



The Internet & Television Association

25 Massachusetts Avenue, NW | Suite 100

Washington, DC 20001

(202) 222-2300

**Steve Morris**

Vice President &

Associate General Counsel

o (202) 222-2454 e smorris@ncta.com

November 21, 2017

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Part 32 Accounting, WC Docket No. 14-130**

On November 21, 2017, NCTA – The Internet & Television Association submitted the attached comments to the Office of Management and Budget. We respectfully request that these comments be included in the record of the above-referenced proceeding. Please do not hesitate to contact me should you have any questions regarding this filing.

Respectfully submitted,

/s/ **Steven F. Morris**

Steven F. Morris



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

Legal Department

• (202) 222-2445

**Via Email Delivery**

Nicholas A. Fraser  
[Nicholas.A.Fraser@omb.eop.gov](mailto:Nicholas.A.Fraser@omb.eop.gov)  
Office of Management and Budget  
New Executive Office Building  
Washington DC 20502

Nicole Ongele  
[Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov)  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

November 21, 2017

**Re: OMB Control No. 3060-XXXX**  
**Part 32 Uniform System of Accounts, WC Docket No. 14-130**

Dear Mr. Fraser:

NCTA - The Internet & Television Association, the principal trade association for the cable industry in the United States, submits these comments in response to the Federal Communications Commission's Paperwork Reduction Act (PRA) Notice and Request for Comment<sup>1</sup> regarding information collection requirements related to the *Part 32 Order*.<sup>2</sup> While NCTA recognizes the importance of eliminating unnecessary regulatory burdens on the communications industry, the Commission's *Part 32 Order* information requirements inexplicably "shift disproportionate costs or burdens onto the public," compromise program objectives and undermine the Commission's statutory obligation to ensure that pole attachment rates are just and reasonable, and thereby fail to satisfy PRA standards.

---

<sup>1</sup> See 82 FR 49368-69 (October 25, 2017) and *Supporting Statement*, Part 32 Uniform System of Accounts, 3060-XXXX (October 2017) (Part 32 Supporting Statement).

<sup>2</sup> *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, CC Docket No. 80-286, Report and Order, FCC 17-15 (rel. Feb. 24, 2017) (*Part 32 Order*). In addition to this PRA challenge, NCTA also has filed with the Commission a Petition for Reconsideration of the *Part 32 Order*. *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Petition for Reconsideration of NCTA – The Internet & Television Association (filed June 5, 2017). That petition is still pending before the Commission.

The Commission has a statutory duty to ensure that the monopoly pole attachment rates charged by incumbent local exchange carriers (LECs) and other utilities are just and reasonable. *See* 47 U.S.C. § 224(b). In lieu of traditional ratesetting based on *ex ante* agency review of cost data submitted by the incumbent LECs, the Commission instead relies on a complaint-driven process to ensure that rates are reasonable. Specifically, until this *Part 32 Order*, the Commission required utilities to publicly report cost-based data, consistently derived under the Commission's Part 32 accounting rules, from which pole rents could be readily reviewed using the Commission's judicially-approved rate formulas.<sup>3</sup> In turn, the Commission put the burden on attaching entities (including the cable operators represented by NCTA) to come to the Commission with complaints and evidence supporting claims about unreasonably high pole rents.<sup>4</sup>

The public reporting of an incumbent LEC's Part 32 accounting data was a critical element of this regulatory regime. As the Commission has held, "[w]ithout 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."<sup>5</sup> Because Part 32 cost information was publicly available and consistently-derived, rates could be easily vetted by attaching parties, minimizing the number of formal complaints reaching the Commission. The Commission itself has told OMB that these Part 32 information requirements are indispensable: "***There is no other existing information known of that would serve our regulatory purposes.***"<sup>6</sup>

The Commission's *Part 32 Order* released earlier this year upends this predictable and effective regulatory regime. While Commission rules continue to put the burden of proof on attaching entities when challenging unreasonable pole rents, the rules adopted in the *Part 32*

---

<sup>3</sup> *Amendment of Rules and Policies Governing Pole Attachments; Implementation of Section 7039d) of the Telecommunications Act of 1996*, Consol. Partial Order on Recon. 16 FCC Rcd 12103 (2001) at ¶ 25 ("For more than two decades, the pole attachment formula has provided a stable and certain regulatory framework, which may be applied "simply and expeditiously" requirement a minimum of staff, paperwork and procedures consistent with fair and efficient regulation."); *FCC v. Florida Power Corporation*, 480 U.S. 245 (1987) (upholding FCC pole attachment formula).

<sup>4</sup> *See* 47 C.F.R. § 1.1409(b) ("The complainant shall have the burden of establishing a prima facie case that the rate, term or condition is not just and reasonable"); *see also* 47 C.F.R. § 1.1404(g) (setting forth specific cost data an attacher must include with a complaint challenging a pole attachment rate as unjust and unreasonable).

