Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
CTIA Petition for Declaratory Ruling Requesting Clarification of Rules Implementing Section 6409 of the Spectrum Act of 2012 and Section 224 of the Communications Act; WIA Petition for Declaratory Ruling Requesting Clarification of Rules Implementing Section 6409 of the Spectrum Act of 2012	)	WT Docket No. 19-250
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
WIA Petition for Rulemaking to Accelerate Wireless Broadband Deployment by Amending the Rules Implementing Section 6409 of the Spectrum Act	)	RM-11849

REPLY COMMENTS OF EXTENET SYSTEMS, INC.

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November 20, 2019

EXECUTIVE SUMMARY

The initial comments filed in response to the CTIA Petition for Declaratory Ruling ("CTIA PDR") and the WIA Petition for Declaratory Ruling and Petition for Rulemaking ("WIA PDR" and "WIA PFR," respectively) confirm that there is substantial support for CTIA's request for pole attachment relief and for CTIA's and WIA's requests for Section 6409(a) relief. The record also demonstrates that Commission grant of the CTIA and WIA submissions is necessary to further the Commission's objectives for 5G.

While the Commission has taken significant steps to promote 5G by making the pole attachment process more efficient and clarifying the obligations of utilities and wireless attachers, the record shows that the targeted relief requested by CTIA is needed to address additional issues that continue to stall wireless deployments. In particular, the record establishes that the Commission can and should declare that light poles are "poles" under Section 224 of the Communications Act, and that the Eleventh Circuit's decision in *Southern Co. v. FCC* does not suggest otherwise. Furthermore, the record shows that blanket bans on wireless attachments to parts of or the entirety of poles can severely affect wireless deployment and – absent a precise, pole-specific showing that an attachment is not feasible due to capacity, safety, reliability, or engineering concerns – violate the Commission's rules.

The record also demonstrates that utilities are using pole attachment agreements to effectively force wireless attachers to surrender their pole attachment rights as a *quid pro quo* for access to utility-owned poles. The Commission has never permitted this and should not do so now. Consistent with the CTIA PDR and the comments supporting it, the Commission should reaffirm as much in this proceeding.

In addition, the record confirms that utilities routinely engage in other behavior which merits Commission action at this time. For example, ExteNet's initial comments described how utilities, relying on an extremely narrow reading of the term "pole attachment" in Section 224, have prohibited ExteNet from installing any of its equipment on poles save for the antenna. ExteNet also described how at least one investor-owned utility has claimed that Commission-regulated rates do not apply to replacement poles, with no legal support for that position. And, some utilities are attempting to charge artificially high rates for strand-mounted antennas, on the theory that the antenna should be treated as if it were affixed to the pole. Simultaneous action on the CTIA and ExteNet requests for pole attachment relief would promote administrative efficiency and further effectuate the Commission's view that pole access, and wireless infrastructure generally, are essential components of the Commission's 5G strategy.

Finally, ExteNet reiterates its support for the Section 6409(a) relief requested in the CTIA and WIA PDRs and in the WIA PFR, particularly CTIA's and WIA's proposed clarifications of the Section 6409(a) shot clock and WIA's proposed cost-based approach to eligible facilities request ("EFR") processing fees. The Commission should reject the attempts by local governments to preserve the status quo. Neither providing greater clarity as to the operation of the Section 6409(a) shot clock nor requiring municipalities to charge cost-based fees for processing EFRs would usurp local authority or interfere with legitimate municipal oversight of wireless installations.

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REPLY COMMENTS OF EXTENET SYSTEMS, INC.

ExteNet Systems, Inc., and its subsidiaries (collectively, "ExteNet"), hereby submit their reply comments on the above-captioned Petition for Declaratory Ruling filed by CTIA – The Wireless Association® ("CTIA") and the above-captioned Petition for Declaratory Ruling and Petition for Rulemaking filed by the Wireless Infrastructure Association ("WIA").[1]

[1] The CTIA Petition for Declaratory Ruling is hereinafter referred to as the "CTIA PDR." The WIA Petition for Declaratory Ruling and Petition for Rulemaking are hereinafter referred to as the "WIA PDR" and the "WIA PFR," respectively. In their joint Order Granting Motion for Extension of Time, the Wireless Telecommunications and Wireline Competition Bureaus extended the reply comment deadline in this proceeding to November 20, 2019. *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, Order Granting Motion for Extension of Time, WT Docket No. 19-250 *et al.*, DA 19-1162 (rel. Nov. 8, 2019)

