

Comments of the International Center for Law & Economics, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

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## **Introduction**

Thank you for the opportunity to comment on this Further Notice of Proposed Rulemaking (FNPRM) in the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment. It is a broad aim of the U.S. government to extend broadband connectivity to all Americans.<sup>[1]</sup> However, a complicating factor in this regard is that Internet service providers (ISPs) need frequent access to utility poles to attach their equipment, which creates a point of friction that adds cost and slows deployment timetables.

These barriers to deployment can take many forms, some arising in areas over which the Commission does not have jurisdiction.<sup>[2]</sup> But with respect to those matters over which it does have jurisdiction, the Commission asks:

In this Second Further Notice, we seek comment on ways to eliminate or expedite resolution of pole replacement disputes by establishing clear standards for when and how utilities and attachers must share in the costs of a pole replacement that is precipitated by a new attachment request.<sup>[3]</sup>

Utility-pole attachments represent a critical component of deployment costs. Current estimates suggest that, in rural areas, as much as 25% of the cost of broadband deployment can be attributed to pole-replacement and upgrade issues.<sup>[4]</sup> We wish to highlight two primary concerns: that decisions by pole owners to delay maintenance and shift costs onto attachers are a significant impediment to deployment, and that there is a pressing need for the Commission to create an expedited process to resolve these disputes. We have attached to these brief comments a paper published by the International Center for Law & Economics and that expands on these and related issues in greater depth.

[Read the full comments here.](#)

<sup>[1]</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021).

<sup>[2]</sup> The FCC lacks jurisdiction over poles owned by electrical cooperatives or municipal governments, and 28 states have not verified that they have regulatory authority over pole

attachments. See Michelle Connolly, *The Economic Impact of Section 224 Exemption of Municipal and Cooperative Poles* (Jul. 12, 2019), available at <https://www.ncta.com/sites/default/files/2019-07/NCTA%20Muni%20and%20Coop%20Poles%20Connolly%20Paper%20Ex%20Parte%20Filing%207-22-19.pdf>. While not the subject of this proceeding, it should be noted that excessive attachment fees from these sources impede broadband build-out by slowing growth and raising the expense to consumers of broadband access. For example, pass-through literature finds that 56% to 70% of wholesale price increases are passed on to consumers while 5.0% to 6.4% of increased commodity prices are passed on to consumers. See *Cost Pass-Through: Theory, Measurement, and Potential Policy Implications: A Report Prepared for the Office of Fair Trading*, RBB Economics, (February 2014), at 156-57, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/320912/Cost\\_Pass-Through\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf). We believe the Commission should engage on this issue as an expert adviser to state authorities that may have influence over these deployment barriers.

[3] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 22-20 (Mar. 16, 2022).

[4] *Petition of NCTA for Expedited Declaratory Ruling, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (Jul. 16, 2020), at 5-9, available at [https://www.ncta.com/sites/default/files/2020-07/071620\\_17-84\\_NCTA\\_Petition\\_for\\_Declaratory\\_Ruling.pdf](https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf).

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