

Senator John Thune
United States Senate SD-511
Washington, D.C. 20510

Re: December 6, 2022 Broadband Expansion Letter

January 13, 2023

Dear Senator Thune,

Connect the Future (CTF) is writing today in response to your letter seeking comments on how to ensure that unprecedented federal broadband funding is used efficiently and is maximized towards bringing connectivity to truly unserved, often rural areas. Our supporters – who represent a wide range of educational, economic, health, agricultural, civic, and social interests – believe that the millions of rural Americans still on the wrong side of the digital divide deserve access to reliable, high-speed internet, regardless of their ZIP codes.

CTF applauds your longstanding commitment to expanding rural internet availability and to removing barriers that may impede efficient and timely broadband deployment. Our brief comments address one of the most persistent barriers raised in your letter: utility pole access. **If internet service providers (ISPs) are unable to obtain attachments to poles in a timely and cost-efficient manner, billions of dollars in federal broadband deployment funding are effectively stranded.** Fortunately, Congress, along with the Federal Communications Commission (FCC), can take concrete steps to avoid such a disappointing outcome and to ensure federal broadband funds deliver high-speed internet availability to all who need it as quickly as possible. The National Telecommunications and Information Administration (NTIA) can also assist by providing guidance to states on the steps they should take to ensure timely and cost-effective access to poles under its Broadband Equity, Access, and Deployment (BEAD) program.

Updating Pole Attachment & Pole Access Regulations

(In response to: Infrastructure, Investment, and Jobs Act (IIJA) Questions 1, 6; General Broadband Questions 6, 8, 9, 10, 11, 13)

Access to utility poles can represent a significant barrier to the fast and cost-efficient deployment of high-quality broadband. Much of our nation's broadband infrastructure, especially in rural areas, is carried by cables attached to poles that are owned by utility companies, electric cooperatives, or municipalities – not broadband providers. When ISPs seek to attach new infrastructure to these poles, some pole owners – recognizing the critical role they play in connecting their communities – are great partners, helping to deliver broadband as quickly as possible. But too often, ISPs face costly, time-consuming, and inconsistent demands imposed by other pole owners. For example, pole owners frequently require new attachers to pay for the complete replacement of older poles that are already beyond their useful life or have been poorly maintained or otherwise damaged. Rather than share in the costs of the new pole, some pole owners unfairly push all of the costs of what will be a shared resource onto the broadband provider. Some pole owners are delaying negotiations on new agreements, refusing to process permits, and creating artificial limits to expansion. Such unreasonable demands can lead to lengthy disputes and shift resources – including federal funds – away from deploying broadband.¹ Disputes and

¹ See "Too many unserved households, small businesses, and schools are still awaiting connectivity due to the excessive costs and needless delays that ISPs face when attaching to poles," Connect the Future (August 2022), <https://connectthefuture.com/wp-content/uploads/2022/08/CTF-ISP-Stories-1.pdf>

delays related to the pole process can even stop projects entirely, especially when pole owners delay or refuse to act on pole attachment requests by broadband providers. *Delayed or derailed broadband expansion efforts result in approximately \$491 million to \$1.86 billion in forfeited national economic gains every month – gains that impact people across the country and encompass commercial, educational, health, civic, and other social benefits.*²

We urge you and your colleagues to:

- **Support Prompt FCC Action on Utility Poles**

Over the past year, the FCC has conducted a Second Further Notice of Proposed Rulemaking examining proposals on how to accelerate broadband deployment by guaranteeing easier, more predictable access to poles as it relates to investor-owned utilities.³ The formal comment period has concluded and we encourage the FCC to act quickly to issue an order that:

- Ensures that when poles must be replaced, replacement costs are divided equitably between pole owners and attachers,
- Standardizes timelines for processing pole attachment applications, and
- Addresses delays by resolving pole access complaints in its accelerated docket.

- **Through Congressional Oversight, Ensure the Tennessee Valley Authority (TVA) Promulgates Rules to Speed Broadband Deployment that include Pole Attachment Reforms**

- The policies and actions of certain TVA Local Power Companies (LPCs) illustrate the particular challenges that broadband providers face. These LPCs oversee access to a network of poles that provide electricity across an 80,000 square mile footprint in the Southeast and these same poles are critical to delivering internet service to the area, including to many Appalachian families who have absolutely no internet access today. Unfortunately, some LPCs delay or altogether inhibit broadband buildout by unfairly refusing to negotiate pole attachment agreements, slow-rolling permit approvals, or significantly raising the cost of access to their utility poles,⁴ resulting in significant delays that can cause broadband providers to miss mandatory deadlines under the terms of funding grants. Such actions are in direct conflict with TVA's mission and responsibility to advance the economic and social well-being of Tennessee Valley residents.
- Although TVA has the authority to require LPCs to offer timely and cost-effective pole access, it has been reluctant to exercise this authority. Congressional oversight can ensure that TVA uses its authority to maximize the government's investment in broadband expansion and make sure that policies speed deployment to finally make internet service available in the unserved areas of the Tennessee Valley region.

- **Consider Legislation to Modernize Access to Poles by Closing the Outdated Muni/Co-Op Loophole**

- While action in the FCC's pending proceeding on poles, and oversight of TVA, would be a significant step in addressing efficient and timely access to poles, existing exemptions and/or gaps in federal and state laws are such that certain pole owners – namely municipalities and

² See Edward J. Lopez & Patricia Kravtin, *Advancing Pole Attachment Policies to Accelerate National Broadband Buildout*, Connect the Future (November 2021), <https://connectthefuture.com/wp-content/uploads/2021/11/Advancing-Pole-Attachment-Policies-To-Accelerate-National-Broadband-Buildout-National-Report.pdf>

³ See FCC Seeks Comment on Resolving Disputes Over Pole Replacement Costs, Federal Communications Commission (March 2022), <https://www.fcc.gov/document/fcc-seeks-comment-resolving-disputes-over-pole-replacement-costs>

⁴ Kelly Dean, *Charter blames WRECC for rural broadband expansion delay*, ABC 13 WBKO News, Dec. 2, 2021, <https://www.wbko.com/2021/12/02/charter-blames-wrecc-rural-broadband-expansion-delay/>

cooperatives – are not held to the same standards as other pole owners. By reexamining these gaps, Congress can determine whether action is needed to modernize poles access by closing these long-standing loopholes, especially as unprecedented federal funding for broadband deployment works its way into states over the next couple of years. At a minimum, Congress could consider developing uniform pole attachment requirements in areas of the country that receive government funds for broadband deployment.

- **Ensure BEAD Program Projects Address the Need for Timely Access to Utility Poles**
 - In its Notice of Funding Opportunity for the BEAD program, NTIA helpfully asked states to identify the steps they will take to streamline cost-effective access to poles. It would also be helpful for NTIA to provide guidance to states on the steps they should take to ensure timely and cost-effective access to poles that will ensure that broadband projects are able to be completed in the four-year timeframe required under the IIJA. Addressing the issue of timely pole access and replacement costs preemptively will remove a significant barrier to deployment that could otherwise threaten the objectives of the BEAD program, particularly Secretary Raimondo’s stated goal of delivering universal internet access by 2030.

Connect the Future (CTF) and our supporters thank you for your continued leadership on these critical issues and your efforts to expand rural broadband access. We look forward to being a resource to you in your important efforts to close the digital divide.

Sincerely,



Zach Cikanek
Executive Director, Connect the Future