

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Rules and Policies)
Governing Pole Attachments)
_____)

CS Docket No. 97-98

**PETITION FOR RECONSIDERATION
AND CLARIFICATION OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned, hereby requests reconsideration and clarification of the Federal Communications Commission's (FCC) Report and Order² in the above-captioned proceeding. This petition for reconsideration and clarification directs itself to three areas addressed by the Report and Order: 1) the exclusion of certain administrative expenses in the pole attachment formula; 2) the costs of ducts that are reserved for maintenance and municipal uses; and 3) the FCC's prescribed method for avoiding negative pole attachment rates. USTA seeks reconsideration of the Report and Order with respect to items one and two

¹ The United States Telecom Association, formerly the United States Telephone Association, is the nation's oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 telecommunications-related companies worldwide. Its carrier members provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities to American and international markets.

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List A B C D E

and clarification as to item three. Reconsideration and clarification as requested herein will produce a final outcome in this proceeding that assures equitable rate treatment for both utilities and attaching entities (CATV system and telecommunications services providers) in accordance with the just and reasonable rate requirement found in Section 224 of the Communications Act.³

DISCUSSION

I. The FCC Should Reconsider Its Decision To Exclude Certain Administrative Expenses In The Pole Attachment Formula

The FCC should reconsider its decision to exclude expenses in Accounts 6110 (network support expenses), 6120 (general support expenses), 6534 (plant operations administrative expenses), and 6535 (engineering expenses) from the “administrative and general expenses” carrying charge for pole attachment rates.⁴ The FCC excluded these expenses in response to the argument by CATV system operators that inclusion of these expenses in the pole attachment formula would produce a double recovery of the expenses - - once in the recurring pole attachment rate and again in one-time “make ready” charges (charges that an attaching entity pays for the one-time costs of modifying a pole, if necessary, to accommodate a pole attachment).⁵ However, the FCC found that

² Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, FCC 00-116, Report and Order (rel. Apr. 3, 2000).

³ 47 U.S.C. § 224.

⁴ Report and Order at ¶ 50. This decision left only Accounts 6710 (executive and planning) and 6720 (general and administrative) in the carrying charge factor for administrative and general expenses.

⁵ Id.

the expenses recorded in these accounts are not project-specific (e.g. a pole attachment project).⁶ Therefore, these expenses are not recovered through make-ready charges, and there is no double-recovery.

Nonetheless, the FCC decided to exclude these accounts from the formula because the FCC found that the expenses in these accounts are not specifically related to the administration of poles.⁷ The FCC should reconsider this decision. Although the expenses in these accounts may not be directly identifiable with specific pole attachment activities, they include costs from functions that provide general support to the overall operation of the business (including the administration and general support of poles). Account 6110 includes the costs of repairing and maintaining the motor vehicle fleet that is used, in part, to transport workers and materials to repair and replace poles. Account 6120 includes the costs of land and buildings, office equipment, and general purpose computers that support a broad range of activities, including the administration of pole attachments. Account 6534 contains costs related to the general administration of plant operations, including poles. Account 6535 includes general engineering expenses that are not specific to a particular project, but that support all operations, including poles. There is no reasonable justification to exclude these expenses from the carrying charge factor. The FCC should include all administrative and general expenses that directly or indirectly support the administration of poles.

⁶ Id. Indeed, these accounts exclude project-specific costs in the same way as Accounts 6710 and 6720, which the Commission included in the administrative carrying charge factor.

⁷ Id.

By excluding these expenses, the FCC reverts back to a flawed methodology that was vacated by the Court in Alabama Power Co. v. FCC.⁸ In Alabama Power, the Court rejected a carrying charge factor for pole attachment rates that divided the cable-related administrative costs by total plant investment, finding that it “yields an artificially low percentage” and “bears no rational relationship to the determination it purports to make.”⁹ The Court explained that it would be reasonable for the FCC to develop a carrying charge factor either by dividing pole-related administrative expenses by pole-related investment, or by dividing total administrative expenses by total plant investment. Subsequently, in its Pole Attachment Order,¹⁰ the FCC decided that it would adopt the second of these methods rather than try to identify the administrative costs that are specifically related to poles.¹¹ In the Report and Order, though, the FCC abandons this approach and divides what it considers to be pole-related administrative expenses by total plant investment.¹² This is precisely the method that the Court condemned in Alabama Power.

Accordingly, the FCC should adopt the administrative element of the carrying-charge formula that it proposed in the notice of proposed rulemaking leading to the Report and Order that would include all administrative and general expenses in Accounts 6710, 6720, 6110, 6120, 6534, and 6535 in the numerator and total plant investment in the denominator.¹³

⁸ Alabama Power Co. v. FCC, 773 F.2d 362 (D.C. Cir. 1985).

⁹ Id. at 370.

¹⁰ Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd 4387 (1987) (Pole Attachment Order).

¹¹ Id. at ¶ 37.

¹² See Report and Order at ¶ 52.

