Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Brian M. O'Hara
Senior Director Regulatory Issues
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
703-907-5798
brian.ohara@nreca.coop

Of Counsel:
Thomas B. Magee
Keller and Heckman LLP
1001 G Street NW, Suite 500 West
Washington, DC 20001
202-434-4128
magee@khlaw.com

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SUMMARY OF ARGUMENT

Because they serve 88% of the counties in the United States, including 327 of the nation's 353 "persistent poverty counties," NRECA's members understand the challenges of promoting the deployment of advanced telecommunications capabilities to rural communities and are deeply committed to it.

More than 200 of NRECA's 900+ members already provide broadband service, incurring the considerable costs required to deploy broadband to remote sections of their service territories because the communities they serve are eager to receive broadband services and because they know they can succeed as viable businesses delivering those services. NRECA is therefore highly skeptical of suggestions by for-profit broadband providers, many with financial resources far superior to electric cooperatives, that they cannot profitably deploy broadband unless electric utilities and their ratepayers finance their pole replacement costs and add to the government grants they already receive.

Charter Communications and other communications companies do not need electric utilities to supplement their RDOF and other subsidies. Charter has 32 million customers, annual revenues of $51.7 billion, and an annual cash flow of $8.7 billion. The RDOF competitive reverse auction enabled Charter and others to calculate the costs to deploy broadband to unserved areas, and then bid for federal dollars in an amount sufficient to make a profit. Asking electric utilities and their ratepayers to pad those calculated profits by reducing well-known pole replacement costs that were already accounted for in the bidding process is abusive. As for their arguments that more broadband will be deployed with such padded finances, they are already committed to serving the areas that are subject to their winning RDOF bids, so the money they squeeze from utilities and their ratepayers will do no such thing.

Rewarding RDOF winners in this fashion is also unfair to other RDOF participants, including many cooperatives, who were outbid in the RDOF auction by some of these same entities seeking pole replacement cost subsidies. If certain RDOF participants were gaming the system to shut out potential competitors, they should not be rewarded by changing the pole replacement rules post-auction to their benefit. For their part, cooperatives that won in the RDOF have every intention to meet those commitments at the level of funding awarded.

Pole replacement cost subsidies are also incongruous with today's lower deployment costs. Because electric cooperatives already bore the cost of constructing pole distribution systems to deliver electricity to high-cost areas, broadband providers now have access to these same high-cost areas for a fraction of that cost, and thus have a much easier time reaching rural customers to provide service than electric cooperative pole owners ever did.

Pole owners make no profit and receive no benefit from prematurely replacing poles, so creating a regime to adjudicate pole replacement cost allocation disputes is unnecessary. In any case, such a regime would be complex and contentious, administratively burdensome, and only increase costs and delay the process.

As for refund liability, the Commission should clarify that it will treat electric utility pole owners consistent with ILEC pole owners, which are protected by the two-year limitations period in Section 415(b). Lengthy refund periods discourage broadband deployment by increasing uncertainty and fueling potential disputes between utility pole owners and attachers.

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COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

The National Rural Electric Cooperative Association ("NRECA") hereby submits these Comments in response to the Second Further Notice of Proposed Rulemaking ("Second Further Notice") released March 18, 2022, in the above-captioned proceeding.[1]

I. INTRODUCTION

A. Background on NRECA

NRECA is the national service organization for more than 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 12 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.

[1] Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, Second Further Notice of Proposed Rulemaking, FCC 22-20 (rel. Mar. 18, 2022) ("Second Further Notice"), https://docs.fcc.gov/public/attachments/FCC-22-20A1.pdf. The Second Further Notice established that Comments are due 60 days after publication in the Federal Register, which occurred on April 28, 2022. Sixty days thereafter is June 27, 2022.