INTRODUCTION

The record shows strong support from commenters, including ExteNet, for Commission adoption of the pole attachment relief CTIA requests in the CTIA PDR.[2] As highlighted by Verizon, "The [*Wireline Infrastructure Third R&O* in WC Docket No. 17-84] continued the Commission's important efforts to promote broadband deployment by making the pole attachment process faster and more efficient . . . But the CTIA [PDR] shows that further action is needed to remove additional barriers that wireless providers encounter when seeking to attach to utility poles."[3]

To that end, commenting parties have confirmed that the Commission can and should grant CTIA's request for a declaration that a light pole is a "pole" under Section 224 of the Act.[4] Contrary to claims by various utilities, the Eleventh Circuit's decision in *Southern Co.* does not preclude the Commission from doing so. Likewise, ExteNet and others support CTIA's request for reaffirmation that blanket bans on installation of wireless equipment and ancillary equipment on portions or the entirety of a pole are prohibited.[5] The record demonstrates this clarification is needed, because utilities are attempting to enforce blanket bans under the guise of "construction

[2] ExteNet is the largest independent provider of distributed network systems ("DNS") in the United States. DNS facilities include individual nodes in a distributed antenna system ("DAS") network, stand-alone small cells that are not part of a DAS network, and similar small cell deployments that satisfy the conditions in Section 1.6002(l) of the Commission's rules. *See* Comments of ExteNet Systems, Inc., WT Docket No. 19-250 *et al.*, at 2 (filed Oct. 29, 2019) ("ExteNet Comments").

[3] Comments of Verizon, WT Docket No. 19-250 *et al.*, at 2-3 (filed Oct. 29, 2019) (discussing *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) ("*Wireline Infrastructure Third R&O*")).

[4] *See* CTIA PDR at 21-25.

[5] *Id.* at 25-27.

standards" or "operation standards," without the required specific showing that there is a capacity, safety, reliability or engineering basis for such restrictions.

Further, the record confirms that the Commission should grant CTIA's request that utilities be prohibited from requiring wireless attachers to surrender their pole attachment rights during negotiations of pole attachment agreements.[6] Commenters explain that this scenario is not a "negotiation," and urge the Commission to declare as much in this proceeding.

In its initial comments, ExteNet requested additional pole attachment relief that dovetails with that requested by CTIA.[7] The core objective of each request is the same: eliminate anti-attacher utility practices that persist notwithstanding the Commission's efforts toward pole attachment reform over the past decade. Both procedurally and on the merits, there is ample justification for the Commission to consider and grant CTIA's and ExteNet's requests for pole attachment relief in this proceeding.

Finally, the record confirms that CTIA's and WIA's requests for Section 6409(a) reform should be granted. In particular, supporting commenters demonstrated why the Commission should, among other things, (i) apply the 60-day shot clock to all authorizations necessary for approval and implementation of an eligible facilities request ("EFR") and (ii) adopt a rule stating that all local fees for processing EFRs must be cost-based.[8]

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[6] *Id.* at 28-31.

[7] ExteNet Comments at 10-21.

[8] *See, e.g., id.* at 21-23.

DISCUSSION

I. THE RECORD SUPPORTS COMMISSION CLARIFICATION THAT LIGHT POLES ARE "POLES" UNDER SECTION 224.

The record supports clarification by the Commission that "light poles" are "poles," as the latter term is used in Section 224 of the Act. While the statute does not define the term "pole," Section 224(f)(1) requires a utility to provide nondiscriminatory access to "any pole" that the utility owns or controls. Other provisions of Section 224 likewise use the term "pole" generically, without distinguishing between light poles and poles used for distribution of electricity.[9] Thus, under a plain reading of the statute, light poles qualify as "poles" and thus are subject to the nondiscrimination and rate regulation requirements in Section 224.

