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

In the Matter of)
)
Amendment of Rules and Policies) CS Docket No. 97-98
Governing Pole Attachments)

REPORT AND ORDER

Adopted: March 29, 2000

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By the Commission:

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I. INTRODUCTION

1. This *Report and Order* ("Order") addresses issues raised in *Amendment of Rules and Policies Governing Pole Attachments, Notice of Proposed Rulemaking*, CS Docket No. 97-98 ("Notice")¹ relating to the maximum just and reasonable rates utilities² may charge for "pole attachments"³ made to a pole, duct, conduit or right-of-way.⁴ Generally, the commenters⁵ represent the interests of one of the following three categories: (1) electric utilities;⁶ (2) cable operators;⁷ and (3) telecommunications carriers.⁸ In this *Order*, we adopt amended rules set forth in Appendix A.

II. BACKGROUND

2. Section 224 of the Communications Act ("Pole Attachment Act")⁹ grants the Commission authority to regulate the rates, terms, and conditions¹⁰ governing pole attachments and requires that such

¹12 FCC Rcd 7449 (1997).

²A "utility" is defined as any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State. 47 U.S.C. § 224(a)1).

³The term "pole attachment" is defined as any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility. 47 U.S.C. § 224(a)(4).

⁴47 U.S.C. § 224; 47 C.F.R. §§ 1.1401-1.1416.

⁵A list of commenters, as well as the abbreviations used in this *Order* to refer to such parties, is contained in Appendix B hereto.

⁶Commenting electric utilities generally include American Electric, Carolina Power, Chugach, ConEd, Duquesne Light, Edison Electric/UTC, Ohio Edison, Public Service of New Mexico, Southeastern Indiana REMC, and Union Electric.

⁷Commenting cable operator interests generally include NCTA, SCBA, TCI, Time Warner, and WorldCom.

⁸Commenting telecommunications carrier interests generally include Ameritech, Association of Local Telecommunications Services, AT&T, Bell Atlantic/NYNEX, BellSouth, GTE, KMC Telecom, MCI, Qwest, SBC, SNET, Sprint, USTA, and U S West. Some telecommunications carriers are local exchange carriers who are also pole owners.

⁹Communications Act of 1934, *as amended* by Pub. L. No. 95-234, 47 U.S.C. § 224.

¹⁰47 U.S.C. § 224.

rates, terms and conditions be just and reasonable.¹¹ The Commission is also authorized to adopt procedures necessary to hear and to resolve complaints concerning such rates, terms, and conditions.¹² In 1978, when Congress directed the Commission to regulate rates for pole attachments used for the provision of cable service, Congress established a zone of reasonableness for such rates, bounded on the lower end by incremental costs¹³ and on the upper end by fully allocated costs.¹⁴ See S. Rep. No. 95-580 ("1977 Senate Report").¹⁵

3. Beginning in 1978, the Commission developed a methodology to determine the maximum allowable pole attachment rate under Section 224(d)(1), (the "Cable Formula"),¹⁶ in *Adoption of Rules for the Regulation of Cable Television Pole Attachments, First Report and Order*, CC Docket No. 78-144 ("First Report and Order");¹⁷ *Second Report and Order* ("Second Report and Order");¹⁸ and *Memorandum and Order* ("Third Order"),¹⁹ implementing a cost methodology premised on historical or embedded costs.²⁰ In 1987, the Commission amended and clarified the methodology for determining rates in *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, CC Docket

¹¹The Commission's authority does not extend to pole attachment rates, terms, and conditions that a state regulates. 47 U.S.C. § 224(c)(1). Jurisdiction for pole attachments reverts to the Commission generally if the state has not issued and made effective rules implementing the state's regulatory authority over pole attachments. Reversion to the Commission, with respect to individual matters, also occurs if the state does not take final action on a complaint within 180 days after its filing with the state, or within the applicable period prescribed for such final action in the state's rules, as long as that prescribed period does not extend more than 360 days beyond the complaint's filing. 47 U.S.C. § 224(c)(3).

¹²47 U.S.C. § 224(b)(1).

¹³See 47 U.S.C. § 224(d)(1). In the pole attachment context, incremental costs are those costs that the utility would not have incurred "but for" the pole attachments in question.

¹⁴*Id.* Fully allocated costs refer to the portion of operating expenses and capital costs that a utility incurs in owning and maintaining poles that are associated with the space occupied by pole attachments.

¹⁵S. Rep. No. 95-580, 95th Cong., 1st Sess. 19 (1977).

¹⁶47 C.F.R. § 1.1404.

¹⁷68 FCC 2d 1585 (1978).

¹⁸72 FCC 2d 59 (1979).

¹⁹77 FCC 2d 187 (1980), *aff'd*, *Monongahela Power Co. v. FCC*, 655 F.2d 1254 (D.C. Cir. 1985) (per curiam).

²⁰72 FCC 2d at 66, ¶ 15. Historical costs are costs that a firm has incurred in the past for providing a good or service and are recorded for accounting purposes as past operating expenses and depreciation.

No. 86-212 ("*Pole Attachment Order*").²¹

4. The Telecommunications Act of 1996 ("1996 Act")²² amended Section 224 in several important respects. Section 703(6) of the 1996 Act added a new Subsection 224(d)(3),²³ that expanded the scope of Section 224 by applying the *Cable Formula* to rates for pole attachments made by telecommunications carriers²⁴ in addition to cable systems,²⁵ until a separate methodology becomes effective for telecommunications carriers.²⁶ Section 703(7) of the 1996 Act added new Subsections 224(e)(1-4), which set forth a separate methodology to govern charges for pole attachments used to provide telecommunications services.²⁷

5. In *Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-151 ("*Telecommunications Report and Order*"), the Commission adopted a separate methodology for pole attachments on poles ("*Telecommunications Pole Formula*") and in conduits ("*Telecommunications Conduit Formula*") for providers of telecommunications services, including cable systems providing telecommunications services, after February 8, 2001.²⁸ Revisions to the *Cable Formula* and the formula for pole attachment rates in conduit systems adopted in this *Order* will apply to attachments made by cable systems and, until the *Telecommunications Pole Formula* and the *Telecommunications Conduit Formula* become effective in 2001, will also apply to attachments by telecommunications carriers providing telecommunications services.²⁹ After February 8, 2001,³⁰ the *Cable Formula* for poles and the formula adopted for pole attachments in conduit systems adopted in this *Order*, will continue to apply to pole attachments used by a cable television system, as long as the pole attachment is not also used to provide

²¹2 FCC Rcd 4387 (1987).

²²Pub. L. No. 104-104, 104 Stat. 56, 149-151 (codified at 47 U.S.C. § 224).

²³47 U.S.C. § 224(d)(3).

²⁴47 U.S.C. § 153(44).

²⁵47 U.S.C. § 153(8); 47 U.S.C. § 602(5).

²⁶See 47 U.S.C. § 224(d)(3) (only to the extent that such carrier is not a party to a pole attachment agreement) and 47 U.S.C. § 224(e)(4).

²⁷47 U.S.C. § 224(e)(1-4).

²⁸13 FCC Rcd 6777 (1998), ¶¶ 116-130.

²⁹See 47 U.S.C. § 224(d)(3) (but only to the extent that such carrier is not a party to a pole attachment agreement); cf. 47 U.S.C. § 224(e)(1).

³⁰See 47 U.S.C. § 224(d)(3).

telecommunications services.³¹

6. In the *Notice*, we sought comment to evaluate the accuracy of the *Cable Formula*, to evaluate and revise certain accounting rules,³² and to consider the continued applicability of certain presumptions.³³ We sought comment regarding a methodology for use in determining just and reasonable pole attachment rates for conduit systems.³⁴ We also sought comment on whether, due to the reported frequency with which accumulated depreciation balances exceed gross pole investment, a modification of the *Cable Formula* was necessary.³⁵

III. PRICING METHODOLOGIES FOR USE IN POLE ATTACHMENT FORMULAS

A. Background

7. When Congress enacted Section 224 in 1978, it directed the Commission to institute an expeditious program for determining just and reasonable pole attachment rates. Legislative history indicates that Congress was concerned with regulatory complexity, opting for a simple plan requiring a minimum of staff, paperwork and procedures and the avoidance of a large-scale ratemaking proceeding.³⁶ Congress did not believe that special accounting measures or studies would be necessary because most cost and expense items attributable to utility pole, duct and conduit plant were already established and reported to various regulatory bodies, for example forms submitted to the Commission by local exchange carriers ("LECs") and to the Federal Energy Regulatory Commission ("FERC") for electric utilities.³⁷ Congress also

³¹The statute states that the § 224(d) rate shall apply for any pole attachment used by a cable television system "solely to provide cable services, . . . [and] subsection (e), . . . shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier . . . to provide any telecommunications service." 47 U.S.C. § 224(d)(3).

³²*Notice* at ¶¶ 1, 30-37.

³³*Notice* at ¶¶ 1, 17-20.

³⁴*Notice* at ¶¶ 1, 38-46.

³⁵*Notice* at ¶¶ 17, 21-29.

³⁶1977 *Senate Report* at 21; see also NCTA Comments at 6-7.

³⁷1977 *Senate Report* at 20 ("Further, there may be some difficulty in determining the components of "actual" capital costs. As to some of these factors, the committee expects that the Commission will have to make its best estimate of some of the less readily identifiable actual capital costs. Special accounting measures or studies should not be necessary."). See also 47 C.F.R. § 1.1404(g)(12), (h). Incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") are regulated by the Commission Rules at 47 U.S.C. Title II. Electric, gas, water, steam and oil utilities are regulated by FERC, an independent regulatory agency within the Department of Energy under authority from the Federal Power Act of 1935, 49 Stat. 847; the Natural Gas Act of

did not expect the Commission to re-examine the reasonableness of the cost methodologies that various regulatory agencies had sanctioned. Section 224(d)(1) describes two possible cost methodologies, incremental and fully allocated, each of which is based on the "actual" capital costs of construction and operation of the pole attachment infrastructure (poles, ducts, conduit and rights-of-way).³⁸ Since 1978, the Commission, in interpreting this statutory language, chose an embedded cost methodology, which has been upheld by the United States Supreme Court.³⁹ Congress expected that pole attachment rates based on incremental costs would be low, because utilities generally recover the make-ready or change-out charges directly from cable systems.⁴⁰ On the other hand, fully allocated costs constitute the basis of the upper boundary of the range of just and reasonable rates.⁴¹ The Commission noted that in arriving at an appropriate rate, it is important to ensure that the attaching entity is not charged twice for the same costs, once for make-ready costs and again for the same costs if the business expense is reported in the corresponding pole or conduit capital account.⁴²

B. Discussion

1. Modification of the *Cable Formula*

8. In the *Notice*, we solicited comment on proposed modifications to the *Cable Formula* and the Commission's rules relating to the maximum just and reasonable rates utilities may charge for pole attachments.⁴³ We also sought comment on whether a modification is necessary to improve the accuracy of

1938, 52 Stat. 821; the Natural Gas Policy Act of 1978, 92 Stat. 3350, Pub. L. No. 95-621; the Public Utility Regulatory Policies Act of 1978, 92 Stat. 3117, Pub. L. No. 95-617; and the Energy Policy Act of 1992, 106 Stat. 2776, Pub. L. No. 102-486.

³⁸See *Gulf Power, et al. v. USA, et al.*, 998 F. Supp. 1386 (N.D. Fla. 1998), *aff'd*, 187 F.3d 1324 (11th Cir. 1999).

³⁹See *First Report and Order*, 68 FCC Rcd 1585, ¶ 25; *aff'd*, *Second Report and Order*, 72 FCC 2d 59, ¶ 15; see also *FCC v. Florida Power Corporation*, 480 U.S. 245 (1987).

⁴⁰1977 *Senate Report* at 19. "Make-ready" generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities. See 1977 *Senate Report* at 19. A pole "change-out" is the replacement of a pole to accommodate additional users. *Pole Attachment Order*, 2 FCC Rcd at 4405 n.3.

⁴¹72 FCC 2d 59, 72 at ¶ 23 (citing 1977 *Senate Report* at 20) (emphasis added).

⁴²*Second Report and Order*, 72 FCC Rcd 59, ¶ 15; see also *American Cablesystems of Florida, Ltd. v. Florida Power & Light Co.*, PA 9-0012, 10 FCC Rcd at 10934, 10935, ¶ 10 (*rel.* June 15, 1995).

