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VIA ELECTRONIC FILING

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

Re: *Petition of the United States Telecom Association for Forbearance From Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61

Dear Ms. Dortch:

In its petition filed in the above-referenced proceeding, the United States Telecom Association ("USTelecom") has requested forbearance from: (i) Part 32 on behalf of all price cap regulated carriers (47 U.S.C. § 220(a)(2), 47 C.F.R. §§ 32.1 – 32.9000); and (ii) the Commission's Continuing Property Record ("CPR") rules on behalf of all incumbent local exchange carriers ("ILECs") (47 C.F.R. § 32.2000(e), (f)). As USTelecom demonstrated in its petition, the Commission is required to forbear from these rules under section 10 of the Telecommunications Act of 1996 because enforcement of these rules is not necessary to ensure that rates or practices are just, reasonable, and nondiscriminatory; enforcement of these rules is not necessary to protect consumers; and forbearance from applying these rules is consistent with the public interest. 47 U.S.C. § 160(a).

In response to USTelecom's petition, several theories have been advanced in an attempt to justify continued application of Part 32 requirements generally and the CPR rules specifically. As discussed in greater detail below, none of these purported justifications constitutes a "current federal need" for the rules in question, which is the standard adopted by the Commission in applying the section 10 forbearance test.[1]

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[1] *Petition of AT&T Inc. for Forbearance under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules,* Memorandum Opinion and Order, 23 FCC Rcd 7302, ¶¶ 20 (2008) ("*AT&T Cost Assignment Forbearance Order*"), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir., filed June 23, 2008); *see also Cellular Telecomm. & Internet Ass'n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

Furthermore, Part 32 requirements, including the Commission's CPR rules, impose significant burdens on affected carriers. These burdens are described in greater detail below. Consistent with Commission precedent, forbearance from outdated and burdensome regulations that impact only a small subset of competitors – as is the case with Part 32 and the CPR rules – is consistent with the public interest.[2]

Nonetheless, price cap carriers that avail themselves of Part 32 relief are prepared to make the voluntary commitments discussed below in order to address certain of these concerns (pole attachment data and section 272(e)(3) imputation) to ensure that the Commission can grant relief from the Part 32 requirements yet still have access to information that the Commission may reasonably need in discharging its regulatory responsibilities. USTelecom agrees that the Commission may condition forbearance on compliance with these commitments.

A. No Current Federal Need Exists for Part 32 As Applied to Price Cap Carriers or For The CPR Rules As Applied To ILECs.

Consistent with its own precedent, the Commission "shall forbear" from the continued application of rules that are "not necessary for a current, federal need."[3] According to the D.C. Circuit, forbearance under section 10 is required unless there

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[2] *See, e.g., Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, WC Docket No. 06-109, FCC 07-149, ¶ 129 (rel. Aug. 20, 2007).

[3] *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c); Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, Memorandum Opinion and Order, 23 FCC Rcd 18483, ¶ 14 (2008) ("*Qwest ARMIS Forbearance Order*"); *id.* at ¶ 16 ("Given that the ARMIS Financial Reports generally no longer contain data that would serve a current, federal need, we find no countervailing public interest benefits to retaining those requirements for Qwest, AT&T, and Verizon"); *see also AT&T Cost Assignment Forbearance Order*, ¶ 20 (concluding "that section 10 does not allow us to find a regulatory requirement 'necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory' if it is not a current need").

exists "a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation."[4]

With respect to Part 32, these requirements currently serve no regulatory purpose as applied to price cap carriers. Historically, the Commission sought to achieve the following with Part 32: (i) deter "cost misallocations by providing the initial information needed to identify cross-subsidization";[5] (ii) ensure compliance with the cost allocation procedures under Parts 32 and 64 and jurisdictional separations purposes under Part 36;[6] (iii) determine interstate access charges (for example, when price cap carriers sought exogenous adjustments based on actual cost changes) as well as to calculate high cost support under the Universal Service program;[7] and (iv) further the goals of the "Part 43 reporting requirements" by "gather[ing] information about the financial performance of large incumbent LECs."[8]

These historic uses for Part 32 data have long since been rendered moot. First, with the transition to price cap regulation, which "severed the direct link between regulated costs and prices," any "cost misallocations" by a price cap carrier would not affect customer rates, and continued rate regulation will protect consumers from

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4 *Cellular Telecomm. & Internet Ass'n*, 330 F.3d at 512 (upholding FCC's decision not to forbear from the application of local number portability rules to wireless carriers when such rules "are required to achieve the desired goal of consumer protection").

