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July 27, 2000

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-12134

Dear Ms. Wideman:

Enclosed for filing please find the original and four copies of the direct testimony of Thomas E. Davis and accompanying exhibits filed on behalf of Fiber Link, Inc. in the above captioned proceeding. This testimony has also been filed pursuant to the Commission's Electronic Filings Program. Proof of Service upon the parties of record is also enclosed.

Very truly yours,

CLARK HILL P.L.C.

Haran C. Rashes

Haran C. Rashes

HCR/kag
Enclosure

cc: Parties of Record
Thomas E. Davis

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09581/083351

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the approval of a code of conduct for CONSUMERS ENERGY COMPANY and THE DETROIT EDISON COMPANY.	)))))	Case No. U-12134

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS:
COUNTY OF INGHAM)

Kristi A. Grieve, being duly sworn, deposes and says that she is an employee of Clark Hill P.L.C., and that on July 27, 2000, a copy of the direct testimony of Thomas E. Davis and accompanying exhibits was served on behalf of the Fiber Link, Inc. upon:

See attached service list

Except as otherwise noted on the attached list, service was accomplished by depositing same in a regular mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly and via electronic mail.

Kristi A. Grieve

Kristi A. Grieve

Subscribed and sworn to before me
this 27th day of July, 2000.

Lynne E. Rosier

Lynne E. Rosier, Notary Public
Ingham County, Michigan
Expiration: May 20, 2003

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13540/081722

SERVICE LIST

CASE NO. U-12134

ADMINISTRATIVE LAW JUDGE

Honorable George Schankler
Michigan Public Service Commission
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the approval of a code of conduct for CONSUMERS ENERGY COMPANY and THE DETROIT EDISON COMPANY.	)))))	Case No. U-12134

DIRECT TESTIMONY OF
THOMAS E. DAVIS
ON BEHALF OF FIBER LINK, INC.

Q. Please state your full name and business address.

A. My name is Thomas E. Davis and my business address is 3529 W. Genesee, Lapeer, MI 48664.

Q. By whom are you employed and in what capacity?

A. I am the President and a shareholder of Fiber Link, Inc., (hereinafter "Fiber Link").

Q. Please describe your professional background.

A. My academic training is in accounting and finance with a bachelors degree from Northern Michigan University. I have spent most of my career as a business owner, with the last 10 years at Fiber Link.

Q. Please describe Fiber Link

A. Fiber Link was formed in 1990. Fiber Link is in the business of constructing, installing, testing and maintaining fiber optic telecommunications networks throughout the State of Michigan, and in several neighboring states. Fiber Link also owns and operates fiber optic networks in 5 Michigan counties. Fiber Link sells and leases fiber optic filaments as well as capacity on such filaments. A fiber optic telecommunications network generally consists of fiber optic cable strung between utility poles and containing two or more fiber optic filaments that allow for the two-way transmission of voice, video and data communications. Associated equipment, electronics and facilities are also involved to carry out and regulate the transmission of the communications. Often the fiber optic cable will contain several, sometimes dozens, of individual fiber optic filaments. Since 1990, Fiber Link has constructed and installed over 2,900 miles of fiber optic cable in various telecommunications networks across the State of Michigan.

After their construction and installation, fiber optic telecommunications networks require very little ongoing maintenance so long as the fiber optic cable is securely attached to the utility poles and that the fiber optic filaments residing in the cable sheath are transmitting the light signals which carry the communications between senders and recipients. Periodically, the fiber optic cable may need to be moved or re-routed to accommodate requests by local units of government, private land owners and utilities. In addition, cable and associated facilities may need to be repaired, replaced or re-attached as a result of storms, vehicle and farm equipment accidents, or other

circumstances which may have caused the cable lines to become severed or detached. Further, additional installation in the form of co-lashing or over-lashing to existing fiber optic cable may be done to expand the number of filaments for networks or to construct additional networks. Fiber Link also performs all of the above-described tasks.

