

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

**REPLY COMMENTS OF THE
EDISON ELECTRIC INSTITUTE**

Edison Electric Institute

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**REPLY COMMENTS OF THE EDISON ELECTRIC INSTITUTE ON NOTICE
OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY**

Pursuant to sections 1.415 and 1.419 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, the Edison Electric Institute (“EEI”), on behalf of its member companies, hereby submits these Reply Comments to address questions and issues in the Commission’s Notice of Proposed Rulemaking (“NPRM”) and Notice of Inquiry (“NOI”) released in the above-referenced proceeding on April 21, 2017.¹

I. Introduction.

EEI is the trade organization that represents all U.S. investor-owned electric companies and its members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia. As providers of electricity to much of America and as owners of a considerable amount of utility poles across the United States, EEI members have considerable expertise in matters concerning communication provider attachment to utility owned electric poles for broadband deployment and the interlocking regulatory schemes concerning FCC pole attachments to utility poles and federal and state regulation of electric utility rates and service, and EEI members have a strong interest in ensuring the Commission’s proposals for pole

¹ Notice of Proposed Rulemaking, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (Released April 21, 2017).

attachment reform and broadband deployment properly consider the interests of EEI's member customers.

The record reflects that pole attachment policy implicates matters that could have a serious impact on public and line worker safety and touches the lives of nearly every American. However, the record is insufficiently developed with respect to the information needed to evaluate the impacts of the proposed reforms that will extend far broader than traditional telecommunications networks and markets. Given that safe and reliable provision of electric service is not within the Commission's technical expertise, the Commission's proposed pole attachment reforms need further analysis and should first be referred to the Commission's recently established Broadband Deployment Advisory Committee ("BDAC") to develop consensus from all impacted parties on reasonable reforms before undertaking the present rulemaking procedures.

Taking into account continuance of the current NPRM process, however, EEI members strongly object to any further mandated reductions to the already compressed FCC pole attachment timelines. Contrary to assertions made by commenters such as the American Cable Association and Crown Castle International Corp., utility pole owners are not the cause of delays and unjust pole attachment expense felt by new broadband attachers and electric utilities have no incentive to obstruct or delay broadband attachers. Indeed, a further artificial shortening of the pole attachment timeline, however, could have serious negative safety ramifications to utility line workers and the reliable provision of electricity to the public at large due to a shortage of qualified line workers utility workers are able to hire to complete work in the Commission's current time deadlines. In reviewing this timeline, the Commission must consider that the lack of available manpower to complete pole work requires utility pole owners to prioritize work to be

completed. Additionally the Commission must not seek to add additional time constraints to utilities for any “pre-application process” because the submission of a complete application is the responsibility of new attachers. The Commission similarly must not dictate a timeline requiring electric utilities to provide electricity to new attacher equipment, because when and where to provide safe electric service is outside the scope of the Commission's regulatory authority. Due to the complex nature of wireless pole attachment requests, the existing extended timelines for wireless attachments must be maintained.

The proposed modifications to exclude capital costs from pole attachment rates also must not be granted. Existing required utility accounting practices do not attribute make-ready costs as capital expenses, making provisions seeking to prevent utility “double recovery” of these costs unnecessary. Inclusion of other non-make-ready capital costs in the pole attachment rates, however, are correctly factored into pole attachment rates as a necessary expense attachers should share as users of these poles.

Finally, the Commission should also be wary of the consequences of further changing rates available to Incumbent Local Exchange Carriers (“ILECs”), adoption of a shot clock on pole attachment enforcement actions prior to cases being fully briefed, overly burdensome, dangerous, or useless mandated utility data disclosures, one-touch make-ready procedures in the electric supply space, and attempts to unnecessarily regulate access to utility street light poles and conduit.

II. The Commission has insufficient information to properly consider the impact of the pole attachment reforms they are proposing and a rulemaking is not appropriate at this time.

