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EX PARTE

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *Petition of Verizon for Forbearance from Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; Implementation of Section 224 of the Act; Amendment of the Commission's Rules Governing Pole Attachments, WC Docket No. 07-245*

Dear Ms. Dortch:

In its pending forbearance petition in WC Docket No. 07-273, Verizon seeks forbearance from enforcement of the requirement to file ARMIS Report 43-01, including data used in the calculation of pole attachment rates.¹ In comments opposing Verizon's petition, Time Warner Telecom explained that ARMIS data continues to be necessary for calculating pole attachment rates.² The deadline for Commission action on the petition is approaching and Verizon has yet to respond to the concern about the potential unavailability of pole attachment data. Accordingly, the National Cable & Telecommunications Association (NCTA) requests that the Commission condition any relief granted to Verizon on a requirement that Verizon continue filing the data contained in ARMIS 43-01 used to calculate pole attachment rates.

Without ARMIS 43-01 data, no attaching party could calculate the rates for attaching to any of Verizon's poles or determine whether any rates are reasonable because the Commission's formulas for cable and telecommunications pole attachment rates require the use of the data in ARMIS 43-01.³ Indeed, the Commission's entire regime for enforcement of the rate provisions of Section 224 is premised on the availability to attaching parties of ARMIS cost data to allow attachers (and the Commission) to review rate calculations and confirm the reasonableness of the pole owner's pole attachment rental rates under the Commission's formula.

¹ Petition of Verizon for Forbearance, WC Docket No. 07-273 (filed Nov. 26, 2007) (Petition).

² See Comments of Time Warner Telecom, *et al*, WC Docket No. 07-273 (filed Feb. 1, 2008) at 3; *id.* at Appendix A (Reply Comments of Time Warner Telecom, WC Docket No. 07-204 (filed Dec. 21, 2007)).

³ Specifically, rate complaints must include cost data that is "based upon historical or original cost methodology" and "derived from ARMIS . . . or other reports filed with state or federal regulatory agencies." 47 C.F.R. § 1.1404 (g)(2).

While increasing competition in the telecommunications marketplace might generally justify forbearance from ARMIS reporting obligations,⁴ that is not the case with respect to the pole attachment cost data in ARMIS 43-01. Competition in the telecom marketplace does not mean there is competition in the market for pole attachments. Verizon does not even argue, let alone introduce any supporting evidence, that pole attachment competition has increased in the seven years since the Commission last considered this issue. To the contrary, as NCTA has demonstrated in the Commission's pending pole attachment rulemaking, there is no competition that constrains the ability of pole owners to impose unreasonable rates, terms, and conditions for pole attachments and no prospect that such competition will develop.⁵ Moreover, because of the lack of options available to attaching parties, the retail competition that exists in the telecom marketplace actually heightens the need for regulation because ILEC pole owners have such strong incentives to impose unreasonable rates, terms, and conditions on cable operators and other attaching parties against whom they compete.

Because of this lack of competition in the provision of poles, the rules governing pole attachment rates are not based on price caps like Verizon's other services, but on traditional rate-of-return principles that are dependent on the public availability of historical cost data. As noted above, the Commission's formulas require the use of this cost data which must be publicly available for use by the Commission or the attaching parties. As the Commission found in 2001, it is precisely because the relevant cost data *is* publicly available that pole owners and attaching parties generally are able to negotiate reasonable pole attachment rates without any involvement by the Commission.⁶ Verizon has not said there are any other sources of data that can be used to confirm the reasonableness of pole attachment rates. Accordingly, allowing Verizon or any other pole owner to avoid making public the data necessary to confirm the reasonableness of rates fundamentally would alter the way the formulas could be used. Attaching parties would find it impossible to evaluate or challenge the reasonableness of proposed rates and the Commission would be unable to carry out its statutory responsibility to ensure that pole attachment rates are reasonable.⁷

⁴ See Comments of the National Cable & Telecommunications Association, WC Docket No. 08-190 (filed Nov. 14, 2008).

⁵ See Comments of the National Cable & Telecommunications Association, WC Docket No. 07-245 (filed Mar. 7, 2008) at 6-8.

⁶ "Reliance on publicly available information has allowed pole owners and attaching parties to resolve rate issues without Commission involvement, which is a cost-savings benefit to utilities, cable operators, other attaching parties, and the Commission." *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*, Report and Order, 16 FCC Rcd 19911, 19931, ¶ 48 (2001).

⁷ In addition to rate complaints, ARMIS data also helps the Commission identify potential over-earnings situations, such as the fact that, in the former Southwestern Bell territory, AT&T already has recovered over \$250 million more than it invested in poles. See Letter from Daniel L. Brenner, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-245 (filed Sept. 18, 2008) at 4.

NCTA has raised similar concerns in connection with a pending request for similar relief filed by Qwest.⁸ In response, Qwest appropriately committed to continue filing the relevant data publicly on an annual basis.⁹ For the reasons explained above, the Commission should condition any grant of relief to Verizon on a similar commitment.

Respectfully submitted,

/s/ Daniel L. Brenner

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⁸ See Letter from Daniel L. Brenner, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-204 (filed Sept. 25, 2008).

⁹ See Letter from Melissa E. Newman, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-204 (filed Oct. 23, 2008).