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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: USTA Petition for Rulemaking
CS Docket No. 98-81
ASD File No. 98-64
Review of ARMIS Reporting Requirements
CC Docket No. 98-117

Dear Ms. Salas:

The National Cable Television Association respectfully submits these comments on the reforms in ARMIS reporting requirements that have been suggested in these dockets. The premise of the suggestions, as stated in the Arthur Anderson study, are that "the cost of service concept on which the need for USOA detail was based is irrelevant. Prices no longer bear a direct relationship to costs." Arthur Anderson at page 11. We believe this is in turn premised on the prevalence of no sharing price cap regulation for many services. Arthur Anderson at page 1. However, these premises are invalid for pole attachments and for the cable television operators (and CLECs) who are dependent upon them. All ILECs, including those of mid-size, have a high volume of transactions involving pole and conduit attachments, which are required

to be based on cost and for which the current Class A reporting requirements are critical. Eliminating or reducing the public availability of this level of accounting detail would eviscerate the FCC's highly effective regime for controlling abuses of this crucial bottleneck to competition.

As the Commission knows well, cable operators are required by local franchise, environmental and zoning laws, and business realities, to make use of existing utility poles.[1] Cable operators seeking to attach facilities to those poles had been subjected to refusals, delays, overcharges, and other abuses by pole owners who feared the potential facilities-based competition.[2] Negotiation failed. State PUCs were unwilling to intervene. Antitrust litigation took over a decade.

The Pole Attachment Act was passed in 1978 to fill the urgent need for a forum for the simple and expeditious adjudication of cable television access and rate disputes. The Pole Act mandates that the FCC provide a readily available forum for the "simple and expeditious" resolution of pole complaints.[3] The Commission has afforded that forum, and has strived since its first rulemaking to craft a rate formula which serves the overarching purposes of the Act: simplicity; expedition; fair compensation to pole owners; and sufficient clarity to promote consistent settlements without recourse to FCC complaints for each of the hundreds of pole contracts and pole rent rate calculations reviewed annually.

The Commission's formula has been clear. It has evolved through several major rulemakings and hundreds of litigated cases which have tested and refined the intricacies of the formula adopted by rule. It has survived challenges raised in court and in Congress. The formula relies nearly exclusively on publicly available information, available from the

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[1] *See, e.g., Better TV, Inc.*, 31 F.C.C.2d 939, 956 (1971); *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987).

[2] *See, e.g., Communications Act Amendments of 1977: Hearings on S. 1547 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong. (1977). *Cable Television Regulation Oversight: Hearings Before the Subcomm. on Communications of the Comm. on Interstate & Foreign Commerce, Parts 1 & 2*, 94th Cong. (1976) (hereinafter *1976 Oversight*); *Pole Attachment: Hearings on H.R. 15372 and H.R. 15268 Before the Subcomm. on Communications of the House Comm. on Interstate & Foreign Commerce*, 94th Cong. (1976) (hereinafter *1976 H. Comm.*).

[3] S. Rep. No. 95-580, at 21 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109, 129.

ARMIS/Class A USOA annual reports routinely prepared by the pole owners. Pole proceedings have been specifically designed to be simple, expeditious three-pleading affairs to resolve disputes with a minimum of paperwork, without discovery and without live testimony.[4] The reliance on such a regime has created enormous benefits.

For 20 years, reliance on this publicly available information has allowed utility pole owners and attaching parties to resolve hundreds of rate issues on their own without Commission involvement. The typical pole attachment agreement permits the rates to be recalculated annually to reflect the most recently filed cost information. But neither the utilities nor cable operators come to the FCC annually to check those calculations. Instead, the industries have established comprehensive private review mechanisms which apply the FCC's formula to current Class A ARMIS data, as set out in public reports, and resolve almost all disputes without agency intervention. The regime has worked so well that the States which have "certified" their authority to regulate pole attachments independently have adopted the FCC formula. (Examples include California, New York, Ohio, Massachusetts,and Michigan.)

The benefits are perhaps most vividly demonstrated in the case of small cable operators who might find themselves dealing with mid-sized telephone companies. Small operators are peculiarly vulnerable to pole rent overcharges, because of the nature of their service areas. The Commission has recognized that small systems serve areas that are far less densely populated than the areas served by large operators.[5] A small rural operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers. A pole rent increase creates an enormous push on rates, and frequently makes rural line extensions uneconomical. These same small operators are often the very parties without the budgets to litigate expensive document-intensive rate cases. Indeed, there is an instructive lesson from an important pole attachment antitrust case brought before the 1978 Pole Act. One small cable operator, Aberdeen Cable, prevailed in its Sherman Act claims against pole abuses, but by

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[4] The rules authorize a complaint, a response by the party subject to the complaint, and a reply by the initial complainant. 47 C.F.R. § 1.1407. The Commission established this three-pleading system in response to Congress' direction that the FCC create a "simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paper work and procedures consistent with fair and efficient regulation."