⁴³*Notice*, 12 FCC Rcd 7449 (1997) at ¶ 5. We proposed a re-evaluation of the current formula methodology to improve the accuracy in the continued application of the formula to cable television systems and to telecommunications carriers pursuant to the 1996 Act.

the *Cable Formula*.⁴⁴ We did not specifically raise the issue of forward looking costs in the *Notice* in this proceeding. However, in response to the *Notice*, American Electric submitted comments supporting a methodology for determining a just and reasonable rate for pole attachments which employs forward looking economic cost pricing.⁴⁵ Electric utility pole owners assert that such a methodology is necessary to appropriately compensate them for pole attachments made by telecommunications carriers. This position is vehemently opposed by most attaching entities. The utilities' argument is articulated in a report prepared by the Reed Consulting Group ("Reed Report"), submitted by American Electric, which argues that the Commission should take a new perspective on the *Cable Formula*. The Reed Report contends that the electric utilities do not possess market power; their facilities are not essential; they do not compete directly with cable or telecommunications companies; they do not enjoy unequal bargaining power; and they have no motivation to restrict access.⁴⁶ Based on these arguments, the Reed Report concludes that pole attachment rates should be set through market negotiation or in the alternative, using replacement rather than historical costs in the *Cable Formula*. In order to reach its conclusion, the Reed Report defines the relevant market to include wireless technology and underground cable as alternatives to pole attachments. NCTA responds that Congress did not choose to repeal or modify the use of historical costs in the *Cable Formula*; that no certified state calculates pole rates based on reproduction costs; that there are no viable alternatives for the placement of cable and telecommunications facilities; and that the utilities do compete with cable and telecommunications providers.⁴⁷

9. The Commission has employed historical costs in *Cable Formula* calculations since the passage of the Pole Attachment Act in 1978.⁴⁸ Further, the United States Supreme Court has upheld the application of an historical cost methodology for determining pole attachment rates.⁴⁹ Thus, for two decades the *Cable Formula* has provided a stable and certain regulatory framework, that may be applied "simply and expeditiously" requiring "a minimum of staff, paperwork and procedures consistent with fair and efficient regulation."⁵⁰ Switching to a methodology based on forward-looking economic costs would

⁴⁴*Notice*, 12 FCC Rcd at 7449 (1997), ¶ 1.

⁴⁵See American Electric Comments at 14-95. American Electric was joined by other utility pole owners. See, e.g., Duquesne Light Comments at 12-13; Edison Electric/UTC Comments at 14-15; Ohio Edison Comments at 12; Public Service of New Mexico Comments at 1.

⁴⁶Reed Report at v.

⁴⁷NCTA Reply at 12.

⁴⁸See *First Report and Order*, 68 FCC Rcd 1585, ¶ 25; *aff'd*, *Second Report and Order*, 72 FCC 2d 59, ¶ 15; see also *Telecable of Piedmont, Inc. v. Duke Power Co.*, 10 FCC Rcd 10898 (1995).

⁴⁹*FCC v. Florida Power Corporation*, 480 U.S. 245 (1987); see also, *Gulf Power v. USA*, 998 F. Supp. 1386 (N.D. Fla 1998), *aff'd*, 187 F.3d 1324 (11th Cir. 1999).

⁵⁰See 1977 *Senate Report* at 21 (stating that it was the desire of the drafters "that the Commission institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and

cause significant disruption and impose significant costs on attachers and this Commission. Such a change would require the Commission to develop a new formula that would necessitate a long and protracted rulemaking proceeding, and would likely involve complicated pricing investigations. In addition, such a change is likely to generate numerous complaints that the Commission would be required to resolve. Moreover, the Reed Report itself acknowledges that the use of a replacement cost methodology burdens regulators with a “long and tedious rate case process.”⁵¹ While we acknowledge that setting prices on the basis of forward-looking economic costs has significant advantages, including that it gives the appropriate signal for new entrants to invest in facilities, we believe these advantages are likely to be less pronounced in this context. We note that Congress has not expressed any intent for the Commission to deviate from the use of historical costs in the Cable Formula. We further note that the *Notice* did not specifically raise the possibility of shifting to a methodology based on forward-looking economic costs, and it therefore may not have been fully considered in the comments. Thus, we believe that in this particular context, after balancing all these factors, the disadvantages associated with changing to a methodology based on forward-looking economic costs would far outweigh any resulting benefits. For these reasons, we decline the electric utility pole owners’ request to shift from the historical cost methodology at this time.

10. Based on all these factors, we will continue the use of historical costs in our pole attachment rate methodology. The continued use of a clear rate formula by the Commission is essential to encourage parties to negotiate for pole attachment rates, terms and conditions. We believe the continued use of historical costs accomplishes key objectives of assuring, to both the utility and the attaching parties, just and reasonable rates; establishes accountability for prior cost recoveries; and accords with generally accepted accounting principles.

2. Gross versus Net Book Costs

11. In the *Notice*, we sought comment on calculating pole attachment rates using gross book instead of net book costs. Currently, the *Cable Formula* incorporates net figures for the calculation of maximum pole attachment rates. Cable operators generally oppose a change to the use of gross book costs, contending that a) there are no regulatory or administrative efficiencies to be gained by moving to all gross book costs; b) net book costs would still be needed for return on investment computations; and c) the technical reasons offered by utilities in support of the use of gross book costs are not valid.⁵² American Electric and other utility pole owners comment that the use of gross book costs are acceptable in the *Cable Formula* if the use of forward looking costs is not adopted by the Commission for pole attachment rates.⁵³

procedures consistent with fair and efficient regulation”).

⁵¹Reed Report at 20.

⁵²See, e.g., NCTA Comments at 24-25; Time Warner Comments at 24.

⁵³See, e.g., American Electric Comments at 70 (carrying charges for maintenance, depreciation, and administrative expense would be calculated based on gross book costs).

As we stated in the *Pole Attachment Order*, our preference is to use net figures.⁵⁴ The calculation of rate base items on a net basis is employed in the *Cable Formula* because that methodology reflects prior utility recovery of investment through depreciation, and prevents over-recovery of actual amounts invested.⁵⁵ We compute the carrying charge elements for maintenance, depreciation and administrative expenses, as well as for return on investment and taxes, using net book costs. For example, the net cost of a bare pole component is derived from the gross investment in poles less accumulated depreciation and accumulated deferred income taxes. The use of gross book costs in the *Cable Formula* would require that the carrying charge elements for maintenance, depreciation and administrative expenses be calculated using gross book costs for both total plant investment and pole investment. Even if gross book costs were used in the *Cable Formula*, the rate of return and the income tax carrying charges would continue to be computed using net book costs because utility prices are generally set to allow an authorized rate of return on net book costs. The use of gross book costs on a case by case basis does not appear to be inconsistent with the legislative history of Section 224, which indicates that the Commission has significant discretion in selecting a methodology for determining just and reasonable pole attachment rates.⁵⁶ In the past, if parties submitted calculations using gross book figures, we have calculated the maximum pole attachment rate using gross book costs.⁵⁷ The important goal is to ensure that like figures are used, whether net or gross and the Commission has stated that if both parties to a pole attachment complaint agree, the pole attachment rates may be computed using gross book costs.⁵⁸ We are not persuaded that our current preference for the use of net figures should be abandoned. Therefore, we will continue to use net figures in the *Cable Formula*. However, as in the past, when all parties to a complaint agree, we will allow the use of gross book costs.

⁵⁴2 FCC Rcd 4387 at n. 21 (1987).

⁵⁵See, 1977 Senate Report; First Report and Order, 68 FCC 2d 1585 (1978); Second Report and Order, 72 FCC 2d 59 (1979); Third Order, 77 FCC 2d 187 (1980); see also *Alabama Power Co. v. FCC*, 773 F.2d 362 (D.C. Cir. 1985) (upholding challenge to the Commission's pole attachment formula relating to net pole investment and carrying charges). Following *Alabama Power*, the Commission revised its rules in the *Pole Attachment Order*, 2 FCC Rcd 4387 (1987).

⁵⁶1977 Senate Report at 9. See, e.g., Bell Atlantic/NYNEX Comments at 3-4; Duquesne Light Comments at 13; Edison Electric/UTC Comments at 42-44; GTE Comments 4-8, Reply 5-6; SBC Comments at 2-6; Sprint Comments at 8-9; USTA Comments at 4-11, Reply at 6-8; see also American Electric Comments at 70-71 (do not object if at pole owner's discretion). But see AT&T Reply at 13-15; Association of Local Telecommunications Services Comments at 13-17; MCI Comments at 20; NCTA Comments at 24-25; Time Warner Comments at 24, Reply at 8-9; WorldCom Reply at 9-10.

⁵⁷See, e.g., *Capital Cities Cable, Inc. v. Southwestern Public Service Co.*, Mimeo No. 5431 (June 28, 1985); *Booth American Co. v. Duke Power Co.*, Mimeo 3064 (Com. Car. Bur., Mar. 22, 1984); *Teleprompter of Greenwood, Inc. v. Duke Power Co.*, Mimeo 001866 (Com. Car. Bur., July 6, 1981).

⁵⁸See, e.g., *TeleCable of Piedmont, Inc.*, 10 FCC Rcd 10898 (1995).

IV. ARMIS Uniform System of Accounts for LEC Pole Owners

12. In the *Notice*,⁵⁹ we proposed a formal revision of the *Cable Formula* for LECs so that it accurately reflects our current use of data from the Commission's Automated Reporting Management Information System ("ARMIS").⁶⁰ ARMIS Report 43-02 - Uniform System of Accounts ("USOA") contains the financial operating results of a LEC's telecommunications operations for every Part 32 account.⁶¹ The *Cable Formula* codified by the *Pole Attachment Order* specifies particular Part 31 accounts to be used to calculate the pole attachment rates LECs may charge cable systems.⁶² Previously LECs reported data collected in Part 31 accounts on an FCC Form M.⁶³ Effective January 1, 1988, Part 31 was replaced by Part 32, which changed how LECs account for and report certain costs.⁶⁴ For example, it appeared that the Part 31 accounts used in the *Cable Formula* included some non-administrative expenses in the administrative component of the carrying charges.⁶⁵ The proposed Part 32 accounts used in the *Cable Formula* would not include such non-administrative expense in the administrative component. The potential for inclusion of unrelated expenses in certain accounts must be balanced with the inability to recover other minor expenses that may have a legitimate nexus to pole attachments that are included in unrelated accounts. Our policy has been that not every detail of pole attachment cost must be accounted for,

⁵⁹*Notice*, 12 FCC Rcd at 7449 (1997), ¶ 30.

⁶⁰*Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules)*, CC Docket No. 86-182, 2 FCC Rcd 5770 (1987), modified on recon., 3 FCC Rcd 6375 (1988) (rel. Oct. 14, 1988) (*ARMIS Order*).

⁶¹ARMIS 43-02 USOA Report consists of three series of tables containing income statement, balance sheet, and general corporate data. This report, filed on an operating company basis, collects the operating results of the LEC's total activities for every account in the USOA, as specified in Part 32 of the Commission's rules. See 47 C.F.R. Part 32. ARMIS is available on the Commission's Internet web site at <http://www.fcc.gov/ccb/armis/>. The ARMIS database allows users to custom select data by report, year, company, study area, or individual data items. Data are available for years 1990 through 1997 and is updated regularly. The Internet availability and subsequent use of this information are expected to expedite calculations the of pole attachment formula.

⁶²*Pole Attachment Order*, 2 FCC Rcd at 4387, 4403, Appendix B (1987).

⁶³*Pole Attachment Order*, 2 FCC Rcd 4387 (1987); see also 47 C.F.R. § 1.1401-1.1416.

⁶⁴*Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, 43 of the FCC's Rules)*, Report and Order, 51 Fed. Reg. 24745 (July 8, 1986) and 51 Fed. Reg. 43493 (December 2, 1986) ("*New USOA - Part 32 Adoption*"); recon. in part, Memorandum Opinion and Order, 2 FCC Rcd 1086 (rel. February 18, 1987).

⁶⁵The Commission's Common Carrier Bureau has provided guidance to telephone companies and cable systems on applying the formula using Part 32 accounts. Letter from Kenneth P. Moran, Chief, Accounting and Audits Division, Common Carrier Bureau, to Paul Glist, Esq., Cole, Raywid & Braverman, 5 FCC Rcd 3898 (Com. Car. Bur., June 22, 1990) ("*Part 32 Guidance Letter*").

nor every detail of non-pole attachment cost eliminated from every account used.⁶⁶ The adoption of Part 32 would not alter our policy in that regard.

13. There was no opposition in the record, and substantial encouragement,⁶⁷ to the codification of the use in the *Cable Formula* of Part 32 accounts reported to the ARMIS. Adoption of Part 32 accounts will facilitate public access to data on which to determine just and reasonable pole attachment rates.⁶⁸ We affirm the use of Part 32 Uniform System of Accounts for LECs, as reported to ARMIS, in determining various components of the *Cable Formula*. These specific accounts are discussed in this *Order* relating to various aspects of the *Cable Formula*.

