



Edison Electric
INSTITUTE

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October 12, 2020

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Notice: In the Matter of Accelerating Wireline Broadband Deployment
by Removing Barriers to Infrastructure Investment (WC Docket No. 17-84)

Dear Ms. Dortch:

On September 8, 2020, the Edison Electric Institute (“EEI”), National Rural Electric Cooperative Association (“NRECA”) and Utilities Technology Council (“UTC”), each representing their respective members, met by phone with Will Adams of the Office of Commissioner Carr. Consistent with the written comments filed in the above-referenced docket, EEI, NRECA and UTC urged the Commission to deny the Petition for Declaratory Ruling submitted by NCTA – the Internet & Television Association (“NCTA Petition”) in its entirety.¹

EEI, NRECA and UTC support the goal of efficiently facilitating broadband deployment. EEI, NRECA and UTC discussed how electric utilities already work cooperatively with communications services providers to help satisfy demands for broadband in their communities, whether in the context of the response to COVID-19 or in the ordinary course of business to ensure the expeditious deployment of broadband services.

EEI, NRECA and UTC explained how the Commission’s current pole replacement policies ensure that utilities receive just compensation for their incremental costs, and administratively shifting these incremental costs to utilities is contrary to the Commission’s policy and would have the effect of undermining the basis of the Commission’s pole attachment rate formulae by systematically denying utilities just compensation. The NCTA Petition relies on numerous faulty premises, not the least of which is that pole replacements necessitated by insufficient capacity are less likely to occur in unserved areas given the lack of deployment by broadband providers, and there is no evidence of widespread disputes in such areas. We also explained that utilities do not fully recover from electricity customers the costs associated with make-ready work, including pole replacements. The current Section 224 rate structure does not

¹ Petition for Expedited Declaratory Ruling, WC Docket No. 17-84 (July 16, 2020).

result in “windfall” profits to pole owners, but rather to the contrary, shifting pole replacement costs to pole owners would force utilities to divert scarce capital from their own business needs to support the needs of a new attacher. Moreover, in practical terms, the proposal would only increase disputes over the percentage of costs that should be allocated to utilities and whether poles are located in “unserved areas.” Additionally, it would shift to the utility the burden of recovering these expenses from electric consumers, which creates significant business uncertainty. Therefore, while electric utilities support facilitating broadband deployments, they cannot continue to assist with facilitating broadband deployment if they do not receive just compensation. Instead of shifting costs in a way that distorts competition and burdens electricity customers, the Commission should be promoting broadband deployment and enforcement of mutually negotiated contractual pole attachment agreements, consistent with the Commission’s current policies.

EEL, NRECA and UTC also explained the requested relief is contrary to the Commission’s current policy with respect to pole replacements, which acknowledges that leaving pole owners with unrecovered costs would create a disincentive for utilities to build taller poles or perform such pole replacements at all. Moreover, we discussed that there is no ambiguity that utilities are not responsible for sharing in the costs of pole change-outs when those “but for” costs are incurred solely in order to provide capacity on the pole to accommodate a new pole attachment request. This is consistent with the Commission’s longstanding cost-causation principles and the Commission has specifically attributed Section 224(h) with the “direct benefits” limitation language in § 1.1408(b) per the *Local Competition Order* implementing the pole attachment provisions of the 1996 Telecommunications Act.² Furthermore, under the *Local Competition Order*, the Commission’s policy treats modifications of existing attachments differently from pole change-outs that are required to respond to the need for additional capacity to accommodate new attachments.

We further discussed that pole owners are not responsible for pole replacement costs based on some vague, indefinite and unquantifiable benefits that may be “incidental” to accommodating pole access requests. Congress has spoken to these issues through Section 224(h) and the Commission’s implementation of that provision in Section 1.1408 of the Commission’s Rules. Moreover, the Commission and Federal appellate courts have relied on the Commission’s current make-ready and pole attachment policy to justify its current Section 224 rate formulae.

There is also no need to clarify the Commission’s rules and policy concerning cost responsibility for modifications to bring poles and existing attachments into compliance with applicable safety and other requirements. Rule § 1.1411(d)(4) and Commission’s orders are clear that a utility may not charge a new attacher to bring poles, attachments or third-party equipment into compliance with current published safety, reliability and pole owner construction standards guidelines, if such poles, attachments or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment. Infrequent individual disputes do not mean that the rule is wrong but rather indicate a refusal by

² See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16098, ¶ 1216 (1996)(the “*Local Competition Order*”).

attaching entities to seek recourse in enforcement proceedings, where the facts and circumstances would be in evidence.

For these reasons, the requested relief should be rejected. Alternatively, as a procedural matter, the Commission cannot address the requested relief through a declaratory ruling, given that such relief would constitute a new rule and involves complex matters regarding allocation of costs and apportionment of benefits, as well as underlying engineering, capacity and safety considerations. Moreover, the Commission may not rely on the original Notice of Proposed Rulemaking in this proceeding to grant the requested relief.³ An entirely new rulemaking would be required.

Finally, we explained that the Commission should reject NCTA's proposal to reverse the Commission's policy against self-help remedies for pole replacements. The rationale against self-help for pole replacements is as relevant and important today as it has been in the past and there is no basis for changing this policy now. Pole replacements will always raise unique safety and reliability issues and present substantial risks to electric infrastructure and personnel. These real issues form the basis for the Commission's current policies that limit self-help remedies with regard to pole replacements.

Respectfully submitted,

EDISON ELECTRIC INSTITUTE

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NATIONAL RURAL ELECTRIC
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³ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comments, 32 FCC Rcd 32,66, 3277-78 (2017).

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