The record establishes that light poles have become increasingly important for achieving the network densification 5G networks require, so there is nothing novel about using light pole attachments for wireless deployment. As noted by Crown Castle, "[u]tility light poles are located in the same locations in the public right-of-way where small wireless facilities must be installed. This makes the light poles excellent candidates for location and attachment of telecommunications facilities."[10] Indeed, Crown Castle has successfully attached to light poles where such attachment is permitted:

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[9] *See* 47 U.S.C. § 224(f)(1); CTIA PDR at 23; ExteNet Comments at 5-6; Comments of ACA Connects – America's Communications Association, WC Docket No. 17-84, at 3 (filed Oct. 29, 2019) ("ACA Comments"); Comments of AT&T, WT Docket No. 19-250 *et al.*, at 23 (filed Oct. 29, 2019) ("AT&T Comments"); Comments of Crown Castle International Corp., WT Docket No. 19-250, at 39-41 (filed Oct. 29, 2019) ("Crown Castle Comments"); Comments of T-Mobile USA, Inc., WT Docket No. 19-250 *et al.*, at 22-23 (filed Oct. 29, 2019); Verizon Comments at 3-4.

[10] Crown Castle Comments at 39. Municipalities should have a vested interest in this regard, as treating light poles as poles available for attachment may diminish the proliferation of poles and equipment in the public right-of-way. *See* AT&T Comments at 22 n. 69 ("[L]ight poles—which already line most rights-of-way at suitable distances—are crucial for deploying the smaller cells required for 5G. Without access to light poles, '[t]he start up costs of constructing an entirely

> Crown Castle has worked with utilities to develop shrouds that attach to the existing light poles and in some cases has even created replicas of the existing light poles that can accommodate radio and antenna attachments and blend in with existing infrastructure. When attaching small wireless facilities to wooden poles with street lights, these attachments can be made in the same manner as small wireless facilities that are installed on other wooden distribution poles, following NESC and/or the local utility's safety attachment guidelines.[11]

Likewise, on numerous occasions utilities have permitted ExteNet to attach to poles that have a luminaire attached. Examples of ExteNet's attachments to these types of poles are provided in Exhibit 1 hereto.

Utilities themselves have acknowledged that light pole attachments are already widely used in small cell deployments. For instance, approximately three years ago Xcel Energy "made the decision to allow wireless service providers to colocate on the company's street light poles," and, in May 2018, launched its Small Cell Dual Use Street Light Pole program to establish "a collaborative approval, design and construction process."[12] Although still in its early stages, "this program has already begun to accelerate the actual deployment of new small cell infrastructure for the provision of 5G and other advanced wireless services to the public, and the level of deployment is expected to accelerate still further . . . ."[13] In fact, the Power Coalition

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new set of poles' for 5G deployment would be 'prohibitive, and when coupled with the difficulties of obtaining regulatory approval . . . , the barriers to such construction are insurmountable.'") (quoting *Southern Co. v. FCC*, 293 F.3d 1338, 1341 (11th Cir. 2002)). Light pole attachments also are beneficial to wireline providers. *See* ACA Comments at 2 ("[T]hese matters are of significant concern not just to wireless providers but to wireline providers as well. For instance, a wireline provider may deploy fiber to a small cell of a wireless provider located on a light pole or may deploy fiber to its own Wi-Fi transceiver installed on a light pole.").

[11] Crown Castle Comments at 39. *See also* ExteNet Comments at 6 (discussing use of light poles for millimeter wave deployments).

[12] Comments of Xcel Energy Services, Inc., WC Docket No. 17-84, at 3 (filed Oct. 29, 2019).

[13] *Id.* at 8.

claims that in many cases electric utilities provide access to light poles where capacity exists and there are no safety issues, conceding that "some electric utilities voluntarily provide access to wooden dedicated street light poles, subject to negotiated terms.[14] And the Power Coalition asserts that "electric utilities have worked with wireless companies to develop, construct, and deploy light poles that are specifically suitable for wireless attachments."[15]

Nonetheless, the utilities contend that treating light poles as "poles" under Section 224 would bring an end to such voluntary arrangements, because, in theory, doing so would create a disincentive for utilities to work cooperatively with wireless providers.[16] Here, the utilities miss the point. ExteNet has never advocated that the Commission punish those utilities that are willing to enter into mutually beneficial light pole attachment arrangements with wireless providers. Rather, declaring that light poles are "poles" under Section 224 is necessary to give full effect to the statute and to remedy denials of access by utilities that are *not* interested in a cooperative approach. The record shows that such dysfunction continues to persist in the marketplace, to the detriment of 5G deployment.[17] Because there is scant evidence that the problem will fix itself, Commission intervention is required.

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[14] Comments of The Power Coalition, WC Docket No. 17-84, at 12 (filed Oct. 29, 2019) ("Power Coalition Comments"). *See also* Comments of Edison Electric Institute *et al.*, WC Docket No. 17-84, at 12 (filed Oct. 29, 2019) ("EEI Comments").

