**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Comprehensive Review of the Part 32 | ) | WC Docket No. 14-130 |
| Uniform System of Accounts | ) | |
| | ) | |

# OPPOSITION OF THE USTELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] submits this Opposition to NCTA– The Internet and Television Association's (NCTA) Petition for Reconsideration[2] of the Commission's Report and Order in the matter of Comprehensive Review of the Part 32 Uniform System of Accounts, the Commission's recent revisions to Part 32 rules.[3] When the Commission adopted the Part 32 Order, the Commission determined that there was a need to streamline and eliminate outdated Part 32 accounting rules which are no longer needed to fulfill the Commission's statutory or regulatory duties.[4] The order states that by reducing the costly burden of outdated regulatory requirements placed upon carriers, they will have, "the ability to better allocate scarce resources toward expanding modern networks which are critical to bringing economic opportunity, job creation, and civic engagement to all Americans."[5] USTelecom supports the findings and conclusions of the Commission's Part 32 Order and opposes NCTA's petition to undo the important revisions to the Part 32 rules.

---

[1] USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.
[2] Petition for Reconsideration of NCTA – The Internet & Television Association, *In the Matter of Comprehensive Part 32 Uniform System of Accounts*, WC Docket No. 14-30 (Jun. 5, 2017) (NCTA PFR).
[3] *See In the Matter of Comprehensive Review of the Part 32 Uniform System of Account*, Report and Order, WC Docket No. 14-130, CC Docket No. 80-286, 32 FCC Rcd. 1735 (Feb. 23, 2017) (Part 32 Order).
[4] Part 32 Order at 1735, para 1.
[5] *Id.* at para 2.

## I. The Commission Should Reject Proposals to Require Carriers to Maintain a Separate Set of Books Under Part 32 Rules

Throughout its petition NCTA argues that the FCC should provide specific direction on reconsideration to ensure that the new regulatory regime does not change what costs may be included in pole attachment rates in order to seek some assurance from the Commission that rates will remain steady over the long run.[6] However, asking the FCC to require price-cap carriers to continue to follow Part 32 for certain things like valuation of assets after a merger defeats the purpose of Part 32 relief. NCTA argues that the prior Part 32 pole attachment regime has been a success for 40 years[7] and by allowing carriers to opt out of Part 32 rules to rely exclusively on GAAP eliminates procedural and substantive protections that ensure that pole attachment rates are based on actual costs.[8] As the Commission itself stated, Part 32 accounting rules are certainly outdated for price cap carriers, and maintaining them is a needless regulatory burden and expense.[9] USTelecom agrees that continuing to maintain outdated Part 32 accounting solely to develop pole attachment rates is both utterly impractical and plainly unwarranted. AT&T, CenturyLink, Verizon and USTelecom developed and presented a fair, comparatively simple, and transparent plan for deriving pole attachment rates during an extended period after the transition from Part 32 to GAAP without disrupting the Commission's pole attachment regime which was adopted by the Commission.[10] In doing so, the Commission not only removed incremental regulatory burdens that consume resources that distract companies from other priorities, such as investing in the broadband network, but also ensured that there would be transparency in pole attachment rates and a mechanism that eliminates the rate impact during an extended period.[11]

---

[6] NCTA PFR at i-iv and 8-10.
[7] NCTA PFR at 2.
[8] NCTA PFR at ii-iii, 8-10 and 11-18.
[9] Part 32 Order at 1735, para 1 and 1739-40, paras 12-13.
[10] Part 32 Order at 1746-47, paras 36-38.
[11] *See Id.*

## II. The Commission's Decision to Adopt the Implementation Rate Difference for Pole Attachment Rates as part of the Transition from Part 32 to GAAP Provides More Than Adequate Protections

NCTA's proposal that the Commission reconsider its Order and adopt rules that will prohibit carriers from inflating pole costs under GAAP above their original cost must be rejected. Specifically, NCTA argues that the Commission should reconsider the Part 32 Order because it failed to provide the necessary protections to ensure that pole attachers have continued access to information necessary to derive pole attachment rates[12] and that telephone companies charge reasonable pole attachment rates.[13] In particular, NCTA is concerned that the *Part 32 Order* removes the requirement that carriers provide a full pole cost report.[14] We believe however, NCTA may have overlooked that the requirement to file the pole attachment cost report for FCC regulated states is already a condition of forbearance from the ARMIS reporting requirements and nothing in the *Part 32 Order* eliminates this requirement.[15] As such, maintaining such a requirement would only duplicate an existing filing and record keeping requirement. The Commission has stated multiple times that it specifically seeks to avoid such unnecessary and duplicative requirements. For example, in a recent Commission rulemaking regarding earth stations rules, the Commission determined that where it had almost identical rules for satellite earth stations on land vehicles as it did for satellite earth stations on aircraft such rules were duplicative, unnecessary and inefficient.[16] In his statement on this NPRM, Chairman Pai noted that two of the Commission's core goals are reducing unnecessary red tape, and enabling the private sector so that they can innovate and invest in new technologies.[17]

---

[12] NCTA PFR at 8-18.
[13] NCTA PFR at 8-11.
[14] *Id.* at 10-11.
[15] *See In the Matter of Petition of Qwest Corporation, et al. for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c)*, WC Docket Nos. 07-204 & 07-273, Memorandum Opinion and Order, 23 FCC Rcd 18483, 18490-91 (Dec. 12, 2008), wherein the Commission said, "We impose one further condition on our forbearance from the ARMIS Financial Report: each carrier's continued annual public filings with the Commission of pole attachment cost data currently submitted in ARMIS Report 43-01."
[16] *See e.g. In the Matter of the Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service*, IB Docket No. 17-95 (May 18, 2017).
[17] *See Id.* at Statement of Chairman Ajit Pai.

Additionally, NCTA's petition demonstrates that it is unfamiliar with the existing requirements. For example, despite NCTA's claims to the contrary, the instructions for FCC Report 43-01 and Pole Attachment Data Report Definitions, dated January 2017, at pages 8-9 and 20-22, specifically requires pole specific information such as Pole Maintenance Expense. Indeed the FCC emphasizes that the shift from USOA to GAAP does not change what costs may be included, but changes only how and when those costs are recognized.[18]In addition, the Commission adopted the requirement to provide cost data for states that have opted to regulate pole attachments for 3 years, and this requirement can be extended for an additional 3 years.[19] So ultimately, under the current order and the other requirements already in place, the Petitioner will have even more data at their disposal than they did under Part 32 rules prior to the order.

Importantly, the Commission adopted the Implementation Rate Difference[20] as a safeguard to protect against sudden rate increases associated with the transition to GAAP,[21] which is precisely what NCTA seeks. As noted previously in this proceeding, GAAP accounting itself is widely used – including by NCTA members - and the resulting financial statements are subject to audit.[22] The transition plan as adopted mitigates the impact of the accounting change through a significant transition period based on the accounting life of poles. Simply put, the Implementation Rate Difference mitigates the effect of changing from USOA accounting to GAAP accounting, for a period of 12 years giving the accounting differences ample time to catch up.

It is a simple and sensible formula that provides transparency and predictability throughout the transition. Furthermore, to the extent any party believes "the rate, term, or condition is unjust or unreasonable" the Commission provides a comprehensive complaint process.[23] NCTA's PFR

---

[18] Part 32 Order at 1747, para 39.
[19] *Id.*
[20] *See* 47 C.F.R. §1.1409
[21] Part 32 Order at 1746-47, paras 36-38.
[22] See Letter from B. Lynn Follansbee, VP – Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket 14-130 (Feb. 14, 2017) (NCTA Feb. 14 Letter).
[23] *See* 47 CFR §1.1404

misconstrues and speculates how companies will derive pole attachment accounting information, asserting that maintenance expenses will somehow be exponentially increased.[24] This error reflects a misunderstanding of both the record and the reported numbers it uses. Verizon stated in the record that it would derive pole maintenance expenses in a manner similar to its current practice – and as any company would – by using the costs specifically attributable to pole maintenance.[25] NCTA purportedly "test[s] this approach" by making a comparison of apples and oranges and then argues that the disparate results are cause for concern.[26] NCTA compares Verizon's pole maintenance expense figures reported to the Commission to a wholly made-up allocation of operating expense using total plant investment and other operating expense and employment figures reported to the New York Public Service Commission. But these figures bear no resemblance whatsoever to any proposal made by Verizon. Instead, as AT&T, CenturyLink and Verizon have explained in the record, the companies' plan to use the same or very similar ways to derive pole attachment rate inputs as they do today.

