 Q.590 - Having heard his explanation in oral testimony, do you  
15 now accept that the two minutes per pole was an average  
16 over the entire population, not just the poles that were  
17 being worked on?

18 MR. FORD: I heard him say that. But I find that  
19 explanation unsatisfactory. I don't find it realistic. I  
20 cannot believe that it would result in one hour per pole  
21 increase in cost to Disco to do its own work because of  
22 the presence of communications facilities.

23 Q.591 - Okay.

24 MR. FORD: And I explained -- I explained yesterday that BC  
25 Tel had put on the record of a decision -- or the

2 proceeding leading up to Decision 86-16 that two minutes per  
3 pole was what they incurred, what they had estimated.

4 Q.592 - That was in a CRTC proceeding, right?

5 MR. FORD: That was a CRTC proceeding. That's correct.

6 Q.593 - And the CRTC rejected that two-minute estimate, right?

7 They said it is higher?

8 MR. FORD: It's because Bell put in a higher number with  
9 some explanation in the decision, that I didn't really  
10 understand, that had to do with the fact that they  
11 operated in rear lots.

12 And I don't really understand that. But they used a  
13 number that was bigger. They actually used a number that  
14 I think was about 10 minutes or 11 minutes.

15 Q.594 - Okay. Thank you. Now, Mr. Ford, I think you said  
16 that you object to double time being used in the loss of  
17 productivity calculation, is that right?

18 MR. FORD: I think it was using exclusively double time. I  
19 certainly found it reasonable that some of -- and this is  
20 the part 2 calculation I think we are talking about here.

21 Q.595 - Yes.

22 MR. FORD: I found that it would be appropriate for part of  
23 it. But certainly not all of the callouts would be, you  
24 know, at overtime rates. And I note again the Chairman's  
25 comment at that time that you don't pay overtime to a

2 truck.

3 Q.596 - Mr. Lawrence, if a callout occurs after-hours, you  
4 would agree double time is appropriate to pay, right?

5 MR. LAWRENCE: In our company we would only pay time and a  
6 half for a callout.

7 Q.597 - If the union contract provides double time, double  
8 time is what you have to pay, right?

9 MR. LAWRENCE: Obviously --

10 MS. MILTON: With respect, I mean, Mr. Lawrence has no  
11 expertise though with contracts or union contracts. So I  
12 really think that that question is a bit misplaced.

13 Q.598 - Do you have any evidence, Mr. Lawrence, that if a  
14 callout occurs after-hours, Disco does pay double time to  
15 its employees for the work?

16 MR. LAWRENCE: Do I have any evidence to that?

17 Q.599 - Right. To the contrary?

18 MR. LAWRENCE: I have heard Mr. O'Hara state that.

19 Q.600 - Okay. But do you have any basis for disagreeing with  
20 him that that is the case?

21 MR. LAWRENCE: No. But I guess I have -- I certainly have  
22 disagreements with the fact that Rogers' facilities create  
23 a significant loss in productivity to Disco.

24 Q.601 - Okay.

25 MR. LAWRENCE: I mean, when you have Aliant already present

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on all these poles, a situation of someone in a joint use in the communications area already exists.

Q.602 - Right. And this is what Mr. Ford took us through yesterday I think. I'm just concerned with the rate for the moment.

If the callout occurs during the day, let's talk about for a minute what happens, all right. So first the crew gets a call right. That's how it works? You have to say yes or no unfortunately.

MR. LAWRENCE: Yes.

Q.603 - And the crew has to stop doing whatever it's doing, whatever other work it's doing, right?

MR. LAWRENCE: Yes. That situation exists within Rogers as well.

Q.604 - Right. And they have to make safe whatever pole or other facility they were working at the time they got the call?

MR. LAWRENCE: That same situation would exist within Rogers. You would be required to leave whatever work you were doing and go deal with whatever the situation is, if it is an emergency.

Q.605 - Well if somebody calls in and says there is a line down, you would characterize that as something that has to be responded to immediately, right?

1 - 4947 - Cross by Mr. Ruby -

2 MR. LAWRENCE: Well if service was off and if it was power  
3 related then I'm assuming that would probably be an  
4 emergency situation, yes.

5 Q.606 - Okay. Well if the customer calls Disco and says I  
6 have got a problem, there is a line down, Disco has to  
7 respond right away, right? There is no choice.

8 MR. LAWRENCE: I would think that Disco would ask questions  
9 about which line is down. I mean, the situation that you  
10 are actually going through right now occurs with Rogers as  
11 well. We get calls from -- and I guess I probably  
12 indicated that yesterday, we get calls from customers  
13 saying there is a line down, and sometimes they really do  
14 not know which line it is down.

15 Q.607 - Right. So you respond as if it's urgent?

16 MR. LAWRENCE: We respond -- probably the urgency of being  
17 cable out is probably not the same as having power out,  
18 but we respond as appropriate.

19 Q.608 - Right. But you expect Disco to respond right away.  
20 It's electricity --

21 MR. LAWRENCE: I have no -- I mean, I have no reason not to  
22 assume that they would respond right away in an emergency.

23 Q.609 - Okay. Let's go back using your practical expertise --  
24 or information I should say. You make the site safe and  
25 you take down all your equipment, right? That's what you

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do when you get a call?

MR. LAWRENCE: When we get a call?

Q.610 - When anybody who is working on a pole gets a line down call, you have told me it's the same thing for Rogers as for Disco?

MR. LAWRENCE: Yes. What I was getting at was we wouldn't necessarily characterize a line down on, you know, in cable perhaps under the same way that would be characterized --

Q.611 - Fair enough.

MR. LAWRENCE: -- with Disco. I mean, if it's down across a street or if it's impairing movement of traffic, then we would respond right away, yes.

Q.612 - The dispatcher tells the crew what to do and where to go, right?

MR. LAWRENCE: Yes, that's correct.

Q.613 - So then the crew has to either, assuming it's not right across the street, has to drive to the new location?

MR. LAWRENCE: Yes. That's exactly what we do. We would -- you know -- if we have crews in Saint John that are working in this area and we get a call that there is a cable down in Rothesay and that it's impeding traffic, then we would respond right away to correct that situation.



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2 Q.614 - And when you get to the new site you would set up all  
3 your equipment that you would need for the job, right?

4 MR. LAWRENCE: Yes.

5 Q.615 - And then you would do the work?

6 MR. LAWRENCE: Yes.

7 Q.616 - And you would have to take down all the equipment?

8 MR. LAWRENCE: Yes.

9 Q.617 - And you have to drive back to the first site?

10 MR. LAWRENCE: That's correct.

11 Q.618 - Set up all the equipment again?

12 MR. LAWRENCE: Exactly. We do that all the time.

13 Q.619 - Right. And get back to work. Now Mr. O'Hara says

14 that doing all that is the equivalent of extending the

15 hours of the day into overtime, would you agree with that?

16 That if you do all that stuff you have to extend the day

17 or do the work at another time?

18 MR. LAWRENCE: It's really difficult, Mr. Ruby, for me to

19 comment on practices that Disco uses to respond to, you

20 know, outages on their facilities.

21 Q.620 - When you say it's difficult it's because --

22 MR. LAWRENCE: I just don't know.

23 Q.621 - -- you don't work for Disco and you don't know?

24 MR. LAWRENCE: I don't know their internal policies and

25 practices as to how they respond to outages or lines down

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or non-emergency or emergency situations.

Q.622 - Can you please pull up slide 15, please, from your package from yesterday? Mr. Ford, I think it was you, but feel free to correct me.

MR. FORD: You are talking slide 15, productivity costs?

Q.623 - Yes, please.

MR. FORD: That's correct. I presented that.

Q.624 - Okay. Now the very first bullet reflects something that Mr. Lawrence said a moment ago about there being no incremental productivity cost to Rogers to access. I want you to imagine with me for a moment a joint use pole that has power and Rogers on it, just the two of them, okay?

MR. FORD: Fair enough.

Q.625 - It is fair to say that sometimes the power workers are going to have to climb over or pass through and around the Rogers' wire?

MR. FORD: I think we discussed yesterday that my lay person's observation there probably wasn't much climbing, but certainly a bucket truck, if it had to work on the back side of a pole or the power facility on the back side of the pole would have to -- would have to be cautious and therefore take a little extra time in passing under the cables.

Q.626 - Right.

2 MR. FORD: That would be the case whether -- you know, if  
3 there is anything in the communications space, whether  
4 it's Rogers or Aliant or both.

5 Q.627 - Well let's just imagine that we are just Rogers and  
6 power for the moment. We will get to Aliant in a minute.

7 MR. FORD: I think we have also discussed that there would  
8 be almost no occasions in the Province of New Brunswick  
9 where you would have Rogers but not Aliant in the  
10 communications space on a Disco pole.

11 Q.628 - I understand that and I will get to Aliant being there  
12 too, but we are going to compare the two, because you say  
13 there is no incremental cost, right. So we need to  
14 compare the two situations, that's right?

15 MR. FORD: That's fair enough.

16 Q.629 - Yes. And when you use a bucket truck, so even if you  
17 didn't climb the pole, once you are at the top if you want  
18 to bring equipment up you have to haul it up to the top of  
19 the pole somehow? Maybe, Mr. Lawrence, you can help us  
20 with that?

21 MR. LAWRENCE: You have to get the equipment -- yes, you  
22 have to bring equipment to the top of the pole.

23 Q.630 - And regardless whether you climb the pole or you use  
24 the bucket truck you have to be careful when whatever you  
25 are raising toward the top of the pole doesn't interfere

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with the Rogers' line, right?

MR. LAWRENCE: Yes. You would have to be careful that it doesn't interfere with any obstruction that there would be, either a tree or a Rogers' line or some impediment that may exist on the right-of-way.

Q.631 - Right. Now sticking with just power and Rogers on the pole, Mr. Lawrence, sometimes you get a non-outage call that will turn out to be a Rogers' wire is down, is that right? But if there is power, somebody calls there is a problem, it turns out to be your wire, right?

MR. LAWRENCE: Well again I would just -- I mean, we are dealing with a hypothetical situation. I mean, we do get situations where our wires go down where we don't characterize them as emergency situations and our dispatch would decide how quickly they would need to send somebody out. If there is any question we would certainly respond right away. The same way that we also get calls that NBTel wires are down and believe it or not occasionally we get calls that Disco wires are down.

Q.632 - And sometimes Disco gets calls that it turns your wire is down?

MR. LAWRENCE: That is what Mr. O'Hara has indicated in his evidence.

Q.633 - You would agree that that's likely, right?

2 MR. LAWRENCE: I think that probably is likely.

3 Q.634 - Okay.

4 MR. LAWRENCE: But I guess I would -- I mean, to be honest I  
5 would characterize some of this as costs that occurred in  
6 your business that you really can't -- I mean, when a  
7 customer calls you don't necessarily know what the -- you  
8 know, what the source of the problem is. I think all  
9 utilities including Aliant would treat this the same way.  
10 We would go to the site to try and determine what the  
11 problem is and deal with it.

12 Q.635 - Thank you. So, Mr. Ford, sticking with my just power  
13 and Rogers on the pole model, in that case if Disco goes  
14 out to a call and it turns out it's a Rogers' wire that's  
15 down, that would be a loss of productivity, right?

16 MR. FORD: That's correct. And I understand Mr. O'Hara has  
17 characterized that as part of the part 2 loss in  
18 productivity.

19 Q.636 - Right. And Rogers should pay for that, we are agreed  
20 on that?

21 MR. FORD: I think we are agreeable that any -- that a share  
22 of the loss in productivity should be included in the  
23 rate, yes.

24 Q.637 - Now if we had a just power and Aliant pole, no Rogers  
25 --

1  
2 MR. FORD: Right.

3 Q.638 - -- we would have the same situation. They should pay  
4 for the loss of productivity associated with a call that  
5 turns out to be their line, right?

6 MR. FORD: Well I'm not sure how that works in the case of  
7 the joint use agreement since there is no money actually  
8 changing hands. It's reciprocal access. But I understand  
9 that that has probably been taken into account. I'm not  
10 trying to be argumentative here. I just -- there isn't  
11 money changing hands, so it's perhaps a little more  
12 difficult.

13 Q.639 - I'm not asking you for how much, but in theory it  
14 should be what is good for Rogers is good for Aliant?

15 MR. FORD: Exactly.

16 Q.640 - Okay. Now you seem to say in the first bullet on  
17 slide 15 that if all three parties are on the pole Aliant  
18 should pay 100 percent?

19 MR. FORD: No, sir. No, sir. I'm not saying that. I'm  
20 saying that if both are in -- since Aliant is there first  
21 and is on all the poles, most of the loss in productivity  
22 would probably be caused by Aliant because in fact it's  
23 the presence of cables there at all that causes the loss  
24 in productivity.

25 But I'm also saying that we are not suggesting that it

2 should not be shared equally between the two users of the  
3 communication space. If we assume that there are two and  
4 that it should be divided equally between them.

5 Q.641 - It should be divided equally?

6 MR. FORD: That's correct. Even though it is not  
7 necessarily an incremental cost when Rogers is added to  
8 the pole. But we are not proposing that Aliant pay a  
9 larger share of that or it be accrued to them and that  
10 Rogers pay less.

11 Q.642 - Thank you.

12 MR. FORD: That is correct. There was an earlier suggestion  
13 based on information which has turned out I guess not to  
14 be valid, that there was an additional loss in  
15 productivity when Rogers was forced to go on the back side  
16 of the pole, and so in my earlier evidence I proposed a  
17 different split, but based on the responses to  
18 interrogatories that showed that was not a factor, I have  
19 now -- I suggest a 50/50 split.

20 MR. RUBY: Thank you, Mr. Ford. Mr. Chairman, there is one  
21 thing that we didn't do yesterday. We started to talk  
22 about a CRTC complaint that Rogers had made.

23 CHAIRMAN: You can talk about it as long as it doesn't have  
24 anything to do with sag.

25 MR. RUBY: I was about to say, sir, that I will promise not

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to talk about sag, but I have been practicing too long to  
promise anything.

All I want to do is introduce the document we were talking  
about, because I think we broke for lunch and I never came  
back to it.

CHAIRMAN: Certainly. Go ahead

MR. RUBY: So if we can do that. It has already been  
circulated. All we need is a number for it.

CHAIRMAN: Okay. Would you describe the document for the  
purpose of the record? I have in front of me a multipage  
document that is on Rogers Cable letterhead. It appears  
to be an application.

