

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

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

COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

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June 27, 2022

SUMMARY

Utilities are promoting broadband access by voluntarily providing pole replacements to accommodate pole attachments by new attaching entities. It is the attaching entity that benefits from these pole replacements. The utility does not derive any direct benefit and the indirect benefits to the utility are insignificant compared to the burden of replacing the pole. Requiring utilities to share in the costs of pole replacements of poles that are not red tagged will likely lead to disputes between the parties, which will ultimately delay broadband deployment. Moreover, the cost of pole replacements is not a barrier to broadband, and the existing process by which utilities have voluntarily performed pole replacements for third party attaching entities has worked well. Therefore, the Commission should not require utilities to share in the cost of pole replacements unless the pole is red tagged, and it should encourage utilities to continue to replace poles to accommodate access for third party attaching entities voluntarily.

The Commission should continue to review disputes involving pole replacements on a case-by-case basis and should encourage the parties to resolve disputes informally, including through mediation. This will ensure that utilities receive cost recovery for their pole replacement costs, while accelerating access for pole attachments at just and reasonable rates for third party attaching entities. The Commission should not attempt to regulate pole replacement costs through the development of rules and cost-sharing formulas through a rulemaking. Pole replacements are complex projects, and the costs can vary significantly based on different circumstances, such that they defy one-size-fits-all rules and cost-sharing formulas.

Similarly, the Commission should refrain generally from requiring that pole replacement complaints be placed on the Accelerated Docket, and it should instead continue to provide discretion to the Enforcement Bureau staff to place a complaint on the Accelerated Docket, considering the complexity of the case and subject to the precondition that the parties engage in mediation. Likewise, the Commission should not require utilities to provide information about the condition of their poles and their

plans for pole replacements to third party attaching entities. The burden of such a requirement on utilities would far outweigh any potential benefits, and it could likely lead to disputes which would delay the deployment of pole attachments.

UTC reiterates that the Commission should grant the Petition for Declaratory Ruling by the Edison Electric Institute, and establish a uniform, consistent two-year statute of limitations for refunds in pole attachment complaint cases, as well as prevent refunds for periods prior to good faith notice of a dispute. UTC believes that the Commission may provide the requested relief based on the existing record in response to the Petition, or it may grant the declaratory ruling as part of this rulemaking. The Commission should, consistent with section 415(b) of the Communications Act, establish a two-year federal statute of limitations on refunds in order to provide greater certainty regarding potential liability in pole attachment complaint proceedings. Moreover, such a statute of limitations would be consistent with the Administrative Procedure Act and would eliminate disparate treatment of utilities and communications common carriers in complaint proceedings.

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COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council hereby files the following comments in response to the FCC’s *Second Further Notice of Proposed Rulemaking* in the above-referenced proceeding.¹ Utilities support the Commission’s goals of promoting broadband access and affordability, and they provide pole attachments to third-party commercial communications service providers on a non-discriminatory basis at cost-based rates. While they are allowed to deny access for reasons of safety, reliability, capacity and other generally accepted engineering practices, they often replace poles in order to accommodate a request for pole attachments when the existing pole is fully loaded, lacks capacity or is otherwise unable to support the new attachment safely.

This process has worked well, and utilities coordinate the process with the existing attaching entities, the contractors, and a variety of others (including local public safety) in a timely manner and in accordance with the FCC’s rules. They replace poles voluntarily to accommodate both wireless and wireline attachments, and many times wireless attachments involve pole replacements using taller poles and pole-top extensions for better coverage. They also assume the cost of the pole replacement if the pole is already scheduled for replacement (i.e., red-tagged). When a pole replacement is necessitated solely by the new attachment, the utility will provide the new attaching entity with a proposal and an estimate of the cost of replacing the pole, which is a simple pass-through (i.e., no mark-up) of the pole replacement costs. The new attaching entity will have the option of approving the estimate, and if it does so, the work will be

¹ Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, *Second Further Notice of Proposed Rulemaking*, WC Docket No. 17-84 (rel. Mar. 18, 2022)(hereinafter “*FNPRM*”)

scheduled and performed in accordance with the terms and conditions provided in the proposal and the estimate.

To be sure, pole replacements is a complex process (actually, the most complex type of work involving pole attachments), and it requires special equipment to install the new pole, prior-notification and coordination with existing attaching entities, scheduling the work and any power outage that is necessary, managing and overseeing the work typically, and collaborating with local public safety officials both ahead of time and at the scene. The same supply chain and workforce issues affecting the economy generally also affect utilities, and these issues can affect the speed and cost of pole replacements. Moreover, pole replacement work will vary significantly depending on the specific pole and the number and types of attachments involved and related engineering considerations, as well as the location of the pole, the timing of the work, prevailing rates for equipment, replacement poles, and labor, and any state and local permitting and right-of-way requirements, just to list some of the factors. In short, pole replacement work and their costs are highly variable. Accordingly, the FCC should refrain from adopting rules for pole replacements.

Questions related to the appropriate apportionment of pole replacement costs should be reviewed on a case-by-case basis in a complaint proceeding, rather than regulated by rule. At the outset it should be emphasized that disputes have been effectively resolved informally, and there have been no FCC complaints involving pole replacements.² This is not a widespread issue, and any claims to the contrary about pole replacement disputes are vague, unsubstantiated and at best anecdotal. This is a classic case of a solution in search of a problem, and there is no basis for attempting to regulate pole replacements. Moreover, regulating pole replacements by rule would suppress the unique facts and circumstances involving pole replacements, and would operate to deny utilities of their Fifth Amendment rights to just compensation.³

² See e.g., Enforcement Bureau -- Market Disputes Resolution Division Pending Complaints, *available at* <https://www.fcc.gov/general/eb-market-disputes-resolution-division-pending-complaints>.

³ U.S. Const. amend V.

The Commission is right to question regulating pole replacements as a policy matter, because the costs will outweigh the benefits. It will likely increase disputes involving pole replacements, which will only delay the deployment of broadband infrastructure. Moreover, the purported benefits to the utility and assessment of the value of these benefits for purposes of cost sharing are highly speculative and completely subjective, and any attempts to regulate pole attachments by rule will ignore the reality that pole replacements are highly complex and highly variable, such that they are more appropriately reviewed on a case-by-case basis, assuming that any complaints are ever even filed. To the extent that some claim that the pole attachment complaint process is too slow, the remedy would be to streamline the processing of complaints involving pole replacements if necessary. The FCC should not reflexively adopt rules in response to abstract, theoretical, and speculative arguments that the pole attachment complaint process is too slow.