NCTA argues that in order to protect attachers from what it sees as the "potential" for substantial increases in pole rate would be to prohibit carriers from charging again for costs of disposal that have already been recovered through costs of depreciation and require those that have fully depreciated pole costs to no longer charge for capital investment, but only for pole expenses.[27] But here NCTA overlooks that the transition mechanism excludes such differences from the rate calculation – i.e., the costs of removal recovered under Part 32 accounting will not be included a second time in the rate because the change in reported expense will be eliminated through the rate Implementation Rate Difference, that is subtracted from the GAAP-derived rate. In fact, the Commission has already stated that it does not "anticipate any significant rate effects resulting from these efforts to further align the USOA with GAAP

[24] NCTA PFR at 16 and Letter from Steven S. Morris, NCTA, to Marlene H. Dortch, WC Docket No. 14-130 (Feb. 8, 2017) at 4, Attachment.
[25] Letter from Ian Dillner, Verizon, to Marlene H. Dortch, WC Docket No. 14-130 (Jan. 21, 2016).
[26] NCTA PFR at 16 and Exhibits; NCTA Feb. 14 Letter at 4, Attachment.
[27] NCTA PFR at 20.

principles.[28] As such, any question about some imagined rate increased has already been resolved by the Commission in its Part 32 Order.

### III. Petitioner Makes Inaccurate Statements

Throughout the PFR NCTA makes some inaccurate statements which cloud the record. For example NCTA states that, "For their part, USTelecom, AT&T and Verizon all contended that GAAP cost data could be used in the pole attachment rate formula with no alteration in pole attachment charges,"[29] however, none of the carriers said that. USTelecom came close and said that there is no evidence that relying upon GAAP would alter rates price cap carriers charge for pole attachments,[30] but AT&T said that there is no basis to believe that pole attachment rates calculated based on GAAP accounting would not be just and reasonable.[31] On that same topic, Verizon just said that the formula could be populated using GAAP data.[32] The difference is significant here and it is inappropriate for Petitioner to characterize what was actually said in the record in order to serve its own argument that somehow the shift in accounting methodology would result in inconsistently derived cost inputs.

NCTA also states that, "none of the carriers performed any pole attachment rate calculations using GAAP data or comparing rate formula results using GAAP and USOA data."[33] Regardless of what is in the record, the Implementation Rate Difference adopted by the Commission is clearly meant to insulate all attachers from differences between GAAP-based and USOA-based rates. The major differences between Part 32 rules and GAAP arise primarily from the timing of certain costs, such as the different treatment of asset lives under GAAP and Part 32 and the costs of removing or taking down a pole. Pole depreciation is somewhat different under the two accounting systems. Also, under Part 32 rules, the cost of removal is taken into account over time, while under GAAP it is calculated at the time

[28] Part 32 Order at 1744, para 28.
[29] NCTA PFR at 13.
[30] Letter from B. Lynn Follansbee, VP-Law & Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-130, (Feb. 10, 2017).
[31] Reply Comments of AT&T Services, Inc., WC Docket No. 14-130 (Dec. 15, 2014) at 5.
[32] Comments of Verizon, WC Docket No. 14-130 (Nov. 14, 2014) at 5.
[33] NCTA PFR at 14.

when the pole is actually removed. The Implementation Rate Difference takes into account these *and any other differences* between the two methodologies. It cancels the effects of the move from Part 32 to GAAP by providing a transition that accounts for these costs on a going-forward basis. It provides a simple and transparent method for addressing any difference between the results derived under the two methodologies and ensures a 12-year transition that is unquestionably fair to attachers.

Not only do NCTA's arguments miss the mark, as discussed above, but they arrive with their new analysis months late. NCTA's petition includes substantial new analysis of data submitted by others in the record several months prior to the Commission's decision.[34] Accordingly, the Commission must reject NCTA's new information as untimely.[35]

## IV. Conclusion

The Commission acted properly in adopting the Part 32 Order because its serves the dual goals of minimizing compliance burdens on carriers while ensuring the agency it needs to fulfill its regulatory duties. For the reasons described herein, the Commission should deny NCTA's PFR.

Respectfully submitted,

USTELECOM ASSOCIATION

By: B. Lynn Follansbee

B. Lynn Follansbee
Jonathan Banks
Its Attorneys

601 New Jersey Avenue, NW, Suite 600
Washington, D.C. 20001
202-326-7300

July 21, 2017

[34] NCTA PFR, Exhibits 1-11. AT&T, CenturyLink, and Verizon filed accounting data in early October 2016, four and a half months before the Commission's decision. Only months after the Commission's decision, in its petition for reconsideration, did NCTA introduce into the record any analysis of that data.

[35] See 47 CFR §1.429(b).