MR. RUBY: It is an application to the CRTC. I don't have  
the date in front of me. But I believe it is on the  
document.

CHAIRMAN: November 2, 2005.

MR. RUBY: And it is an application with respect to Aliant.

CHAIRMAN: Okay. And that will be given the number A-125.

MR. RUBY: Thank you, Mr. Chairman.

Q.643 - While we are on the subject of a little bit of  
housekeeping, Ms. Roughneen reminds me that Mr. Armstrong  
had said he was going to check to see if the rate  
chargeable to cable companies by Aliant before 1995 was  
still 9.16.



2 Mr. Armstrong, have you had a chance to do that?

3 MR. ARMSTRONG: Mr. Ruby, unfortunately I have not come up  
4 with any response to that.

5 Q.644 - All right. Thank you. We will hope that by the end  
6 of the day somebody gives you a call.

7 MR. ARMSTRONG: I will do my best.

8 MR. MACNUTT: Excuse me, Mr. Chairman. Is it possible for  
9 Mr. Ruby to provide the participants with a copy of A-125?

10 MR. RUBY: Yes. We will do that. I thought it had been  
11 done already. I'm sorry, Mr. MacNutt.

12 MS. MILTON: Perhaps I could canvass with the panel at  
13 lunchtime your question, Mr. Ruby, on rates prior to 1995.  
14 I have been avoiding talking to them. But if you don't  
15 mind I will do that. And we will see if we can get you  
16 something.

17 MR. RUBY: Sure. Thank you, Ms. Milton.

18 Ms. Roughneen is keeping me to a strict schedule to comply  
19 with all my comments on the housekeeping front.

20 Q.645 - Yesterday, Mr. Lawrence, I told you that we would come  
21 back and I would give you a particular document. And you  
22 had asked me for a reference with respect to separation  
23 space.

24 And I just wanted to tell you that it is table 24 of the  
25 CSA standard which is referenced in exhibit A-63,

2 Mr. O'Hara's original evidence.

3 So I told you I would give you the reference. So there it  
4 is. I'm not sure anything turns on it. Because we have  
5 spent an awful lot of time on that sag table. Oh, I said  
6 sag.

7 MR. LAWRENCE: Okay.

8 Q.646 - Okay. Dr. Ware, are you aware of the fact that  
9 economics journals are ranked by members of the economics  
10 community?

11 DR. WARE: Yes. I believe there are several methodologies  
12 out there of ranking economic journals. Of course like  
13 any exercise it has no value unless one states what the  
14 purpose of such a ranking is.

15 MR. RUBY: Mr. Chairman, we have circulated one such ranking  
16 from a journal. And I would like to introduce it and just  
17 ask Mr. Ware a question about it. And it has been  
18 precirculated to Ms. Milton.

19 CHAIRMAN: Well, I presume you will make it relevant to this  
20 proceeding, Mr. Ruby?

21 MR. RUBY: Absolutely.

22 Q.647 - Do you have a copy there, Dr. Ware?

23 DR. WARE: Yes, I do.

24 Q.648 - And you have seen this before, right?

25 DR. WARE: I'm not sure this is the one you circulated last

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2 Friday or --

3 Q.649 - It is.

4 CHAIRMAN: Let's just wait a minute until we get the exhibit  
5 number on it.

6 MR. RUBY: Pardon me.

7 CHAIRMAN: And my records indicate this should be RCC-6.

8 MS. MILTON: Actually I think it would be an A, wouldn't it?

9 CHAIRMAN: I beg your pardon. That is why you should never  
10 start until I have figured this all out.

11 And so therefore it is A-126.

12 MR. RUBY: Thank you, Mr. Chairman.

13 Q.650 - Dr. Ware, did you have a chance to look through Dr.

14 Mitchell's resume that has been file in this proceeding?

15 DR. WARE: Very briefly, yes. I didn't spend any time on  
16 it.

17 Q.651 - Okay. Well, I'm happy for you to do this by way of

18 undertaking. But can you just confirm to me that he has

19 published in the number 1 ranked journal, American  
20 Economic Review?

21 If you remember offhand that is fine. But you can do it  
22 later if you would like over a break.

23 DR. WARE: I don't remember that from his c.v. But I

24 wouldn't be surprised to learn. I'm happy to look at it  
25 now or look at it later.

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Q.652 - Why don't you look at it later. And you might as well check the number 2 one as well to see if he has published in that. And we will come back to it perhaps after lunch. Now Dr. Ware, in the last five years how many journals in the top 40, let's say on this list, have you published in?

DR. WARE: Well, obviously I would have to --

Q.653 - I'm happy for you to check over a break as well.

DR. WARE: -- check that. I'm not sure what the relevance of that question is.

CHAIRMAN: Do you have the entire article?

MR. RUBY: I will provide the entire article.

CHAIRMAN: Would you please? Thank you.

Q.654 - We will come back to that then after you have had a chance to look this over. But can you tell me -- I gather from your résumé that you have not published predominantly concerning cable television in any peer review journals?

DR. WARE: That would be -- I think that's correct, yes.

Q.655 - And no peer reviewed papers predominantly concerning costs analyses, is that right?

DR. WARE: You would have to define costs analyses more precisely.

Q.656 - The subject matter that you are giving evidence on?

DR. WARE: My mandate was to give evidence on the

1                   - 4961 - Cross by Mr. Ruby -

2 methodology for pricing for access to pole networks. And I

3       have published in the area of economic theory that is

4       relevant to that issue.

5 Q.657 - In peer review journals?

6       DR. WARE: Yes.

7 Q.658 - So we will see when you tell us about how they fall

8       into the ranking.

9       Turning to another subject, Dr. Ware, if each pole user

10      makes the same demand on a common resource, you say that

11      you should allocate the same amount to common cost to each

12      of those two users, is that correct?

13      DR. WARE: That would be consistent with a standard fully

14      distributed cost methodology.

15 Q.659 - Is that yes?

16      DR. WARE: I would have no problem with it. I mean, that is

17      consistent with what I have said here.

18 Q.660 - Thank you. Mr. Lawrence, Rogers just uses Disco's

19      wood poles, right?

20      MR. LAWRENCE: Sorry. Could you repeat?

21 Q.661 - Rogers just uses Disco's wood poles, right, as opposed

22      to steel?

23      MR. LAWRENCE: No. We actually have some facilities --

24 Q.662 - Oh, do you have them?

25      MR. LAWRENCE: -- on steel poles.

2 Q.663 - All right. Thank you.

3 MR. LAWRENCE: Very few. But there are some.

4 Q.664 - When you say "very few" is that a tenth of a percent?

5 MR. LAWRENCE: I --

6 Q.665 - My understanding is Disco doesn't have very many poles  
7 that aren't wood in the first place, so --

8 MR. LAWRENCE: Well, there is quite a few in Fredericton  
9 that go down some of the streets. There are probably --  
10 probably more, you know, within urban areas than there are  
11 in rural areas.

12 Q.666 - 1 percent, half a percent, quarter percent?

13 MR. LAWRENCE: Probably very small, yes, a half to one  
14 percent.

15 Q.667 - Okay. Thank you. Since what year have Rogers'  
16 predecessor cable companies been using Disco poles, Mr.  
17 Lawrence?

18 MR. LAWRENCE: Well, we -- the relationship between Rogers'  
19 predecessors and Disco -- I mean, our relationship was  
20 always with Aliant. So we do not discern between Disco  
21 poles and Aliant poles.

22 We -- as Mr. Armstrong has indicated, we would -- you  
23 know, we would make permit to Aliant. And then they would  
24 grant us that permit, so --

25 Q.668 - How long on joint use poles? Just to make it easier.

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MR. LAWRENCE: I'm assuming that we have used Disco poles since cable television facilities first started in New Brunswick.

Q.669 - When was that?

MR. LAWRENCE: Well, in Saint John it was 1974, '75. In Moncton it was 1976, '77. In Bathurst it was around 1978. In Miramichi it was 1978.

Q.670 - Fredericton?

MR. LAWRENCE: In Fredericton service was available earlier than that. It was -- it was not -- it was probably available in the late '60s in Fredericton. And in the Edmundston region, which is near the border, which is where some of the signals come in from, it was available even earlier than that. Some of the rural areas like Shediac, Grand Falls, some of the smaller systems received cable service later.

Q.671 - Would you agree with me, Mr. Lawrence, that poles, even if they are properly maintained, need to be replaced eventually?

MR. LAWRENCE: I would agree with that.

Q.672 - And so the pole population is constantly being renewed?

MR. LAWRENCE: There has been evidence here that states that that does actually happen, yes.

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Q.673 - And you would agree with that?

MR. LAWRENCE: Well, as we have said, I mean, eventually a pole will either -- it needs to be replaced. I think the question is, you know, what is that length of time. And you know, there are some poles that will last for a short period of time if they are damaged.

And then there is other poles which -- my understanding is if there is really nothing wrong with them, Disco does not replace them. So they could last 40, 50 -- 50 years or longer depending on whether or not they need to be replaced.

Q.674 - Right. And if something happened, some mishap, they might have to be replaced sooner, right?

MR. LAWRENCE: Yes.

Q.675 - Rogers has facilities on poles that have been replaced, right?

MR. LAWRENCE: Yes.

Q.676 - Dr. Ware, you have noted -- first of all, have you gone through the Aliant/Disco joint use agreements?

DR. WARE: Not in any detail, no.

Q.677 - But you have noted that the cost-sharing ratios have changed at least once over the course of the joint use relationship, right?

DR. WARE: I believe they changed in 1996 from 60 percent



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for Disco and 40 percent for Aliant to 57 percent to Disco and 43 percent to Aliant, which I would like to note is in the opposite direction that's predicted by Mr. Mitchell's theory.

Because of course that was around the same time at which Disco started receiving revenue from pole rental revenue from Rogers for the pole rental attachments.

Q.678 - When you draw that conclusion you are relying just on the fact of the change in revenue distribution, no other change in the relationship between Aliant and Disco at the time?

DR. WARE: Well, that's because you were asking me about a change in the revenue distribution. Yes. I mean, those are the only two variables that we are discussing.

Q.679 - Well, the record will speak for itself. But I was asking you about the change in the ratios, and maybe I wasn't specific enough, of the ownership. But do you know of any other factors that changed in 1996?

DR. WARE: I don't. I could refer the question to the panel if you think it would be helpful.

Q.680 - Well, no. I want to know -- in formulating your opinion you just expressed a conclusion about the inconsistency of Dr. Mitchell's model with the data or with the fact of the agreement.

2 I want to know if you relied on anything else except the  
3 change in ratio of the distribution of the third party  
4 access fee?

5 DR. WARE: No. I'm just relying on those two things.

6 Q.681 - Okay. Thank you. The change in the proportion of  
7 ownership applied to the old poles when it changed in 1996  
8 as well as the new poles, right?

9 DR. WARE: I have no detailed knowledge of that. But I  
10 presume ownership means ownership.

11 Q.682 - Of the whole pole population or at least the joint use  
12 pole population?

13 DR. WARE: That would be my presumption.

14 Q.683 - Okay. And doesn't that tell us that we should take a  
15 long-term view of cost allocation? That is what Aliant  
16 and Disco did?

17 DR. WARE: No, sir. It doesn't tell me anything. You  
18 haven't offered me an explanation of why that percentage  
19 changed. So it doesn't tell me anything about, you know,  
20 what the explanation was for it.

21 Q.684 - You don't find it instructive that -- sorry, let me  
22 put it another way. Changing the ownership proportions  
23 for the entire pole population is consistent with taking a  
24 long-term view of cost, isn't that right?

25 DR. WARE: No. I wouldn't agree with that, no.

2 Q.685 - Now electricity ratepayers pay for poles over time,  
3 right? They don't pay for them all at once, isn't that  
4 right?

5 DR. WARE: Electricity ratepayer pay rates. The question  
6 of, you know, what the cost methodology is, how those  
7 rates are -- that revenue is allocated towards cost, you  
8 know, is a cost allocation methodology issue.

9 Q.686 - Right. I see that. Can you turn to your evidence at  
10 paragraph 4? Let's see if that helps. This is Exhibit  
11 RCC-3, Dr. Ware's evidence, paragraph 4. And I would like  
12 to turn your attention to the second sentence, if I may.  
13 It starts, in the former case. Do you have it there?

14 DR. WARE: Yes, I have that.

15 Q.687 - And there you say, at the time of the entrance arrival  
16 the initial outlay -- this is the initial outlay for the  
17 poles, is that right? That's what you are talking about?

18 DR. WARE: I'm talking about the outlay for the pole network  
19 as a whole.

20 Q.688 - May have been returned to investors with a fair rate  
21 of return through regulated pricing. Now you say may have  
22 been. If with respect to the poles the initial outlay was  
23 not returned, should I take it from that that we should  
24 not use an ex-post analysis?

25 DR. WARE: No. I would -- I would argue that the issue

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there is a question of the appropriate level of capital contribution.

Q.689 - Well this is under the heading ex-ante cost allocation versus ex-post, right? Title number 3 on the same page, you see it there?

DR. WARE: That is the heading, yes. I have just given you my interpretation of the sentence.

Q.690 - All right. Let me put it the other way. If the initial outlay has not been returned, you would agree with me that we can use an ex-ante approach to cost allocation?

DR. WARE: No, I wouldn't. The issue that I am addressing in this sentence is an issue about whether or not the investors in a utility or in an essential utility have received a fair rate of return on their investment. It has nothing to do with ex-post/ex-ante in the sense that -  
- I'm taking it as a given that we have an ex-post -- we are in an ex-post situation here.

But suppose it were the case that the initial investors had not received a fair rate of return on their investment, then that might argue for a higher level of capital contribution in a particular case. But it has nothing to do with the ex-post issue. It's always ex-post.

Q.691 - Thank you. Now the costs that are being allocated in

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this proceeding are annual costs, right?

DR. WARE: Well you can express them that way. I mean that's one way of expressing them, yes.

Q.692 - So effectively if we haven't yet fully depreciated the pole it's not fully paid for yet by the ratepayers, right?

DR. WARE: That depends on the pole, of course. We have a whole population of poles.

Q.693 - Well across the population.

DR. WARE: Some are fully depreciated, some are not. Some are new, some are ten years old, 20 years old, 30 years old, 40 years old, 50 years old.

Q.694 - Well across the pole population.

DR. WARE: So we are looking at an asset for a facility which is being -- which depreciates and which is being capitalized over time. We expressed that as an annual rate.

Q.695 - Disco is seeking \$30.61 in this proceeding, right?

