Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

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SUMMARY

Out of all of the proposals in the Notice of Proposed Rulemaking (NPRM), the one that has the most potential to accelerate broadband deployment is one-touch-make-ready (OTMR). Many utilities and attaching entities agree that OTMR would bypass the delays in the current process, reduce complexity, encourage cooperation, and provide safeguards to ensure that services are not affected and safety is maintained. While there is some opposition to OTMR from incumbent local exchange carriers (ILECs) and community access television (CATV) operators, a subset of ILECs actually support OTMR. For the reasons mentioned above, the Utilities Technology Council (UTC) supports OTMR and encourages the Commission to adopt a rule to require OTMR with appropriate safeguards, consistent with the comments on the record.

That said, there is disagreement on the record about the need and efficacy of shorter timelines for application processing and make-ready; and in fact, OTMR may obviate the need for shorter timelines. UTC opposes imposing shorter timelines because we are concerned that such change could have an impact on safety and reliability, particularly in the context of make-ready timelines and particularly regarding large orders. There is only anecdotal data to support shorter timelines, and even then, it is not clear that shorter timelines would really make a difference. Other issues, such as errors in the application and delays in responses from attaching entities, are bigger problems in terms of delays. In short, the potential benefit from shorter timelines appears to be outweighed by the risk to safety and reliability. In any event, any make-ready requirements must only apply to work in the communications space of the pole – not in the supply space. Moreover, any timelines must provide flexibility to allow the clock to be paused due to lack of resources and other issues, such as electric service restoration and other emergencies. Any work in the supply space must be done by utilities, and UTC, therefore,

opposes allowing third-party contractors to perform make-ready in the supply space due to safety and reliability concerns. For similar reasons, UTC also opposes allowing third party contractors perform engineering surveys.

UTC and other comments on the record also oppose the Commission's proposal to require public disclosure of a standardized schedule of make-ready fees. UTC and other comments also oppose those who urge the FCC to establish a pole attachment database. Make-ready fees are variable and utilities should be allowed to continue to charge fees on the actual costs, rather than estimating the fees on a per pole basis. UTC and other comments on the record strongly oppose proposals to eliminate capital costs from make-ready fees and pole attachment rates. As UTC and others explained in their comments, utilities already avoid double recovery of the capital costs from make-ready, and moreover, eliminating capital costs from make-ready and pole attachment rates would deny utilities just compensation in violation of the Fifth Amendment of the U.S. Constitution.

UTC and other comments also oppose the proposal to provide ILECs with regulated rates for pole attachments. Doing so would only increase disputes between utilities and ILECs, not resolve them as the Commission claims. Moreover, ILECs enjoy benefits that make their attachments distinctly different from other entities/attachments on the pole, and the Commission should not presume that ILECs are similarly situated to other attachers. Finally, the proposal shifts the burden to utilities and requires clear and convincing evidence to overcome the presumption in favor of the ILEC. This reversal in the evidentiary burden is contrary to Commission policy as well as case precedent and contract law, and lacks a reasoned analysis to support it, because comments on the record show no significant disputes with ILECs or any changed circumstances that would diminish ILECs' bargaining power in negotiating joint use

agreements.

UTC opposes comments that urge the FCC to expand its jurisdiction in order to regulate pole attachments on the poles of public power utilities and cooperative utilities. These entities are excluded from the FCC's authority under Section 224, and the Commission should not attempt to conflate Section 253 to assert jurisdiction to regulate pole attachments under that provision. As such, there is no legal or policy basis for regulating the pole attachment practices of these entities. Similarly, UTC opposes comments that urge the Commission to expand its authority in order to regulate light poles. Again, the Commission lacks authority to do so, and it should not regulate light poles because it would distort the free market that exists for wireless collocation. In addition, regulating light poles would discourage innovative approaches that utilities are offering to provide access to street lights.

Finally, UTC reiterates its opposition to the Commission's proposal to eliminate consumer protection provisions that require carriers to directly notify customers – including utilities and other non-residential and residential customers – about any copper replacement or discontinuance of service with sufficient advance notice of 180 days. UTC reiterates that electric utilities are uniquely affected because they lease circuits from the carriers, which help to support operational safety and reliability for electric substation monitoring and control as well as teleprotection. These circuits tend to be in remote areas where utilities lack access to reasonable alternatives. If a carrier transitions those circuits and replaces them with new services, those services may not provide the same reliability as the legacy service or they may not provide as cost-effective a solution as the legacy service. Worse, if the carrier discontinues that service altogether, the utility may lose connectivity to critical assets, threatening not just safety and reliability, but grid resilience, which is a critical component of our country's economic and

national security. Several utilities, as well as other parties, filed comments in opposition to this proposal.

In sum, electric utilities are doing their part to promote broadband by providing access at just and reasonable rates for pole attachments and by providing broadband infrastructure and services on both a wholesale and retail basis. It is time for the Commission to recognize that utilities are enablers of broadband, and to support utilities as they work with broadband service providers to serve America. Therefore, UTC supports the comments on the record that propose real solutions for moving forward to promote broadband deployment together – including one-touch-make-ready.

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The Utilities Technology Council ("UTC")[1] hereby files the following reply comments in response to the Federal Communication Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* in the above-referenced proceeding.[2] UTC reiterates its position expressed in its initial comments and that is supported by other comments on the record in response to the Commission's proposals.

Specifically, UTC opposes the proposal to shorten the timelines for application processing and make-ready. At the outset, the record does not show that reducing the timelines will accelerate broadband deployment, and in fact, many comments discount the premise of this proposal. Moreover, proposing to shorten timelines would place additional demands on utilities without any consideration of the additional resources that utilities would need in order to meet the deadlines, and it would not provide sufficient flexibility to toll the timelines for certain circumstances, such as lack of sufficient resources to process applications on a timely basis. In

[1] UTC was formerly the "Utilities Telecom Council". *See* www.utc.org.

[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry and Request for Comment, WC Docket No. 17-84 (rel. April 21, 2017). *See also* Federal Communications Commission, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, 82 Fed. Reg. 22453 (May 16, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-05-16/pdf/2017-09689.pdf.

that regard, UTC reiterates its opposition to the Commission's proposal to require utilities to process very large orders (*i.e.*; greater than 300 poles or five percent of the statewide pole inventory) within a prescribed timeframe, rather than to allow the parties to negotiate a timeline. In addition, UTC and other comments on the record emphasize that any make-ready timelines should only apply to work in the communications space, not in the supply space – and make-ready does not include pole replacements. Similarly, UTC echoes the comments by utilities that oppose allowing attachers to use third-party contractors to perform make-ready in the supply space. UTC also reiterates that it is opposed to allowing third-party contractors perform loading analysis as part of the make-ready process.[3] Utilities need to ensure that the loading analysis is performed correctly, because the loading analysis is critical to safety, reliability and infrastructure integrity. Allowing third parties to conduct the loading analysis could lead to errors that could undermine the safety and reliability of the poles.

UTC also continues to oppose the Commission's proposals that would regulate the rates for make-ready and pole attachments by preventing utilities from recovering their capital costs. As UTC and other parties on the record have commented, it is impractical to require utilities to provide standardized rates and publicly disclose this schedule of make-ready rates. Make-ready costs should continue to be recovered based on actual costs, rather than estimates that may under-recover the costs that utilities incur from make-ready work. Comments on the record have explained that utilities do not double recover their make ready costs through the capital accounts that go into the pole attachment rate. Utilities credit those costs back to the attaching entity that paid for the make-ready. As such, there is no reason for the Commission to regulate make-ready charges. Moreover, the Commission should not prevent utilities from including their capital

[3] Third-party contractors performing pole loading must be under the supervision of the utility. Utilities have experience with third-party contractors that have submitted erroneous engineering data.

costs in the regulated rate for pole attachments, because doing so would deny utilities just compensation under the Fifth Amendment of the U.S. Constitution.

UTC and numerous other comments on the record also oppose the FCC's proposals to provide ILECs with regulated rates for pole attachments. As UTC and numerous other parties on the record have commented, the proposal to provide ILECs with regulated rates would undermine joint use agreements that have been in place for decades, and would further subsidize the communications industry at the expense of electric ratepayers. Moreover, there are substantive and procedural issues associated with the Commission's proposal to presume that ILECs are similarly situated with other attachers (which ignores benefits that ILECs enjoy under their joint use agreements) and that place the burden on the utility to show that ILECs should not be entitled to regulated rates (which unreasonably reverses the Commission's policy that required ILECs to show they are entitled to regulated rates for pole attachments).

UTC reiterates its concerns about the Commission's proposal to impose a "180-day shot clock" on the Enforcement Bureau to process pole attachment complaints. Consistent with the comments on the record, the Commission should limit the shot clock to certain types of pole attachment complaints. Even then UTC is still concerned that the shot clock could prevent the Enforcement Bureau from adequately considering the evidence in a complaint proceeding. As such, UTC urges the Commission to require the parties to comply with pre-filing informal dispute resolution rules, and refrain from starting the clock until those requirements have been satisfied. Further, after a complaint is filed, the Commission must provide flexibility for the Enforcement Bureau to pause the shot clock under certain circumstances.

