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MAY - 8 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 8, 2002

VIA COURIER

Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE - Suite 110
Washington, D.C. 20002

**Re: 2000 Regulatory Review – Comprehensive Review of the
Accounting Requirements and ARMIS Reporting
Requirements for Incumbent Local Exchange Carriers:
Phase 3, CC Docket Nos. 00-199 & 99-301**

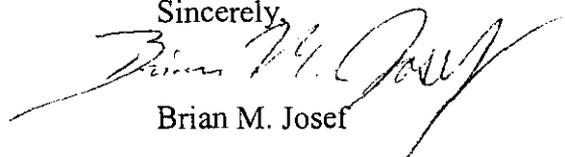
**Reply Comments of the National Cable & Telecommunications
Association**

Dear Ms. Dortch:

On behalf of the National Cable & Telecommunications Association, enclosed for filing please find an original plus four copies and a stamp and return copy of the Motion for Leave to Accept Late-Filed Reply Comments and accompanying Reply Comments on the Further Notice of Proposed Rulemaking in the above-referenced docket.

Kindly stamp the "stamp-and-return" version of this letter and return it to the messenger for return delivery to us. Please do not hesitate to contact the undersigned attorney should you have any questions regarding this filing.

Sincerely,



Brian M. Josef

cc: Andrew Mulitz

BMJ
Enclosure

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| 2000 Regulatory Review – |) | |
| Comprehensive Review of the |) | CC Docket No. 00-199 |
| Accounting Requirements and |) | |
| ARMIS Reporting Requirements for |) | |
| Incumbent Local Exchange Carriers: |) | |
| Phase 3 |) | |
| |) | |
| Local Competition and Broadband Reporting |) | CC Docket No. 99-301 |

MOTION FOR LEAVE TO ACCEPT LATE-FILED REPLY COMMENTS

The National Cable & Telecommunications Association (“NCTA”), by its attorneys, hereby submits this Motion for Leave to Accept Late-Filed Reply Comments in the above-captioned proceeding.

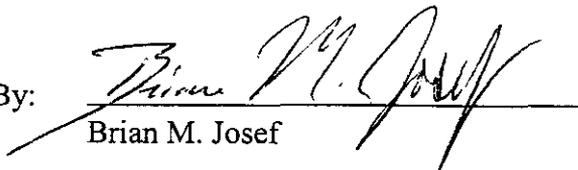
Good cause exists for granting this request, as production errors prevented the filing on May 7, 2002. Because NCTA hereby files the accompanying Reply Comments only hours after the established due date, the public and other commenters will not be prejudiced by this minor delay. Moreover, granting this Motion will allow the response to a proposal presented for consideration by other commenters, thereby enabling the Commission to proceed with an appropriate record before it.

Accordingly, it is respectfully requested that the Commission grant this Motion and accept the accompanying Reply Comments.

Respectfully submitted,

**National Cable &
Telecommunications Association**

By:


Brian M. Josef

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Its Attorney

May 8, 2002

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

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| ARMIS Reporting Requirements for |) | |
| Incumbent Local Exchange Carriers: |) | |
| Phase 3 |) | |
| |) | |
| Local Competition and Broadband Reporting |) | CC Docket No. 99-301 |

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

The National Cable & Telecommunications Association (“NCTA”), by its attorneys, respectfully submits the following reply comments in the above-captioned proceeding.

I. Introduction and Summary

NCTA has maintained throughout this proceeding that the Part 32 Uniform System of Accounts (“USOA”) utilized in pole attachment rate calculations, made publicly-available through ARMIS reports, is critical for cable operators and telecommunications attachers. Because this review implicates pole/conduit-related accounts, resolution of this proceeding by the Federal Communications Commission (“FCC” or “Commission”) may significantly affect the terms under which cable systems and competitive local exchange carriers (“CLECs”) offer services to their subscribers. Pole attachment and conduit expenses involve a vital aspect of cable operators’ and telecommunications providers’ business operations, and incumbent local exchange carriers (“ILECs”), including mid-sized ILECs, have a substantial number of third party attachments. Eliminating or reducing the public availability of this level of accounting detail would

eviscerate the Commission's highly-effective regime for controlling abuses of this crucial bottleneck.