DR. WARE: I believe that's correct, yes.

Q.696 - If Rogers started paying Aliant \$30.61 per pole per year, roughly speaking the current proportion of cost division would be maintained as between Disco and Aliant, is that right?

DR. WARE: Sorry. I don't understand the question. Can you try to clarify?

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Q.697 - There is a cost sharing proportion between Disco and Aliant currently of 57.43, right?

DR. WARE: Okay.

Q.698 - If Disco gets paid more for access to its pole and Aliant still gets \$9.60, my understanding of your evidence is that -- I don't want to put too fine a point on it. There is a problem there of some kind, is that right?

DR. WARE: The question is if Disco gets \$30 and Aliant only gets \$9.60 there is a problem?

Q.699 - Is there a problem with the proportions all of a sudden?

DR. WARE: Well I don't know where the proportions came from in the first place. So obviously I don't know the answer to that. But I mean, I don't know what determined the proportions. But I mean the purpose of this hearing as I understand it is to design an appropriate rate for attachment to Disco poles.

Q.700 - We shouldn't worry about the Aliant side of this. That's not the role of any of us in this hearing, is that fair?

DR. WARE: It's not my understanding of what this hearing is about.

Q.701 - Thank you. Mr. Armstrong, if it turned out that Aliant wasn't satisfied with the 57/43 split for any

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2 reason, it could try and renegotiate its deal with Disco,  
3 right?

4 MR. ARMSTRONG: I believe so.

5 Q.702 - It could also go to the CRTC and ask for a higher pole  
6 attachment rate, try and get some more revenue, right?

7 MR. ARMSTRONG: Yes. That's open to Aliant.

8 Q.703 - Mr. Lawrence, let's look for a moment at stand alone  
9 poles.

10 CHAIRMAN: Mr. Ruby, rather than doing that why don't we all  
11 stand and take lunch and come back at quarter-after-one.

12 MR. RUBY: Thank you.

13 (Recess - 12:00 p.m. - 1:15 p.m.)

14 CHAIRMAN: Just a housekeeping item before we start. And  
15 that is concerning Friday. Dave Young is presently  
16 handing out a list of the people who have indicated that  
17 they want to make presentations.

18 And as you can see it is quite an extensive list. And I'm  
19 going to have to hold people to 15 minutes apiece. The  
20 Public Intervenor isn't here. But I will pass that word  
21 along to him as well.

22 You know, I have been asked if it is necessary to have the  
23 lawyers present. And I certainly don't encourage it.

24 Just because it is an Informal Intervenors day.

25 I hope that Disco has some folks here who will be able

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2 to chat with people if they have some problems that one might  
3 say are customer service policy related or something of  
4 that nature. Anyway, having said all of that, are you up  
5 to that, Ms. Clark?

6 MS. CLARK: I'm not sure if I am. But we will be sure  
7 someone can be.

8 CHAIRMAN: I think it is appropriate that you anticipate  
9 that we may get some like that. And it would be very  
10 helpful if there were someone here who could show them how  
11 to get in touch with the 1-800 number on the right basis  
12 and that sort of thing.

13 However, a good many of the people who have indicated they  
14 will come are corporations. And they are certainly not  
15 here on that basis.

16 However, if we do get more than are presently on the  
17 agenda, why we will set another time for the rest of the  
18 folks who want to talk to the Board. But we are filled up  
19 now. Okay. Any other preliminary matters from anyone?

20 If not --

21 MR. HASHEY: Not from us, Mr. Chair.

22 MR. RUBY: Mr. Chair, the only minor one is you had asked  
23 for a full copy of that ranking document?

24 CHAIRMAN: Yes. We only need one.

25 MR. RUBY: Well, unfortunately we have killed the tree



1  
2 already.

3 CHAIRMAN: The professor amongst us wanted to see the whole  
4 thing. It is good to know. I just hope that somebody is  
5 still producing the kind of paper we are using.  
6 Go ahead, Mr. Ruby.

7 MR. RUBY: All right. Thank you, sir.

8 Q.704 - Mr. Lawrence, earlier this morning your counsel  
9 mentioned that you had a document that you wanted to enter  
10 into evidence having something to do with separation  
11 space?

12 MR. LAWRENCE: This was based on a question that you asked  
13 me --

14 Q.705 - Right.

15 MR. LAWRENCE: -- yesterday, Mr. Ruby.

16 MR. RUBY: Okay. So I'm content, Mr. Chair, that that be  
17 put on the record.

18 MS. MILTON: We have copies. I wasn't going to interrupt  
19 the flow. So I had anticipated putting this in in  
20 redirect, so --

21 CHAIRMAN: Ms. Milton, we have had trouble hearing you. And  
22 as you remember the second day of your examination, why  
23 things were night and day. They were excellent. I think  
24 that we have slunk back to the first day again.

25 MS. MILTON: My apologies.

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CHAIRMAN: No problem. But I do want to hear what you have to say.

Q.706 - Mr. Lawrence, do you have a copy of the document there?

MR. LAWRENCE: I don't --

MS. MILTON: I was just saying, Mr. Chair, that we had copies. I had anticipated putting it in through redirect, not to interrupt the flow. But we will get the copies circulated now.

CHAIRMAN: Okay. Thank you, Ms. Milton. My records indicate this document will be RCC-6.

Q.707 - Mr. Lawrence, if two standards apply to Rogers --

CHAIRMAN: Just hold on a second till we are finished with all our scribing up here.

MR. RUBY: Oh, thank you. Pardon me, Mr. Chair?

CHAIRMAN: Okay. Go ahead, sir.

Q.708 - Thank you. Mr. Lawrence, if Rogers has two standards that it has to meet one higher than the other related to the same subject matter, by meeting the higher one you will agree with me it automatically meets the lower one, right?

MR. LAWRENCE: Well where this comes from, Mr. Ruby, was yesterday you had asked me based on some of my evidence where I had indicated that there was a standard that

2 allowed for I believe it was one meter of space, or sorry, 40  
3 inches of space -- one meter of space separation, and you  
4 had asked me where I got that number from.

5 And this is what this is basically dealing with is the  
6 fact that there are standards which are alluded to in the  
7 joint user manual between existing construction and new  
8 construction. So what appears to have happened is some  
9 time in the past between Disco and Aliant you have moved  
10 to higher standards.

11 So the point I was making was that there is a very large  
12 base of embedded or already existing structures out there  
13 that would have been built to the existing standard as  
14 opposed to the new standard.

15 Q.709 - And I appreciate you answering my question from  
16 yesterday, but I have got a new one for today, which is if  
17 Rogers has to meet two standards on the same subject, by  
18 meeting the higher one it automatically meets the lower  
19 one, right?

20 MR. LAWRENCE: Well I don't see where we have to meet two  
21 standards. We have a standard which -- you have one which  
22 is at 40 inches and you have a new standard which is at 48  
23 inches. So if we are building new structures they would  
24 meet the new standard.

25 Q.710 - All right.

1 - 4976 - Cross by Mr. Ruby -

2 MR. LAWRENCE: I guess that's what I -- I'm not sure I  
3 answered your question.

4 Q.711 - All right. Let's try this a different way. If you  
5 look on page RCC-6, do you see notes at the bottom?

6 MR. LAWRENCE: Yes, I do.

7 Q.712 - Do you see note number 2?

8 MR. LAWRENCE: Yes.

9 Q.713 - The second sentence reads, the minimum separations  
10 must allow the mid span separation as outlined by figure  
11 14 and figure 15 of the joint use manual. Do you see that  
12 there?

13 MR. LAWRENCE: Yes, I do.

14 Q.714 - So under this particular page or standard it's telling  
15 you you have to meet the joint use manual standard, right?

16 MR. LAWRENCE: It's telling you that you have to meet the  
17 CSA standard, yes.

18 Q.715 - Right. And if you take a look at figure 14 for me in  
19 the CSA standard, that's Exhibit -- sorry, the joint use  
20 manual, pardon me -- we have got that page excerpted in  
21 Mr. O'Hara's evidence which is Exhibit A-63. It's Mr.  
22 O'Hara's evidence, A-63, Appendix H.

23 MR. LAWRENCE: I have it.

24 Q.716 - This is the same standard that comes to 1.2 meters as  
25 the minimum, right? You see the little chart

2 three/quarters of the way down the page.

3 MS. MILTON: Sorry, Mr. Ruby. I'm looking at that page and  
4 it appears to be a different page number from the ones  
5 referenced here. Am I missing something? I see 269 on  
6 that page.

7 MR. RUBY: I don't know why the page numbers read what they  
8 do but the figures are certainly right, the figure numbers  
9 are 14.

10 MS. MILTON: Is there a figure number on that page?

11 MR. RUBY: It says figure 14, and at the bottom of page 269  
12 and Appendix H it says figure 14. Do you see that there,  
13 Mr. Lawrence?

14 MR. LAWRENCE: Yes, I do.

15 Q.717 - So you will agree with me that RCC-6 tells you you  
16 have to follow the standard at Exhibit H -- pardon me --  
17 Appendix H.

18 MR. LAWRENCE: Mr. Ruby, the point I'm making is what you  
19 have in exhibit H is for new construction. If you look at  
20 what we just put on the table and you look at the top of  
21 the sheet you will see that there is no difference on the  
22 minimum standards for existing construction, that it's not  
23 dependent upon span length at all.

24 Q.718 - But what I'm asking you is to look at the note, and  
25 the note says that you have to meet the minimum

2 separations mid span according to figure 14, right? That's  
3 what Rogers needs to do?

4 MR. LAWRENCE: Yes, that's correct.

5 Q.719 - Thank you. Panel, if you wouldn't mind pulling out  
6 the transcript from yesterday. I have a few remaining  
7 questions flowing from it. Do you only have one copy up  
8 there or more? All right. Dr. Ware, maybe we could ask  
9 you to start with it on page 4777.

10 DR. WARE: I have that page.

11 Q.720 - And if we can look at line 13 through 15, now ex-post  
12 pricing to an essential facility can be priced efficiently  
13 priced at incremental cost plus some contribution to  
14 common cost. So are you saying here, Dr. Ware, that there  
15 is some incremental cost associated with Rogers being on  
16 the poles?

17 DR. WARE: The phrase that I used there I believe appears in  
18 my report that was filed in evidence. And I'm saying -- I  
19 was saying yesterday in my presentation exactly what I was  
20 saying in my report, which is that it's appropriate to --  
21 well what it says here, that it's appropriate to price the  
22 attachment at incremental cost plus a contribution to  
23 common cost. And I then explained in my presentation  
24 yesterday that my interpretation of incremental cost is  
25 what I call long-run incremental cost where I attribute

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the capital cost of the part of the usable section of the pole that is occupied by -- or deemed to be occupied by Rogers as being part of incremental cost, which is the long-run incremental cost concept.

Q.721 - Well, Dr. Ware, that's what confused me. If you turn to page 4785 of the transcript at line 17, you say, there are no incremental capital costs in addition to those incurred by the incumbent which are created by Rogers attachment to these poles. And then you go on to say, thus there is no vacancy. So are you including incremental costs from Rogers capital costs or not?

DR. WARE: I'm sorry. Could you repeat the question?

Q.722 - Well you just told us that you use in the calculation incremental capital cost from Rogers, but here you say there are no incremental capital costs from Rogers. Can you explain that?

DR. WARE: What I'm saying in this sentence here is that the -- there is no incremental cost. Once the pole is built there is no incremental cost other than the attachment cost, the direct cost of attachment to Rogers cable being attached to the pole.

Q.723 - But there are incremental capital costs associated with Rogers' use of the pole?

DR. WARE: Using the approach that I described in my report

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2 I would attribute a long-run incremental cost corresponding to  
3 the -- as I said the space occupied by Rogers on the pole  
4 plus whatever allocation of the separation space that is  
5 deemed appropriate.

6 Q.724 - Is that yes?

7 DR. WARE: No.

8 Q.725 - Okay. I will do this again. There are no incremental  
9 capital costs? Are there no incremental capital costs  
10 created by Rogers?

11 DR. WARE: Well --

12 Q.726 - You have told me -- you have explained the details but  
13 you don't seem to want to tell me if the word no shouldn't  
14 be in there. Should it say there are incremental capital  
15 costs?

16 DR. WARE: Well I -- in some sense I think I was answering a  
17 different question when I --

18 Q.727 - Well this is your direct examination.

19 DR. WARE: -- made that statement.

20 Q.728 - There is no question here.

21 DR. WARE: Okay. So what is the question?

22 Q.729 - No, no. You were doing direct examination here. You  
23 made a presentation.

24 DR. WARE: Right.

25 Q.730 - Doctor, I'm not really trying to be difficult here.



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DR. WARE: Right.

Q.731 - What I want to know is in other parts of the transcript --

DR. WARE: Okay.

Q.732 - -- you say there, here you say there are no. I just want to know which one is a mistake.

DR. WARE: I think it's consistent to say that I'm using the sense of incremental cost here in a short-run sense on this page of the transcript.

Q.733 - So you have switched definitions?

DR. WARE: So there were no short-run incremental costs.

Q.734 - Should I take it all your other evidence concerns long-term incremental --

DR. WARE: That's right.

Q.735 - -- and this is the only place you have switch definitions?

DR. WARE: That's correct.

Q.736 - All right. And I notice that the conclusion you draw from this is you say right after that, thus there is no vacancy. Would you agree with me that if there are incremental capital costs, there would be a vacancy risk?

DR. WARE: No.

Q.737 - But you tie the two together, don't you? You say thus.

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DR. WARE: But I say there is no vacancy because the poles were built to the specifications of a single power attacher and a single communications attacher. That's my understanding, anyway. And the design, the planning, the costing of that pole network was built on that basis. So that to describe the fact that most of those poles don't have a Rogers cable attached them as a vacancy I don't think is correct.

Q.738 - I don't think that's what you say in that paragraph, but I will pass on. Can you go back to page 4779. Do you have it there?

DR. WARE: Yes, I do.

Q.739 - You gave three examples here of a gas pipeline, electric transmission line and a local telephone switch, right?

DR. WARE: That's correct, yes.

Q.740 - And the subject you were trying to deal with here was the allocation of common costs, right --

DR. WARE: That's correct.

Q.741 - -- in these examples? Now for gas pipelines if long-term users' gas consumption increases, the common pipe they use would also increase, right?

DR. WARE: I'm sorry.

Q.742 - If the users of the common pipeline over the long-term

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2 start using more gas, more consumption, you need a bigger  
3 pipe, right, over the long-term?