Pole attachment reform involves matters that could seriously impact the safety of line workers and the public, as well as the reliable provision of electricity to consumers. The Commission lacks expertise in matters concerning provision of utility electric service and more analysis and input is needed from utilities to develop reasonable pole attachments reforms that encourage broadband deployment while preserving electric safety and reliability. Before enacting pole attachment regulation reform through the NPRM process, the Commission should perform needed analysis with input from all stake holders through the BDAC. Impact studies likely need to be performed and considered before developing specific reform suggestions, which can be submitted through the BDAC by utilities as well as ILECs and broadband providers. Further, in order to ensure that all views are considered, it is imperative that the membership of the BDAC be expanded to include more state representatives.

III. Broadband deployment is better served by ensuring existing pole attachment timelines are met.

Although some commenters have backed the Commission's proposals for further reducing the timetables for pole attachment applications, EEI's assessment of comments filed indicate that the majority of commenters, including utility and ILEC pole owners, as well as broadband communications attachers, believe broadband deployment will be better served through measures that ensure existing timelines are met and that meeting reduced timelines may not be feasible and may lead to increased safety, reliability, and engineering concerns at the pole.

a. Assertions made by ACA and Crown Castle are incorrect.

While the majority of commenters seem to share EEI's view that the Commission should not further reduce its pole attachment timetables and that the majority of delays are due not to utilities, but by existing attachers on the pole, certain incorrect assertions made in comments filed in this matter should be corrected for the record. The American Cable Association ("ACA") places most of the blame for what it believes are unacceptable pole attachment timelines and costs on utilities due to various unreasonable utility pole attachment practices. Additionally, Crown Castle International Corp. ("Crown Castle"), goes a step further to suggest that utilities purposefully impose unnecessary safety standards in an effort to "limit if not outright prohibit pole attachment."²

To the contrary, electric utilities are not unnecessarily delaying the pole attachment process for new attachers and do not propose purposely restrictive safety standards in order to deny broadband. As explained by EEI in its previous comments³, EEI utility members have no reason to delay pole attachment requests, and patently deny that utilities are purposefully imposing unreasonable or unobtainable safety standards in an effort to de facto deny broadband attachment access to its pole network. Electric utilities have no incentive to delay communications attachments. Only competing attachers would benefit from such perceived delays or denial of access to poles. To the contrary, utility pole owners benefit from being able to process and resolve attachment requests as quickly as possible while preserving needed safety and reliability standards so as to free up limited utility manpower resources for other needed utility work.

² See Crown Castle Comment at 5.

³ See EEI Comment at 19-20.

As other parties have noted, electric utilities are generally able to meet their existing timelines, and delays that occur are most often due to unresponsive existing attachers in the communications space and unauthorized attachers who have previously performed faulty work.⁴

In its comments, Crown Castle asserts that safety standards imposed by individual utility owners that go above the minimum safety standards imposed by the National Electrical Safety Code (“NESC”) are unreasonable and have been designed to purposefully deny broadband attachment access.⁵ Thus, Crown Castle asks the Commission to mandate utility owners may only set safety standards at the national minimum standard established by NESC⁶. The Commission has previously heard and rejected this proposal (rightfully so). The NESC is not intended to be a uniformly applied standard, but rather a floor from which utilities should set their own system specific safety standards, which often may be more strenuous than NESC standards. Published exclusively by IEEE, the NESC is revised every 5 years to keep the Code up to date and viable. Additional safety standards and practices are designed to protect the safety of the utilities line workers, where the consequences for accidents occurring at poles can be deathly severe, but also to protect the integrity of the pole network and all attached entities. Pole owners know the specifics of their pole networks (and the nuances of their particular geographic location) best and because the consequences for mistakes can be so severe, they should not be mandated to establish safety standards at the minimum level required nationally by the NESC.⁷

⁴ See Coalition of Concerned Utilities Comment at 10-15.

⁵ See Crown Castle Comment at 4-10.

⁶ *Id.* at 4.

