

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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

**COMMENTS OF THE  
WIRELESS INFRASTRUCTURE ASSOCIATION**

Stephen Keegan  
Counsel, Government Affairs

**WIA – The Wireless Infrastructure Association**  
2111 Wilson Blvd., Suite 210  
Arlington, VA 22201  
(703) 621-0525

June 27, 2022

**TABLE OF CONTENTS**

- I. INTRODUCTION AND SUMMARY .....1
- II. COST ALLOCATIONS SHOULD REFLECT THE REALITY THAT POLE OWNERS RECEIVE A DIRECT BENEFIT FROM POLE REPLACEMENTS AND UPGRADES AND THUS CANNOT PASS THROUGH ALL COSTS.....2
  - A. UTILITIES DIRECTLY BENEFIT FROM POLE REPLACEMENTS, UPGRADES, AND MODIFICATIONS AND ATTACHERS SHOULD NOT BEAR THE FULL RESPONSIBILITY FOR THESE COSTS. ....3
  - B. POLE REPLACEMENT IS A DIRECT BENEFIT TO THE UTILITY, EVEN IF IT RESULTS IN EARLY POLE RETIREMENT.....4
- III. THE FCC SHOULD ESTABLISH CLEAR STANDARDS FOR WHEN AND HOW THE COST CAUSATION AND COST SHARING REQUIREMENTS APPLY TO POLE REPLACEMENTS. ....5
  - A. POLE OWNERS SHOULD NOT BE PERMITTED TO SEEK THE ENTIRE COST OF POLE REPLACEMENT, EVEN WHEN REPLACEMENT IS TO INCREASE CAPACITY FOR A PROPOSED ATTACHMENT .....5
  - B. THE COMMISSION’S RULES SHOULD PROTECT EXISTING ATTACHERS FROM MAKE-READY COSTS TO SHIFT EQUIPMENT DURING POLE UPGRADES. ....6
  - C. THE COMMISSION SHOULD ADOPT BROADER TERMS, OR BETTER DEFINE TERMS, FOR ADDRESSING POLE REPLACEMENTS .....7
- IV. THE COMMISSION SHOULD MAKE INFORMATION ABOUT POLE STATUS AVAILABLE AND EXPEDITE DISPUTE RESOLUTION. ....8
- V. CONCLUSION.....9

## I. INTRODUCTION AND SUMMARY

The Wireless Infrastructure Association (“WIA”) respectfully submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Second Further Notice of Proposed Rulemaking.<sup>1</sup> WIA strongly supports the Commission’s efforts to streamline regulations and to remove barriers to wireless infrastructure deployment. Specifically, WIA urges the Commission to clarify its rules related to pole replacement costs and end the practice of pole owners requiring attaching entities to bear the full cost of pole replacement.<sup>2</sup>

As billions of dollars in federal funding become available for broadband expansion, there is a distinct need for the Commission to streamline regulations and to remove barriers to wireless infrastructure deployment. Clear rules related to pole replacement costs are needed to ensure that these investments are not delayed or squandered through excessive make-ready costs. While there is significant national attention on connecting rural America, pole attachment rules will impact broadband deployment across the country and continue to be relevant as networks are improved to meet increasing demand. Accordingly, WIA encourages the Commission to:

- Clarify that pole owners generally benefit from a pole replacement, even when a replacement is precipitated to add capacity for a new attacher, and that its rules do not permit pole owners to impose the entire cost on the new attacher in light of this benefit.
- Provide clear guidance for attachers and pole owners regarding allocation of costs to replace or upgrade poles.
- Narrowly construe the reference in Section 1.1408(b) to costs “necessitated solely” by a new attachment to apply only to discrete make-ready needs precipitated by the new attacher.

---

<sup>1</sup> WIA is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. WIA’s members include infrastructure providers, carriers, and professional services firms.

<sup>2</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Further Notice of Proposed Rulemaking, FCC 22-20 (rel. Mar. 18, 2022) (“Second Further Notice”).

- Eliminate references to “red tagged” poles because the term is confusing and replace the term with broader, clearer language that more accurately reflects when a pole may need to be replaced for reasons other than to accommodate a new attacher.
- Take additional steps to make information about the condition of poles available to potential attachers.
- Expedite review of attachment disputes.

By taking these actions, the Commission will promote rapid broadband expansion and build upon its commitment to removing barriers that hinder infrastructure deployment.

