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27 June 2022

VIA ECFS

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

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

Dear Ms. Dortch,

As the Commission is aware, section 224(b) of the Communications Act of 1934 grants the Commission the authority to regulate the rates, terms, and conditions of pole attachments, that is, any attachment by a telecommunications provider to a pole, duct, conduit, or right-of-way owned or controlled by a utility. For more than a decade the FCC has been remaking the rules for pole attachments with the goal of creating a system that speeds the deployment of broadband to all corners of the nation. At issue now is how to establish regulatory certainty where pole replacements, and allocation of the costs for that replacement, are concerned.

Increasingly, pole owners have been requiring the attacher to pay the entire cost of a pole replacement regardless of whether the new attachment is the sole cause of a pole replacement or not. The current rules allow that a pole owner can require an attacher to pay the entire cost of a new pole but and then also allow the utility, the pole owner, to charge rent for attaching to that same pole. This scheme would not work in any other economic scenario. Imagine paying a builder to build a house only to then have the builder own it, and then require rent to be paid to the builder to actually have someone live in the house. The Commission must create a fair allocation of costs on replacement poles, and end the current abusive scheme.

In addition to providing a more sensible solution, time is of the essence. Measures should be taken to expedite the approval of requests to attach equipment. Any barriers or systems that slow the expansion of broadband via pole attachments should be examined, including whether a better flow of information

to the attachers from the pole owners regarding the condition of the poles would help avoid conflicts in the first place or make the resolution of disputes easy and faster when they do occur. Cost allocation and increasing the speed at which broadband can be rolled out are crucial steps in closing the broadband access gap, and hence benefitting the economy broadly and individuals specifically.

As has been well documented over the years broadband continues to be a reliable economic multiplier for the U.S. economy and a steady contributor to the financial health of states, counties and towns. Access to broadband improves the economy broadly even as it benefits local economies. Poles are a critical element in providing access by extending broadband access to further reaches of the country at a reasonable cost to millions of Americans. So, charting the right path forward for pole attachments is important as it is fundamentally about the expansion of access to broadband, and hence the betterment of our economy and individual's lives.

Access to broadband is also about advancing innovation. While innovation is a simple concept it is a highly complex in its manifestation, requiring the interplay of many factors in a broad ecosystem that is supportive of innovation. The broadband system in the U.S. is part of that ecosystem and is a critical input for innovation in this country. Access to broadband has been shown time and again to be a key to various undertakings and enterprises whether in the urban core or far-flung rural communities, allowing more people to gain information, form a business, improve their mental and physical health, participate in education more fully or simply for entertainment.

Slowing the broadband rollout then stands in absolute opposition to innovation, the betterment of the economy and the national policy of greater broadband deployment across the country. Government should be asking what it can do to enhance broadband availability and penetration. Government could play a key role in continuing the success of broadband by addressing the real need for a systematic analysis and removal of barriers to infrastructure deployment. As the U.S. economy continues to stumble, removing such barriers is critical to allow for the continued investments in network infrastructure. The need is not just broadly economic but also important to individual consumers across the country, but particularly to those in rural areas.

The identification of the challenge and the importance of crafting a correct solution has been made clear elsewhere.

Similarly, rents set for attachment of broadband equipment and lines to existing poles must avoid arbitrary rate increases that slow deployment and increase costs to consumers.

Pole owners should not be able to arbitrarily raise costs on broadband providers. This challenge becomes particularly acute in areas with fewer homes where broadband providers need to access a greater number of poles for every home served. Costs, delays, permitting or other regulatory hurdles become increasingly large barriers for broadband deployment.

Timely, fair and cost-effective should be the goals of all those who want broadband access in rural and agricultural areas. While it seems easy enough to attach broadband cables to utility

poles, the process still involves permitting, renting space for equipment, and often replacing poles. Each pole requires an attachment, and the pole owners charge a price for each attachment – but that tends to be just the beginning of the money being sought.

In addition to the attachment cost, those who attach to poles are often forced to bear the entire financial burden of replacing any poles that were previously damaged, worn out or otherwise unusable. Normally, of course, the owner would bear the expense. In the case of broadband providers, they either pay, go to court, or are stopped from providing service to those who want it. With yet more expense, the provider is effectively limited at the margins in how many new customers they can serve. At the least, replacement or upgrade costs should be fairly distributed between pole owners and those who seek to attach new equipment.

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Quick decisions in pole disputes and fair treatment of all parties in something as arcane as attaching equipment to old wooden poles can very directly bring broadband to more people. The big picture is clear, we should close the distance on the last mile of broadband delivery. Pole owners who hold up progress by holding up broadband providers are missing the forest for the poles.

Broadband companies want to provide service deep into the underserved areas, and have even made commitments to that end in accepting the RDOF money. Nevertheless, high fees they must pay and the costs being then shifted to them to replace polls drives up the costs. This means less deployment.¹

Requests to affix a new antenna to an existing pole should be welcomed, even encouraged, with rates that are reasonable and designed to encourage greater broadband roll out, not rates designed to benefit the local co-op, municipal electricity company, or government broadband provider. To do otherwise is to ignore the challenge of the last parts of the country being provided with broadband access.