⁷ See, e.g., *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C. Rcd. 15499, ¶1148 (Adopted Aug. 1, 1996) (“In addition to operating under federal, state, and local requirements, a utility normally will have its own operating standards that dictate conditions of access. Utilities have developed their own individual standards and incorporated them into pole attachment agreements because industry-wide standards and applicable legal requirements are too general to take into account all of the

As an example of just one immediate problem implicit in Crown castle's request, the NESC is limited in scope and does not involve regulations that deal with RF interference and the needed clearances necessary to address this issue. Setting safety standards at the minimum levels required by NESC guidelines would leave utility pole owners unable to appropriately handle RF interference issues, which would have serious concerns for new needed wireless attachments.

b. Further reducing the pole attachment timetable could have serious consequences for worker safety and standard of work required at the pole without significantly improving broadband deployment.

As described by EEI and comments addressing concerns of other utility pole owners, pole electric utility work is extremely dangerous; working to ensure it is performed correctly, both at the pole through work performed by qualified linemen and through appropriate pre attachment review and post work inspections is paramount. Further reducing timelines for utilities to adequately complete this work threatens worker safety/lives and the integrity of utility electric networks, as well as the integrity of existing attacher communication networks. Reducing pole attachment timetables potentially could leave utility pole owners with insufficient time to conduct needed work and reviews at a level of care necessary to ensure the appropriate high standards of care they currently require.

c. Providers calling for a shortened timetable fail to take into account that individual pole attachment applications do not exist in a vacuum.

As described in EEI's previous Comments, there is currently a shortage of linemen qualified to perform pole attachment work in the supply space.⁸ Additionally, because of the

variables that can arise. A utility's individual standards cover not simply its policy with respect to attachments, but all aspects of its business. Standards vary between companies and across different regions of the country based on the experiences of each utility and on local conditions . . . As a result, each utility has developed its own internal operating standards to suit its individual needs and experiences.”)

⁸ See EEI Comment at 23.

years long time it takes to train qualified linemen, as well as due to existing labor agreements, it is highly unlikely utility pole owners would be able to hire needed additional manpower if shortened timeframes for pole attachment applications were granted, especially considering that the need for additional manpower would hit all utility pole owners simultaneously upon entry of regulations requiring shortened timeframes.

Due to these manpower limitations, it is necessary for utilities to prioritize work across different pole attachment applications they receive, as well as their own needed work to maintain the electric network and deploy electric services. Comments such as those from ACA and Crown Castle consistently fail to account for this manpower shortage and need to prioritize workers across multiple needs existing at the same time. Utility poles owners typically need the full application time periods in place currently not because the work required takes the whole period, but because it is necessary to have a larger window in which utilities are able to schedule needed work. The unsubstantiated comment that some “‘good actors’ utilities” are able to complete pole attachment requests in as little as twenty-one days⁹ is more likely due to the fact that these utilities may be experiencing fewer application requests than typically experienced in this industry and can assign workers to the individual applications more quickly. For similar reasons, requests to impose shorter time periods for utilities to complete small attachment requests similarly should be rejected because it would be unfair to other attachers going through larger requests to have utilities stop work on their project to complete work on an attachment application that came later in time.

⁹ See ACA Comment at 9.

- d. The Commission should not impose additional deadlines to the Pole attachment timeline including deadlines to complete the “pre-application process” or a requirement to activate electric service to attacher equipment.**

Commenters, including Crown Castle, have supplied requests for the Commission to subject additional requirements to both ends of the current pole attachment timeline. Crown Castle has asked both to “start the clock” earlier through inclusion of time deadlines for a “pre-application process,”¹⁰ as well as deadlines to the end of the timeline for times in which utilities will be required to activate electrical service to attacher equipment.¹¹

Providing the utility with a “complete” application is the responsibility of the new attacher and requiring a utility to act on a pole attachment request within a certain timeframe without full information is irresponsible. Complete applications are needed by the utility to properly evaluate the feasibility, safety and reliability implications of a proposed attachment. EEI members have previously noted that utility pole owners routinely receive inaccurate or incomplete applications from communications attachers.¹² Including a time deadline for utilities to act on work that must be performed by the new attacher likely would only lead to denial of application requests when attachers do not submit sufficient complete applications within this deadline and invites unnecessary pole attachment complaints requiring Commission enforcement.

