

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Accelerating Wireline Broadband Deployment by ) WC Docket No. 17-84  
Removing Barriers to Infrastructure Investment )

**MOTION FOR EXTENSION OF TIME OF THE AMERICAN PUBLIC POWER  
ASSOCIATION, THE EDISON ELECTRIC INSTITUTE, THE NATIONAL RURAL  
ELECTRIC COOPERATIVE ASSOCIATION, AND THE UTILITIES TECHNOLOGY  
COUNCIL**

Pursuant to section 1.415(e) and 1.46(b) of the Commission’s rules, the American Public Power Association (“APPA”), the Edison Electric Institute (“EEI”), the National Rural Electric Cooperative Association (“NRECA”), and the Utilities Technology Council (“UTC”) (collectively “Utility Trade Associations”) hereby request an extension of time to file reply comments in response to the Commission’s *Second Further Notice of Proposed Rulemaking* in the above-referenced proceeding.<sup>1</sup> Currently, reply comments are due on July 27, 2022. However, due to the significant number of comments, the complexity of the issues raised and the sheer volume of the filings, the Utility Trade Associations request that the Commission provide an additional 60 days until September 26, 2022, for parties to reply to comments that were submitted in response to the *FNPRM*. The Utility Trade Associations also request that the Commission toll the reply comment period until the Commission determines whether to grant confidential treatment for certain redacted information in initial comments submitted on the record. This additional time is necessary to allow the parties sufficient time to analyze the comments (including several new studies), gather information from electric companies and other pole owners, and compile and incorporate this data into their reply comments. The Commission’s *FNPRM* raises highly fact-specific issues related to pole replacements, which required substantial time just to

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<sup>1</sup> Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, *Second Further Notice of Proposed Rulemaking*, WC Docket No. 17-84 (rel. Mar. 18, 2022)(hereinafter “*FNPRM*”)

develop initial comments. Now that the initial comments have been submitted, it is clear from review of these comments that an additional 60-days will be necessary to develop reply comments, which will help to properly inform the Commission and will not prejudice any of the parties to the proceeding.

Although Commission policy provides that an extension of time is not routinely granted,<sup>2</sup> there is good cause here because the 30-day period for reply comments provided in the *FNPRM* does not provide enough time for interested parties to fully develop the record.<sup>3</sup> There are 38 comments that were filed in response to the *FNPRM*, including several new studies, and some of the submissions include highly redacted material, which only adds to the difficulty of replying to the over 1,000 pages of comments that were submitted.<sup>4</sup> Moreover, many of these comments raise new issues and propose new rules that were not considered in the *FNPRM* or elsewhere in the record.<sup>5</sup> These issues and proposals involve highly complex matters, which require careful deliberation and coordination among the parties to respond. Granting an extension of time will give “sufficient time for parties to analyze the issues” and “meaningfully address them,” thereby allowing the Commission to make a more informed decision regarding the issues and proposals raised in comments on the record.<sup>6</sup> Note also that the current reply

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<sup>2</sup> 47 C.F.R. §1.46(a)(stating that “it is the policy of the Commission that extensions of time shall not be routinely granted.”).

<sup>3</sup> See *Audio Enterprises, Inc. Apparent Liability for Forfeiture*, File No. ENF-88-04, Order, 3 FCC Rcd 5402, para. 2 (Com. Car. Bur. 1988).

<sup>4</sup> See Comments of Charter Communications, Inc. in WC Docket No. 17-84 (filed June 27, 2022)(stating that it is “redacted for public disclosure”)(hereinafter “Comments of Charter”). Some of the material that is redacted from the comments makes it virtually impossible for parties to meaningfully reply to the claims in the comments. See e.g., *Id.* at 2 (stating that “[i]n Charter’s recent experience, pole replacement demands from pole owners’ amount, on average, to one out of every [REDACTED] poles to which Charter seeks access,” adding that “[p]ole replacement costs on an “average” project can account [REDACTED].”).

<sup>5</sup> See e.g., Comments of the NCTA, The Internet and Television Association in WC Docket No. 17-84 (filed June 27, 2022)(proposing rules that would require utilities to complete a survey and engineering work within 15 days of an attachers’ submission of its completed application, and authorizing the attacher to hire a contractor to conduct the survey and requiring the utility to pay for any additional costs incurred by the new attacher resulting from the delay.).