5 *See Federal Communications Commission Issues Biennial Regulatory Review Report for the Year 2000*, CC Docket No. 00-75, 2001 FCC LEXIS 378, at 71 (2001) ("*2000 Biennial Review Regulatory Report*").

6 *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, ¶ 10 (2001) ("*2000 Biennial Review Order*").

7 *2000 Biennial Review Order*, ¶¶ 11-12.

8 *2000 Biennial Review Regulatory Report* at 71.

any cross-subsidization.[9] Second, the Commission's decision to freeze jurisdictional separations factors and forbear from continued application of the Part 32 and 64 cost allocation rules and Part 36 to the Bell Operating Companies ("BOCs") has eliminated any continued need for Part 32 for these purposes.[10] Third, with the elimination of "ongoing tinkering with price caps" and reform of the Universal Service program, Part 32 data is no longer even theoretically necessary for these purposes either.[11] Finally, Part 32 is not necessary for Part 43 reporting purposes because the Commission has granted forbearance from the vast majority of Part 43 reports (and must grant forbearance from the limited Part 43 reporting requirements that remain).

Notwithstanding the elimination of the regulatory purposes historically served by Part 32, other possible uses for Part 32 data have been suggested, including: (1) pole attachment rates; (2) imputation under 47 U.S.C. § 272(e)(3); (3) as a condition to forbearance from the Cost Assignment Rules; (4) special access rates; (5) prices for unbundled network elements; and (6) compliance with 47 U.S.C. § 254(k). None of these purported uses constitutes a "current, federal need" that would justify continued application of Part 32 to price cap carriers.

1. Part 32 is not necessary to ensure just and reasonable pole attachment rates.

As a condition to the Commission's granting forbearance from ARMIS reporting requirements, AT&T, Verizon, and Qwest committed to continue filing annual pole attachment data, formerly filed on ARMIS Report 43-01.[12] USTelecom is not seeking forbearance from this condition, and all price cap carriers are willing to adhere to this same commitment. However, price cap carriers can meet their obligations to provide pole attachment data annually without continued adherence to Part 32.

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9 *AT&T Cost Assignment Forbearance Order*, ¶¶ 17-18 (citations omitted).

10 *See* Petition of USTelecom for Forbearance From Certain Legacy Telecommunications Regulations, WC Docket 12-61, pp. 38-39 (filed Feb. 16, 2012) ("Forbearance Petition").

11 *See* Forbearance Petition at 39 (quoting *AT&T Cost Assignment Forbearance Order*, ¶ 19).

12 *Qwest ARMIS Forbearance Order*, ¶ 13.

The Commission's pole attachment rules do not require the use of Part 32. Rather, these rules contemplate that a utility will utilize data and information "based upon *historical or original cost methodology*, insofar as possible" and that such data "should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies."[13] As evidenced by its rules, the Commission's primary concern is having cost data that a party challenging a pole attachment rate can include in its complaint, which necessitates "the continued public availability of such data."[14] However, the Commission has not insisted upon any particular manner in which pole attachment data must be collected and reported, explicitly recognizing "that the public availability of these data in alternative forms filed with the Commission would be sufficient ...."[15]

For the vast majority of expense categories that are used in calculating pole attachment rates, price cap carriers can provide the same expense information maintained in accordance with GAAP rather than Part 32. For those limited expense categories under Part 32 that do not have a precise corollary under GAAP, price cap carriers can utilize a reasonable accounting proxy in satisfying their reporting obligations, which, as would be the case for all reported pole attachment data, would be subject to audit.