Attempts to include time deadlines for when utilities provide electric service to attacher equipment fall outside of the scope of the Commission’s authority. Determining when and where it may be safe to provide electric service should be subject only to the proper determination of the electric provider itself and is subject not to FCC jurisdiction, but rather that of the Federal Energy Regulatory Commission and state and municipal energy regulators.

¹⁰ See Crown Castle Comment at 10-13.

¹¹ See Crown Castle Comment at 21-22.

¹² See EEI Comment at 21-22.

e. Wireless pole attachment applications are complex and require additional time to complete.

Some commenters have expressed a desire to shorten the pole attachment timeline for wireless pole attachments to the current timelines available for wireline attachments or shorter.¹³ As explained by EEI in its previous comment, however, additional time is included for wireless pole attachment requests for good reason because wireless pole attachments are ever-changing and significantly more complex than wireline attachments.¹⁴

Although wireless networks are typically described as “small cell,” the actual wireless equipment attached to poles is anything but small. Wireless equipment is larger and more complex requiring additional engineering survey assessment to determine if the added equipment will meet load bearing safety standards. Wireless equipment also raises radio frequency (“RF”) exposure and interference requiring additional analysis. Additionally, while wireline attachments have mostly been standardized (essentially a bolt attaching the wire to the pole), small cell wireless equipment is heavily specialized between providers, requiring additional time to consider how the large equipment may attach to the pole. Finally, wireless attachments may also seek attachment above the supply space at the pole top. Such installations increase safety concerns for work performed near energized conductors limiting who may perform such work and the necessary safety precautions that must be undertaken to properly address potential interference and safety risks to workmen.

Each of these factors justifies the current extended timeline concerning wireless attachments to utility poles. The increased amount of wireless applications associated with the pending deployment of 5G networks across the country underscores the need to retain these

¹³ See e.g. Extenet Systems, Inc. Comment at 52.

¹⁴ See EEI Comment at 28-29; see also Coalition of Concerned Utilities Comment at 26-28.

expended timelines as utility worker resources are likely to be stretched thinner as 5G deployment ramps up across the country.

IV. Capital Costs should not be excluded from the pole attachment rental rate.

In the NPRM, the Commission sought comment regarding proposals to adjust the current pole attachment rate formula to exclude various capital expenses including capital expenses recovered through make-ready fees, as well as other non-make ready capital expenses utility pole owners use to own and maintain their pole networks. However, the record demonstrates that both of these proposals are not well reasoned and should be rejected.

The Commission's proposal to codify a rule excluding utility capital expenses already recovered by the utility through make-ready fees will do nothing to reduce pole attachment rates nor aid broadband deployment.¹⁵ As a most fundamental premise, utility accounting practices do not attribute make-ready work as a capital expense included in their pole attachment rates. As such, and contrary to the belief of the Commission and various parties not familiar with these practices, there has been and is currently no "double recovery" of costs associated with make-ready. While, several parties have supplied comments indicating that the proposal to amend Section 1.1409(c) of the Commission's rules will prevent such double recoveries, they fail to offer any actual evidence that utility and other pole owners are actually including make-ready costs as a capital expense included in their pole attachment rates.¹⁶

The best source to explain how utilities account for make-ready costs come from the utilities themselves. To that end, EEI points the Commission to the comments filed by the Coalition of Concerned Utilities for an accurate description of how utilities account for these

¹⁵ *NPRM* at ¶¶ 38-39.

¹⁶ *See e.g.* Comcast Comment at 29-30; NTCA Comment at 8-9; Verizon Comment at 15.

charges.¹⁷ As described in the Coalition Comment, reimbursement for make-ready work is treated as a Contribution in Aid of Construction (“CIAC”) and is credited back to the work order where work was performed. Make-Ready costs that are offset by CIAC payments are not included in either the capital or expense accounts used to calculate formula pole attachment rates.¹⁸ This practice is consistent with the Uniform System of Accounts and is already regulated under the Code of Federal Regulations concerning account methods for electric plant.¹⁹ Thus changing the Commission rules to specifically exclude capital expenses already recovered via make-ready fees from “actual capital costs” is unnecessarily duplicitous with existing federal electric plant accounting regulations and would serve only as a solution to a problem that does not exist.