<sup>6</sup> See *Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Order Granting Extension of Time, 34 FCC Rcd 8660 ¶3 (2019); see also *Spectrum Five LLC Petition for Enforcement of Operational Limits and for Expedited*

comment period includes the July 4<sup>th</sup> holiday, and the current filing deadline coincides with the deadline for filing comments in two other proceedings, which adds to the difficulty of replying to the initial comments in this proceeding.<sup>7</sup> Therefore, in light of the significant volume of materials submitted, as well as the complexity of the issues and the proposals raised in initial comments, granting the requested extension of time to develop reply comments would serve the public interest by allowing parties to prepare more complete responses to the initial comments on the record and will not prejudice any of the parties.<sup>8</sup>

**I. Additional Time Is Needed to Address the New and Numerous Issues Raised in Voluminous Initial Comments.**

Initial comments present numerous claims that will require further investigation, which will be difficult because these allegations are generally vague and unsubstantiated. The initial comments also introduce new studies and make numerous additional proposals with significant potential impacts to the cost of pole access. It bears emphasis that some initial comments propose new rules and raise new issues that were not part of the *FNPRM* that potentially have far reaching operational and cost impacts. Furthermore, the studies suggest new rationales and complicated methodologies for shifting pole replacement costs (and other costs related to planning and make-ready for broadband deployments) to utilities and their electricity customers. However, these studies were not available to the parties at an

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*Proceedings to Revoke Satellite Licenses*, Order, 35 FCC Rcd 13992 (2020).

<sup>7</sup> Specifically, the current reply comment deadline coincides with the deadline for filing reply comments in response to the Commission’s *Notice of Inquiry* regarding receiver performance standards, and the *Notice of Inquiry* regarding offshore communications. See *Promoting Efficient Use of Spectrum through Improved Receiver Interference Immunity Performance*, ET Docket No. 22-137, Notice of Inquiry, FCC 22-29 (rel. Apr. 21, 2022); and see *Facilitating Access to Spectrum for Offshore Uses and Operations*, WT Docket No. 22-204, Notice of Inquiry, FCC 22-41 (rel. June 9, 2022); See also *Allocation of Spectrum for Non-Federal Space Launch Operations*, ET Docket No. 13-115, Order, DA 21-788 (rel. Jul. 7, 2021)(granting a 30-day extension of time for comments and reply comments, in recognition that the comment period fell over two Federal holidays – Juneteenth National Independence Day and the Fourth of July, and that requestors claimed that “[a]n extension of time will allow interested parties and their experts the opportunity to better analyze the questions posed in the FNPRM and their real-world implications, thus allowing them to prepare more thorough responses.”)

<sup>8</sup> *Id.* (stating that the criteria for granting an extension of time “are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay.”)

earlier stage in the proceeding and it is extremely problematic that Charter Communication's study includes data that has been redacted from public disclosure. It is not clear what is the basis for confidential treatment or under what terms this material will be accessible to the public which compounds the difficulty for utilities and other parties to meaningfully respond to Charter's comments, Appendix A, and its most recent study. Finally, some of the initial comments raise unique issues that are specific to certain types of attachments that would shift all of the costs to utilities even if the pole replacement was performed specifically to provide additional space on the pole as requested by the new attacher to accommodate the attachment.

The sheer volume of the comments alone requires additional time to review, analyze, and respond to in reply comments. As noted above, there were over 1,000 pages of comments filed in response to the *FNPRM*. Many of these comments involve highly complex matters that require consultation and coordination among the members of the Utility Trade Associations and other organizations, and the current reply comment deadline will not provide sufficient time for utilities and other parties to provide detailed information to respond to the initial comments. An additional 60-days will be necessary to provide sufficient time for utilities and other parties to analyze the initial comments and provide a meaningful opportunity to develop reply comments that address the highly complex and fact-specific matters that are involved with pole replacements.

The public interest would be served by granting a 60-day extension of time for reply comments, and granting an extension of time will not prejudice any of the parties. Commission precedent supports granting such an extension of time because it will enable utilities and other parties to better respond to the initial comments and therefore enable the Commission to make more informed decisions involving the complex matters related to pole replacements, the conditions under which costs of pole replacements should be shared, and the appropriate allocation of those pole replacement costs among the parties.<sup>9</sup> The

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<sup>9</sup> See *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Order, DA 97-984, (rel. Apr. 29, 1997)(granting a 45-day extension of the comment period, where a 60-day extension had been requested); and see *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Order, DA 13-1785 (rel.

summer months are some of the busiest times for utilities, as electric demands are high and many of their projects are scheduled during this time of the year when conditions are better and crews and other resources are more available for projects in the field. Utilities are also preparing for another season of hurricanes, tornados, storms, and wildfires, which also makes it difficult for the parties to divert resources away from those activities.

