

Marlene H. Dortch, Secretary Federal Communications Commission 45 L Street NE Washington, DC 20554

Re: Written Ex Parte in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84;

Dear Ms. Dortch:

The FCC has devoted considerable resources to bridging the digital divide and the National Rural Electric Cooperative Association ("NRECA") appreciates this much needed attention. With respect to the above-captioned pole attachment proceeding, NRECA respectfully offers its observations from the perspective of rural electric cooperative pole owners.

Background on NRECA

NRECA is the national service organization for nearly 900 not-for-profit rural electric cooperatives that provide electric power to 56% of the nation's landmass, approximately 42 million people in 48 states, or approximately 13 percent of electric customers. Rural electric cooperatives serve 88% of the counties of the United States, including 327 of the nation's 353 "persistent poverty counties," which is 92% of these persistent poverty counties.

Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. They are dedicated to improving the communities in which they serve, and the management and staff of rural electric cooperatives are active in local rural economic development efforts. Electric cooperatives are private, not-for-profit entities that are owned and governed by the members to whom they deliver electricity. Electric distribution cooperatives are small entities under the U.S. Small Business Administration's legal and regulatory framework. Electric cooperatives are democratically governed and operate according to the seven Cooperative Principles.¹

Electric Cooperatives are Eager for Broadband Deployment to their Communities

America's rural electric cooperatives are committed to promoting the deployment of advanced telecommunications capabilities within the rural communities and areas in which they serve. America's cooperatives play a crucial role in the development of broadband infrastructure to serve rural unserved and underserved locations, by supporting providers of all types in efforts to have vital broadband services deployed to their unserved and underserved communities. One measure of how important broadband services are to rural unserved areas covered by NRECA member cooperatives is that over 200 NRECA members currently are working to provide these much-needed broadband services

¹ The seven Cooperative Principles defined by the International Cooperative Alliance are: Voluntary and Open Membership, Democratic Member Control, Members' Economic Participation, Autonomy and Independence, Education, Training, and Information, Cooperation Among Cooperatives, and Concern for Community.

themselves or through partnerships with affiliated or unaffiliated ISPs. Another 100 such projects are being considered.

Electric cooperatives view broadband deployments as critical rural development projects necessary for economic growth, educational opportunities, and access to telehealth. Having served these remote communities for decades with reliable electric service, electric cooperatives are devoted to the wellbeing of the rural members they serve and have a keen interest in ensuring the development of safe, reliable Internet access service, no matter who provides it.

Electric Cooperatives Are Resource-Constrained

Although attachments to the distribution poles owned by NRECA's electric cooperative members are not regulated by the Commission, the resource constraints that electric cooperatives face are similar to those described by investor-owned electric utility commenters in this proceeding. As small businesses, cooperatives, in many instances, are more resource constrained than other utilities. Electric cooperatives understand, given such resource constraints, that accommodating large numbers of new attachment requests safely and efficiently requires a smooth and flexible process with all relevant parties -- pole owners and communications attachers alike -- rowing in the same direction.

<u>Certain Proposals Will Facilitate Broadband Deployments</u>

Certain measures being addressed in this proceeding will contribute to a smooth and flexible process that will better facilitate broadband deployments by implementing common sense measures that all responsible attaching entities should find unobjectionable. Several such commonsense measures have been proposed in this proceeding and should be adopted by the Commission. These include the following proposals:

- 1. To help pole owners prepare, communications companies should notify pole owners well in advance of new, and especially large scale, buildouts so that pole owners can try to gather the resources to prepare for such extraordinary, once-in-a-generation activity.²
- 2. To avoid confusion caused by overlapping make-ready work, communications companies should install their new attachments within 120 days after the completion of make-ready.³
- 3. To ensure that pole owners do not waste time with unreliable applications, attachers should better plan their routes and properly supervise their contractors, and Professional Engineers should certify that the information contained in applications is accurate.⁴
- 4. In order to create and preserve valuable pole space and pole loading capacity, existing attachers should remove their unused attachments.⁵
- 5. So that future attachments are not delayed and made more expensive by noncomplying practices of existing attachers, all existing and new attachers must comply with the pole attachment permitting process, with the National Electrical Safety Code, and with the pole owner's design and engineering standards. To provide the necessary incentives to make this happen, pole

² See Southern Co., et al., Initial Comments in Response to The Third Further Notice of Proposed Rulemaking, WC Docket No. 17-84, at 18-19 (filed Feb. 13, 2024).

³ See Comments of the Coalition of Concerned Utilities on Third Further Notice of Proposed Rulemaking, WC Docket No. 17-84, at 24 (filed Feb. 13, 2024).

