

**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
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

The Schools, Health & Libraries Broadband (SHLB) Coalition submits these reply comments in response to the Federal Communication Commission’s (Commission) Second Further Notice of Proposed Rulemaking on removing barriers to infrastructure investment. The initial comments filed in this proceeding present diverse scenarios, arguments, and solutions to the Commission’s questions regarding the allocation of pole replacement costs. These varying considerations show that many commenters do *not* find the current regulatory framework surrounding pole replacements a settled issue. SHLB thus continues to encourage the Commission to put forth clear equitable and efficient cost allocation standards that acknowledge these considerations to create workable solutions between pole owners and attachers.

I. THE CURRENT COST-CAUSATION MODEL DOES NOT PROVIDE A CLEAR FRAMEWORK FOR EQUITABLE AND BALANCED COST ALLOCATION SOLUTIONS

Some parties argue that the Commission’s current regulatory landscape, specifically the cost-causation model, provides a sound mechanism for determining the allocation of pole

replacement costs.¹ SHLB and other record commenters contend, however, that the current model does not provide a clear framework for both the pole owner and attachers to achieve equitable and balanced cost allocation solutions because it does not require standards for recordkeeping or sharing of information related to an owner's poles. First, under current standards, pole owners are not required to establish any form of recordkeeping procedures to document the maintenance or management of their poles. This lack of information often shifts a large onus onto attachers to conduct their own pole loading studies, inspections, and other tests to determine the state of a pole prior to beginning its make-ready work.² If a pole owner was required to maintain adequate records of its poles, which could then be provided to the attacher, both parties would be able to more efficiently anticipate the costs (both directly and not directly attributable to the new attachment) at the beginning of the project. Certain electric utility commenters, however, reject suggestions to establish requirements for better recordkeeping efforts.³ At the same time, pole owners argue that the Commission should take action to reduce barriers to deployment purportedly caused by issues like alleged unauthorized attachments or abandoned equipment that take up space on a pole and contribute to delays when a new,

¹ See, e.g., Comments of AT&T in WC Docket No. 17-84, at 5 (June 27, 2022, revised version filed June 29, 2022) (“[T]he cost-causer principle – whereby an attacher bears *all costs* associated with a pole replacement needed to support its new or modified attachments – is sound and promotes broadband deployment.”) (“AT&T Comments”).

² See, e.g., Comments of the Schools, Health & Libraries Broadband Coalition in WC Docket No. 17-84, at 6 (June 27, 2022) citing an example of the Imperial County Office of Education (ICOE) in California that was required to hire a contractor to perform pole load studies, costing approximately \$100,000, and resulting in approximately fifty poles that required replacement. The costs to replace the failed poles were approximately \$1.4M, and ICOE could not proceed with the project. (“SHLB Comments”).

³ See Initial Comments of Southern Company, Oncor Electric Delivery Company LLC, Entergy Corporation, Duke Energy Corporation, American Electric Power Service Corporation, and Ameren Services Company (collectively, the “Electric Utilities”) in WC Docket No. 17-84, at 57 (June 27, 2022) (“To the extent the Second FNPRM’s proposed requirement would require electric utilities to collect and maintain information on the condition of each distribution pole within some sort of searchable database, the Electric Utilities oppose such proposal.”) (“The Electric Utilities are not required to maintain, nor do they maintain, records on the ‘condition of’ each individual pole.”) (“Electric Utilities Comments”).

legitimate attacher wants to lease space.⁴ There is little evidence that these issues are widespread, and such issues can be discovered and remedied more efficiently if the pole owner properly maintains up-to-date records concerning its infrastructure.

Second, the current standards do not require pole owners to provide a prospective attacher with any certain level of transparency or information sharing about the state of their poles.⁵ SHLB has heard from members⁶ that a pole owner may not provide adequate (or any) information about its poles, including the age of the pole, its tagged status, or its replacement and maintenance schedules, even upon the attacher's explicit request.⁷ In SHLB members' experience, a pole owner may provide nothing more than an opaque invoice showing the total cost of the pole replacement, without further detail.⁸ Additionally, some utility commenters further suggest that the Commission should not require a pole owner to share such information

⁴ See Comments of Virginia Electric and Power Company D/B/A Dominion Energy Virginia and D/B/A Dominion Energy North Carolina, Dominion Energy South Carolina, Inc., and Xcel Energy Services Inc. in WC Docket No. 17-84, at 22-31 (June 27, 2022).

⁵ The Commission's rules do provide for some transparency, particularly relating to the charges associated with make-ready costs. For example, utilities are required to "present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready" which includes "documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate." See 47 C.F.R. § 1.1411(d). Record comments, however, indicate that attachers rarely receive the level of detail required by the Commission's existing rule.

⁶ The SHLB Coalition is a public interest coalition consisting of more than 300 member organizations, including representatives of schools, libraries, health care providers and telehealth networks, state broadband offices, private sector companies, state and national research and education networks, consulting firms and consumer organizations. See <http://shlb.org/about/coalition-members> for a current list of SHLB Coalition members.