On the other side of the issue, there are capital costs (not associated with make-ready costs) rightfully included in pole attachment rate formulas. The Commission has put forth a proposal to potentially exclude these capital expenses from the available pole attachment rate formulas and has asked for comment on the extent to which new attachers “cause” these capital charges.²⁰ As detailed by various pole owner comments, focusing on whether attachers *cause* these capital expenses makes little regulatory sense.²¹ Utility capital costs are a necessary component of maintaining the pole network that is then made available to broadband attachers. Broadly, the Commission’s authority over pole attachment rates requires that the rates be “just and reasonable.”²² This standard applies not just to those seeking to attach to the pole but also to

¹⁷ See Coalition of Concerned Utilities Comment at 32-33.

¹⁸ *Id.*

¹⁹ 18 C.F.R. Part 101, Electric Plant Instruction # 2 (“Electric Plant to be Recorded at Cost”), Section D.

²⁰ *NPRM* at ¶¶ 40-43.

²¹ See Coalition of Concerned Utilities Comment at 34-39.

²² 47 U.S.C. 224(b)(1).

the pole owners themselves. No matter whom “causes” pole carrying charges, they are still expenses incurred by pole owners to own and maintain poles that communications attachers then use. Therefore, communications attachers should pay their fair share of those annual costs, including capital expenses, and excluding these costs from the pole attachment rate available to pole owners would not provide a just and reasonable rate of return for these services.

V. There is no need for the Commission to change its position with regard to the ILEC rate.

The Commission adequately evaluated whether ILECs should be given the telecommunications rate in the course of the *2011 Pole Attachment Order* and declined to do so. The factors that existed then still exist today and a presumption that ILECs should receive the telecomm rate is not warranted.

As the Commission notes in the NPRM, Previously in the *2011 Pole Attachment Order*, the Commission declined to adopt an ILEC pole attachment rate formula and instead elected to evaluate ILEC rate complaints on a case-by-case basis.²³ Under the current framework, the burden is placed on the ILEC in complaints to show that it is comparably situated with other third party attachers in order to receive the existing non-ILEC attacher rates. The Commission now, however, has proposed flipping this burden to the utility to prove by clear and convincing evidence that the benefits enjoyed by the ILEC in their joint use or joint ownership agreement “far outstrip” the benefits afforded to other attachers subject to pole attachment agreements.²⁴ Unsurprisingly, ILEC comment filers have supported this proposal.²⁵ However, the same factors that previously led the Commission deciding not to adopt a standardized pole attachment ILEC

²³ *NPRM* at ¶ 44.

²⁴ *NPRM* at 45.

²⁵ *See* AT&T Comment at 23; CenturyLink Comment at 21-22; Frontier Comment at 4-7.

rate in 2011, and granting a presumption that ILECs should receive the lower attacher rate affords ILECs an unfair advantage against competing attachers that do not receive the additional benefits of utility/ILEC joint use and joint ownership agreements, and robs utilities of just and reasonable rates associated with ILEC use of its poles through agreed upon joint agreements.

ILECs enjoy significant benefits over non-ILEC broadband providers through joint ownership and joint use agreements. These types of agreements are fundamentally different than simpler pole attachment agreements. Through joint ownership and joint use agreements; ILECs typically have much fewer make ready costs associated with their attachments, often can move forward with attaching to joint poles without utility approval, avoid post inspection costs and delays other non-ILEC communications attachers experience, as well as a myriad of other benefits that save time and expense compared to attachers subject to pole attachment agreements.²⁶ These added benefits of joint use and joint ownership agreements justify the typically higher rate than that paid by parties subject to pole attachment agreements. Shifting the burden to pole owners by giving the ILEC a presumption that they may receive the same rate and requiring “clear and convincing evidence” to rebut the presumption, puts ILECs at an unfair competitive advantage over their non-ILEC competitors (and the electric utilities in an apparent “no win” situation).