UTC also takes this opportunity to reply to comments on the record that raise certain additional issues. Specifically, UTC agrees with comments on the record that oppose further

expansion of pole attachment regulation of poles that are owned or controlled by public power utilities, cooperatively organized utilities and other entities that are excluded from the FCC's pole attachment jurisdiction.[4] The Commission lacks authority to regulate pole attachments by these entities. Section 224(a) of the Communications Act excludes these entities from the definition of utilities that are subject to FCC pole attachment jurisdiction. Congress recognized that there was no reason, as a policy matter, to regulate public power utilities and cooperative utilities because they are accountable to their constituents and cooperative members and thus have inherent incentives to provide access to poles at rates, terms, and conditions that are just and reasonable. In addition to lacking authority under Section 224, the Commission also lacks authority under Section 253 to regulate pole attachments, because that provision only applies to governmental entities that are acting in their governmental role to permit towers and manage the rights –of-way. It does not extend to public power utilities which are acting in a proprietary capacity.[5] Finally, there is no clear statement in Section 253 that would authorize the Commission to preempt state and local management of pole attachment practices, and doing so would conflict with the provisions of Section 224.

In addition, UTC also opposes various comments suggesting other ways that the FCC should expand its pole attachment jurisdiction. Specifically, UTC opposes expanding the FCC's jurisdiction to regulate access to light poles. Light poles are not "poles" within the meaning of Section 224, nor can the FCC interpret its authority to include them as such. As a legal matter, there is nothing in the statute or the history of the Pole Attachment Act to indicate that light poles

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[4] *See* 47 U.S.C.§224(*a*)(1)(excluding from the definition of a utility "any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.")

[5] *See* Comments of the American Public Power Association at 12-14, *citing Qwest v. City of Portland,* 383 F.3d 1236, 1240 (9th Cir. 2004) and S*print Spectrum v. Mills*, 283 F.3d 404, 421 (2d Cir. 2002)(explaining that the language of Section 253 relates to "statutes" "regulations" or "legal requirements" and that courts have concluded that thus Section 253 relates to state and local governments acting in their regulatory role, rather than their proprietary activities.)

are subject to the FCC's pole attachment authority.[6] Unlike utility poles that were designed for the express purpose to be used "in whole or in part, for any wire communications," light poles are completely different in that they were not built for wire communications at all.[7] In addition, the courts have limited the scope of poles that are subject to the FCC's jurisdiction.[8] As a policy matter, there is insufficient record to show that access to light poles is being denied, or that rates, terms and conditions are unjust or unreasonable. Moreover, expanding jurisdiction to include light poles would distort the free market that exists for wireless infrastructure access (e.g. towers). Given the Fifth Amendment Constitutional implications of expanding the FCC's pole attachment jurisdiction to include light poles and the impact that it would have on existing markets, the Commission lacks sufficient authority to interpret its authority expansively in this context. There are other alternatives besides access to light poles for wireless infrastructure deployment, and as such, there is no underlying basis or compelling rationale for the FCC to expand its jurisdiction to include light poles.

The underlying problem with many of the Commission's proposals in this NPRM is that they are policy-based and lack a sufficient record of evidence to support them and/or are in conflict with the express terms, legislative history and context of the Commission's statutory authority under the Communications Act. Combined, the proposals contribute to the impression that the Commission is inventing jurisdiction without any basis in fact or law. While the FCC has been able to defend its pole attachment policies in the past, courts are going to be less inclined to extend *Chevron* deference, particularly because pole attachments have been found to

[6] 47 U.S.C. §224.

[7] *See* 47 U.S.C.§224(a). *See also National Cable & Telecommunications Ass'n v. Gulf Power Co.*, 534 U.S. 327, 339 (2002) (recognizing that this language defines the poles that are covered under the FCC's jurisdiction.)

[8] *Southern Co. v. FCC*, 293 F.3d 1338, 1346 (11th Cir. 2002)(finding that the Act speaks precisely to the issue of poles that are subject to the Act, and that the Act does not extend to a utility's interstate electric transmission towers.)

effect a *per se* (i.e.; physical) taking of utility property, and the courts tend to narrowly interpret an agency's authority in such cases, particularly where the ripple effect of such regulation (e.g.; regulating light poles) would distort existing markets, which could result in further liability to the federal government for claims to just compensation.[9]

As a legal matter, because pole attachments effect a *per se* taking, the government must ensure that the pole owners receive compensation that reflects the earning potential of the property taken. Fair market value is the accepted basis for determining that earning potential.[10] The fair market value of pole attachments is readily determinable from comparable markets using other access alternatives (especially in the context of wireless attachments); notwithstanding the FCC's previous claims to the contrary.[11] As such, pole owners are entitled to pole attachment rates that are based on market value, and such value properly includes opportunity cost—the value of the services made possible by that access.[12] Thus, the Commission should not continue to claim that costs should be limited to incremental or historical costs, where market-based rate valuations would apply; nor for the same reason should it strip out capital costs from make-ready and pole attachment rates.

In addition, UTC echoes the comments that support the adoption of rules for one-touch-make-ready. UTC agrees with comments that OTMR may be the single biggest way that the

[9] *See* Gutierrez-Brizuela v. Lynch, 834 F.3d 1142, 1149 (10th Cir. 2016) (Gorsuch, J., concurring). *See also* Horne v. United States Department of Agriculture, 576 U.S. ___ , 135 S. Ct. 2419 (2015). *And see* Brian Hodges and Christopher Kieser, "Horne v. United States Department of Agriculture: The Takings Clause and the Administrative State" (Sept. 29, 2015), available at http://www.fed-soc.org/publications/detail/horne-v-united-states-department-of-agriculture-the-takings-clause-and-the-administrative-state.

[10] Christopher Yoo and Daniel Spulber, "Access to Networks: Economic and Constitutional Connections" Cornell Law Review, Vol. 88, May 2003 at 999.

[11] *Id.* at 1001. *But see* Ala. Cable Telecomms. Ass'n v. Ala. Power Co., Order, 16 F.C.C.R. 12209, 12234 ¶ 55 (2001), aff'd sub nom. Ala. Power Co. v. FCC, 311 F.3d 1357 (11th Cir. 2002)(finding that there was no "reasonable way to evaluate a pole attachment value using a comparable sales approach.")

[12] *Id*. at 1001.

Commission could promote broadband deployment. Further, UTC agrees that the FCC should adopt rules regarding OTMR because it is unlikely that incentives alone will encourage parties to cooperate. UTC also agrees with comments that express concerns about safety and reliability regarding OTMR, and we believe that t safeguards should be established to ensure that the work that is performed by an attaching entity is done safely and does not impact the services of other attaching entities.

UTC appreciates the FCC's expressed interest in protecting safety and preserving reliability. In that regard, UTC supports the comments on the record that propose holding attaching entities accountable and requiring existing attachers to remove unused attachments, make room for new attachers and reduce pole loads. Moreover, attachers should be held accountable for unauthorized attachments and safety violations under the provisions of their pole attachment agreements with utilities, and the FCC should allow utilities to impose penalties for unauthorized attachments and for safety code violations. Utility pole owners should also be allowed to require communications attachers to participate in an electronic notification system. Finally, utility standards for safety and reliability should be respected by attaching entities. These utility standards supplement and enhance the standards under the National Electric Safety Code (NESC) and guidelines under the Occupational Safety and Health Administration.[13] For all of these reasons, the Commission is right to balance the need to maintain safety and reliability with its desire to promote more expeditious pole attachments and enhance broadband deployment.

On the issue of broadband deployment, UTC reminds the Commission that despite the

[13] National Electric Safety Code, Institute of Electrical and Electronics Engineers, Inc., C2-2017 (2017). *See also* Communication Tower Best Practices, Occupational Safety and Health Administration, OSHA 3877-06 2017, *available at* https://www.osha.gov/Publications/OSHA3877.pdf.

2011 Pole Attachment Order,[14] which instituted timelines and uniform pole attachment rates, broadband access has not been occurring on a reasonable and timely basis, and there continues to be a significant digital divide between urban and rural areas of the country.[15] There is no reason to believe that shortening the timelines and further reducing make-ready charges and rates for pole attachments – including providing ILECs with regulated rates – will promote broadband deployment. It is more likely that the cost savings to attaching entities will be treated as profits by the big communications companies, and that shorter timelines and additional access rights will lead to greater disputes between pole owners and attachers over standards for safety and reliability. Furthermore, extending regulated rates to ILECs and undermining joint use agreements will remove incentives for utility pole owners to invest and maintain their infrastructure, which are key components for broadband deployment.

The Commission should be developing long-term policy solutions rather than proposing short-term ideas that will not advance the Commission's broader goals of promoting broadband. Restoring balance to the rules for pole attachment rates and access will help to promote broadband deployment by encouraging investment in infrastructure and promoting cooperation among the parties, which will, in turn, result in fewer disputes and better safety and reliability. Conversely, reducing rates and lowering standards will only lead to more disputes and degradation of the nation's pole infrastructure. Utilities are doing their part to promote broadband by providing access at just and reasonable rates for pole attachments and by providing

[14] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC Rcd 5240, 5252, paras. 22-23 (2011) (*2011 Pole Attachment Order*).