<sup>5</sup> *2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, CC Docket Nos. 00-199 *et al.*, Report and Order, 16 FCC Rcd 19911, 19928 ¶ 44, 19931 ¶ 48 (2001) (*Phase 2 Order*).

<sup>6</sup> *See e.g.* FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2017) at 2; FCC Supporting Statement, *ARMIS Annual Summary Report – FCC Report 43-01*, Docket 3060-0512 (October 2014) at 2; FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2014) at 2; FCC Supporting Statement, *ARMIS Annual Summary Report – FCC Report 43-01*, Docket 3060-0512 (April 2012) at 2; FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2011) at 2; and FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2008) at 2.

*Order* permit incumbent LECs to use Generally Accepted Accounting Principles (GAAP) instead of Part 32 accounting and no longer require carriers to report the consistently-derived, cost-based data necessary for an attaching entity to meet its evidentiary burden. As such, the information requested not only subverts PRA-mandated “practical utility,”<sup>7</sup> it threatens to undermine the Commission’s well-established and highly successful pole attachment rules and policies.

Moreover, the increased burden to attaching entities (and the Commission) in ferreting out and analyzing inconsistently-derived data for the roughly 20 million poles owned by telephone companies could be crippling. In 2015 alone, incumbent LECs filed pole attachment data for ninety-six separate service areas.<sup>8</sup> Pole attachment rates are updated annually using this prior year cost data, and rates may be reviewed and adjusted for multiple years.<sup>9</sup> Thus, while the Commission may have reduced the burden on carriers, it has done so in a way that “shifts disproportionate costs or burdens onto the public” in violation of the PRA standards.<sup>10</sup>

In response to NCTA’s initial PRA comments, the Commission claims that it need not consider the burden on attaching entities. According to the Commission, any reliance by attaching entities upon the Part 32 cost data is “purely voluntary” because “the revised rules do not obligate pole attachers to generate, maintain, retain or disclose or provide information to the Commission.”<sup>11</sup> But that is wrong. The process chosen by the Commission to meet its statutory obligation to ensure that incumbent LECs do not abuse their monopoly over pole attachments depends on complaints by attaching parties rather than traditional *ex ante* ratesetting by the Commission. Pursuant to this process, any attaching party that seeks to challenge the rates charged by a pole owner (i.e., any party that seeks to benefit from the reasonable rates that Congress has required the Commission to provide through its regulations) is subject to formal information submission requirements through the complaint process.<sup>12</sup> By upending the information process, the Commission has failed to “take[] every reasonable step to ensure that the proposed collection of information ... is the least burdensome necessary for the proper

---

<sup>7</sup> 5 C.F.R. § 1320.3(1) (“the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability,” as well as “a person’s ability to receive and process that which is disclosed, in the case of a third-party or public disclosure in a useful and timely fashion.”).

<sup>8</sup> Incumbent LECs that submitted this information in 2015 in CC Docket No. 86-182 included Frontier Communications Corporation, Verizon, AT&T Services, Inc., CenturyLink, Hawaiian Telcom Communications, Inc., Windstream Corporation, Telecommunications of Puerto Rico, and FairPoint Communications, Inc.

<sup>9</sup> 47 C.F.R. § 1.1410(a)(3).

<sup>10</sup> 5 C.F.R. 1320.8(d)(1)(iii) (“The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.”).

<sup>11</sup> Part 32 Supporting Statement at 3-4.

<sup>12</sup> Indeed, the PRA definition of burden accounts for this precise scenario. Burden is defined in the PRA to include the “total time, effort, or financial resources expended by persons” (not just respondents) to “provide information to or for a Federal Agency” and includes inter alia, “adjusting the existing ways to comply with any previously applicable instructions and requirements.” 5 CFR § 1320.3(b)(1)(v).

performance of the [Commission's] functions to comply with legal requirements and achieve program objectives," as required by PRA.<sup>13</sup>

In its Petition for Reconsideration and initial PRA comments, NCTA offered easy solutions to the Commission to remedy the unfair burdens imposed by the *Part 32 Order*, to meet its legal requirements and achieve program objectives, while still providing the relief from regulatory burdens intended by the *Part 32 Order*. Left uncorrected, price cap carrier pole attachment rents will increase as a result of the transition to GAAP accounting but attaching parties will lack the information required to bring rates into alignment with statutory requirements. This contravenes Congressional direction; defies the Commission's own stated objectives to advance broadband deployment by relieving utility pole attachment barriers; and violates the PRA.

Until the *Part 32 Order* is corrected, the Office of Management and Budget should not approve the PRA request.

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris  
Jennifer K. McKee

---

<sup>13</sup> 44 U.S.C. §§3501-3520.