Q. For what types of entities or organizations does Fiber Link provide these services?

A. Fiber Link has constructed and installed fiber optic telecommunications networks for numerous telecommunications providers, many commercial users, and dozens of school districts, colleges and educational consortia throughout the State of Michigan. We have designed and constructed more educational use fiber networks in Michigan, than any other vendor. For many of these organizations, Fiber Link performs the general, ongoing and emergency maintenance of the system. Fiber Link has also built and retains ownership in approximately 300 miles of fiber optic networks.

Q. Where in the state has Fiber Link constructed and installed fiber optic telecommunications networks?

A. We have constructed networks in most Michigan Counties. We have a great deal of experience in both urban and rural areas. For instance, our current construction schedule includes the communities of Farmington, Farmington Hills, Bloomfield Hills, Royal Oak, Birmingham, Southfield,

Novi, Ann Arbor, Ypsilanti, Kalamazoo, Saginaw, Lansing, Portage, and so on. We are also building countywide networks in Washtenaw, Saginaw and Macomb counties that take us into every single community in the county. This is typical of our workload at any given time.

Q. Does Fiber Link, Inc. compete with energy utilities in Michigan for the provision of the fiber optic telecommunications services you discussed earlier?

A. Yes, Fiber Link, Inc. does and/or potentially will compete with utilities and their affiliates with respect to the provision of these services. Energy utilities and their affiliates are looking increasingly to entering and competing in the telecommunications arena. As you are no doubt aware, the telecommunications industry is growing at an accelerating rate, including satellite, wireless and land-line communications. Many new companies have entered the industry, and it is my estimation that this will continue. Companies which have traditionally not conducted business in the telecommunications industry, such as energy utilities and energy companies, are beginning to enter the market, as regulatory and economic barriers have been removed.

The two largest electric utilities in this state, Consumers Energy Company ("Consumers") and The Detroit Edison Company ("Edison"), have entered the telecommunications field, including the business of constructing, installing and maintaining fiber optic telecommunications networks. In fact, I am aware that Consumers has bid for and has provided fiber optic network construction

for certain school systems in Michigan. Attached, please find my Exhibit TED-1 (I-___) selected pages from Consumers Energy's Web Site detailing some of their telecommunications offerings, both to schools and in unregulated service fields. Also attached, please find my exhibit TED-2 (I-___), which consists of a copy of a Consumers brochure distributed to Michigan schools regarding Consumers' fiber optic construction program for schools. Edison or an affiliate of Edison has also endeavored to provide these services to certain school systems and leases fiber optic cable to telecommunications providers. As early as 1994 Edison demonstrated an intent to provide construction, material and installation of fiber systems as evidenced by my exhibit TED-3 (I-___), which consists of a February 23, 1994 letter from Gary Mittleman, Edison's Assistant Vice President and Manager - Business Development to John A. Abramson, then Director of the Commission's Electric Division.

Q. Are you saying that electric utilities or their affiliates should not be able to provide these services in competition with companies like Fiber Link?

A. Not at all. Fiber Link welcomes the competition. However, the electric utilities and their affiliates should compete fairly and appropriate guidelines or a code of conduct need to be in place to help ensure that they do so.

Q. Please explain.

A. Because of their status as regulated monopolies, electric utilities have been able to construct an extensive, monopoly network of utility poles or conduit throughout the State of Michigan. They have also been able to employ and train substantial numbers of personnel to be skilled in the installation and maintenance of the wires and facilities interconnecting these poles. The utilities have been able to pass on the costs associated with building this network and employing and training these personnel, as well as receive a return on their investments, to their utility customers through regulated rates. Through decades of regulatory protection and basically guaranteed cost recovery through utility rates, these utilities have amassed a considerable amount of economic power, expertise and --for all intents and purposes-- a monopoly on the statewide network of utility distribution poles, which is the essential infrastructure upon which fiber optic cable telecommunications networks are installed. Without appropriate protections and guidelines in place, utilities could leverage these considerable monopoly assets and thus unfairly compete with non-affiliate telecommunications providers, such as Fiber Link, Inc. Consequently, it is essential that the Commission establish a clear and enforceable code of conduct to protect against cross-subsidization by utility ratepayers of unregulated non-utility and affiliate ventures.