[15] *See* "Archive of Released Broadband Progress Notices of Inquiry," Federal Communications Commission, *available at* https://www.fcc.gov/general/archive-released-broadband-progress-notices-inquiry (including findings from the Eighth Broadband Progress report that "The report concludes that until the Commission's Connect America reforms are fully implemented, these gaps are unlikely to close. Because millions still lack access to or have not adopted broadband, the Report concludes broadband is not yet being deployed in a reasonable and timely fashion.")

broadband infrastructure and services on both a wholesale and retail basis. It is time for the Commission to recognize that utilities are enablers of broadband, and for the FCC to support utilities as they work with broadband service providers to serve Americans in unserved and underserved areas. Therefore, UTC supports the comments on the record that propose real solutions – like OTMR -- for moving forward to promote broadband deployment collaboratively.

At the same time that it promotes broadband, the Commission must not forget about legacy networks and the consumers who rely on those networks and the communications services that they provide. In that regard, UTC opposes the Commission's proposals to revise the rules for copper replacement and discontinuance of service under Section 214 of the Communications Act. As UTC and numerous other comments explain, the proposals threaten to remove important consumer protections during the IP Transition.

UTC reiterates that utilities are uniquely affected because they lease circuits from the carriers, which help to support operational safety and reliability for substation monitoring and control as well as teleprotection. These circuits tend to be in remote areas where utilities lack access to reasonable alternatives. If a carrier transitions those circuits and replaces them with new services, they may not provide the same reliability as the legacy service or they may not provide as cost-effective a solution as the legacy service. Worse, if the carrier discontinues that service altogether, the utility may lose connectivity to critical assets, threatening safety and reliability.

These circuits can be extensive, crossing state lines and being provided through several different carriers. Moreover, utilities may lease hundreds or thousands of these circuits, which adds to the complexity of the problem of managing the transition when a carrier replaces a copper service or discontinues service altogether. As such, UTC reiterates that utilities require

sufficient time and direct notice from carriers about any planned copper replacement or discontinuance of service, and the Commission should not suddenly eliminate the rules that the Commission only recently put in place to protect utilities and other consumers from the impact of the IP Transition.

I. Access to Poles

A. The Commission Should Not Reduce Timelines for Processing Applications, Including Especially Large Orders.

UTC reiterates that the Commission should continue to recognize that there are circumstances which will limit a given utility's ability to meet the shorter timelines, and the utility will incur additional costs in meeting the shorter timelines. This is particularly true for large orders. .The Commission should reduce the size of large orders, but it should not reduce the timelines.[16] With the advent of 5G, there will be larger orders and more of them. The Commission should adjust for this reality by providing flexibility to allow utilities more time to process multiple requests for large orders for pole attachments that may come in at the same time. The Commission should also recognize that utilities must be allowed to recover any increased costs that they incur to staff up in order to meet increased demand for pole attachments due to compressed timelines. Finally, the Commission should allow utilities to toll the timelines for reasons such as lack of resources.[17] As UTC explained in its comments, the number and size

[16] *See* Comments of UTC at 7-8 (requesting that the Commission reduce the definition of large orders to include an application for 100 poles or more, and opposing capping the timeline in the case of orders larger than 3000 poles or five percent of the statewide inventory).

[17] UTC also submits that the number and size of pole attachment requests can vary significantly, making it hard to foresee and prepare for large orders. One utility has informed UTC that a national wireless carrier had planned to deploy 500 small cells by the end of the first quarter of this year, but it actually only applied for a small fraction of that number. Subsequently, the wireless carrier projected filing 70 applications covering more than 1,300 node poles by end of year. These highly fluctuating and inaccurate projections illustrate the reality that it is not reasonably foreseeable to project the number and size of applications for pole attachments. The same utility also has informed UTC that the cancellation rate for applications for towers has historically been about 50 percent over the last 15 years. Again, this presents real challenges for utilities who must prepare with staff and other resources to meet the deadlines.

of pole attachment requests can vary considerably, and there is a real and demonstrable shortage of contractors, particularly power-qualified contractors, who are qualified to perform work in or above the supply space on utility poles, which could delay the completion of make-ready for projects involving wireless attachments.[18]

Numerous other comments – and not just utilities -- agree that the timelines are not the answer to promote broadband and should not be compressed, due to safety and reliability concerns. Frontier Communications expresses the same concern that "significantly reduced timelines …could impose significant costs on Frontier or undermine the integrity of its service and safety of its infrastructure, as well as the safety of individuals who may not be appropriately experienced in the risks of pole work."[19] The Texas Office of Public Utility Commissioners also expressed concerns that "accelerating the pole attachment timeline could adversely impact safety and lead to increased costs."[20] Similarly, CenturyLink opposed "dramatic changes…such as slashing timelines…. [that] would put these critical interests at risk."[21] Verizon also supports leaving the existing timeline intact for those that choose not to use one-touch-make-ready as a process.[22] AT&T expressed some of the same concerns as utilities about resources and staffing

[18] *See* Comments of UTC at 9-10.

[19] *See* Comments of Frontier Communications at 2 (filed June 15, 2017). *See also Id.* at 17 ("Because of these concerns, Frontier believes that it is premature to roll out dramatic changes to make-ready processes and timelines on a nationwide basis.")

[20] Comments of the Office of Texas Public Utility Commissioners at 2 and 5 (explaining that "[u]tilities without sufficient personnel will be forced to call upon a limited pool of qualified outside contractors, which will lead to increases in costs. Additionally, the need to outsource the engineering to outside contractors who may lack the skill and experience of a utility's own employees, especially under accelerated timelines, could lead to safety issues and disrupt electric service.")

[21] Comments of CenturyLink at 5 (filed June 15, 2017).

[22] Comments of Verizon at 9 (filed June 15, 2017).

that would arise if the Commission were to shorten the make-ready timelines.[23]

In addition, all of the electric utilities which commented and their stakeholder organizations oppose changing the timelines for application processing.[24] As EEI and others report, the primary source of delays are attributable to errors by the applicants in completing their applications, and failure to cooperate during modifications.[25] As electric utilities explain in their comments, the 45-day period for processing applications has been in place for more than 20 years, and it is "the critical period during which the Electric Utilities perform the necessary engineering analysis to determine whether a pole or pole line can accommodate a request for attachment, and if so, what make-ready work is required to accommodate the request. Shortening this period to 15 days, as proposed by the Commission, would require the Electric Utilities to truncate their engineering analysis, with consequences to the safety and reliability of the network—a problem for all stakeholders."[26]

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[23] Comments of AT&T at 12-13 (filed June 15, 2017)(stating that "[t]he sudden and finite ebbs and flows in demand for make-ready work do not justify a permanent increase in resources to complete such work, though temporary expanded coverage is feasible when attachers coordinate with AT&T and provide advanced notice of major deployments.")

[24] *See* Comments of the Edison Electric Institute at 19-20 (hereinafter, "Comments of EEI")(emphasizing that "the Commission has not shown that there is a need to shorten current timelines," and that "the application review timeline should not be shortened."); Comments of Alliant Energy Corp., WEC Energy Group, Inc. and Xcel Energy Services, Inc. at 20-24 (hereinafter "Comments of Midwest Utilities")(underscoring that "the Commission should maintain the time periods allowed for survey, cost estimate, and acceptance" and adding that "the extended timelines for larger pole attachment orders should be retained and refined," to clarify that the relevant extensions for "large" and "very large" orders apply to the number of poles requested in a given 30-day period by all requesting attachers.); Joint Comments of Centerpoint Energy Houston Electric, LLC, Dominion Energy Virginia, and Florida Power and Light Company at 4-6 (emphasizing that the "Commission should not further reduce the time frames within which pole access requests much be processed," and adding that the "proposed rule modifications could not be implemented without substantial cost to electric utilities and their ratepayers.") *and* Initial Comments of Ameren Corporation, American Electric Power Service Corporation, Duke Energy Corporation, Entergy Corporation, Oncor Electric Delivery Company LLC, Southern Company, Tampa Electric Company at 11 (underscoring that "the Commission should retain the long-standing 45-day application response deadline." Also opposing the Commission's proposal to cap the timeline for large orders that are over 3000 poles of five percent of the statewide inventory in a given month). (hereinafter, "Electric Utilities Initial Comments")

[25] Comments of EEI at 21-22.

[26] Electric Utilities Initial Comments at ii.

In addition to opposing shortening the deadlines generally, utilities are strongly opposed to capping the timelines for larger orders as proposed by the Commission, and they echo UTC's request to redefine large orders to include applications for 100 or more poles. As they explain, the current definition of a large order is too high and is "far from manageable," and "there is no "cap" on the number of sequential requests that a single attacher may submit every 30 days."[27] Instead, they suggest that the Commission reduce the number of poles subject to deadlines, such that the lower limit would be reduced from 300 to 100 poles, and the upper limit would be reduced from 3,000 to 500 poles.[28] Alternatively, utilities suggest that the Commission should (1) limit the applicability of Rule 1.1420(g) to the application response and estimate; and (2) require good faith negotiation for the timing of all requests larger than the lesser of 300 poles or 0.5 percent of the utility's poles in a state.[29] Importantly, these deadlines should apply only to the application response and estimate stages in the application process; they should not apply to the actual make-ready work or the engineering analysis.[30]

Finally, utilities are opposed to shortening the timelines for make-ready. As the Midwest

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[27] Comments of the Coalition of Concerned Utilities: Arizona Public Service; Consumers Energy; Eversource; Exelon Corporation; FirstEnergy; Hawaiian Electric; Kansas City Power and Light; NorthWestern Energy; Portland General Electric; Puget Sound Energy; South Carolina Electric & Gas; The AES Corporation at 5-6 (filed June 15, 2017) (hereinafter, "Comments of the Coalition for Concerned Utilities"). *See also* Comments of the Midwest Utilities at 20 (stating that "Likewise, the Midwest Electric Utilities oppose the Commission's suggestion of a cap that would allow utilities only 45 days in total to review applications covering more than 3,000 poles or more than 5% of the utility's poles in a state. Managing such large volumes of pole attachment requests – while continuing to ensure the safety, reliability, and integrity of the electric and communications infrastructure – in anything less than the timeframes (and relevant extensions) provided under the current rules would require utilities to increase staff at an additional cost that would be directly attributable to the attaching entities, as well as to divert resources from their own electric distribution operations.")