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. Every NRECA distribution co-op member is classified as a small business entity by the U.S. Small Business Administration. Electric cooperatives are democratically governed and operate according to the seven Cooperative Principles.[2]

B. Electric Cooperatives Are Deeply Committed to Promoting the Deployment of Affordable Broadband

NRECA and its members are deeply committed to promoting the deployment of advanced telecommunications capabilities within the rural communities and areas in which they serve. The promotion of broadband deployment by electric cooperatives generally takes one of three forms:

1. Over 200 NRECA members provide fixed broadband service today, deploying fiber-based, fixed wireless or combined fiber and fixed wireless technologies to low-density (and therefore high-per capita cost) rural communities.
2. NRECA estimates that another 100 or so are currently exploring the feasibility of providing broadband, either on their own or through partnerships.

[2] The seven Cooperative Principles 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.

3. Finally, the vast majority of cooperatives are supporting other providers in deploying vital broadband service to their unserved and underserved communities.

Electric cooperatives also support ensuring that broadband is accessible (meaning affordable) once deployed. Prior to adoption of the Infrastructure Act,[3] and prior to the Consolidated Appropriations Act, 2021,[4] which established the Emergency Broadband Benefit Program ("EBB Program"), NRECA members took meaningful steps to assist rural households to remain connected to the internet during the first wave of the COVID-19 pandemic. NRECA members providing broadband services maintained broadband service to customers despite lack of payment, waived late fees because of economic distress, and opened Wi-Fi hotspots to those in need. NRECA member broadband providers also went a step further to increase their customers' internet speeds without charge.[5]

NRECA's members providing broadband service understand the considerable costs required to deploy broadband to remote sections of their service territories, but many have incurred those costs anyway, because the communities they serve are eager to receive broadband services and because they knew they could succeed as viable businesses delivering those services. NRECA therefore is highly skeptical of suggestions made by for-profit broadband providers, many with financial wherewithal far superior to much smaller electric cooperatives,

[3] Infrastructure Investment and Jobs Act, H.R. 3684, 117th Congress, *available at* https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf ("Infrastructure Act").

[4] Consolidated Appropriations Act, 2021, H.R. 133, div. N, tit. IX, § 904(b)(1) (2020).

[5] *See* Cathy Cash, *Co-op Broadband Providers Pledge to Sustain Low-Income Service as Pandemic Hardships Increase*, NRECA, https://www.electric.coop/co-op-broadband-providers-pledge-to-sustain-low-income-service-coronavirus-pandemic-hardships-increase/ (Mar. 25, 2020).

that they cannot profitably deploy broadband unless electric utilities and their ratepayers add to the government grants, they already receive by financing their pole replacement costs.

C. The Proposed Rule Should be Rejected by the Commission

The FCC's opening of this proposed rulemaking was prompted by a petition filed by Charter and NCTA. In that petition, Charter and NCTA sought rule revisions that would alter the FCC current make-ready/pole replacement cost recovery methodologies and timelines. When the FCC issued the rulemaking, it entertained these proposed alterations. While NRECA's members do not fall within the FCC's jurisdiction for this rulemaking they still may be impacted because of the policy precedent that this rulemaking could establish.

NRECA therefore respectfully submits these Comments to explain that these cable industry demands are misleading, highly objectionable, and inappropriate, and should therefore be rejected by the Commission.

II. COMMENTS

A. Charter Communications and Other Communications Companies Do Not Need Electric Utilities To Finance Their Broadband Deployments

Charter Communications, which is probably the most vocal advocate for the reduction of pole replacement costs, is the second largest cable operator in the United States, with more than 32 million customers, annual revenues of $51.7 billion, and annual cash flow of $8.7 billion.[6] Adding to this annual cash flow is the $1.2 billion dollars over ten years that Charter won in the bidding process for Phase I of the FCC's Rural Digital Opportunity Fund ("RDOF") auction.[7]

[6] Charter Communications, 2021 Annual Report, at p. 7 (available at: a798e04f-1fad-4157-aaf2-3d2866459f51 (charter.com) (last visited Apr. 21, 2022).