It is not at all clear that pole replacements are a barrier to broadband access and that regulating the cost of pole replacements will promote broadband access. Economic studies attempt to make the connection, but fail.⁴ They are based on generalized assertions that have no application to pole replacements. Moreover, they fundamentally claim that any additional costs of deployment represent a barrier to broadband, regardless of whether the costs are right or not. It would be great if there were no costs of deployment, but the reality is that there are high costs of deploying broadband in unserved areas. These are the true barriers to broadband, not pole replacements. In that regard, speculative studies arguing for the elimination of any additional costs of deploying broadband infrastructure such as pole replacements are contrary to settled economic principles and constitutional guarantees against takings without just compensation. The reality is that these costs are not eliminated, they are just shifted to the utility and ultimately to electric ratepayers. Moreover, such studies conflate the potential impact from a

⁴ See e.g. Edward Lopez and Patricia Kravtin, Advancing Pole Attachment Policies to Accelerate National Broadband, Connect the Future, available at <https://connectthefuture.com/wp-content/uploads/2021/11/Advancing-Pole-Attachment-Policies-To-Accelerate-National-Broadband-Buildout-National-Report.pdf>. See also Patricia D. Kravtin, The Economic Case for a More Cost Causative Approach to Make-Ready Charges Associated with Pole Replacement in Unserved/Rural Areas: Long Overdue, But Particularly Critical Now in Light of the Pressing Need to Close the Digital Divide (September 2, 2020).

lack of broadband access as synonymous with the cost of pole replacements, which is completely misleading. Utilities support broadband access, and that is why they accommodate pole replacements to facilitate deployment. However, the cost of replacing poles is insignificant for communications attachers compared to other economic factors that contribute to the digital divide. Pole replacements are not a barrier to broadband, and economic studies fail to show any causal connection between shifting pole replacement costs and promoting broadband deployment.

I. Determining the Applicability of Cost Causation and Cost Sharing

The *FNPRM* requests comment on numerous issues related to pole replacements, which generally inquire regarding the circumstances under which utilities should share in pole replacement costs and the appropriate allocation of these costs between utilities and attaching entities. While the Bureau's 2021 Declaratory Ruling clarified that pole owners may not require a new attacher to pay for the entire cost of pole replacements unless they are solely necessitated to accommodate the new attachment, the Commission generally inquires in the *FNPRM* about certain scenarios beyond those involving red-tagged poles or poles that are out of compliance, where financial responsibility for pole replacements should be shared by attachers and utilities and how those costs should be apportioned. It also asks for comment on the scope of utility liability for pole attachment rate refunds when rates are found to be unjust and unreasonable.

Specifically, the Commission requests comment on whether utilities should share in the cost of pole replacements when the pole was already planned to be replaced in the future, such as one or two years after the new attachment request is made. In such cases, the definition of the term "necessitated solely" comes into question, and the Commission asks whether it should codify a definition for this term for purposes of section 1.1408(b) with regard to the allocation of pole modification costs. In that regard, it also asks whether "capacity" within section 1.1408(b) refers to both additional space needed to accommodate the new attachment and/or the need for a stronger pole to increase loading capacity. It also requests comment on whether to establish a definition of "red-tagging" or other terminology that distinguishes between priority replacements that need to be performed immediately due to the status of a

pole from non-priority replacements that may be implemented at a later time.

Moreover, it asks for comment on incidental and direct benefits accruing from pole replacements, including any criteria that would distinguish a direct benefit from an incidental one, as well as any economic or legal authorities to support distinguishing direct from incidental benefits. It also asks for comment on the circumstances under which existing attachers, as opposed to utilities, may be responsible for preexisting violations that require an entire pole to be replaced, including whether a utility directly benefits from a pole replacement that corrects a preexisting violation within the meaning of section 1.1408(b) even if the utility did not cause the violation. Finally, it asks whether case precedent could be construed to mean that a utility is responsible for the costs of correcting a preexisting violation because it directly benefits from the pole replacement.

Turning to the allocation of pole replacement costs, the Commission asks for comment on how to identify and quantify the costs of a pole replacement that are proportional to the direct benefit obtained by a utility from a pole replacement that is not necessitated solely by a new attachment request. It also asks how to distinguish the incremental costs attributable to the new attacher from the costs that should be attributable to utilities when a pole is necessary to make space for the new attachment and for a reason that directly benefits the utility. It also asks about the apportioning of related costs associated with pole replacements, such as the cost of transferring existing attachments to the new pole.

Finally, the Commission requests comment on alternative approaches and standards that would depart from distinguishing direct from indirect benefits or recovering costs through non-recurring charges. Specifically, it asks for comment on the underlying economic and operational impacts on the parties, including whether an alternative approach would allow utilities to fully recover the costs of establishing additional capacity on their poles. Similarly, it asks for comment on the policy implications, including whether an alternative approach would promote or deter broadband deployment and/or successfully negotiate pole attachment agreements. Finally, it asks whether it should establish a presumption that utilities directly benefit from pole replacements that are precipitated by a new attachment request and establish clear standards for how and when utilities should be required to pay a

proportional share of the total pole replacement costs.

A. Utilities should not share in the cost of pole replacements when the pole was already planned to be replaced one or two years in the future, unless the pole is red tagged.

The Commission asks if utilities and other pole owners should be required to share in the cost of pole replacements, if a pole is scheduled to be replaced one or two years in the future. UTC opposes requiring utilities to share in the costs of these pole replacements, unless the poles are red tagged. At the outset, UTC emphasizes that utilities bear the full cost of replacing red tagged poles that were already scheduled for replacement, consistent with the FCC's 2018 Pole Attachment Order.⁵ This policy should address general concerns that new attachers are unfairly incurring pole replacement costs and delays to access poles that were already scheduled for replacement or that contained preexisting violations that caused the pole to be in need of replacement at the time that access was requested, making it unnecessary for the Commission to adopt a rule that would expand cost sharing on utilities more broadly to apply to other poles that are scheduled to be replaced in the future.