4 DR. WARE: Not necessarily, no, because that would depend on  
5 the capacity with which the original pipe was built.

6 Q.743 - But over the long-term you would agree with me that  
7 nobody builds capacity to last forever. Eventually you  
8 need to expand the pipe, right?

9 DR. WARE: I'm not aware of any examples of a pipe, an  
10 existing pipeline having its capacity expanded. Perhaps  
11 you can point me to one.

12 Q.744 - Do you do work at the National Energy Board?

13 DR. WARE: No, I do not.

14 Q.745 - All right. And they are the ones that regulate gas  
15 pipelines, right?

16 DR. WARE: Just to clarify. Pipelines are built obviously  
17 with a flexible amount of capacity. I mean, you can run a  
18 lot of gas or not very much gas down a pipeline. And you  
19 can vary the volume of gas that goes through the pipe by  
20 varying the speed at which it goes through the pipe  
21 without changing the size of the pipe.

22 Q.746 - Right. But eventually people need gas at some certain  
23 flow and you might have to expand the pipe, right?

24 DR. WARE: It's hypothetically possible.

25 Q.747 - All right. Let's look at transmission lines. Same

1  
2 thing. Eventually we all know that transmission lines need to  
3 be upgraded, right, as consumption increases?

4 DR. WARE: It's possible.

5 Q.748 - Okay. Let's look at a telephone switch. Over the  
6 long-term you may have to upgrade a local telephone switch  
7 if use of the switch increases, right?

8 DR. WARE: If you hit a capacity, I mean with any facility,  
9 if the demands on that facility exceed its capacity, you  
10 might have to upgrade it.

11 Q.749 - Thank you. Can you turn over to the next page,  
12 please, 4780. Now you say at line 4, power users require  
13 more space and sturdier taller poles.

14 Now when you say power users require more space, you mean  
15 they require more space at the top of the pole, right?

16 DR. WARE: More space on the pole.

17 Q.750 - Well the buried portion doesn't change, right, on a 40  
18 foot typical pole?

19 DR. WARE: It depends precisely what you are saying, but if  
20 you are saying in terms of the stand alone costs it is  
21 possible that the buried portion would change with  
22 different users.

23 Q.751 - Well when you say power users require more space what  
24 are you talking about?

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2 DR. WARE: I'm talking about simply the amount of space that  
3 is allocated on a 40 foot pole.

4 Q.752 - On a joint use 40 foot pole?

5 DR. WARE: Yes.

6 Q.753 - Okay. And then you say, and sturdier taller poles.

7 So sturdier -- you will agree with me there is no evidence  
8 on the record with how sturdy poles are?

9 DR. WARE: Well I won't agree with that, no. I believe that  
10 there is some evidence on the record that power users do  
11 require sturdier poles.

12 Q.754 - Okay. Where is that?

13 DR. WARE: Well I would have to consult with my Panel and  
14 see if we could --

15 Q.755 - Okay. Well I see Mr. Ford reaching behind him. Why  
16 don't we keep going and maybe we will come back to it.  
17 Now it's true that if you add communication space to a  
18 power only pole you have to increase the height of the  
19 pole, right?

20 DR. WARE: Well you have to give me a little more  
21 information than that. If you are saying you take -- if  
22 you want to add a communications space and a separation  
23 space to a power only pole, then by definition you are  
24 going to make it taller.

25 Q.756 - Can you flip over, please, to page 4785? Pardon me.

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2 We have looked at this one already. 4794. And, Mr. Ford, I  
3 think this is your evidence, isn't it, about the 82 year  
4 old man? Do you have a copy of the transcript there? So,  
5 Mr. Ford, 4794, please, at the part --

6 MR. FORD: Yes, I have it.

7 Q.757 - Okay. The paragraph starting with line 5, that was  
8 your evidence about the 82 year old man, right?

9 MR. FORD: Well I think it was -- it dealt with average life  
10 expectancy for a New Brunswicker and I picked the number  
11 out of the air and said if the statisticians gave us a  
12 figure of 82 years, and that was my analogy or my example.

13 Q.758 - Okay. What you are dealing with here really is human  
14 capital, right? You are looking at -- to make it  
15 analogous to the pole example it's not income that  
16 matters, it's the cost, the capital cost, right?

17 MR. FORD: We are looking at age and we are looking at a  
18 number that is associated with that, whether it be a  
19 person or whether it be a pole.

20 In the case of a person I have used income, in the case of  
21 a pole we are using cost.

22 Q.759 - Okay. Well let's see if we can come up with a common  
23 example we can both agree with. If we look at the 82 year  
24 old but look at historical cost of food, clothing, the  
25 costs of the person living. If someone dies at age 40 you

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lose some of that capital investment in their lives, right?

MR. FORD: I don't think I have quite looked at things that way before. All I was trying to do in my analogy was calculate the average income of New Brunswickers. It didn't have -- there were no -- I wasn't looking at investments or money that had been spent.

Q.760 - You weren't trying to equate cost of poles to cost of person's investment in that --

MR. FORD: I was just showing that I believed it was appropriate to include all New Brunswickers the same way it's appropriate to include all of Disco's poles that it currently has in use, and that was a simple example that I was trying to give.

Q.761 - All right. A simple example explains what is going on here. But if we look at -- another way. If we look at the data set you have chosen, average annual income. You have assumed, haven't you, that the decision maker has a perfect data set knowing the exact income of each person in this population, right?

MR. FORD: Not necessarily. It could be done on a statistical basis by choosing a certain sample, at which point then there is an statistical error involved. If you had the facilities, were doing 100 percent of the

2 population, then you would have exact numbers, yes.

3 Q.762 - Right. And if you did it on a statistical basis then  
4 one way of doing it would be to look at the average  
5 expectancy of people's lives. That would be one of the  
6 statistical mechanisms?

7 MR. FORD: No. I'm saying -- no. I think what you would be  
8 doing would be to compose your sample on a statistically  
9 valid basis. Now I'm not a statistician and I don't put  
10 myself forward as an expert in this area, but I'm  
11 generally aware that if you are sampling you design a  
12 sample in a very specific way that you believe is  
13 representative, and then to account for the potential that  
14 the sample isn't totally representative, you assign some  
15 statistical -- I guess it's a range of confidence levels I  
16 think is the term that's used.

17 Q.763 - All right. That's fine. If it's outside your range  
18 of expertise I will go on. If you go on to page 4795, you  
19 give your \$10,000 car example, right?

20 MR. FORD: Yes, sir.

21 Q.764 - And the numbers you put in here, these are just round  
22 numbers you have chosen at random, right?

23 MR. FORD: Exactly, sir.

24 Q.765 - So if we change your example a little bit and we say -  
25 - and I'm at line 16 at page 4795. If we say a basic car



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costs \$10,000, and now it's \$10,000 for the total additional cost of all accessories including air conditioning. So 10,000 for the car, 10,000 for the air conditioning. Are you with me so far?

MR. FORD: Fair enough.

Q.766 - So it's 10' instead of 5,000. If you go down to line 25, following your example. The dealer calls you and tells you he is increasing -- or it's a 10 percent increase to get air conditioning, right?

MR. FORD: Sorry. I'm --

Q.767 - I'm just following along, 25 --

MR. FORD: No. Line 25 is blank on this --

Q.768 - Pardon me. It's line 23. The dealer calls the factory and the engineer says installing an air conditioner increases the cost of the basic car. So there you are increasing the cost by \$1,000, right?

MR. FORD: Correct.

Q.769 - Now if all the accessories cost \$10,000 and if you flip over to your next page, the dealer comes back to you and says, well I'm going to take 10 percent off the total cost of the accessories, that's still \$1,000, right?

MR. FORD: That's correct.

Q.770 - If the car and the accessories cost the same thing it doesn't matter whether you take 10 percent -- you gross up

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10 percent or take 10 percent down, right?

MR. FORD: I could do the calculation and say but if the car costs \$20,000 and the accessories cost \$5,000, presumably the calculation would have yielded five percent.

Q.771 - Right. The point I am trying to make is that proportions matter, don't they, the proportion between the cost of the car and the cost of the accessories?

MR. FORD: No, they do not. And the point is that the cost -- what I was attempting to show here is the cost of the basic car has nothing whatsoever to do with how you desegregate the accessories account, if we term it that, or the fixtures account. Including the cost of the pole in that calculation renders it totally invalid.

Q.772 - Okay. Let's do it again. No matter what figure we pick for the cost of the car and the cost of the accessories, as long as the two figures are the same you can gross up from one or take down the same percentage from the other. You will always get the same numerical answer, right?

MR. FORD: You could create a set of circumstances in which the calculation would coincidentally give you the same value, but there is certainly no basic reason in advance that you would say that that methodology makes sense. It might in some case give you the same answer, but

2 you would not set out in my view in a logical sense to  
3 determine -- to desegregate the fixtures account by  
4 looking at the cost of poles.

5 Q.773 - I understand. You don't like the methodology, right?  
6 It's the approach you don't like?

7 MR. FORD: What -- I don't believe the approach is valid.

8 Q.774 - Put it this way. If the numbers happen to be the same  
9 by coincidence for the car and the accessories, you are  
10 going to get the right answer doing it this way, right, if  
11 it happened to be that way?

12 MR. FORD: If it happened to turn out that way, but it would  
13 be -- it would be a coincidence.

14 Q.775 - Okay. Thank you. Dr. Ware, can you go to your  
15 evidence, RCC-3, please? Paragraph 4?

16 DR. WARE: Yes, I have that.

17 Q.776 - I have to go back to this again. Because I'm afraid I  
18 didn't understand what you said the first time. In the  
19 first sentence of paragraph 4, right, you say, In pricing  
20 the allocation of a common cost there is crucial  
21 distinction between ex-post and ex-ante, right? That is  
22 what you say in the first sentence?

23 DR. WARE: Yes.

24 Q.777 - And then you say in the former case. That is the ex-  
25 post situation, right?

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DR. WARE: Yes. The former case is the ex-post situation,  
yes.

Q.778 - Okay. And then you go and say, At the time of the  
entrance arrival the initial outlay may have been  
returned.

Now you told me just before the break that if it turns out  
that the initial outlay may not have been returned, you  
say that has nothing to do with the ex-post analysis,  
right?

DR. WARE: Well, I would have to look at the transcript to  
see what I actually said. It was broadly speaking, yes.

Q.779 - Okay. Well, if you go on to the next sentence you say  
"this case". Now that is the ex-post case, right? Do you  
see it there?

DR. WARE: Yes. I see it, yes.

Q.780 - Right. And so it is this case is more appropriately  
analyzed as a problem of pricing to an essential facility,  
which is one of the main points of your argument, right?

DR. WARE: It is one of the main points, yes.

Q.781 - Okay. I don't understand what this sentence is doing  
there if it has nothing to do with ex-post. This is the  
sentence that starts "in the former case". If it doesn't  
matter what the initial outlay is, why would you use it to  
link ex-post to essential facility costing?

2 DR. WARE: The point I made before the break is that whether  
3 or not the investors in this facility have received a fair  
4 rate of return on their investment is relevant to the  
5 issue of the magnitude of a capital contribution, but not  
6 relevant to the question of whether or not we are dealing  
7 with an ex-post situation or not.

8 Q.782 - So why did you put the sentence in here in the  
9 paragraph linking ex-post to essential facility?

10 DR. WARE: Because I'm referring to the case -- let's see,  
11 what am I referring to?

12 Q.783 - Let me put it this way. I put to you that it doesn't  
13 matter -- or excuse me, it does matter whether the initial  
14 outlay may have been returned. You say it doesn't matter.  
15 And I say it does. Do you have anything further you can  
16 add about that?

17 DR. WARE: Well, just to reiterate what I said yesterday in  
18 my presentation, which is that an essential facility is a  
19 sunk investment or a facility in which it is either  
20 infeasible or economically undesirable to duplicate in  
21 order to create access for an entrant.

22 Q.784 - Okay.

23 DR. WARE: Now notice I didn't say anything about whether or  
24 not the investors in that facility have received a fair  
25 rate of return or not.

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2 Q.785 - Right. Mr. Lawrence -- well, let's talk about stand-  
3 alone poles for a minute. Can we assume for the moment  
4 that a stand-alone pole for any of the parties would be 30  
5 feet high?

6 MR. LAWRENCE: Are you referring to service poles or -- I  
7 didn't understand you.

8 Q.786 - No. A pole that only has communications on it or only  
9 has power on it. Is that a fair working assumption?

10 MR. LAWRENCE: Well, I'm not sure about the Disco pole. But  
11 certainly a pole that only has communication facilities on  
12 it would never -- almost never require to be -- I mean,  
13 most of them would be probably in the 30-foot range, yes.

14 Q.787 - Okay. How much buried and clearance space do you need  
15 on a power-only pole?

16 MR. LAWRENCE: On a power-only pole?

17 Q.788 - Yes.

18 MR. LAWRENCE: That would depend on the size of the pole.

19 So --

20 Q.789 - Well, a 30-foot one?

21 MR. LAWRENCE: I believe what's in the evidence is that it  
22 would be 5.5 feet.

23 Q.790 - And a 35-foot pole?

24 MR. LAWRENCE: It's 6 feet I believe without checking --

25 Q.791 - All right.

2 MR. LAWRENCE: -- the evidence.

3 Q.792 - Let's keep it easy. So let's say 35 feet. Because I  
4 think you mentioned that is as high as you go in northern  
5 New Brunswick, right, on your line, is 35 feet?

6 MR. LAWRENCE: Yes, I believe so.

7 Q.793 - Okay. So let's use 35 feet. So that is 6 feet of  
8 buried. How much clearance?

9 MR. LAWRENCE: If we are the only people on the pole -- and  
10 we would obviously have put a 35-foot pole up there for a  
11 reason. And as I stated yesterday, the reason why we did  
12 that was because the span length that we used is in the  
13 area of 120 meters which is roughly about three times what  
14 you would have in a normal joint use pole. So as a result  
15 we would move closer to the top of that pole.

16 Q.794 - Let's try and do this differently. A communications-  
17 only pole, no matter how big it is, along a roadway has to  
18 have 6 feet of buried space as long as it has passed that  
19 first initial point, right, on the chart? And 18 feet at  
20 mid span of clearance?

21 MR. LAWRENCE: If we are the only people on the pole, then  
22 the standards would be as we had discussed yesterday.

23 Q.795 - But they are exactly the same standard for a  
24 communications-only pole as for a Disco-only pole, right?

25 MR. LAWRENCE: A standards deal with clearances from the

2 ground regardless of what facilities you are talking about.