This approach would suffice for purposes of the Commission's pole attachment rules and price cap carriers' pole attachment reporting obligations. This approach also would avoid requiring price cap carriers to continue to bear the burdens associated with maintaining hundreds of Part 32 accounts simply to generate pole attachment data that only rely upon a limited subset of Part 32 accounts. As the Commission observed in a different context, which is equally applicable here, "maintaining overbroad rules" cannot be justified "when a more focused approach will ensure compliance with [the Commission's] regulatory goals ...."[16]

Therefore, going forward price cap carriers that avail themselves of Part 32 relief voluntarily commit to continue filing the same pole attachment information that is filed today. In the future, most of this information will be based on GAAP or an

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13 47 C.F.R. § 1.404(g)(2), (h)(2) (emphasis added).

14 *Qwest ARMIS Forbearance Order*, ¶ 13, n.42.

15 *Id.*, ¶ 13.

16 *AT&T Cost Assignment Forbearance Order*, ¶ 28.

analogous/successor accounting regime; to the extent that regime is insufficient in certain respects, carriers that avail themselves of Part 32 relief will develop reasonable (and auditable) methods to replicate necessary pole attachment data for filing purposes.

2. Part 32 is not necessary to ensure compliance with the imputation requirements in section 272(e)(3).

Section 272(e)(3) requires a BOC to charge its long distance affiliate or "impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service." Neither section 272(e)(3) nor any Commission order mandates that a BOC maintain Part 32 accounts in order to demonstrate compliance with its imputation obligations. In fact, the expense accounts mandated by Part 32, which represent the vast majority of the accounts maintained by a carrier subject to Part 32, are completely irrelevant to section 272(e)(3) compliance.

To be sure, the Commission historically required that BOCs reflect the amounts imputed pursuant to section 272(e)(3) in Account 32.5280 (Unregulated Operating Revenue). But there is nothing magical about this particular account as it relates to a BOC's ability to track and record amounts imputed under section 272(e)(3). In fact, the BOCs can readily track the imputation transactions subject to section 272(e)(3) in a subsidiary record or using some other identifier without maintaining every single expense and revenue account mandated by Part 32.

This focused approach would be consistent with the Commission's reasoning in granting forbearance from the Cost Assignment Rules, notwithstanding the BOCs' ongoing obligation to comply with the imputation requirement in section 272(e)(3). According to the Commission, such compliance did not warrant "[t]he maintenance of the elaborate and pervasive blanket of regulations" inherent in the Cost Assignment Rules because it "would constitute a substantially overbroad method of ensuring section 272(e) compliance."[17] As the Commission reasoned, "We cannot justify maintaining overbroad Cost Assignment Rules when a more focused approach will ensure that AT&T satisfies the regulatory goals of section

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[17] *AT&T Cost Assignment Forbearance Order*, ¶ 28 (quoting reply comments of AT&T).

272(e)(3)."[18] Such reasoning applies equally here and is fatal to maintaining overbroad Part 32 requirements when a "more focused approach" to section 272(e)(3) compliance would suffice.

Therefore, going forward price cap carriers that avail themselves of Part 32 relief voluntarily commit to maintain an annual subaccount/identifier or other record to track transactions subject to section 272(e)(3) in a reasonable (and auditable) manner.

3. Part 32 is not necessary as a condition to forbearance from the Cost Assignment Rules.

That the Commission relied in part on the continued operation of Part 32 accounts in granting the AT&T, Verizon, and Qwest forbearance from the Cost Assignment Rules does not establish a "current, federal need" for Part 32. First, because AT&T, Verizon, and Qwest did not seek forbearance from Part 32 at that time, the Commission did not address whether forbearance from Part 32 for price cap carriers satisfies the section 10 criteria. Second, the *AT&T Cost Assignment Forbearance Order* did not identify any current, federal need for Part 32 data. Third, while conditioning forbearance from the Cost Assignment Rules on the filing of a general compliance plan by AT&T, Verizon, and Qwest, the Commission did not require that the compliance plan include Part 32 USOA data.