Unlike the case with red tagged poles that are already scheduled to be replaced or poles with preexisting violations that require replacement, it would be unfair to the utility to bear pole replacement costs for poles that are perfectly fine but require replacement solely due to the new attachment. It should be irrelevant whether the pole may be scheduled to be replaced a year or two in the future. The reality is that the utility would not have incurred the cost of replacing the pole at that time but for the need to accommodate the new attaching entity. There is no benefit to the utility that might justify requiring the utility to share in the pole replacement costs. Moreover, requiring utilities to share in the cost of such pole replacements would have the practical effect of accelerating or compounding pole replacement costs for the utility.

In that regard, the Commission should consider the possibility that a pole may be scheduled for replacement due to reasons other than its condition. For example, there may be a road widening that is

⁵ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, et al.*, WC Docket No. 17-84, *et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, ¶121, n. 450 (2018) (“2018 Pole Attachment Order”).

scheduled in the future which would require the pole to be replaced. It would be wrong to require the utility to bear the cost of replacing the pole to accommodate the new attacher, when the utility would then have to incur the cost of replacing the pole again when the road widening takes place in the future. Similarly, a pole replacement may be required due to the request of the new attacher for a taller pole, which is often the case with wireless attachments, as well as wireline attachments. It would be unfair to the utility to force it to bear the replacement costs of that pole, simply because it was scheduled to be replaced at some point in the future. The new attacher needed to replace the pole anyway for a taller pole, regardless of whether the pole was scheduled to be replaced later in the future. Moreover, such a reflexively simplistic rule would completely ignore other ancillary costs associated with the pole replacement that the utility would not otherwise incur if it were not for the need to accommodate the new attacher, including the additional time and expense of expediting the pole replacement instead of replacing it on a regular schedule.

Finally, the Commission should remain mindful of the unintended consequences of requiring utilities to bear the cost of replacing poles, just because they were already scheduled to be replaced at some point in the future. Such a rule could be deliberately used against the utility by attachers for no other reason than to gain a monetary advantage and it could distort reasonable expectations, plans and practices related to deployments, leading to disputes or other consequences that would outweigh the potential benefits and delay and discourage broadband access. For all these reasons and more, the Commission should not require utilities and other pole owners to share in pole replacement costs just because the pole might already be scheduled for replacement at some point in the future.

B. Utilities do not directly benefit from pole replacements generally and should not share in the costs based on incidental benefits.

The Commission asks if utilities directly benefit from pole replacements and whether they should share in the cost of pole replacements simply due to incidental benefits.⁶ The reality is that utilities do not

⁶*FNPRM* at ¶¶11-15.

directly benefit when they replace poles to accommodate a new attachment. They are accommodating the new attachment to support broadband access. Whatever purported benefits that the utility gains from replacing the pole are insignificant. The utility is not required to replace the pole and it is permitted to deny access, consistent with section 224 of the Communications Act. Utilities are providing pole replacements voluntarily, and the Commission should develop policies to encourage utilities to provide pole replacements as a way to promote broadband deployment.

The Commission should also recognize that when utilities voluntarily provide pole replacements, they undertake a significant project that requires complex coordination with the other attaching entities on the pole as well as contractors and local authorities who are involved in the project. The work also needs to be scheduled ahead of time so that the project is conducted in a safe and effective manner with minimal impact on consumers and communities. Finally, the utility typically oversees the work to make sure that it is conducted properly, and it typically conducts all the post-construction follow-up with the parties who participated in the pole replacement.

Note that one of the big problems here is the failure of attaching entities to timely transfer their attachments from the old pole to the new pole. In such cases, the utility will typically leave a “stub pole” with the attachment on the old pole, resulting in two poles (i.e., “double wood”) next to each other. This problem is widespread, and it underscores some of the issues for utilities associated with pole replacements. Instead of questioning how utilities benefit from pole replacements, the Commission should address double wood and other issues associated with pole replacements.

As utilities provide pole replacements voluntarily to accommodate new attachments and to promote broadband access, they do not directly benefit, nor do they gain any incidental benefits that would justify the Commission requiring utilities to share in the cost of pole replacements. These pole replacements are special projects and represent a relatively small percentage of the number of pole replacements overall that utilities perform on a regular basis. Moreover, as a special project, a lot of extra work goes into conducting pole replacements for attaching entities. This work varies considerably depending on a number of factors and it is highly complex, owing in part to the need to move electric

conductors as well as communications equipment on the pole. The time and expense involved can also vary considerably, depending on the type of poles being replaced as well as the location where they are set as well as other factors, such as the availability of labor and equipment necessary to perform the pole replacement.

Consequently, the benefits to the utility are limited and the burdens on the utility are substantial from pole replacements. Yet, utilities are ultimately responsible for ensuring the integrity and reliability of their pole infrastructure, and they assume that responsibility by replacing poles when and where needed. As a policy matter, the Commission should encourage utilities to invest in the maintenance of their infrastructure, which helps to promote communications reliability and broadband access.

UTC is concerned that requiring utilities to incur the cost of pole replacements to accommodate attaching entities, based on some vague and uncertain incidental benefits that they gain will be difficult to implement and ultimately discourage infrastructure investment to the detriment of the public interest. As the Commission is currently looking at ways to improve network reliability and resiliency, its *FNPRM* on pole replacements seems at odds with the Commission's goal of hardening pole infrastructure and making networks more resilient.⁷ In any event, the Commission proceeds from a false premise in assuming that utilities gain substantial direct or indirect benefits from pole replacements such that they should share in the costs with attaching entities. Utilities do not directly benefit from pole replacements. Any incidental benefits are insignificant compared to the burden of replacing the pole, which is primarily for the benefit of the new attacher.

C. The identification and quantification of pole replacement costs based on purported benefits should be addressed if at all in a pole attachment complaint proceeding, not through a rulemaking.

Pole replacements are highly complex projects, and the costs vary significantly based on a variety of factors. It is highly fact-specific and subject to surrounding circumstances, defying regulatory approaches for cost sharing. Instead of trying to develop rules for sharing pole replacement costs, the

⁷ *Resilient Networks*, PS Docket No. 21-346, Notice of Proposed Rulemaking (rel. Oct. 1, 2021).

Commission should rely on adjudication through pole attachment complaints. Moreover, the Commission should expedite the resolution of disputes involving pole replacements by encouraging parties to engage in mediation and informal dispute resolution. This process has been demonstrated to be effective at providing remedies to attaching entities.