[5] *Insight Communications Company*, DA 95-2334 (Nov. 13, 1995) (small system average is 35.3 homes per mile, while large system average is 68.7 homes per mile).

the end of the 12 years of litigation, it was bankrupt.[6]

The cost-saving benefits of the FCC's expeditious regime redound to the utilities, cable operators, and the Commission. The time-saving benefits are especially valuable in today's highly competitive arena, when delays in attachments by cable operators and CLECs may determine whether or not consumers have a choice among telecommunication providers.

The USOA accounts which are currently used in establishing pole rents are set forth in the Attachment. The Arthur Anderson proposals would eviscerate the operation of the formula. For example:

- Pole rents are determined by isolating the cost of a bare pole, which is currently booked to Class A Account 2411. Anderson proposes exclusive reliance on Class B Account 2410. This account includes not only poles, but aerial cable, undersea cables, buried cable, intrabuilding network wiring, and conduit systems, none of which is included in the rental for attachment to a bare pole.

- Because poles are licensed for use by-the-pole, the pole rent is calculated by dividing the aggregate investment per bare pole by the units of poles, which is in turn maintained in continuing property records and reported in ARMIS. Anderson proposes the consolidation of such CPR records.

- Pole rent carrying charges rely on the use of discrete elements of the existing matrix for expense reporting. For example, the costs of "pole maintenance" in Account 6411 is broken out in the expense matrix so that the rents which LECs pay to power companies are not charged to cable operators, who directly pay power companies for attachment to power poles. Anderson proposes (page 23) to eliminate the matrix, which would create the very double charge which the FCC has specifically found to be unjust.[7]

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[6] *TV Signal Co. of Aberdeen v. American Tel. & Tel. Co.*, 462 F.2d 1256 (8th Cir. 1972); *TV Signal Co. of Aberdeen v. American Tel. & Tel. Co.*, 617 F.2d 1302 (8th Cir. 1980); *TV Signal Co. of Aberdeen v. American Tel. & Tel. Co.*, 49 R.R.2d 328, 1981-1 Trade Reg. Rep. (CCH) ¶ 63,944 (D.S.D. 1981).

[7] 5 FCC Rcd 3898 (1990).

- Telecommunications pole rents under the formula to be phased in from 2001-2005 depend on a geographically de-averaged determination of the number of attaching parties on the pole. Anderson proposes (pages 26-27) the elimination of the geographically distinct record keeping.

The Commission should not lightly reduce the number of entities reporting at the Class A level of detail, nor should it collapse these accounts into higher levels of aggregation. There is no regulatory or negotiating regimen on which cable television operators or CLECs may fall back should the FCC terminate the data points which are the key to the FCC's pole formula. When such data is not reported publicly, in a manner which is subject to ready confirmation and which is demonstrably internally consistent, pole rent calculations rapidly fall into dispute and adversarial proceedings. Annual evidentiary hearings for each LEC reporting at a Class B level of aggregation would defeat the purposes of the Pole Act. Because poles and conduits are essential facilities, the competitive consequences would be severe.

Anderson states (page 22) that "management would likely keep a significant number of accounts for internal analysis" and could make them available for FCC staff on an as needed basis. This would require regulatory intervention for purposes calculating each year's pole rent. We respectfully submit that the existing ARMIS accounts should continue to be required and publicly reported to serve the purposes of the Pole Act.

Respectfully submitted,

Paul Glist

CALCULATION OF MAXIMUM POLE ATTACHMENT RATE
Sample

Net Investment Per Bare Pole	$106.23
Gross Investment in Pole Plant	$150,000,000.00
-Depreciation Reserve for Poles	$80,000,000.00
-Accumulated Deferred Taxes	$13,416,310.77
=Net Investment in Pole Plant	$56,583,689.23
-Net Investment in Appurtenances (5%)	$2,829,184.46
=Net Investment in Bare Pole Plant	$53,754,504.77
/Number of Poles	505,998
=Net Investment per Bare Pole	$106.23
CARRYING CHARGES	
Maintenance	
Chargeable Maintenance Expenses	$609,000.00
/Net Investment in Pole Plant	$56,583,689.23
=Maintenance Carrying Charge	1.08%
Maintenance Expense for Bare Pole	$578,550.00
Depreciation	
Annual Depreciation Rate for Poles	4.61%
Gross Investment in Pole Plant	$150,000,000.00
/Net Investment in Pole Plant	$56,583,689.23
=Gross/Net Adjustment	265.09%
Deprec Rate Applied to Net Pole Plant	12.22%
Depreciation Expense for Bare Pole	$6,569,250.00