[15] Power Coalition Comments at 12.

[16] *See, e.g.*, Power Coalition Comments at 12; EEI Comments at (i); Comments of Coalition of Concerned Utilities, WC Docket No. 17-84, at 17 (filed Oct. 29, 2019) ("CCU Comments").

[17] *See* CTIA PDR at 22; Verizon Comments at 5 ("[I]n our efforts to deploy broadband infrastructure, we have encountered . . . a utility in Wisconsin that does not allow attachments to any of its light poles. When utilities do allow access, they often impose rates that are far higher than the rates available under the FCC's pole attachment formula."); AT&T Comments at 22-23 ("[S]ome electric utilities are . . . asserting that 'light poles' are not governed by Section 224. As a result, these electric utilities are demanding excessive fees (or in-kind physical plant contributions) for access to light poles or denying access altogether, impeding deployment of 5G facilities. For example, three electric utilities operating in Texas refuse to allow AT&T access to

Utilities erroneously rely on the Eleventh Circuit's decision in *Southern Co.* for the proposition that "pole" only refers to those poles used to distribute electricity, and thus cannot encompass light poles.[18] But, *Southern Co.* never addressed the issue of whether a light pole is a "pole" under Section 224. Instead, *Southern Co.* addressed a different question, *i.e.*, whether "the FCC exceeded its authority by asserting that the [Pole Attachments Act, as modified by the Telecommunications Act of 1996] applies not just to the 'poles, ducts, conduits, and rights-of-way owned or controlled by [utilities],' but to electric transmission facilities as well."[19] In other words, the Court reviewed whether the Commission could go *beyond* the universe of "poles, ducts, conduits, and rights-of-way" to also regulate attachments to electric transmission facilities. Accordingly, *Southern Co.* cannot be sensibly read as stripping the Commission of jurisdiction to decide whether a light pole is a "pole" is under Section 224.

Moreover, the Court acknowledged that utilities, per Section 224(f)(1), must give telecommunications carriers nondiscriminatory access to "*any* pole, duct, conduit, or right-of-way owned or controlled by it."[20] The Court further acknowledged that in this context "any pole" means "all poles."[21] Hence, even if the Commission were to agree that *Southern Co.*

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light poles. An electric utility in Florida allows AT&T access to only those light poles where AT&T will install (and donate to the utility) dark fiber. Multiple other electric utilities across the country have taken similar positions.") (footnotes omitted).

[18] *Southern Co. v. FCC*, 293 F.3d 1338 (11th Cir. 2002) ("*Southern Co.*"). *See also* EEI Comments at 8; CCU Comments at 9-10; Power Coalition Comments at 5-6; Comments of Ameren Service Company *et al.*, WC Docket No. 17-84, at 7-9 (filed Oct. 29, 2019) ("Electric Utilities Comments").

[19] *Southern Co.*, 293 F.3d at 1343 (citation omitted).

[20] *Id.* at 1349-50 (*quoting* 47 U.S.C. § 224(f)(1)) (emphasis added). *See also* AT&T Comments at 23-25.

[21] *Southern Co.*, 293 F.3d at 1349-50.

speaks to whether light poles are "poles" under Section 224, the case is at best ambiguous on that issue and cannot divest the Commission of authority to address it in this proceeding.[22]

Lastly, utilities and municipalities cite a variety of implementation issues that, in their view, should discourage the Commission from concluding that "light poles" are "poles" under Section 224 (*e.g.*, how to calculate attachment rates for light poles, how to accommodate private contracts between municipalities and utilities for light pole installations, and how to address light poles installed on private property).[23] That puts the cart before the horse – the Commission need not (and should not) resolve any implementation issues until it first clarifies that light poles are covered by Section 224. Once the Commission decides that light poles are covered, it may opt to conduct a rulemaking to the extent necessary to resolve the implementation issues raised by the utilities and the municipalities.[24]

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[22] The Coalition of Concerned Utilities, citing the definition of "utility" in Section 224(a)(1), contends that Commission jurisdiction is lacking "because streetlight-only poles are not used for wire communications." CCU Comments at 10; 47 U.S.C. § 224(a)(1) (defining "utility" to mean entities whose "poles, ducts, conduits and rights-of-way" are "used, in whole or in part, for any wire communications"). *Southern Co.*, ironically, puts this argument to rest: "The plain meaning of § 224(a)(1) is that a utility (for the purposes of the statute) is any entity that controls 'poles, ducts conduits, or rights-of-way' and uses some of those facilities for wire communications. The language does not limit the definition of a 'utility' to an entity that uses *all* of its facilities for the purpose of wire communications; the lack of such limiting language leads to the natural inference that a utility is an entity that owns or controls *some* facilities used for that purpose." *Southern Co.*, 293 F.3d 1349 (emphasis in original). It therefore is not necessary that a light pole be used for wire communications, as long as at least some of the utility's other poles are used for that purpose.