## **II. COST ALLOCATIONS SHOULD REFLECT THE REALITY THAT POLE OWNERS RECEIVE A DIRECT BENEFIT FROM POLE REPLACEMENTS AND UPGRADES AND THUS SHOULD NOT PASS THROUGH ALL COSTS.**

The Commission properly expresses concern that efforts by utilities to require attachers to assume financial responsibility for a utility’s capital assets could deplete resources that would otherwise be available for broadband deployment.<sup>3</sup> It is time for the Commission to expressly recognize that pole owners receive a direct benefit from pole replacement.<sup>4</sup>

To prevent further disputes, the Commission should clarify that pole owners “directly benefit” from a pole replacement—even a pole replacement undertaken solely to increase capacity for a new attacher—and therefore must share in the cost of pole replacements. Further, the Commission should narrowly construe Section 1.1408(b) to make clear that costs “necessitated solely” by the attachment include only discrete make-ready needs precipitated by the new attacher.<sup>5</sup> On these points, WIA supports the cost allocation methodologies that have been proposed by participants in the wireless industry including NCTA and Crown Castle.<sup>6</sup> These clarifications are consistent with long-standing Commission precedent that a utility may not

---

<sup>3</sup> *Id.* ¶ 17.

<sup>4</sup> *Id.* ¶ 18.

<sup>5</sup> *Id.* ¶ 10.

<sup>6</sup> *Id.* ¶ 16 & n. 39.

impose all make-ready costs of a pole replacement on the new attacher,<sup>7</sup> and will encourage broadband deployment.

**A. Utilities Directly Benefit from Pole Replacements, Upgrades, and Modifications, and Attachers Should Not Bear the Full Responsibility for These Costs.**

A pole replacement confers a direct benefit to the owner in the form of the new pole. This benefit accrues to the utility even in the event of the early retirement of an otherwise serviceable pole or if additional space is not immediately utilized.<sup>8</sup> This benefit should be quantified, and pole owners should be required to pay a share of pole replacement costs consistent with the benefit they will be receiving whenever a pole is replaced to accommodate a new attachment.

When a utility must replace a pole, the new pole is often not identical to the original. In the case of a pole that is upgraded to a taller or higher class pole to create necessary vertical clearance or loading, the pole owner still directly benefits by obtaining a new, larger pole that will have lower maintenance cost and greater revenue generation opportunities for the pole owner.<sup>9</sup> Further, as noted by NCTA, the owner will generally obtain additional capacity through the pole upgrade, providing opportunities for more customers.<sup>10</sup> Accordingly, the Commission should declare that pole owners directly benefit from a pole replacement under Section 1.1408(b), and, as a result, the pole owner must pay its fair share of the costs. WIA supports the cost allocation methodologies proposed by NCTA and Crown Castle.

---

<sup>7</sup> See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, 36 FCC Rcd 776, 777 ¶ 8 (2021) (“*Pole Attachment Declaratory Ruling*”).

<sup>8</sup> Second Further Notice ¶ 28.

<sup>9</sup> See Comments of Charter Communications, Inc. on Petition for Declaratory Ruling, WC Docket No. 17-84 at 8 – 11, 25 - 81 (Sept. 2, 2020) (outlining the various economic arguments for how investments are realized on utility poles).

<sup>10</sup> See, e.g., Second Further Notice ¶ 19 n.52. The Commission has noted that unused space has the potential to be a burden to utilities if the extra capacity goes unused. However, the benefit is not contingent on the pole owner immediately making use of the extra capacity, rather the ability to host additional tenants, even without an active offer to use the space, is a direct benefit to the pole owner.

**B. Pole Replacement is A Direct Benefit to the Utility, Even if it Results in Early Pole Retirement.**

While utilities argue that the early replacement of infrastructure comes at a cost to them, either directly or because of an inefficient allocation of resources,<sup>11</sup> this premise is flawed and ignores the benefits received. Even if this replacement is made earlier than originally planned to accommodate an attachment, the pole owner is left in a better position than they started. Consistent with Commission rules and precedent, this benefit to the pole owner should be recognized in the cost allocation rules and the pole owner should have to share a proportionate amount of the costs for the new pole.