V. FORMULA FOR DETERMINING ATTACHMENT RATES FOR POLES

14. The Commission uses the following *Cable Formula* in disputed cases to set rates to be charged by utilities for attachments on poles:⁶⁹

$$\text{Maximum Rate} = \frac{\text{Space Occupied}}{\text{Total Usable Space}} \times \text{Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

15. In the *Notice*, we sought comment on the continued applicability of various factors and elements within this formula.⁷⁰ In *Implementation of Section 703(e) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking ("Telecommunications Notice")*,⁷¹ we also sought comment regarding whether wind and weight load factors should be considered in the pole attachment rate and deferred discussion and decision on that issue to this rulemaking.⁷²

A. Percentage of Total Usable Space Occupied

1. Background

⁶⁶See *American Cablesystems of Florida, Ltd.*, 10 FCC Rcd 10934 (1995).

⁶⁷See, e.g., Bell Atlantic/NYNEX Comments at 5; BellSouth Comments at 5-6; NCTA Comments at 29 (but still object to paying for utilities' strategic planning, etc.); SBC Comments at 22; USTA Comments at 16.

⁶⁸*Part 32 Guidance Letter*, 5 FCC Rcd 3898 (1990).

⁶⁹*Pole Attachment Order*, 2 FCC Rcd 4387 (1987) at ¶ 6; 47 U.S.C. §§ 224(b)(1), (d).

⁷⁰*Notice*, 12 FCC Rcd at 7449, ¶¶ 17-37.

⁷¹12 FCC Rcd 11725 at ¶ 18 (1997).

⁷²*Telecommunications Report and Order*, 13 FCC Rcd 6777 (1998) at ¶ 25.

16. In the *Second Report and Order*, consistent with Section 224(d)(2) and Congressional intent, the Commission defined total usable space as the space on the utility pole above the minimum grade level that is usable for the attachment of wires, cables, and related equipment.⁷³ Based upon survey results, consideration of the National Electric Safety Code ("*NESC*"),⁷⁴ and practical engineering standards used in constructing utility poles, the Commission found that "the most commonly used poles are 35 and 40 feet high, with usable spaces of 11 to 16 feet, respectively."⁷⁵ In the *Third Order*, the Commission relied on *NESC* guidelines and data received in its rulemaking proceedings to affirm the presumption of an average 18 feet for minimum ground clearance, referring to Congressional findings that ". . . the typical utility pole [is] 35 feet in length [and] has 11 feet of usable space leaving a total of 24 feet for both the portion buried underground [6 feet] and the necessary ground clearance [18 feet]."⁷⁶ To avoid a pole by pole rate calculation, the Commission adopted rebuttable presumptions of (1) an average 37.5 foot pole height; (2) 13.5 feet of usable space; and (3) one foot as the amount of space a cable television attachment occupies.⁷⁷ These presumptions serve as the premise for calculating pole attachment rates under the current formula.

17. In anticipation of the *Notice*, a group of electric utilities filed a white paper ("*White Paper*"),⁷⁸ intended to facilitate the exchange of ideas among parties interested in matters related to pole and conduit attachments.⁷⁹ The *White Paper* asserts that over time and with increased demand for pole space the average pole height has increased to 40 feet, and that the usable space presumption should be reduced from

⁷³See 72 FCC 2d at 69; 47 C.F.R. § 1.1402(c).

⁷⁴The National Electrical Safety Code® ("*NESC*"), published by the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") adopts certain standards that cover basic provisions for safeguarding persons from hazards arising from the installation, operation, or maintenance of (1) conductors and equipment in electric supply stations, and (2) overhead and underground electric supply and communication lines. *NESC*, 1997 Edition (published August 1, 1996) Abstract and § 1, p. 1. The *NESC* is a voluntary standard; however, some editions and some parts have been adopted, with or without changes, by some state and local jurisdictional authorities. *NESC*, p. vi.

⁷⁵72 FCC 2d at 69.

⁷⁶*Third Order*, 77 FCC 2d 187 n.8 (1980) (referencing the *1977 Senate Report* at 20); see also *Second Report and Order*, 72 FCC 2d at 68 n.21.

⁷⁷72 FCC 2d at 69-70. In the *Telecommunications Report and Order*, we affirmed the one foot presumption for attachments made by telecommunications carriers. 13 FCC Rcd 6777 (1998) at ¶ 91.

⁷⁸See *White Paper* filed by the law firm of McDermott, Will and Emery on August 28, 1996, on behalf of the American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power Company, Entergy Services, Inc., Florida Power and Light Company, Northern States Power Company, The Southern Company and Washington Water Power Company.

⁷⁹American Electric Reply at 2.

13.5 feet to 11 feet.⁸⁰ In 1984, the Commission, in an order denying a petition filed by some of the utilities now sponsoring the *White Paper, Petition to Adopt Rules Concerning Usable Space on Utility Poles*, FCC 84-325 ("*Usable Space Order*")⁸¹ rejected the same arguments for changing the usable space presumptions as they again put forward.

18. In the *Notice*, we sought comment on the 37.5 foot presumptive pole height, the 13.5 foot usable space presumption, the average 18 foot minimum ground clearance, the allocation of the 40-inch safety space to usable space, the exclusion of 30 foot poles from the calculation of costs of a bare pole and whether 30 foot poles lack a sufficient amount of usable space to accommodate multiple attachments.⁸²

2. Discussion

19. The presumptions used in the *Cable Formula* have been repeatedly affirmed since the enactment of the Pole Attachment Act.⁸³ We again decline to modify the well established presumptions leading to 7.4% as the percentage of usable space occupied by a pole attachment.⁸⁴ Commenters are divided on this issue, with pole owners asserting they should be entitled to higher rates⁸⁵ that would result from their desired presumption changes, and attaching entities quoting Congressional intent, Commission precedent and widespread industry practice to counter the arguments.⁸⁶ We are not persuaded by specific current industry data from electric utilities to change the usable space presumptions.

⁸⁰*White Paper* at 11.

⁸¹Unpublished Order (*rel.* July 25, 1984).

⁸²*Notice* at ¶¶ 18-20.

⁸³*First Report and Order*, 72 FCC 2d 59; *Second Report and Order*, 77 FCC 2d 187, 191-193; *Cable Information Services, Inc. v. Appalachian Power Co.*, 81 FCC 2d 383 (1980); *Television Cable Service, Inc. v. Monongahela Power Co.*, 88 FCC 2d 56 (D.C. Cir. 1981).

⁸⁴The ratio of space occupied (presumptive 1 foot) over usable space (presumptive 13.5 feet) results in a factor of 0.074 for use in calculations of the *Cable Formula*.

⁸⁵*See, e.g.*, American Electric Comments at 48; Carolina Power Comments at 74; Edison Electric/UTC Comments at 34; Ohio Edison Comments at 11; Union Electric Comments at 20.

⁸⁶*See, e.g.*, Association for Local Telecommunications Services Comments at 5; Ameritech Comments at 3; AT&T Comments at 17; MCI Comments at 5; WorldCom Reply at 12. *Cf.* NCTA Comments at 9-15 (actual average pole height is increasing, but there is no basis for reducing the 13.5 feet usable space presumption in the pole formula).

a. Safety Space

20. A 40-inch safety space was created to minimize the likelihood of physical contact between employees working on cable television or telephone lines and the potentially lethal voltage carried by the electric lines, as well as to prevent electrical contact between such cables.⁸⁷ In the *Second Report and Order*,⁸⁸ and the *Third Order*,⁸⁹ the Commission rejected the arguments of electric companies that the entire 40 inches of safety space should be attributable to cable television operators. In the *Notice*,⁹⁰ we sought comment on the continued validity of the allocation of the 40-inch safety space to usable space. After consideration of the evidence in this proceeding, we decline to decrease the amount of usable space from 13.5 feet to 11 feet by reallocating the 40-inch safety space as unusable space. Removing the 40-inch safety space from usable space, under Section 224(d), would have the effect of spreading the costs of the safety space among the utility pole owner and the attaching entity.⁹¹

21. Some electric utilities request that we remove the 40-inch safety space from the presumptive 13.5 feet of usable space because the safety space exists to protect attaching entities' workers when installing and maintaining their pole attachments.⁹² Attaching entities assert that any cable operator or telecommunications carrier seeking to install a pole attachment is already required to incur "make-ready" expenses to ensure the existence of the 40-inch safety space, and that electric utilities benefit from the safety space by attaching their own facilities such as communications equipment, street lights, transformers, and grounded, shielded power conductors in the safety space.⁹³

22. It is the presence of the potentially hazardous electric lines that makes the safety space necessary and but for the presence of those lines, the space could be used by cable and telecommunications attachers.⁹⁴ The space is usable and is used by the electric utilities. A bare pole, when erected has portions

⁸⁷See, *Second Report and Order*, 72 FCC 2d 59, 69-70 (citing NESC at Appendix C, at 163, Table 235-5 (1977 ed.) at n. 25.

⁸⁸*Id.*

⁸⁹77 FCC 2d 187 (1980).

⁹⁰12 FCC Rcd 7449 (1997) at ¶ 19.

⁹¹47 U.S.C. § 224(d)(1), (2).

⁹²See, e.g., American Electric Comments at 51; Carolina Power Comments at 33; Duquesne Light Comments at 20; Edison Electric/UTC Comments at 30; Public Service of New Mexico Comments at 6; Union Electric Comments at 21.

⁹³See, e.g., Time Warner Comments at 15; USTA Comments at 23; see also *Second Report and Order*, 72 FCC 2d at 71.

⁹⁴See, e.g., NCTA Comments at 12; TCI Comments at 14; Time Warner Comments at 15, U S West Comments at

to which attachments cannot be made at any time—the ground clearance and the part of the pole below ground. The rest is available for attachments; it is usable space. A communications attachment, even though it may be a fiber optic cable with a diameter of only one inch, is presumed to occupy one foot of the attachable space because of separation requirements. In a like manner, the electric supply cable on the pole, because of its unique spacing requirements must be 40 inches away from communications attachments. No one questions that the eleven inches of space not physically occupied by a fiber optic cable, but attributed to it, is usable space. Because the electric supply cable precludes other attachments from occupying the safety space, which would otherwise be usable space, the safety space is effectively usable space occupied by the supply cable. So long as their crews make the installation, the electric utilities are not limited by the *NESC* in what equipment or cables they may attach in the safety space. Accordingly, we reject the electric utilities' arguments to reduce the presumptive usable space of 13.5 feet by 40 inches.

b. Minimum Ground Clearance

23. In the *Second Report and Order*, the Commission established that a presumptive average 18 feet of the pole space is reserved for ground clearance.⁹⁵ The 18 foot presumption is not dictated by the National Electric Safety Code ("NESC"),⁹⁶ but is an average to be used in the estimation of total usable space.⁹⁷ In the *Usable Space Order*, we determined that the selection of the 18 foot figure reflected various elements such as differing pole heights, as well as NESC standards that vary depending on the physical environment of the pole.⁹⁸ Factors used to determine the NESC standard of minimum ground clearance, include whether the wires or cables cross over railroad tracks, roads, or driveways and the amount of voltage transferred through the cables.⁹⁹ In response to the *Notice*, some electric utilities suggest that the lowest attachment on a pole must be at least 19'8" from the ground in order to accommodate communications cable sag.¹⁰⁰ The electric utilities provide us with "average" sag for a "typical"

5. *But see*, Sprint Comments at 4 (since all attaching parties are required to comply with the *NESC*, the space should be regarded as unusable).

⁹⁵2 FCC 2d 59, 69-70 (1979); National Electric Safety Code ("NESC") Appendix C, Table 235-5, p. 163 (1977 ed.); MCI Comments at 10.

⁹⁶*NESC* Rule 232, Vertical Clearances of Wires, Conductors, Cables, and Equipment Above Ground, Roadway, Rail, or Water Surfaces provides narrative and table references for various clearances [clearance is defined as the clear distance between two objects measured surface to surface (*NESC*, § 2, at p. 5)] under a variety of circumstances, involving a variety of types of electric and communications equipment, and in a variety of environments.

⁹⁷*See* MCI Comments at 10.

⁹⁸*Usable Space Order*, slip op. at ¶ 11.

⁹⁹*NESC* at 77, Table 232-1 (1997 Edition).

¹⁰⁰*See, e.g.*, American Electric Comments at 48-50.

communications cable, but do not indicate how either was determined.¹⁰¹ In the *Usable Space Order* we carefully considered numerous studies submitted to us before concluding that the 18 foot figure was an appropriate tool to estimate usable space.¹⁰² The data provided by the utilities regarding sag does not demonstrate the same rigor as the studies on which our *Usable Space Order* was based.¹⁰³

24. The rebuttable nature of the usable space presumption allows for the use of a different minimum ground clearance when necessary to improve the accuracy of the calculations.¹⁰⁴ Presumptions were adopted to encourage expeditious response to complaint information requests.¹⁰⁵ We have not been persuaded that a departure from our well established presumption of an average minimum ground clearance of 18 feet is warranted.¹⁰⁶

c. 30 Foot Poles

25. In the *Notice*, we sought comment on whether 30 foot poles lack a sufficient amount of usable space to accommodate multiple attachments and whether including poles of 30 feet or less in the total number of poles for calculating the *Cable Formula* results in a distorted rate.¹⁰⁷ The *White Paper* contends that poles of 30 feet or less lack a sufficient amount of usable space to accommodate multiple attachments, and suggests that the inclusion of these poles in the calculation results in an inexact determination of the actual net costs of a bare pole.¹⁰⁸

¹⁰¹See, e.g., American Electric Comments at 48-50.

