



The Internet & Television Association
25 Massachusetts Avenue, NW | Suite 100
Washington, DC 20001
(202) 222-2300

Legal Department

o (202) 222-2445

February 8, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, W.W.
Washington, D.C. 20554

Re: Review of the Part 32 Uniform System of Accounts, WC Docket No. 14-130

Dear Ms. Dortch:

On February 7, 2017, Jennifer McKee and Steve Morris of NCTA – The Internet & Television Association (NCTA) and Maria Browne of Davis Wright Tremaine met with Jay Schwarz, Acting Wireline Advisor to Chairman Pai, and Claude Aiken, Legal Advisor to Commissioner Clyburn, to discuss the above-referenced proceeding. In particular, we discussed a proposal from AT&T, CenturyLink, and Verizon (incumbent LECs) to end the mandatory use of data based on Part 32 Uniform System of Accounts (USOA)¹ for purposes of calculating pole attachment rates and instead give carriers the option to discontinue such reporting and make pole attachment information available using Generally Accepted Accounting Principles (GAAP) accounting.² As described in detail below, NCTA demonstrated that there are two substantial concerns that warrant rejection of the incumbent LEC proposal. To the extent the Commission grants the requested relief, we proposed that it be conditioned on freezing incumbent LEC pole attachment rates at current levels.

Problem #1 – The Incumbent LEC Proposal Would Undermine Broadband Deployment by Increasing Pole Attachment Rates without Justification

The Commission's regulation of pole attachment rates is premised on the fact that pole owners possess a monopoly with respect to access to poles and that traditional cost-based rate regulation therefore is necessary to ensure that rates are reasonable as required under Section 224 of the Communications Act.³ The current regulatory regime uses Part 32 accounting data related

¹ 47 C.F.R. Part 32.

² See, e.g., Letter from Timothy Boucher, CenturyLink, to Marlene H. Dortch, WC Docket No. 14-130 (Jan. 26, 2017) (CenturyLink Letter); Letter from Ian Dillner, Verizon, to Marlene H. Dortch, WC Docket No. 14-130 (Dec. 5, 2016) (Verizon Letter).

³ 47 U.S.C. § 224.

to the cost of deploying and maintaining poles as inputs to the Commission's rate formulas to ensure that rates are cost-based and reasonable. The incumbent LECs have failed to demonstrate that moving from Part 32 accounting to GAAP accounting would ensure that rates remain reasonable. In particular, they have not provided an estimate of the magnitude of the rate change that attaching parties would be expected to experience. On the current record, the Commission has no idea whether a transition to GAAP principles will result in a rate increase of 5 percent or 50 percent or 500 percent. For this reason alone, the proposal should be rejected.

Compounding this evidentiary flaw in their argument, the incumbent LEC proposal to increase pole attachment rates runs directly counter to the Commission's stated policy goals. As the incumbent LECs themselves have explained,⁴ maintaining low, uniform pole attachment rates is a central feature of the Commission's efforts to promote broadband deployment.⁵ While the Commission's 2011 pole attachment reforms took a significant step in this direction by revising the telecommunications rate formula to produce rates comparable to the cable rate formula,⁶ Chairman Pai has stated that attaching parties still are "paying too much for pole attachments" and that additional reductions in pole attachment rates should be considered (e.g., by eliminating capital costs from the rate formulas) to further promote broadband deployment.⁷

While the Chairman seeks to further reduce pole attachment rates, the incumbent LEC proposal to change accounting practices moves in the opposite direction by creating the potential for rate increases of "a few dollars per year per attachment" and potentially much more.⁸ Given that broadband providers may need thousands of attachments for a single geographic area, the consequences of such a rate increase for attaching parties would be significant, particularly in

⁴ See, e.g., Letter from Glenn Reynolds, USTelecom, to Marlene H. Dortch, WC Docket No. 07-245 at 10 (Mar. 31, 2011) (USTelecom 2011 Letter) ("The Commission then concluded that '[t]o support the goal of broadband deployment, rates for pole attachments should be *as low . . . as possible*.'" (emphasis in original); Letter from Ann Berkowitz, Verizon, to Marlene H. Dortch, WC Docket No. 07-245 at 1 (Mar. 25, 2011) ("providing a low, uniform rate for pole attachments will benefit consumers by encouraging broadband deployment, particularly in rural areas.").

⁵ *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 110, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (*National Broadband Plan*) ("To support the goal of broadband deployment, rates for pole attachments should be as low and as close to uniform as possible.").

⁶ *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) (*2011 Pole Attachment Order*), *aff'd sub. nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013); see also *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Order on Reconsideration, 30 FCC Rcd 13731 (2015) (*2015 Reconsideration Order*).

⁷ *2015 Reconsideration Order*, Concurring Statement of Commissioner Ajit Pai, 30 FCC Rcd at 13774 ("[E]ven after the Order, ISPs and their customers will be paying too much for pole attachments. That's because the new telecom rate still includes payments for the capital expenses of the pole owner even when the pole owner has already recovered them separately.").