UTC believes that attaching entities would be better served if the Commission continued to rely on case-by-case review of disputes through adjudication, rather than trying to adopt ill-suited, vague and potentially prejudicial rules to regulate pole replacements that would prevent utilities from recovering their costs. It is a highly speculative undertaking to try and identify and quantify the purported benefits of pole replacements in an attempt to regulate sharing pole replacement costs with utilities. Most likely, any such rules if promulgated would be highly inaccurate and operate to systematically deprive utilities of their constitutional rights to just compensation. As a policy matter, regulating pole replacement costs is only going to encourage disputes between attaching entities and utilities, which will ultimately delay broadband deployment.

II. Allocating Costs When Utilities Directly Benefit from Pole Replacements

In the *FNPRM*, the Commission asks for comment on whether utilities should share in the cost of pole upgrades and modifications unrelated to new attachments, including whether they directly benefit and whether they should pay a proportional share of the costs.⁸ Specifically, it asks if a pole upgrade is necessitated at the time a pole is replaced to create capacity for a new attachment, whether the text of section 1.1408(b) allocates all costs of the pole replacement, including those for unrelated upgrade/expansion modifications, to the new attacher.⁹ In that regard, the Commission notes a distinction between the text of section 1.1408(b) and the language in the *Local Competition Order*¹⁰, which addresses situations where the pole replacement is an “opportunity” for the utility and other attachers to “expand their own use” of the new pole, and it asks for comment on how to reconcile these different cost

⁸ *FNPRM* at ¶18.

⁹ *Id.* at ¶19.

¹⁰ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*).

attribution standards in the Commission's rules and the *Local Competition Order*.¹¹

It also asks for comment on revising section 1.1408(b) to expressly create a presumption that utilities directly benefit when they use a pole replacement precipitated by a new attachment request as an opportunity to upgrade the pole or expand it for its own use, such that it should pay a proportional share of the pole replacement costs.¹² In that regard, the Commission asks for comment on the position of utilities that it is unnecessary to modify the Commission's rules to address cost allocation when utilities use a new attachment request as an opportunity to upgrade the pole or expand it for its own use. Finally, it asks for comment on the proportional share of the costs that utilities should share for pole upgrades and expansions, as well as several other issues related to the adoption of a presumption that utilities directly benefit, including the positive or negative effect on pole attachment negotiations and the deployment of broadband facilities, any adverse effects on utility ratepayers, and whether any party attaching later must pay a share of the costs of the pole replacement based on the text of section 1.1408(b).¹³

The *FNPRM* also asks for comment on the costs and benefits of early pole retirement, including additional information and documents to substantiate the economic, legal, and practical implications of potentially revising its rules governing cost sharing.¹⁴ In that regard, it asks whether revising the rules to require utilities to pay some portion of the costs of replacing a pole that is necessitated solely to accommodate a new attachment would better align the economic incentives of the parties, or whether it would, as some utilities suggest, simply incentivize utilities to deny access to the pole in this circumstance.¹⁵

Turning to the cost allocation formula, the Commission requests comment on the proposal by NCTA to allocate the net remaining book value of the replaced pole based on its average depreciated bare pole investment under the Commission's pole attachment rate formula, including whether it would make

¹¹ *FNPRM* at ¶21, citing *Local Competition Order*, 11 FCC Rcd at 16077, para. 1166 (“If . . . a cable operator seeks to make an attachment on a facility that has no available capacity, the operator would bear the full cost of modifying the facility to create new capacity, such as by replacing an existing pole with a taller pole. Other parties with attachments would not share in the cost, unless they expanded their own use of the facilities at the same time.”).

¹² *Id.* at ¶23.

¹³ *Id.* at ¶24.

¹⁴ *Id.* at ¶29.

¹⁵ *Id.* at ¶30.

utilities whole for early replacement of poles and whether utilities should be allowed to contest the sufficiency of the allocation as compensatory.¹⁶ It also asks for comment on alternative standards of cost allocation that would better balance the incentives of the parties, be administratively simple to apply and be more amenable to utilities.¹⁷ Moreover, it asks for a broad range of data from pole replacement projects to gather the broader scope of pole replacements and their costs. Finally, it asks whether the impact of revising the cost sharing rules to recognize that utilities directly benefit from pole replacements for new attachments and requiring utilities to pay a proportional share of the costs would have a positive or negative effect on negotiations of pole attachment agreements and broadband deployment, as well as whether it would be discriminatory for a utility to deny access to a new attacher based on lack of capacity on the pole if it is providing broadband itself.¹⁸

A. Utilities should not share in the cost of pole upgrades and modifications unrelated to new attachments.

It is not uncommon for utilities to replace a pole with a stronger or taller pole, if the pole must be replaced to accommodate a new attaching entity. The reason is simple to understand. The additional incremental cost of using a stronger or taller pole is insignificant compared to the long-term benefits. Most of the costs are in the labor and installation of the new pole anyway, so it makes sense to use a stronger or taller pole when replacing a pole. As a policy matter, the Commission should encourage this practice, because it creates more capacity for other attachments and in turn greater broadband access and competition. It also improves network reliability and resiliency if the new poles are stronger, which helps them to withstand increasingly severe climate change events. Finally, it enables utilities to more effectively support communications attachments – and particularly wireless attachments because taller poles provide better wireless coverage for small cell pole-top attachments. Additionally taller poles provide more clearance for work above the electric space on the pole.

Any benefits to the utility from pole upgrades and modifications are marginal, and attaching

¹⁶ *Id.* at ¶30.

¹⁷ *Id.*

¹⁸ *Id.* at ¶34.

entities are the primary beneficiaries.¹⁹ Utilities use the same amount of space on the pole regardless, but attaching entities enjoy much more additional capacity on taller or stronger poles. Arguably utilities benefit from stronger poles too, but the benefits are hard to quantify, especially when calculated as an average across their entire networks. Meanwhile, the attaching entity gains all the benefits of the pole upgrade which is a direct and tangible benefit that makes it possible for the attaching entity to deploy and provide service.

There is no question that the attaching entity directly benefits far more than the utility, and it can justify the pole replacement cost more easily than the utility because it was a necessary expense for the attaching entity to provide service. Meanwhile the utility didn't need to replace the pole in the first place, and probably didn't gain much from whatever incidental benefit may be provided in the process. Ultimately, the difficulty of trying to allocate the costs of pole upgrades and modifications will outweigh any possible benefits. The tried-and-true process that has been followed for decades has worked well and there have been few if any complaints in the past. The Commission should not overreach in attempting to regulate to pole replacements, including modifications and upgrades, because it sets bad policy that discourages investments and creates burdens that far outweigh any potential benefits.