⁷ This concern was also reflected in certain initial comments filed in this proceeding. See, e.g., Comments of Crown Castle Fiber LLC in WC Docket No. 17-84, at 29 (June 27, 2022) ("... it has become increasingly difficult for Crown Castle to obtain any pole-related information from pole owners.") ("Crown Comments"); Comments of INCOMPAS in WC Docket No. 17-84, at 19 (June 27, 2022) ("Our members indicate that they have struggled to gain access to a variety of information during new network deployments, including standardized cost structure for replacement poles, pole retirement and replacement plans, pole audit information, and previous work order details.").

⁸ *Crown Comments* at 29-30 ("Crown Castle regularly is provided invoices for make-ready and pole replacement, for example, that provide no detail, and utilities have refused to provide additional detail, even when asked.").

about its poles with a new attacher.⁹ Although SHLB does consider important a pole owner’s efforts to keep confidential information about its infrastructure or future build plans safe, it is rational to allow an attacher the means to develop reasonable expectations and understanding about the costs they are being asked to pay in association with a pole replacement. Without such transparency, the attacher maintains little recourse to contest these costs, aside from blindly questioning them. For an attacher to then initiate a formal complaint is unworkable without having sufficient pole data to support its claim.

Without requiring adequate pole maintenance and management records and transparency of this information to attachers, the current cost-causer framework creates (and perpetuates) a system where the pole owner maintains a disproportionate amount of bargaining power during each pole deployment project and prevents the prospective attacher from designing more efficient routes. Alternatively, maintenance of up-to-date recordkeeping and information sharing (with confidentiality and safety measures) are achievable and reasonable conditions that should not be denied to potential attachers, and the Commission’s rules should clarify and enforce such requirements to set forth equitable and efficient standards.

II. A LACK OF FORMAL COMPLAINTS DOES NOT MEAN THAT THE CURRENT REGULATORY LANDSCAPE IS WORKING WELL FOR BOTH ATTACHERS AND POLE OWNERS

Certain parties also argue that there has not been a significant number of formal complaints filed by broadband attachers claiming unjust pole replacement costs resulting from

⁹ *See, e.g.*, Comments of The Utilities Technology Council in WC Docket No. 17-84, at 20-21 (June 27, 2022) (“[T]he Commission should not require utilities to provide potential attachers with information concerning the condition of and replacement plans for, their poles.”) (“UTC Comments”); *See also Electric Utilities Comments* at 56 (suggesting that electric utilities *already provide* information concerning the condition of their poles because “attachers can see which poles have been tagged when they visit the pole line as part of planning their proposed routes” and because attachers can be present during a field inspection.).

the current cost-causation regulatory scheme. For example, USTelecom states that “[p]ole attachment complaints alleging unjust and unreasonable pole replacement costs are few and far between.”¹⁰ The organization further claims that a lack of substantial complaints “demonstrates that the Commission’s rules are understood and working well.”¹¹ Others also point to this same understanding as justification that the cost-causer model provides workable solutions for both the pole owner and communications attacher.¹² Some of these parties additionally conclude that *revising* the Commission’s rules to allocate pole replacement costs to any party beyond the new attacher will increase disputes, cause pole owners to outright deny pole access, and act as the catalyst in delaying broadband deployment.¹³

SHLB strongly opposes these notions. These arguments cast an inequitable light on the pole attachment process and ignore the difficult choices an attacher is often forced to make when faced with paying expensive pole replacement costs, including whether it is advantageous to bring a formal complaint.¹⁴ In its initial comments, SHLB points to real examples of pole attachment projects that were riddled with such high replacement costs that some attachers made the decision to forgo the project entirely.¹⁵ For their own business and economical reasons, the normal recourse for these attachers was not to file a formal complaint, but to unfortunately cut

¹⁰ Comments of USTelecom – The Broadband Association in WC Docket No. 17-84, at 15 (June 27, 2022).

¹¹ *Id.*

¹² *See, e.g., AT&T Comments* at 8-9 (“New attachers have filed no formal complaints seeking to reallocate costs for a replacement pole that was larger than needed or due to any of the other everyday scenarios presented in the *Second Notice*.”).

¹³ *See, e.g., Comments of Lumen Technologies* in WC Docket No. 17-84, at 23-24 (June 27, 2022) (when “[f]aced with the decision of whether to grant a money-losing request for a pole replacement or exercise their right to deny the request, many pole owners will reluctantly choose to deny.”) (“Lumen Comments”).

¹⁴ As discussed herein, an attacher may not have the data or resources it requires to bring a formal complaint, due to a lack of pole recordkeeping and transparency of this information from the pole owner.