[7] Charter Communications, Inc. and Subsidiaries, Notes to Consolidated Financial Statements, at p. F-40 (available at: a798e04f-1fad-4157-aaf2-3d2866459f51 (charter.com) (last visited Apr. 21, 2022) ("In December 2020, the Company won a bidding process for $1.2 billion in phase I of the Rural Digital Opportunity Fund ("RDOF") auction to further extend its broadband services in states where it currently operate. The Company expects to fund its multi-billion dollar fiber-based build-out over a six to eight-year period.").

And adding to all of that is any additional funding Charter might receive from redirecting American Rescue Plan Act funds to finance pole replacements, from the $42.45 billion Broadband Equity, Access, and Deployment (BEAD) program in the Infrastructure Investment and Jobs Act, and from other federal and state sources, such as a potential RDOF Phase II.

Despite these considerable cash reserves and enormous government subsidies, entities like Charter are now asking electric utilities and their ratepayers to give them even more money to subsidize their broadband deployments. Setting aside the objection that electric utilities and their ratepayers should not be financing broadband deployments by for-profit communications companies, this additional source of "free money" for communications companies is simply unnecessary to promote broadband deployment. This potential additional money is not free. A cost shift by reallocation of pole replacement costs proposed by NCTA in its petition would come at the expense of electric rate payers.

The federal and state funding processes themselves explain why. The RDOF competitive reverse auction, for example, enabled entities like Charter to determine the costs to deploy broadband to the unserved areas for which they bid, and then bid for federal dollars in an amount sufficient to maintain their business plan and expected profit margin. Entities like Charter were successful bidders by accepting RDOF funding lower than what other bidders determined they could accept. Many electric cooperatives and other companies were outbid for RDOF funding in this way, consistent (supposedly) with the intended result of allocating federal dollars to the most efficient provider.

Assuming that gamesmanship was not the reason electric cooperatives and other willing providers were underbid in many census block groups across the U.S. in RDOF Phase I funding, successful RDOF bidders made an assessment that they could profitably build out to unserved

areas with the funding they received. The RDOF process in fact requires any winning bidder to certify that it "will have available funds for all project costs," and to describe "the estimated project costs for all facilities that are required to complete the project, *including the costs of upgrading, replacing, or otherwise modifying existing facilities* to expand coverage or meet performance requirements."[8] Certainly Charter, with 32 million customers and a long history as a service provider, understood "*the costs of upgrading, replacing, or otherwise modifying existing*" distribution poles when it placed its bids and accepted RDOF awards.

Based on their own assessments, therefore, RDOF winners like Charter determined they do not need additional funding to successfully build out to the unserved areas they committed to serve by accepting the awards. They determined they would earn a profit regardless of any additional funding. It is therefore unnecessary for these winning bidders to be given additional money or for the FCC to reduce the legitimate and well-known pole replacement costs that providers should have included in any broadband deployment plan, and particularly where they won RDOF bids and committed to deploy at the award amount. They will build out to these areas without additional monetary contributions from utilities because they know they will be profitable and because they have voluntarily committed as part of the RDOF process to serve those areas. Any regulation directing electric utilities to bestow such monetary contributions to RDOF winners like Charter will therefore not increase broadband deployments since RDOF winners like Charter are required to serve those areas anyway. Extracting money from utilities will only increase the profits that RDOF winners like Charter already expect to receive.

[8] Public Notice, "Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904," FCC 20-77, AU Docket No. 20-334, *et al.* (released June 11, 2020), at ¶ 312 (emphasis added).

Not only would requiring electric utilities and their ratepayers to line the pockets of RDOF winners be inappropriate, rewarding RDOF winners in this fashion is unfair to the large number of RDOF participants, including many cooperatives, who were outbid in the RDOF auction. And if certain RDOF participants were gaming the system to shut out potential competitors, they should not be rewarded by changing the pole replacement rules post-auction to their benefit. For their part, cooperatives that won in the RDOF have every intention to meet those commitments at the level of funding awarded.