[23] *See, e.g.*, Power Coalition Comments at 8-11; CCU Comments at 12-16; Comments of National Association of Telecommunications Officers and Advisors, *et al.*, WT Docket No. 19-250 *et al.*, at 14 (filed Oct. 29, 2019) ("NATOA Comments").

[24] Edison Electric Institute *et al.* assert that a declaration that light poles are "poles" under Section 224 would be tantamount to a substantive rule that requires a notice-and-comment rulemaking. EEI Comments at 30. But, again, Section 224(f)(1) mandates that utilities afford telecommunications carriers with nondiscriminatory access to "*any* pole." Since a light pole falls within the ambit of "any pole," asking the Commission to declare that "pole" includes light poles would not expand the scope of Section 224. Rather, it would make clear what is already implicit in the statute. CTIA is merely asking for an interpretive ruling to that effect, and as such its

II. THE RECORD SUPPORTS COMMISSION CLARIFICATION THAT BLANKET BANS ON WIRELESS POLE ATTACHMENTS ARE PROHIBITED.

In their initial comments, wireless providers demonstrated that blanket bans on installing wireless or ancillary equipment, whether for parts of poles or the entirety of poles, can severely restrict wireless pole attachments. CTIA makes this point in the CTIA PDR,[25] and Crown Castle's experience further highlights the problem:

> [I]t is still common for utilities to broadly allege safety and climbing concerns as [a] rationale for blanket prohibitions of any equipment attached in the unusable space on utility poles. Notably this space on the pole is essential for installation of small wireless facility radios, electric meters, and shutoff switches necessary for the deployment of small wireless facilities. In those instances where utilities prohibit such installations, Crown Castle is required to either place a new pole or add a pedestal or ground-mounted shroud in the right-of-way to hold such essential equipment. However, local jurisdictions are frequently loath to approve the additional infrastructure, preferring instead that our attachments be collocated on existing utility poles. Thus, the utility's blanket policy conflicts with local requirements or preferences.[26]

The utilities' obligations are clear: before denying access to a pole, a utility must, in writing, provide a prospective attacher with its precise reasons for denying the proposed attachment, and must further show that those reasons are permissible (*i.e.*, they relate to capacity,

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request is appropriately addressed via declaratory ruling rather than a notice-and-comment rulemaking. *See* 5 U.S.C. §553(a)(3) (establishing exceptions from notice-and-comment rulemaking for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice").

[25] CTIA PDR at 25-27.

[26] Crown Castle Comments at 42-43. *See also* AT&T Comments at 26 ("CTIA correctly points out that some electric utilities are violating Section 224 and the Commission's implementing rules by adopting blanket prohibitions to adding attachments to various parts of poles, without providing any legitimate justification. These impermissible blanket prohibitions are impeding AT&T's ability to timely and efficiently deploy the infrastructure needed to support 5G services.").

safety, reliability or engineering issues per Section 224(f)(2)).[27] That showing must be made on a per attachment, per pole basis.[28] Further, "[i]t is not sufficient for a utility to dismiss a request with a written description of its blanket concerns about a type of attachment or technology, or a generalized citation to [S]ection 224."[29] Indeed, "[c]oncerns that appear to be mere pretexts rather than legitimate reasons for denying statutory rights to access will be given serious scrutiny by the Commission, including in any complaint proceeding arising out of a denial of access."[30]

Nevertheless, the utilities categorize their blanket bans as "standards" and suggest that this excuses them from having to make the per-attachment, per-pole "capacity, safety, reliability or engineering" showing under Section 224(f)(2).[31] The utilities are wrong -- while it is true that the Commission to date has not prohibited blanket bans on attachments of equipment in the "unusable" space on a pole, it requires utilities in those circumstances to explain their precise capacity, safety, reliability or engineering reasons for denying access "in a way that is specific with regard to both the particular attachment(s) and the particular pole(s) at issue."[32]

Simply put, a blanket ban supported only by generic safety concerns cannot reach the level of specificity required for denial of an attachment application. Utilities have increasingly moved away from denials specific to a pole or attachment and towards blanket general rules for attachment, with little justification provided for the resulting blanket bans. Commission action is

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[27] ExteNet Comments at 7-8 (citing 47 U.S.C. § 224(f)(2) and 47 C.F.R. § 1.1403(b)).