While a 60-day extension of time is necessary to provide utilities and other parties with a meaningful opportunity to reply, granting this limited extension of time will not prejudice the parties in any significant way and will appropriately balance the interests and preserve due process. Moreover, the public interest will be served because utilities will continue to accommodate attachers by providing third-party attachers with pole replacements to promote broadband deployment. Additional time for reply comments should ultimately result in better rules, which will avoid disputes and thereby accelerate broadband deployment.

**II. Information Submitted in Initial Comments Should Not Be Granted Confidential Treatment, and the Commission Should Toll the Reply Comment Period Until the Information Is Publicly Disclosed.**

Section 0.459 of the Commission’s rules provides the process by which parties may request confidential treatment of information submitted to the Commission and it describes the criteria that applies to Commission review of such requests.<sup>10</sup> In relevant part, section 0.459 requires that parties must request the Commission to withhold materials or information from public inspection and that the request must contain a statement of the reasons for withholding the materials from inspection and of the facts

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Aug. 20, 2013)(granting a 60-day extension of time for comments and a 30-day deadline thereafter for reply comments.) *See also Expanding Flexible Use of the 12.2-12.7 GHz Band*, WT Docket No. 20-443, Order, DA 21-370 (rel. Mar. 30, 2021)(granting a 30-day extension of time for both comments and reply comments, and agreeing with movants the extension of time will allow all interested parties to “more fully develop their responses to the Commission’s NPRM leading to a better record.”); *and see Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 21-978 (rel. Aug. 10, 2021)(granting a 30 day extension of time for both comments and reply comments); *and see Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Order Granting Extension of Time, DA 22-6 (rel. Jan. 4, 2022)(extending the comment and reply comment deadlines by 30 and 45 days, respectively, and finding that “there is good cause for granting the requested extension of comment and reply comment dates given the importance of developing a robust record for the proceeding.”)

<sup>10</sup> *See* 47 C.F.R. §0.459.

upon which those records are based, including among other things an explanation of 1) the degree to which such information is commercial or financial, or contains a trade secret or is privileged; 2) the degree to which such information concerns a service that is subject to competition; and 3) how disclosure of the information could result in substantial competitive harm. It also requires the request to identify 1) measures taken by the party submitting the request to prevent unauthorized disclosure of the information and 2) whether the information is already public and/or has been previously disclosed to third parties. Finally, section 0.459 states that “[c]asual requests (including simply stamping pages “confidential”), which do not comply with the requirements of paragraphs (a) and (b) of this section [including the statement of facts with the explanations and identifications required in support of a confidentiality request] will not be considered.” Note that the Enforcement Bureau has issued a Public Notice to remind the public that request for confidentiality must cover only material warranting confidential treatment under the Commission’s rules.<sup>11</sup> In addition, Commissioner Starks has expressed his concern about parties submitting overbroad confidentiality claims that make it impossible for people outside the Commission to understand the key facts at issue.<sup>12</sup>

As noted above, Charter has submitted initial comments, which redact portions of the text from public disclosure. In addition to redacting the comments, Charter also redacts portions of the study that were filed along with the comments, as well as Appendix A submitted with request for confidential treatment. Subsequently, Charter has made at least two other filings with the Commission, which entirely exclude any information from public disclosure. While the Commission’s rules permit parties seeking confidential treatment of a portion of a filing to submit in electronic format a redacted version of their comments in rulemaking proceedings, the rules require the request for confidential treatment to include the statement of the reasons for withholding the information from public disclosure. It is not clear

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<sup>11</sup> Enforcement Bureau Reminds Public That Request for Confidentiality Must Cover Only Material Warranting Confidential Treatment Under the Commission’s Rules, Public Notice DA 20-579 (rel. June 18, 2020).

<sup>12</sup> *American Broadband & Telecommunications Company, Jeffrey S. Ansted*, File No.: EB-IHD-17-00023554, Statement of Commissioner Geoffrey Starks, FCC 20-47 (rel. Apr. 13, 2020).

whether such a statement was submitted with Charter's comments, let alone what specific reasons Charter claimed supported confidentiality, including whether and how the information might be considered commercial, financial, or substantially harmful competitive information.