3 Q.796 - Okay. Thank you.

4 MR. LAWRENCE: So it's not -- it has nothing to do with  
5 Disco or Rogers' facilities. It basically says that they  
6 have to be a minimum distance from the ground dependent  
7 upon the situations, which was part of our discussion  
8 yesterday.

9 Q.797 - Right.

10 MR. LAWRENCE: There is a lot of different situations across  
11 New Brunswick.

12 Q.798 - And that is the same for buried?

13 MR. LAWRENCE: The buried space is as per the information --

14 Q.799 - And it doesn't matter whose pole it is?

15 MR. LAWRENCE: No.

16 Q.800 - Okay.

17 MR. LAWRENCE: It depends on the size of the pole or the  
18 height of the pole.

19 Q.801 - Right. Or it doesn't matter whether it is joint use  
20 or single use?

21 MR. LAWRENCE: No, it doesn't.

22 Q.802 - Okay. Let's look at a joint use pole now. If a user  
23 requires more dedicated space than other users on the  
24 joint use pole, how much additional buried and clearance



2 space would be required when we move to a 40-foot joint use  
3 pole?

4 MR. LAWRENCE: It depends on the amount of space they  
5 require on the pole.

6 Q.803 - Well, how is that, on a joint use pole?

7 MR. LAWRENCE: Based on the --

8 Q.804 - When you go on a joint use pole --

9 MR. LAWRENCE: Yes.

10 Q.805 - -- does there have to be more buried space suddenly?

11 MR. LAWRENCE: Well, the issue of buried space is based on  
12 the height of the pole but also based on the proportional  
13 use of the pole.

14 Q.806 - I'm not talking about costing. I'm talking about the  
15 way you design the pole. Let's try clearance. Maybe that  
16 will be easier.

17 By adding communication space to a Disco power-only pole,  
18 you don't increase the amount of clearance space, do you?

19 It stays exactly the same?

20 MR. LAWRENCE: The standards are -- they don't specify what  
21 the attacher is. They say that these are minimum  
22 standards to ground.

23 Q.807 - And that is the same for a joint use pole too, right?

24 MR. LAWRENCE: Yes.

25 Q.808 - Okay. Does the presence of a power user on a joint

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use pole prevent Rogers from obtaining the full benefit of the buried and clearance portions of the pole?

MR. LAWRENCE: The buried and clearance space is required, and as we have said, based on the proportional use of the pole, that's how it would be determined, what part we need.

Q.809 - Okay. But that is a costing issue. What I would like to know from a technical operational reality point of view, does the presence of the power user prevent Rogers from obtaining the full benefit of the joint use pole?

MR. LAWRENCE: Well, the presence of the power user creates some situations as we have talked about with separation space and other things to deal with safety to communications workers.

Q.810 - Okay. That is a good point. Does it make a -- look, we will talk about separation. But does it make -- or does it prejudice Rogers with respect to the clearance and buried space, that it is on a pole with Disco?

MR. LAWRENCE: No. The clearance and buried space -- well, the clearance space requirements have nothing to do with Disco's facilities.

Q.811 - Dr. Ware -- it is all right. It has nothing -- I thought you had started to answer my question. But I don't think you did.

2 For clearance and buried space does the presence of Disco  
3 on the pole prevent Rogers from obtaining all of the  
4 benefits of the clearance and buried space?

5 MR. LAWRENCE: I mean, as far as us being able to -- like if  
6 you have a communication pole --

7 Q.812 - Yes.

8 MR. LAWRENCE: -- we have -- there is no issue as far as  
9 clearance and buried space.

10 Q.813 - Okay. Try this. I put to you the answer is no, that  
11 it doesn't prevent Rogers from enjoying all the benefits  
12 of the clearance and buried space. Right?

13 MR. LAWRENCE: We have the ability to place our services on  
14 that pole.

15 Q.814 - Okay. Dr. Ware, would you agree with me that joint  
16 use parties have the same needs for clearance and buried  
17 space?

18 DR. WARE: No, not unless -- I mean, you can make that  
19 assumption. I'm willing to make that assumption. But  
20 when you say the same needs, you would have to be more  
21 precise about what that means.

22 Does that mean -- are we saying for example if they were  
23 building stand-alone costs would they be the same? Or are  
24 you saying something else?

25 Q.815 - Let's try it this way. Commissioner Sollows a few

2 weeks ago I think provided us with a definition of common  
3 costs that was a cost that could not reasonably be  
4 attributed to any single user of a pole. And Dr. Mitchell  
5 accepted that. Do you accept that definition as well?

6 DR. WARE: Well, no, not really. Because I think that, you  
7 know, all of the cost allocation literature and many  
8 regulatory decisions that are devoted to the question of  
9 allocating common costs do so using the method of fully  
10 distributed cost pricing when they do in fact attempt to  
11 separate the differential demands of different users on  
12 the common costs.

13 Q.816 - Okay. Let's talk about the separation space for a  
14 minute. Power, cable and telecom all need the separation  
15 space because it is a function of joint use, right? They  
16 need to separate from each other? That is your  
17 understanding?

18 DR. WARE: Sorry. There is three of them needed? Is that  
19 the question?

20 Q.817 - Communications need to be separated from power. So  
21 they both need separation space?

22 DR. WARE: Communications and power both need separation  
23 space.

24 Q.818 - Right.

25 DR. WARE: Yes. That is fair enough.

1 - 5001 - Cross by Mr. Ruby -

2 Q.819 - Dr. Ware, using poles together is a better approach  
3 than each user building their own poles?

4 DR. WARE: That is -- when you say using them together you  
5 mean sharing poles?

6 Q.820 - Joint use?

7 DR. WARE: Joint use. That is a maintained assumption that  
8 as far as I know has not been disputed in this hearing.

9 Q.821 - So if each of the individual parties suffer a little  
10 bit by having to deal with each other, that is -- what  
11 they gain is a very big benefit of sharing the cost of a  
12 joint structure, right?

13 DR. WARE: I'm perfectly willing to accept that there is a  
14 net benefit towards -- in sharing the use of the pole by  
15 different users.

16 Q.822 - Now one of the examples you have given in your  
17 materials deals with the Interac network, is that right?

18 DR. WARE: Yes. That's correct.

19 Q.823 - Right. And that is the clearing house for bank  
20 machine transactions?

21 DR. WARE: Yes.

22 Q.824 - And what you are referring to is a consent order I  
23 think of the Competition Tribunal, is that right, in your  
24 material?

25 DR. WARE: Yes. I believe I do refer to it, yes.

2 Q.825 - Okay. And that was an abuse of dominance case, right?

3 DR. WARE: Well, there was -- I'm trying to remember if

4 there -- I mean, obviously it was a consent proceeding.

5 So there was no contested proceeding. And I'm not sure it

6 is correct.

7 I'm not a lawyer. I'm not sure it's correct to describe

8 it as an abuse of dominance case since there was

9 technically no case. There was only a consent.

10 Q.826 - Well, it was not an abuse of dominance situation.

11 Well, let me do it this way. The term "essential

12 facility" wasn't used in the consent decree with respect

13 to Interac, right?

14 DR. WARE: I'm not sure of that. I would have to go and

15 reread it in order to verify that.

16 Q.827 - And the Director of Competitions case with respect to

17 Interac was not based on essential facilities arguments,

18 was it?

19 DR. WARE: Actually it did include an essential facilities

20 argument.

21 Q.828 - All right. Do you have your evidence open now? If

22 you have it open still, we were just looking at paragraph

23 4. Can you turn to paragraph 8 please?

24 DR. WARE: Yes, I have that.

25 Q.829 - You start that paragraph with "Two other examples of

1  
2 essential facilities decisions from recent Canadian regulatory  
3 history."

4 And go on to deal with Interac, right? So you are using  
5 Interac as an example of essential facilities decisions,  
6 right?

7 DR. WARE: Yes.

8 Q.830 - Okay. Do you remember co-authoring a paper -- I think  
9 it is in your c.v. -- with Brian Rivard called "Interac,  
10 Essential Facilities and Access to Electronic Funds  
11 Networks"?

12 DR. WARE: Do I remember? Yes, which fortunately I do.

13 Q.831 - Okay. It is only two pages long. I'm happy to give  
14 you a copy. But what I'm going to put to you is that you  
15 say that Interac is not an example of a decision based on  
16 an essential facilities argument. That is what you  
17 published, right? Do you remember that?

18 DR. WARE: Well, I would prefer that you showed it to me.

19 Q.832 - All right.

20 CHAIRMAN: I'm going to take our break. And you can show  
21 that to the witness. And you may be accused of abuse of  
22 dominance if you don't think about the other intervenors  
23 who have to question between now and 3:00.

24 MR. RUBY: Thank you.

25 CHAIRMAN: We will take a break.

2 (Recess)

3 CHAIRMAN: Go ahead, Mr. Ruby.

4 MR. RUBY: Thank you, Mr. Chair. Just with respect to  
5 timing, I should mention that Mr. Gorman has very kindly  
6 yielded whatever time he would need to me. So there are  
7 no other Intervenors with questions. And Ms. Milton tells  
8 me that assuming nothing goes wrong she is about five  
9 minutes.

10 MR. MACNUTT: And it is my understanding the Commissioners  
11 will have some questions.

12 CHAIRMAN: Yes. We have to have an opportunity.

13 MR. RUBY: I will make sure there is lots of time for sag  
14 questions from the Commission.

15 Q.833 - Given the time restrictions, Dr. Ware, why don't we  
16 just leave your paper on the record. And the Board can  
17 read it for itself and draw its own conclusions. I will  
18 move on to another subject.

19 MS. MILTON: Mr. Ruby, if you are going to put something on  
20 the record I think you have to give a chance to the  
21 witness to explain it or discuss it. If it is going on  
22 the record ask your question. Otherwise take it off the  
23 record.

24 CHAIRMAN: I think that is fair.

25 MR. RUBY: All right. Well, then I'm happy to take the time



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2 to do it.

3 Q.834 - Do you have a copy of it there, Dr. Ware?

4 DR. WARE: Yes, I do.

5 MR. RUBY: I'm not sure whether we have stamped it yet.

6 This is the -- it is called "Comment and Analysis." It is

7 dated Winter 1997, 1998. Pardon me, Mr. Chair. I didn't

8 realize it hadn't been distributed to you yet.

9 CHAIRMAN: Whose exhibit is this?

10 MR. RUBY: This is mine, sir.

11 CHAIRMAN: Okay. A-127. Go ahead.

12 MR. RUBY: Thank you.

13 Q.835 - In the second page of this excerpt, page 17, do you

14 see at the top, sir, the second sentence, "Earlier we

15 pointed out that the Director's case against Interac was

16 not based on essential facilities argument nor did it

17 require one"?

18 DR. WARE: Yes, I see that.

19 Q.836 - Okay. Now does that continue to be your opinion, that

20 Interac was not an essential facilities situation?

21 DR. WARE: Well, that is not what I say there. The sentence

22 that you read says something different. It says that the

23 Director's case was not based on an essential facilities

24 argument.

25 Q.837 - Okay. I will look at the next sentence then. "Rather

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Interac was an abuse of dominance case." So that is what it was, abuse of dominance, not essential facilities, right?

DR. WARE: Well, these are all descriptions of the case.

But if I could be permitted to finish my answer. Without having a chance to review this case and review the decision, I can't be sure what led to me crafting that sentence in exactly the way that I did.

But I think that the Board will agree with me that the Interac network does impact, meet the definition of an essential facility as I have given it I guess both today and yesterday in my presentations, that it is a facility in which there is enormous advantages towards allowing access to financial institutions who were not before this consent in the mid 1990's who could not access the electronic funds network, smaller financial institutions, other card issuers, et cetera and who could not be allowed to do so unless -- until this consent order.

And so there were tremendous advantages to allowing joint use or access by those other financial institutions to the network. So I think it's very clear that it does meet the criteria of an essential facility.

Q.838 - All right. Well, I'm content to let the words in your 1997 paper speak for themselves. Let's talk about Dr.

2 Mitchell's rule number 3. You will remember that one?

3 DR. WARE: Yes, I do.

4 Q.839 - That is not an equal sharing of common costs rule, is  
5 it?

6 DR. WARE: No.

7 Q.840 - That is allocating costs proportionally to stand-alone  
8 costs?

9 DR. WARE: Broadly speaking, yes.

10 Q.841 - Okay. Now at paragraph 30 of your paper -- and I  
11 don't think you need to go to it -- you quote what you  
12 call the classic work by Alfred Kahn. Remember that?

13 DR. WARE: I would prefer to go to it.

14 Q.842 - Okay. Well, that is fine.

15 MR. RUBY: This is RCC-3, Mr. Chairman, paragraph 30.

16 Sorry. Pardon me, 36.

17 Q.843 - So you see it there?

18 DR. WARE: Yes, I do.

19 Q.844 - Okay. You don't quote the whole paragraph, do you, in  
20 the second excerpt from Mr. Kahn's book?

21 DR. WARE: I honestly can't remember if I do or not.

22 Q.845 - I'm going to show you the page please.

23 MR. RUBY: I have got, Mr. Chairman, an excerpt from the  
24 Kahn text, page 151.

25 CHAIRMAN: That is A-128.

2 MR. RUBY: Thank you.

3 Q.846 - Dr. Ware, can you look at the end of the last sentence  
4 of that paragraph which follows on the bit that you  
5 quoted? While we are getting stamped up perhaps you could  
6 take a look at that.

7 DR. WARE: Where on the page are we looking?

8 Q.847 - Your quote is at the top of page -- not the very top -  
9 - of page 151. And I would like you to start reading at  
10 the sentence that starts "an ingenious variant" right in  
11 the middle of the page.

12 DR. WARE: Okay.

13 Q.848 - See it there?

14 DR. WARE: Yes.

15 Q.849 - "An ingenious variant to the latter was the  
16 alternative justifiable expenditures method devised by the  
17 Tennessee Valley Authority, which in general allocated the  
18 common costs of multipurpose river development schemes  
19 among various services supplied" -- and it lists them --  
20 "in proportion to what it would have cost to provide each  
21 of those services in the same quantity in single purpose  
22 projects set up exclusively for them."

23 Now will you agree with me, sir, that Dr. Mitchell's rule  
24 3 is based on proportionate stand-alone costs?

25 DR. WARE: Well, the theoretical version of it is. But it's

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my understanding that there are no data available that would allow us to compute our cost shares using that rule.