[28] *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5275 ¶ 75 (2011) ("*2011 Pole Attachment R&O*").

[29] *Id.* at 5276 ¶ 76.

[30] *Id.*

[31] *See* Electric Utilities Comments at 15-22; CCU Comments at 21-27; EEI Comments at 14-20; Power Coalition Comments at 13-14.

[32] *Wireline Infrastructure Third R&O*, 33 FCC Rcd at 7773 n. 498. Blanket bans on wireless pole-top attachments remain prohibited. *2011 Pole Attachment R&O*, 26 FCC Rcd at 5276 ¶ 77.

needed to provide a course correction back toward specific denials based on specific pole conditions and attachments.

Finally, the Commission has stated that it would be open to revisiting its decision not to prohibit blanket bans on attachments in the "unusable" space.[33] Given the record here, now would be an opportune time for the Commission to reevaluate the apparent presumption that attachments in the "unusable" space are inherently unsafe. Crown Castle, for example, notes that nearly two-thirds of the utilities to which it attaches its facilities permit the attachment of some equipment in the "unusable" space.[34] This has been ExteNet's experience as well. If attachments in the "unusable" space are as widespread as the record suggests, then any safety-related rationale for a blanket ban is suspect and requires further inquiry.

III. THE COMMISSION MUST STOP UTILITIES FROM REQUIRING WIRELESS ATTACHERS TO SURRENDER THEIR POLE ATTACHMENT RIGHTS.

The record explains that utilities, who have substantial leverage during pole attachment negotiations, are using pole attachment agreements to effectively force wireless attachers to surrender their pole attachment rights in order to gain access to utility-owned poles.[35] Moreover, utilities attempt to give the illusion of bona fide negotiation by including contractual language such as "the parties entered into this Agreement voluntarily" or the licensee "acknowledges this Agreement to be a lawful and valid agreement between the Utility and Licensee."[36] For the reasons cited by CTIA, ExteNet and others, the Commission should make it

[33] *Wireline Infrastructure Third R&O*, 33 FCC Rcd at 7773 ¶ 134.

[34] Crown Castle Comments at 43.

[35] *See, e.g.*, CTIA PDR at 29-30.

[36] ExteNet Comments at 9-10.

clear that utilities may not force such agreements on attachers in the first place, and that such conduct is a *per se* violation of the Commission's pole attachment rules.[37]

Not surprisingly, the utilities misstate the issue here. The Electric Utilities, for instance, claim that CTIA's request, if granted, would be a "complete reversal of longstanding Commission precedent . . . ."[38] Edison Electric Institute *et al.* likewise contend that "[t]his relief would . . . reverse decades of Commission precedent that favors privately negotiated solutions between utility pole owners and attachers."[39] CTIA did not ask the Commission to outlaw privately negotiated pole attachment agreements entered into voluntarily and willingly by both sides. In fact, the Commission itself has noted that such agreements may be useful in addressing issues not explicitly addressed by the Section 224 or the Commission's pole attachment rules.[40] The question, however, is whether utilities should be allowed to effectively hold such agreements hostage unless a wireless attacher surrenders its pole attachment rights. The Commission has never permitted this, and its current remedy, the rarely used "sign and sue" rule, has not deterred the utilities from this kind of behavior.[41]

IV. THE COMMMISSION SHOULD GRANT THE ADDITIONAL POLE ATTACHMENT RELIEF REQUESTED BY EXTENET.

As detailed in ExteNet's initial comments, utilities also routinely engage in other behavior which merits Commission action. Specifically, ExteNet described how utilities, relying on an extremely narrow reading of the term "pole attachment" in Section 224, have prohibited

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[37] *Id.* at 8-10; T-Mobile Comments at 25; Crown Castle Comments at 46-49; ACA Comments at 6-7.

[38] Electric Utilities Comments at 22.

[39] EEI Comments at 23. *See also* Power Coalition Comments at 20.

[40] *See Wireline Infrastructure Third R&O*, 33 FCC Rcd at 7711 ¶ 13.

