



Edison Electric
INSTITUTE

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March 8, 2020

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, NE
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 March 5, 2020, Aryeh Fishman, Associate General Counsel, Regulatory Affairs, for the Edison Electric Institute (“EEI”), Brian O’Hara, Senior Director Regulatory Issues, Telecommunications & Broadband for the National Rural Electric Cooperative Association (“NRECA”) and Brett Kilbourne, Vice President Policy and General Counsel, met by phone with Ramesh Nagarajan, Acting Legal Advisor, Wireline to Acting Chairwoman Rosenworcel to discuss the above-referenced proceeding.

During this meeting we explained that the electric industry supports the national goals for the deployment of broadband networks, including efforts to expand broadband networks in unserved areas. Electric companies not only have provided access to pole infrastructure, consistent with requirements of Section 224 of the Communications Act,¹ but they also have voluntarily developed innovative attachment solutions that enable communications service providers to access a broader selection of utility-owned poles at reasonable rates. We also discussed how many cooperatives are beginning to offer broadband and that some investor owned utilities are also looking at different opportunities to partner with communications provider in bringing broadband to communities in their service territory. With respect to pole replacements, we noted that although utilities cannot be required to expand their systems or replace poles (they have the right to deny access to their facilities for lack of capacity) over the last number of decades, due to the certainty of cost recovery under the Commission’s current rules, utilities have routinely voluntarily replaced poles to accommodate new attachers to support broadband deployments, even though utilities are entitled to deny access for reasons of insufficient capacity. Regulatory certainty regarding full cost recovery for pole replacements has encouraged this practice by utilities to voluntarily replace poles to accommodate new attachers to support broadband deployment.

¹ See 47 U.S.C § 224.

We expressed support for the Declaratory Ruling issued last month by the Wireline Competition Bureau (“Bureau”) that clarifies it is contrary to the Commission’s rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made.² The Bureau’s clarification draws an appropriate bright-line that will reduce disputes in these situations by making clear the requesting attacher is not the sole cause of the pole replacement under section 1.1408(b) of the Commission’s rules and should not pay the entire cost of a new pole.

We further expressed support that the Declaratory Ruling declined to adopt proposals that would have the effect of shifting the predominant share of pole replacements to pole owners.³ We explained that it is very important that the Commission’s pole attachment policies concerning pole replacements continue to ensure that utilities receive just compensation for their incremental costs. We explained that shifting these incremental costs to utilities contravenes the statute and is contrary to the Commission’s policy but also would have the effect of undermining the Commission’s rate formula and discouraging utilities from voluntarily performing pole replacements at all.

Finally, we emphasized that the Commission is correct to refrain from developing prescriptive cost allocations concerning the universe of situations where the requesting attacher should not be required to pay for the full cost of a pole replacement and the proper allocation of costs in those situations. Disputes over pole replacements are infrequent, particularly in unserved areas where there is generally sufficient capacity available on poles for additional attachments and the Commission’s Declaratory Ruling should serve to reduce the potential for disputes even further. Moreover, to the extent that parties to pole attachment agreements do have disputes regarding red-tagging of certain poles and/or the cost responsibility for the replacement of these poles, these are highly complex and fact-specific issues, which should be addressed in an adjudicatory proceeding as opposed to a rulemaking.

Please feel free to contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Aryeh Fishman

Aryeh Fishman
Associate General Counsel
Edison Electric Institute

² See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, DA 21-78, at ¶ 8 (rel. Jan. 19, 2021) (“Declaratory Ruling”).

³ See *id.* at ¶ 9; see also *Petition for Expedited Declaratory Ruling of NCTA – the Internet & Television Association*, WC Docket 17-84 filed July 16, 2020); *Crown Castle Reply Comments* at 9.

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/s/ Brian M. O'Hara

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Cc: Meeting Attendees