¹⁰²*Usable Space Order*, slip op. at ¶ 12.

¹⁰³Section 1.1404(g)(11) states that 13.5 feet may be used in lieu of actual measurement as the amount of usable space, but that it may be rebutted. 47 C.F.R. § 1.1404(g)(11). We have stated that a survey that yields a statistically reliable result would be acceptable. See *Second Report and Order* at ¶ 21. Such a survey must meet the requirements of Section 1.363 of the Commission's Rules. 47 C.F.R. § 1.363.

¹⁰⁴See *NESC* (1997 edition), Forward at vi.; see also Ohio Edison Comments at 21-22 (arguing that the Commission's rules should expressly allow a utility to use a different average of usable space for its rate calculations than the Commission's rebuttable presumption if state law requires a minimum ground clearance at the pole of more than 18 feet).

¹⁰⁵1977 *Senate Report* at 21.

¹⁰⁶See, e.g., Ameritech Comments at 3; AT&T Comments at 17; Bell Atlantic/NYNEX Comments at 11; NCTA Reply at 37-38.

¹⁰⁷*Notice* at ¶ 20.

¹⁰⁸*White Paper* at 12-13.

26. We have not been presented with evidence that a pole attachment rate based on pole inventory, in which 30 foot poles are included, fails to adequately compensate a pole owner. We have received significant information to the contrary.¹⁰⁹ Telecommunications carriers disagree with the utilities' argument to exclude 30 foot poles from the bare pole calculation.¹¹⁰ The record confirms the prevalent use of 30 foot poles and reflects that exclusion of such poles from the *Cable Formula* calculations could distort the resulting rate by excluding a significant portion of LEC plant investment from the rate calculation.¹¹¹ With a presumed ground clearance of 18 feet, a 30 foot pole has six feet of usable space. A 30 foot electric utility pole can accommodate two communications attachments or more with overlashing. A 30 foot LEC pole can accommodate more.¹¹² We conclude that a distorted inventory of poles would be reflected if utilities were allowed to "opt out" or exclude their poles of 30 feet or less when calculating their pole attachment rates.¹¹³

d. Weight and Wind Load Factors

27. In the *Telecommunications Notice* we sought comment on an issue raised by Duquesne Light in its Petition for Reconsideration ("*Duquesne Petition*") of the Commission's decision in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 ("Local Competition Order")*.¹¹⁴ The *Duquesne Petition* requests that the Commission recognize, and incorporate into its rate formula, that various attachments place difference burdens on the poles. Duquesne Light asserts that presumptions used in the *Cable Formula* should include

¹⁰⁹See, e.g., NCTA Comments at 15-18 (LECs use significant numbers of 30-foot poles); Sprint Comments at 4-5 (still use many 30 foot poles); USTA Comments at 27-29 (LECs use substantial numbers of 30-foot poles); U S West Comments at 4 (over 13% of inventory is 30 feet or less). Cf. American Electric Comments at 55-57; Carolina Power Comments at 29; Edison Electric/UTC Comments at 29 (Electric utilities do not use many 30-foot poles and do not account for them separately).

¹¹⁰Ameritech Comments at 4; AT&T Comments at 10; Bell Atlantic/ NYNEX Comments at 10; GTE Comments at 13; MCI Comments at 12; SBC Reply at 39; Sprint Comments at 4; USTA Comments at 27.

¹¹¹See, e.g., GTE Reply at 13; NCTA Comments at 12-16, Reply at 21-22; Ohio Edison Comments at 26; SBC Comments at 38-39; TCI Comments at 13; Time Warner Comments at 11-13, 18-19; U S West Comments at 4.

¹¹²See, e.g., Ameritech Comments at 4; AT&T Comments at 18; NCTA Comments at 4-5, Reply at 21-24.

¹¹³See, e.g., Ameritech Comments at 4; AT&T Comments at 10; Bell/NYNEX Comments at 10; GTE Comments at 13; MCI Comments at 14; NCTA Comments at 15; Public Service of New Mexico Comments at 6; SBC Reply at 39; Sprint Comments at 5; TCI Comments at 13; Time Warner Comments at 12-13; USTA Comments at 28-29; U S West Comments at 4.

¹¹⁴*Telecommunications Notice*, 12 FCC Rcd at 11725, ¶ 18 (citing *Local Competition Order*, FCC 96-325, 11 FCC Rcd 15499 at 16058-107, ¶¶ 1119-1240 (1996)); see also Duquesne Light CC Docket No. 96-98 Comments at 17-18.

factors addressing weight and wind loads.¹¹⁵ For instance, Duquesne Light claims that overlashing of an attachment will increase the loading on the pole, especially during adverse icy and windy weather conditions. Duquesne Light maintains that an increase in loading could cause a pole to lean, lines to sag or the pole to break or collapse. This increase in loading, Duquesne Light argues, necessitates the charging of an additional fee for the overlashed cable, as well as treatment of the overlash as a separate attachment.¹¹⁶ In the *Telecommunications Report and Order*, we reserved decision on the weight and wind load issues until the resolution of the rulemaking currently before us.¹¹⁷ We will therefore address at this time whether any presumptions should reflect these factors.

28. Consideration of loading, including weight and wind load, relates to engineering of the pole structure. Sections 24 through 26 of the NESC address considerations of loading and structural requirements in detail.¹¹⁸ We do not believe that an attachment "burden on the pole" relates to anything other than an assessment of need for make-ready changes to the pole structure, including pole change-out, to meet the strength requirements of the NESC. Make-ready costs are non-recurring costs for which the utility is directly compensated and as such are excluded from expenses used in the rate calculation.¹¹⁹ We agree with USTA that the statutory language for allocating costs in Section 224 refers to space, not load capacity.¹²⁰

29. We are not convinced that "burden on the pole" due to weight and wind load is an additional factor for consideration in the determination of the amount of space occupied.¹²¹ Wind and weight loading factors, as calculated using NESC rules,¹²² increase as the cross-sectional area of the wire increases. The NESC calculations use the worst case scenario where the wind is blowing parallel to the ground and perpendicular to the side of the cable, wire, conductor, etc., creating maximum wind resistance. The surface area presented to the wind is directly proportional to the diameter or vertical dimension of the

¹¹⁵Duquesne Light CC Docket No. 96-98 Comments at 17-18; Duquesne Light CS Docket No. 97-151 Comments at 36.

¹¹⁶Duquesne Light CS Docket No. 97-151 Comments at 26-28.

¹¹⁷*Telecommunications Report and Order*, 12 FCC Rcd at 11725, ¶25.

¹¹⁸NESC at 142-168, Sections 24-26.

¹¹⁹See *Second Report and Order*, 72 FCC 2d 59, at ¶27.

¹²⁰47 U.S.C. § 224(d); see also, e.g., USTA Reply at 13-14.

¹²¹For discussion of applicability of the one foot presumption for cable operators, see ¶¶ 28, 35 of this *Order*; see also, *Telecommunications Report and Order*, 13 FCC Rcd 677 at ¶¶ 80-92 for applicability to telecommunications carriers.

¹²²NESC Rule at 148 (1997 Edition).

wire, conductor, cable, etc.¹²³ As the vertical dimension increases, and therefore, the surface area increases, the wind load factor increases. It is the vertical dimension of the wire that determines how much space is occupied on the pole. The current method for allotting space to a pole attachment, therefore, accounts directly for the wind load factor. The weight load factor is considered when deciding whether a stronger pole is necessary as part of make-ready work.

30. Further, the inclusion of factors such as wind and weight load in the presumptions could lead to unacceptable over-recovery. Many of the factors have already been included in accounts in the maintenance element of the carrying charge rate. For electric utility owned poles, FERC Account 593 includes pole related expenses for overhead lines and allows for the recovery of the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution facilities. This account includes expenses for repair pole related equipment and adjusting the sag of attachments to the pole.¹²⁴ The Commission's ARMIS rules for LEC accounting provide for the recovery of damages and pole related expenses caused by storms or other casualties.¹²⁵ The complete costs of the physical attachments of an attaching entity are normally paid to the pole line owner as a condition of attachment, addressing such factors as weight, wind load and safety space.¹²⁶ These make-ready costs have been fully recovered. It would be inappropriate to allow for their recovery again through the pole rate.

B. Cost of a Bare Pole

31. In the *Pole Attachment Order*, the Commission promulgated a methodology to arrive at the net cost of a bare pole for use in the *Cable Formula*¹²⁷ from a calculation of the total investment in poles less accumulated depreciation for poles, and less accumulated deferred income taxes.¹²⁸ An adjustment to a utility's net pole investment (of 15% for electric utilities and 5% for LECs) is necessary to eliminate the

¹²³The surface of the cable presented the wind is approximately a rectangle with a length equal to the distance between the poles (l) and a height equal to the half the cumulative circumferences of the wires (in the worse case) ($\frac{1}{2}\pi d_1 + \frac{1}{2}\pi d_2 + \frac{1}{2}\pi d_3 + \dots$). The surface area is then $l \times \frac{1}{2}\pi(d_1 + d_2 + d_3)$ when a cable is overlashed with another cable above and one below and it increases proportionately as the cumulative diameter increases.

¹²⁴See 18 C.F.R. Part 101 (Uniform Systems of Accounts Prescribed for Public Utilities And Licensees Subject to the Provisions of the Federal Power Act) Account 593.

¹²⁵47 C.F.R. §§ 32.5999(b)(3), 32.6410, 32.6411.

¹²⁶See, e.g., NCTA Comments at 15-16; Summit CS Docket No. 97-151 Comments at 1.

¹²⁷See *Pole Attachment Order*, 2 FCC Rcd 4387 (1987) at ¶¶ 10-19 & Appendix B. The *Pole Attachment Order*, used the term "depreciation reserve" in this formula. We have updated our terminology to reflect Generally Acceptable Accounting Principles (GAAP) and use the term "accumulated depreciation."

¹²⁸*Pole Attachment Order*, 2 FCC Rcd 4287, at ¶¶ 10-19 & Appendix B.

investment in crossarms and other non-pole related items.¹²⁹

1. LEC Pole Owner Formula Methodology

32. The *Pole Attachment Order* prescribed a formula for determining the net cost of a LEC's bare pole, using the old Form M, Part 31 Account 241 (Gross Pole Investment), as follows:¹³⁰

$$\text{Net Cost of a Bare Pole} = \frac{\text{Gross Pole Investment (Account 241)} - \text{Depreciation Reserve (Poles)} - \text{Accumulated Deferred Income Taxes (Poles)} - \text{0.05 of Net Pole Investment}}{\text{Total Number of Poles}}$$

33. In the *Notice*, we proposed a revised formula to determine a value for the net cost of a bare pole using the ARMIS Part 32 Account 2411 (Gross Pole Investment) for LEC pole owners, applying the 5% (or 0.95) adjustment factor.¹³¹ Based on the record, we affirm our proposed formula to determine the net cost of a bare pole for LEC pole owners under the following formula:¹³²

$$\text{Net Cost of a Bare Pole (LEC)} = 0.95 \times \frac{\text{Account 2411} - \text{Accumulated Depreciation (Account 3100)(Poles)} - \text{Accumulated Deferred Income Taxes (Account 4100 + 4340)(Poles)}}{\text{Number of Poles}}$$

34. In this formula Accumulated Depreciation (Poles) and Accumulated Deferred Income Taxes (Poles) are derived from composite Part 32 accounts attributable to poles. Specifically, Accumulated Depreciation (Poles) represents the share of Part 32 Account 3100 (Accumulated Depreciation) that corresponds to Account 2411, and Accumulated Deferred Income Taxes (Poles) represents the shares of Part 32 Accounts 4100 (Net Current Deferred Operating Income Taxes) and 4340 (Net Noncurrent Deferred

¹²⁹See *Pole Attachment Order*, 2 FCC Rcd at 4387, 4390, (1987) at ¶ 19. The two factors reflect the differences between LECs' and electric utilities' investment in crossarms and other non-pole investment that is recorded in the pole accounts. Electric utilities typically have more investment in crossarms than LECs. The 0.85 factor for electric utilities recognizes this difference. These adjustment factors are rebuttable. See also, *Notice* at ¶ 42.

¹³⁰*Pole Attachment Order*, 2 FCC Rcd 4287, Appendix B. FCC Form M Part 31 Accounts 171 [Depreciation Reserve] and 176.1 [Deferred Income Taxes (Accumulated)] were composite accounts that were required to be maintained on a subsidiary basis, and therefore apportionment of these accounts were necessary to determine pole rates. In other words, Depreciation Reserve (Poles) represented the share of FCC Form M Part 31 Account 171 that corresponded to Account 241 (Gross Pole Investment), and Accumulated Deferred Income Taxes (Poles) represented the share of FCC Form M Part 31 Account 176.1 that corresponded to Account 241.

¹³¹*Notice* at ¶ 42.

¹³²*Notice* at Appendix A.

Operating Income Taxes) that correspond to Account 2411.¹³³

35. The formula, as adopted, updates the *Cable Formula* to reflect current regulatory accounting practices by LECs, and clarifies the method for accurately deriving the proper figure for accumulated deferred income taxes when used in conjunction with the pole attachment formula.¹³⁴ This formula updates the *Cable Formula* in a manner that is equitable to all parties by providing consistency in calculating a pole attachment rate based on publicly available and verifiable data.¹³⁵ The adjustment to the *Cable Formula* also recognizes more accurately the accumulated deferred taxes related to pole investment than would proration based upon a ratio of pole investment to total plant in service.

2. Electric Utility Pole Owner Formula Methodology

36. The *Pole Attachment Order* prescribed a formula for determining the net cost of a bare pole for electric utilities using FERC Accounts¹³⁶ as follows:¹³⁷

$$\text{Net Cost of a Bare Pole} = \frac{\begin{array}{r} \text{Account 364} \\ \text{(Gross Pole} \\ \text{Investment)} \end{array} - \begin{array}{r} \text{Depreciation Reserve} \\ \text{(Poles)} \end{array} - \begin{array}{r} \text{Accumulated Deferred} \\ \text{Income Taxes (Poles)} \end{array} - \begin{array}{r} 0.15 \text{ of} \\ \text{Net Pole Investment} \end{array}}{\text{Number of Poles}}$$

37. In the *Notice*,¹³⁸ we stated the formula includes factors appropriate for arriving at the net cost of a bare pole for electric utility pole owners. In response to the *Notice*, some electric utilities assert that FERC Accounts 365 (Overhead Conductors and Devices) and 368 (Line Transformers) should be included in the calculations to determine the net cost of a bare pole.¹³⁹

¹³³*Part 32 Guidance Letter*, 5 FCC Rcd 3898 (1990). For Account 3100, see ARMIS Report 43-02, row 0390. The subsidiary accounts for Accounts 4100 and 4340 are required to be maintained and reported to the Commission. See 47 C.F.R. §§ 43.21, 43.43, 32.4100 and 32.4340. See also, Biennial Regulatory Review, Review of Accounting and Cost Allocation Requirements, FCC 99-106 at ¶ 15 (rel. June 30, 1999) and Biennial Regulatory Review, Review of ARMIS Reporting Requirements, FCC 99-107 at ¶ 13 (rel. June 30, 1999).

¹³⁴See USTA Comments at 18. Cf. NCTA Reply at 34.

¹³⁵*Pole Attachment Order*, 2 FCC Rcd 4387 (1987); 1977 Senate Report at 19-20.

¹³⁶FERC Account 364 is "poles, towers and fixtures." 18 C.F.R. Part 101, Description of Accounts.

¹³⁷*Pole Attachment Order*, 2 FCC Rcd 4387, 4402-03, Attachment B (1987).

¹³⁸*Notice* at ¶ 10.

¹³⁹*Notice*, 12 FCC Rcd at 7449, ¶ 18. See, e.g., American Electric Comments at 58-67; Carolina Power Comments at 43-58; Edison Electric/UTC Comments at 37-41.

38. We decline to add portions of Accounts 365 or 368 to the net cost of a bare pole factor. This factor already contains adjustment components, relating to appurtenances such as crossarms, that can be challenged with appropriate verifiable data.¹⁴⁰ We affirm our conclusion that lightning protectors and grounding installations recorded in accounts other than Account 364 should not be included in the calculation of the net cost of a bare pole factor.¹⁴¹ Attaching entities are required to provide separate grounding for their own attachments.¹⁴² Lightning protectors and grounding installed on poles by utilities are equipment specific to the electric utility's core business services and not related to the general cost of the pole plant. Portions of Accounts 365 and 369 are already included in the maintenance element of the relevant *Cable Formula*.¹⁴³

39. We do not believe that portions of Accounts 580 (Operation: Supervision and Engineering) and 583 (Operation Overhead Line Expenses, Major Utilities Only) should be included even if they contain some capital expense incurred with respect to all electric power distribution plant.¹⁴⁴ Based on the record, we believe that any increased accuracy that would be derived from including some minute percentage of pole-related expenses that may be recorded in miscellaneous accounts, is outweighed by the complexity of arriving at an appropriate and equitable percentage of the expenses.¹⁴⁵ The descriptions of what expenses are to be reported in Accounts 365, 368,¹⁴⁶ 580 and 583, contained in FERC Part 101,¹⁴⁷

¹⁴⁰See *Pole Attachment Order*, 2 FCC Rcd 4387, 4390 (1987), ¶ 19 (appurtenance ratios (5% for telephone and 15% for electric utilities) [are] rebuttable presumptions to be used in the event no party chooses to present probative, direct evidence on the actual investment in non-pole-related appurtenances); see also, e.g., AT&T Reply at 24-28; NCTA Comments at 19-21, Reply at 26.

¹⁴¹Notice at ¶ 18.

¹⁴²See, e.g., NCTA Comments at 19-20, NCTA Ex Parte Presentation March 12, 1998. *But see*, American Electric Comments at 58-67; Carolina Power Comments at 50-52; Electric Edison/UTC Comments at 37-41.

¹⁴³*Pole Attachment Order*, 2 FCC Rcd 4387, 4402-03, Attachment B (1987); see also discussion of the maintenance element at Section V.C.2 of this *Order*.

¹⁴⁴See, e.g., Carolina Power Comments at 50-52.

¹⁴⁵See, e.g., MCI Reply at 31-33; NCTA Comments at 21 (if the Commission were to consider the addition of grounding systems into the rate formula, that inclusion would have to be spread across the utility investment in its entire distribution network), Reply at 26; Time Warner Comments at 19-22; see also, *Hearing Designation Order, American Cablesystems of Florida, LTD. v. Florida Power and Light Company*, PA 91-0012, CC Docket No. 95-95, 10 FCC Rcd 10934 at ¶ 10 (June 15, 1995); *Hearing Designation Order, TCA Management Co., et al., v. Southwestern Public Service Company*, PA 90-0002, CC Docket No. 95-84, 10 FCC Rcd 11832 (June 15, 1995).

¹⁴⁶See, e.g., MCI Reply at 31-33; NCTA Reply at 26.

¹⁴⁷See, 18 C.F.R. Part 101: descriptions of (FERC) accounts and operating expense reporting instructions.

appear to relate more directly to the electric utilities' core business operations rather than "actual capital costs attributable to the entire pole, duct, conduit or right-of-way," as required for inclusion in the rate formula.¹⁴⁸

40. In keeping with long-standing Commission precedent,¹⁴⁹ expenses relating to grounding systems should be excluded from the rate base because, like cross-arms and appurtenances, they are part of the electric utilities' entire system of conductors, rather than of poles.¹⁵⁰ In addition, costs for such equipment are often included in make-ready expenses that attaching entities pay on an up-front, non-recurring basis.¹⁵¹ We also agree with cable operators and telecommunications carriers that contend the adoption of the electric utilities' proposals would have the significant disadvantage of requiring the allocation of portions of FERC accounts into rate-base calculations, turning virtually every rate dispute into a full-blown, discovery-laden rate case.¹⁵²

41. We affirm the following formula to determine the net cost of a bare pole for electric utilities:

$$\text{Net Cost of a Bare Pole (Electric)} = 0.85 \times \frac{\text{Account 364} - \text{Accumulated Depreciation (Poles)} - \text{Accumulated Deferred Income Taxes (Poles)}}{\text{Number of Poles}}$$

42. Under this formula, Accumulated Depreciation (Poles) represents the share of FERC Account 108 (Accumulated provision for depreciation of electric utility plant (Major only) a composite account that is required to be maintained on a subsidiary basis, that corresponds to Account 364 (Poles,

¹⁴⁸47 U.S.C. § 224(d)(1).

¹⁴⁹See, e.g., *Williamsburg Cablevision v. Carolina Power and Light Co.*, PA 82-007, FCC Mimeo 1961 (Jan. 26, 1983); *American Television and Communications Corp. v. Wisconsin Power & Light Co.*, PA No. 82-006, Mimeo 1678 (Jan. 4, 1985).

¹⁵⁰In the *Notice*, 12 FCC Rcd at 7449 n. 55, we suggested that the costs of grounding systems may be included in FERC accounts currently used to calculate electric utilities' pole attachment rates. Asset accounts 364, 365, and 369 are used to calculate the maintenance component of the carrying charge rate. However, Account 364, reduced by 15% to account for appurtenances, is used as the pole rate base (net cost of a bare pole). The *White Paper* suggests that the grounding and arrestor systems booked to Account 365 should be added to this rate base. For the reasons set forth in this section, we believe they should not be. See NCTA Comments at 21 (if the Commission were to consider the addition of grounding systems into the rate formula, that inclusion would have to be spread across the utility investment in its entire distribution network); see also MCI Reply at 31-33; NCTA Reply at 26; Time Warner Comments at 19-22.

¹⁵¹See, e.g., MCI Reply at 31-33; NCTA Reply at 26.

¹⁵²See, e.g., MCI Reply at 31-33; NCTA Reply at 26; Time Warner Comments at 19-22.

Towers, and Fixtures).¹⁵³ Similarly, Accumulated Deferred Income Taxes represents the share of composite FERC Account 190 (Accumulated deferred income taxes) that corresponds to Account 364.¹⁵⁴

3. Total Number of Poles

43. We have previously concluded that poles of 30 feet or less should be included in calculations of the *Cable Formula* in our discussion about pole height and the usable space presumption.¹⁵⁵ Based on our review of the record in this proceeding, we also conclude that poles of 30 feet or less should therefore be included in the inventory of the total number of poles owned or used, jointly-owned or solely-owned, by a utility. The exclusion of these poles would result in a distorted and inaccurate pole inventory resulting in an unjust and unreasonable pole attachment rate because they are being used by the utility for their business services and by cable operators and telecommunications carriers to provide their respective services.¹⁵⁶

C. Carrying Charge Rate (Poles)

44. The carrying charge rate¹⁵⁷ reflects those costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments.¹⁵⁸ The elements of the carrying charge rate are: administrative, maintenance, depreciation, taxes and cost of capital (rate of return).¹⁵⁹ In the *Pole Attachment Order*,¹⁶⁰ the Commission identified the regulatory accounts to be used, where possible, in

¹⁵³18 C.F.R. Part 101, General Instructions.

¹⁵⁴*Id.*

¹⁵⁵See discussion at Section V.A.2.c of this *Order*.

¹⁵⁶See, e.g., NCTA Comments at 15; SBC Reply at 39; USTA Comments at 28-29; U S West Comments at 4; *Cf.*, e.g., American Electric Comments at 55-57; Carolina Power Comments at 29; Edison Electric/UTC Comments at 29; see also, e.g., Duquesne Light Comments at 18 (cannot separate out 30 foot poles from total inventory of poles).

¹⁵⁷The annual carrying charge rate attributable to the cost of owning a pole are required to be provided in a pole attachment complaint. These charges may be expressed as a percentage of the net pole investment. Accumulated deferred taxes are used in calculating the administrative, maintenance and taxes elements of the carrying charge rate. The utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes with its pleading, if accumulated deferred taxes are at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes. 47 C.F.R. § 1.1404(g)(9).

¹⁵⁸Notice at ¶ 11.

¹⁵⁹*Pole Attachment Order*, 2 FCC Rcd at 4387, 4391 (1987), ¶ 25.

¹⁶⁰2 FCC Rcd 4387, 4402-03, Attachment B (1987); see also *American Cablesystems of Florida, Ltd.*, 10 FCC

applying the *Cable Formula* to determine the maximum allowable rate for pole attachments. The carrying charge rate factor of the *Cable Formula* is calculated as follows:¹⁶¹

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

To calculate the carrying charge rate, the Commission developed a formula that relates each of these elements to a pole owner's net pole investment.¹⁶² The full *Cable Formula*, with all its components, elements and accounts used, is attached to this *Order* as Appendix C.

45. In May 1986, the Commission adopted a new uniform system of accounts for all FCC regulated telephone companies.¹⁶³ The Commission's Annual Report Form M was revised on April 27, 1989¹⁶⁴ to reflect the new accounting system in Part 32 that replaced the accounting system in Part 31, effective January 1, 1988.¹⁶⁵ The *Pole Attachment Order* provided formulas for determining a maximum just and reasonable pole attachment rate with regulatory accounts identified.¹⁶⁶ The formula for LECs used Part 31 accounts. After the *New USOA-Part 32 Adoption*, the Common Carrier Bureau responded to a request for clarification of what Part 32 accounts would be used in place of the Part 31 accounts specified in the *Pole Attachment Order*. That guidance was given with the understanding that an exact tracking of expenses from Part 31 accounts to Part 32 accounts was not possible.¹⁶⁷ In this *Order*, we formalize and further clarify the Part 32 accounts to be used in the *Cable Formula* for LECs utilities. LECs maintain their Part 32 accounts and file their annual operating costs with the Commission's Automated Reporting and Management Information System ("ARMIS").¹⁶⁸

Rcd 10934 (1995).

¹⁶¹Notice, 12 FCC Rcd at 7449, Appendix A.

¹⁶²*Pole Attachment Order*, 2 FCC Rcd at 4387, 4402-03, Attachment B (1987).

¹⁶³*New USOA - Part 32 Adoption*, 51 Fed. Reg. 24745 (1986) and 51 Fed. Reg. 43493 (1986); *recon. in part*, 2 FCC Rcd 1086 (1987).

¹⁶⁴Common Carrier Bureau, DA 89-503 (*rel.* May 22, 1989).

¹⁶⁵*Part 32 Guidance Letter*, 5 FCC Rcd 3898 (1990).

¹⁶⁶2 FCC Rcd 4387, 4402-03 (1987).

¹⁶⁷*Part 32 Guidance Letter*, 5 FCC Rcd 3898 (1990).

¹⁶⁸*Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules)*, CC Docket No. 86-182, 2 FCC Rcd 5770 (1987), *modified on recon.*, 3 FCC Rcd 6375 (1988) (*rel.* Oct. 14, 1988) ("*ARMIS Order*").

1. The Administrative Element

46. In the *Pole Attachment Order*, the Commission adopted procedures to identify and calculate administrative expenses, for use in the carrying charge rate as a ratio of total administrative and general expenses to total plant investment.¹⁶⁹ A formula for the administrative expenses¹⁷⁰ was given as follows:

$$\text{Administrative Expense} = \frac{\text{Administrative and General Expenses}}{\text{Gross Plant Investment} - \text{Depreciation Reserve} - \text{Accum. Deferred Taxes, Plant}}$$

47. In the *Notice*,¹⁷¹ we proposed the following revised formula, using Part 32 accounts, for the administrative element for LECs:

$$\text{Administrative Element} = \frac{\text{Administrative and General (Accounts 6710 + 6720 + 6110 + 6120 + 6534 + 6535)}}{\text{Gross Plant Investment} - \text{Accumulated Depreciation (Account 3100)} - \text{Accum. Deferred Taxes, Plant (Accounts 4100 \& 4340)}}$$

48. The substantive changes to the administrative element proposed in the *Notice*, based primarily on the adoption of Part 32,¹⁷² included the addition of Accounts 6710 (Executive and Planning), 6720 (General and Administrative), 6110 (Network Support Expense), 6120 (General Support Expense), 6534 (Plant Operations Administration Expense), and 6535 (Engineering Expense).¹⁷³ Additionally, we proposed to exclude Account 6231 (Radio Systems Expense) because we believe that the expenses reported in this account are unrelated to the administrative element relating to pole attachments.¹⁷⁴ We also proposed to exclude what previously were the non-administrative components of Part 31 Accounts 671 (Operating Rents), 672 (Relief and Pensions) and 677 (Expenses Charged During Construction).¹⁷⁵

¹⁶⁹2 FCC Rcd at 4387, 4392 (1987), ¶ 37.

¹⁷⁰The *Pole Attachment Order* labeled the elements of the carrying charge rate as "expenses" (2 FCC Rcd at 4387, 4402-03, Attachment (1987)) rather than "carrying charge rates" as we did in the *Notice* (12 FCC Rcd at 7449, Appendix A), e.g., administrative expense is labeled administrative element in our current formula elements of the carrying charge rate.

¹⁷¹*Notice* at ¶¶ 31-33.

¹⁷²47 C.F.R. Part 32; see also *Part 32 Order*, 2 FCC Rcd 1086 (1987).

¹⁷³*Notice*, 12 FCC Rcd at 7449, ¶ 31.

¹⁷⁴*Notice*, 12 FCC Rcd at 7449, ¶ 32; see also 47 C.F.R. §§ 32.6231, 32.2231(a). Account 6231 includes the original cost of ownership of radio transmitters and receivers. This investment in radio systems is maintained in Accounts 2231.1 (Satellite and Earth Station Facilities) and 2231.2 (Other radio facilities.) 47 C.F.R. § 32.2231(a).

¹⁷⁵*Notice* at ¶ 33.

49. We affirm our tentative conclusion that the administrative element contain Part 32 Accounts 6710¹⁷⁶ and 6720¹⁷⁷ because those accounts contain a comprehensive set of administrative expenses which are related to operating expenses and capital costs attributable to pole attachments.¹⁷⁸ Even though some expenses contained in these accounts are not attributable to pole attachments, the bulk of the expenses are relevant to plant investment.¹⁷⁹ It is not necessary to separate out all miscellaneous expenses from the accounts used. Notably, there are minimal pole related expenses reported in other accounts that are largely not pole related and, therefore, not included in our formula calculations. We do not require the removal of every non-pole related cost from every account nor do we require every pole attachment cost be pulled from extraneous accounts.¹⁸⁰ The LEC utility pole owner is compensated for the pole attachment's use of space on the pole by the use of the *Cable Formula* as required by the statute.¹⁸¹ Cable operators and telecommunications carriers support the inclusion of Accounts 6710 and 6720.¹⁸²

50. We do not adopt our tentative proposal to include Accounts 6110, 6120, 6534 and 6535. Generally, LEC pole owners support the Commission's proposals for adoption of Part 32 and the inclusion of Accounts 6710, 6720, 6110, 6120, 6534 and 6535.¹⁸³ In contrast, cable operators assert that if Accounts 6110, 6120, 6534, 6535 are used, the attaching entity will be paying for the same expenses twice, once

¹⁷⁶Account 6710 includes a summary for reporting purposes of the contents of Accounts 6711 and 6712. (47 C.F.R. § 32.6710). Account 6711 includes: executive and planning costs incurred in formulating corporate policy and in providing overall administration and management. (47 C.F.R. § 32.6711). Account 6712 includes: costs incurred in developing and evaluating long-term courses of action for the future operations of the company, including performing corporate organization and integrated long-range planning, management studies, options and contingency plans and economic strategic analysis. (47 C.F.R. § 32.6712).

¹⁷⁷Account 6720 includes a summary for reporting purposes of the contents of Accounts 6721 through 6728. (47 C.F.R. § 32.6720). Account 6720 is comprised of the accounts for accounting and finance (47 C.F.R. § 32.6721), external relations (47 C.F.R. § 32.6722), human resources (47 C.F.R. § 32.6723), information management (47 C.F.R. § 32.6724), legal (47 C.F.R. § 32.6725), procurement (47 C.F.R. § 32.6726), research and development (47 C.F.R. § 32.6727), and "other general and administrative" (47 C.F.R. § 32.6728).

¹⁷⁸See 47 U.S.C. § 224(d)(1).

¹⁷⁹See NCTA Comments at 32-35.

¹⁸⁰See 1977 Senate Report at 19-22; see also *American Cablesystems of Florida, Ltd.*, 10 FCC Rcd 10934 (1995).

¹⁸¹47 U.S.C. § 224(d)(1).

¹⁸²See, e.g., AT&T Comments at 20; GTE Comments at 10; NCTA Comments at 26-34; SBC Comments at 22; USTA Comments at 16.

¹⁸³See, e.g., AT&T Comments at 20; GTE Comments at 10; SBC Comments at 22; USTA Comments at 16, Reply at 9-10.

through make ready charges and again as part of the pole attachment rate.¹⁸⁴ The cable operator or telecommunications carrier compensates the pole owner for pole attachments through project specific costs in make-ready expenses¹⁸⁵ and through rates based on the *Cable Formula*.¹⁸⁶ Account 6110, Network Support Expenses, aggregates a number of different accounts that relate to general equipment cost and maintenance not applicable to other plant specific operations expenses.¹⁸⁷ Account 6120, General Support Expenses, aggregates a number of accounts that relate to expenses and costs not directly attributable to pole attachments, such as art work and computers.¹⁸⁸ Account 6534, Plant Operations Administration Expense, includes costs incurred in the general administration of plant operations that are not transferable to project specific construction and training accounts.¹⁸⁹ Account 6535, Engineering Expense, includes costs incurred in the general engineering of the LEC's telecommunications plant which are not directly chargeable to a specific project.¹⁹⁰ If costs are attributable to a pole attachment specific project, those expenses are recorded in accounts already included in the *Cable Formula*.

51. We affirm our conclusion not to include Part 32 Account 6231 in the calculations for the administrative element because that account reports expenses associated with radio systems¹⁹¹ and is unrelated to poles.¹⁹² There was no opposition to the exclusion of Account 6231 from the administrative element calculations. We also affirm our proposal to exclude the non-administrative expenses previously charged to Part 31 Accounts 671, 672, and 677, except to the extent the expenses are include in Part 32

¹⁸⁴See, e.g., NCTA Comments at 32-35; see also Time Warner Comments at 25.

¹⁸⁵See, e.g., NCTA Comments at 32-35; Time Warner Comments at 25.

¹⁸⁶See 47 U.S.C. § 224(d)(1); see also, e.g., NCTA Comments at 32-35; Time Warner Comments at 25.

¹⁸⁷See 47 C.F.R. § 32.6110. Account 6110 (Network Support Expenses) includes a summary for reporting purposes of the contents of Accounts 6112 through 6116. Account 6110 includes: motor vehicle expense (47 C.F.R. § 32.6112), aircraft expense (47 C.F.R. § 32.6113), special purpose vehicles expense (47 C.F.R. § 32.6114), garage work equipment expense (47 C.F.R. § 32.6115), other work equipment expense (47 C.F.R. § 32.6116).

¹⁸⁸See 47 C.F.R. § 32.6120. Account 6120 (General Support Expenses) includes a summary for reporting purposes of the contents of Accounts 6121 through 6124. Account 6120 includes: land and building expense (47 C.F.R. § 32.6121), furniture and art work expense (47 C.F.R. § 32.6122), office equipment expense (47 C.F.R. § 32.6123), general purpose computers expense (47 C.F.R. § 32.6124).

¹⁸⁹See 47 C.F.R. § 32.6534.

¹⁹⁰See 47 C.F.R. § 32.6535.

¹⁹¹See 47 C.F.R. § 32.6211, § 32.2231.

¹⁹²See NCTA Comments at 32-35.

Accounts 6710 and 6720.¹⁹³

52. The following formula is adopted to determine the administrative element of the carrying charge rate of the *Cable Formula* for LEC pole owners:

$$\text{Administrative Element} = \frac{\text{Administrative and General (Accounts 6710 + 6720)}}{\text{Gross Plant Investment (Account 2001)} - \text{Accumulated Depreciation (Account 3100)} - \text{Accumulated Deferred Taxes, Plant (Accounts 4100 \& 4340)}}$$

2. The Maintenance Element

53. In the *Pole Attachment Order*, the Commission adopted procedures to identify and calculate the maintenance expenses for use in the carrying charge rate as a ratio of expenses included in the utility's pole maintenance account, to net pole investment.¹⁹⁴ For purposes of the calculation of the maintenance element, the denominator is the net pole investment which equals the sum of gross pole investment, minus accumulated depreciation related to poles, minus accumulated deferred income taxes related to poles.¹⁹⁵

a. Pole Rental Expenses Paid to a Third Party by LEC Pole Owner

54. In the *Notice*¹⁹⁶ we proposed the following revised formula for the maintenance element¹⁹⁷ for LEC pole owners, to exclude pole rental expenses paid to third parties by the LEC pole owner, from the amount reported in Account 6411 (Poles Expense):

$$\text{Maintenance Element} = \frac{\text{Account 6411} - \text{Rental Expense (Poles)}}{\text{Account 2411} - \text{Accumulated Depreciation (Poles)} - \text{Accumulated Deferred Income Taxes (Poles)}}$$

55. We affirm our tentative conclusion to exclude rental expenses from accounts that make up

¹⁹³See, e.g., AT&T Comments at 20; GTE Comments at 10; NCTA Comments at 26-34; SBC Comments at 22; USTA Comments at 16.

¹⁹⁴2 FCC Rcd 4387 (1987).

¹⁹⁵2 FCC Rcd at 4387, 4402-04, Attachment B (1987).

¹⁹⁶*Notice* at ¶¶ 33-34.