Additionally, simply owning more poles does not afford electric utilities bargaining leverage over ILECs in rate negotiations. As described in the Coalition of Concerned Utilities Comment, electric utilities typically are “stuck” with their ILEC counterparts.²⁷ They typically cannot remove existing ILEC attachments even if a joint use agreement terminates, and must use

²⁶ See Coalition of Concerned Utilities Comment at 45-49.

²⁷ *Id.* at 51-52.

their ILEC owned poles due to the likelihood that state regulators will not likely permit the utility to construct its own duplicative poles in ILEC pole areas. This lack of options or recourse forces utilities to negotiate fair rates with ILECs in joint pole agreement negotiations.

Because joint use and joint ownership pole agreements typically afford ILECs greater benefits over other communications attachers subject to the rate formula, with the extent of these benefits depending on what terms have been negotiated in the specific joint agreement, a case-by-case review of ILEC attachment rates is warranted and ILECs should not be given a presumption that they are similarly situated with other communication attachers subject to less beneficial pole attachment agreements.

VI. EEI supports a “Shot Clock” for Commission resolution of pole attachment complaints, but the parties must be given the opportunity to fully prepare their cases and the clock should not start until the case has been fully briefed.

Many commenters have supported the Commission’s proposal to establish a “shot clock” for efficient Enforcement Bureau resolution of pole complaints filed under Section 1.1409 of the Commission’s rules.²⁸ EEI also believes all parties should have quick resolution of their complaints before the Commission, and supports implementation of a shot clock to spur efficient adjudication of Commission pole attachment decisions. Such efficiency must be balanced with ensuring both parties receive due process and are able to fully prepare their cases. To achieve this balance, EEI proposes that the shot clock should not start upon the filing of the complaint, but only start once both parties have been able to fully brief their case. If the clock only starts after the case has been fully briefed, then it is likely that the shot clock could be reduced from the 180 days proposed by the Commission to some lesser timeframe. This approach would allow for both parties to fully prepare their cases while still allowing for

²⁸ See *NPRM* at ¶ 47-51.

efficient resolution of complaints. It would also allow a specific amount of time for the Commission to make its decision instead of being rushed to meet the clock in cases where discovery and briefing could go long and eat up most of the 180 day clock. Additionally, it would reduce the need of the Commission to justify and enact a potential “pause” to the shot clock for cases where the discovery and briefing stages take a very long time.

VII. The Burdens of the Commission’s proposed data disclosures far outweigh the benefits new attachers would receive from this information.

In the NPRM, the Commission has proposed two potential forms of data disclosures utilities may be mandated to compile and provide to attachers: (1) provision of a standardized list of common make-ready charges²⁹, and (2) creation of publically assessable databases of pole rates, locations, and availability.³⁰ As demonstrated in comments from electric utility and ILEC pole owners, the benefit gained by attachers from information that could be compiled is negligible, while at the same time could pose a serious burden on pole owners as well as put the reliability of the electric grids and the public at large at increased risk.

In EEI’s previous Comment, EEI noted that requiring utilities to publish a list of “common” make-ready charges would prove to be difficult for utilities to provide and would be of little benefit to new pole attachers due to the high variance involved in make-ready work. As confirmed in comments from other various electric utility and ILEC pole owners,³¹ final make-ready costs for a particular build depend on a large degree of factors specific to an individual pole attachment application request. Make-ready cost differences present themselves from pole to pole based on factors including terrain, accessibility, pole type and size, and status of existing

²⁹ *NPRM* at ¶¶ 33-34.

³⁰ *Id.* at ¶ 27.