NCTA supports the Commission's efforts toward streamlining those regulations that are no longer consistent with the public interest. In this context, NCTA agrees in principle with the recent proposal by Bellsouth Corporation, SBC Communications, Inc., the Verizon telephone companies, Qwest Corporation, The Frontier and Citizens Incumbent Local Exchange Carriers, and Cincinnati Bell Telephone Company (the "ILEC Coalition") that all facilities-based telecommunications carriers furnish the Commission with an annual, publicly-available, report for pole/conduit-related account data.¹

Although NCTA believes the broad proposal by the ILEC Coalition has potential, several issues require clarification by the Commission before it can be considered for adoption. Specifically, the Commission should ensure that any ILEC filing of pole/conduit-related accounts adopted by the Commission will be: (1) mandatory and verified by declaration under penalty of perjury; (2) verifiable through pre-complaint discovery of all Part 32-type and GAAP account data and subsidiary records maintained by ILECs; (3) subject to auditing and verification authority by Commission staff; (4) reported for all states by carriers on a state-by-state basis; and (5) consistent with the definitions of the corresponding Part 32 pole/conduit-related accounts. By requiring the above clarifications and modifications to the ILEC proposal, the data will be

¹ See Joint Comments of Bellsouth, SBC, Verizon, Qwest, Frontier, and CBT, CC Docket Nos. 00-199 and 99-301 (Apr. 8, 2002) at 19-20, Attachment D (hereinafter "ILEC Coalition Comment").

The proposed Pole Attachment/Conduit Report submitted by the ILEC Coalition in Attachment D specifies and defines the cost accounts to be reported. These accounts consist of: total plant in service; conduit investment; pole investment; total depreciation reserve; depreciation reserve - conduit; depreciation reserve - poles; depreciation rate for conduit; depreciation rate for poles; total deferred income tax; maintenance expense conduit; maintenance expense poles (excludes pole rental expense); executive, planning, general and administrative expense; operating tax expense; total number of poles; total km of conduit system duct; total km of conduit system trench. See ILEC Coalition Comment at Attachment D.

available to cable operators and other attachers which will promote consistent pole attachment settlements without recourse to complaints for each of the hundreds of pole attachment agreements and annual rental rate calculation reviews.

II. ALL ILECs Must Continue To File Pole/Conduit-Related Account Information That Is Publicly-Available, Verified and Verifiable

At a minimum, as the Commission considers the ILEC Coalition's proposed Pole Attachment/Conduit Report ("Report"), it must make clear that *all* incumbent telecommunications carriers will be required to file with the Commission the pole/conduit-related account information specified in Attachment D.² This filing mandate must apply equally to all incumbent telecommunications carriers, including both Class A and Class B ILECs.³ Such a requirement makes practical sense, as cable and telecommunications providers attach to large, mid-sized and smaller ILECs' poles and must rely on the corresponding account

² The ILEC Coalition alludes to such a requirement, but uses suggestive, rather than mandatory, language in setting forth this proposal. *See* ILEC Coalition Comment at 20.

Further, the ILEC Coalition's proposed Attachment D reference to "non-proprietary information" in the caption must be clarified. *See* ILEC Coalition Comment, Attachment D. The Commission should confirm that the ILEC Coalition's reference to "non-proprietary information" would not provide a means for ILECs to evade providing *all* necessary account information. The pole/conduit-related account data is not proprietary. For example, in a state pole attachment tariff proceeding, one ILEC initially asserted that such pole-related account information was proprietary, but subsequently reconsidered and provided the information to attaching parties. *See Investigation Into Tariff Filing of Verizon New England Inc. D/B/A Verizon Vermont: Re: Revisions to Its Pole Attachments Tariff*, Docket No. 6607, Vermont PSB (Feb. 21, 2002). The ILEC neither experienced adverse disclosure of information nor any commercial disadvantage as a result.

The Federal Energy Regulatory Commission has rejected utilities' claims that such account data is proprietary. *See* Letter from Douglas W. Smith, General Counsel, Federal Energy Regulatory Commission, to Ronnie R. Labrato, Gulf Power Company, FERC RIMS DOC 2090351 (Sept. 14, 2000). The Commission has similarly required the public availability of this type of information. *See generally Teleport Communications Atlanta, Inc. v. Georgia Power Co.*, 16 FCC Rcd. 20238 (rel. Nov. 14, 2001); *Alabama Cable Telecomm. Ass'n v. Alabama Power Co.*, Order, 15 FCC Rcd. 17346, ¶ 8 (2000), *appeal docketed*, *Alabama Power Co. v. FCC*, Docket Nos. 00-14763-I & 00-15068-D (11th Cir., Sept. 12, 2000); *Cavalier Telephone, LLC v. Virginia Electric and Power Co.*, 15 FCC Rcd. 9563 (2000).

³ The filing requirement should not apply to CLECs because they do not own or control the vast, contiguous networks of poles and conduit held by ILECs, nor do they control access to essential facilities. Further, CLECs do

data for calculating pole attachment rental rate increases and guaranteeing that such increases comply with the Commission's well-established formulas.