Administrative	
Administrative Expenses	$377,267,000.00
Total Plant In Service	$8,257,747,000.00
-Depreciation Reserve for TPIS	$3,867,992,000.00
-Accumulated Deferred Taxes	$738,590,000.00
=Net Plant in Service	$3,651,165,000.00
Administrative Carrying Charge	10.33%
Administrative Expense for Bare Pole	$5,554,336.97
Taxes	
Normalized Tax Expense	$227,651,000.00
Total Plant In Service	$8,257,747,000.00
-Depreciation Reserve for TPIS	$3,867,992,000.00
-Accumulated Deferred Taxes	$738,590,000.00
=Net Plant in Service	$3,651,165,000.00
Tax Carrying Charge	6.24%
Tax Expense for Bare Pole	$ 3,351,606.07
Return	
Return Authorized by State	11.25%
Return Expense for Bare Pole	$ 6,047,381.79
Total Carrying Charges	41.11%
Recapitulation of Carrying Costs	
Maintenance Expense for Bare Pole	$ 578,550.00
Administrative Expense for Bare Pole	$ 5,554,336.97
Taxes	$ 3,351,606.07
Depreciation	$ 6,569,250.00
Return	$ 6,047,381.79
Total Annual Cost	$ 22,101,124.83
Annual Cost per Pole	$ 43.68

Allocation of Annual Carrying Costs				
Space Occupied by Cable	1.0			
/Total Useable Space	13.50			
Charge Factor	7.41%			
Maximum Rate				
Net Investment Per Bare Pole	$106.23			
*Carrying Charges	41.11%			
Carrying Cost	$ 43.68			
*Charge Factor	7.41%			
=MAXIMUM RATE	**$3.24**			
DATA ENTRY AND SOURCE (ARMIS)		**Account**	**Table**	**Source**
Gross Investment in Pole Plant	$150,000,000.00	**2411(af)**	**B-1-2**	**ARMIS 43-02**
Gross Investment in Total Plant	$8,257,747,000.00	**240(af)**	**B-1-2**	**ARMIS 43-02**
Depreciation Reserve for Pole Plant	$80,000,000.00	**0390(j)**	**B-5-4**	**ARMIS 43-02**
Depreciation Reserve for TPIS	$3,867,992,000.00	**0490(j)**	**B-5-4**	**ARMIS 43-02**
Pole Maintenance Expense	$609,000.00	**6411(ac)**	**I-1-2**	**ARMIS 43-02**
	$581,000.00	**6411(af)**	**I-1-2**	**ARMIS 43-02**
Depreciation Rate for Poles	4.61%	**2411**	**B-7-1**	**ARMIS 43-02**
Administrative Expense 1	$14,750,000.00	**6710(ab)**	**I-1-3**	**ARMIS 43-02**
Administrative Expense 2	$362,517,000.00	**6720(ab)**	**I-1-3**	**ARMIS 43-02**
Taxes	$227,651,000.00	**7200(bb)**	**I-1-**	**ARMIS 43-02**
Accumulated Deferred Taxes	($52,157,000.00)	**4100(bb)**	**B-1-4**	**ARMIS 43-02**
	$790,747,000.00	**4340(bb)**	**B-1-4**	**ARMIS 43-02**
Accumulated Deferred Taxes (Prorated to Poles)	$13,416,310.77	**Calculated as indicated**		
Overall Rate of Return (Last Rate Case)	11.25%	**PSC**		
Number of Poles	505,998	**150**	**S-1, 1.A**	**ARMIS 43-08**

