

April 17, 2023

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street, NE  
Washington, D.C.

Re: WB Docket No. 17-84, *Accelerated Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Ms. Dortch,

The sixteen below-named providers of high-speed internet and communications services, respectfully request that the Commission move promptly to issue an Order on its Second Further Notice of Proposed Rulemaking in this proceeding. **The Commission is uniquely positioned to provide common-sense guidance and timelines to ensure that broadband is available to every home and small business in the country. We encourage the Commission** to require that:

1. Investor-owned utility (IOU) and local exchange carrier (LEC) pole owners share in the cost of replacing poles.
2. Disputes between attachers and pole owners should be resolved in a truly expedited fashion that protects the process against pole owners' anti-competitive incentives and well-documented, longstanding patterns of delay and obfuscation.

**For too long, pole owners have exploited their monopoly power to receive windfalls by pushing the entire cost of pole replacements onto a new user of their pole—all while concurrently charging ratepayers to recover the same costs.** Certainly, attaching providers benefit from a new pole, but *so do the pole owners*, and a fair cost-sharing regime that reflects the benefits on both sides of this equation is economically sound and fundamentally fair. As pole *owners*, IOUs and LECs are able to:

1. Depreciate poles on their taxes (even when a broadband provider pays the entire cost of replacing a pole, *the IOU/LEC still owns it* in the end),
2. Use the added pole capacity (typically replaced poles are taller and stronger) for their own needs;
3. Collect rent from existing users of the pole (including from the broadband provider—even when the provider covered the entire cost of the new pole),
4. Gain additional space to rent to new users of the pole, and
5. Enjoy lower maintenance costs with a new pole.

**As the expert agency in this space, the Commission can both address these issues and send a clear message more broadly that broadband funds should be used fairly and efficiently.** Requiring third-party broadband providers to cover 100% of the costs of replacing poles—a significant cost in any broadband project—is uneconomical, illogical, and unfair. Without relief and guidance from the Commission, the direct impact will be significantly slowed deployment of broadband that will reach fewer unserved homes and small businesses. The relief we request is not a stretch, or even a modest reach. The Commission has developed an extensive record in this docket, including policy and legal arguments, data, economic studies, and examples of the impact of abusive practices by pole owners on the ability of broadband providers to bring high speed connectivity to all Americans, including to rural,

unserved areas. It is crystal clear that relief is needed to advance the goal of bringing broadband to every person and every small business, in every part of this country, in a timely manner. The record demonstrates that IOUs—owners of the *only* set of utility poles in their areas—have every incentive to oppose a fair approach to sharing the cost of pole replacements. The record also makes clear that many pole owners, who themselves are building out broadband (or are planning to do so), have every incentive to delay, and shift as many costs as possible, to their potential broadband competitors.

The Commission asks whether perverse incentives exist today that interfere with broadband deployment. The answer—as evidenced in the comments—is a resounding yes. Pole owners avoid replacing poles today if they can delay replacement until they can require a third party attacher, as a condition of access, to pay the full cost of a new pole.

**The problem of skyrocketing pole replacement costs paid solely by the new broadband attacher, and the delays in resolving disputes, threatens the country’s once-in-a-generation opportunity to close the digital divide.** With the significant influx of government funding for broadband deployment to unserved and underserved areas, most notably, the \$42.45 billion allocated by Congress for the Broadband Equity, Access, and Deployment (BEAD) Program, the problem of high pole replacement costs and delays will soon accelerate these complaints from a murmur to a fever pitch. These government funds will go further, and accomplish the goal of service to all, if a fair allocation scheme is required of the monopoly providers. And the buildout will go faster if the Commission resolves disputes with a speed that reflects the need for homes and businesses to get connected to high speed broadband as quickly as possible.