Q.850 - And Mr. Kahn calls it an ingenious variant to have a proportion of stand-alone cost model, right? This is consistent with the paragraph, rule 3 that is?

DR. WARE: I was about to agree with you. But now I'm not sure what you are asking me.

Q.851 - Okay. Is rule 3 consistent with Kahn's ingenious variant?

DR. WARE: This last sentence of that paragraph I believe is consistent with Dr. Mitchell's rule 3, yes.

Q.852 - Now you said there is a practical problem with rule 3 because of the data. Rule 3 works in this particular circumstance as long as you assume that pole height is proportional to cost, right?

DR. WARE: Well, no. Actually it doesn't for at least two reasons that I could think of. But there may be others. I mean, I'm clearly venturing into an area where I'm getting out of my expertise here.

But one issue is the issue of sturdiness, that power users will require a sturdier pole, might be a thicker pole. And it may have more weight on it. The cables may be heavier.

The other important issue is span length. Because my

2 understanding is that -- for example Rogers Cable-only network

3 in the north of New Brunswick has a span length which is

4 more than double that of the Disco pole network.

5 Q.853 - So Rogers in its model assumes that pole -- that cost

6 is proportional to pole height, right, for its model?

7 DR. WARE: It assumes the opportunity cost of space is a

8 linear function of the amount of space used.

9 Q.854 - Okay. Thank you. And, Mr. Ware -- sorry, Mr.

10 Lawrence, is it fair to say that for a joint use pole the

11 spans can only be as far apart as the joint use partner

12 with the smallest span requirement?

13 MR. LAWRENCE: Well, the --

14 Q.855 - Or excuse me, maximum span requirement?

15 MR. LAWRENCE: The maximum span requirement?

16 Q.856 - It can't be any further apart than the guy who can't

17 go any further, right?

18 MR. LAWRENCE: Well, those are design -- that's the way the

19 network was designed between Aliant and Disco. We are

20 just the tenant. We take the structures as they are.

21 Q.857 - Okay.

22 MR. LAWRENCE: I don't know whether they could have been

23 designed at any different span lengths. But I know that

24 if we were doing it they would be.

25 Q.858 - All right. Dr. Ware, I have one last article to take

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2 you to. And that is the Young article on cost allocation that  
3 both you and Dr. Mitchell have commented on in your  
4 prefiled evidence. We have got some excerpts here for you  
5 if you would like. On page 1211 --

6 CHAIRMAN: That's A-129.

7 Q.859 - Pardon me, Mr. Chair. Page 1211, it's the second page  
8 of the package. You see the heading, Dr. Ware,  
9 Decomposition into Cost Elements?

10 DR. WARE: Yes, I do.

11 Q.860 - Now I would like to read this with some help from you.

12 We now turn to a class of situations that call for a  
13 different approach. Consider four homeowners who want to  
14 connect their houses to a trunk power line. So would you  
15 think it's useful to look at this example in dealing with  
16 power allocation for this Board?

17 Now this is a good analogy, right, starting with power,  
18 better than using gas pipelines or something else?

19 DR. WARE: No, I wouldn't agree with that. I mean, we have  
20 to identify what problem is being solved before we can say  
21 whether it's a useful analogy or not.

22 Q.861 - Okay. Fair enough. Let's keep going. The cost of  
23 each segment of the line is proportional to its length.

24 That's the same as a pole, right? That's the assumption  
25 we are making?

2 DR. WARE: Well it may be the assumption you are making but  
3 we have evidence on the record that that's not correct.

4 Q.862 - Okay. Well I think that it's the assumption Rogers is  
5 making, but let's keep going.

6 A segment costs the same amount whether it serves some or  
7 all of the houses. That's true of poles too, right? Each  
8 segment costs the same regardless of who is using it?

9 DR. WARE: No, I wouldn't agree with that.

10 Q.863 - For a particular pole each foot on the pole you told  
11 us we are assuming linear costing, right?

12 DR. WARE: Yes, but if you just assume that an identical  
13 pole is required to serve the same users, power users,  
14 communication users, then by assumption it must be  
15 correct. But that doesn't mean it's empirically true  
16 though.

17 Q.864 - If you turn over the page, sir, the diagram. This may  
18 help. Mr. Young explains how it would work here. Since  
19 everyone uses the segment O to A -- now O to A is a common  
20 piece of the trunk line, right, in the diagram?

21 DR. WARE: Yes, I believe that's correct.

22 Q.865 - And A to B is also common?

23 DR. WARE: No. Or I think user A is not using A to B.

24 Q.866 - Pardon me. That's right. So A is like the clearance



2 space for example on a pole?

3 DR. WARE: I wouldn't accept the analogy, no.

4 Q.867 - Well the conclusion that is reached for segment O to A  
5 is its costs should be divided equally among all four  
6 homeowners, would you agree with that?

7 DR. WARE: No, I wouldn't. Neither would I agree -- going  
8 right back up to the first complete -- sorry, the second  
9 complete sentence on page 1212, where he says, since  
10 everyone uses the segment O A its costs should be divided  
11 equally among all four homeowners.

12 The problem I have with that is it depends on use. I  
13 would chose to divide the cost of those four -- between  
14 those four homeowners according to their relative use.

15 Q.868 - Okay. Well can you look where it says figure 5, you  
16 see the caption, cost of connecting four houses to an  
17 existing trunk power line. That makes it analogous to an  
18 existing power pole, doesn't it?

19 DR. WARE: No, because I don't accept the analogy with poles  
20 at all here. I mean, I think this is devoted to a  
21 different problem, and I do want to stress to the Board  
22 that this is not -- you know, this is one methodology  
23 which is being proposed to solve this particular problem  
24 which is not the problem of pricing a power pole.

25 Q.869 - Okay.

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DR. WARE: But it's not a methodology with which I would agree.

Q.870 - Okay. Let's take figure 5. Can you take your thumb and put it --

CHAIRMAN: Mr. Ruby, I don't understand why you continue to question using this. The witness has on any number of points disagreed with you, doesn't want to accept it. I suggest you save it for your argument in closing and let's get on to another matter.

Q.871 - Thank you, Mr. Chair. Dr. Ware, would you agree with me that empirical validation is the distinguishing feature of science?

DR. WARE: It's a distinguishing feature of science.

Q.872 - Right. Well an economist for example should test with reasonable data sets their theory and compare it against the empirical evidence?

DR. WARE: I think all scientists would like to do that, including economists. Economists I think have less success typically than other branches of science, but it's certainly desirable.

Q.873 - Okay. If we use for the moment the pole length that Mr. Ford has put forward and the CRTC has put forward, you are familiar with that model, right, of pole, 40 foot typical pole?

2 DR. WARE: Yes, I am.

3 Q.874 - So if we use those dimensions, there the

4 communications attachers use two feet and you say I think

5 are deemed to use 3.25 feet of separation space, right?

6 DR. WARE: In that model, yes.

7 Q.875 - And the power company uses 11-and-a-half feet of power

8 space?

9 DR. WARE: I believe that's correct.

10 Q.876 - Right. Which gives you 69 percent of usable space,

11 that's the calculation that has been done?

12 DR. WARE: I'm sorry. What is 69 percent?

13 Q.877 - Power uses 69 percent of what you have called the

14 usable space on the pole, right?

15 DR. WARE: I said that would be 11.5 divided by 11.5 plus 2

16 plus 3.25, is that it?

17 Q.878 - Right.

18 DR. WARE: Okay. I mean, I will accept your arithmetic. I

19 --

20 Q.879 - All right. Can you tell me which telecommunications

21 and power company joint use agreements in Canada have the

22 power company bearing 69 percent of the total cost of

23 joint use poles? And I will put it to you that there are

24 none.

25 DR. WARE: I cannot verify that assertion, you know, without

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independently looking at that myself, but if you tell me that there are none I have no particular reason to disagree with you.

Q.880 - Okay. In the evidence the power company's share never goes higher than 61 percent, right, in all the examples that appear in the evidence of telecom and power company joint use agreements, right?

DR. WARE: I'm sorry. Could you repeat the question?

Q.881 - You know what, in the interest of time I will leave it at that. Does your relative use model predict the negotiated sharing of joint use poles by telecom and power companies anywhere in Canada?

DR. WARE: I would argue that looking at negotiated agreements is in fact not a very -- not a helpful guide to deciding on the -- an efficient and fair price for access to an essential facility. It's not -- I mean, without wanting to take up too much of our time, we don't expect monopolies to negotiate efficient and competitive rates. We expect the opposite. And that's why we have competition laws and that's why we have regulatory bodies such as this one.

Q.882 - I take it the answer is no, your model does not predict the outcomes found in Canada? You say 69 percent, right?

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2 DR. WARE: Well no, I wouldn't agree with that.

3 Q.883 - So it does predict the outcomes?

4 DR. WARE: Well for example if we take the space allocation  
5 that Disco has proposed, then the proportion that use  
6 model predicts in allocation to -- in the case of two  
7 users that is, a single communication user and a single  
8 power user, it predicts an allocation of 40 percent to the  
9 communication user and 60 percent to the power user.

10 Q.884 - So your model only works if you use the Disco data set  
11 that your colleagues on the Panel say are incorrect?

12 DR. WARE: Well as I say I don't actually -- I would not  
13 accept that fact at all, because I don't believe looking  
14 at negotiated outcomes is a good guide to what is  
15 essentially a normative question, that is, what should a  
16 regulatory Board find as a fair and efficient price for  
17 access.

18 Q.885 - All right. Let's try putting it the other way around.

19 The Mitchell model. Regardless of whether you use the  
20 pole length data set Rogers has proposed or the ones Disco  
21 has proposed, it yields cost sharings that are in the  
22 cluster of empirical evidence we find across Canada,  
23 right?

24 DR. WARE: One thing I did not see from Dr. Mitchell, and I  
25 apologize if I missed it, but I did not see an attempt to

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2 test the variation in the different space usages or across  
3 different provinces and look at the predictions that that  
4 would yield for the sharing rules -- negotiated sharing  
5 rules between communications and power users, and I think  
6 that would be a basic test that I would want to do to see  
7 whether in fact the variations in the shares do respond in  
8 the right direction to changes in pole use.

9 Q.886 - All right. Well have you plugged in Rogers pole  
10 length numbers into Dr. Mitchell's three rules? Have you  
11 done that exercise? You are criticizing Dr. Mitchell for  
12 not having done it. Have you done it?

13 DR. WARE: To look at that variation -- you mean the  
14 experiment that I just described, you mean?

15 Q.887 - Yes. But for the numbers we know about, the numbers  
16 in Ontario?

17 DR. WARE: No. The reason I haven't done it is because I'm  
18 not claiming that it is a way of verifying the theory.  
19 But Dr. Mitchell is.

20 Q.888 - Okay. If you apply Rogers' numbers to rule 1 of Dr.  
21 Mitchell you get a power share of 62 percent, is that  
22 right?

23 DR. WARE: I'm not sure. Actually I would have to work that  
24 out again.

25 Q.889 - Okay. Tell you what. I'm quite content, if it is all

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right with the Chairman, that if you want to do the math and provide it in writing to plugging in the Ontario pole length numbers into Dr. Mitchell's rules 1, 2 and 3 and providing those numbers to the Board, I'm quite content that that be done by written undertaking.

I will tell you that my calculation is it is 62 percent under rule 1 for the Power Company, same for rule 2, 58 percent under rule 3. And you can tell me if I'm wrong?

MS. MILTON: Mr. Chairman, the numbers are on the record.

I'm not sure we need to file anything. If you would like us to file something we can. But the numbers are all there.

MR. RUBY: I'm content if you point out if I have done the math wrong.

DR. WARE: Am I right in saying this is in Dr. Mitchell's evidence? I seem to recall that there is something of that sort.

Q.890 - Well, those numbers aren't in. But I'm cross examining you, sir, on this.

MR. RUBY: But that said, Mr. Chairman, I'm glad to report those are my questions. Though I should ask -- thank you very much, sir.

CHAIRMAN: Thank you, Mr. Ruby. Mr. Gorman, there is a bit

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of time?

MR. GORMAN: Well, Mr. Chairman, perhaps if there --  
because there is just a little bit of time. I think I had  
something like 82 questions, but --

CHAIRMAN: Yes. And so did Dr. Sollows. We have dealt with  
most of that.

MR. GORMAN: If I were to whittle mine down to two perhaps  
Dr. Sollows would do the same?

CHAIRMAN: He certainly will.

MR. GORMAN: I will just ask my questions from here and  
probably save a little bit of time.

CROSS EXAMINATION BY MR. GORMAN:

Q.891 - Mr. Lawrence, I really only have a couple of questions  
left. And as I say, we have taken most of them out. But  
I would like to take you to RCC-4. And it is an  
Interrogatory. It is Rogers UM IR-20. Do you have that,  
Mr. Lawrence?

MR. LAWRENCE: I think I do.

Q.892 - The question that was asked, Question A is "What is  
the current rental fee per power supply equipment to be  
mounted on Disco poles?" And the introduction to the  
question indicated there were something like 1,512 power  
supplies.

If you look at your response it seems to me you



2 haven't answered the question. Perhaps you could answer it  
3 for us today?

4 MR. LAWRENCE: The honest answer is I don't know what that  
5 rate is. We will have to get that for you.

6 Q.893 - Do you know if there is a rate at all?

7 MR. LAWRENCE: Perhaps Mr. Armstrong would know.

8 MR. ARMSTRONG: I honestly don't know the answer to that  
9 question either. Other than there may be attached to the  
10 rate for the unmetered rate, there might be a customer  
11 charge that might include some pole connection fee. But I  
12 can't say for sure.

13 MR. LAWRENCE: I guess it's not really a rental fee for the  
14 power supply. We own the power supply. But your question  
15 I believe is how much do we pay in electricity costs for  
16 each power supply on --

17 Q.894 - No. Sorry. That wasn't the question.

18 MR. LAWRENCE: Okay.

19 Q.895 - It appears to be what you have answered is what is the  
20 electricity cost. But my understanding from the evidence  
21 is that these power supplies are attached not in the  
22 communication space but actually below the communication  
23 space. And I wonder if there is an extra fee paid to  
24 attach these power supplies in that space?

25 MR. LAWRENCE: Oh, thank you for clarifying that. No.

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2 There is no extra fee for attaching in that space. That is  
3 the space that is set out by Disco and Aliant for OUR  
4 power supplies.

5 And there is not a fee specifically for being in that  
6 space. There is a fee for the power that is consumed by  
7 that supply.