II. The Costs Of Ducts Reserved For Maintenance And Municipal Uses Should Be Treated As “Unusable Space” And Should Be Recovered From All Users

The FCC should reconsider its decision to treat duct space that is reserved for maintenance activities or that is set aside for use by municipalities as “usable space.”¹⁴ This duct space benefits all users and cannot be used either by the conduit owner or by any party from whom the owner can recover attachment charges.

Ducts that are reserved to allow for maintenance can be used by the owner or an attaching entity to place temporary cables in the event of a cable break. In many instances, conduit owners provide attaching entities with the temporary use of a duct in order to conduct maintenance. Such arrangements are provided for in the license agreements and contracts between the conduit owners and attaching entities and are typically at no cost to the attaching entities. Municipal ducts are reserved for use by local governments, usually as a condition of a conduit owner’s franchise, right-of-way, or other authorization to place the conduit system in a particular location. In both cases, the conduit owner does not receive any revenue associated with the reserved ducts. Since these ducts benefit all users, the costs of these ducts should be allocated to all users by treating these ducts as “unusable space.”

By treating these ducts as “usable space,” the FCC unfairly places all of the costs of these ducts on the conduit owner. Contrary to the FCC’s finding, the conduit owner is not compensated for these costs as part of its net conduit investment or in the carrying

¹³ See *id.* at ¶ 47.

¹⁴ Report and Order at ¶ 90.

charge rate.¹⁵ In the FCC's formula for the conduit attachment rate, net investment and the carrying charge factor are multiplied by the ratio of the amount of duct space that is used by an attaching entity to the total amount of duct space, which includes ducts that are reserved for maintenance and municipal uses. By including these maintenance and municipal ducts in the denominator, the FCC's formula calculates a smaller percentage of total costs that can be charged to a third-party attaching entity. Ultimately, if all ducts in a system are occupied, this formula requires the conduit owner to bear the costs of the percentage of total duct space that it occupies plus the costs of space reserved for maintenance and municipal uses. This is inequitable and contrary to the principle of competitive neutrality since a carrier conduit owner could wind up subsidizing a competitor to whom it provides duct access. Accordingly, the FCC should spread the costs of these ducts among all users by treating them as "unusable space."

III. FCC's Method Of Avoiding Negative Pole Attachment Rates Requires Clarification

In the Report and Order, the FCC correctly recognizes that its use of "net pole investment" in the pole attachment rate formula would ultimately produce negative rates because the "net salvage value" of poles is usually negative (the salvage value is less than the cost of removal).¹⁶ Net investment is defined as gross investment minus depreciation, minus accumulated deferred income taxes. Approximately halfway through a pole's useful life, depreciation of the pole plus depreciation of the removal costs exceed the original (gross) pole investment and can produce negative pole attachment rates.

¹⁵ See id. at ¶ 89.

¹⁶ Report and Order at ¶ 64.

To avoid this anomaly, a number of commenters proposed that the FCC use gross investment, rather than net investment, in the rate formula. However, the FCC decided that it could rely on net investment without producing negative rates if it took removal costs out of the formula. That is, the FCC decided that local exchange carriers (LECs) should compute their net pole investment by subtracting from gross pole investment only the portion of accumulated depreciation in Account 3100 that is attributable to poles, but not the amount attributable to removal costs.¹⁷

Although the FCC's decision eliminates negative rates, it assumes a level of accounting detail that may not exist. USTA is unaware of any LECs that keep records that would allow them to identify the portion of Account 3100 that represents the accumulated depreciation of pole removal costs. Further, if the effect of removal costs were excluded from Account 3100, it would also have to be excluded from accumulated deferred income taxes in Accounts 4100 and 4340. It is USTA's belief that LECs do not maintain their accounts at a level of detail that would allow them to identify removal costs in those accounts either.

The FCC should make it clear that LECs who do not have this level of detail in their accounting records may follow a simple method of estimating the amount of pole removal costs that should be excluded from the rate formula. The FCC should allow LECs to identify the portion of accumulated depreciation that is "attributable to poles" by subtracting the "future net salvage" component from the pole depreciation rate. For example, if the depreciation rate for poles is 7 percent, and 3 percent represents future net salvage value, the portion "attributable to poles" would be 4 percent. The LEC would

¹⁷ Id. at ¶¶ 69-70.

then calculate net pole investment by subtracting 4/7ths of the balance in the Accumulated Depreciation Account 3100 (Poles) from Gross Pole Investment in Account 2411, as illustrated in the attachment hereto.

Given the FCC's ruling, the FCC should permit LECs to use a similar method to estimate the amount of salvage costs that should be removed from Accumulated Deferred Income Taxes (Poles) Accounts 4100 and 4340. In order to accomplish this, LECs would first estimate the amount of Accumulated Deferred Income Taxes for poles by calculating the ratio of Depreciation Reserve Account for Poles to total depreciation in Account 3100.¹⁸ This ratio is multiplied by the total amounts in Accounts 4100 and 4340. Next, this amount is multiplied by the portion of the depreciation rate that excludes salvage costs (4/7ths in the example above) in order to estimate the amount of Accumulated Deferred Income Taxes "attributable to poles," as illustrated in the attachment hereto. Finally, this amount would also be subtracted from Gross Pole Investment Account 2411 in calculating the net pole investment.