Charter and the cable industry are asking utilities and their ratepayers for pole replacement subsidies on top of their government grants, but Charter and the cable industry have found another way to double-dip. At the cable industry's urging, legislation was enacted late last year in Texas and North Carolina to divert funds allocated to those states by the American Rescue Plan Act to allow broadband providers like Charter to recover 50% of their pole replacement costs, up to $5,000/pole in Texas and up to $10,000/pole in North Carolina.[9] Similar legislation has been introduced in at least five other states (Missouri, Nebraska, Kentucky, Florida, and West Virginia).[10]

From a profit-maximizing business perspective, it is easy to understand why the cable industry would be looking for free money wherever they can get it. Many profit-maximizing enterprises would do the same thing. But no matter what anyone thinks about state legislation that allows broadband providers to double dip into federal funding by diverting Rescue Plan

[9] *See* Texas HB 1505 (available at: Texas Legislature Online - 87(R) Text for HB 1505); North Carolina budget bill SB105, at pp. 508-512 (available at: S105v8.pdf (ncleg.gov)).

[10] *See* Missouri SB990 (available at: SB990 - Creates provisions relating to pole replacements for certain broadband facilities (mo.gov)) (50% up to $4,000/pole); Nebraska LB1208 (available at: LB1208) (50% up to $5,000/pole); Kentucky HB 492 (available at: Kentucky Legislative Research Commission Search Options) (50% up to $5,000/pole); Florida HB1543 (available at: : HB 1543 (2022) - Broadband Infrastructure | Florida House of Representatives (myfloridahouse.gov)) (50% up to $5,000/pole); and West Virginia HB4001 (available at: HB4001 INTR.pdf (wvlegislature.gov) (per pole reimbursement amounts not yet specified).

dollars to pole replacements, asking electric utilities and their ratepayers to provide the funds for this double-dipping is simply wrong. Instead, the appropriate place to address these well-known and long-standing pole replacement costs is within an application for federal and state broadband grants, such as RDOF, coupled with the communications industry's abundant cash flow ($8.7 billion this year for Charter alone).

The drive by Charter and others to urge the Commission to shift legitimate and well-known pole replacement costs from the new attacher to the pole owner, and the concurrent push for pole replacement funding at the state level, raises legitimate questions regarding the efficacy of the reverse auction format utilized by the agency in the RDOF auction. The only logical conclusions one can reach to explain the drive by Charter for these alternative funding and cost avoidance measures is either that they want to supplement the profits they already calculated with additional funding from utilities and the government, or that they bid below the cost to meet their RDOF commitment. In either case, it makes no sense for the Commission to reward such behavior with additional subsidies. If some states wish to create pole replacement funds to supplement the federal funds that broadband providers already receive, they have authority to do so and can make that decision through the legislative process. But NRECA respectfully submits that allowing each state to make its own policy decision to fund pole replacements is better than imposing a federal mandate in the 28 states subject to Commission jurisdiction that utilities and their ratepayers must provide even more double-dipping pole replacement cost funding to these entities. Should the Commission grant additional pole replacement subsidies in this proceeding, and then more states create pole replacement funds, the result will be triple dipping by RDOF winners to cover these well-known and legitimate costs.

B. Because Electric Cooperatives Already Constructed Pole Distribution Systems to Deliver Electricity to High-Cost Areas, Broadband Providers Now Have Access for a Fraction of That Cost

To meet the electricity needs of rural Americans, the nation's electric cooperatives managed to construct a pole distribution system to reach farms, homes, and other businesses throughout high-cost and low-density areas in rural America. Small business electric cooperatives constructed, and for many decades now have maintained, these pole networks as a necessary burden to keep the lights on in rural America. Broadband providers are now being called upon (and being subsidized) to deliver broadband services to these same high-cost areas. But the cost for broadband providers to access existing pole distribution systems to meet that need is only a small fraction of the cost they would incur to construct their own pole distribution systems.