Although the compliance plans filed by the BOCs included references to Part 32, such inclusion does not establish a current, federal need for Part 32 data. On the contrary, the Commission intended these compliance plans to enable carriers to "preserv[e] the integrity – for both costs and revenues – of [their] accounting system[s] … to ensure that accounting data requested by the Commission in the future will be available and reliable."[19] Price cap carriers can demonstrate this ability without regard to Part 32.

It is telling that the compliance plans filed by AT&T, Verizon, and Qwest also referenced ARMIS reports that – like Part 32 – were required at the time the plans were filed. Such references did not establish a current, federal need for ARMIS reporting. And, they certainly did not prevent the Commission from determining

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18 *Id.*

19 *AT&T Cost Assignment Forbearance Order*, ¶ 21.

that forbearance from ARMIS reporting requirements was warranted under section 10. Under the circumstances, it would be arbitrary and capricious for the Commission to reach a different conclusion with respect to Part 32.

Equally telling is that in the more than five years since AT&T, Verizon, and Qwest filed their compliance plans, the Commission has never once requested any accounting data maintained pursuant to those plans. That the Commission has had no reason to make such a request confirms that the Commission has no current, federal need for a price cap carrier's accounting data generally or Part 32 data specifically.

4. Part 32 is not necessary for purposes of special access rates.

It has been suggested that Part 32 may be necessary in the future depending upon the outcome of the rulemaking proceeding recently initiated by the Commission to examine the regulation of special access rates. Although USTelecom disagrees strongly with this suggestion, it does not constitute a current, federal need that would justify continued compliance with Part 32.

First, at no point has the Commission ever indicated that, even if were to revisit special access rates, it would actually move away from the price cap regime and return to embedded cost-based regulation that may have some connection to Part 32. Indeed, such an approach would run exactly counter to more than 20 years of regulatory trends on the state, federal, and international level. The Commission has said time and time again that historical cost-based regulation is not preferred.[20] For example, the Commission's latest reform of its universal service regime will distribute funding based on a forward-looking cost model – and ultimately through

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[20] *See, e.g., Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 21 (1990) (reaffirming "the basic policy judgment that a properly-designed system of incentive regulation will be an improved form of regulation [as compared to rate-of-return regulation], generating greater consumer benefits …"); *Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, Order, 23 FCC Rcd 7353, ¶ 6 (2008) (noting that "incentive-based regulation is preferable to rate-of-return regulation" because it provides "incentives for carriers to become more productive, innovative, and efficient" and benefits consumers through lower prices).

competitive bidding mechanisms.[21] The Commission's conclusions regarding the value of this approach cannot be squared with any suggestion here that the Commission may actually return to embedded cost-based regulation in the special access context.

Second, predictions that the Commission will resolve its special access rulemaking in a manner that will or may necessitate Part 32 data are entirely speculative at this juncture. Speculative predictions about future needs are inherently incompatible with the current, federal need standard. Indeed, if a possible, future need for a particular rule was sufficient to demonstrate a current, federal need, the standard would be completely eviscerated. Such an approach also would be contrary to the D.C. Circuit's admonition that the Commission cannot "sweep [section 10] away by mere reference to another, very different, regulatory mechanism."[22]

Third, the Commission has previously held that the possible outcome of a future rate proceeding is insufficient to establish a current, federal need for rules from which forbearance is being sought. Specifically, in granting forbearance from the Cost Assignment Rules, the Commission refused to concede "that there will never be any federal need for accounting information in the future to adjust our existing price cap regime or in our consideration of reforms moving forward."[23] However, the Commission concluded that a current need for information cannot be established based upon "a possible need for the information to modify rate regulation at some point in the future."[24]

5. Part 32 is not necessary for establishing UNE prices.

Any suggestion that Part 32 data is necessary to establish UNE prices is inaccurate. The Commission's Total Element Long Run Incremental Cost ("TELRIC") methodology, which must be used in establishing UNE rates, requires that rates be

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21 *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *pets. for review pending sub nom. In re: FCC*, 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

22 *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001).