⁸ CenturyLink Letter at 2. In the example the incumbent LECs use for illustration, they acknowledge that granting the request could raise pole attachment rentals by 58%. See Verizon Letter, at attached Hypothetical GAAP-Based Pole Attachment Rate Development, Table 2 (comparing a Part 32 pole rate of \$3.40 with a \$5.38 GAAP pole rate, for a \$1.98 or 58% differential).

rural areas where more poles (and pole attachments) are needed to reach each customer.⁹ Indeed, the potential for harmful increases in pole attachment rates was one of the factors the Commission identified in its previous decision rejecting the use of GAAP for purposes of calculating pole attachment rates, an analysis that was affirmed by the D.C. Circuit when it rejected the incumbent LECs' appeal of that decision.¹⁰

The incumbent LECs suggest that the negative consequences of such rate increases could be minimized by phasing in the increases over a lengthy transition period.¹¹ While a lengthy transition may be better than a short one, in no way does it eliminate the disincentive for future investment (and penalty for past investment) that results from pole attachment rate increases that are completely untethered from any increase in the cost of providing access to poles. Particularly in a situation where current rates unquestionably are more than compensatory to the pole owner,¹² the better approach is to simply avoid rule changes that would result in rate increases for pole attachments.

Problem #2 – The Incumbent LEC Proposal Does Not Rely on Publicly Available or Verifiable Information

As the Commission has previously recognized, USOA accounting (initially Part 31, and today Part 32) assures that attaching parties may review pole rental rates and resolve differences with pole owners by using publicly reported and verifiable information. Part 32 provides consistently-derived plant-specific investment and disaggregated expenses that the Commission, state regulators, and industry analysts currently use to resolve disputes over maximum permitted rates for access to poles, ducts, conduits, and rights-of-way. It serves as the foundation for disciplining pole attachment rates and for a regulatory regime that has operated successfully for over three decades.¹³ The Commission also has recognized that GAAP accounting does not

⁹ *National Broadband Plan* at 110.

¹⁰ *Petition of USTelecom for Forbearance*, WC Docket No. 12-61, *et al.*, Memorandum Opinion and Order; Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627 at 7659-60, ¶ 65 (2013) (*USTelecom Forbearance Order*), *affirmed Verizon and AT&T v. FCC*, 770 F.3d 961 (2014) (*Verizon and AT&T v. FCC*).

¹¹ CenturyLink Letter at 3.

¹² USTelecom 2011 Letter at 11, *citing FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987) (“Appellees have not contended, nor could it seriously be argued, that a rate providing for the recovery of fully allocated cost, including the actual cost of capital, is confiscatory.”); *see also Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002), *cert. denied*, 124 S. Ct. 50 (2003) (“Marginal cost provides just compensation” and the Commission’s cable rate, “which provides for much more than marginal cost, necessarily provides just compensation.”).

¹³ *See 2000 Biennial Regulatory Review - Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, 16 FCC Rcd 19911, 19931 ¶48 (2001) (“Reliance on publicly available information has allowed pole owners and attaching parties to resolve rate issues without Commission involvement, which is a cost-savings benefit to utilities, cable operators, other attaching parties, and the Commission.”); *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, 15 FCC Rcd 6453, 6464, ¶ 13 (2000) (*2000 Fee Order*) (“Adoption of Part 32 accounts will facilitate public access to data on which to determine just and reasonable pole attachment rates.”).

provide the same sort of consistently-derived, public and verifiable sources for the data used in the rate formulas, which was an important factor in the Commission's prior rejection of such an approach and the D.C. Circuit's decision affirming that decision.¹⁴

The latest proposal from the incumbent LECs does nothing to address this concern.¹⁵ Today, for example, Part 32 requires the separate tracking of critical elements of the rate formulas, such as pole maintenance. Under the incumbent LEC proposal, pole maintenance apparently would be based on higher level expense accounts, direct labor, and an undefined loading factor, but the proposal is vague on how this would work.¹⁶ As described in the Attachment to this letter, in testing this approach against recent data reported by one carrier, the maintenance expenses alone could be well over 1000 percent higher than they are under the current regime, without even accounting for an additional "loading factor" for which the incumbent LECs provide no basis, detail or consistency. Whatever pole maintenance data an incumbent LEC offers each year would have no assurance of being consistently-derived, plant-specific, or appropriate for pole rent calculations, whether or not the incumbent LEC makes its proposed number publicly available. Under the incumbent LEC proposal, pole data developed under Part 32 would only be available by Commission order,¹⁷ thereby eliminating the primary means by which attaching parties and pole owners have resolved hundreds of specific pole attachment disputes for decades without the need for Commission intervention. The accounting issues involved in a transition to GAAP are clearly not limited solely to differences in depreciation lives, depreciation rates and expensing the cost of removal as suggested by the incumbent LECs.¹⁸ A vague assurance that GAAP accounts will be apportioned and loaded in some undefined way does not provide sufficient confidence that pole attachment rates can continue to be disciplined and that disputes can be resolved with the minimum of Commission involvement.