¹⁹⁷In the *Pole Attachment Order*, 2 FCC Rcd 4387 (1987), the formula for the maintenance element included FCC Form M Part 31 Account 602.1. Account 602.1 was converted to Part 32 Account 6411. See *Part 32 Guidance Letter*, 5 FCC Rcd 3898 (1990).

either the administrative or maintenance elements of the carrying charge rate of the *Cable Formula*.¹⁹⁸ Based on the record and current practice, we believe the most economically precise and equitable approach is not to include rents paid to third parties in either the administrative or maintenance element of the carrying charge rate for LECs. These expenses are itemized and reported on Account 6411, and can be verified and removed from the formula calculations.¹⁹⁹ The burden should not rest on an attaching entity to discover or determine whether rents are appropriate for inclusion in the carrying charge rate as some pole owners suggest. We disagree that the inclusion or exclusion of rental expenses should depend on what is contracted for in the rental agreement between the third party pole owner and the LEC "renter."²⁰⁰

56. The exclusion of pole rental expenses paid to a third party is necessary to avoid the attaching entity compensating the LEC pole owner for expenses related to the LEC pole owner's core business expenses rather than capital costs of providing pole attachments as required by Section 224(d)(1).²⁰¹ Account 6411 includes the rents paid by the LEC to electric utilities for the LEC's use of the electric utility's poles for the LEC's own core business. Cable operators and telecommunications carriers pay to LECs pole attachment rental fees to attach to LEC poles, and may also independently pay rental fees to the electric utility to attach to their poles. Inclusion of the LEC's rental fees paid to the electric utility in the *Cable Formula* would result in the cable operator or telecommunications carriers subsidizing the LEC's own pole rental fees and paying the electric utility twice.²⁰² We disagree that inclusion of pole rental expenses is appropriate because the costs are incurred in relation to plant administrative expenses.²⁰³ We are not persuaded that the inclusion of these rents in pole attachment rate computations is appropriate just because it represents a business expense incurred by the LEC to conduct its core business.²⁰⁴

¹⁹⁸Notice at ¶¶ 33-34.

¹⁹⁹See 47 C.F.R. § 32.6411; *Part 32 Guidance Letter*, 5 FCC Rcd 3898 (1990); see also, e.g., NCTA Comments at 26-27, Reply at 33-34.

²⁰⁰See, e.g., Ameritech Comments at 4-5, Reply at 3; Bell Atlantic/NYNEX Comments at 6. Cf. USTA Reply at 8.

²⁰¹See, e.g., NCTA Comments at 26-27 (inclusion of rents could result in attaching entity subsidizing the telephone company's pole rentals and paying the electric company rental fees twice), Reply at 33-34; Time Warner Comments at 26 (exclude rental expenses); USTA Reply at 8 (attaching entity should not have to determine when it is appropriate to include rental expenses in its rate); U S West Reply at 8 (appropriate to exclude to avoid double counting).

²⁰²See, e.g., NCTA Comments at 26-27, Declaration of Patricia Kravtin at ¶ 18; Time Warner Comments at 26; USTA Reply at 8.

²⁰³See, e.g., Bell Atlantic/NYNEX Comments at 6 (include pole rental expense in Account 6411 costs).

²⁰⁴See, e.g., Ameritech Comments at 4-5; Bell Atlantic/NYNEX Comments at 6 (include pole rental expense in Account 6411 costs).

b. FERC Account 590

57. In the *Pole Attachment Order*, the Commission adopted the following formula to determine the maintenance element of the carrying charge rate for use by electric utility pole owners:²⁰⁵

$$\text{Maintenance Expense} = \frac{\text{Account 593 (Maintenance of Overhead Lines)}}{\left[\begin{array}{c} \text{Investment in} \\ \text{Accounts 364, 365, \& 369} \end{array} \right] - \left[\begin{array}{c} \text{Depreciation in} \\ \text{Accounts 364, 365, \& 369} \end{array} \right] - \left[\begin{array}{c} \text{Deferred Income Taxes} \\ \text{Related to} \\ \text{Accounts 364, 365, \& 369} \end{array} \right]}$$

58. In the *Notice*,²⁰⁶ we sought comment on whether a portion of the expenses recorded in FERC Account 590 (Maintenance Supervision and Engineering)²⁰⁷ should also be included in the numerator of this equation if the cost of labor and expenses reported in that account relates to poles. If so, we inquired what amount of those expenses should be allocated to the pole maintenance carrying charge. Electric utilities record the cost of labor and expenses incurred in the general supervision and direction of the distribution system maintenance in Account 590.²⁰⁸ A portion of the amount in Account 590 may support supervision of the maintenance of the pole line investment. The amount in this account, however, also applies to distribution plant other than poles and conduit. If used, the amount from the account would have to be adjusted.²⁰⁹ In the *Notice*, we tentatively concluded that some identifiable portion of the expenses recorded in Account 590 should be included in the maintenance element of the carrying charge rate of the *Cable Formula*.

59. As a result of our review of the record in this proceeding, we reject our tentative conclusion. We believe that any increased accuracy that would be derived from including the minute percentage of pole related expenses that may be included in Account 590, is outweighed by the complexity of arriving at an appropriate and equitable percentage of the expenses. The elements are not designed to be all inclusive nor are they intended to exclude all non-pole related expenses in the interest of simplicity.²¹⁰ Utility pole owners are adequately compensated for their costs of providing space in which an attaching entity can attach facilities necessary to support its cable or telecommunications services through the *Cable*

²⁰⁵2 FCC Rcd at 4387, 4402-03 (1987).

²⁰⁶*Notice* at ¶ 35.

²⁰⁷18 C.F.R. Part 101.

²⁰⁸18 C.F.R. Part 101, description of accounts; *see also* Carolina Power Comments at 52-54; Duquesne Light Comments at 30.

²⁰⁹*See, e.g.*, Carolina Power Comments at 52-54 (for poles), 71-72 (for conduit).

²¹⁰1977 *Senate Report; Telecable of Piedmont, Inc. v. Duke Power Co.*, 10 FCC Rcd 10898 (1995); *see also American Cablesystems of Florida, Ltd. v. Florida Power & Light Co.*, 10 FCC Rcd 10934 (1995).

Formula components.²¹¹ The methodology used to arrive at a pole attachment rate should be simple and based preferably on publicly identifiable and verifiable data.²¹² In our view, the existing formula for the maintenance element of the carrying charge rate achieves that objective.

60. Electric utility pole owners assert that Account 590 expenses are appropriate for inclusion in carrying charge rate factor of the *Cable Formula*.²¹³ Edison Electric/UTC suggests a factor of two percent of Account 590 would be appropriate,²¹⁴ while Ohio Edison contends that 22% of the expenses in Account 590 could be allocable to pole maintenance.²¹⁵ Sprint expressly supports the use of Account 590 data.²¹⁶ Cable operators contend that Account 590 is designed to cover maintenance costs that have little or no nexus to the pole network and attachment of communications facilities to such poles and that actual maintenance expenses associated with poles, conductors and services (drops) are already accounted for in other accounts.²¹⁷ Further, cable operators contend that the amount of return possible is not justified by the level of detail and calculation required.²¹⁸

61. We disagree with electric utilities that Account 590 should be included in the carrying charge rate factor of the *Cable Formula* just because the expenses relate to the maintenance of a distribution system which may include poles.²¹⁹ The description of Account 590 advises that "direct field supervision of specific jobs shall be charged to the appropriate maintenance account." To the extent that pole owners are able to specifically identify and report maintenance costs related to poles on which there are pole attachments, those expenses should be included in Account 593 on which the maintenance element is

²¹¹47 U.S.C. § 224(d)(1).

²¹²*First Report and Order*, 68 FCC 2d 1585 (1978); *Pole Attachment Order*, 2 FCC Rcd 4387 (1987); see also *American Cablesystems of Florida, Ltd. v. Florida Power & Light Co.*, 10 FCC Rcd 10934 (1995).

²¹³See American Electric Comments at 66; Carolina Power Comments at 52-54, 71-72; Duquesne Light Comments at 30; Edison Electric/UTC Comments at 25-26; Ohio Edison Comments at 29; Union Electric Comments at 35.

²¹⁴Edison Electric/UTC Comments at 26 (2% is appropriate).

²¹⁵Ohio Edison Comments at 29 (22% of Account 590 should be allocable to pole maintenance).

²¹⁶See Sprint Comments at 10.

²¹⁷See, e.g., NCTA Comments at 37; Time Warner Comments at 26.

²¹⁸See, e.g., NCTA Comments at 37; Time Warner Comments at 26.

²¹⁹See American Electric Comments at 66; Carolina Power Comments at 52-54, 71-72; Duquesne Light Comments at 30; Edison Electric/UTC Comments at 25-26; Ohio Edison Comments at 29; Union Electric Comments at 35. *But see, e.g.*, NCTA Comments at 37-38.

currently based.²²⁰ We are not persuaded that any residual expense related to poles that may be included in this account is significant.

3. The Depreciation Element

62. In the *Pole Attachment Order*,²²¹ the Commission adopted the following formula to determine the depreciation expense²²² for use in the *Cable Formula*:

$$\text{Depreciation Expense} = \frac{\text{Depreciation Rate for Gross Pole Investment}}{\text{Net Pole Investment}} \times \frac{\text{Gross Pole Investment}}{\text{Net Pole Investment}}$$

63. For the purpose of the formula calculations, net pole investment is identified as gross pole investment minus the depreciation reserve (also known as accumulated depreciation) related to poles minus accumulated deferred income taxes related to poles.²²³ Under 47 C.F.R. Part 32, Section 32.22(a), LECs are required to provide their current and non-current deferred tax data in Accounts 4100 and 4340, respectively.²²⁴ The formula for the net cost of a bare pole includes accumulated deferred taxes which are derived by adding Accounts 4100 and 4340. The sum of these two accounts is then multiplied by the ratio of gross pole investment to total gross plant investment to calculate the net deferred operating income taxes for poles.

64. Some LEC pole owners assert that, because pole removal costs typically exceed gross salvage proceeds by a wide margin, negative net salvage values and, consequently, negative or unusually low pole attachment rates may occur late in a pole's useful life. For example, if each of the five carrying charge formula components equals 10%, the total carrying charge rate would be 50%. This rate would then be multiplied by net pole investment, expressed on a per pole basis as net cost of a bare pole, and the

²²⁰See, e.g., NCTA Comments at 37; Time Warner Comments at 26. Account 593 also includes some non-pole related expenses, such as expenses for the cleaning of insulators and bushings, various functions in support of crossarms, the capital costs of which are factored out of the net cost of a bare pole as discussed elsewhere in this *Order*; see also 18 C.F.R. Part 101, Account 590, 593 description of accounts.

²²¹2 FCC Rcd at 4387, 4402-03, Attachment B (1987).

²²²47 C.F.R. § 1.1404(g)(9).

²²³2 FCC Rcd at 4387, 4402-03 (1987) Attachment B (for electric utilities and for LEC utilities). The Attachment further clarified that "[i]n using calculations using FERC Form. No. 1 data and FCC Form M data, we are treating deferred taxes as most state commissions do -- as a rate base deduction. If the state utility commission includes the reserve for deferred income taxes in the utility's capital structure at zero cost, we would not need to make any further adjustment, [as described at] ¶¶ 42-48 and note 16, *supra*."

²²⁴47 C.F.R. § 32.22(a).

percentage of usable pole space occupied by a cable operator or telecommunications carrier, to determine the maximum just and reasonable rate per pole. Since the *Cable Formula* calculation involves the multiplication of these three factors, two of which would be positive and one negative, a negative rate could result if the LECs assertions proved true.

65. The *Cable Formula* methodology anticipates depreciation rates at levels sufficient to provide each utility pole owner the opportunity to recover its plant investment on a straight-line depreciation basis over the life of the associated plant. In the *Notice*,²²⁵ we proposed to revise the depreciation element of the *Cable Formula*. We sought comment²²⁶ on the scope of the problem outlined in the *SWB Petition*²²⁷ and inquired as to the number of jurisdictions where accumulated depreciation balances currently exceed gross pole investment, or may in the near future.²²⁸ In instances where commenters believe that a modification of the pole attachment formula is necessary, we sought comment on appropriate adjustments and the circumstances in which the adjustment should be made.²²⁹ We sought comment to determine whether net salvage value is appropriate to include in the depreciation rate or whether the application of the depreciation rate formula leads to negative net pole investment results.²³⁰

66. In the *Notice*,²³¹ we also sought comment on whether, due to the frequency with which accumulated depreciation balances exceed gross pole investment, a modification of the *Cable Formula* is necessary. Four LEC pole owners report that they currently have negative pole values due to the results of calculations using negative net pole salvage values.²³² Two other LEC pole owners predict they may experience negative net pole values in the future.²³³ Electric utilities report their costs of removal by

²²⁵See *Notice* at ¶¶ 15-16.

²²⁶*Notice* at ¶ 21.