³¹ *See* Coalition of Concerned Utilities Comment at 30-32; *See also* Frontier Communications Comment at 21-22.

attachers, which make it difficult to publish a standard list of work performed across a utility's pole network. Additionally, many factors such as labor rates and material costs also may vary greatly not just from location to location, but over time as well. As noted by AT&T, make-ready charges do tend to be unpredictable before a proper engineering survey is performed associated with a specific attachment build application, but not because pole owners are purposefully keeping attachers in the dark.³² Rather, pole attachment make-ready work is inherently unpredictable and charging fair and just rates to attachers involves an analysis of the work needed for each application.

Producing a standardized list of "common" make-ready charges would either yield a list extremely small containing those few charges that may not be subject to such high degree of variance, or extremely large to include the necessary disclaimers and exceptions associated needed to accurately inform the attacher to potential costs. Compilation of an adequately inclusive likely would be impossible. Regardless of which side of the spectrum the published list fell on however, it would be of little use to the new attacher as a way to predict their final make-ready fees for an anticipated buildout. Conversely, providing an up-to-date list of charges would prove to be burdensome, and potentially impossible for pole owners to maintain, and likely would only lead to increased disputes with attachers when actual make-ready costs inevitably differ.

While commenters' responses to the proposed make-ready charges indicate that preparation of the schedule would be of little use to broadband attachers, comments from pole owners reveal that a requirement to compile and make publically available the types of pole information found in the NPRM's paragraph 27 could not only pose an enormous cost burden on

³² See AT&T Comment at 19.

pole owners, but could also prove to be actively dangerous to the security of the nation and its infrastructure. In an effort to improve information regarding pole location and attachment availability for new attachers, the Commission has asked whether it might be beneficial to maintain a public database regarding pole locations, pole conditions, existing attachers, and available space on poles for new attachments.³³ While some commenters have expressed support for requiring pole owners to catalog and provide this information as being beneficial to new attachers in planning broadband buildouts and preparing pole attachment applications, those in favor of such a proposal do not take into account the immense burden such a request would impose on pole network owners. There appears to be consensus among comments filed by pole network owners that the costs of such proposals would vastly outweigh the benefits to be gained by attachers and should not be adopted.³⁴

Section 224 requires utilities to provide access for attachers and permits the Commission to adjudicate disputes. Neither Section 224, nor any other provision of the Communications Act, grants the Commission the authority to mandate electric utilities to collect and maintain pole information they do not already collect for themselves. As detailed in the Comments of the Coalition of Concerned Utilities, utility pole owners do not maintain information concerning the location of attachments on individual poles and often do not retain records of the attachment activities of ILECs that share poles through joint use or joint ownership agreements. Requiring utilities to collect this information, therefore, would require a pole-by-pole field study of each pole owner's entire network, which for many can account for pole numbers in the millions. In addition to diverting workers to conduct such a survey that could be used to facilitate actual

³³ *NPRM* at ¶ 27.

³⁴ See e.g. EEI Comment at 35-36; Coalition of Concerned Utilities Comment at 53-59; CenturyLink Comment at 16; AT&T Comment at 24-25; Frontier Comment at 20-21.

attachment requests, The Coalition of Concerned Utilities estimates that completing a survey of one million poles, not atypical for many electric utility pole networks, could take upwards of four years at a cost of \$30,000,000, not including additional maintenance costs of maintaining such a database and making it publically accessible. Furthermore, due to the fast changing nature of utility pole attachments, keeping this data up-to-date would prove to be a near impossible task. By the time the complete survey would be completed, the data for poles first surveyed would have long since become obsolete and near useless for attachers attempting to utilize the data to accurately predict the on-the-ground status at individual poles, requiring new surveys and likely keeping the pole owner in constant need to continually update this information.

Pole network information utilities do currently maintain is closely guarded and not information that should be freely made public. Information concerning the nation's electric and telecommunications grid, including pole and conduit locations is Critical Energy Infrastructure Information utilities are required to keep from the public domain for public safety and national security concerns including terrorist and cyber attacks. Additionally, disclosing locations of attachments on poles could pose competitive concerns for competing broadband attachers, as it would likely reveal proprietary information about where communications companies are deploying services. Forcing utilities and communications providers to provide such proprietary information would likely be an unlawful taking and outside the Commission's authority.

