

December 5, 2019

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket Nos. 19-126 and 10-90

Dear Ms. Dortch:

The National Rural Electric Cooperative Association (“NRECA”) respectfully submits this *ex parte* letter in the above-referenced proceedings in accordance with Section 1.1206 of the Commission’s Rules.¹ This letter addresses an ill-considered proposal by CenturyLink and ITTA – The Voice of America’s Broadband Providers (“ITTA”) that electric cooperatives, and other entities expressly exempt from federal pole regulation by Congress, must comply with the Commission’s pole attachment regulations as a condition to participating in the Phase 1 auction of the Rural Development Opportunity Fund (“RDOF”).² We also respond to related points raised by NCTA and AT&T.

As an initial matter, the proposed condition is outside the scope of this proceeding. The RDOF Notice of Proposed Rulemaking addresses the proposed Phase 1 auction without even mentioning pole attachments or pole attachment regulation, much less proposing that compliance with pole attachment regulations be a precondition to receiving funding. Instead, pole attachments and their effect on broadband deployment have been and continue to be addressed in the ongoing WC Docket No. 17-84 proceeding. The 47 U.S.C. Section 224(a)(1) statutory exemption for cooperatively organized entities, which include both electric and telephone cooperatives,³ was expressly acknowledged in that proceeding.⁴

The proposed condition is not only improperly beyond the scope of this proceeding, but it also makes little regulatory sense. To illustrate, CenturyLink raises unsubstantiated allegations about an unnamed Colorado cooperative which, according to CenturyLink, refused to process a Century Link pole attachment request until “other issues” are resolved.⁵ To determine whether any FCC regulations have been violated, the Commission’s procedure would require an in-depth and lengthy complaint proceeding conducted by the Enforcement Bureau before any action is taken. CenturyLink’s request for implementation of a major

¹ 47 C.F.R. §1.1206; *In the Matter of Rural Digital Opportunity Fund*, Notice of Proposed Rulemaking, WC Docket Nos. 19-126, 10-90, released August 2, 2019 (“RDOF NPRM”). 84 Fed. Reg. 43543, August 21, 2019.

² See Comments of CenturyLink, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (CenturyLink Comments), at pp. 22-23; see also Comments of ITTA - The Voice of America’s Broadband Providers WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (ITTA Comments), at p. 23.

³ 47 U.S.C. 224(a)(1).

⁴ Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment, Third Report and Order and Declaratory Ruling, FCC 18-111, WC Docket No. 17-84, WT Docket No. 17-79, ¶5, n.10 (rel. Aug. 3, 2018) (“August 2018 Pole Attachment Order”).

⁵ CenturyLink Comments, at p. 24.

unrelated regulatory requirement in the RDOF proceeding based on unsubstantiated claims is unwarranted and inappropriate. Adding such a requirement would place an impractical and cumbersome precondition for determining eligibility to participate in the Phase 1 auction or the Phase 2 auction, particularly to electric cooperatives who are uniquely positioned to provide fixed broadband and voice services where incumbent providers have demonstrated minimal interest in deploying advanced networks in rural areas.

One need to look no further than the results of the 2018 CAF II reverse auction for examples of electric cooperatives stepping in to deploy broadband to unserved and underserved communities, where the incumbent failed to deliver adequate service. Thirty-two electric cooperatives won thirty-five bids winning over \$250 million over ten years to bring broadband to over 86,000 locations that lacked broadband. This represents over 30% of all CAF II winning bids. More than 30 of these winning electric cooperative bids will result in gigabit networks.

Moreover, electric cooperatives have their own stories to tell about irresponsible and noncompliant pole attachments. There are numerous examples of established services providers refusing to pay pole attachment fees in order to coerce a cooperative pole owner to bow to the providers' demands. Additionally, thousands of third-party attachments have been installed in violation of the National Electrical Safety Code ("NESC"), as have countless numbers of unauthorized attachments, all of which jeopardize the safety and reliability of the electric grid, as well as all the other communications providers attached to impacted poles.⁶ Electric cooperatives would certainly like this behavior to stop, but they do not contend that fixing safety violations and removing unauthorized attachments should be a precondition to Tier One services providers participating in the Phase I auction or the Phase 2 auction.