1. The Commission should not create a presumption that utilities directly benefit when they use a pole replacement precipitated by a new attachment request as an opportunity to upgrade the pole or expand it for its own use.

As explained above, utilities do not directly benefit from pole replacements to accommodate

¹⁹ See Letter from Aryeh Fishman, Assoc. General Counsel, Edison Electric Institute, and Brian M. O'Hara, Sr. Dir. Regulatory Issues, NRECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4 (filed Dec. 17, 2020) (Edison Electric Institute/NRECA Dec. 17, 2020 Ex Parte Letter) ("In cases of insufficient capacity, where a pole owner requires replacement of a pole with a larger, stronger, or higher class of a pole, such work is performed solely to create capacity for the new attachment. This is not an exclusive modification or an 'upgrade' that is unnecessary or unreasonably required to accommodate the new attachment. When there is a need for a pole to be replaced because of lack of capacity, the new pole still must ensure safety, reliability and resiliency. Therefore, to accommodate the new load, the new pole must meet all applicable standards and requirements at the time of installation and the attaching entity is the cost-causer of this work. Under the Commission's policy, in this scenario, because the replacement of the pole is triggered by insufficient capacity, the attacher is the direct beneficiary and may incur up to the full cost of the work that would otherwise not be performed but for its request. Unless the pole owner uses the opportunity to add to or modify its own facility for its own exclusive use, it does not directly benefit from the pole replacement and does not bear any share of the pole replacement costs.")

attaching entities and any incidental benefits are not worth trying to allocate towards the utilities for cost sharing purposes. So, it doesn't make any sense to create a presumption that utilities benefit by virtue of replacing poles to accommodate a new attaching entity. That is why the state of Maine established a presumption that utilities do not benefit from pole replacements, even though the state does have a pole replacement cost-sharing policy in place.²⁰ It recognized that utilities don't generally benefit from pole replacements, and as a practical matter there have been few instances where utilities have shared in pole replacement costs with attaching entities. Moreover, every other state in the country recognizes that attaching entities are the cost causer for pole replacements, and they follow policies that allocate the entire cost of the pole replacement on the attaching entity.²¹ Accordingly, the Commission should refrain from adopting a presumption that utilities benefit from pole replacements, including when they take the opportunity to expand capacity or upgrade the pole for its own use.

2. It is unnecessary to modify the Commission's rules to address cost allocation when utilities use a new attachment request as an opportunity to upgrade the pole or expand it for its own use.

It is not necessary or prudent for the Commission to modify its rules to address cost allocation when utilities use a new attachment request as an opportunity to upgrade the pole or expand it for its own use.²² To the extent that section 1.1408 even applied to the allocation or imputation of the cost of pole upgrades or expansions, it could serve as the basis for the Commission to review a dispute involving a pole replacement, including an upgrade or expansion. The Commission would not need to create rules for pole replacements, nor should it, because the existing rules could be applied and trying to create new rules will be far more difficult and provide very little potential benefits. Defining incidental and direct benefits to utilities through pole replacements generally by rule would be inherently arbitrary, vague and

²⁰ See 65-407-880 Me. Code R. § 1(C). See also Petition of NCTA for Expedited Declaratory Ruling, WC Docket No. 17-84 at 26 n59 (filed July 16, 2020)(conceding that that the statutory framework in the state of Maine presumes that utilities do not benefit from upgrades made during pole replacements)(hereinafter NCTA Petition).

²¹ See Letter from Robin Bromberg to Marlene H. Dortch, Secretary Federal Communications Commission in WC Docket No. 17-84 at 2 (Jan. 11, 2021)(explaining that the new attacher is the *cost causer* of the pole replacement and should thus pay for the pole replacement, and that this is the way all states (except Maine) handle such replacements.)

²² See *FNPRM* at ¶23.

subjective.

3. Regulating pole replacement costs by adopting a presumption that utilities benefit from pole upgrades and requiring them to bear a proportional share of the costs will have a negative effect on negotiations of pole attachment agreements and broadband deployment.

The guiding principle for the Commission in this proceeding should be less regulation, not more. Although attaching entities encourage the Commission to regulate pole replacements, the reality is that this is a solution in search of a problem. Moreover, as a policy matter, regulating pole replacements is more likely to delay broadband deployment than promote it. Finally, the adoption of rules for pole replacements will almost certainly systematically deny utilities from recovering their costs, contrary to their Fifth Amendment rights under the Constitution.²³ The legal challenges from such a rule alone would outweigh any potential benefits. Moreover, the complaint process serves as a regulatory backstop to protect attaching entities against unjust or unreasonable pole replacement practices by utilities for review by the Commission on a case-by-case basis. There is no reasonable basis for the Commission to regulate pole replacements and in fact the record does not reflect any widespread problem that would justify creating rules. In any event, the complexity and variability of pole replacement costs defy standardized rules.

The Commission should not create a presumption that utilities benefit from expansions, because the burden should remain on the attaching entity to describe how the utility joined in the pole replacement and define the incidental and/or direct benefits in measurable and quantifiable terms.²⁴ As explained above, utilities provide pole replacements to accommodate requests for access by new attachers and to promote broadband access. The attacher is the sole beneficiary of pole replacements and any purported benefits to the utility from expansion of capacity are speculative at best. Utilities have stipulated on the record that they should share in the costs of the replacement of poles that were already scheduled to be

²³ U.S. Const. amend V.

²⁴ 47 C.F.R. §1.1409(b) (“The complainant shall have the burden of establishing a *prima facie* case that the rate, term or condition is not just and reasonable or that the denial of access violates 47 U.S.C. §224(f).”)

replaced. However, they do not join in the pole replacement, nor should they share in the cost of the pole simply because the new pole may be stronger or taller than the old one. If any presumption is established, it should be that the attacher is the sole beneficiary of the new pole, not the utility.