[28] Comments of the Coalition of Concerned Utilities at 6.

[29] Electric Utilities Initial Comments at 16.

[30] *Id*. (adding that "communications space make-ready should be addressed through a one-touch-make-ready rule. In any event, allowing the utility pole owner to "add" time to the period for performing communications space make-ready does not make sense given that electric utilities almost never perform the communications space make-ready themselves. To the extent there is a deadline at all for make-ready work above the communications space, it should be addressed separately and clearly.")

Utilities explained, "any acceleration of the timeline for the completion of make-ready work in the communications space – including the extended timeline for large pole attachment orders will result in even more safety violations and construction deficiencies."[31] In addition to safety concerns, the Midwest Utilities also point out that "the failure to perform make-ready or installation in accordance with the approved design often results in inefficient use of the available space on the pole, which in turn drives up the cost of deployment for any future communications attachers due to the need for corrections or make-ready that would not have otherwise been needed."[32] Even Google shares the view that shortening the timelines for make ready will not speed access to poles.[33]

UTC echoes these comments that express concerns about shortening the timelines and we oppose certain comments that propose additional restrictions on utilities during the application processing stage. Specifically, UTC opposes proposals by the American Cable Association (ACA) and Crown Castle, which provide anecdotal and often unsubstantiated accounts of delays caused by utilities, so as to support their proposals for frankly dangerous revisions to the current application review and make-ready process.

The ACA claims that a utility has required one of its members to obtain prior approval to overlash existing attachments, and another one has allegedly charged $1,000 per pole for

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[31] Comments of the Midwest Utilities at 26-27 (adding that "[t]he potential danger to utility or communications personnel when climbing or working on a pole that has safety violations and construction deficiencies is unquantifiable – accelerating the work needed to adhere to safety and engineering standards should not be an option for consideration in this rulemaking proceeding.")

[32] *Id.*

[33] *See* Comments of Google at 12 (concluding that "shortening the current make-ready deadlines would not solve the problem of delay. First, as long as make-ready is performed in sequential notice periods, the cumulative number of days of make-ready will continue to unreasonably postpone network deployment. Second, and more critically, shortening current deadlines without improving make-ready procedures is unlikely to result in faster deployment because of the substantial amount of coordination and planning required among existing attachers. Today, existing attachers struggle to meet the 60-day deadline; unless the Commission reforms its rules to streamline make-ready procedures themselves, shorter deadlines alone will not improve make-ready.")

overlashing. It also claims that a utility has required approval for attachments to drop poles. Based on this anecdotal data, and despite its own admission that utilities generally are processing applications in a timely manner, ACA proposes a manifesto of demands related to application processing and make ready.[34]

Likewise, Crown Castle has a similar list of unreasonable and dangerous demands, including restrictions against pre-application steps in the process, shorter timelines for application processing (including eliminating the estimate stage and any extra time for processing large orders), and detailed cost estimates of make-ready. Crown Castle also proposes to limit the make-ready period to 30 days or less, regardless of the size of the order. It also proposes to require utilities to allow the use of third-party contractors to perform make-ready in the electric space and to require utilities to include electric power activation of attachments as part of the make-ready work that must be completed within the Commission's defined timeframe.[35]

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[34] Specifically, ACA demands that Master Agreements 1) allow attachers to be able to "Notify and Attach" when overlashing and "Attach and Notify" when installing drops to connect customers; 2) Permit attachers to receive compensatory damages and legal fees when a utility unreasonably delays or denies pole access or charges unjust, unreasonable, or discriminatory fees; 3) Provide for symmetrical indemnification provisions between attachers and utilities; and limit penalties on attachers for unauthorized attachments. In addition, ACA demands access to pole data to 1) Develop and maintain a searchable electronic database of the location and availability of poles, ducts, and conduit that are installed, replaced, or upgraded after the order in the Wireline NPRM proceeding takes effect, and make available this database and any other relevant paper or electronic information that the utility possesses regarding its poles to existing and potential attachers, subject to appropriate confidentiality and security protections; and 2) Make available to attachers a web-based ticket management system for ease of tracking applications and make-ready works. ACA also demands that the FCC 1) Require every utility to make publicly available, including on its website, its process for accepting and evaluating applications for pole attachments, including the information required and application format; 2) Require utilities to participate in joint surveys of their poles upon an applicant's request; 3) Prohibit utilities from requiring an applicant to pay for engineering design where a visual inspection (or inspection using an electronic database) indicates no work is required; and 4) Prohibit a utility from requiring an applicant to pay for a pole loading analysis where there are two or fewer existing attachers on the pole. Finally, ACA demands that the make ready timeline should be 90-days for applications involving 20 or fewer attachments – and that the FCC should 1) Enable attachers, using utility-approved contractors, to undertake all necessary make-ready, including work in the electric space, if a utility or an existing attacher fails to complete make-ready within the Commission's timeframe and 2) Require a utility to make publicly available, including on its website, a list of at least five approved contractors to undertake make-ready. *See* Comments of the American Cable Association at ii-iv.

[35] Comments of Crown Castle at 12-22.

UTC opposes these proposals by ACA and Crown Castle because there is insufficient evidence on the record to support them, particularly given the threat they would pose to safety and reliability. The proposal to require utilities to allow third-party contractors to perform make-ready in the supply space is particularly dangerous due to the presence of energized power lines, as is the proposal to require make-ready to be performed in 30 days regardless of the size of the project.

As UTC and numerous other utilities have commented on the record, it is crucial that the make-ready self-help requirements not apply to work in the supply space because of the clear potential for threats to the safety of workers and to reliable utility operations.[36] It is also absolutely essential that the Commission maintains the extended time periods for the completion of make-ready work above the communications space. Attachers should not be allowed to hire third parties to perform make-ready in the supply space, because of the risk of electrocution and other hazards in the supply space.[37] Similarly, reducing the timelines for make-ready to 30

[36] *See* Comments of UTC at 13 (supporting allowing new attachers to use third-party contractors when parties fail to meet make-ready deadlines, but not to perform make-ready in the electric space.) *See e.g.* Initial Comments of the Electric Utilities at 8 (stating that "[t]he Commission's rules should draw clear distinctions between communications space make-ready and power supply space make-ready." Also underscoring that "**[t]here are no circumstances under which a one-touch make-ready or self-help remedy is appropriate above the communications space**.") *See also* Comments of the Fiber Broadband Association at 5 (recognizing that To be sure, one-touch make-ready may not be appropriate in every situation. Some pole work may be so sensitive that the facility owner can rightly insist on doing the work itself. For instance, one touch make-ready might be restricted to simple make-ready construction ("SMRC") where no customer outage is anticipated. SMRC would include attachment transfers and relocations in the communications space – including straight or curved cable locations – involving installation or use of clamps, down guys, anchors, guy guards, extension arms, verticals, and bonds. Make-ready work requiring customer outages might be considered "complex make-ready construction" ("CMRC"), and would be performed by either the pole owner or the owner of an attachment already on a pole. Likewise, any make-ready work in the power supply space, where dangerous electrical lines run, would be deemed CMRC and would be performed by the electric utility. Indeed, the Pole Attachment Act requires utilities to notify attachers before modifying or altering a pole – work that is likely to cause a customer outage and therefore to be CMRC – in order to provide those attachers with time to modify their attachments. 47 U.S.C. § 224(h). Section 224(h), though, does not apply in the case of SMRC.")

[37] UTC also notes that it is opposed to allowing third-party contractors to perform loading analysis as part of the make ready process. Utilities need to ensure that the loading analysis is performed correctly, because the loading analysis is critical to safety, reliability and infrastructure integrity. Allowing third parties to conduct the loading analysis could lead to errors that could undermine the safety and reliability of the poles.

days—half the time that is generally allowed, and a third of the time that is allowed for work above the communications space under the current rules – is likely to lead to accidents, particularly if it is a large project, as contractors will be rushing the job.[38] The only basis offered by ACA and Crown Castle for these proposals is that they will reduce the time to deploy broadband networks. They fail to sufficiently consider the risk to safety and reliability that would result from these proposals. As such, these proposals should be rejected by the FCC.

B. One-Touch-Make-Ready Rules and Safeguards Should Effectively Accelerate Broadband Deployment While Protecting Safety and Reliability.

Many of the utilities as well as Verizon and Google contend that adopting OTMR policies should obviate the need to shorten the timelines for make ready.[39] Utilities agree that OTMR will also address a laundry list of problems with the current process, including lack of cooperation among the existing attaching entities, which results in double wood issues and blocks new attachers from accessing poles.[40]

Several utilities have already adopted OTMR. CPS Energy of San Antonio has adopted OTMR and emphasized that they require attachers to submit the engineering along with their applications, which is important for them to meet the 21-day timeline for reviewing a completed pole attachment application.[41] Northwestern Energy has implemented a process called "One

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[38] Note that the Commission's rules would provide up to 135 days for large orders for wireless attachments under the current rules. Crown Castle's proposal would only allow 30 days even for these types of large orders.

