

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

In the Matter of)	
)	
Accelerating Wireline Broadband)	WC Docket No. 17-84
Deployment by Removing Barriers to)	
Infrastructure Investment)	
)	

**COMMENTS OF
THE FREE STATE FOUNDATION***

I. Introduction and Summary

These comments are filed in response to the Commission's request for public comments on the Petition filed by NCTA – The Internet & Television Association seeking an expedited declaratory ruling regarding pole replacements and pole attachments. We call on the Commission to promote rapid broadband deployment by promptly issuing a declaratory ruling that prohibits utility pole owners in unserved areas from requiring broadband providers to bear the entire costs of new replacement poles. Utility company pole owners receive benefits from erection of new poles, and they should share in the cost of replacements.

In light of the importance of this issue in furthering ubiquitous broadband deployment, we call on the Commission to place pole attachment disputes on the agency's accelerated docket to expedite resolution. And the Commission should clarify

* These comments express the views of Randolph J. May, President of the Free State Foundation, and Seth L. Cooper, Director of Policy Studies and Senior Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.

that it has authority to order pole owners involved in disputes involving unlawful delays and denials to complete pole replacements within specific timeframes.

Issues surrounding pole attachments are often complex and tedious, and they have tended to occupy an agency backwater. But in the drive to expand broadband deployment to unserved, mainly rural areas, they are increasingly important and quickly resolving them in a pro-deployment, pro-consumer way can make a real difference.

II. The Commission Should Remove Barriers to Pole Replacements and Attachments to Accelerate Broadband Deployment

Deploying high-speed broadband Internet access services to unserved areas typically requires that cables be attached to utility poles. It is often the case that existing utility poles need to be replaced to allow for the new attachments. Apparently, some utility pole owners attempt to require cable operators or wireline telecommunications providers to pay all the costs of replacing their poles as a precondition to allowing attachments. But saddling service providers with the entire expense of replacing old poles results in imposing unjustifiable high-cost barriers to timely deployment of broadband Internet services to all Americans. Long delays in granting applications for attachments also pose deployment barriers.

The Commission has a responsibility to reduce barriers to broadband deployment, especially in unserved areas, which most often, but not invariably, are rural areas.

Although policy actions by the Commission have helped to boost access to broadband Internet services, many Americans still lack such access. As the *2020 Broadband Deployment Report* states: "While deployment is improving in all geographic areas, we recognize that there is still significant work to do to encourage deployment to rural areas,

where 22.3% of Americans lack access, and Tribal lands, where 27.7% of Americans lack access."¹

Pole attachment rules are necessary to keep utility pole owners from exercising monopolistic power to charge above-market rates for leasing access to poles and, therefore, driving up consumer prices for services that depend on such access. Accordingly, Section 224 of the Communications Act authorizes the FCC to "regulate the rates, terms, and conditions of pole attachments to provide that such rates, terms, and conditions are just and reasonable, and . . . adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions."²

There are good reasons why owners of utility poles should bear responsibility for some of the expense of replacements. Utility poles have finite lives, and even in the absence of renters the owners eventually incur costs to replace old poles with new ones. Also, owners receive the benefit of increased revenues through upgraded poles that have expanded space for leasing. Recognition that owners ought to share in the costs of replacing their poles is consistent with §1.1408(b) of the Commission's rules, which provides: "The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and *by all parties that directly benefit from the modification.*"³

Cable operators and wireline telco providers should be obligated to pay only the incremental costs that they cause in hastening the replacement of old utility poles with

¹ FCC, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 19-285, *2020 Broadband Deployment Report* (released April 24, 2020), at ¶ 94.

² 47 U.S.C. § 224.

³ 47 C.F.R. § 1.1408(b) (emphasis added).

new ones. The Commission ought to adopt a formula for apportioning pole attachment replacement costs, and thereby reduce a significant barrier to broadband deployment in unserved areas. Furthermore, the Commission could supplement such a formula with a process by which pole owners have opportunity to demonstrate, upon clear and convincing evidence, that providers seeking attachments have caused or will cause specific and unique financial costs that they should be obligated to cover.

In addition to reducing cost barriers, the Commission should accelerate broadband deployment by expediting pole attachment disputes through its complaint procedures. The Commission should put pole attachment complaints involving unserved areas on the agency's Accelerated Docket. As set forth in §1.736 of the Commission's rules, the Accelerated Docket includes a 60-day timeframe for resolving disputes more quickly. Under the rules, the Commission's staff has discretion in accepting complaints for inclusion on the Accelerated Docket. The Commission should direct the staff's exercise of that discretion to accept pole attachment disputes in unserved areas for that docket.

Also, the Commission should clarify that it has remedial authority to order pole owners involved in disputes to complete pole replacements within specific timeframes. According to petitioner NCTA, on many occasions, applications for new attachments languish and "[i]n some instances, utilities have delayed action on pole attachment applications and used the time to deploy their own broadband facilities instead."⁴ While we don't have any independent knowledge regarding this allegation, the Commission's authority over pole attachments is intended to prevent the occurrence of any such abuses

⁴ NCTA – The Internet & Television Association, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, Petition for Expedited Declaratory Ruling (Petition) (July 16, 2020), at 30.

or potential abuses of utility pole owners' monopolistic power. Regardless of the underlying reason, lengthy delays on attachment applications prolong an unacceptable status quo for Americans in rural areas who lack access to broadband Internet services. Such delays also effectively thwart broadband providers from complying with Commission-imposed buildout obligations intended to expand broadband access.

Under §1.736(b) of the Commission's rules for pole attachment complaints, "[i]f the Commission determines that access to a pole . . . has been unlawfully denied or delayed, it may order that access be permitted within a specified time frame and in accordance with specified rates, terms, and conditions."⁵ When faced with unreasonable delays by utility pole owners, filing pole attachment complaints with the Commission can be less-than-inviting for broadband providers because the agency's complaint resolution process can result in even longer delays. Aside from putting pole attachment disputes in unserved areas on the Accelerated Docket, the Commission should curb delays by declaring that §1.736(b) authorizes the agency to order utility pole owners to complete pole replacements within a specific timeframe or – if necessary – to designate a qualified and authorized contractor to make such replacements.

Getting broadband Internet access to unserved Americans depends on the Commission: (1) speedily reducing cost barriers to pole attachments and pole replacements; (2) speeding up resolution of pole attachment disputes in unserved areas by addressing them on the Accelerated Docket; (3) speeding up pole replacements in the face of unlawful denials and delays by requiring pole replacement be completed within

⁵ 47 C.F.R. §1.736(b).

specific timeframes; and (4) taking speedy action on NCTA's petition to implement these reforms.

III. Conclusion

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

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