CALCULATION OF MAXIMUM CONDUIT RENTAL RATE
Sample Telephone Company

	97-98 Calculation
Net Investment Per Conduit Foot	
Gross Investment in Conduit	$100,000,000.00
-Depreciation Reserve for Conduit	$50,000,000.00
-Accumulated Deferred Taxes	$13,333,333.33
=Net Investment in Conduit	$36,666,666.67
/Conduit Feet (see Data Entry for Calc)	3,280,930
=Net Investment per Conduit Foot	$11.18
Carrying Charges	
Maintenance	$500,000.00
Conduit Expenses Chargeable to Maintenance	$36,666,666.67
=Net Investment in Conduit Plant	1.36%
=Maintenance Carrying Charge	
Depreciation	4.00%
Annual Depreciation Rate for Conduit	$100,000,000.00
Gross Investment in Conduit	$36,666,666.67
=Net Investment in Conduit	272.73%
=Gross/Net Adjustment	10.91%
Deprec Rate Applied to Net Conduit	
Administrative	$70,500,000.00
Administrative Expenses	$1,500,000,000.00
Total Plant In Service	

	Conduit
-Depreciation Reserve for TPIS	$650,000,000.00
-Accumulated Deferred Taxes	$200,000,000.00
=Net Plant in Service	$650,000,000.00
Administrative Carrying Charge	10.85%
Taxes	
Normalized Tax Expense	$50,000,000.00
Total Plant In Service	$1,500,000,000.00
-Depreciation Reserve for TPIS	$650,000,000.00
-Accumulated Deferred Taxes	$200,000,000.00
=Net Plant in Service	$650,000,000.00
Tax Carrying Charge	7.69%
Return	
Return Authorized by State	11.25%
Total Carrying Charges	42.06%
Allocation of Annual Carrying Costs	
Based on Usable Space	
Portion of Cost allocated as "Usable"	100%
Conduit Feet	3,280,929.60
"Usable" Duct Feet	26,247,436.77
Average Number of "Usable" Ducts per Foot	8.0
Average Number of Ducts Per Conduit Foot	9.0
Space Occupied by Cable (Half Duct)	0.5
Usable Conduit Space Assigned to Cable per Duct Foot	0.0625
Charge Factor -- Usable Space	6.25%
Maximum Rate	
Net Investment per Conduit Foot	$11.18
*Carrying Charges	42.06%
=Annual Carrying Cost	$4.70
*Charge Factor	6.25%
=MAXIMUM RATE PER CONDUIT FOOT	$0.29

DATE ENTRY AND SOURCE		Account	Table	Source
Gross Investment in Conduit	$100,000,000.00	2441(af)	B-1-2	ARMIS 43-02
Gross Investment in Total Plant	$1,500,000,000.00	240(af)	B-1-2	ARMIS 43-02
Depreciation Reserve for Conduit	$50,000,000.00	0420(j)	B-5-4	ARMIS 43-02
Depreciation Reserve for TPIS	$650,000,000.00	0490(j)	B-5-4	ARMIS 43-02
Booked Conduit Maintenance Expense	$1,000,000.00	6441(ab)	I-1-2	ARMIS 43-02
Rents	$400,000.00	6411(__)	I-1-2	ARMIS 43-02
Pensions	$100,000.00	6411(__)	I-1-2	ARMIS 43-02
Conduit Expenses Chargeable to Maintenance	$500,000.00	6411(ac)	I-1-2	ARMIS 43-02
Conduit Expenses Chargeable to Administration	$500,000.00	6411(af)	I-1-2	ARMIS 43-02
Administrative Expense	$50,000,000.00	6710(ab)	I-1-3	ARMIS 43-02
Administrative Expense	$20,000,000.00	6720(ab)	I-1-3	ARMIS 43-02
Total Administrative Expenses	$70,500,000.00			
Annual Depreciation Rate for Conduit	4.00%	2411	B-7-1	ARMIS 43-02
Taxes	$50,000,000.00	7200(bb)	I-1-	ARMIS 43-02
Accumulated Deferred Taxes	$200,000,000.00	4100(bb)	B-1-4	ARMIS 43-02
		4340(bb)	B-1-4	ARMIS 43-02
Accumulated Deferred Taxes (Prorated to Conduit)	$13,333,333.33	Calculated as indicated		
Overall Rate of Return (Last Rate Case)	11.25%	PSC		
Conduit Trench KM 43-08, S-1	1,000.00	150	S-1, 1.A	ARMIS 43-08
Duct KM	9,000.00			
Maintenance (Enter zero unless used by cable)	1,000.00			
Usable Duct KM	8,000.00			
Mile Per KM	0.6214			
Feet per Mile	5,280.00			
Conversion Factor: KM to Feet	3,280.93			
Total Conduit Feet	3,280,929.60			
Usable Duct Feet	26,247,436.77			
Unusable Duct Feet	3,280,929.60			
Total Duct Feet	29,528,366.37			