

June 27, 2022

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

Re: Second Further Notice of Proposed Rulemaking on Accelerating Wireline
Broadband Deployment by Removing Barriers to Infrastructure Investment:
Resolving Disputes Over Pole Replacement Costs, WC Docket No. 17-84

Dear Ms. Dortch:

We, the undersigned organizations, respectfully submit these comments in the above-referenced proceeding to encourage the Federal Communications Commission (“Commission”) to revise its pole attachment rules to spur rural broadband deployment. We applaud the Commission for adopting a second further notice of proposed rulemaking,¹ following NCTA’s petition for expedited declaratory ruling.² Our organizations have long recognized the relationship between Commission policies regarding the attachment of broadband facilities to poles in rural markets and the availability of broadband in those areas.³ It is time for the Commission to resolve the issues raised in NCTA’s petition and allow the market to connect the unserved.

The Covid-19 pandemic has made clear what many in unserved rural communities have understood for years: high-speed broadband deployment has the unique power to generate significant economic benefits, promote remote learning opportunities, and provide new healthcare options. Addressing the fact that not all Americans have access to such opportunities has only grown more urgent in these last challenging years.

Our organizations understand that enabling investment so that market forces can promote growth is the best and most efficient way to expand broadband deployment. That is why we

¹ *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Further Notice of Proposed Rulemaking, WC Docket No. 17-84, FCC 22-20 (rel. Mar. 18, 2022) (“Second FNPRM”).

² Petition for Expedited Declaratory Ruling of NCTA, WC Docket No. 17-84 (filed July 16, 2020) (“NCTA Petition”). The Wireline Competition Bureau explained that the issues raised in the Petition were better suited for a rulemaking. *See In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, 36 FCC Rcd 776, 777 ¶ 3 (2021) (“Pole Replacement Declaratory Ruling”).

³ *See* Letter from Bartlett D. Cleland, Executive Director, Innovation Economy Institute, et al. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (Sept. 2, 2020) (“Cleland Letter”).

continue to support the proposed clarifications that NCTA offered in its Petition as economically sound solutions to address a market failure that is currently creating extraordinarily high costs to attach broadband facilities to poles (especially in rural markets), thereby preventing, minimizing and/or delaying the flow of private and public investment for rural broadband deployment. At bottom, utility companies that often own these poles should not be able to distort the market and exploit their position for private gain.⁴

Clarifying the cost-sharing requirements for pole replacements, ensuring prompt review of pole attachment applications, and creating an expedited process to review pole attachment disputes (especially in rural unserved areas) will offer economically sound solutions that will enable private and public investment to flow to areas where it is needed and can be profitably deployed. Pole owners should not be able to exploit their position to slow down the pole attachment process and/or force other parties to bear their costs of replacing aging pole infrastructure -- all of which make it more difficult for competitors to enter the market.⁵ Moreover, when disputes over these issues do arise, parties should be able to obtain quick resolution without a slow regulatory process becoming yet another inhibitor to connectivity. As such, we now urge the Commission to craft policies consistent with NCTA's requested clarification of the pole attachment rules,⁶ as well as its request to expedite its resolution of complaints under those rules that inhibit pole access in unserved areas.

As the Commission knows, millions of Americans are deprived of the benefits of the 21st century digital economy, a disconnect that carries with it far-reaching ramifications. Without access to reliable, high-speed broadband, rural communities are significantly disadvantaged when trying to compete for high-paying jobs, providing 21st century educational opportunities, and attracting and keeping the most talented workers. Congress has recognized the pressing need to close this digital divide through historic investments in broadband infrastructure.

However, private investment and robust government subsidies alone will not result in the deployment of high-speed broadband in unserved rural areas without key policy reforms that can make it logistically easier to deploy infrastructure to sparsely populated communities. Ensuring equitable and timely access to poles is a critical part of ensuring a timely and cost-efficient buildout of broadband infrastructure.

⁴ Congress, the courts, and the Commission have long recognized this monopoly. See *Communications Act Amendments—Penalties and Forfeitures Authority and Regulation of Cable Television Pole Attachments by the Federal Communications Commission*, S. Rep. No. 95-580 at 13 (Nov. 2, 1977) (“Public utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates.”) (citation omitted), *reprinted in* 1978 U.S.C.C.A.N. 109, 121; *NCTA v. Gulf Power*, 534 U.S. 327, 330 (2002) (“Since the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.”); *In re Alabama Cable Telecommunications Ass’n*, 16 FCC Rcd 12209, 12234 (2001) (noting “the bottleneck monopoly status of the utilities’ poles”).

⁵ *Accord FCC v. Florida Power Corp.*, 480 U.S. 245, 249 (1987) (explaining that Congress enacted the 1978 Pole Attachment Act to prevent pole owners from “exploiting their monopoly position by engaging in widespread overcharging.”).

⁶ See, e.g., *NCTA Petition* at 9-31.

Pole replacements remain a persistent barrier to rural broadband buildout. They impose significant costs on providers seeking to connect the unconnected. Lacking a market-driven need to upgrade these poles, many are several decades into their service life and need replacement before they can support additional attachments permitting high-speed broadband deployments. Some providers have reported the expense of upgrading or replacing aging poles can commonly constitute as much as 25 percent of a rural buildout's cost.⁷ As a result of such high costs, broadband providers must redesign or even shrink buildout projects, which leaves millions of Americans households on the wrong side of the digital divide year after year.

The Commission should affirm that it is unreasonable to require broadband providers to cover the entire costs of upgrading a pole owner's facilities for the pole owner's future use and benefit. Reimbursement is appropriate only for the incremental costs they actually cause the pole owner to incur. At the same time, the Commission should outline clear standards for determining when a pole replacement is not "necessitated solely" by a new attachment. Ensuring the proper allocation of replacement costs will ensure that the party best-suited to keep costs low—the owner—is properly incentivized to do so, while also promoting broadband expansion, innovation, and property interests.

However, changes and clarification of the Commission's pole attachment rules are alone insufficient if pole owners can slow roll processing of attachment applications or delay an attachment by initiating disputes before the Commission. Unexpected and unnecessary delays waste precious private and public resources and shift the broadband deployment calculus which can lead to unserved areas remaining unserved. Accordingly, we continue to support proposals that: (1) the Commission clarify the obligations of pole owners to process attachment applications in a timely manner; and (2) the Commission use its accelerated docket procedures to prioritize disputes between attaching entities and pole owners in rural areas so that parties can reach a resolution quickly and complete their projects in a timely manner. The Commission should take advantage of its existing dispute resolution mechanism to address this ongoing barrier to rural broadband deployment.

Our organizations strongly support the free market and believe that private decisions about the allocation of capital are the most efficient way to close the digital divide. But to successfully encourage broadband providers to reach unserved rural areas, the Commission must address roadblocks that have long frustrated the ordinary operation of the marketplace. Pole owners erecting unnecessary barriers to the deployment of broadband to extract rents from their competitors—and then creating unreasonable delays over the resolution of those disputes—are exactly the type of market distortions that require limited government intervention.

We strongly encourage the Commission to move forward and urge speedy clarifications and rule changes to provide for equitable cost-sharing in pole replacements, accelerated processing of pole attachment applications, and an accelerated review of pole attachment disputes in rural areas.

⁷ See Petition at 6; Cleland Letter at 2.

Respectfully submitted,

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