Further, Century Link fails to mention Colorado's broadband infrastructure law, enacted this past June to encourage broadband deployment in rural areas by electric cooperatives. The Colorado law grants cooperatives the right to install broadband facilities within their electric easements, but only if the cooperatives "charge just and reasonable attachment fees" and provide access to competitive broadband providers looking to attach to the cooperative's poles on a "just, reasonable, and nondiscriminatory basis".⁷ As the Colorado law demonstrates, states are perfectly capable of regulating electric cooperative pole attachments when appropriate, just as Congress envisioned.⁸

Not to be outdone, NCTA also goes well beyond the scope of the RDOF NPRM by referencing its consultant's study submitted in the WC Docket No. 17-84 pole attachment proceeding, which contends that electric cooperative pole attachment rates are higher than rates charged by investor-owned utilities.⁹ Similarly, AT&T offers the bald assertion that "[b]ecause these utilities are exempt from section 224, they are able to condition access to their poles on the payment of exorbitant fees wholly unrelated to their costs and on requirements entirely unrelated to the attachment, which delays and increases the cost of broadband deployment."¹⁰

⁶ "Technology Advisory: How One Cooperative Leveraged Data to Advance its Pole Attachment Policies," NRECA (February 2018), at p. 3, available at: <https://www.cooperative.com/programs-services/bts/Documents/Tech-Advisory-NOVEC-Pole-Attachment-Case-Study-FINAL-2-22-18.pdf>

⁷ 2019 Colo. ALS 424, 2019 Colo. Ch. 424, 2019 Colo. SB. 107.

⁸ Twenty states and the District Columbia have exercised authority over pole attachment regulation via reverse preemption. Initiatives to reverse preempt pole attachment regulation are pending in Pennsylvania and West Virginia. Virginia law allows the state corporation commission to arbitrate pole attachment disputes.

⁹ Reply Comments of NCTA – The Internet & Television Association, WC Docket Nos. 19-126, 10-90 (filed Oct. 21, 2019) (NCTA Reply Comments), at p. 11.

¹⁰ Reply Comments of AT&T, WC Docket Nos. 19-126, 10-90 (filed Oct. 21, 2019) (AT&T Reply Comments), at pp. 18-19.

The notion that cooperative pole attachment rates impair broadband deployment is not credible. NRECA's White Paper submitted in WC Docket 17-84 demonstrates that the cost of pole attachments is *not* a significant deterrent for deploying fixed broadband in rural areas.¹¹ For example, the White Paper notes instances in which electric cooperatives have offered to provide discounted or free pole attachments to Tier one services providers to encourage them to provide service to their rural communities. In each case, those offers were rejected.¹² During pole attachment negotiations between a Tennessee cooperative and a Tier One services provider, a vice president of that provider stated that "the company would not extend its services further into the cooperative's rural areas even if the pole attachment rate were zero." The White Paper also helpfully explains how pole attachment rates are insignificant in comparison to the overall cost of broadband deployment in rural areas.

Colorado is not the only state to recognize that electric cooperatives are essential to addressing the digital divide in rural areas. For example, to ensure that broadband service becomes available throughout its state, the Tennessee legislature modified state law to allow electric cooperatives to provide broadband service within their service areas.¹³ More recently, Mississippi enacted legislation expressly authorizing electric cooperatives to provide broadband service to address the low rate of fixed broadband deployment in that state.¹⁴

In closing, the focus of the RDOF NPRM is the development of rules and procedures to distribute up to \$20.4 billion to firms interested in providing broadband service to underserved and unserved rural communities throughout the nation. Electric cooperatives have demonstrated a strong interest in meeting this objective. Unsubstantiated and incorrect generalized inferences regarding cooperative pole attachment rates and practices have no place and do not warrant consideration in this proceeding.

Sincerely,

National Rural Electric Cooperative Association

/s/

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¹¹ See generally "Rural Electric Cooperatives: Pole Attachment Policies and Issues," NRECA, WC Docket No. 17-84, WTB Docket No. 17-79, and GN Docket No. 17-83 (Filed Jun. 10, 2019)(NRECA White Paper).

¹² *Id.*, at p. 14; see also *id.*, at p. 14-15 (describing the four cases in Virginia, Indiana, Arkansas, and Tennessee.).

¹³ See Tennessee Broadband Accessibility Act., 2017 Bill Text TN S.B. 1215.

¹⁴ See Mississippi Broadband Enabling Act., 2019 Bill Text MS H.B. 366.