One electric utility calculated that it would cost approximately $60,000 per mile to duplicate its pole infrastructure in rural areas.[11] By comparison, according to NCTA – the Internet & Television Association, the annual cost to attach to an electric cooperative's pole is $15.39. By NCTA's calculation, at 18 poles per mile this annual rental rate would cost the attacher approximately $277 per mile per year.[12] At this rate, it would take a cable attacher well over 200 years in pole attachment fees to match the initial cost of building a mile of pole infrastructure ($60,000/$277 = 216.61). As for pole replacement costs, Charter complained that

[11] In the Matter of Commonwealth Telephone Company LLC d/b/a Frontier Communications, Commonwealth Telephone Company LLC, Frontier Communications of Breezewood, LLC, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications Company of West Virginia d/b/a Frontier Communications Company of West Virginia, and Frontier West Virginia Inc., Complainants, v. Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company dba Allegheny Power, Monongahela Power Company, and the Potomac Edison Company, Respondents, EB-14-MD-008, Docket No. 14-218, filed July 11, 2014, p. 25. This cost estimate is from 2014 so the cost to duplicate pole infrastructure per mile in rural areas has likely increased since then.

[12] NCTA, "High Pole Costs Harm Broadband Deployment, Pole Attachments" (available at: Pole Attachments | NCTA — The Internet & Television Association) (last visited Apr. 22, 2022).

"as many as one out of every twelve poles needs to be replaced" in one of its rural buildouts.[13] But even assuming this outlier applied in all cases, if a new attacher paid to replace every twelfth pole, that still equates to only $5,000 per mile ($60,000/12 = $5,000, or eight and one-third percent (8.33%) of what an entirely new pole distribution system would cost to construct in a rural area. This does not even include the ongoing maintenance, vegetation management, and other costs associated with managing this infrastructure, which typically cost pole owners many hundreds of dollars more per mile per year. These data clearly show that the savings to communications attachers are substantial, and that having access to this fully constructed pole distribution system is already an enormous benefit. Simply put, now that the pole distribution system has already been built by electric utilities, communications attachers today have a much easier time reaching rural customers to provide broadband service than electric cooperative pole owners did, and still do, to reach rural customers to provide electric service.[14]

Considering the success of electric cooperatives in constructing and maintaining an entire pole distribution system to reach areas previously unserved with electricity, considering that broadband providers can now piggyback on that system for a small fraction of the cost, and considering that broadband providers are positioning themselves to receive tens of billions of dollars to extend their networks using already-constructed pole distribution corridors, NRECA's small business electric cooperative members are highly skeptical of broadband provider claims that they need the FCC to reduce the legitimate and well known pole replacement costs and shift

[13] *See, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, NCTA – The Internet & Television Association, Petition for Expedited Declaratory Ruling, at p.6, WC Docket No. 17-84 (filed July 16, 2020) ("For instance, in one major broadband construction project that has included (to date) over five thousand miles of new rural plant, Charter has encountered situations in which as many as one out of every twelve poles needs to be replaced.")

[14] It is also worth noting that from a cost sharing perspective, high-cost areas and low-cost areas are routinely combined into system-wide costs by communications companies and electric utilities alike, enabling one area to offset the other to level the burdens.

those cost to the utility pole owner and electric rate payers and/or double-dip into additional funding supplied by state pole replacement funds. It seems clear that these companies are asking the Commission to supplement their profits to serve these areas at the electric utility industry's expense.[15]

C. Utility Poles Are Not a Monopoly

Attachers continue to claim that utility poles are a monopoly. Existing utility poles are not a monopoly, but they are often the least cost option now that utilities have undertaken the significant capital investment and ongoing operations and maintenance costs to construct and maintain these assets. But entities deploying broadband have multiple options, as evidenced by the experience of electric cooperatives that are deploying broadband outside their electric service area. Just as electric cooperatives have done in areas outside their electric service territory, other broadband providers can bury their cable underground, construct their own pole infrastructure along public rights-of-way, or attach to existing pole infrastructure. When deploying broadband outside their electric service territories, electric cooperatives use any combination of these options, and switch between options as circumstances dictate. Regardless of which route they take, electric cooperatives providing broadband make the necessary investment to meet their deployment obligations. They do not seek to game the regulatory system or seek to double dip