Shifting the burden by establishing a presumption that utilities directly benefit from pole replacements precipitated by a new attachment when the utility uses the pole replacement as an opportunity to expand the capacity of the pole would have a negative effect on pole attachment negotiations and the deployment of broadband facilities. It would eliminate the incentive for utilities to accommodate pole replacements voluntarily, and it would punish utilities for making sound investments that make poles more capable of supporting new attachments and more resilient and reliable. Replacing the old pole with exactly the same pole may not be sufficient to support the new attachment, as a practical matter. Moreover, the public interest would be better served by replacing the pole with a stronger or taller pole, because it increases the capacity to support attachments and the strength of the pole to remain resilient and reliable. Finally, the marginal additional cost of the new pole is likely negligible compared to the cost of replacing the old pole with the same pole.

If utilities were required to share in the cost of pole replacements involving a taller or stronger pole, they would likely refrain from accommodating the pole replacement request or they would only replace the pole with exactly the same pole as the old one. Neither of these likely outcomes promotes the goal of promoting broadband access, nor do they advance the goal of promoting the goal of infrastructure resilience and reliability.²⁵ The purported benefits to the utility from pole upgrades and expansions are highly speculative and the evidentiary burden should not be shifted to utilities by the establishment of a presumption that they benefit from such pole replacements.

B. Early pole retirement shifts costs onto utilities and ratepayers, and the public interest benefits in terms of broadband deployment are uncertain.

The problem with early pole retirement is that it inherently deprives ratepayers of the full value of

²⁵See *e.g.*, *Resilient Networks*, PS Docket No. 21-346, Notice of Proposed Rulemaking at ¶36 (Oct. 1, 2021)

investments supported by electric service rates. If a pole replacement is performed to accommodate a new attaching entity, those costs should be properly allocated to the attaching entity, not the utility. Otherwise, a perfectly fine pole that is replaced before it is no longer used and useful will result in higher costs to the utility and those costs are ultimately borne by ratepayers.

While the negative impact on utility ratepayers is clear, the public interest benefits for broadband consumers are speculative at best. There is nothing on the record that requires attaching entities to deploy broadband in unserved areas as a quid pro quo for requiring utilities to share the cost of pole replacements. Moreover, there is no evidence to support the claim that pole replacements are a barrier to broadband in unserved areas. To the contrary, poles in unserved areas should have available capacity because presumably there are no communications attachments on a pole in an unserved area, and thus pole replacements should be unnecessary in unserved areas as a practical matter. It defies basic logic to believe that pole replacements are a barrier to broadband in unserved areas. Yet there has been no evidence submitted on the record to prove that pole replacements are a barrier in unserved areas. Only unsubstantiated and anecdotal claims have been submitted on the record, nothing close to what is necessary to support regulating pole replacements.

1. The NCTA proposed cost sharing formula is completely unfair and would systematically deny just compensation by ignoring the value to the utility of the useful life of the pole.

The proposed cost sharing formula based on the net value of the depreciated pole would result in utilities bearing practically all the costs of pole replacements, which is completely unfair and a transparently disingenuous proposal by NCTA.²⁶ Most poles are fully depreciated, and the proposed cost sharing formula would result in a near zero offset of the cost of a new replacement pole, such that the utility would bear the entire cost of the new pole under this proposed formula. The utility would wind up incurring the entire cost of the new pole as a practical matter, assuming the old pole was fully depreciated. Even if the old pole was not fully depreciated, the utility would unfairly bear the cost of the new pole to

²⁶ NCTA Petition at 11, 23.

the extent that the formula fails to account for the expected useful life of the pole for utility purposes. Meanwhile, utilities would incur accelerated costs for pole replacement because of early retirement of poles that would otherwise have continued to be used and useful for utility purposes. In this way, the proposed cost sharing formula is doubly unfair to utilities by shifting costs and accelerating them.

One of the challenges with developing a cost-sharing formula is the practical difficulty of quantifying the remaining expected useful life of the pole for utility purposes, which is likely to lead to disputes between the parties over the estimated value of the old pole. In turn, the potential benefits from a cost-sharing formula would likely devolve into diminishing returns, even if a formula could be developed that is potentially fairer to the utility. Ultimately, the public interest would be better served by continuing to follow existing practices for allocating pole replacement costs, instead of attempting to develop a cost sharing formula that would apply in all cases. The costs are simply too variable and the estimated useful life of the pole too debatable to develop a cost sharing formula that could be effectively implemented as a practical matter.

2. Case-by-case review of cost sharing for pole upgrades and modifications represents the best alternative approach.

The Commission should continue to use case-by-case review of complaints involving sharing the cost of pole replacements, rather than attempting to develop rules for cost sharing for pole replacements.²⁷ This process is more likely to result in full recovery of pole replacement costs while ensuring timely resolution of cost sharing disputes. As noted above, pole replacements are complex and the costs are variable depending on the circumstances, such that it would be difficult to develop uniform rules for cost sharing through a rulemaking. Given the limited number of disputes involving pole replacements, adjudicatory review rather than rulemaking also appears to be the most administratively efficient approach to ensuring fair and equitable sharing of pole replacement costs between the parties. UTC is

²⁷ See *FNPRM* at ¶31 (suggesting an alternative approach for cost recovery for pole replacements that would allow utilities to recover their costs over time through the pole attachment recurring rates rather than through make-ready fees, and asking for comment on whether this approach would make utilities whole for early retirement of a structurally sound pole.)

concerned that untested alternative approaches may not ensure that utilities fully recover their pole replacement costs, and therefore it urges the Commission to continue to review make ready fees for pole replacements, including upgrades and capacity expansions on a case-by-case basis.

3. Revising the cost sharing rules by expressly recognizing that utilities directly benefit from pole replacements performed at the request of third parties will have a negative effect on negotiations of pole attachment agreements and broadband deployment.

As a policy matter, revising the cost sharing rules by expressly recognizing that utilities directly benefit from pole upgrades and modifications will have a negative effect on negotiation of pole attachment agreements and broadband deployment.²⁸ At the outset, UTC reiterates that utilities do not directly benefit when a new pole is set to accommodate the needs of a third party, and the Commission should not attempt to establish rules for when and how utilities should be required to pay a proportional share of the total pole replacement costs. UTC also reiterates that disputes involving pole replacement costs are likely to be fact-specific and better addressed in adjudicatory proceedings. Finally, UTC reiterates that attempting to regulate cost sharing through rules rather than relying on case-by-case review through adjudication will lead to more disputes or will discourage utilities from voluntarily accommodating pole replacement requests, which will also delay broadband deployment.