Early pole replacement is an issue of time-shifting; the pole would have been replaced in the future, whether in the relatively near future or in many years. The utility would eventually be required to replace the pole, regardless of requesting attachers. Thus, in the case of an pole being replaced before its planned retirement, attachers should at most be responsible for the average net book value of the pole.<sup>12</sup> The NCTA average book value proposal fairly compensates the pole owner for the remaining, undepreciated value of the pole, and the utility also gets the benefit of a new pole for its inventory.<sup>13</sup>

The Commission’s cost allocation rules should recognize that “utilities receive a windfall when they hold new attachers responsible for all the costs of a pole replacement because it eliminates or reduces the costs they would have otherwise had to pay to replace the pole in the future[.]”<sup>14</sup> The rules thus should preclude utilities from imposing all costs associated with pole replacements on attachers, even when replacement was necessitated for capacity. By adopting

---

<sup>11</sup> See, e.g., *id.* at n.82.

<sup>12</sup> *Id.* ¶ 30.

<sup>13</sup> NCTA, Petition for Expedited Declaratory Ruling, WC Docket No. 17-84, at 11, 23 (filed July 16, 2020).

<sup>14</sup> Second Further Notice ¶ 16.

clear rules on this issue, the Commission will expedite broadband deployment because disagreements can be avoided about what burdens can be shifted onto new and existing attachers.

### **III. THE FCC SHOULD ESTABLISH CLEAR STANDARDS FOR WHEN AND HOW THE COST CAUSATION AND COST SHARING REQUIREMENTS APPLY TO POLE REPLACEMENTS.**

The record already developed in this proceeding demonstrates that many pole owners are not applying the cost causation and cost sharing requirements in Section 1.1408(b) fairly, or at a minimum, there is significant disagreement regarding the Commission's rules.<sup>15</sup> Commission action is necessary to ensure fairness because the costs associated with collocating facilities directly impacts broadband deployment – as costs rise, the scope of deployments may decrease. Thus, it is essential that the Commission establish clear standards for determining who must bear the cost of pole replacement. As discussed below, the Commission should expressly state that attachers are not responsible for all pole replacement costs even when a new pole is necessary to create space for the proposed attachment. The Commission also should eliminate references to red-tagged poles because that term is open to confusion and misapplication.

#### **A. Pole Owners Should Not be Permitted to Seek the Entire Cost of Pole Replacement, Even When Replacement is to Increase Capacity for a Proposed Attachment**

Under the Commission's rules, attachers should not be responsible for all costs of replacing a pole, and when the pole replacement is required by the pole owner for reasons other than creating needed capacity for the new attachment, the attacher should not be responsible for any costs. Like previous commenters in this docket,<sup>16</sup> WIA members have been asked to bear the entire cost of pole replacement when the replacement is not "solely caused by" the new attachment. WIA

---

<sup>15</sup> See Second Further Notice ¶ 17 & n.46 (summarizing record of commenters stating that attachers are being required to "absorb costs that are not caused by their attachments and/or result in attachers assuming financial responsibility for a utility's capital assets").

<sup>16</sup> *Id.*

members have reported encountering pole owners that demand pole replacement even though the pole has vertical space for the new attachment and the new attachment passes loading standards (*i.e.*, there is not a lack of capacity). Generally, but not always, these demands occur when the pole is older or poorly maintained and the pole owner views the attachment request as an opportunity to install a new pole and shift all costs to the attacher. In these instances, pole replacement is not necessitated by a new attachment and the pole owner derives a significant benefit from the new pole.

The practice of requiring attachers to pay for new pole or upgrades not necessitated by a new attachment is directly at odds with Section 1.1408(b) of the Commission's rules, which specifies that all "parties that directly benefit from" a modification to a facility to accommodate an attachment must "share proportionately" in that cost.<sup>17</sup> The Commission should make clear that sharing proportionately in the cost of pole replacement means, for the attacher, paying only the costs the new attacher causes. This also means that when replacement is necessitated by preexisting conditions, the attaching party is not responsible for any part of the pole replacement, as the Commission has previously made clear.

**B. The Commission's Rules Should Protect Existing Attachers from Make-Ready Costs to Shift Equipment During Pole Upgrades.**

In the *Local Competition Order*, the Commission stated that an attacher is responsible for the entire cost of a new pole needed to create new capacity for its attachment "unless [other parties with attachments] expanded their own use of the facilities at the same time."<sup>18</sup> WIA urges the Commission to re-emphasize this point here – if existing attachers modify or expand their use on a pole as part of the new attachment process, they should be required to pay a portion of the costs.

---

<sup>17</sup> 47 C.F.R. § 1.1408(b).

<sup>18</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499, 16077 ¶ 1166 (1996) (*Local Competition Order*).

Conversely, if equipment is merely moved to accommodate a new attachment, the existing attachers should not incur any costs and the new attacher should be required to pay the direct costs – but nothing more – associated with moving the equipment.