[15] Offhand claims that utility poles somehow generate profits are ludicrous and unfounded. Pole ownership is a burden necessary to deliver services that utilities bear and that communications attachers exploit. If utility pole ownership were the "profit center" some attachers claim, then surely an enterprising company would have emerged to seize the opportunity. For example, highly successful companies like American Tower, Crown Castle, and others have emerged to play an important role in erecting and maintaining cellular towers to lease space to multiple mobile service providers. Given their success, it is illuminating that no company like American Tower or Crown Castle has tried to build and market pole distribution systems. The answer is simple - utility pole ownership is not a money-making venture, but rather a necessary expense for utilities which communications companies access at very low cost but at considerable inconvenience to pole owners.

into further subsidizing longstanding, legitimate and well-known costs of deployment that any reputable existing provider would have included in its original deployment cost model and plan.

D. Utility Poles Should Be Treated No Differently Than Other Privately-Owned Broadband Cost Inputs

Charter and NCTA are seeking the federal regulation of private assets, namely electric utility poles. Investor-owned utility poles are privately paid for and maintained by regulated utilities, and electric cooperative poles are privately paid for and maintained by cooperative members in a not-for-profit structure. No other legitimate cost input to broadband deployment is subject to such potential regulation to benefit one private entity over another. For example, the cost of fiber optic cable is one of the higher expenses in any broadband deployment, but no one is asking Corning to reduce what it charges broadband providers for fiber. Labor is another expensive input in any broadband deployment, but no one is asking employees to reduce their wages to further spur broadband deployment. Pole replacement costs are similar legitimate and well-known deployment costs that should be treated no differently than other broadband cost inputs. The Commission should therefore reject this one-sided and illegitimate push by the cable industry to require utility pole owners to reduce their legitimate cost-based pole replacement charges.

E. Overseeing a Pole Replacement Cost Allocation Regulatory Regime Would Be An Administrative Nightmare That Would Only Increase Costs And Delay The Process

The Second Further Notice asks numerous questions regarding pole replacement cost allocations that envision a complicated process. In just one paragraph, for example, the Second Further Notice asks:

> Should the Commission address this issue by revising section 1.1408(b) to expressly create a presumption that utilities directly benefit when they use a pole replacement precipitated by a new

> attachment request as an opportunity to upgrade the pole or expand it for its own use and should, therefore, pay a proportional share of the pole replacement costs? If so, what are the specific circumstances to which such a presumption would apply? Specifically, we seek comment on when an upgrade or expanded use of a pole by a utility confers an incidental versus direct benefit to a utility. For instance, NCTA and other commenters urge us to require utilities to share in the costs of a pole replacement that results in the utility obtaining excess capacity for its own use.[16]

This single set of questions alone create a contentious process. Attaching entities are entitled to their own opinions, but as the trade association for hundreds of electric cooperative pole owners, NRECA unequivocally contends there is no basis to create a presumption, rebuttable or not, that utilities directly benefit when a pole replacement is precipitated by a new attachment request. This is a false presumption. Cooperatives and other utilities are obligated through electric service agreements to conduct ongoing maintenance of their infrastructure to ensure electric grid resilience and reliability. Routine pole inspections are performed to meet these obligations. Pole replacements paid for by new attachers are not usually due to the age or condition of the pole but occur instead because a stronger or taller pole is necessary to accommodate the proposed communications attachments. There is no electric system need for taller poles. They are only required to accommodate communications attachers to maintain required clearance heights.

When replacements are required to accommodate proposed attachments, the pole owner charges the replacement costs to the company whose attachment request necessitated the new pole. No profit is made by the pole owner, nor should any utility pole owner be required to subsidize the broadband deployment of attaching providers. Any cost for pole replacements inappropriately shifted from an attacher (cost-causer) to the utility pole owner would amount to

[16] Second Further Notice at ¶ 23.

an unanticipated and unbudgeted expense that will negatively impact the operational and maintenance budget of the utility pole owner. Creation of the proposed regulatory cost allocation process would encourage new attachers to challenge any pole owner determination that the new attacher cover a substantial portion of any pole replacement. If the cost to replace numerous poles were challenged by an attacher, the potential hit to a pole owner could be substantial causing that pole owner to contest any such challenge.