23 *AT&T Cost Assignment Forbearance Order*, ¶ 21

24 *Id.*

determined based on the forward-looking economic costs of the UNE.[25] Under this TELRIC methodology, "*Embedded costs (including those in the incumbent LEC's book of accounts) … may not be considered when determining the forward-looking economic cost of a UNE.*"[26] Although historic costs may be probative of forward-looking costs, establishing UNE rates based upon embedded costs as reflected in a price cap carrier's Part 32 accounts would blatantly violate TELRIC.[27]

Furthermore, the obligation to establish UNE prices rests with state public service commissions, not the FCC.[28] Thus, even assuming Part 32 were necessary for establishing UNE prices (which is not the case), a purported state need for Part 32 data is insufficient to satisfy the current, federal need standard. As it held in the *AT&T Cost Assignment Forbearance Order*, the Commission "[does] not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely."[29]

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[25] 47 C.F.R. § 51.505(e); *see also* 47 C.F.R. §§ 51.501et. seq.

[26] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes With Verizon Virginia, Inc. and For Expedited Arbitration*, Memorandum Opinion and Order, 18 FCC Rcd 17722, ¶ 37 (2003) (citing 47 C.F.R. § 51.505(d)) (emphasis added) ("*WorldCom Arbitration Order*").

[27] *See WorldCom Arbitration Order*, ¶¶ 324-327 (establishing cost inputs for Digital Loop Carrier (DLC) systems based upon Verizon's actual contract for DLC equipment); *see id.* ¶ 369 (adopting switching cost study that relied on "the most recent" switching data available and rejecting proposed forward-looking switching costs based "on a sample of switches reflecting decade old equipment").

[28] 47 U.S.C. § 252(d)(1) (establishing the cost-based standard governing "[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment" under section 251(c)(2) and "the just and reasonable rate for network elements for purposes of" section 251(c)(3)).

[29] *AT&T Cost Assignment Forbearance Order*, ¶ 14; *see also Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Memorandum Opinion and Order and Notice of Proposed Rulemaking,* 23 FCC Rcd 13647, ¶ 14 (2008) (rejecting the argument that ARMIS service quality and infrastructure

A current, federal need for Part 32 data does not exist by virtue of the possibility that a state public service commission may "fail to act to carry out its responsibility" to establish UNE rates, in which case it would fall to the Wireline Competition Bureau ("Bureau") to do so.[30] It has been more than a decade since the Bureau was called upon to step into the shoes of a state public service commission and only for the state of Virginia. The possibility – no matter how remote – that the Bureau may have to establish UNE rates for a single state cannot constitute a current, federal need that would justify perpetuating the entire Part 32 regime for all price cap carriers across the entire country.

6. Part 32 is not necessary to ensure compliance with section 254(k).

Part 32 rules are unnecessary to ensure that price cap carriers comply with section 254(k). As a threshold matter, USTelecom has not sought forbearance from section 254(k), which states that a "telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition."[31] Price cap carriers will continue to comply with this mandate even if the Commission grants forbearance from Part 32.[32]

Furthermore, given the sea change in the communications marketplace, it is difficult to identify a service (if any) that is now *not* subject to competition. And, in the face of such competition across all segments of the marketplace, it is doubtful that any price cap carrier would be able to engage in cross-subsidies. Nonetheless, if a

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reports are necessary because states may rely on them for state consumer protection activities).

[30] *See* 47 U.S.C. § 252(e)(5); *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, Order, 16 FCC Rcd 6231, ¶¶ 8-10 (2001) (delegating authority to the Bureau to conduct and decide arbitration proceedings).

[31] 47 U.S.C. § 254(k).

[32] *See, e.g., AT&T Cost Assignment Forbearance Order* ¶ 30 ("Although we forbear from our Cost Assignment Rules, including the affiliate transaction rules, we do not forbear from section 254(k) of the Act. We merely find that AT&T has demonstrated that it satisfies the three-prong test for forbearance with regard to these particular rules. AT&T remains subject to section 254(k) itself.").

carrier were to attempt to do so, the Commission would have to determine whether the particular service being used to subsidize another service is in fact "not competitive" – a determination that would not require access to any cost data.