Second, attaching parties have a substantial interest in requiring that any filing of pole/conduit-related accounts with the Commission be verified and verifiable. The Commission should require that each Report be supported and proved by the written declaration of an authorized officer of the incumbent carrier under penalty of perjury. This person should attest to the veracity and accuracy of the Report's account data. This declaration requirement is standard practice before the Commission by parties attempting to establish or support specific facts in all aspects of communications regulation.⁴ Moreover, the filing of a declaration imposes little burden, if any, upon ILECs. Because the ILEC Coalition has not specified that the proposed Report will be verified by written declaration under penalty of perjury, NCTA seeks to ensure that this practice is expressly required. Accordingly, the Commission should require that all incumbent telecommunications carriers must file the Report and attest to its accuracy and veracity in a written declaration under penalty of perjury.

III. The Commission Should Ensure That Attachers Have Full Rights to Pre-Complaint Discovery of All Relevant Account Information While Maintaining Authority To Verify and Audit ILEC Accounts

It is not enough that all ILECs providing pole attachments submit sworn, verified Reports. One of the fundamental reasons for the success of the existing pole attachment regime is that it enables parties to obtain and verify the account data from a publicly-available database, so that they may then negotiate pole attachment rates in accordance with the Commission's pole/conduit formulas without taxing agency staff or resources. Thus, it is essential to the

not maintain accounting data under Part 32 of the USOA.

⁴ See, e.g., 47 C.F.R. § 1.16.

continued success of the Commission's pole attachment regulations that the data submitted by ILECs be verifiable. This information can be verified in at least two ways.

First, the Commission must provide attachers the ability to conduct pre-complaint discovery of all Part 32 and GAAP account data that ILECs maintain for their own internal purposes. This will enable attachers to independently verify the accuracy of the Report's data. Independent verification is critical because the proposed Report data is isolated from overall account balances found in existing ARMIS reports. Such isolation prevents attachers from cross-referencing other integrated Part 32 and ARMIS cost accounts to ensure proportionality and reasonableness of pole/conduit-related account information. To illustrate, an attaching party might compare the reported dollar amount for "pole investment" to figures for "total assets" or "total outside plant." If the pole investment equals \$90 million and total assets equal only \$100 million, the attaching party would quickly recognize the inconsistent proportionality and conclude that the carrier's account numbers are probably in error. In the event that the Commission were to streamline or eliminate Part 32 accounting and ARMIS reporting requirements, attachers would have no accompanying accounting data that provides the crucial context for the information received in the proposed Report. Providing attachers explicit, independent rights to pre-complaint discovery will enable them to detect aberrations or distortions in the pole and conduit data they receive from pole owners.

Second, the Commission should continue to maintain auditing and verification authority for FCC Staff. The Commission clearly has this authority. Under Section 220(a) of the Communications Act of 1934 ("the Act"), the Commission may direct the kind of financial books and records that carriers must maintain so that the Commission can ensure that carriers'

rates and practices are just and reasonable.⁵ In establishing a uniform system of accounts, Congress charged the Commission with “ensur[ing] a proper allocation of all costs to and among telecommunication services, facilities, and products (and to and among classes of such services, facilities, and products) which are ... offered” by the carrier.⁶ Congress delegated broad authority to the Commission in carrying out its responsibilities for oversight of ratemaking and carrier practices. Consistent with this purpose, Section 220(c) grants the Commission authority to request further information or order an audit of any carrier’s books to ensure compliance with its accounting rules.⁷

The Commission should reserve its authority to conduct additional investigations into the underlying data upon which the ILEC filing is based, as well as all Part 32-type and GAAP subsidiary account information, pursuant to its authority under Section 220(c). Any audits and/or investigations should involve Staff from the Enforcement Bureau, which currently receives and considers pole attachment complaints, and the Media Bureau.

IV. The Commission Should Clarify That Carriers Must Report Account Data For All States At The State Level

While it is important that attaching parties and the Commission have procedures for verifying carrier account data, the Commission should not neglect the level of reporting of this information. It appears that the ILEC Coalition’s proposed Report is inconsistent with respect to the level of reporting of pole/conduit-related data. Specifically, the proposed Report states that

⁵ See 47 U.S.C. § 220(a).

⁶ 47 U.S.C. § 220(a)(2).

⁷ See 47 U.S.C. § 220(c).

carriers shall report at the state level,⁸ while elsewhere in the ILEC Coalition Comment the carriers propose that the Report could be provided at the company level.⁹ If the ILEC Proposal is considered, the Commission should expressly require the reporting of the pole/conduit-related account data at the state level.

State level account information is most useful to attaching parties that almost exclusively calculate pole attachment rental rates on a state-by-state basis. Moreover, requiring state level reporting by incumbent carriers for *all* states in which they operate would be of more practical value for state commissions, including those that independently regulate pole attachments, as they seek to track this account data for their own regulatory purposes.