⁴ *Id.* at 18, 24.

⁵ *Id*. at 18-20.

owners should be authorized to assess noncompliance fees and charge imposition costs to remedy such noncompliance.⁶

Certain Rulings Will Impede Broadband Deployments

The proposals enumerated above will help to remove obstacles to future deployments and to facilitate broadband deployments. Other, ill-considered, 11th hour measures proposed by communications attachers and adopted by the Commission, will create new obstacles. These counterproductive and ill-considered last minute proposals include the requirements that utility pole owners provide to communications attachers, upon request, copies of pole inspection reports, and copies of utility easements.⁷ These provisions will only lead to cost increases and further delays and should be reconsidered.

Utility pole inspection reports do not contain information helpful to plan possible broadband routes. To the contrary, this new requirement to gather and produce pole inspection reports (and to respond to questions about the information contained in such reports) creates useless, time-consuming distractions from the more important work utility pole owners should be doing to accommodate attachment requests.

Utilities inspect pole plant on 10-year (or similar) cycles to identify poles that need replacement, and such replacements that are identified in any report are made during the years-long period between inspection reports, well before a new attacher comes along. Not only have many (if not the great majority) of the reported pole replacements already occurred during that years-long period before a new attacher comes along, other poles during this period may themselves have reached the end of their useful lives or otherwise require replacements because of additional attachment activity, or other circumstances.⁸ As such, any given pole inspection report cannot timely and usefully predict the number of poles to be replaced at the much later time a new attacher route is created. The only indicator of where and how many poles must be replaced to accommodate any given broadband rollout is the contemporaneous survey performed in all cases at the time the new attacher files its attachment application. In short, before that application is submitted, no one can know the extent of pole replacement and other make-ready activity that must be performed to accommodate the request. Pole inspection reports are of no use in that respect.

Additionally, providing copies of easements upon request constitutes a drastic measure unlikely to resolve anything. Rather, it very likely will create hundreds of new disputes. Most cooperatives, like investor-owned utilities, have dozens (and even hundreds) of different varieties of easements. These easements, many of which could be 80 or 90 years old, are all subject to various interpretations in state courts located in the specific state where the easement is located. And no matter what the vintage or the particulars of the language employed, many electric easements have been drafted with the provision of electric service in mind.

Requiring pole owners to provide copies of such easements creates opportunities for a vast number of potential disputes about state law, language in individual easements, and access rights, which state

⁶ *Id*. at 20-22.

⁷ Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (WC Docket No. 17-84), Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, FCC 23-109 (rel. Dec. 15, 2023) at ¶¶ 23, 49.

⁸ Such other circumstances are too numerous to list here, but they include natural events such as tornados, flooding, wildfires, and earthquakes, and vehicle collisions which damage utility poles. Because of these circumstances and many more, pole inspection reports are not a useful tool when evaluating poles at the time an attachment request is received by a pole owner.

courts, not administrative agencies, would be required to resolve. And such disputes, whether brought to a court or not, potentially could raise questions about thousands of easements, which prior to this requirement might never have otherwise been disputed. The result would only be increased cost and further delay – the opposite of what the Commission, pole owners and attachers all want.

To the extent that easements are an issue for broadband deployments, state legislatures have developed better solutions. NRECA is aware of legislation enacted in 24 states to address such easement issues, often clarifying the treatment of broadband deployments vis-à-vis utility easements and reducing the potential risk for such broadband providers.⁹ Such state legislation has largely eliminated this easement obstacle without creating time-consuming and resource heavy disputes on an easement-by-easement basis that will slow down broadband deployments. The Commission, and groups representing attaching communications entities, should instead focus on highlighting examples of state actions to resolve easement issues to the benefit of all, rather than focusing on additional requirements that will only slow the process and increase costs.

Conclusion

Because NRECA's electric cooperative members serve the most rural, remote and high-cost communities in America, and because these communities currently find themselves unserved or underserved with broadband, NRECA supports meaningful efforts to enhance broadband deployments and to remove barriers to full deployment without putting additional burdens on utility pole owners. We appreciate this opportunity to offer our perspective in this pole attachment proceeding.

Respectfully submitted,

National Rural Electric Cooperative Association

By: <u>/s/ Brian M. O'Hara</u>

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⁹ States that NRECA is aware of that have addressed electric easement issues (24): Alabama, Alaska, Arkansas, Arizona, Colorado, Georgia, Indiana, Kentucky, Louisiana, Maryland, Michigan (by addressing damages only), Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia.