

Introduction

We thank the Federal Communications Commission (FCC) for the opportunity to offer these reply comments on the Further Notice of Proposed Rulemaking (FNPRM) in the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment.

Ensuring that broadband connectivity is deployed effectively and efficiently to all Americans is among the FCC's most important priorities. As Chair Rosenworcel has observed:

We are about to invest billions in high-speed infrastructure nationwide. It's essential that we have policies in place that make sure these dollars are used in a cost-effective way and that pole attachment policies facilitate, rather than impede, broadband buildout.[\[1\]](#)

The Infrastructure Investment and Jobs Act (IIJA) allocated \$65 billion to help the Commission and the National Telecommunications and Information Administration (NTIA) facilitate further deployment and adoption.[\[2\]](#) Private investment in broadband networks also continues to grow, with \$2 trillion spent since 1996, including \$86 billion in 2021 alone.[\[3\]](#)

This attention and funding could be wasted, however, due to roadblocks that stand in the way of deployment and threaten to reduce the efficacy of federal investment. Inflation remains at very high levels, which diminishes the practical reach of IIJA funds. Moreover, NTIA has signaled its interest in promoting policy goals that may divert some funding away from targeting the needs of the unserved.[\[4\]](#) Given this backdrop, it is crucial that the Commission exercise its authority to remove barriers to deployment.

In this proceeding, we believe that means seeking reform and clarification of inefficient pole-attachment rules that lead to cost overruns and deployment delays.[\[5\]](#) The docket includes numerous comments that document various ways utility-pole owners sometimes shift costs onto attachers.[\[6\]](#) What's more, several different types of pole owners are subject to FCC jurisdiction in this area, multiplying the problems across many different bargaining parties, including providers such as incumbent local exchange carriers, privately owned public-utility providers, and investor-owned poles.[\[7\]](#)

The aim of pole-attachment rules should be to equitably assess costs in a way that ensures the attachment process does not inefficiently serve to extract rents. As the Commission notes, the Wireline Bureau focused on these potential inefficiencies when it "clarif[ied] that it is unreasonable and inconsistent with Section 224 of the Communications Act, the Commission's rules, and past Commission precedent, for utilities to impose the entire cost of a pole replacement on a requesting attacher when the attacher is not the sole cause of a pole replacement."[\[8\]](#) In short, a rule that unilaterally imposes replacement costs on a given

attacher—while potentially expedient from an administrative perspective—is unlikely to provide an economically optimal outcome. At the same time, depending on the condition of the pole, shifting all or most costs onto the pole owner may also be inadvisable.

With that in mind, a strict “sole cause” standard for determining the resolution of pole replacements is likely inefficient. As we discuss below, such standards can lead to hold-up and hold-out problems that negatively affect broadband deployment. We believe the current formula can be refined to ensure that deployment funds aren’t unjustifiably captured as rents. As others in the docket have maintained,[\[9\]](#) the formula should be adjusted to ensure that the allocation of pole-replacement costs more closely reflects the incremental costs and benefits to each of the parties.

In particular, the allocation should account for the depreciated value of the pole being replaced, as well as the incremental costs and benefits of larger and newer poles to pole owners, incumbent attachers, and anticipated future attachers, as well as the incremental costs to pole owners of early replacement. The remainder of this comment summarizes these considerations and offers some broad recommendations.

Before discussing our view of how to amend the pole-replacement-cost formula, we would like to express again our support for the idea commonly voiced in the docket that pole-replacement disputes should be placed on the Accelerated Docket. As many commenters note in the record, delays in resolving pole disputes can seriously delay or entirely jeopardize some deployment projects.[\[10\]](#) Fundamentally, the focus of this proceeding—as well as most of the federal funding that has been devoted toward expanding broadband—regards how best to connect locations that are far out on the cost curve. Delays are very costly and reduce the number of households served. Encouraging disputes to be settled in a timely fashion can only help to close the digital divide.

[Download the full comments here.](#)

[\[1\]](#) *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (“FNMRRPM”)*, FCC 22-20 (Mar. 16, 2022)
<https://docs.fcc.gov/public/attachments/FCC-22-20A2.docx>.

[\[2\]](#) Drew Clark, *Commerce Department’s NTIA Releases Details for Funds Distributed Under IIJA*, BroadbandBreakfast (May 13, 2022)
<https://broadbandbreakfast.com/2022/05/commerce-departments-ntia-releases-details-for-funds-distributed-under-iija>.

[\[3\]](#) *2021 Broadband Capex Report*, USTelecom (Jul. 18, 2011)
<https://ustelecom.org/research/2021-broadband-capex-report>.

[\[4\]](#) Kristian Stout, *To Close the Digital Divide, Broadband Infrastructure Funds Must Be Spent Efficiently*, Truth on the Market, (May 27, 2022)
<https://truthonthemarket.com/2022/05/27/to-close-the-digital-divide-broadband-infrastructure-funds-must-be-spent-efficiently>.

[5] NCTA notes in its petition that, in hard-to-connect rural areas, as much as 25% of a project's cost could be attributable to pole-attachment disputes. *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. Pole owners dispute this number. For example, AT&T says that only 0.35% of requests it received resulted in the need for replacement. Robert Vitanza, David Chozempa, & David Lawson, *Comments of AT&T (Corrected)*, AT&T ("AT&T Comments") at 7-8 (Jun. 29, 2022) <https://www.fcc.gov/ecfs/search/search-filings/filing/> NCTA, on the other hand, says about 8% of requests might need pole replacement. Ultimately, this is an empirical question the Commission needs to resolve. That said, the IIJA and BEAD programs are overwhelmingly focused on those households that are underserved and who are, by definition, more expensive to connect. Thus, it can be possible both for AT&T to be correct *generally* that pole-attachment disputes are rare, as well as for NCTA to be correct *specifically* about the extent of the problem in rural areas when pole replacements are needed.

[6] See, e.g., Thomas Cohen, *Re: Ex Parte Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Kelley Drye & Warren LLP (Mar. 26, 2018) [https://www.fcc.gov/ecfs/file/download/ACA%20Poles%20Ex%20Parte%203-26-18%20\(FINAL\).pdf?folder=1032633296362](https://www.fcc.gov/ecfs/file/download/ACA%20Poles%20Ex%20Parte%203-26-18%20(FINAL).pdf?folder=1032633296362) ("...utilities often fail to provide any explanation for the significant increases in project costs on the final bill and do not provide the information necessary to challenge the reasonableness of the make-ready charges. Mr. Shawn Beqaj (Armstrong) provided examples where a utility charged a new attacher for the correction of preexisting safety violations caused by others or for overdue improvements designed to bring poles into compliance with utility regulations"); Kris Anne Monteith, *Declaratory Ruling By the Chief, Wireline Competition Bureau*, Federal Communications Commission, (Jan. 19, 2021) <https://www.fcc.gov/ecfs/search/search-filings/filing/106282945908521> ("A California fiber ISP whose mission is to bring fiber broadband networks to rural and remote areas experienced serious time delays and a large increase in project expenses when an investor-owned utility revealed that hundreds of its poles in some very rural and remote areas did not have test and treat survey inspections in a decade or more. This caused substantial delays in bringing broadband service to unserved communities during the COVID-19 pandemic. Further, this high pole failure meant that the project expense forecasts were too low, and so the return on investment went from 7-9 years upward to a level that made the project almost uneconomical."); Matthew M. Polka, Thomas Cohen, & Ross J. Lieberman, *Comments of the American Cable Association on the Notices of Proposed Rulemaking*, American Cable Association (Jun. 15, 2017) [https://www.fcc.gov/ecfs/file/download/ACA%20Infrastructure%20NPRM%20Comments%20\(FINAL\).pdf?folder=1061666240361](https://www.fcc.gov/ecfs/file/download/ACA%20Infrastructure%20NPRM%20Comments%20(FINAL).pdf?folder=1061666240361) ("...an investor-owned utility in Minnesota charged Mediacom to fix violations on poles to which Mediacom had been attached for 20 years caused by the utility moving its equipment during pre-make-ready inspections for a new attacher."); Rick Chessen, Neal M. Goldberg, Steven F. Morris, & Maria Browne, *Petition*