Q. Do you believe that codes of conduct proposed by Edison (Exhibit DECo-10) and Consumers (Exhibit CECo-1), in this proceeding, are adequate to protect against cross-subsidization, information sharing, preferential treatment between a utility's regulated and unregulated services?

A. No. The codes of conduct proposed by utilities specifically are limited to the utilities and their affiliates participating in the retail electric open access service programs. Edison and Consumers' codes of conduct do not address areas outside the electric industry. In addition, these codes of conduct do not address such areas as misrepresentation to customers of the regulated nature of the utility versus the unregulated nature many offered services, the need for the utility to be treated as a telecommunications provider when providing telecommunications services, or the separation of employees doing work in both regulated and unregulated areas.

Q. Do you believe that code of conduct proposed by Staff (Exhibit S-16), in this proceeding, is adequate to protect against cross-subsidization, information sharing, preferential treatment between a utility's regulated and unregulated services?

A. While Staff's Code is a step in the right direction, there are certain areas that I feel it should be supplemented to ensure that cross-subsidization, information sharing, preferential treatment

between a utility's regulated and unregulated services do not take place, especially in the telecommunications area.

Q. Do you have any examples of situations where cross-subsidization by electric utilities in the telecommunications could occur?

A. Yes. A utility could utilize its employees and the expertise of its management, which are being paid for by utility customers through utility rates, and divert and devote those employees and that expertise to non-utility activities, such as telecommunications. Employees and personnel who have traditionally worked on maintenance of the utility lines and utility poles for purposes of providing electric utility service could be devoting part or full-time to providing installation and/or maintenance services directly to telecommunications end-users or providers or to the utility's affiliates. An article published at page 13 in the February 15, 1999 edition of *Crain's Detroit Business* (Exhibit TED-4 (I-___), the web pages I previously mentioned (Exhibit TED-1 (I-___)), and the brochure Consumers distributes to schools (Exhibit TED-2 (I-___) suggest that Consumers has been running a program which provides fiber optic installation services for schools and libraries for use in local and wide area networks. This goes to the very heart of my business. I think it is imperative that the Commission have the ongoing ability to identify the use of utility assets and personnel for non-utility purposes, the extent of the use, and the allocation of time, costs and

overhead for such non-utility uses and to take appropriate actions, be they ratemaking or otherwise, to prevent, to stop, to rectify and to penalize such cross-subsidies.

Another concern is the utilities' use and leveraging of their monopoly control over the distribution utility pole infrastructure to impede or to increase the costs of pole attachments for non-affiliated telecommunications providers. In the Commission Case No. U-10831, the Commission established a uniform statewide rate of $3.74 per pole which attaching parties are to pay to utilities in order to compensate them for leasing space on and using their utility poles. However, utilities are attempting to impose additional costs on telecommunications providers in order to access and attach to the utilities' poles. Utilities are attempting to charge telecommunications providers very high "administrative" fees and outrageously expensive make ready assessment fees in order for those telecommunications providers to attach to their utility poles. The level of these fees is dubiously related to the utilities' actual costs and appears more to be an attempt to put up an economic barrier to non-affiliated telecommunications providers' access to their monopoly utility pole infrastructure. I am also aware of circumstances where utility personnel (bearing the insignia or logo of the electric utility) represented to potential end-users that quicker processing of make ready assessments and work and pole attachment agreements could be done if the installation of the fiber optic cable connections were to be done by the utility or its affiliate. As a result of these types of activities, Fiber Link, Inc. has experienced extraordinary delays in commencing and

completing construction of fiber optic networks. This presents another anti-competitive barrier for non-affiliated telecommunications providers. These circumstances are not adequately addressed by the proposed codes of conduct.