VIII. One-Touch Make-Ready may prove beneficial, but the Commission should proceed with caution.

In comments to the NPRM, much was offered by commenters detailing the various pros and cons of the potential for The Commission's One-Touch Make-Ready ("OTMR") proposals to speed access to poles by utility attachers. Generally, EEI believes OTMR, if enacted with care,

may prove beneficial to new communications attachers to reduce make-ready expense and timelines and shorten the overall attachment process.³⁵

While EEI generally supports the development of OTMR protocols for make-ready work in the pole communications space, it does so with the caveat that no OTMR proposal should include utility work performed in the electric supply space. First, as detailed in EEI's previous Comment, utilities generally complete their make-ready work in the supply space quickly.³⁶ Delay experienced in completing make-ready work is due to competing attachers in the communications space delaying or ignoring make-ready work requests and due to correction of previous incorrectly completed or unauthorized communications attachment work. Including utility make-ready work in the electric supply space, therefore, is unnecessary in order to resolve the source of delay of work at the pole, and would serve only to blur differentiation of work completed in each space on the pole and the different standards of work necessary for each space.

Due to the electric load present on utility lines, work conducted in the supply space is significantly more dangerous than work completed in the communications space and utilities alone should direct this work. Performing work in the electric supply space requires certified education and training and years long on-the-job apprenticeship to reach journey lineman status and the ability to provide unsupervised electric supply space work. Line crews need to be familiar with the individualized safety standards, practices, and protocols of the electric utility they are providing work for as well as possess a deep understanding of NESC standards and utility specific-requirements. Communications attachers are unfamiliar with these needed

³⁵ EEI Comment at 32-35.

³⁶ *Id.* at 32.

standards and cannot adequately direct supply space work. Additionally, inclusion of supply space work in an OTMR framework would likely prove inefficient for the new attacher in getting the work done at a reasonable rate and timeframe. Because supply space work requires such highly qualified linemen, which currently are in short supply, using these linemen to perform all work on the pole including electric supply space and communications space work would be unnecessarily costly and likely a source of delay while attachers wait to line up supply space certified workers to perform all OTMR work. Keeping electric supply space make-ready work and communications space make-ready work separate preserves needed safety standards and allows attachers to more quickly and cost effectively utilize lower tier line workers certified for communications space work.

Finally, many OTMR proposals present in filed comments contemplate utility-approved contractors. Just as communications attachers do not possess the knowledge necessary to direct supply space work, utilities are not aware of the standards some communications attachers may require concerning specialized equipment at the pole location. Therefore utilities alone will not be able to certify contractors that are qualified to handle all make-ready work at the pole. While EEI supports OTMR in the communications space, such issues will need to be addressed to develop a workable framework.

IX. The Commission should deny calls for increased regulation of street light pole and conduit access.

Some commenters have called for increased regulation of utility owned light poles³⁷ and conduit.³⁸ The Commission should resist increased efforts to regulate attachments at these facilities. Inclusion of street light poles in the definition of utility poles available for wireless

³⁷ See Wireless Infrastructure Association Comment at 74.

³⁸ See Crown Castle Comment at 26-27.

access, was never intended as infrastructure to be included in the definition of pole previously contemplated by the Commission's previous pole attachment comments. Access to light poles would only benefit attachers seeking wireless attachments and would create increased burdens on utilities to monitor and address wireless street light pole attachment requests. Furthermore, light poles are generally not situated to accommodate pole attachments in terms of their capacity, functionality, and aesthetics.

Likewise the Commission should not take steps to further regulate access to conduits. In many cases, particularly in urban areas where attachers are most likely to seek access, this conduit is over 100 years old and in bad shape. Commission intervention would only exacerbate what is already a serious problem.

WHEREFORE, EEI respectfully requests that the Commission consider these reply comments and ensure that any future Commission action ordered as a result of this proceeding is consistent with them.

Respectfully submitted,

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