[39] *See* Comments of Verizon at 4 (emphasizing that "[t]he Commission should authorize one-touch make-ready as an alternative to the current pole attachment process," and describing how this would shorten the pre-make-ready process as well as make-ready itself.). *See also* Comments of Google at 7 (stating, "[b]ecause OTMR creates a streamlined process that allows one contractor to complete all make-ready, OTMR avoids much of the time-consuming planning that is necessary under the current rules, which not only require utilities to manage the coordination of make-ready among existing attachers but also require existing attachers to play a substantial role in ensuring that make-ready is completed.")

[40] *See e.g.* Comments of the Coalition of Concerned Utilities at 11-17.

[41] Comments of CPS Energy at 11 (stating that "CPS Energy also seeks to clarify that while the Commission referenced the fact that CPS Energy's Standards provide for a 21-day period for CPS Energy to review a completed

Stop" which is similar to OTMR. Likewise, We Energies has been involved in a program called the "Joint Use Most Preferred Process" ("JUMPP") that We Energies developed in coordination with other pole owners and attachers in its area to manage pole relocation, system improvement, and pole maintenance projects through the use of a shared contractor. These all serve as examples of utilities that have adopted innovative approaches for accelerating make-ready processes, and they demonstrate that utilities have every incentive to speed up the process and not delay access.

Utilities agree that OTMR may be the best way to break down the most significant barriers to wireline deployment – the refusal of existing attachers to cooperate with accommodating new attachers.[42] They elaborate that, "[m]ere revisions to the existing sequential timeline for communications space make-ready is not enough. The Commission needs to adopt a new approach that places less burden on existing attachers, less burden on the pole owner, and more control with the party seeking to make the new attachment, while at the same time protecting the existing attachers and pole owner from liability."[43] Moreover, these utilities conclude that making OTMR a reality will require the FCC to adopt rules requiring OTMR, because electric utilities cannot unilaterally impose their own OTMR practices nor can they incent third party entities to cooperate on OTMR.[44]

To be sure, utilities support the adoption of safeguards, such as post-construction

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pole attachment application, a condition precedent for CPS 'Energy completing its review within that time frame is that the applicant is responsible for including make-ready engineering design documents as part of the application. This is an important requirement that allows CPS Energy to move forward in its review of applications on the accelerated schedule that providers are seeking.")

[42] Initial Comments of the Electric Utilities at 4.

[43] *Id.* at 5.

[44] *Id.* at 4-8.

inspection of the make-ready work. In addition to opposing the use of OTMR in the supply space, UTC reiterates its qualified support for the Commission's proposal for the impacted entities to agree on a single contractor to perform the make-ready, and to adopt a post-make-ready timeline that would provide as few as 14 days for existing attachers to inspect the make-ready work of the new attaching entity's contractor.[45] UTC also reiterates its support for allowing existing attachers and pole owners to require new attachers to indemnify defend and hold harmless existing attachers for damages or outages that occur as a result of make ready work on their equipment.[46] Utilities support these safeguards, as well.[47]

Utilities support a one-touch-make-ready rule (similar in concept to those adopted by Nashville and Louisville), and they agree that the Commission has the authority to adopt OTMR.[48] Google and others also support this form of OTMR, and also support the Commission's authority to adopt rules for OTMR.[49] Meanwhile, carriers and cable companies generally oppose OTMR, and instead support right-touch make-ready (RTMR). UTC supports

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[45] Comments of UTC at 14.

[46] *Id.*

[47] *See e.g.* Comments of the Coalition of Concerned Utilities at 18 (conditioning support for OTMR provided that the Commission allow pole owners to require attaching entities to obtain surety bonds and indemnify pole owners against losses.) *See also* Comments of the Midwest Utilities at 31 (emphasizing that "[t]he use of contractors to perform make-ready work in the communications space requires the adoption of appropriate safeguard … such as liability safe harbors and indemnification protections for utilities and participating attachers, as well as remedies that ensure that the work is completed within a reasonable amount of time in a quality manner and in full compliance with all applicable codes, safety requirements, and utility engineering specifications.")

[48] *See* Initial Comments of Electric Utiilties at 5-6. *See also Id.* at 6 (stating, "To be clear, the Electric Utilities have longstanding concerns regarding the Commission's expansive view of its authority under Section 224. But to be blunt, if the Commission had authority to adopt the communications space make-ready rules in the 2011 Order, then it has the authority to adopt a one-touch make-ready proposal here.")

[49] Comments of Google at 12-15 (emphasizing that "[t]he Commission has the authority to adopt OTMR" because the FCC has authority to establish just and reasonable rates, terms and conditions for pole attachments and make ready does not represent a taking.) *See also* Comments of the Fiber Broadband Association at 5, n.10, *citing* Letter from Howard J. Symons, General Counsel, Federal Communications Commission, to Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice (Oct. 31, 2016) (urging the Department of Justice to file a statement of interest in federal court to oppose AT&T's claim that Louisville's OTMR ordinance was preempted by federal law).

OTMR and submits that RTMR would likely lead to unnecessary delays that would frustrate the overarching goal of increasing broadband deployment. Simply put, RTMR would put too much power in the hands of the ILECs and the cable television incumbents to exclude or delay new attachers from accessing poles. As such, the Commission should adopt OTMR rules.

UTC also continues to urge the Commission to incent third parties to comply with utility safety standards, radio frequency exposure standards, and the NESC when making pole attachments or conducting make ready.[50] In that regard, UTC opposes the proposal by Crown Castle which would prohibit utilities from adopting safety standards in addition to what is required under the NESC.[51] UTC opposes this proposal because the NESC serves as a floor, not a ceiling, for safety standards. Utilities have their own safety standards that supplement and complement the NESC, based upon the fact that utilities have different network architectures and design specifications. While the Commission has reserved the right to review utility standards as part of pole attachment complaints, it has never disregarded utility safety standards altogether, as Crown Castle proposes.[52] Therefore, UTC opposes the comments of Crown Castle that would prohibit utilities from adopting safety standards other than the NESC.

On that point, utilities comment on the record that they continue to find that a significant percentage of attachments are made without authorization and/or in violation of utility safety codes and/or the NESC.[53] While the Commission has established policies to incent attaching

[50] *Id* at ¶13 (inviting comment on "potential remedies, penalties, and other ways to incent utilities, existing attachers, and new attachers to work together to speed the pole attachment timeline.")

[51] *See* Comments of Crown Castle at 10 (requesting that the Commission adopt a rule that any "construction standard" imposed by a utility that exceeds the NESC clearance standard by more than 20 percent is presumptively unfair and unreasonable in violation of Section 224 of the Communications Act.)

[52] *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, Report and Order, 11 FCC Rcd 15499, 16068-69, ¶¶ 1145-49 (1996) (Local Competition Order) (specifically declining to impose the National Electric Safety Code (NESC)).

[53] *See e.g.* Comments of the Coalition of Concerned Utilities at i, and 14 (stating that "existing communications

entities to comply with the permitting process by enforcing penalties for unauthorized attachments, the Commission has refrained from sanctioning penalties for safety violations. As the Commission seeks to find ways to incent the parties to work together on pole attachments, it should take this opportunity to address this issue by clarifying that penalties for pole attachment violations may be enforced by utilities under the terms of pole attachment agreements.[54]

C. There Is No Legal or Policy Rationale for FCC Pole Attachment Regulation of Public Power or Cooperative Utilities.

UTC and several other commenters oppose further expansion of pole attachment regulation of poles that are owned or controlled by public power utilities, cooperatively organized utilities and other entities that are excluded from the FCC's pole attachment jurisdiction.[55] The Commission lacks authority to regulate pole attachments by these entities.[56] Section 224(a) of the Communications Act excludes these entities from the definition of utilities that are subject to FCC pole attachment jurisdiction.[57] Congress recognized that there was no reason as a policy matter to regulate public power utilities and cooperative utilities because they are not-for-profit utilities established to be accountable to their customer-owners, local and state

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companies have installed unauthorized attachments and created safety violations that slow down the new attacher process and make it far more expensive.") *See also Id.* at 20 ("Utility Pole Owners Should Be Allowed to Sanction Existing Attachers For Unauthorized Attachments and Safety Violations.") *And see* Comments of the Midwest Utilities at 26 (reporting that "We Energies is finding issues during approximately 50% of the post-construction inspections that it conducts, including safety violations, encroachment issues, and the failure to construct in accordance with the approved design. Alliant Energy reports that 63% of the projects that have been completed have violations that were found during post-construction inspection, and Xcel Energy reports similar post-construction inspection findings.")

[54] *See also* Comments of the Coalition of Concerned Utilities at 20 (stating that utility pole owners should be allowed to sanction existing attachers for unauthorized attachments and safety violations.).

[55] *See* Section 224(a)(1)(excluding from the definition of a utility "any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.")

[56] Comments of the National Rural Electric Cooperative Association at 3. See also Comments of the American Public Power Association at 6 (filed June 15, 2017)(hereinafter "Comments of APPA").