Another concern is the misrepresentation by the utilities that they do not need various permits for installation of fiber optics for telecommunications. Consumers makes this claim on their brochure (Exhibit TED-2 (I-___)), where they state "and because we install cable every day, we already have the required construction licenses and permits -- helping you to avoid big delays in getting the job done." If Consumers, any other utility, or their affiliates are providing "unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage," then they should be considered a telecommunications provider under Section 102 of the Michigan Telecommunications Act ("MTA"), MCL 484.2102, and required to obtain municipal permits under Sections 251 through 254 of the MTA, MCL 484.2251 - 484.2254, as is Fiber Link. If the utilities are asserting that their electric franchises exempt them from these telecommunications requirements, then they have a clear competitive advantage as they enter the telecommunications industry. For example, a new Michigan Department of Transportation policy requires telecommunications providers to be an interexchange carrier registered with the Commission or a licensed competitive local exchange carrier to access MDOT's rights-of-way. Under this policy, Edison and Consumers would be unable to qualify if they were offering

telecommunications services openly. By gaining access to rights-of-ways surreptitiously it enables the utilities to unfairly to compete against people like Fiber Link, who couldn't do it that way and wouldn't be able to get access to poles or rights of way. or The competitive advantage that the utilities have if they do not need to obtain telecommunications permits for use of rights-of-ways is illustrated by various complaints filed with this Commission by telecommunications providers against municipalities, highlighting how difficult, time consuming, and costly these permits are to obtain. Recently I testified as a witness in one of these cases, MPSC Case No. U-12354.

Another concern is the buying power of the utility by virtue of its size, customer base and territory. The utility can use its buying power and size to purchase assets and inventory in substantial bulk and thus achieve much greater cost economies than that which a smaller, separate affiliate could achieve. Fiber Link Inc.'s particular concern is the potential that the utility could use these purchasing economies to provide its affiliates with the advantage of this buying power. Depending upon the specific asset item or how the utility invoices or records such items, huge amounts of assets or inventories could be transferred to affiliates without the transfer being reported to the Commission under the Guidelines for Affiliate Transactions, adopted by the Commission in Case No. U-11916. This would put competitors at a significant competitive disadvantage.

What these situations clearly indicate is the inherent incentive on the part of the monopoly utilities to leverage the control over their monopoly assets, regulatory status and their substantial

buying power in order for them or their affiliates to gain an unfair competitive advantage over their competitors or potential competitors with respect to the provision of telecommunications services. This inherent potential for abuse would appear to only get worse as these utilities and/or their affiliates enter into and increase their efforts and presence in the telecommunications industry. I believe it is critical that the Commission establish a very clear code of conduct for the utilities and their affiliates to follow so as to monitor and address these potential abuses.

Q. Do you have any recommendations as to any additions to a code of conduct which the Commission could establish to address these concerns?

A. Yes. I believe the following guidelines or requirements would help to protect against these abuses:

a. To the greatest extent possible, there should be a functional and legal separation of regulated utility and non-regulated business functions. This would include the prohibition of the sharing of employees and equipment between the utility and its affiliates providing non-utility services. This would help to ameliorate or minimize the leveraging power the utility or its affiliates could use in competing in the telecommunications industry. At the very least, there should be a requirement that all employees of the utility document (on time sheets, work orders, etc.) their time spent on non-utility activities, that the utility document the nature and hours of use of utility equipment for non-utility purposes and that the utility submit this

information to the Commission on a more frequent basis than annually. In addition, the utility should be required to report to the Commission situations where it has transferred utility personnel to affiliates on a more frequent basis than annually. The Commission Staff should be required to conduct regular periodic audits of the utilities to ensure that the utilities are appropriately and adequately documenting the use of employees and equipment for non-utility purposes and that cross-subsidization is not occurring.