To the extent the Commission has reason to believe a particular carrier has violated section 254(k), it can order the carrier to provide any requested information necessary to prove compliance with the statute.[33] However, USTelecom is unaware of the Commission making such a request. Regardless, there is no rational basis for price cap carriers to continue to collect and record Part 32 information when a price cap carrier can demonstrate compliance with section 254(k) based on accounting data maintained in accordance with GAAP or a successor regime. Indeed, with forbearance from the Cost Assignment Rules – specifically the cost allocation procedures under Parts 32 and 64 – historical Part 32 data would provide no insight into claims of purported cross-subsidization.

In addition, the data reported in Part 32 accounts is no longer necessary for the Commission to accomplish its universal service goals.[34] The Commission formerly used this data to "to calculate universal service support, which enables carriers serving high-cost and rural areas to provide local service at affordable rates."[35] However, the Commission's universal service reforms have obviated any purported need for Part 32 data for universal service purposes.[36] Accordingly, it would be arbitrary and capricious for the Commission to deny forbearance from the requirements of Part 32 based on a purported need to ensure compliance with section 254(k).

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33 *Id.*

34 *See* 47 U.S.C. § 254(k) ("The Commission, with respect to interstate services, . . . shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services").

35 *2000 Biennial Review Order* ¶ 11.

36 *See* Forbearance Petition at pp. 38-39 & n.72.

B. Part 32 And The CPR Rules Impose Significant Burdens on Affected Carriers.

Even if the Commission could demonstrate a current, federal need for continued application of Part 32 to price cap carriers and the CPR rules to ILECs (which is not the case), the burdens that such requirements impose on affected carriers far exceeds any theoretical benefit to the Commission or the public.[37] As USTelecom explained in its Forbearance Petition, and as elaborated upon below, these requirements impose significant costs in terms of labor, delay and lost opportunities. While it is difficult to quantify all the costs of compliance with Part 32's sixty-seven pages of detailed accounting rules, price cap carriers must maintain complex and duplicative accounting systems to manage voluminous amounts of data.[38]

For example, a significant incremental cost of compliance is the cost of system updates for accounting changes. These large system costs result from taking the outside vendor general ledger packages, which cover a wide spectrum of finance activities, and having to create "bolt on" changes to comply with Part 32 requirements. This burden is further magnified through both the monthly maintenance of the system, driving those costs higher by an estimated 20 percent, as well as other downstream feeder systems that require modifications in order to properly feed information into Part 32 accounts. Major updates are released at least annually, and in order to make these updates function properly all the "bolt on" changes must be examined, modified, and tested along with the other feeder systems. AT&T estimates this cost to be approximately $15-20 million annually for systems and other related costs and an additional $3-4 million in personnel costs, which include the expense associated with having personnel conduct account reconciliations and analysis, prepare journal entries, create and maintain account tables, oversee additional accounting internal controls, and perform other associated activities.

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[37] *See, e.g., 2000 Biennial Review Regulatory Report*, at 70 (acknowledging that "Part 32 may impose more burdensome information requirements on incumbent LECs than needed in the changing and competitive landscape" by establishing unnecessary "record-keeping requirements and accounting procedures.)

[38] *See* Forbearance Petition at pp. 40 (explaining that "price cap carriers collectively incur millions of dollars in maintaining two separate sets of books …" in complying with Part 32).

Although it is impossible to quantify all of the costs associated specifically with Part 32 compliance, the following is a list of incremental activities that each price cap carrier must perform to comply with Part 32 – activities that would not be undertaken in the absence of Part 32. While this is an illustrative, not comprehensive, list, it provides an overview of the burdens that Part 32 imposes on price cap carriers. Even if the Commission were able to identify a regulatory need for financial records in the future, GAAP-compliant financial accounting would be available to provide such records.

1. Accounting software

General Ledger packages purchased from system vendors such as Oracle require company specific customization in order to comply with Part 32 accounting requirements. Vendor systems are only designed for GAAP accounting. Typically "mappings" must be developed to get from native accounts of the package system to Part 32 accounts, creating substantial programming and system modification. The on-going functionality of new systems is often severely diminished due to the level of records and data that must be added in order to comply with Part 32. The systems cannot function as they were intended because of the large volume of data that is required under Part 32.