It is hard to believe that the information that has been redacted could be considered confidential because the redactions apparently provide information, such as reports of the number of poles that have required replacement on average in Charter's recent experience with pole owners, as well as the average cost that pole replacements account towards the total cost of aerial construction. Stretching credulity even further, Charter entirely excludes Appendix A of the comments, claiming that it provides "data from an illustrative set of recent projects involving attachments to investor-owned utility poles in Commission-regulated jurisdictions, including both RDOF deployments as well as recent non-RDOF deployments."<sup>13</sup> In a footnote, Charter states that "[t]o avoid revealing competitively sensitive information, Charter has anonymized the illustrative projects by removing reference to the specific pole owner and is submitting the Appendix with a request for confidential treatment."<sup>14</sup> Finally, Charter redacts portions of a recent study that it commissioned, and the information that is redacted completely excludes entire tables and the conclusions in the text that are made based on the information in the tables. It is highly questionable whether the redacted information could be considered confidential because it is not commercial, financial, or substantially harmful competitive information, nor is it clear whether this information is not already public or has been disclosed previously to third parties. In fact, some of the redacted information clearly was disclosed to the authors of the study, and as such it should not be considered confidential information.

Charter's redaction of this information is fundamentally at odds with the Administrative Procedure Act because it prevents parties from effectively responding to the claims that are being made in a meaningful way. It thwarts the APA process of notice and comment if Charter is able to hide

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<sup>13</sup> Comments of Charter at 10.

<sup>14</sup> *Id.* at n. 11.

information in its claims about the number of pole replacements that have been required in its deployments and the costs these pole replacements account for in their total cost of aerial construction. Not only is this information not confidential, but it also involves matters that are central to the issues that are posed in the rulemaking. Parties must be allowed to respond to claims made by Charter in their reply comments, but they have no way of replying effectively unless the information is made available publicly or otherwise disclosed to the parties. Moreover, it prevents the Commission from making an informed decision if Charter is allowed to make claims about the number of pole replacements and the costs incurred without the opportunity for parties to file reply comments in response to those claims.

The Commission has denied confidential treatment in numerous cases where, as here, the requestor has not explained the degree to which the information is commercial or financial proprietary material that is not otherwise available or would substantially harm the competitive interests of the party if it was publicly disclosed. Even if arguably the information redacted by Charter involved this kind of information, the Commission should not grant confidential treatment here because the public's interest in disclosure of the information for purposes of the rulemaking outweighs any arguable private interest that Charter could claim to the contrary. This is precisely the kind of information that must be disclosed because it is central to the issue of pole replacement costs in this proceeding. Otherwise, Charter can make any claim without any concern that parties would have a meaningful opportunity to rebut those claims in their reply comments. Moreover, it would allow Charter to give a one-sided portrayal of the issues that would deprive the Commission from making informed decisions.

The Commission should toll the time period for reply comments as long as the information in Charter's comments, Appendix A and its study as well as its other filings is not made public or otherwise disclosed to the parties. At the very least, the time period should be tolled until the Commission has formally decided whether to grant confidential treatment of this information.<sup>15</sup> As explained above,

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<sup>15</sup> While the Commission may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made, once such a response in opposition to a confidentiality request is filed, the party requesting confidentiality may file a reply within ten business days. The Commission will then make its decision, and if the request for confidentiality is granted, the ruling will be placed in



utilities and other parties do not have a meaningful opportunity to respond to the claims made by Charter in the redacted material, and the Commission should ensure procedural due process and fundamental fairness consistent with the APA by tolling the reply comment period until this issue is resolved.

**CONCLUSION**

For all these reasons, the Utility Trade Associations respectfully request that the Commission grant a 60-day extension of time for filing reply comments in response to the initial comments in this proceeding. Good cause exists for granting this limited extension of time and none of the interests of the parties will be prejudiced by granting this request for extension of time. The Commission should also toll the time period for reply comments until the issue with regard to the confidential treatment of the information in Charter’s comments is addressed by the Commission and resolved. The Utility Trade Associations request expedited treatment on this Motion.

Respectfully submitted,

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the public file in lieu of the materials withheld from public inspection. Until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings are exhausted, the information will be accorded confidential treatment. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection once the period for review of the denial has passed. *See* 47 C.F.R. §0.459(d).

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