b. Utilities should also be prohibited from providing preferences to affiliated companies or customers of affiliated companies, and should be prohibited from representing or implying that preferences may be had by utilizing the services of affiliated companies.

c. Utilities should be prohibited from allowing affiliates to use the utility's name, logo, trademark or any other indicia. Utilities should also be prohibited from steering business to or in any way endorsing affiliated providers.

d. When operating in another regulated industry, such as telecommunications, utilities should be explicitly subject to all regulations imposed on any other competitor in that industry.

e. The code of conduct affiliate guidelines should be extended to utilities other than Consumers, and Edison, who are also in the position of being able to exercise their

monopoly power and leverage to engage in cross-subsidization and to unfairly compete against non-affiliate telecommunications providers.

These are some suggested guidelines or requirements which I believe would help to address and hopefully prevent or alleviate some of the potential abuses by utilities and its affiliates in non-utility activities. I have attempted to identify code of conduct requirements which would help to address the particular abuses or problems of which I am aware. There may be other or similar potential abuses or transactions occurring which would warrant additional guidelines and protections.

Q. Does this complete your testimony at this time?

A. Yes.

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Fiber Optics Construction

If your school system, governmental entity or business is interested in installing "overhead or underground" fiber optics cable for inter-connectivity in Michigan's Lower Peninsula, please call us first. Whether you need "distance learning," WAN/LAN systems or other voice/data applications, we can arrange for quick installation and year-round maintenance of your system.

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Contact us at: services@consumersenergy.com

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Joint Construction Services

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Contact us at: services@consumersenergy.com

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Whether you're in the commercial or industrial sector, we'll make sure your pipes and lines are properly installed and on schedule with our joint utility trench service. Plus, we offer total project management from design to installation for complete customer satisfaction.

- **Project management**
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- **Underground maintenance**

Contact our company representative at 517-791-5621 or email: services@consumersenergy.com

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Contact us at: services@consumersenergy.com

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The use of cellular phones, pagers and other wireless communication devices is skyrocketing. To handle this demand, the wireless communications industry relies on an expansive statewide system of antennas to ensure reliable communication.

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— Streamlined process
— Client facilitator
- Engineering

— Engineering/structural analysis review
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— Train construction workforce
— Handle construction cost/billing activities
- Facilitate Energy Delivery

— Commodity delivery/design
— Meter installation
— Billing
- System Maintenance
- Asset Protection and Security

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You've always known Consumers Energy as a reliable, low-cost provider of gas and electricity in Michigan. But we're so much more.

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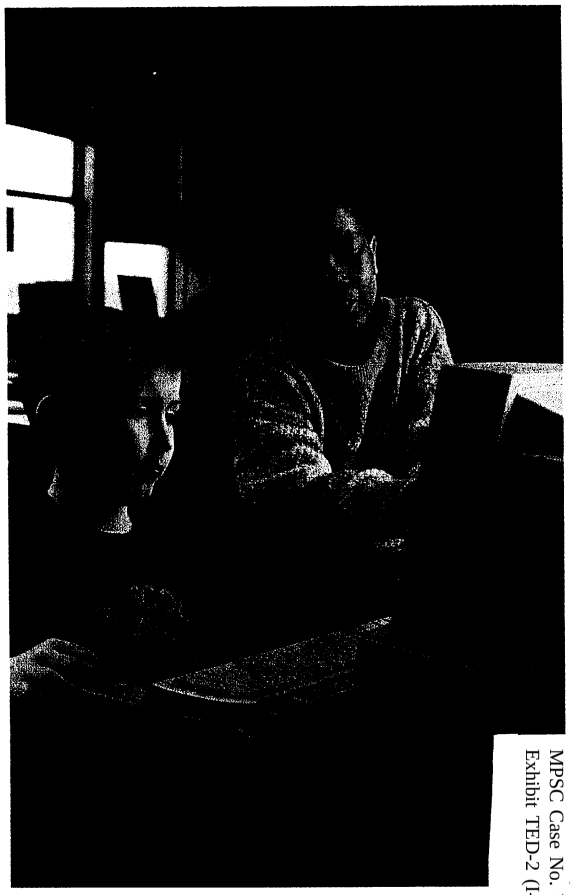
The Power of Communication

Connecting Schools with Fiber Optics



A Prime Opportunity

In a world where information moves ever faster, the staff and students in your school district can no longer afford to be separated by solid walls.

Communication today depends on the swift, direct and targeted exchange of information, yet upgrading technology doesn't have to bust your district's budget.

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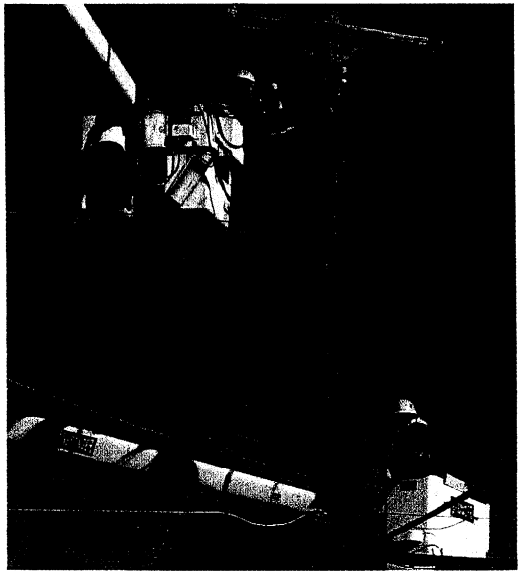
The spun-glass strands of fiber-optic cable can do the job of hundreds of copper wires, allowing the speedy transfer of huge amounts of data over much longer distances.



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There are three good reasons your district should consider having Consumers Energy install fiber-optic cable: your staff, your students and your budget.

Your district competes with Michigan's more than 500 school districts, along with private and charter schools for students and funding.

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Finally, you can have Consumers Energy install fiber-optic cable without your district having to bust its budget.

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Consumers Energy has more than a century of experience in installing and maintaining overhead and underground cable, so networking your district with fiber optics is second nature to us.

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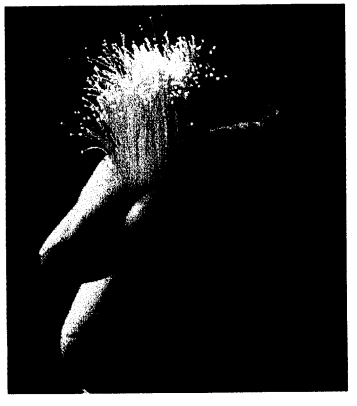
Our Advantages

When you choose Consumers Energy, you select a company several steps ahead of the competition.



We have equipment and resources in place statewide to serve you. And because we install cable every day, we already have the required construction licenses and permits — helping you to avoid big delays in getting the job done.

And, if there's ever a problem involving overhead or underground lines, we're on the scene. Emergency personnel always call us first — before phone or cable companies.

Gary Miltleman
Assistant Vice President and
Manager • Business Development

Detroit Edison
2000 Second Avenue
Detroit, Michigan 48226
(313) 237-8834

February 23, 1994

Mr. John A. Abramson
Director, Electric Division
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, Michigan 48909

Dear Mr. Abramson:

I appreciated the time you were able to set aside for Joe Welch and I to speak with you about Detroit Edison's fiber optic efforts. We believe that this new technology of communication will form the "information superhighway" of the future, and Detroit Edison would like to be part of it.

At this time, our aim is not to become a telecommunication service provider, rather, we plan on:

1. leasing fiber to service providers

2. using fiber for company communications -- both internal and external.

We believe this plan can be achieved in a low risk manner with the benefits being retained by the customers. Our lease agreements (at least as we see them now) are likely to reflect the following pattern:

- Service provider pays (or reimburses Edison) for most or all of the design, construction, material and installation of a fiber system.
- Detroit Edison owns the fiber system.
- Detroit Edison leases most of the fiber to the service provider at reasonable rates for a 10 to 50 year term. Expected fiber life is 60 years plus.
- Detroit Edison retains some strands of fiber for its own use.
- Edison may also receive a one-time cash payment ii right-of-way is particularly valuable.

- Note that Edison is not leasing out conduit or pole space at tariffed rates as part of this program; rather; we are leasing out fiber for a different set of benefits. The tariffed rates are, however, still available for anyone who desires them.

Detroit Edison will lower costs and improve services with fiber reserved for our own uses.

- Intra company calls can go over this fiber, thereby making our own communication expenses more cost effective.

- Further, the fiber system can provide links directly to long distance carrier switches (MCI, AT&T, Sprint, etc.), saving more money.

- The fiber system provides high speed data transmission among our facilities and with customers. This includes DAS (distribution automation system) and demand side management services significantly beyond what's available today.

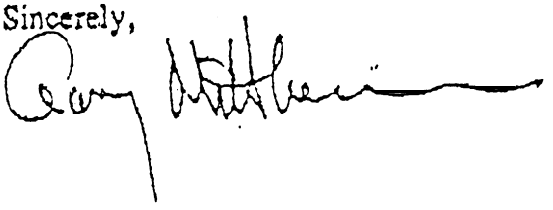
- Edison will eventually be able to develop communication links with the customer's home for: meter reading, service turn-ons and turn-offs, bill payment and sophisticated energy management services.

- This fiber system may also form the basis of many new -- or yet to come -- services such as metering and communication with electric vehicle charging stations.

Edison's participation in this program enables communication service providers to quickly and efficiently update their networks so that they may provide the most competitive and up-to-date services to residents of the greater Detroit area. The program also utilizes our customers' rate based assets more effectively, which lowers costs, improves services and makes Detroit Edison more competitive. We anticipate that all of the benefits leading to lower costs will be included in our regulated earnings statements.

We are clearly excited about these new opportunities and look forward to keeping you informed as we proceed.

Sincerely,



cc: L.G. Garberding
J.L. Welch

bcc: S. Carpman
M. Davis
A. Dickinson

Consumers Energy builds telecom biz

BY AMY MINDELL
Special to *CRAIN'S DETROIT BUSINESS*

Although it has no plans to offer local phone service, Consumers Energy Co., like a lot or" utilities around the country, has moved cautiously toward the telecommunications arena.

For the past year, the Jackson-based company has been leasing space on its electric transmission and radio towers to local cellular telephone companies. More recently, it started a program to sell fiber-optic expertise and infrastructure to schools and communities.

"We're not into telecommunications itself," said Jack Decker, project manager-business development at Consumers Energy, the principal subsidiary of CMS Energy Corp. (NYSE: CMS). "We're trying to leverage our assets as much as we can without affecting the basic integrity of our systems or disrupting our core service."

To date, 60 Consumers towers house antennas, Decker said. Consumers earns $500 to $2,000 a month on each rental, depending on the tower's location and the area's population density. The utility has about 6,000 towers throughout its Lower Peninsula service territory.

Since last fall, Consumers also has been running a program offering fiber-optic installation services for nonprofit organizations such as school districts and libraries. Schools use the fiber-optic cables to run local and wide area networks and for distance learning programs.

Although any organization has the legal right to attach to a utility pole, most nonprofits bid out the job of installing and maintaining network infrastructure.

Consumers charges a monthly pole space rental fee, usually less than $10 a month for each pole; a make-ready fee that can cost up to several hundred dollars a pole; and an installation fee. Installation runs between $50,000 and $500,000 for a typical school district, depending on the type and size of the cables. CDB