Adjudication of pole replacement disputes is appropriate because the pole replacement process has worked well and there are few disputes. Pole replacements are highly complex, and the costs vary considerably depending on the circumstances, such that disputes are better addressed through

²⁸See *FNPRM* at ¶18 (inviting comment on whether the Commission should revise its pole attachment rules to expressly recognize the utilities directly benefit from pole replacements that are precipitated by a new attachment request and establish clear standards for when and how utilities should be required to pay a proportional share of the total pole replacement costs.) See also *FNPRM* at ¶12 (seeking comment on whether a utility directly benefits from a pole replacement that is necessary to correct a preexisting violation that the utility did not cause). See also *FNPRM* at ¶13 (seeking comment on how to identify and quantify the costs of a pole replacement that are proportional to the direct benefit obtained by a utility from a pole replacement that is not necessitated solely by a new attachment request.) And see *FNPRM* at ¶14 (asking how the Commission should distinguish the incremental costs attributable to the new attacher from the costs that should be attributable to utilities when a pole replacement is necessary to make space for the new attachment and for a reason that directly benefits the utility). See also *FNPRM* at ¶15 (seeking comment on whether the Commission should revise its cost allocation rules to modify or replace the direct benefit versus incidental benefit standard set forth in section 1.1408(b).)

adjudication. Finally, review of pole replacement costs through adjudication is more likely to ensure that utilities receive cost recovery for pole replacements, while also ensuring timely resolution of disputes, which will in turn lead to faster broadband deployment. For all these reasons, the Commission should not expressly recognize that utilities directly benefit from pole replacements, nor should it develop rules for when and how utilities should share in the cost of pole replacements.

III. Avoiding and Resolving Disputes Between Utilities and Attachers

The Commission also invites comment on additional measures that the Commission could adopt that would enable attachers and utilities to avoid pole replacement disputes and/or quickly resolve them when they occur. Specifically, the Commission invites comment on the suggestion by ExteNet to require utilities to provide potential attachers with information concerning the condition of, and replacement for their poles. It also asks if there are any other issues beyond pole replacements that hinder the deployment of broadband facilities. The Commission also asks for comment on NCTA's proposal that the Commission establish a policy favoring the placement of pole attachment complaints arising in unserved areas on the Accelerated Docket, which requires that a proceeding on a complaint be concluded within 60 days. In that regard, it asks for comment on whether this policy would be limited to discrete pole attachment issues that do not require the Commission to consider whether a rate, term, or condition of attachment is unjust or unreasonable, and whether there is additional clarity the Commission could provide on the scope of pole refunds available under the Commission's existing rules. Lastly, the Commission asks for comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion and accessibility, as well as the scope of the Commission's relevant legal authority.

A. Utilities should be allowed to continue to voluntarily provide information concerning the condition of, and replacement of poles to help potential attachers deploy broadband facilities.

Contrary to ExteNet, the Commission should not require utilities to provide potential attachers with information concerning the condition of and replacement plans for, their poles.²⁹ The Commission

²⁹ See *FNPRM* at ¶35, citing Comments of ExteNet at 6-7/

has considered similar concepts in the past, and it has declined to require utilities to provide this kind of detailed pole attachment information to attaching entities. There as here, the marginal benefits to attachers from providing this kind of information are outweighed by the substantial burden on utilities of making this information available.³⁰ At the outset, utilities are concerned about providing critical infrastructure information, which is carefully protected from public disclosure because of its implications for public safety and national security.³¹ Utilities are also concerned that mandatory reporting requirements could have the practical effect of extending survey times, which would ultimately result in broadband deployment delays. Finally, there are also concerns that mandatory reporting requirements will lead to additional further reporting requirements that would create undue burdens for utilities.

As a practical matter, these reporting requirements may not promote broadband deployment, if for example the pole is already red-tagged and scheduled to be replaced anyway, which would be plainly evident to attaching entities. It also creates a double standard, whereby attaching entities may refuse to disclose information to utilities about their deployment plans, yet utilities would be required to disclose detailed and comprehensive information about their infrastructure to these same attaching entities. Finally, there are concerns about the potential process, whereby attaching entities may demand additional information and on short notice without regard to the burden it places on the utility and without any obligation upon the attaching entity that it will apply and deploy facilities.

B. Pole attachment complaints involving pole replacements should not all be placed on the Accelerated Docket, and the Commission should encourage the parties to engage in informal dispute resolution, including mediation to resolve pole replacement disputes.

Contrary to NCTA, the Commission should not force fit resolution of pole replacement disputes

³⁰ See *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration at ¶89 (Apr. 7, 2011)(declining to establish a pole attachment database, due to practical difficulties involved as well as “legitimate concerns about making critical infrastructure information and proprietary information available to the public, and about whether a database would be susceptible to abuse by unauthorized attachers.”)

³¹ See “Critical Infrastructure Information” under Title II, Subtitle B of the USA Patriot Act, title XXII of Pub. L. 107–296.

by placing all complaints involving pole replacements on the Accelerated Docket.³² Instead, the Commission should consider placing certain complaints involving pole replacements on the Accelerated Docket, such as those simply involving the denial of access in unserved areas, where the facts of the case may be more readily determined and where there is a compelling public interest in providing broadband to consumers that otherwise lack access.³³

The Commission's rules provide that "[p]articipation in mediation is generally voluntary, but may be required as a condition for including a matter on the Accelerated Docket."³⁴ This existing rule should serve as the model for the Commission to follow in pole attachment complaints involving pole replacements. The parties should be encouraged to attempt to settle or narrow their disputes, and the staff in the Enforcement Bureau Market Dispute Resolution are available to conduct mediations.³⁵ While the staff will determine whether a matter is appropriate for mediation, the parties may request mediation of a dispute before the filing of a complaint, as well as afterwards while the complaint is still pending.³⁶ The staff may hold the case in abeyance pending mediation, which would be particularly appropriate in disputes where the pole has been replaced and access has been provided but the parties cannot agree on the sharing of the cost of the pole replacement (e.g., where the public interest in providing broadband access in unserved areas is not at issue).³⁷ By requiring mediation as a condition for placing a pole replacement complaint on the Accelerated Docket, it would promote informal dispute resolution and accelerate broadband deployment.

UTC emphasizes that section 1.737 of rules gives the Enforcement Bureau's staff the discretion to place a pole attachment complaint on the Accelerated Docket, subject to the condition that the parties be permitted to resolve the dispute through mediation. The Commission is correct to question whether it

³² NCTA Petition at 27-29.