Every new updated release from the vendor requires additional customization rework and testing in order to install the new release. In addition, any subsidiary feeder system such as accounts payable, accounts receivable, etc. require significant levels of effort to ensure that Part 32 compliance is maintained in the new system.

2. Property records and depreciation

Part 32 requirements for plant accounting and recordkeeping are significantly more detailed than what GAAP requires. The level of detail at which accounts, subaccounts and detailed plant record categories are defined far exceeds the record keeping necessary to verify the existence of plant assets and support the asset balances presented in the financial statements.

For example, depreciation requirements under Part 32 do not allow the flexibility that GAAP permits in the determination of depreciation expense (even though Part 32 depreciation requirements serve no regulatory purpose for price cap carriers). Price cap carriers cannot use depreciation methods that most closely reflect the use

(and decline in net realizable value) of assets. Furthermore, Part 32 results in separate schedules and depreciation modules programmed in vendor accounting systems, including: (i) additional analysis of FCC booked reserve balances; (ii) monthly journalization of Part 32 depreciation; (iii) reconciliation to external books; and (iv) maintaining historical records supporting Part 32 depreciation as well as depreciation expense calculated consistent with GAAP.

There are additional burdens and costs associated with price cap carriers having to track assets at a threshold level under Part 32 that is lower than the GAAP applied standard. Specifically, section 32.2000 requires that price cap carriers maintain detailed information for property record units at a very low level. The effort is excessive compared to the benefit derived. The current rule requires the accounting system to track by exact location, by bay or rack/shelf/position or slot to ensure the existence of the investment on the books.

For example, take a plug-in, which is a circuit board that can be "plugged-in" to a shelf in a central office, a remote terminal, a controlled environmental vault, or even a cell site. A plug-in that costs $10 and is placed at a price cap carrier's central office must be capitalized in accordance with Part 32 and tracked at a detailed level by the original cost, the exact location (meaning by bay or rack), the shelf identification, and even the position or slot in that shelf. Furthermore, if this plug lasts 30 years, the detailed tracking requirements would continue over 30 years and every time the $10 asset is moved to another bay or even another building, the records would have to be updated. Additionally, since the tiny plug can often only be identified with an asset tag at the frame, it requires an audit by using physical asset verification since the $10 plug can look very similar to a $25,000 plug. When the equipment is retired from service after all those years, the detailed asset data would again be referenced to record the removal and subsequent retirement of the plug.

Contrast that to the same $10 plug deployed by a wireless carrier subject to GAAP. This asset would be expensed in the year it was placed into service and would never be subject to further tracking.

3. Cost of removal

Part 32 imposes additional costs in analyzing the cost of removal of an asset. Under GAAP, a price cap carrier would be required to recognize the cost of removal when the expense is incurred. By contrast, Part 32 requires that a price cap carrier

calculate and record the cost of removal at the time an asset is placed in service, because it must be included as depreciation expense over the life of the asset.

4. Materiality

According to GAAP, materiality is always to be considered in the recording and reporting of results. Thus, assets that are not material to a price cap carrier's financial records are not subject to the same recording and reporting requirements as would apply to material assets.

By contrast, Part 32 requires that financial information be recorded "irrespective of an individual item's materiality under GAAP."[39] There is no flexibility in determining expense limits on assets taking into account factors such as technological change, cost, etc. Part 32 requires the capitalization and tracking of all network assets, regardless of associated cost. For example, plug-in circuit equipment can vary in cost from $10.00 to over $25,000. However, Part 32 requires that a price cap carrier capitalize and track the $10.00 plug-in in the same manner as the $25,000 plug, which is overly burdensome.

5. Other revenues and expenses

Part 32 also imposes burdens on price cap carriers in identifying, tracking, reclassifying, and reconciling revenues. For example, under GAAP, sublease billings for a price cap carrier are recorded and reported as an expense credit. By contrast, Part 32 requires that sublease billings be recorded as revenue, which necessitates unique accounting codes and processing through subsidiary systems in order to properly record the differences.