Solution – Freeze Pole Attachment Rates as a Condition of Switching From Part 32 to GAAP Accounting

To the extent the Commission decides that there are benefits to moving forward with granting Part 32 relief to the incumbent LECs, notwithstanding the significant problems described above, it also should take steps to ensure the continued benefits of ready resolution of pole disputes and pole rent discipline which are so essential to broadband deployment.

¹⁴ *USTelecom Forbearance Order*, 28 FCC Rcd at 7659, ¶ 63 ("Without ongoing access to the data derived from Part 32 accounts, neither the Commission nor interested parties could ascertain or verify that pole attachment rates based on the Commission's rate formula reflect actual costs, or that these calculations produce just and reasonable rates in accordance with our rules."), *affirmed Verizon and AT&T v. FCC*, 770 F.3d at 968.

¹⁵ See Verizon Letter (offering no counterpart GAAP accounts for pole investment, pole depreciation, pole maintenance, or other key elements of the pole formula); CenturyLink Letter at 1-2 (proposing an "Implementation Rate Difference" but no defined method for setting annual GAAP-based rates).

¹⁶ See Letter from Ian Dillner, Verizon, to Marlene H. Dortch, WC Docket No. 14-130 (Jan. 21, 2016) (schedule noting that there is no GAAP accounting for pole maintenance, which would be derived from field reporting codes for direct labor and apply an undefined loading factor).

¹⁷ CenturyLink Letter at 4.

¹⁸ See, e.g., CenturyLink Letter at 2.

Ms. Marlene H. Dortch

February 8, 2017

Page 5

Specifically, the Commission should require that incumbent LECs freeze all pole rents at 2016 levels as a condition to opting out of Part 32 requirements. Freezing rates would avoid pole rent disputes and increases, save the costs of Part 32 accounting, and avoid the need for the detailed investigations, guidance, or rulemaking that would otherwise be required to develop a GAAP-based pole rate methodology. Under this approach, neither pole attachers nor state and federal policymakers would be harmed by an incumbent LEC's choice to opt out of the USOA accounting system with respect to the calculation of pole attachment rates, which is wholly appropriate given the substantial benefits incumbent LECs will derive from accounting relief and the total absence of any cost justification for rate increases. NCTA strongly encourages the Commission to incorporate this condition into any order granting relief from the Part 32 requirements.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

Jennifer K. McKee

cc: J. Schwarz
C. Aiken
A. Bender
K. Monteith
P. Arluk
M. Sacks
V. Goldberg
R. Cohn
D. Sloten
J. Jackson

ATTACHMENT

The carriers propose to eliminate accounting detail for plant-specific investment and disaggregated expenses but offer no counterpart GAAP accounts for pole investment, pole depreciation, pole maintenance, or other key elements of the pole formula. For example, according to the Verizon *ex parte* letter and attached chart dated January 21, 2016, pole maintenance would need to be based on higher level expense accounts, direct labor and a loading factor. We tested this approach against recent Verizon reporting to the Commission and to the New York State PSC, and found that the maintenance expenses alone could be well over 1000 percent higher, without even accounting for an additional loading factor.

The detailed Part 32 ARMIS 43-01 report that Verizon filed with the Commission reports its 2015 pole maintenance expense at \$11 million, less \$6 million in pole rentals paid to power companies, for a net expense of \$5 million.¹

Pole Maintenance Expense	\$ 11,781,000
Pole Rental Expense	\$ (6,610,000)
Pole Expense	\$ 5,170,000

In its annual report to the New York State PSC for 2015, Verizon reported \$2.5 billion in plant specific operating expenses.² Allocating plant specific operating expenses by the ratio of pole plant to total plant in service would produce an expense of over \$70 million (over 1000 percent higher than is now reported in ARMIS to the Commission).

Pole Investment (gross)	\$ 815,331,182
TPIS (gross)	\$ 28,616,035,261
Ratio	2.85%
Plant Specific Operating Expense	\$ 2,523,546,526
	\$ 71,901,161

The result is no better if one attempts to allocate based on labor ratios. Verizon did not report a labor ratio specifically for pole expense. Verizon reported that 2.7 percent of employees are for engineering. If that labor ratio were applied to the expenses that Verizon reported for plant specific operating expenses, the expense would be equally inflated.

Engineering Employees	363
Total Employees	13,399
Ratio	2.71%
Plant Specific Operating Expense	\$ 2,523,546,526
	\$ 68,366,847

¹ Verizon Annual Report in CC Docket No. 86-182 (Mar. 31, 2016).

² Verizon NY Inc. 2015 Annual Report at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=10-01709>.