These problems with skyrocketing costs for pole replacements and delays arising out of the dramatically tilted playing field have been around for a long time, and it is past time for reform.<sup>1</sup> Now, builders and service providers are submitting new evidence into the record that these issues persist:

- [Crown Castle](#) describes the effects of pole owners’ bargaining leverage: “These pole owners flout the Commission’s rules by demanding that a new attacher pay to replace a pole that should have either been replaced or scheduled for replacement already. When pole owners make these unreasonable demands, attachers are sometimes forced to pay the full cost of the pole replacement or risk not being able to deploy new networks. As the Commission has repeatedly recognized . . . attaching parties have no bargaining power in negotiating these demands with pole owners.”
- [Altice USA](#) submits that “pole owner practices . . . continue to create unnecessary impediments for attachers . . . . These impediments arise at every stage of the attachment process—starting

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<sup>1</sup> See, e.g., Reply Comments of AT&T Inc., RM No. 11293, 3 (filed Dec. 19, 2005) (arguing that electric utilities have “unprecedented bargaining leverage over ILECs”); Reply Comment of Sprint Nextel Corporation, WC Docket No. 07-245, RM-11293, RM-11303, 4 (filed Apr. 22, 2008) (contending that electric company or ILEC poles are “another example of a bottleneck facility controlled by entities possessing market power”); Reply Comments of T-Mobile USA, Inc., RM-11293, 10 (describing both the delays experienced when working with pole owners and the effect of that delay on the efficacy of the FCC’s complaint process); Pole Attachment Complaint of Verizon Virginia LLC and Verizon South Inc., Docket No. 15-190, File No. EB-15-MD-006, 2 (filed Aug. 3, 2015) (*proceeding dismissed with prejudice following settlement*) (alleging that a local utility had delayed pole rental negotiations for nearly twenty-two months).

with overly burdensome pre-attachment surveying and engineering requirements and continuing through make-ready—and, when added together, significantly undermine and delay attachers’ ability to deploy broadband facilities and serve customers in a timely and cost-effective manner.”

- Providers like [T-Mobile](#) have indicated that IOU requests to replace a pole when a new attachment is not the cause for the replacement (i.e. the pole has a pre-existing condition or is scheduled for replacement) “depletes the financial resources available for broadband deployments.” Instead, the Commission should recognize the benefit that pole owners derive from pole replacements and ensure that new attachers are not subsidizing utility plant upgrades.
- [Multiple providers represented by ACA Connects](#) allege that the costs associated with pole replacement—IOWs typically charge between \$6,000—\$30,000 for a *single* replacement pole—have made it necessary to settle for underground deployments despite this approach typically being two times more expensive than an aerial build. New Lisbon Broadband Communications and MetroNet report that higher pole replacement costs have made boring a more cost-effective deployment option, with MetroNet amending its network design to go underground in seventy-five percent of new builds.
- [Breezeline](#) submits that it pays significantly more for pole replacements when working with larger IOUs than it does when working with co-ops and smaller utilities in Virginia and Pennsylvania on similarly complicated replacements.

To put these high replacement costs in context, the Coalition of Concerned Utilities, in their Reply Comments, claimed that, at any given time, the costs associated with pole replacements could range from \$800 to \$6,000 or more. The reality is that costs are significantly higher and climbing.

For all of the above reasons, we urge the Commission to move this proceeding forward as quickly as possible by issuing an Order that ensures a fair process for allocating the cost of a replacement pole between pole attachers and pole owners, and to expedite to the greatest extent possible disputes involving access to poles.

Respectfully submitted,

Altice USA, Inc.  
Biddeford Internet Corporation d/b/a “GWI”  
Charter Communications, Inc.  
Conterra Ultra Broadband, LLC  
Cox Communications  
Crown Castle Fiber LLC  
Hilliary Communications  
Ideatek Telecom, LLC  
Mediacom Communications Corp.  
Service Electric Cable TV  
SmartCom Telephone, LLC  
Sonic Telecom, LLC  
Talkie Communications  
Tilson Broadband  
Vermont Communications Union Districts Association  
Zayo Group LLC