²²⁷Southwestern Bell Telephone Company, Computation of Rates for Attachment of Cable Television Hardware to Utility Poles, Petition for Clarification or in the Alternative, a Waiver, AAD 94-125 (filed Aug. 26, 1994) (*SWB Petition*).

²²⁸*Notice* at ¶¶ 23.

²²⁹*Notice* at ¶¶ 22.

²³⁰*Notice* at ¶¶ 24.

²³¹*Notice* at ¶¶ 21-28.

²³²See, e.g., Bell Atlantic/NYNEX Comments at 3; SBC Comments at 11; Sprint Comments at 5-8 (Sprint Operating Companies have now); U S West Comments at 6.

²³³See Ameritech Comments at 2; GTE Comments at 4.

different accounting methods than LECs and do not experience negative results.²³⁴ Cable operators and some telecommunications carriers assert the reports of negative pole value are either anomalies of the accounting practices used, or are mathematically impossible.²³⁵

67. We find that there is some merit in all of the comments received. The problem arises from the net pole investment formula itself, under which:

$$\begin{array}{rcccc} \text{Net Pole} & & \text{Gross Pole} & & \text{Accumulated} & & \text{Accumulated Deferred} \\ \text{Investment} & = & \text{Investment} & - & \text{Depreciation (Poles)} & - & \text{Income Taxes (Poles)} \\ & & \text{(Account 2411)} & & \text{(Account 3100)} & & \text{(Accounts 4100 \& 4340)} \end{array}$$

For LECs, the Accumulated Depreciation balance includes both the depreciation attributable to Gross Pole Investment *and* depreciation attributable to removal costs. However, Account 2411 does *not* include removal costs. Instead, removal costs are subtracted from gross salvage proceeds to arrive at future net salvage value. Therefore, the Accumulated Depreciation balance will ultimately exceed Gross Pole Investment, leading to negative net pole valuations. As a general matter, these atypical results are also fueled by the materiality of pole removal costs. For most telecommunication asset classes, removal costs represent a small percentage of gross investment and are usually less than gross salvage proceeds. However, poles are an anomaly in this regard. Future Net Salvage values average -73%, meaning that removal costs dwarf gross salvage proceeds, and represent a large percentage of Gross Pole Investment. Applying the depreciation of removal costs to Gross Pole Investment, therefore, accelerates the recovery period of Gross Pole Investment by over 40%.

68. As a remedy, some commenters suggested setting a minimum value for net pole investment at the last positive valuation to occur under our current formula.²³⁶ Although we agree that this would preclude negative results, it would not cure the fundamental mismatch between the components of the Gross Pole Investment and Accumulated Depreciation calculations. Moreover, investment returns based on the difference between Gross Pole Investment and Accumulated Depreciation as defined presently are understated to the extent that removal cost depreciation is reflected in the Accumulated Depreciation balance. This inequity would persist if last positive valuations were used. Finally, last positive valuations would vary among operators and lead to inconsistent results.

69. Instead, we will eliminate the *cause* of the negative results. Specifically, when the Accumulated Depreciation attributable to removal costs is isolated as an offset to gross removal costs under

²³⁴See, e.g., American Electric Comments at 71.

²³⁵See, e.g., NCTA Reply at 26-29; MCI Comments at 33-37; TCI Comments at 22; Time Warner Comments at 23.

²³⁶See, e.g., NCTA Reply at 28-29.

the future net salvage calculation, negative results are eliminated. This allows a proper matching of depreciation and corresponding sources, and provides an accurate basis for calculating investment returns. Account 3100, as used in the *Cable Formula*, is redefined to include only that portion of Account 3100 which arises from the depreciation of Account 2411. The remaining component of Account 3100, accumulated depreciation for removal costs, is netted separately under the future net salvage calculation. The total depreciation recovery remains unchanged, but the risk of negative carrying charge components has been eliminated. The LECs recovery basis is now comparable to that of electric utility pole owners.

70. Consequently, for the purposes of *all* affected formulas, we redefine Net Pole Investment as:

$$\text{Net Pole Investment} = \frac{\text{Gross Pole Investment (Account 2411)}}{\text{Accumulated Depreciation (Poles) (Account 3100)}} - \frac{\text{Accumulated Deferred Income Taxes (Poles) (Accounts 4100 \& 4340)}}{\text{Gross Pole Investment (Account 2411)}}$$

where Accumulated Depreciation (Poles) includes *only* that portion of Account 3100 which arises from the depreciation of Account 2411. The portion of Accumulated Depreciation (Poles) attributable to removal costs shall be treated as an offset to gross removal costs when calculating future net salvage value.

4. The Taxes Element

71. In the *Notice*,²³⁷ we sought comment on whether the taxes element of the carrying charge rate of the formula used for LEC pole owners should reflect certain tax-related accounts. We also proposed that changes from Part 31 to Part 32 accounting for LEC pole owners should be reflected under the following formula:

$$\text{Tax Element} = \frac{\text{Operating Taxes (Account 7200)}}{\frac{\text{Gross Plant Investment (Account 2001)} - \text{Accumulated Depreciation (Account 3100)} - \text{Accumulated Deferred Taxes (Plant, Accounts 4100 \& 4340)}}{\text{Gross Plant Investment (Account 2001)}}$$

72. We believe the proposed accounts and methodology for the taxes element of the carrying charge rate provide utility pole owners with appropriate compensation when used under the *Cable Formula*.²³⁸ Although a one-to-one matching of tax elements from Part 31 to Part 32 may not be achievable in all instances, we believe the proposed tax element formula will provide reasonable results in an expeditious manner.²³⁹ Basing the tax element of the carrying charge rate on pole investment, rather than

²³⁷Notice at ¶ 36.

²³⁸Notice, 12 FCC Rcd at 7449, Appendix B.

²³⁹See, e.g., AT&T Reply at 25; NCTA Comments at 26-27.

plant investment as proposed by utility pole owners,²⁴⁰ may produce results decidedly different from the actual tax experience of pole owners and are subject to manipulation. Similarly, the application of statutory tax rates instead of tax rates based on actual individual experience are likely to produce overstated tax carrying charge rate that would result in artificially higher pole attachment rates.

73. We affirm the use of our proposed formula. Our policy in applying the *Cable Formula* does not eliminate all non-pole related expenses from all accounts used in the carrying charge rate.²⁴¹ We are not required to disaggregate accounts to eliminate possible non-pole related investments or expenses, nor are we required to scour all utility accounts for every dollar that may benefit a pole attachment.²⁴² We do not believe the statutory Federal income tax rate, rather than actual taxes paid, should be used in calculating the taxes element of the carrying charge rate factor of the *Cable Formula* because the actual taxes paid are readily available from the utility pole owners' regulatory agency data.²⁴³

5. The Rate of Return Element

74. The rate of return element²⁴⁴ is currently taken from the rate of return authorized for the utilities' intrastate services. In the *Notice*, we noted that this policy implicitly assumes that the states will continue to regulate utility rates on a rate of return basis, when in fact many states are moving away from that method of regulation and have adopted incentive-based regulation.²⁴⁵ We tentatively concluded that in such cases the authorized intrastate rates of return will not reflect the utilities' costs of capital.²⁴⁶

75. The Commission has adopted an annual rate of return for the interstate access services of LECs of 11.25%.²⁴⁷ In the *Notice*, we sought comment on whether 11.25% should be used as the rate of return when calculating the carrying charge rate factor of the *Cable Formula*, for utilities in states that no

²⁴⁰See, e.g., Bell Atlantic/NYNEX Comments at 7.

²⁴¹*American Cablesystems of Florida*, 10 FCC Rcd 10934, at ¶ 10. But see American Electric Comments at 58-67; Carolina Power Comments at 56.

²⁴²See 1977 Senate Report at 19-20; *American Cablesystems of Florida, Ltd.*, 10 FCC Rcd 10934; see also NCTA Comments at 26-34; Time Warner Comments at 24-26.

²⁴³See Bell Atlantic/NYNEX Comments at 7.

²⁴⁴See 47 C.F.R. § 1.1404(g)(10).

²⁴⁵*Notice* at ¶ 37.

²⁴⁶See *Notice* at ¶ 37; see also 47 U.S.C. § 224(d)(1).

²⁴⁷See *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, 5 FCC Rcd 7507 (1990).

longer regulate that utility on a rate of return basis.²⁴⁸ In the *Notice*,²⁴⁹ we proposed the following as the return element of the carrying charge rate for use in the *Cable Formula*:

$$\text{Return Element} = \frac{\text{Applicable}}{\text{Rate of Return}}$$

76. We affirm our tentative conclusion to continue the use of the rate of return authorized by the state for intrastate services of the utility, when available.²⁵⁰ Commenters generally agree that the rate of return set by the Commission for LECs, as modified from time to time, is a reasonable default rate of return for use in the *Cable Formula* when an actual rate of return is not prescribed by the state.²⁵¹ NCTA points out, however, that, if the utility's actual realized rate of return is lower than the default, it would be inequitable to allow it a higher rate of return than its actual rate.²⁵² We believe that the use of the default rate of return is an equitable solution, in those instances when a state has not prescribed a rate of return for a utility covering the period of time in which rates were in dispute. We adopt as the default rate of return, the rate of return set by the Commission for LECs, covering the appropriate period, as it is modified from time to time.²⁵³ We believe this serves our policy of using default rates to expedite the *Cable Formula* calculations.

VI. FORMULA FOR DETERMINING ATTACHMENT RATES FOR CONDUITS

A. Background

77. Conduits are structures that provide physical protection for cables and allow new cables to be added inexpensively along a route, without having to dig up the landscape, streets and other structures in the community each time a new cable is installed. A collection of conduits, together with their supporting infrastructure, constitutes a conduit system.²⁵⁴ A conduit consists of one or more ducts, which are the

²⁴⁸*Notice* at ¶ 37.

²⁴⁹*Notice*, 12 FCC Rcd at 7449, Appendix A.

²⁵⁰*See* 47 C.F.R. § 1.1404(g)(10); *see also Alabama Power*, 773 F.2d at 371-72.

²⁵¹*See, e.g.*, American Electric Comments at 69; Bell Atlantic/NYNEX Comments at 2, 5; ConEd Comments at 4-5, 14; GTE Comments at 11; MCI Comments at 20-21; NCTA Comments at 38; SBC Comments at 22-23; Sprint Comments at 10; Union Electric Comments at 37.

²⁵²NCTA Comments at 38.

²⁵³The current rate of return of 11.25% is subject to revision by the Commission. *See Common Carrier Bureau Sets Pleading Schedule in Preliminary Rate of Return Inquiry*, 11 FCC Rcd 3651 (1996) and 47 C.F.R. § 65.101; *see also AT&T Comments* at 20 (citing *Local Competition Order*, 11 FCC Rcd 15499, 15856, ¶ 702).

²⁵⁴*See NESC* § 2; *see also American Electric Comments* at 84.

enclosures that carry the cables.²⁵⁵ Often, when cable system or telecommunications carriers' cables are placed in a duct, three or more inner ducts are inserted into the duct allowing "one duct to be treated more like conduit."²⁵⁶ Section 224 provides that for conduit, the capacity of the conduit is the equivalent of usable space in the pole context.²⁵⁷

78. Congress authorized the Commission to regulate rates, terms, and conditions for pole attachments in ducts and conduits under Section 224 which states:

... a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the ... total duct or conduit capacity, which is occupied by the pole attachment, by the sum of the operating expenses and actual capital costs of the utility attributable to the entire ... duct [or] conduit.²⁵⁸

The 1977 *Senate Report* outlined Congressional intent regarding the methodology the Commission should apply when determining whether a rate was just and reasonable for pole attachments on poles and in ducts, conduit and rights-of-way.²⁵⁹ It was not until 1996, however, that the Commission had before it a complaint about rates charged by a utility for attachments in a conduit.²⁶⁰

79. In the *Notice*,²⁶¹ we sought comment on application to conduits of the attachment formula used to calculate the maximum rate for poles, and on several issues relating to how to determine the percentage of capacity occupied by an attachment:²⁶² how to identify the total capacity and costs attributable to the conduit, and whether conduit owned by an electric utility is sufficiently different from conduit owned by a LEC or other utility to warrant special treatment. The conduit methodology proposed in the *Notice* to determine the maximum just and reasonable rate per attachment is represented as follows:²⁶³

²⁵⁵NESC § 2.

²⁵⁶Edison Electric/UTC Comments at 22 n. 7.

²⁵⁷See 47 U.S.C. § 224(d)(1).

²⁵⁸47 U.S.C. § 224 (d)(1).

²⁵⁹1977 *Senate Report* at 19-20.

²⁶⁰*Multimedia Cablevision v. SWB*, CS Docket No. 96-181, 11 FCC Rcd 11202 (1996) ("*Multimedia Cablevision*").

²⁶¹*Notice* at ¶¶ 38-46.

²⁶²47 U.S.C. § 224(d)(1).

²⁶³*Notice*, 12 FCC Rcd 7449 at Appendix C.