[57] *Id*.

policy makers and cooperative members and thus have inherent incentives to provide access for pole attachments at rates, terms, and conditions that are just and reasonable.[58] In addition to lacking authority under Section 224, the Commission also lacks authority under Section 253 to regulate pole attachments, because that provision only applies to governmental entities that are acting in their governmental role to permit towers and manage the rights-of-ways.[59] It does not extend to public power utilities which are acting in a proprietary capacity.[60] Finally, there is no clear statement in Section 253 that would authorize the Commission to preempt state and local management of pole attachment practices. Should the FCC disregard Section 253, such action would conflict with the provisions of Section 224.

D. The Commission Should Not Attempt to Regulate Light Poles

In addition, UTC opposes comments that urge the FCC to expand its jurisdiction to regulate access to light poles.[61] Light poles are not "poles" within the meaning of Section 224, nor can the FCC interpret its authority to include them as such. As a legal matter, there is nothing in the statute or the history of the Pole Attachment Act to indicate that light poles are subject to the FCC's pole attachment authority.[62] Unlike utility poles that were designed for the express purpose to be used "in whole or in part, for any wire communications," light poles are completely different.[63] In addition, the courts have limited the scope of poles that are subject to

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[58] Comments of APPA at 9-12.

[59] *Id* at 6.

[60] Id. at 12-14.

[61] Comments of the Wireless Infrastructure Association at 74.

[62] 47 U.S.C. §224.

[63] *See* 47 U.S.C.§224(*a*). *See also National Cable & Telecommunications Ass'n v. Gulf Power Co.*, 534 U.S. 327, 339 (2002) (recognizing that this language defines the poles that are covered under the FCC's jurisdiction.)

the FCC's jurisdiction.[64] There is insufficient evidence to show that access to light poles is being denied, or that rates, terms and conditions are unjust or unreasonable. Given the Fifth Amendment constitutional implications of expanding the FCC's pole attachment jurisdiction to include light poles and the impact that it would have on existing markets, the Commission lacks sufficient authority to interpret its authority expansively in this context. There are other alternatives besides access to light poles for wireless infrastructure deployment, and as such, there is no underlying basis or compelling rationale in the NPRM for the FCC to expand its jurisdiction to include light poles.

II. Re-examining Rates for Make-Ready Work and Pole Attachments

A. The Commission Should Not Require Utilities to Publicly Disclose a Standardized Schedule of Make-Ready Charges.

UTC continues to oppose the Commission's proposal to regulate rates for make-ready by requiring utilities to post a schedule of standard fees and charges.[65] As UTC and others explained in their initial comments, make-ready costs vary considerably depending on a variety of factors, especially on the geographic area of the country and the availability of contractors in the area.[66] UTC also reiterates our opposition to regulating make-ready charges in such a way that would require utilities to set a standard charge per pole that a new attacher may choose in lieu of a cost-

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[64] *Southern Co. v. FCC*, 293 F.3d 1338, 1346 (11th Cir. 2002)(finding that the Act speaks precisely to the issue of poles that are subject to the Act, and that the Act does not extend to a utility's interstate electric transmission towers.)

[65] *See* Comments of UTC at 15.

[66] *See* Comments of Midwest Electric Utilities at iii, 24 and 36 (confirming that "[t]he rates utilities charge are based on actual cost, which can vary significantly on a case-by-case basis and are thus not suitable to standardization," adding that rates vary "depending on numerous unique factors, including material and labor costs which fluctuate.") *See also* Initial Comments of the Electric Utilities at 40 (emphasizing that "[t]he variability of make-ready costs make them unsuitable for representation in a 'schedule' and utilities already invoice such costs on an actual cost basis.")

allocated charge.[67] As several comments on the record noted, the Commission itself has previously considered and rejected this concept.[68] The Commission should continue to reject requiring public disclosure of a schedule of standardized charges for make-ready, because "the limited benefit of this proposal would not outweigh the burdens it would impose on utilities."[69] For similar reasons, the Commission should also reject proposals to require utilities to reimburse third-party attaching entities for any potential benefits that the utility realizes from make-ready by third-party attaching entities.

B. The Commission Should Not Eliminate Capital Costs from Make Ready Fees And Pole Attachment Rates.

UTC and other comments on the record continue to oppose the exclusion of capital costs from the pole attachment rental rate, and UTC does not believe that it is necessary for the Commission to codify a rule that excludes reimbursed make-ready capital costs from use in the pole attachment rate. Comments on the record confirm that utilities will typically reimburse attachers and true-up any overpayment of make ready actual costs that were incurred.[70] As such, utilities avoid double recovering their make-ready costs through the pole attachment rental rate.

At the same time, utilities do incur capital costs that are not recovered through make-ready, which must be included in the pole attachment rate in order to provide utilities with just

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[67] *See NPRM* at ¶33 (inviting comment on whether it would be reasonable to allow utilities to set a standard charge per pole that a new attacher may choose in lieu of a cost-allocated charge.)

[68] *See e.g.* Initial Comments of the Electric Utilities at 40, *quoting 2011 Pole Attachment Order* at ¶86. (stating that "Actual charges vary depending on numerous unique factors, including material and labor costs which fluctuate. As such, the price of make-ready does not lend itself well to a fixed schedule of charges.")

[69] *2011 Pole Attachment Order* at ¶86.

[70] See Comments of Centerpoint Energy Houston Electric, LLC, Dominion Energy Virginia, and Florida Power and Light Company at 23-24 (filed June 15, 2017)(explaining how make-ready costs are charged and collected in advance of performing any make-ready work, so whether the make-ready costs have been fully recovered is never an issue. Then, the recovered make-ready fees are credited to the account, thus ensuring that existing attachers are not unfairly paying capital costs caused by others.")

compensation for pole attachments. To exclude these capital costs from the pole attachment rate would violate the express terms of the statute, as well as the Fifth Amendment of the United States Constitution. The impact of excluding capital costs from the pole attachment rate would be significant. As some utilities report, they stand to lose, on average, 70 percent of their pole cost recovery from cable television system and telecommunication carrier attachments if capital costs are excluded from the pole attachment rate.[71]

The Commission must not strip all capital costs from the pole attachment rate formula. Doing so would exacerbate the systematic under recovery of utilities' costs associated with pole attachments under the current rate formula. As explained above, it is also contrary to the express terms of the statute that provides for reimbursement of the capital costs of pole attachments and with Congress's intent for the recovery of a pro-rata portion of the unusable space costs. Some parts of the Commission's current rate formulae are under appeal and pending review by the courts and other parts of the rate formulae have been upheld, largely due to deference by the courts to the FCC's interpretation of its pole attachment authority. It is unlikely that judicial deference would apply, however, to an interpretation that is directly contrary to the express terms of the statute, particularly where the resulting rate would restrict utilities to recovering their incremental costs. Courts are increasingly reluctant to defer to regulatory agencies that interpret their own authority expansively, particularly where it would effect a *per se* taking of property, as is the case with pole attachments.[72]

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[71] Initial Comments of the Electric Utilities at 51 (estimating that "[i]n the aggregate for the Electric Utilities, this would shift approximately $30 million in costs annually to electric ratepayers.")

[72] *See e.g. Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1149 (10th Cir. 2016) (Gorsuch, J., concurring). *See also Horne v. United States Department of Agriculture*, 576 U.S. ___ , 135 S. Ct. 2419 (2015). *And see* Brian Hodges and Christopher Kieser, "Horne v. United States Department of Agriculture: The Takings Clause and the Administrative State" (Sept. 29, 2015), available at http://www.fed-soc.org/publications/detail/horne-v-united-states-department-of-agriculture-the-takings-clause-and-the-administrative-state.

C. The Commission Should Not Establish Its Proposed Presumption That ILECs Are Entitled to the Telecom Rate for Pole Attachments.

The Commission's proposal to extend the regulated rate for telecommunications attachments to ILECs constitutes an overreach of the Commission's authority. This proposal represents an about-face from the approach that it took in its *2011 Pole Attachment Order*, which declined to apply the telecom rate to ILEC attachments and which placed the evidentiary burden on ILECs to prove their case that a lower just and reasonable rate should apply. Now, the FCC is shifting the burden to utilities to overcome a presumption that the regulated rate should apply to ILEC attachments.

The FCC's stated reason for this policy reversal is to resolve disputes, but as one commenter points out, "the 'repeated disputes' referenced in the NPRM actually amount to eight total complaints filed by two companies (Frontier and Verizon)."[73] Moreover, as UTC stated in its initial comments, the Commission's proposal to extend regulated rates to ILECs will not resolve disputes. Instead, comments agree that it will "reignite" disputes between ILECs and utilities.[74]

Comments on the record also point out that the Commission's proposal to shift the burden to utilities is inconsistent with ordinary principles of contract law, which would place the burden on the party trying to get out of the terms of the contract (here, the ILECs trying to avoid the terms and conditions of their joint use agreements with utilities). It also is contrary to U.S.

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[72] Christopher Yoo and Daniel Spulber, "Access to Networks: Economic and Constitutional Connections" Cornell Law Review, Vol. 88, May 2003 at 999.

[73] Initial Comments of Electric Utilities at 31 (adding that "All but two of those eight complaints have been resolved through settlement.") *See also* Comments of the Midwest Utilities at 43-44 (reporting that they have not seen any significant disputes or issues arise with respect to their existing joint use agreements with ILECs and asserting that "the premise suggested by the Commission that it is necessary to change the rules in order to avoid repeated disputes and end controversy is false.").