8 Q.896 - Sure. And you would agree that they are mounted  
9 outside of the communication space?

10 MR. LAWRENCE: Yes. They are mounted outside the  
11 communication space. But as I have pointed out somewhere  
12 here, the number of 1,512 is about 1 percent or maybe half  
13 a percent of all the poles, all the Disco poles that we  
14 have power supplies -- or that we have facilities on.

15 Q.897 - The second part of the question, part (b), asks  
16 whether or not unique rates for attachment of power  
17 supplies were charged in other jurisdictions? So now that  
18 you know it is not the power rate that we are looking for  
19 but whether or not some additional fee is paid for  
20 attachment of power supplies, can you respond to that  
21 question?

22 MR. LAWRENCE: Are you speaking of New Brunswick or other  
23 jurisdictions?

24 Q.898 - Part (a) dealt with New Brunswick. Part (b) is asking  
25 you whether or not you pay a unique rate to attached power

1 supplies in jurisdictions other than New Brunswick?

2 - 5023 - Cross by Mr. Gorman -

3 MR. LAWRENCE: I will pass that question off to Mr.  
4 Armstrong.

5 MR. ARMSTRONG: Thank you, Mr. Lawrence. In Ontario through  
6 a negotiated agreement the cable industry agreed to pay to  
7 the hydro distributor or the electricity distributors in  
8 that province a rate of \$1.92 per power supply per year.

9 Q.899 - Just one other short series of questions and then I  
10 will be done.

11 Mr. Armstrong -- and I'm referring to the Ontario Energy  
12 Board decision which has been much discussed over the five  
13 days of hearings.

14 And I understand that the purpose of that was to establish  
15 a single rate for all of the municipal electric utilities  
16 in Ontario for pole attachments, is that correct? The  
17 idea was to get a uniform rate?

18 MR. ARMSTRONG: I think that that was the product of the  
19 hearing. the Ontario Energy Board set a uniform rate for  
20 cable attachments on hydro poles.

21 Q.900 - Okay. And it for all of the -- I believe it was all  
22 of the municipal utilities?

23 MR. ARMSTRONG: It was for all of the hydro distributors in  
24 the province, electricity distributors.

25 Q.901 - Sure. And do you agree that Rogers has attachments

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has attachments on poles in New Brunswick owned by -- besides  
Disco by Edmundston, Perth-Andover and Saint John Energy?

MR. ARMSTRONG: Yes, absolutely.

Q.902 - And are you currently paying each of those municipal  
utilities the same rate that you were paying to Disco?

MR. ARMSTRONG: I would have to check. But I understand  
that to be the case.

Q.903 - Subject to check you could agree with that?

MR. ARMSTRONG: Yes.

Q.904 - Now the applicability of this Board's ruling on the  
issue to the municipal utilities, I guess it is not before  
this Board. But I would ask you if it is your intention  
to offer the same rate to the municipal utilities as is  
determined by this Board to be fair and equitable?

MR. ARMSTRONG: I had a discussion a number of sessions ago  
with -- I believe it was Mr. Marr of Saint John Energy.  
And I agreed with him at that time that we would pay the  
same rate to Saint John Energy that we would pay to Disco.  
Similarly I would expect to pay the same rate to  
Edmundston and Perth-Andover.

MR. GORMAN: Thank you. I have no further questions.

CHAIRMAN: Thanks, Mr. Gorman. If Rogers were not prepared  
to pay that you could simply have Mr. Burpee subject his

2 company to our regulation. And that would ensure it.

3 MR. GORMAN: You better get Mr. Burpee here quickly.

4 CHAIRMAN: Thank you, Mr. Gorman. Mr. MacNutt, any  
5 questions?

6 MR. MACNUTT: Board staff have no questions.

7 CHAIRMAN: Thank you.

8 BY THE BOARD:

9 MR. BELL: My question is for Dr. Ware. And I just need a  
10 little help here. In your evidence you make the  
11 distinction between ex-ante and ex-post principles of  
12 pricing for access to the network.

13 And then further in your evidence you cite that Disco  
14 utility poles fall within the definition of ex-post  
15 pricing. Am I correct in that?

16 DR. WARE: Yes. That's correct.

17 MR. BELL: Then on page 9 of that same evidence, paragraph  
18 17, you say -- and I'm not quoting exactly here -- but on  
19 an ex-ante basis it makes no sense for Disco to bear none  
20 of the costs of the separation space.

21 Is that an inconsistency? Or am I out of context here?

22 DR. WARE: I'm sorry, Commissioner. Can you give me the  
23 reference again?

24 MR. BELL: It is page 9 of your evidence. And it is number  
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2 17.

3 DR. WARE: No. I see it now. Thank you.

4 MR. BELL: Okay.

5 DR. WARE: No. it's not an inconsistency. I mean, what I'm

6 commenting on there is that -- of course I realize that

7 Dr. Mitchell in his approach had used an ex-ante approach.

8 And I wanted to comment on whether or not in that

9 approach how you would allocate the cost of the separation

10 space.

11 And of course for the next ante approach there is a

12 certain symmetry in the sense that power has to be

13 separated from communications and communications has to be

14 separated from power. That is the point I was making

15 there.

16 MR. BELL: Okay. Thank you.

17 MS. LEBLANC-BIRD: I have a couple of questions for Mr.

18 Armstrong or Mr. Lawrence.

19 How long was or is the rate of 9.60 being paid by Rogers

20 to Aliant on account of pole usage prior to Disco's

21 terminating the joint support structure licence agreement?

22 MR. ARMSTRONG: I will answer that question. The rate was

23 approved by the CRTC in 1995.

24 MS. LEBLANC-BIRD: So since 1995 it has been 9.60 per pole?

25 That is what is being paid?

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MR. ARMSTRONG: That's correct.

MS. LEBLANC-BIRD: Are Rogers regulated by any independent body or governing body in relation to the rates that they can charge their subscribers for services?

MR. ARMSTRONG: I believe that all of our cable systems are now rate deregulated. So no, the answer is no.

MS. LEBLANC-BIRD: I have heard this morning a couple of terms thrown around, co-ax cable and fibre optic cable.

And I heard someone say something about fibre optic cable in relation to digital television.

Is fibre optic cable a new type of technology?

MR. ARMSTRONG: I'm going to let Mr. Lawrence handle that one.

MR. LAWRENCE: Commissioner, fibre optic cable has been around for probably about 20 years. It has been used in cable operations for about 10 years. So it is a relatively new technology. It allows us to provide more services to customers and improve our service to customers.

It's not required to provide digital services. It's just another way of getting the services to the customers that is much more efficient and does it in a much better way.

But the question was around whether or not you needed

2 fibre optic cable to provide digital services. And you don't  
3 need fibre optic cable to provide digital services. You  
4 can provide more services with fibre optic cable. But  
5 digital is not something that is dependent upon having  
6 fibre optic cable.

7 MS. LEBLANC-BIRD: So it permits Rogers to provide different  
8 services than they would have supplied in the past?

9 MR. LAWRENCE: Yes. And also provide them to a much higher  
10 service level than we would have in the past.

11 MS. LEBLANC-BIRD: Well, with respect to rate-setting, what  
12 is your position with respect to Mr. O'Hara's proposition  
13 in his evidence at A-63, that Rogers since 1977 with the  
14 introduction of high-speed Internet and VOIP  
15 Telecommunications, that this has increased Rogers'  
16 revenue dramatically and thusly increasing the value of  
17 its attachments to Disco's poles?

18 I realize that is a philosophical question. But I'm just  
19 interested in your position on that.

20 MR. ARMSTRONG: I don't know where to begin. It may -- the  
21 revenues that are involved in -- or that get returned to  
22 Rogers through providing these additional services have  
23 increased.

24 The cost to Rogers for providing those digital services,  
25 or those additional services I should say, to



2 residents of New Brunswick and elsewhere in Canada have also  
3 significantly increased.

4 And I should also note that there is no voice over  
5 Internet. Well, Rogers wouldn't be very happy with me  
6 saying that we use voice over Internet, because we do a  
7 different type of telephony. But there is no telephony  
8 service offered over the cable network today in New  
9 Brunswick. So you know, right now I guess one of the  
10 three of those services aren't being provided.

11 MS. LEBLANC-BIRD: There is another issue that I was  
12 confused about. Mr. Ford, you state at page 4 of your  
13 direct evidence, exhibit RCC-1 power utilities and  
14 telecommunications carriers are granted access to public  
15 lands for the purpose of erecting pole lines and also  
16 arrange easements on private lands. Further you say that  
17 cable companies cannot gain access to the rights-of-way to  
18 build their poles. And that at page 11 of you evidence  
19 that access to public property for the purposes of  
20 constructing such pole lines would probably not be granted  
21 even if a cable operator wished to construct its own  
22 poles. I am just asking the question, is there some  
23 prohibition or is there some legislation that would stop  
24 Rogers from making a duplicate set of poles and I realize  
25 in an economy of scale we don't wish to have that. But is

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there something that makes it so that they can't do that?

Because I thought I heard yesterday where there are some poles just for Rogers use in the northern part of the province.

MR. FORD: No, that is a good point, Madam Commissioner.

And I will ask Mr. Armstrong also to comment and it is certainly clear that where there are existing pole lines, municipalities are generally -- have generally refused to grant cable companies to install their own their own poles. And there are a number of reasons and some of them being simply aesthetic reasons. But that is what I was getting at that in some cases I understand applications have been made and denied. It is generally accepted in the industry that it's not worthwhile making an application because it will not be approved as long as there is an existing pole line to which the cable company can adapt its plant such that it can achieve the objective of distributing its signal to its customers. But I certainly want to give Mr. Armstrong a chance to respond to your question as well.

MR. ARMSTRONG: I agree with Mr. Ford. There is no, that I am aware of anyway, explicit prohibition against anyone building poles in Canada. And when I say -- but I qualify that by it's just -- whenever I have spoken to a

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2 municipality, whenever we have made an application to a  
3 municipality to build a second set of poles, it has always  
4 been turned down. It has always been refused.  
5 The other part of my job with Rogers is to deal with  
6 municipalities and negotiate for access to municipal  
7 rights-of-way. And I often speak with municipalities and  
8 suggest to them, you know, we would like the opportunity  
9 to build pole lines in instances where it is favorable to  
10 us. And in every instance that I have raised that I have  
11 been told that it's a non-starter and won't happen. If  
12 there are poles in the ground, on a road and we want to  
13 access to poles, we want to build aerial plant, we have to  
14 go and make our deal with the pole owner. There will be  
15 no -- in any of the discussions that I have had with the  
16 municipalities I am told 100 percent of the time there  
17 will be no additional poles built in the municipality.

18 MS. LEBLANC-BIRD: Okay. And I have one last question. Mr.  
19 Ford, on page 9 of your direct evidence, exhibit RCC-1,  
20 you at paragraph 1 speak of indirect or fixed costs  
21 associated with poles. And you refer to as a capital  
22 related cost, property taxes paid on the value of the  
23 poles. This is something that I am asking for interest.  
24 Are there property taxes paid by the utility in relation  
25 to the poles or easements and would these be distinct from

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the Department of Transportation right-of-way fees as you have noted on page 19 of your evidence in RCC-1?

MR. FORD: Yes, I am of course dependant on Disco for the costing information. But it is my understanding that there is a tax payable and I believe the rate is 2.25 percent and it is included in the costing information that I developed on which I developed my rate proposal.

MS. LEBLANC-BIRD: So are those two distinct costs, the property taxes and The Department of Transportation right-of-way fees?

MR. FORD: Yes, they are distinct and the right-of-way fee is a linear tax and it is not related to poles, it is related to linear plant. So it would be the wires as opposed to the poles themselves on which that tax is assessed. And it is therefore -- and I think that was one point of agreement between Disco and Rogers, that that would not be appropriately included in the costing for the development of this rate.

MS. LEBLANC-BIRD: Thank you very much.

MR. NELSON: Mr. Lawrence, I would like you to turn to RC-5, please. That is your slide presentation from yesterday, page 10.

MR. LAWRENCE: I have it.

MR. NELSON: Page 10?

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MR. LAWRENCE: Page 10, yes.

MR. NELSON: Let's just go up to the pole to clearances  
17.25 feet up to the two feet of communication space.  
There is -- in the evidence and in this evidence and  
previous evidence, there is six points on the pole that  
you can connect to in the communication space, isn't  
there?

MR. LAWRENCE: Yes. There is a possibility of a maximum of  
6 connectors within the communication space, Mr.  
Commissioner, when you look at both the front side of the  
pole and the back side of the pole.

MR. NELSON: And the back side. So there is three in front  
and three in back?

MR. LAWRENCE: Yes, that's correct.

MR. NELSON: And right now in most cases, you and Aliant are  
on the two, so there is four left?

MR. LAWRENCE: That's correct.

MR. NELSON: And when you go to hang your wire, hang your  
equipment on that pole, do you take one of the top points?

MR. LAWRENCE: Usually because of the fact that our fibre  
optic cables and co-ax cables are lighter, we usually are  
nearer the top on the back. Now we don't wish to be on  
the back, but Aliant has --

MR. NELSON: Has the front.

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MR. LAWRENCE: -- pushed us to the back of the pole. So we typically are in the back.

MR. NELSON: So you take the top hook-up on the back?

MR. LAWRENCE: Typically, yes.

MR. NELSON: And so I guess the question -- I am trying to avoid using a word here on pain of death, but in that space of two feet, and if you take the top connection -- you take that top connection, your line would fall within the space of the two feet between the spans?

MR. LAWRENCE: Yes, it would.

MR. NELSON: You would not go below the two foot area?

MR. LAWRENCE: That's correct.

MR. NELSON: Whether it's a 40 meter span or a 60 meter span?

MR. LAWRENCE: That's correct.

MR. NELSON: So that therefore always maintain the 17.25 feet clearance on the bottom?

MR. LAWRENCE: That's correct.

MR. NELSON: And I didn't use the word. Thank you.

MR. LAWRENCE: I will try not to use it as well.

MR. TINGLEY: For Mr. Lawrence, I guess, it's funny how you get into poles and you start looking at a pole in a different light. A pole is just not a pole anymore. But my question is Aliant have just strictly service poles for

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their own use, 30 foot service poles or 30 foot poles that have nothing but Aliant equipment on it, is that correct?

MR. LAWRENCE: No, they fulfil the same role as a Disco service pole. They provide --

MR. TINGLEY: Not a service poll. They are shorter poles?

MR. LAWRENCE: Oh, okay.