Price cap carriers incur additional costs in recording and reporting other expenses under Part 32 as compared to GAAP. For example, Royalty Expense is recorded under GAAP as operating expense, while Part 32 requires Royalty Expense to be recorded as Other Income/Expense. Likewise, GAAP requires recognition of gain or loss on the transfer of an asset, while Part 32 requires that asset transfers be recorded against depreciation reserve. Goodwill is not amortized under GAAP, while Part 32 requires amortization of goodwill. In each instance, a price cap carrier must incur the cost of implementing and maintaining separate systems and

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[39] 47 C.F.R. § 32.26.

procedures in order to account for the differences in the financial and regulatory treatment of these expenses.

6. Taxes

All entries required for Part 32 compliance require the tax effect calculation and recording including the impact on tax reserves. Because a price cap carrier files a single tax return at the federal level, which is based on information the carrier maintains in accordance with GAAP, the carrier must incur additional time and expense in reviewing and subsequently recording tax expense as deferred taxes to the balance sheet for Part 32 purposes. Any differences in the deferred taxes recorded for Part 32 purposes must be analyzed and reversed in accordance with the appropriate timing of each event that caused the book/tax difference. This reconciliation activity can occur as frequently as every month, depending upon the carrier involved.

7. Corporate book closing

The closing of a price cap carrier's financial books each month is impeded by Part 32, because Part 32 regulatory books must be closed and reconciled before the financial accounting process required under GAAP is complete. This timing difference requires the establishment of unique controls, analysis and review of entries at critical times in short time frames and additional journal entries.

Apart from timing, an essential part of the closing process occurs when the monthly revenue and expense balances are matched in an income summary resulting in the net income for the period. This process is complicated by requiring the identification of all non-GAAP Part 32 entries and subsequently matching the non-GAAP revenue and expenses for elimination in order to close the financial books. Furthermore, unique coding of revenues, expenses, and assets is required in order to recognize the non-GAAP Part 32 impacts so that they could be properly eliminated for financial reporting purposes.

8. Accounting classification

Compliance with Part 32 requires that a price cap carrier essentially maintain two sets of accounts. One set has codes that are only used for companies subject to GAAP (*e.g.*, wireless operations), and the other has codes that only apply to companies subject to Part 32 (*e.g.*, ILEC operations). This dual set of accounts

requires that employees learn different accounting requirements, which adds unnecessary training and compliance costs. It also complicates a price cap carrier's operations. For example, the same piece of network equipment can have a completely different accounting classification depending upon the entity installing or maintaining the equipment (*i.e.*, GAAP if installed by a wireless affiliate versus Part 32 if installed by the ILEC).

9. Management reporting

Part 32 results are not used to manage a price cap carrier's business. The expenses as categorized under Part 32 do not present a clear picture of activities performed to produce a product or service, nor do Part 32 revenues reflect the products or services that have evolved in the telecommunications sector since the introduction of Part 32 in 1988. Instead, most price cap carriers have developed management reporting information systems that focus on activity-based cost and product based revenue information (*e.g.*, salaries and wages by activity or service versus buried cable expense). To the extent data repositories only contain a source of revenue, expense, and asset data, a price cap carrier must incur the time and expense to carefully remove all Part 32 non-GAAP financial information when analyzing and designing management reporting data.

10. New products and services

Price cap carriers must analyze all new products and services to determine the proper accounting that must be employed. The analysis requires a double effort - one to determine the GAAP accounting requirements and another to determine the Part 32 accounting requirements. Because Part 32 accounting can frustrate many current processes and systems that were designed to handle new and innovative products and services, extra effort is required to identify and resolve Part 32 requirements. This too often results in manual processes since mechanized systems cannot handle the arcane Part 32 requirements. The end result is that Part 32 compliance requirements hamper a price cap carrier's ability to deliver products and services to market on a timely basis, which harms both price cap carriers and their customers.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket.

Sincerely yours,

Bennett L. Ross

cc: Michael Steffen
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