[74] *See* Comments of UTC at 20. *See also* Initial Comments of Electric Utilities at 33.

Supreme Court precedent, which establishes that "[a]bsent some reason to believe that Congress intended otherwise, …, we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief."[75] Moreover, these comments agree with UTC that the Commission would establish a high standard for utilities to meet in order to overcome the proposed presumption that the telecommunications rate should apply to ILEC attachments.[76] This high standard (clear and convincing evidence) is higher than the standard that would usually apply in civil cases (preponderance of the evidence),[77] and would unfairly stack the odds against utilities, presumably allowing an ILEC to prevail unless the utility could show that there was relative balance in pole parity between the ILEC and the utility.[78] For all of these reasons, the Commission's proposal should not be adopted because it is unreasonable and exceeds the FCC's authority.

Contrary to the Commission's proposed presumption, ILEC are not "similarly situated" to other attachers. Comments on the record describe numerous ways that ILECs enjoy benefits that do not apply to other attachers. For example, ILECs pay significantly lower make-ready costs; they do not need to obtain advance approval to make attachments. They have no post-attachment inspection costs; and rights-of-way are often obtained by the electric company. Moreover, they have guaranteed space on the pole and preferential location on the pole. Finally, they enjoy numerous additional rights such as approving and denying pole access, collecting

[75] Comments of Centerpoint Energy Houston Electric, LLC, Dominion Energy Virginia and Florida Power and Light Company at 27, *citing Shaffer v. Weast*, 546 U.S. 49 (2005).

[76] The FCC is proposing that clear and convincing evidence would be required to overcome the presumption that the regulated rate should apply to ILEC attachments. *Id* at ¶44.

[77] *Id.*at 34.

[78] Percentage of pole ownership is among the factors the FCC is proposing to consider in order to rebut the presumption that ILECs should be entitled to regulated rates. *Id.* (asking for comment on whether an incumbent LEC would have to own a majority of poles in a joint ownership network in order to show that the ILEC is not entitled to the regulated rate).

attachment rents, and input on where new poles are placed.[79] In addition to advantages, ILECs are distinctly different from other attachers, because they occupy more space on the pole and their attachments are heavier than those of other attachers.[80]

ILECs do not lack bargaining power. They are large and sophisticated entities that have operated for decades under joint use agreements that they have mutually negotiated with utilities. Utilities report that the balance of pole ownership has remained relatively unchanged over the past years since the *2011 Pole Attachment Order*.[81] Certainly, nothing has changed recently that would justify the FCC's sudden reversal of the burden of proof. Moreover, the FCC recently found in *Florida Power & Light v. Verizon*,[82] that Verizon "received and continues to receive benefits under the Agreement that are not provided to other attachers, but it has not produced any evidence showing that the monetary value of those advantages is less than the difference between the Agreement Rates and the New or Old Telecom Rates over time."[83] UTC agrees with comments on the record that urge the FCC to continue to follow the approach that the FCC took in the *Florida Power* complaint and require the ILECs to prove that they are similarly situated with other attachers, because nothing has changed recently that would indicate that ILECs have lost bargaining power that might justify shifting the burden of proof to electric utilities.

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[79] *See* Initial Comments of Electric Utilities at 26, *quoting 2011 Pole Attachment Order* at 216, n. 654. *See also* Comments of the Coalition of Concerned Utilities at 45-49. *And see* Comments of the Midwest Utilities at 45-46 (describing numerous differences between ILEC attachments and other attachments).

[80] Initial Comments of Electric Utilities at 30 (concluding that the sag of the heavier ILEC lines results in "occupancy" of four feet for a single attachment (because no other communications attachment can be made either below the attachment or within the 12 inches above the attachment)).

[81] Comments of Midwest Electric Utilities at 44 (stating "there has not been any significant change in bargaining power or other changed circumstances that would necessitate or justify a presumption that the rates for pole attachments paid by ILECs should be similar to the rates paid by other third party attachers.")

[82] *Florida Power & Light v. Verizon* , Docket No. 14-216, Memo. Opinion and Order (Feb. 11, 2015).

[83] *Id*. at ¶ 24.

D. The Commission Should Not Adopt a Pole Attachment "Shot Clock" for Pole Attachment Complaints.

UTC continues to oppose the adoption of an 180-day shot clock for pole attachment complaints because it is concerned that any deadline will discourage or prevent the Enforcement Bureau from sufficiently considering the evidence on the record in a complaint proceeding.[84] Other comments on the record take a similar posture towards this proposal, and would only support the adoption of a shot clock for certain complaints and on the condition that the case was fully briefed prior to starting the clock.[85] UTC remains concerned that the proposed shot-clock would short-shrift the inherently fact-intensive issues related to pole attachment complaints.[86] Moreover, UTC is concerned that a shot clock will lead to the Bureau addressing complaints generically, rather than considering the specific facts on a case-by-case basis. As such, the Commission need not and should not rush to judgment on pole attachment complaints.

Consistent with the comments on the record, if the Commission does adopt a shot clock, it should begin to run from the date that the complaint and all responsive pleadings have been filed. As the Commission itself recognized, "[s]tarting the clock at these later junctures [i.e. subsequent to the filing of the initial complaint] would allow the Enforcement Bureau sufficient time to review the relevant issues involved in a pole access complaint and would not disadvantage the timing of the Enforcement Bureau's review if the pleading cycle or discovery

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[84] Comments of UTC at 21-24.

[85] *See* Joint Comments of Centerpoint Energy Houston, LLC, Dominion Energy Virginia, and Florida Power and Light Company at iv and 38 (stating that the Commission's proposed 180-day complaint shot clock should be applied only where pole access is completely denied.")

[86] Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, *Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 11864 at ¶22 (2010) (*2010 Order or Further Notice*)(This enforcement process has not always led to clear standards, due to the incentives to reach negotiated settlements as well as the *fact-intensive nature of many disputes*."(emphasis added)).

takes longer than expected."[87] The Commission should pause the shot clock for a variety of reasons, including but not limited to: when the parties need additional time to provide information requested by the Bureau, as well as when the parties are pursuing informal dispute resolution, when the parties engage in significant discovery or briefing of the disputed issues that prolongs the complaint process; or when the complaint involves large pole access requests of a complex nature that necessitate Enforcement Bureau requests for significant additional information from the parties in order to resolve the complaint.[88] Finally, UTC continues to urge the Commission to require pre-complaint procedures, such as working with Enforcement Bureau staff before a complaint is filed to narrow the factual and legal issues in a particular dispute; discussing the need to exchange relevant documents and discovery and the timeframe for doing so; and agreeing on various case management issues, such as the entry of a protective order for the exchange of confidential information.[89]

As the Commission has observed, the existing rules require similar pre-complaint processes, and they have resulted in the complaint process proceeding much more smoothly.[90] Therefore, if the Commission does adopt a shot clock, it should ensure that the adjudicatory process is balanced and flexible by: 1) continuing to rely on case-by-case review of the specific facts at issue; 2) starting the clock after the record is complete and the Enforcement Bureau has sufficient time to analyze the submissions of the parties; 3) pausing the clock when the parties need more time or are negotiating informal settlements; and 4) requiring the parties to engage in pre-complaint processes to narrow the scope of the complaint proceeding and arrange scheduling

[87] *Id.*at ¶45.

[88] *See id.* at ¶46.

[89] *See id.* at ¶47.

[90] *Id.*

of discovery, as appropriate.

III. The Commission Should Not Adopt Its Proposals to Expedite the Copper Retirement and Network Change Notification Process.

UTC and utilities that commented on the record oppose the Commission's proposal to repeal Section 51.332, because eliminating this rule would eliminate necessary and important consumer protections. The rule was only recently established in the *2015 Technology Transitions Order* and should be allowed to continue in effect. It is difficult to believe that the rule could have caused significant delays for carriers, given that it has only recently gone into effect. Moreover, the FCC should allow the rules to work, rather than presuming that they represent an undue burden. The rules are necessary to protect consumers – including utilities and other business/enterprise customers, as well as retail customers.

As UTC has explained in its comments to the rulemaking that led to the *2015 Technology Transitions Order*, utilities are threatened by the elimination of legacy carrier circuits and services, which utilities rely upon to support mission critical communications for remote monitoring and control of electric substations, as well as protective relaying applications. Some utilities lease hundreds of these legacy carrier circuits, and they lack adequate alternatives – particularly in remote areas where many of the substations and other electric critical assets are located. Utilities are under strict regulatory requirements to meet reliability standards, and they must be able to maintain communications with their critical assets in order to ensure operational safety, reliability and security. Therefore, Section 51.332 is necessary to protect utilities and other consumers during the IP Transition.

As the Commission has recognized, the IP Transition is a real problem for consumers – particularly in rural areas, where carriers are discontinuing services or allowing their networks to degrade to the point that reliability is affected. More specifically, utilities are contending with

unique challenges brought about by the IP Transition. Not only do they have a large number of circuits that are at risk of discontinuance, but these circuits can stretch for miles across multiple states and running over multiple carrier networks. As a result, it is challenging for utilities to manage the process as different carriers transition at different times, sometimes over the same circuit. Moreover, utilities have stringent performance requirements for latency and reliability, and they need to be sure that a replacement service from a carrier will be able to meet these performance requirements. Given the complexity of the IP Transition as well as the sheer number of circuits and services involved, utilities need sufficient notice and additional time to be able to prepare to transition to alternative communications, which as a practical matter may be the utility's own fiber or microwave networks in many cases.