for *Expedited Declaratory Ruling*, NCTA – The Internet & Television Association (Jul. 16, 2020)

https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf (“ComEd refused to permit Crown Castle to attach to poles that had been ‘red tagged’ by ComEd until Crown Castle first pays to replace or reinforce those red tagged poles, even though the conditions that caused the red tag status existed prior to and are unrelated to Crown Castle’s proposed attachment.”); Christopher L. Shipley & Andrew Mincheff, *Comments of INCOMPAS*, INCOMPAS (Jun. 27, 2022) <https://www.fcc.gov/ecfs/search/search-filings/filing/10629168805842> (“INCOMPAS’ member IdeaTek, which operates in rural Kansas...has been allocated 100 percent of the replacement costs on applications that require make-ready and pole replacement, with no consideration given to the enrichment and benefit this confers to the utility or the current value or condition of the pole.”)

[7] See *Public Notice: States that Have Certified that They Regulate Pole Attachments*, Federal Communications Commission (Mar. 19, 2020) https://docs.fcc.gov/public/attachments/DA-20-302A1_Rcd.pdf. Note that this only applies across the 23 states that have not certified that they regulate pole attachments. *Id.*

[8] FNMPRM ¶ 2

[9] See, e.g., *Re: WC Docket No. 17-84 – Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Connect the Future Coalition (Jun. 27, 2022) <https://files.fcc.gov/ecfs/download/e595c759-afb8-4e7d-a10f-35373238e59f?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>; Elizabeth Andrion & Maureen O’Connell, *Comments of Charter Communications Inc.*, Charter Communications (Jun. 27, 2022) <https://files.fcc.gov/ecfs/download/355be4d0-4729-48d4-807a-640c5645c3e9?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>; James E. Dunstan, *Comments of TechFreedom*, TechFreedom (Jun. 27, 2022) <https://files.fcc.gov/ecfs/download/4a3c5f41-de6e-4da5-a973-fd18d2ef9f39?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>.

[10] See, e.g., Ross J. Lieberman, Brian Hurley, Thomas Cohen, & Edward A. Yorkgitis Jr., *Comments of ACA Connects on Second Further Notice of Proposed Rulemaking*, ACA Connects (Jun. 27, 2022) <https://files.fcc.gov/ecfs/download/085b9a94-c9a3-41a0-975e-dbdd4bc7969f?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>; Randolph J. May, Seth L. Cooper, & Andrew K. Magloughlin, *Comments of the Free State Foundation*, Free State Foundation (Jun. 27, 2022) <https://freestatefoundation.org/wp-content/uploads/2022/06/FSF-Comments-%E2%80%93-Accelerating-Wireline-Broadband-Deployment-by-Removing-Barriers-to-Infrastructure-Investment-062722.pdf>; Steven Morris, Victoria Goldberg, Maria Browne, & David M. Gossett, *Comments of NCTA – The Internet & Television Association*, NCTA (Jun. 27, 2022) <https://files.fcc.gov/ecfs/download/9391ec57-88c4-43c1-8f5c-b8af2b23a626?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>.

[cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b](#); Matthew M. Polka, Ross J. Lieberman, Thomas Cohen, Edward A. Yorkgitis Jr., & J. Bradford Currier, *Comments of the American Cable Association on the Notices of Proposed Rulemaking*, American Cable Association (Jun. 15, 2017)

[https://www.fcc.gov/ecfs/file/download/ACA%20Infrastructure%20NPRM%20Comments%20\(FINAL\).pdf?folder=1061666240361](https://www.fcc.gov/ecfs/file/download/ACA%20Infrastructure%20NPRM%20Comments%20(FINAL).pdf?folder=1061666240361) (“MetroNet...has been waiting more than a year for approval of applications for 160 pole attachments because the one employee responsible for reviewing applications was out on extended medical leave.”)