Requiring a pole owner to carry all or a substantial portion of the financial burden to replace a pole that would otherwise not have to be replaced for years is not a benefit. It diverts vital resources from the areas of most need to the pole owner, which might include maintenance and upgrades of substations, distribution lines, distribution equipment, trucks, offices, etc., or the hiring of sufficient personnel to perform necessary electricity distribution tasks. To cite pole replacements alone, if a utility were required to subsidize some portion of communications company pole replacements, it potentially reduces funding available to replace red-tagged poles outside the specific broadband deployment area in question.

The creation of specific rebuttable criteria and some regulatory process under which the cost of every single pole replacement might be allocated between the pole owner and a new attacher would be complex and counterproductive, and the process itself would end up increasing costs and delaying deployment. The process of entertaining pole-specific technical determinations on numerous factors, including each pole's age, condition, strength capabilities, local geography, local storm and fire requirements, applicable wind and ice loading from new attachments and other existing attachments would be complicated for everyone involved, including the regulator. To make and present such determinations, pole owners and attachers would need outside engineers and lawyers to work with company personnel to argue their

respective positions. The more circumstances that are implemented, the more complex and burdensome the process will become. Commission Staff in the end would be given the unenviable task of sorting through all of these voluminous competing pole-specific details in an attempt to provide a reasonable evaluation within a reasonable time frame so as not to further delay deployment of broadband facilities.

The only entities that would benefit from such a regime would be the many engineers and lawyers to whom attachers and pole owners would be required to pay exorbitant fees to fight over each pole's "proper" cost allocation. Certain broadband providers would be inclined to game any such rules to reduce their costs and shift them to the pole owner. And the pole owners would have no interest in subsidizing these providers. Such a regime to adjudicate pole cost allocations would therefore be complex and contentious, and the Commission should reject any such proposal to create one.

F. The Commission should Approve the EEI Pole Refund Petition

NRECA urges the Commission to grant EEI's Petition for Declaratory Ruling (1) that the "applicable statute of limitations" under Rule 1.1407(a)(3) is the same as the two-year limitations period set forth in 47 U.S.C. § 415(b); and (2) that it is not "appropriate" for complainants to recover refunds for periods that precede good faith notice of a dispute. Though the Commission raised a few questions regarding its refund policy in the Second Further Notice of Proposed Rulemaking ("Second FNPRM"), the record is already sufficiently developed to rule on EEI's Petition for Declaratory Ruling.

NRECA agrees with the EEI petition that lengthy refund periods that precede a notice of a dispute do not serve the purpose of Rule 1.1407(a)(3) or promote broadband deployment. Instead, they present a significant barrier to broadband deployment by increasing uncertainty and fueling potential disputes between utility pole owners and attachers. The Commission should not

subject electric utility pole owners to variable and lengthy state law limitations periods. The Commission's current approach to refund claims creates shocking, unreserved demands for periods long passed, which serve as a barrier to productive negotiations and for electric utilities to enter into collaborative deployment partnerships that are required to meet our shared goal of bridging the digital divide. The Commission should instead clarify it will treat electric utility pole owners consistent with ILEC pole owners, which are protected by the two-year limitations period in Section 415(b).

III. CONCLUSION

NRECA appreciates this opportunity to offer its observations that broadband providers, and especially recipients of federal and state grants, do not need additional funding from electric utilities and their ratepayers to be profitable and to deploy broadband. The Commission should

reject the NCTA proposal. The electric utility industry should not be required to finance communications industry broadband rollouts under any circumstances.

Respectfully submitted,

National Rural Electric Cooperative Association

By: _____/s/_____

Brian M. O'Hara
Senior Director Regulatory Issues
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
703-907-5798
brian.ohara@nreca.coop

Of Counsel:
Thomas B. Magee
Keller and Heckman LLP
1001 G Street NW, Suite 500 West
Washington, DC 20001
202-434-4128
magee@khlaw.com

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