Congress and the Commission mandate that states that have certified to independently regulate pole attachments must establish and issue rules implementing their regulatory authority.¹⁰ The Commission's Rule 1.1414 further specifies that the state commission shall include a detailed methodology for pole attachment regulation that "has been made publicly available in the state."¹¹ Filing the proposed Report for all states in which a particular ILEC operates will assist those certified states in satisfying their obligation to establish a detailed methodology tied to publicly-available data.¹² State pole attachment regulations will not be effective unless the pole/conduit-related data is publicly available. The easiest way to accomplish this is by filing the information for all states with the Commission.

⁸ See ILEC Coalition Comment at Attachment D.

⁹ See ILEC Coalition Comment at 20.

¹⁰ 47 U.S.C. § 224(c)(3).

¹¹ 47 C.F.R. § 1.1414 (emphasis added).

¹² See 47 C.F.R. § 1.1414.

Filing all states' pole/conduit-related data at the state level also helps enable regulators and attachers to "sum up" account totals into aggregate figures that more closely compare to corporate levels of reporting accounting information to other agencies. For example, an ILEC files corporate-level GAAP accounting information before the Securities and Exchange Commission ("SEC") for all of the states it serves. If that ILEC then files the proposed Report for pole/conduit-related data for some states, but omits other states (*e.g.*, certified states independently regulating pole attachments), regulators and attachers cannot aggregate the data to check the carriers' figures for scale. Similarly, they would be unable to confirm that the data "sum up" to accurately reflect the corporate-level account data.

Therefore, if the Commission considers adoption of the ILEC Proposal, it should require that ILECs file with the Commission pole/conduit-related account data at the state level for all states in which they operate.

V. The Accounts in the Proposed Report Should Use the Exact Definitions of the Corresponding Part 32 Accounts

The proposed ILEC reports would be significantly less useful -- to ILECs, attaching parties, state commissions, and the Commission -- if they do not correspond to the current Part 32 definitions used by the Commission. Therefore, the Commission should require that the proposed Report expressly adopt the pole/conduit-related account definitions from Part 32 of the Commission's rules. It is clear that the ILEC Coalition has made an effort to provide definitions of the required accounts that closely track the Part 32 definitions.¹³ However, these definitions do not exactly correspond with existing Part 32 definitions.¹⁴ Utilizing the existing Part 32

¹³ See ILEC Coalition Comment at Attachment D.

¹⁴ For example, the ILEC Coalition's definition of "Executive, Planning, General and Administrative" differs from the corresponding revised definition in Section 32.6720 of the Commission's rules. See 47 C.F.R. § 32.6720. The

definitions would ensure consistency and avoid confusion by ILECs who have reported cost data under these definitions since their inception in the mid-1980s. Retaining the Part 32 definitions for reporting pole/conduit account data would impose no additional burden on ILECs. Indeed, as noted above, the definitions provided by the ILEC Coalition in Attachment D closely reflect the Part 32 definitions, with minor differences. Continued reporting under the precise Part 32 definitions ensures comparability with prior account data, and avoids complications arising from new and different definitions that may arise in the future. Therefore, maintaining the existing Part 32 definitions is in the public interest.

VI. Conclusion

As the Commission has noted, the cost-saving benefits resulting from the ARMIS Reporting regime have accrued to pole owners, cable operators, other attaching parties, and the Commission.¹⁵ Any streamlining or elimination of ARMIS and Part 32 account reporting requirements should avoid unraveling the past 20 years of efficient pole attachment regulation. For

proposed Report identifies "...the costs *included* in developing and evaluating long-term courses of action for future operations of the company..." and "the costs of general and administrative nature such as costs *included* in providing accounting and financial services...." See ILEC Coalition Comment at Attachment D (emphasis added). In contrast, the corresponding definitions in Section 32.6720 require reporting of "costs incurred," rather than "costs included" in such activities. 47 C.F.R. § 32.6720. The altered definition contained in the ILEC Coalition Comment is ambiguous and could create accounting problems.

Further, the ILEC Coalition's definition of "conduit investment" does not include Section 32.2441's detail that such account shall include the "cost of pumping water out of manholes and of cleaning manholes *and ducts* in connection with construction work and the cost of permits and privileges for the construction *of cable and wire facilities....*" See 47 C.F.R. § 32.2441 (emphasis added).

¹⁵ See 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Report and Order, 16 FCC Rcd. 19911, ¶ 48 (rel. Nov. 5, 2001).

the foregoing reasons, NCTA believes that the ILEC Coalition's proposed Report may be workable, but urges the Commission to clarify and make explicit the issues enumerated above.

Respectfully submitted,

/s/ Daniel L. Brenner

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May 8, 2002