MR. TINGLEY: And I am assuming they are 30 feet, because they are shorter than the power pole that's on the other side of the street. But I notice between here and Riverview, where I live, is significant distances, there are power poles on one side of the road or street through Salisbury, for example?

MR. LAWRENCE: Yes.

MR. TINGLEY: And there is a line of -- or a row of -- shorter -- I am assuming Aliant poles, because they are communication --

MR. LAWRENCE: That's correct. You are right.

MR. TINGLEY: Okay. Now throughout the province is that a significant situation or is that --

MR. LAWRENCE: No, that's actually a -- that's actually a fairly small situation that usually occurs in an urban area where Disco and Aliant are upgrading their services, so you have an older communication-type structure on one side and then there is a new joint use pole that is on the

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2 other side.

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And over time what happens is Aliant would usually

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transfer their facilities to that side of the pole. But

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if there is no immediate reason to do that, Commissioner,

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then they would stay on that pole and we would be on that

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pole with them.

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I hope I didn't confuse you with --

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MR. TINGLEY: I am a little confused, because there is, you

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know, like quite a number of kilometers, there would just

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-- there would be power poles on one side of the street or

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road?

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MR. LAWRENCE: Yes, that's correct.

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MR. TINGLEY: And short communication poles, I am assuming,

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because the communication wires are right at the top of

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the pole. There is no power on them or anything else that

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I can see?

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MR. LAWRENCE: You are absolutely right. Those would be --

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those would be non-joint use poles. They would be --

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MR. TINGLEY: That's right.

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MR. LAWRENCE: That's right.

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MR. TINGLEY: So you are communication would be on the power

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pole not on the --

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MR. LAWRENCE: No. Actually in most of those cases, it

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would still be on --



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MR. TINGLEY: It could be --

MR. LAWRENCE: -- it would be on the old pole with Aliant.

The point I was trying to make was usually there is no economic reason for putting two pole lines down the same street. There is -- you know, usually what happens is it's part of an upgrade. And over a period of time you would expect that the services would all migrate to the joint use poles. That was the point I was trying to make.

But there is quite a few situations in the urban areas, which have the situation you have described.

MR. TINGLEY: Okay.

MR. LAWRENCE: And in those cases, we would usually be on the communication pole with Aliant, not on the Disco pole.

MR. TINGLEY: All right. So on those so-called communication poles, there wouldn't necessarily be any Rogers on those poles. They would be mostly on the -- let's say the power pole itself?

MR. LAWRENCE: Actually in that case, we are probably on the same pole as Aliant.

MR. TINGLEY: Okay.

MR. LAWRENCE: Like I can't say 100 percent of the time.

But typically we would have put our services on the same -- like we would be attached to Aliant strand, because these small communication poles would be old poles. And

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up until 1994, we would have actually been last to Aliant strand. So we are probably almost all the time on the same pole as Aliant.

MR. TINGLEY: Thank you. Now in your -- I guess it's in your -- I guess it's in your evidence too, but in your Power Point presentation on page 23, you have the pole rental rates and you are showing your rates. And this is a question I think for Disco moreso than Rogers. Would Disco have a comparable chart showing the breakdown of costs in their proposed annual rental charge as well to match up with this -- just for information purposes, would --

MS. MILTON: I think there is a comparable chart in Dr. Mitchell's evidence. It's in the back -- I think it might be labelled Appendix C.

MR. RUBY: That's right, sir. It's Appendix C to the evidence of Dr. Mitchell.

MR. TINGLEY: Dr. Mitchell.

MR. RUBY: And that's A-64.

MR. TINGLEY: All right. Thank you very much.

MR. DUMONT: Mr. Lawrence, how many times let's say your employees have to service a pole in New Brunswick, how many times you would say that they climb up the pole or they go up with using a ladder or a bucket?

2 MR. LAWRENCE: Most of our maintenance work, Commissioner,  
3 would be done with bucket trucks. However, all of our  
4 service-type work would be done with ladders.

5 As far as the actual number, I mean we climb probably  
6 hundreds of poles a day across the province. So it would  
7 be --

8 MR. DUMONT: Well, I don't need a number, but I haven't seen  
9 somebody climb a pole in a long time.

10 MR. LAWRENCE: Oh, with spurs? Yes. I mean --

11 MR. DUMONT: That's the point I want to make.

12 MR. LAWRENCE: Usually we use ladders, yes.

13 MR. DUMONT: That's correct. Thank you.

14 CHAIRMAN: That's because he has been in here for too long.

15 DR. SOLLOWS: Thank you, Chairman. Just two questions, or  
16 one shorter than the other, I hope. Mr. Ware, I am  
17 referring to A-126 was a -- the journal paper that you  
18 got before lunch from Mr. Ruby, "Rankings of Academic  
19 Journals and Institutions in Economics". I was glancing  
20 at that and in the full paper the ranking goes over 109  
21 journals -- no, 159 journals.

22 Have you seen this paper before? Or just the copy that --

23 DR. WARE: Well, it was circulated last Friday, I believe,  
24 Commissioner

1 - 5040 - By The Board -

2 DR. SOLLOWS: And have you seen the full paper?

3 DR. WARE: Yes, the full paper was circulated. Oh, it  
4 wasn't. I am sorry. Just the excerpt was circulated. I  
5 am sorry. I was wrong.

6 MS. MILTON: The title was circulated.

7 DR. SOLLOWS: Okay. I was just -- not done a complete  
8 search, but I see that this was published in the Journal  
9 of the European Economics Association. And I was just  
10 wondering if you could help me identify where in the list  
11 that would appear. I certainly checked the top 50 and  
12 couldn't find it. And I was just wondering what  
13 conclusion I should draw from that fact?

14 DR. WARE: Well, I think it may not appear. And one of the  
15 things had Mr. Ruby asked me about this, which he chose  
16 not to, but one of the things that I would have said was  
17 that we need to -- in order to give any credibility or  
18 sort of value to an exercise like this, we have to find a  
19 way of evaluating the exercise itself. And, of course,  
20 that has not been done. There are several rankings of  
21 this kind around and every so often, every few years,  
22 somebody publishes another one.

23 DR. SOLLOWS: Yes. Thank you very much. I would like to  
24 now return your attention to A-63, tab E, which is the  
25 much discussed CSA Standard C-22-3, number 101. And I

1  
2 would like you to look first at page ix, which is the  
3 preliminary page -- in the preliminary pages identifies  
4 the technical committee on overhead lines, that was I  
5 would assume largely responsible for the development of  
6 the standard. And this is not to you, Dr. Ware, but  
7 anyone on the panel. When I go down the list of names and  
8 companies, I find there were 13 power or distribution  
9 company representatives, four telephone company  
10 representatives and three transportation-type people. But  
11 nowhere in this do I see any cable companies.

12 And I am wondering why if the concern has been expressed,  
13 as it has been expressed by Rogers, that they have not had  
14 an opportunity to participate in the decision-making  
15 process and therefore it's an ex-post rather than ex-ante  
16 analysis. Why would they not avail themselves of the  
17 opportunity to participate in the committee that sets the  
18 specifications?

19 MR. ARMSTRONG: I will take a stab at that. I think the  
20 answer to that is that what you see here in this list is a  
21 list of owners of poles. And Rogers, as a tenant, you  
22 also don't see, for example, well I don't know when these  
23 were done, but you don't see any -- oh, 2001 -- so you  
24 don't see any companies like GT Group Telecom when it was  
25 a going concern. You don't see a company like AT&T

2 when it was a going concern. And I think that's a reflection  
3 of the difference between ownership and tenancy in these  
4 poles.

5 DR. SOLLOWS: So you are -- while you do own poles, you  
6 don't consider yourself a major owner of poles?

7 MR. ARMSTRONG: That's correct.

8 DR. SOLLOWS: Therefore, you don't have --

9 MR. ARMSTRONG: That's correct.

10 DR. SOLLOWS: Okay. Thank you very much. Again in the  
11 standard, I want to refer you to table 2, which we have  
12 been there before, page 61 and 62. And this is the  
13 notorious minimum vertical design clearances above ground  
14 or rails for AC current. And when I read things like  
15 this, I tend to go to the bottom first. And I wanted to  
16 turn you to page 62 under column 1.

17 And I see fourth entry from the top, alongside roads and  
18 highways in areas unlikely to be travelled by road  
19 vehicles within 1.5 meters of the limit of the right of  
20 way. With the footnote being, this ground is generally  
21 adjacent to fences and accessible to small vehicles, but  
22 not likely to be travelled by high road vehicles or high  
23 farm machinery.

24 And as I read this standard, it has for cable-type wires a  
25 clearance requirement of 3 meters. That to me --

2 I would interpret -- as I would interpret that standard, that  
3 would apply to mainly rural areas, is that the case? And  
4 the reason we are talking about 3.7 meters or 4.4 meters  
5 is because you are dominantly using poles in more urban  
6 and suburban areas?

7 MR. LAWRENCE: I think that's a fair statement,  
8 Commissioner. Overall, we are using more poles in urban  
9 areas than we are in rural. We do have quite a few cable  
10 systems in small communities. And I guess the question is  
11 where exactly does rural start. And you know that's --

12 DR. SOLLOWS: But certainly as far as the standard goes, the  
13 specification is neither urban nor rural?

14 MR. LAWRENCE: That's true.

15 DR. SOLLOWS: It's whether or not the right of way, which I  
16 take it to be the right of way for the wires for the poles  
17 --

18 MR. LAWRENCE: Right.

19 DR. SOLLOWS: -- is within 1.5 meters of the road?

20 MR. LAWRENCE: That's true.

21 DR. SOLLOWS: Right. And so I guess there is some question  
22 in my mind whether we should be talking about 3 meters or  
23 4.42 meters when I look at the descriptions under column 1  
24 on page 61. The first item is over land, which really  
25 everybody agrees with if you are going over the highway,

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over the right of way of pipeline, alongside and within the limits of streets and highways in densely populated areas.

This is a municipal situation where you have the pole right alongside the street?

MR. LAWRENCE: Yes.

DR. SOLLOWS: Alongside or over farm and likely to be travelled. And I am just wondering if we -- and I want to give you the opportunity to comment, is if we have been careful enough in this proceeding to interpret this standard carefully and maybe been too quick to jump to conclusions about what the appropriate height is for a wire?

MR. LAWRENCE: Well, I think, Commissioner, we are trying to establish a height. The idea is to try and establish a typical height, rather than to try and establish a height for every single pole that's out there. And the -- our proposition is that we accept 17.25 feet as a typical height. There will be places where it will be higher than that. There will be a lot of places as you can see on here, which will be lower than that. In fact there is none of these standards that even come to 17.5 feet. So I agree with you. There is -- if anything the typical height could be left, but in the interest of coming up with a typical sort of model, that was the height that has



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been used other places and that was the height that we chose to use.

DR. SOLLOWS: Thank you.

MR. ARMSTRONG: Can I add just one comment to that as well, Mr. Commissioner? The other thing that Rogers has in the province of New Brunswick and it was installed by Mr. Stanley some years ago, he was quite a -- had quite a bit of fore thought, but he installed a fibre ring that goes completely around this province and interconnects many of the cable systems that we have -- not -- certainly not all the cable systems, but many of them. And they would be located on very rural roads, on poles alongside rural roads, out in the middle of -- you know, between communities. So I think that their -- and those poles would number, subject to what Mr. Lawrence has to say, I think those poles would number somewhere in the tens of thousands.

MR. LAWRENCE: Absolutely. That's true. They would be in the tens of thousands. And I again I just wanted -- Madam Commissioner, you had mentioned the pole line we built in northern New Brunswick. The reality is the only reason we built that was because there were no poles there. If there had been any other alternative, we would not have built that line. But as Mr. Armstrong has mentioned, Bill

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Stanley wanted to create a fibre optic line that basically ringed New Brunswick and the only way to do that was to build this pole line and that's why we did that.

DR. SOLLOWS: Thank you very much. Those are all my questions.

CHAIRMAN: I have to point out that NB Tel also ringed it in New Brunswick with fibre optics back in the early 80s when this Board regulated them.

And Dr. Ware, I had look forward to a fulsome discussion, as we sometimes say, in reference to if I ever acted on behalf of Moosehead Breweries and I wanted to sue Brewer's Retail in Ontario, whether I head my argument on abuse of dominance or essential facilities. However, alas there is no time.

I understand there is no redirect, is that correct?

MS. MILTON: There is very brief redirect.

CHAIRMAN: Okay.

REDIRECT EXAMINATION BY MS. MILTON

Q.905 - Mr. Armstrong, Mr. Ruby asked some question yesterday relating to snow accumulation in Toronto and New Brunswick and then he asked you to confirm that Toronto is Rogers biggest market. Do you recall that?

MR. ARMSTRONG: Yes, I do.

Q.906 - What percentage of the poles that Rogers uses in

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Ontario would be located in Toronto?

MR. ARMSTRONG: Off the top of my head, I am not entirely sure. But it would be I would think less -- somewhere in the neighbourhood of 15 to 20 percent.

Q.907 - Thank you. This is my last question. And I enter it with some trepidation, because I am going to have to use that word, but I will be quick.

Mr. Lawrence, Mr. Ruby --

CHAIRMAN: The Commissioners had another word for it I think, but --

MS. MILTON: Oh, okay. Maybe I could say it backwards. That won't work.

Q.908 - Mr. Lawrence, Mr. Ruby ask you to confirm that the CSA standards do not vary for communication and power users. Do you recall that, that was this afternoon?

MR. LAWRENCE: Yes, that's correct.

Q.909 - Do clearance standards vary with the voltage of lines?

MR. LAWRENCE: Yes, actually they do, very substantially.

And the tables here show -- in fact the table that Commissioner Sollows just pointed out shows that when you move up in voltage, you move up in ground clearance requirements as well. So that was an omission on my part.

Q.910 - All right. Can you confirm that satisfaction of

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clearance standard at mid span is a function of sag?

MR. LAWRENCE: Yes.

Q.911 - So if power facilities weigh more than communication facilities or otherwise sag more, they will have to be mounted higher on the pole to meet the standard, would that be correct?

MR. LAWRENCE: Yes, that's correct, Ms. Milton.

MS. MILTON: Thank you very much. Those are all my questions.

CHAIRMAN: Thank you, Ms. Milton. Thank you, panel, for your two days of testimony. And we will adjourn now and reconvene at 9:15 tomorrow. And you, of course, are excused. Thank you.

(Adjourned)

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of this hearing, as recorded by  
me, to the best of my ability.

Reporter