¹⁵ *See SHLB Comments* at 6-8 citing various pole attachment projects.

their losses and either find an alternative solution or postpone the project. One reason providers may choose to forego a formal complaint is that the Commission’s existing dispute resolution process can take six months or more to resolve, which is far too long for most projects due to funding availability, customer needs, and other important factors. This is one reason SHLB supports expanded use of the Accelerated Docket to resolve issues related to active deployments.¹⁶ Further, many attachers believe it would be fruitless to file a complaint because the Commission has not set forth any standard or cost allocation methodology. It would thus be incorrect to assume that any of the attachers highlighted in SHLB’s initial comments would agree that a significant dispute about pole replacement costs did not exist. To suggest that filing a formal complaint is the only true mechanism to detect pole cost disputes and, alternatively, that a lack of complaints means that the current regulatory landscape is “working well,” demonstrates an oversimplified view of the issues and solutions available to both parties.¹⁷ To also blame future changes in the cost allocation system for increased denials to pole access and delayed deployment fails to consider unsuccessful negotiations, like in SHLB’s examples, that result because the attacher maintains little leverage in the attachment process and must walk away.

III. POLE OWNERS RECEIVE A DIRECT BENEFIT FROM A POLE REPLACEMENT

Some commenters also maintain that pole owners do not receive a direct benefit when a pole is replaced for capacity reasons.¹⁸ SHLB continues to refute this premise. When a

¹⁶ *Id.* at 11-12. SHLB clarifies that its request is for acceleration of all pole attachment disputes related to active deployments, rather than for only those that involve pole replacements.

¹⁷ SHLB additionally notes that it is important to consider that formal debates and complaints about pole replacement costs may increasingly *become* a larger issue as states receive an influx of federal broadband funding through the Infrastructure Investment and Jobs Act, under which recipients are encouraged to utilize existing infrastructure like utility poles in their deployment projects.

¹⁸ *See, e.g., Lumen Comments* at 10-15; *UTC Comments* at 7-9.

broadband attachment precipitates a pole replacement, the pole owner benefits by acquiring a new pole that is free from damage, decay, or other conditions that affect its value and future maintenance requirements. The pole owner may also decide to upgrade the pole or increase capacity for its own equipment at the time of the replacement, which provide certain benefits that are not necessary to accommodate the new attacher. If the pole owner increases the capacity of its pole at the time of replacement beyond the attacher's direct needs, it may also benefit by collecting more revenue if future attachers lease this additional space. SHLB argues that these, and other plausible benefits suggested by commenters, should be given merit in formulating the Commission's cost allocation rules. SHLB also reiterates that considerations such as whether the pole has significant remaining "life" at the time of replacement, should also be acknowledged. By accounting for such factors, the Commission's rules can and should allocate pole replacement costs in an equitable manner.

IV. CERTAIN ARGUMENTS PUT FORTH MAY NOT BE WELL-SUITED FOR THE COMMISSION'S PROCEEDING

SHLB finally notes that this proceeding may not be the correct venue to address some of the arguments put forth by certain initial comments. For example, one commenter recommended implementation of a federal pole replacement fund, rather than allocating replacement costs to either the owner or attacher.¹⁹ SHLB suggests that this idea, however, is likely to be better suited and gain more traction through legislation presented before Congress, rather than in response to the Commission's questions in this rulemaking proceeding. Additionally, one commenter proposed that communications companies that were previously awarded federal grant subsidies (such as through RDOF) to assist with deployment for certain broadband projects should not be

¹⁹ *Electric Utilities Comments* at 54.

able to then allocate pole replacement costs onto a pole owner, arguing that this would effectively give the attacher additional funding from the pole owner to subsidize those deployments.²⁰ SHLB does not support this argument, and suggests that its consideration could ultimately distract or deter from the Commission's ultimate goal of finding equitable and efficient ways of speeding broadband deployment.

V. CONCLUSION

In conclusion, SHLB maintains that standards regarding the allocation of pole replacement costs is not settled or working well for both pole owners and attachers. The current cost-causation model does not promote adequate recordkeeping procedures for the maintenance or management of utility poles, nor does it require a pole owner to share this valuable information with attachers as a way for them to develop reasonable expectations about pole-related costs. It also lacks important cost-sharing considerations, such as the benefits that pole owners derive from acquiring a new pole, that could better achieve equitable and efficient solutions. Proponents of the current regulatory landscape also do not acknowledge the real-time delays in deployment that already result when an attacher must walk away from a project due to exorbitant pole replacement costs. SHLB put forth certain considerations in its initial comments, including requests for:

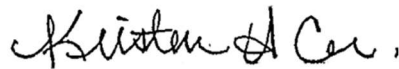
- i) clarity in the Commission's rules regarding the cost allocation requirements for pole replacements;

²⁰ See Comments of The National Rural Electric Cooperative Association in WC Docket No. 17-84, at 4-8 (June 27, 2022).

- ii) equitable and efficient solutions between the attacher and pole owner, including considerations of the benefits bestowed upon pole owners and requirements for transparency of pole records and information; and
- iii) acceleration of pole attachment disputes for active deployments by placing them on the FCC's Accelerated Docket and consideration for alternative techniques, like state pole attachment working groups, to resolve pole attachment disputes.

SHLB strongly encourages the Commission to acknowledge these requests as it finds meaningful and equitable ways to bridge the digital divide through use of existing infrastructure such as utility poles.

Respectfully submitted,



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