As the Commission explained in the NPRM, repealing Section 51.332 would eliminate the direct notice requirement in so far as it currently extends to utilities, as well as to other entities besides telephone exchange carriers.[91] Repealing this provision would also eliminate the requirement that carriers provide notifications regarding their *de facto* retirement of services,[92] as well as their retirement of the feeder portion of copper loops and subloops.[93]

UTC opposes the Commission's proposal to eliminate Section 51.332 and in the process no longer require carriers to provide direct notification of network changes to their customers, nor require them to provide network change notifications regarding the *de facto* retirement of services. Going back to the old rules is inappropriate given what the facts show. Prior to the implementation of the *2015 Technology Transitions Order,* utilities did not find out that carriers

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[91] *NPRM* at ¶58.

[92] *De facto* retirement of services is defined as "the failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling" of services.47 C.F.R. §51.331(a).

[93] *NPRM* at ¶57.

were retiring services until after the fact or far too late for utilities to find adequate replacement services – thus threatening the safety, reliability and security of electric, gas and water services.[94] Utilities also discovered that carriers were failing to maintain their networks and/or not fixing outages quickly enough. If the FCC eliminates Section 51.332, UTC is concerned that carriers will go back to their old ways of transitioning their services without providing utilities with adequate (or any) notice ahead of time. Eliminating Section 51.332 will also allow carriers to fail to maintain their networks and disregard the service level agreements (SLAs) that they have for lines that they lease to utilities. Due to these concerns, UTC opposes the elimination of Section 51.332.

The Commission is considering two alternatives to eliminating Section 51.332. It is considering eliminating all differences between copper retirement and other network change notice requirements, which would render copper retirement changes subject to the same long-term or, where applicable, short-term network change notice requirements as all other types of network changes subject to Section 251(c)(5).[95] It is also proposing to amend Section 51.332 to streamline the process, provide greater flexibility, and reduce burdensome requirements for incumbent LEC copper retirements.[96]

UTC opposes these alternative proposals for many of the same reasons that we oppose

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[94] *See e.g*. Reply Comments of the Edison Electric Institute in WT Docket No. 07-245

[95] *Id.* at ¶59.

[96] *Id.*at ¶60. The Commission is proposing specific amendments that would only require ILECs to notify telephone exchange service providers that directly interconnect with the incumbent LEC's network, as was the case under the predecessor rules, rather than "each entity within the affected service area that directly interconnects with the incumbent LEC's network."; reduce the waiting period to 90 days from 180 days after the Commission releases its public notice before the incumbent LEC may implement the planned copper retirement; and provide greater flexibility regarding the time in which an incumbent LEC must file the requisite certification. The Commission's proposal would also amend Section 51.332 to reduce the waiting period to 30 days where the copper facilities being retired are no longer being used to serve any customers in the affected service area; eliminate the requirement that the copper retirement notice include a description of any changes in prices, terms, or conditions that will accompany the planned changes; and eliminate the "good faith communication" requirement.

the Commission's proposal to eliminate Section 51.332 entirely because they would still mean the elimination of the direct notification requirement.[97] These alternative proposals would effectively negate important consumer protections during the IP Transition, including direct notice to consumers, such as utilities, about planned copper retirements. Moreover, there is nothing to suggest that these consumer protections have substantially delayed carriers from transitioning nor have they imposed an undue burden on carriers in terms of compliance. In order to adequately protect consumers (including utilities), UTC recommends that the Commission refrain from reducing the requirement for carriers to provide advance notice of copper replacements and from eliminating the "deemed denied" rule when objections are filed against carrier applications for copper replacement.

The Commission also proposes other revisions to its network change notification rules, which also threaten to remove important consumer protections. Specifically, the Commission proposes to eliminate Section 68.110(b), which requires that "[i]f . . . changes [to a wireline telecommunications provider's communications facilities, equipment, operations or procedures] can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service."[98] UTC is concerned that the elimination of this

[97] Note that the proposal to amend Section 51.332 would not eliminate *de facto* retirement, but the proposal to eliminate the distinction between copper retirements and other network change notification requirements would eliminate *de facto* retirement from requiring notification. The proposal to eliminate the distinction between copper replacements and other network changes would also reduce advance notification from 90 days to 10 days, and it would potentially eliminate the "deemed denied" rule that would apply when an objection is filed against a carrier copper replacement application.

[98] *NPRM* at ¶67, *citing* 47 CFR § 68.110(b).

provision could undermine the reliability and security of utility applications that are supported by carrier services, if the replacement service is incompatible with the utility's terminal equipment. As such, it is important that utilities be provided notification of such changes. Since the Commission's proposal would eliminate that requirement (Section 68.110(b)) UTC opposes it.

IV. The Commission Should Not Adopt Its Proposal to Streamline the Section 214(a) Discontinuance Process.

UTC continues to oppose the Commission's proposals to streamline the Section 214 process for reviewing a carrier's application to discontinue services. Just as UTC is concerned about the impact of copper replacement and other network changes on the safety, reliability and security of utility communications systems, UTC is also concerned that the proposed changes to the process for reviewing carrier applications to discontinue services will further threaten utility communications. The proposed changes fail to balance fairly the interests of consumers, including non-residential customers such as utilities. Instead, the proposed changes are premised on the assumption that they impose costs on carriers that discourage investment in modernizing communications systems. The Commission should seriously question whether the regulatory requirements associated with advance notice requirements and proof that adequate replacements exist before discontinuing services really hinder investment by the carriers in modernizing their networks. There are larger economic forces at work here, and the ILECs began backing out of rural areas decades before the *2015 Technology Transitions Order* or the *2016 Technology Transitions Order*. That aside, removing these underpinnings or diluting them will not sufficiently protect utilities that need communications systems for day-to-day operations as carriers implement the IP Transition.

Case in point is the proposed removal of the adequate replacement test that was established in the *2016 Technology Transitions Order*. While the proposed two-part test is

simpler and would only require the carrier to show that it offers VoIP in the area and that at least one other alternative provider offers voice in the area; the three-part test established in the *2016 Technology Transitions Order* covers other factors that are clearly important to ensuring that consumers are able to receive the same functionality and reliability from replacement services that they had from their legacy analog services. [99] Specifically, the three-part test describes issues regarding functionality, which clearly goes to the substance of the issue for utilities – i.e. reliability. Utilities must ensure that the replacement services will be able to meet their performance requirements. It is not enough that the replacement merely offers VoIP and that there is an alternative voice provider in the area. For this and other similar reasons, UTC opposes the Commission's proposals to eliminate this and other requirements related to the Section 214 discontinuance process.

V. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, UTC urges the Commission not to adopt its proposal for regulated rates for ILEC attachments, and it requests that the Commission avoids adopting shorter timelines for application processing and make-ready without providing flexibility to address factors which may delay the process and which are beyond the control of the utility. If the Commission does adopt shorter timelines, it must ensure that utilities are able to recover their additional costs associated with meeting those shorter deadlines. UTC opposes the comments that urge the FCC to expand its pole attachment jurisdiction to extend to public power and cooperative utilities, and to light poles. These entities are expressly excluded from

[99] Under the three part test, a carrier must show that "one or more replacement service(s) offers all of the following: (i) substantially similar levels of network infrastructure and service quality as the applicant service; (ii) compliance with existing federal and/or industry standards required to ensure that critical applications such as 911, network security, and applications for individuals with disabilities remain available; and (iii) interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors." *2016 Technology Transitions Order*, 31 FCC Rcd at 8305, para. 65.

the FCC's jurisdiction by the provisions within Section 224(a), and light poles are not poles within the meaning of the statutory terms. Similarly, as a policy matter, the Commission should not regulate these entities and these light poles because there is no need to do so. UTC appreciates the Commission's stated interest in protecting the safety, reliability and security of critical infrastructure, while it attempts to adopt changes to the pole attachment rules to speed access to poles and reduce the cost of make-ready and the annual rental rate for pole attachments. UTC underscores that safety, reliability and security must remain paramount, and that the Commission should not adopt policies that would compromise critical infrastructure. In addition, UTC underscores that utilities are enabling broadband by providing pole attachments to third-party communications providers, and by providing broadband services on a wholesale or retail basis, including in areas that would otherwise be unserved. As such, the Commission should appropriately balance the interests of utilities along with the interests of communications service providers when considering its proposed rules for pole attachments.

In addition, UTC urges the Commission to preserve Section 51.332 consumer protections that carriers provide direct notification to consumers well in advance of a copper replacement or other network change; as well as the requirements that carriers not only provide sufficient notice that they plan to discontinue a service, but also that they show there are adequate replacements that provide the same or better functionality as the legacy service that is being discontinued. Utilities need sufficient advance notice prior to the replacement of copper services and they need to ensure that replacement services will provide the same or better functionality as the existing services that they currently receive from carriers. They also need similar protections as carriers proceed in discontinuing services, particularly in remote areas where utilities have critical assets and lack reasonable alternatives to communicate with those critical assets as well as personnel in

the field. Safety, reliability and security are jeopardized without adequate safeguards during the IP Transition, as carriers replace copper networks and discontinue services that they provide to utilities.

Respectfully,

Utilities Technology Council

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