

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) opposes any change in the manner in which incumbent local exchange carriers (LECs) account for the costs used in the calculation of pole attachment rates that would increase those rates. For the reasons recently identified by the United States Court of Appeals for the D.C. Circuit in *Verizon and AT&T v. FCC*, the Commission should continue to require incumbent LECs to maintain pole attachment cost data pursuant to existing Part 32 accounting rules.¹

INTRODUCTION

The Commission adopted the Uniform System of Accounts (USOA) in 1986, a time when “virtually all interstate access rates were subject to rate-of-return regulation, under which rates are set to cover an entity’s regulated operating expenses and provide a pre-specified return on the capital the company uses to provide regulated services.”² In the *USTelecom Forbearance Order*, the Commission recognized that the subsequent adoption of price cap regulation for most access services had altered, but not eliminated, the need for the type of detailed cost-based

¹ *Verizon and AT&T v. FCC*, Case No. 13-1220, slip op. (Oct. 31 2014) (*Verizon and AT&T v. FCC*).

² *Comprehensive Review of Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Notice of Proposed Rulemaking, FCC 14-123 (rel. Aug. 20, 2014) (*Notice*) at ¶ 4.

accounting records required by USOA under the Commission's Part 32 rules.³ Consequently, while the Commission found that forbearance of those rules was not warranted, it did commit to solicit comment on possible streamlining of those rules, which it has done in the *Notice*.⁴

NCTA submits these comments to address one narrow aspect of this proceeding – the accounting requirements applicable to pole attachment cost data. Incumbent LECs remain subject to traditional rate-of-return regulation with respect to pole attachment rates and consequently there is no basis for eliminating or streamlining the Part 32 rules with respect to this category of data. To the contrary, the analysis in the *USTelecom Forbearance Order*⁵ and in *Verizon and AT&T v. FCC*,⁶ strongly supports continued retention of the Part 32 rules for pole attachment accounting data.

**POLE ATTACHMENT REGULATION REQUIRES CONTINUED
ACCESS TO PART 32 ACCOUNTING DATA**

The last few decades have witnessed an explosion of competition in virtually every segment of the telecommunications marketplace. Yet for all this progress, pole attachments remain one area that is immune to competition. In any given geographic area, local governments typically will allow only one entity to build poles. Recognizing that pole owners have a monopoly, Congress adopted Section 224 of the Act in 1978 and required the Commission to regulate pole attachment rates except where those rates are regulated by the states.⁷ Because of

³ *Petition of USTelecom for Forbearance*, WC Docket No. 12-61 et al., Memorandum Opinion and Order and Report and Order; Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7658, ¶ 62 (2013) (*USTelecom Forbearance Order*), *affirmed Verizon and AT&T v. FCC*, slip op. at 2.

⁴ *Id.* at 7665, ¶ 77; *Notice* at ¶ 8.

⁵ *USTelecom Forbearance Order* at 7658-60, ¶¶ 63-65.

⁶ *Verizon and AT&T v. FCC*, slip op. at 12-14.

⁷ 47 U.S.C. § 224(b)(1); *NCTA v. Gulf Power*, 534 U.S. 327, 330 (2002) (Cable operators “have found it convenient, and often essential, to lease space for their cable on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.”).

the monopoly that pole owners possess, the Commission regulates pole attachment rates pursuant to traditional rate-of-return principles, including the use of historical costs in the calculation of pole attachment rates.⁸

The *Notice* provides no basis for changing the Part 32 rules applicable to pole attachment cost data. In the context of pole attachments, the Commission cannot rely on Generally Accepted Accounting Principles (GAAP) instead of Part 32 because “negotiating parties rely on cost data contained in Part 32 to set [pole attachment] rates, and in the event there is a dispute, to form the basis of allegations in a complaint.”⁹ Additionally, as the carriers “concede,” there are “certain expense categories under Part 32 [that] do not have a ‘precise corollary under GAPP’” and “there are ‘significant’ differences in the two treatments of certain pole attachment expenses” that could lead to unwarranted increases in pole attachment rates.¹⁰ Indeed, the carriers admitted that “relying on GAAP would require carriers to develop new methods to replicate the pole attachment cost data.”¹¹ For these reasons, the D.C. Circuit found that the carriers’ argument for relying on GAAP in this context is “rather weak and easily rejected.”¹² Moreover, as also noted by the court, the carriers that are subject to Part 32 have essentially conceded that requiring continued compliance with these requirements for pole attachments is

⁸ *Notice* at ¶ 37; *USTelecom Forbearance Order*, 28 FCC Rcd at 7658, ¶ 63 (“[T]he Commission’s rules require a party filing a pole attachment rate complaint to include cost data ‘based on historical or original cost methodology’ and ‘derived from ARMIS . . . or other reports filed with state or federal regulatory agencies.’”).

⁹ *Verizon and AT&T v. FCC*, slip op. at 12; see also *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.”).

¹⁰ *Verizon and AT&T v. FCC*, slip op. at 13; see also *USTelecom Forbearance Order*, 28 FCC Rcd at 7659-60, ¶ 60 (“[T]he record contains no reference to alternative sources of pole attachment data that would meet the standard set by our rules.”).

¹¹ *Verizon and AT&T v. FCC*, slip op. at 13.

¹² *Id.*

reasonable.¹³ The court’s decision affirming the *USTelecom Forbearance Order* provides more than sufficient basis for the Commission to definitively conclude that incumbent LECs must remain subject to Part 32 with respect to pole attachment cost data.

CONCLUSION

For all the reasons explained in these comments, the Commission should continue to require incumbent LECs to comply with Part 32 accounting requirements in connection with pole attachment cost data.

Respectfully submitted,

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November 14, 2014

¹³ *Id.* at 14 (“[P]etitioners submitted an *ex parte* letter suggesting, *inter alia*, a partial forbearance – Part 32 data would be required *only* for pole attachment rates.”); *see also USTelecom Forbearance Order*, 28 FCC Rcd at 7659, ¶ 63 n.193.