[41] *See* ExteNet Comments at 9-10.

ExteNet from installing any of its equipment on poles save for the antenna.[42] ExteNet also described how at least one utility has claimed that Commission-regulated rates do not apply to replacement poles, with no legal support for that position.[43] And, some utilities are attempting to charge artificially high rates for strand-mounted antennas, on the theory that the antenna should be treated as if it were affixed to the pole.[44] ExteNet thus proposed additional pole attachment relief in its comments, which the Commission should grant in this proceeding.

Simultaneous action on the CTIA and ExteNet requests for relief would promote administrative efficiency and further effectuate the Commission's view that pole access, and wireless infrastructure generally, are essential components of the Commission's 5G strategy.[45] As Chairman Pai noted in his recent speech before the Council on Foreign Relations, "the United States is poised to seize [5G] opportunities," and is determined to lead the way in 5G deployment.[46] The interests of consumers therefore are well served by maintaining a proactive regulatory approach for pole access. Conversely, consumer interests are disserved by reliance on complaint-based, case-by-case regulation that is expensive and time-consuming.

V. THE COMMMISSION SHOULD GRANT THE SECTION 6409(A) RELIEF REQUESTED BY CTIA AND WIA.

Finally, wireless providers, trade associations and others provided ample record evidence that further Section 6409(a) relief is necessary to speed deployment of 5G.[47] Among other

[42] *Id.* at 10-17.

[43] *Id.* at 17-20.

[44] *Id.* at 20-21.

[45] *See, e.g., Wireline Infrastructure Third R&O*, 33 FCC Rcd at 7706 ¶ 1.

[46] Remarks of FCC Chairman Ajit Pai Before the Council on Foreign Relations (Nov. 5, 2019), https://docs.fcc.gov/public/attachments/DOC-360632A1.pdf.

[47] *See, e.g.*, Comments of American Tower, WT Docket No. 19-250 *et al.* (filed Oct. 29, 2019); AT&T Comments at 6-21; Comments of Competitive Carriers Association, WT Docket No. 19-

things, the record confirms that local governments either do not understand or, in the worst cases, are manipulating the 60-day Section 6409(a) shot clock, thereby delaying the processing and implementation of EFRs.[48] The record also confirms that municipalities are charging exorbitant fees for processing of EFRs.[49]

ExteNet thus reiterates its support for the Section 6409(a) relief requested in the CTIA and WIA PDRs and in the WIA PFR, particularly CTIA's and WIA's proposed clarifications to the Section 6409(a) shot clock and WIA's proposed cost-based approach to EFR processing fees.[50] At the same time, the Commission should reject the attempts by local governments to preserve the status quo.[51] Neither providing greater clarity as to the operation of the Section 6409(a) shot clock nor requiring municipalities to charge cost-based fees for processing EFRs would usurp local authority or interfere with legitimate municipal oversight of wireless installations. Consistent with its broader objectives for 5G, the Commission should grant the Section 6409(a) relief requested in the CTIA and WIA PDRs and WIA PFR.

250 *et al.* (filed Oct. 29, 2019); Crown Castle Comments at 8-35; Comments of Nokia, WT Docket No. 19-250 (filed Oct. 29, 2019); T-Mobile Comments at 7-18; Comments of Free State Foundation, WT Docket No. 19-250 (filed Oct. 29, 2019); Comments of Wireless Internet Service Providers Association, WT Docket No. 19-250 (filed Oct. 29, 2019).

[48] *See, e.g.*, CTIA PDR at 18-19; WIA PDR at 5-7.

[49] *See, e.g.*, WIA PFR at 12-13; Nokia Comments at 9; Crown Castle Comments at 35-36.

[50] ExteNet Comments at 21-23.

[51] *See, e.g.*, Comments of City of Austin, Texas, WT Docket No. 19-250 *et al.*, at 4-5 (filed Oct. 29, 2019); NATOA Comments at 5-6, 16; Comments of City of San Diego *et al.*, WT Docket No. 19-250 *et al.*, at 4, 89-90 (filed Oct. 29, 2019).

VI. CONCLUSION

For the reasons set forth in these reply comments and in ExteNet's initial comments, ExteNet requests that the Commission grant the CTIA PDR, the WIA PDR and the WIA PDR, and the additional pole attachment relief ExteNet requested in its initial comments.

Respectfully submitted,

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Dated: November 20, 2019

EXHIBIT 1


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