**C. The Commission Should Adopt Broader Terms, or Better Define Terms, For Addressing Pole Replacements**

The *Pole Attachment Declaratory Ruling* and the Second Further Notice note that when a new attachment request precipitates the replacement of a “red-tagged” pole, the replacement is not “necessitated solely” by the new attachment.<sup>19</sup> However, the use of the term “red tagged” to indicate when a pole has been identified for replacement or maintenance has caused significant confusion. Pole owners are currently given broad discretion to determine when a pole has been “red-tagged” within the Commission’s rules. To eliminate this confusion, WIA urges the Commission to stop using the term and instead make clear that a pole replacement is not necessitated by an attachment when the pole is identified by the owner for replacement under any circumstances, regardless of whether the replacement is necessary to bring the pole up to safety standards or simply due to age and maintenance concerns.

Absent this clarification, pole owners will be rewarded for failing to maintain their infrastructure. Pole owners are currently incentivized to wait until the last possible opportunity to upgrade poles so they can shift the replacement costs to attachers. The Commission should rectify this situation by clarifying its rules to eliminate potential ambiguity around the term “red tagging,” and to impose cost allocation rules that leave no incentive for pole owners to take advantage of telecommunications attachments to address pole plant maintenance. Such rules will incentivize pole owners to address issues in an expedient manner and thus maximize available locations to site telecommunications infrastructure.

---

<sup>19</sup> *Pole Attachment Declaratory Ruling*, 36 FCC Rcd at 777 ¶ 8.; Second Further Notice ¶ 9.

If the Commission decides not to drop references to red-tagged poles, it should define the term to mean that there is a pre-existing condition at a pole that is not the new attacher's responsibility. As noted by Crown Castle, the term red-tagged "should include any pole where, based on an existing condition, the utility contends the pole must be replaced before any new attachment, or change to an existing attachment, may be made."<sup>20</sup> The key point is that the utility demands the pole be replaced based on a pre-existing condition (the pre-existing condition may be that the pole needs eventually to be replaced). Simply put, the existence of a pre-existing condition should preclude a pole owner from shifting the cost of replacing a pole to a prospective attacher.

#### **IV. THE COMMISSION SHOULD MAKE INFORMATION ABOUT POLE STATUS AVAILABLE AND EXPEDITE DISPUTE RESOLUTION.**

WIA supports the Commission providing clear guidelines that will help both utilities and attachers develop reasonable expectations about the costs associated with pole replacements. For example, WIA supports utilities making information on the status of poles available to potential attachers. Additionally, the Commission should develop an expedited review process to resolve attachment disputes.

***Making the Status of Poles Available.*** The Commission should adopt a mechanism for utilities to provide clear information about the maintenance status of a pole and its current condition.<sup>21</sup> By providing potential attachers with information concerning the condition or, and replacement plans for poles, attachers would be better able to understand the costs associated with making new attachment requests, which would facilitate better conversations with pole owners.

***Adopting Expedited Review.*** There remains an ever growing need for broadband capacity and efforts to expand broadband could be stymied by disputes over pole attachments. Lengthy

---

<sup>20</sup> Letter from D. Van Fleet Boys, Senior Counsel, Utility Relations, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WC Docket 17-84, at 2 (filed Mar. 9, 2022).

<sup>21</sup> Second Further Notice ¶ 35.

dispute resolution inevitably hurts consumers who may have to wait for service to reach them. Thus, the Commission should craft any new rules in a way that discourages litigation, which is inherently time consuming and can lead to inconsistent results.

Further, WIA supports establishing an expedited review process for attachment disputes.<sup>22</sup> The Commission should create rules for these reviewing disputes that encourage quick and efficient resolution. In particular, any complaint that involves active deployment of a network should receive expedited treatment by the Enforcement Bureau.

## V. CONCLUSION

By adopting and clarifying rules consistent with these comments, the Commission can ensure that infrastructure providers and carriers can more quickly expand their networks and provide connectivity to more communities across the country. Attachers and utilities both would benefit from Commission guidance that would minimize disputes and speed deployments going forward.

Respectfully submitted,

/s/Stephen Keegan  
Stephen Keegan  
Counsel, Government Affairs

**WIA – The Wireless Infrastructure Association**  
2111 Wilson Blvd., Suite 210  
Arlington, VA 22201  
(703) 621-0525

June 27, 2022

---

<sup>22</sup> *Id.* ¶ 36.