

## **UTC Files Comments and Reply Comments in Support of EEI Petition Seeking 2-Year Statute of Limitations**

### **FCC Continues to Use State Statutes of Limitation in ILEC Pole Complaints**

On August 23, 2021, UTC filed [comments](#) supporting a Petition for Declaratory Ruling by the Edison Electric Institute, which requests that the FCC adopt a two-year statute of limitations for refunds awarded pursuant to section 1.1407 of the Commission's rules in pole attachment complaint proceedings and prevent recovery of damages prior to good faith notice of pole attachment disputes. UTC agreed with EEI that the Commission should not use state statutes of limitations when determining refunds owed by utilities to ILECs for pole attachments, because doing so systematically discriminates against utilities and it creates regulatory uncertainty. Instead of using state statutes of limitation that are longer and vary from state to state, the Commission should use the two-year statute of limitations in section 415(b) of the Communications Act of 1934, which would protect due process and equal protection under the law for utilities and greater certainty regarding the extent of liability from pole attachment refunds. UTC also urged the Commission to prevent refunds for periods prior to good faith notice of a dispute. UTC agreed that this clarification would discourage ILECs from gaming the system by delaying the filing of a complaint in order to increase the size of the refund they could be awarded. Finally, UTC argued that the Commission should grant EEI's petition for clarification because it would discourage disputes over pole attachments, which would in turn promote the deployment of broadband infrastructure.

On September 10, 2021, UTC filed [reply comments](#) in support of EEI's petition. UTC reiterated that granting EEI's request for a uniform two-year statute was appropriate under section 415(b) of the Communications Act of 1934, would apply to agency proceedings, would be consistent with Commission precedent, and avoid inconsistent, discriminatory and inequitable treatment. Because the ILEC complaints arose not from joint use contracts but instead are based on the regulated rate for pole attachments, the Commission should not borrow state statute of limitations related to civil actions for breach of contract. UTC also supported EEI's request to limit refunds to the period after a good-faith dispute has been provided to the utility by the ILEC. Not doing so would expose utilities to massive liabilities and encourage gaming of the system by ILECs. Finally, UTC explained that the Commission had the authority to grant EEI's petition under the Administrative Procedures Act without opening a rulemaking proceeding and that such an action would support the Commission's goals of reducing disputes between the parties and encourage broadband deployment.

In addition to UTC, numerous utilities filed comments and replies in support of the petition for declaratory ruling by EEI. The comments reflect widespread concern by utilities about two recent decisions by the FCC involving pole attachment complaints by ILECs against utilities, which awarded refunds to ILECs for overcharges stretching back five years, based upon state law for breach of contract. Moreover, the Commission released another similar pole attachment complaint decision on August 27, 2021 against another utility, awarding the ILEC complainant a five-year refund of its pole attachment rental payments based on the state statute of limitations in Florida where the poles are located. In doing so, the Commission continued to borrow the state statute of limitations instead of the two-year statute of limitations in section 415(b) of the Communications Act of 1934, despite the pending petition for declaratory ruling by EEI. This continuing trend only underscores the need for the Commission to grant the declaratory ruling, before more pole attachment complaints by ILECs result in decisions by the FCC that follow this precedent.