This approach provides a reasonable estimate of the amount of removal costs that should be excluded from the formula. The depreciation rates can easily be determined by referring to the depreciation rates that LECs maintain in their books for pole investments. Since FCC accounting requirements vary for LECs by size and classification, LECs that do not retain the above-referenced data should have the option of using any other reasonable approach to estimate the amount of pole removal costs that should be

¹⁸ Should actual data by type of plant asset be available, it would be used.

excluded, including using the percentage arrived at by any comparable LEC that has used this alternative methodology.¹⁹

Accordingly, the FCC should clarify that LECs should use the foregoing methodology, where possible, to calculate net pole investment to identify the portion of accumulated depreciation and accumulated deferred income taxes attributable to pole removal costs.

CONCLUSION

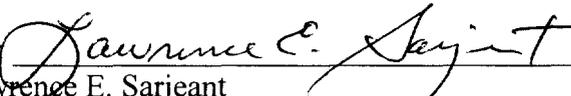
On the basis of the discussion presented above, USTA requests that the FCC reconsider the Report and Order by: 1) adopting the administrative element of the carrying-charge formula initially proposed in the NPRM; and 2) allowing the recovery of costs associated with ducts reserved for maintenance and municipal uses from all users. Additionally, the FCC should clarify that LEC owners should use the alternative method described in Section III. above, where possible, in order to determine the amount of pole

¹⁹ The need for the clarification urged in Section III. of this filing evidences the tension that exists between the Biennial Review of Regulations process, mandated by Section 11 of the Communications Act (47 U.S.C. § 161), and the codification of the use of Part 32 in the *Cable Formula* (See Report and Order at ¶ 13.). Section 11 requires the biennial review of all FCC regulations that apply to the operations or activities of telecommunications services providers. This review includes the review of the FCC's Part 32 rules. USTA has been an aggressive advocate for substantially limiting the number and scope of FCC accounting and reporting requirements applicable to LECs. USTA anticipates that Part 32 requirements for LECs will substantially decline over time. Consequently, LECs must be given the flexibility to use other, perhaps non-publicly available, sources for inputs to the *Cable Formula* as the requirements for maintaining existing Part 32 accounts are modified or repealed. Flexibility is also required in the case of FCC forbearance from certain accounting and reporting requirements pursuant to Section 10 of the Communications Act (47 U.S.C. § 160). Under no circumstances

removal costs to be excluded from the rate formula. LECs that do not retain the above-referenced data should have the option to use any other reasonable approach to arrive at the amount of pole removal costs to be excluded from the rate formula - - including the use of the percentage arrived at by another comparable LEC having such accounting detail.

Respectfully submitted,

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should maintenance of a Part 32 account be required solely because it has been “codified” in the *Cable Formula*.

ATTACHMENT

ILLUSTRATIVE EXAMPLE TO CALCULATE NET-BOOK FOR POLE ATTACHMENT RATE FORMULA

<u>Line</u>	<u>Description</u>	<u>Source</u>	<u>Amount</u>
1	Total plant in service	Table B-1; Pg 2 Row 240; Col af	\$ 15,000,000
2	Pole plant in service	Table B-1; Pg 2 Row 2411; Col af	\$ 300,000
3	Total Depreciation Reserve	Table B-5; Pg 4 Row 490; Col j	\$ 8,000,000
4	Pole Depreciation Reserve	Table B-5; Pg 4 Row 390; Col j	\$ 280,000
5a	Accumulated Depreciation Reserve Account 4100	Table B-1; Pg 3 Row 4100	\$ 25,000
5b	Accumulated Depreciation Reserve Account 4340	Table B-1; Pg 4 Row 4340	\$ 75,000
5	Total Accumulated Depreciation Reserve	Line 5a plus Line 5b	\$ 100,000
6	Total Pole Depreciation Rate	FCC Depreciation Rate (see note a)	7%
7	Pole Depreciation 'attributable' Rate	"100" for life component (see note a)	4%
8	Pole Depreciation 'removal costs' Rate	"75" for cost of removal component (see note a)	3%
9	Pole Percentage of Total Plant	Line 2 / Line 1	0.02
10	Pole Depreciation Percentage of Total Plant	Line 4 / Line 3	0.035
11	Pole Depreciation Reserve -Applicable	Line 4 * Line 7 / Line 6	\$ 160,000
12	Pole Accumulated Depreciation Reserve - Applicable	Line 5 * Line 10 * Line 7 / Line 6	\$ 2,000
13	Net Pole Investment	Line 2 - Line 11 - Line 12	\$ 138,000

Notes

- a Depreciation components shall be based upon approved FCC Prescribed Rates;