Such pole access requests should be processed quickly by the pole owners. Given the competitive conflict often present in pole access decisions, that some who own poles are also considering getting into the broadband business or already have, action must be taken. If the goal is truly to provide service to more of the currently unserved then slow responses to attachment requests should not be tolerated.

The facts have been laid out to the Commission previously.

¹ Bartlett Cleland, Adjunct Scholar, The James Madison Institute and Executive Director, Innovation Economy Alliance “*Bridging the Final Gaps: Policy Paths for Broadband Deployment in Florida.*” James Madison Institute. https://www.jamesmadison.org/wp-content/uploads/2021/03/Broadband_Policy_Brief_Mar2021_v02.pdf at page 5.

The reality of our digital divide is hard to ignore. According to the FCC’s own studies, while 97% of Americans in urban areas have access to high-speed fixed Internet service, that number plummets to 65% in rural communities.² All in, nearly 30 million Americans are effectively shut out of the digital era.³ The ramifications of this disparity are far reaching. Without reliable access to high-speed Internet, unserved rural communities are left at a distinct disadvantage in recruiting high paying jobs, providing 21st century educational opportunities, and attracting the most talented workers. Addressing this challenge has only grown more urgent due to our present pandemic. This crisis has shown that reliably fast Internet is critical for services like distance learning and telemedicine—both of which are severely strained in rural locations around the country.

However, deploying high-speed broadband in unserved rural areas will not be achieved through expensive government subsidies. Solving this problem will require creating the right market conditions for a significant increase in private sector investment, due in no small part to the complicated logistics of providing infrastructure to sparsely populated communities. Government should not increase these costs through mandates, but instead immediately pursue removing artificial barriers to such investment.

One such persistent barrier to rural broadband buildouts has been the cost of pole replacements. Without any market-driven need to upgrade these poles, many are nearly fifty years old and in need of replacement before additional attachments can be accommodated. According to some broadband providers, the expense of upgrading or replacing aging poles can commonly constitute as much as 25% of a rural buildout’s cost.⁴ Those staggering numbers often limit the reach of buildout projects leaving too many households on the wrong side of what is becoming a digital chasm.

Replacement of these aging facilities is ultimately a necessity for the heavily regulated utilities that own and operate them, yet they often leverage their monopoly position to seek to shift the entirety of these replacement costs to the attaching entities. In an efficient and competitive market, pole owners would not be able to shift all of these costs in this manner, as they would be limited by competitive pressures to charging fees much closer to their actual costs of allowing the attachment. Although local utilities’ monopoly control over poles forecloses a competitive market for pole attachments,⁵ Congress and the FCC have historically sought—

² *Bridging The Digital Divide For All Americans*, Federal Communications Commission, <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans> (last visited Aug. 12, 2020).

³ *Id.*

⁴ Petition for Expedited Declaratory Ruling, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (filed July 16, 2020) (“DR” or “Petition”) at page 6.

⁵ Congress, the courts, and the FCC have long recognized this monopoly. See *Communications Act Amendments—Penalties and Forfeitures Authority and Regulation of Cable Television Pole Attachments by the Federal Communications Commission*, S. Rep. No. 95-580 at 13 (Nov. 2, 1977) (“Public utilities by

through the regulation of pole attachment rates—to create a framework that is at least closer to a market outcome than monopoly pricing.”⁶

The issue must be addressed immediately as the implications for both the U.S. economy as well as millions of individual consumers are clear. That is to say, if the pole access question is not addressed correctly then the country will not receive the broadband that it could otherwise have.

With the tens of billions of dollars flowing to the states and localities from the federal government to try to spur quicker broadband build out to the unserved, failing to address this issue will be more than a lost opportunity, it will result in the waste of precious taxpayer dollars. This is an issue of precious resources being used as desired by Congress, not being wasted enriching others. This is also, at its heart, simply a question of deployment, of more broadband, more places for more people. This is an opportunity to set things right.

Respectfully,

A handwritten signature in black ink, appearing to read 'Bartlett D. Cleland', written in a cursive style.

Bartlett D. Cleland
Executive Director
Innovation Economy Institute

virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates.”) (citation omitted), *reprinted in* 1978 U.S.C.C.A.N. 109, 121; *NCTA v. Gulf Power*, 534 U.S. 327, 330 (2002) (“Since the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.”); *Alabama Cable Telecommunications Ass’n*, 16 FCC Rcd 12209, 12234 (2001) (noting “the bottleneck monopoly status of the utilities’ poles”).

⁶ Comments to the Federal Communications Commission, in re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 by Bartlett D. Cleland, Innovation Economy Institute; David Williams, Taxpayers Protection Alliance; et.al. 2 September 2020.