³³ See *FNPRM* at ¶36 (inviting comment on the criteria for guidance on when pole attachment complaints should be placed on the Accelerated Docket, including accounting for the number and complexity of the claims, need for discovery, need for expert affidavits, and ability of the parties to stipulate to facts.)

³⁴ 47 C.F.R. §1.737.

³⁵ *Id.*

³⁶ 47 C.F.R. §1.737(b).

³⁷ See 47 C.F.R. §1.737 (d) (stating that "[i]n any proceeding to which no statutory deadline applies, staff may, in its discretion, hold a case in abeyance pending mediation.")

is necessary to create the rule proposed by NCTA, when the staff already has the discretion to place a pole attachment complaint on the Accelerated Docket.³⁸ UTC also believes that the Commission is correct to ask if staff should account for the number and complexity of the claims, need for discovery, need for expert affidavits, and ability of the parties to stipulate to facts in the matter.³⁹ Moreover, the Commission is right to ask if the Accelerated Docket should only be used in discrete pole access issues rather than matters involving whether a rate, term, or condition of attachment is reasonable.⁴⁰ Matters involving rates, terms and conditions and other matters that involve complex claims are not appropriately addressed in the Accelerated Docket, due to the need to provide sufficient time for discovery and other evidentiary considerations, particularly in matters involving the cost of pole replacements which are highly fact-specific and variable depending on the surrounding circumstances, such as current supply chain and labor shortage issues.

UTC also emphasizes that the Commission's rules apply a 180-day shot clock for Enforcement Bureau resolution of pole access complaints filed under section 1.1409 of the rules, which the Commission has recognized in its *FNPRM*.⁴¹ This shot clock should ensure that complaints involving pole replacements are addressed in a timely manner. The Commission should not adopt a 60-day shot-clock in all complaints involving pole replacements, as proposed by NCTA, because it would operate to unfairly prejudice the interests of utilities. For example, attaching entities could prepare well in advance of filing their complaint, leaving utilities and other pole owners with insufficient time to respond to the complaint, including providing the necessary information raised in the complaint. By contrast, the 180-day shot clock would help to ensure that utilities and other pole owners have sufficient time to respond to complaints involving pole replacements, while also ensuring timely resolution of such complaints for

³⁸ *FNPRM* at ¶36.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See 47 C.F.R. §1.1414. See also *FNPRM*, citing *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 at 11132-34, ¶¶ 9-13 (2017). In all other pole attachment complaints, the Commission follows the 270-day shot clock provided under section 1.740 of the Commission's rules.

attaching entities. Given the Commission's rules already provide a 180-day shot clock for pole attachment access complaints, it is unnecessary for the Commission to adopt a rule that would favor placing complaints involving pole replacements on the Accelerated Docket.

Informal dispute resolution, including mediation, has been proven effective at addressing pole attachment disputes generally, and there is every reason to believe that it would also effectively address disputes involving pole replacements on a timely basis. Not only has it resolved disputes more effectively, but it also has accelerated the resolution of disputes, reducing administrative burdens on the Commission in the process. Therefore, and given the highly fact-specific nature of pole replacements and the variability in complexity and cost of different pole replacements, the Commission should continue to encourage the parties to engage in informal dispute resolution rather than attempt to automatically place pole replacement complaints on the Accelerated Docket or regulate cost sharing of pole replacements through a rulemaking.

C. The Commission should clarify that the 2-year federal statute of limitations under section 415(b) of the Communications Act applies to refunds awarded in pole attachment complaint proceedings, and that refunds are not permitted prior to good faith notice of a dispute.

UTC reiterates its support for the Commission to apply a unified, consistent, and fair federal 2-year statute of limitations for refunds in pole attachment complaint proceedings, consistent with its previously-filed comments in this proceeding.⁴² Although UTC believes that the Commission may issue a declaratory ruling based on the record already developed in response to the Petition for Declaratory Ruling by the Edison Electric Institute, the Commission may opt to grant the requested relief as part of its decision in response to the *FNPRM*. As UTC and others explained in their previously filed comments, applying a two-year federal statute of limitations under section 415(b) of the Communications Act and barring refunds prior to good faith notice of a dispute would provide utilities with greater certainty and

⁴² See Comments of the Utilities Technology Council in WC Docket No. 17-84 (Aug. 23, 2021). See also Reply Comments of the Utilities Technology Council in WC Docket No. 17-84 (Sept. 10, 2021)(supporting the Petition for Declaratory Ruling of the Edison Electric Institute). And see Petition for Declaratory Ruling of The Edison Electric Institute, WC Docket No. 17-84, at 1 (filed April 20, 2021) (EEI Petition), available at <https://www.fcc.gov/ecfs/filing/10420059605067>.

encourage parties to engage in good-faith negotiations with each other for pole attachments. Conversely, borrowing from state statutes of limitations creates significant uncertainty because the state statutes of limitations can vary in length from two to ten years, and it is inconsistent with the borrowing doctrine because pole attachments are not the most analogous state law cause of action for its application to a pole attachment complaint. Finally, adopting a two-year federal statute of limitations for pole attachment complaints would eliminate arbitrary and disparate treatment of utilities and carriers regarding refunds in complaint proceedings.

IV. Conclusion

Therefore, UTC requests that the Commission avoid regulating pole replacement costs by rule, and instead review disputes on a case-by-case basis. This approach will promote broadband deployment by providing incentives for the parties to negotiate pole attachment agreements, including and especially to accommodate additional attachments through pole replacements. Pole replacements are not a barrier to broadband deployment, and the Commission should reject purported studies that claim otherwise. The process for pole replacements works well and there are no pole attachment complaints pending at the Commission involving pole replacements. To the extent any changes to the rules are needed, they should be limited to ensure that utilities are fully compensated for pole replacements and related expenses, including any new requirements the Commission may adopt that are designed to provide attachers with additional information about pole replacements and to accelerate pole attachment complaints involving pole replacements in unserved areas. Finally, the Commission should adopt a uniform, consistent and fair 2-year statute of limitations for refunds in pole attachment complaints and prevent refunds prior to the date of good faith notice of a dispute, consistent with the Petition for Declaratory Ruling filed by the Edison Electric Institute in this proceeding.

Respectfully submitted,

UTILITIES TECHNOLOGY COUNCIL

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June 27, 2022