

**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	)	
	)	

**COMMENTS OF THE  
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

**In response to the**

**THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

**February 13, 2024**

The Schools, Health & Libraries Broadband (SHLB) Coalition welcomes the opportunity to submit these comments in response to the Federal Communication Commission’s (Commission) Third Further Notice of Proposed Rulemaking (“Third FNPRM”) on removing barriers to infrastructure investment.

**I. INTRODUCTION**

The SHLB Coalition commends the Commission’s efforts to address the many issues facing those involved in the pole attachment process. We appreciate that the Commission has made several improvements in the regulation of pole attachments over the past few years including adopting the Fourth Report and Order and Declaratory Ruling (issued Dec. 15, 2023) (“Fourth Report and Order and Declaratory Ruling”) in this proceeding. The Third FNPRM

provides an additional opportunity to clarify further some of the open issues, especially concerning the issue of cost allocation of pole replacements.

The SHLB Coalition’s mission is to promote open, affordable, high-quality broadband to anchor institutions and their communities in support of bridging the digital divide.<sup>1</sup> At a time when access to high-speed internet is imperative for functioning societies to thrive, this goal has never been more important. The Covid-19 pandemic brought further attention to the importance of fast and reliable internet as more Americans rely upon telehealth services, remote learning, and telework. Many families, schools, libraries, and healthcare facilities, however, are located in areas where new broadband infrastructure is unavailable, difficult, or costly to obtain at the rate necessary to solve their urgent needs. Leveraging existing infrastructure such as utility poles can reduce the costs of deployment and help to solve this digital disparity.

## **I. BACKGROUND**

Several members of the SHLB Coalition – including state broadband officials, non-profit research and education networks, and commercial broadband companies – have repeatedly pointed out that the lack of guidance around pole replacement issues impedes the deployment of broadband networks and could severely undermine the government-funded broadband investment programs intended to end the digital divide. As we have reported in this docket over the past two years, our broadband provider members often encounter pole attachment and pole replacement problems that either delay or halt their broadband build-out projects entirely, which

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<sup>1</sup> The SHLB Coalition is a public interest coalition consisting of more than 300 member organizations. SHLB Coalition members include 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.

have impeded the deployment of high-capacity broadband service to community anchor institutions around the country. SHLB Coalition is particularly concerned about the impact of pole attachment disputes on broadband deployment because the Broadband Equity, Access and Deployment (BEAD) program is intended to ensure that anchor institutions have a minimum of gigabit-level service available to them, but this goal may not be achieved unless the FCC provides greater guidance to resolve pole replacement issues.

The need for greater clarity around pole replacement disputes is likely to become even more urgent in the near future. State broadband offices are obligated to make awards to organizations to deploy broadband to all unserved and underserved locations, including anchor institutions, over the next 12 months. We expect broadband providers to start deploying their networks in 2025 under tight build-out timelines in order to meet the BEAD program goals of connecting all Americans by the end of 2028.<sup>2</sup>

We appreciate the FCC’s decisions in the Fourth Report and Order and Declaratory Ruling to make the pole attachment process faster, more transparent, and more cost-effective. The measures adopted by the Commission – including expanding the definition of “red-tagged” poles, clarifying an attacher’s right to access information regarding utility easements, clarifying that pole owners must meet the FCC’s timelines for processing attachments to up to 3,000 poles, implementing a new intra-agency, expedited process for the FCC’s handling of pole access complaints, and imposing additional record retention and disclosure requirements on pole owners – are helpful.

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<sup>2</sup> BEAD awardees have four years from 2024 to implement their BEAD grants. See <https://www.internetforall.gov/sites/default/files/2022-05/BEAD%20Info%20Sheet%20-%20IFA%20Launch%20-%20Final.pdf>.

Nonetheless, the critical issue of pole replacement costs remains an open issue, despite a substantial amount of evidence in the record supporting a cost allocation approach. Even though the Commission did not formally request comment on this issue in the Third FNPRM, the issue was raised by the Second Further Notice and remains unresolved and open for comment.<sup>3</sup>

## **II. THE COMMISSION SHOULD BUILD ON THE PROGRESS MADE IN ITS PREVIOUS DECISIONS TO CLARIFY THE ALLOCATION OF POLE REPLACEMENT COSTS.**

### **A. The concern about the lack of pole replacement cost allocation is growing.**

While we appreciate the clarifications in the Fourth Report and Order, the absence of clarification around pole replacement cost allocations remains problematic. This issue has received greater attention from policymakers and the press over the past few months:

- Senators [Ron Johnson](#) (R-WI), [Tammy Baldwin](#) (D-WI), [Shelley Moore Capito](#) (R-WV) and Senator [John Kennedy](#) (R-LA) have written letters to FCC Chairwoman Rosenworcel asking for clarification of pole attachment and pole replacement policies.<sup>4</sup> For example, the November 2023 letter from Sen. Capito calls for “a fair sharing of pole replacement cost with an expedited process for resolving disputes.” The letter from Senator Kennedy is even more direct, as he states:

The Commission must implement a fair and economically sound cost-sharing regime for pole replacement. Pole owners are using attachment requests as an opportunity to replace their aging poles while having the attaching broadband provider foot the entire bill for that new pole. This one-sided allocation of costs makes little sense when the pole owner benefits from the new pole, owns the pole, charges rent to attachers for being on the pole, and enjoys tax benefits from depreciating the pole. The pole owner paying nothing for the cost of the pole replacement and the attaching broadband provider paying everything is clearly not a "fair apportionment of costs" as required under the statute. Failure of the Commission to right this wrong and institute a fair

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<sup>3</sup> We do appreciate the clarifications made in the Pole Replacement Declaratory Ruling (*Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd 776 (WCB 2021) (*2021 Pole Replacement Declaratory Ruling*)).and the clarification of the red-tagged rule in the Fourth Report and Order.

<sup>4</sup> These letters and responses are available at <https://www.fcc.gov/chairwoman-rosenworcels-letters-congress>.

allocation of costs will directly jeopardize the goal of bringing broadband to unserved homes in America.

- According to an article in Cardinal News, Virginia legislative officials are considering legislation that would address the gap between the broadband and electric utilities. (“Del. Scott Wyatt, R-Mechanicsville, told the state’s Broadband Advisory Council on Dec. 9 [2024] that he was concerned that legislators can’t force the power companies and ISPs to ‘play together’ at the moment. Many are making progress, while others are “at a standstill,” he said. The cost of adding lines to poles is increasing, he added. “I’m having heartburn when original negotiations and contracts were \$30,000 a mile, and now those prices have changed to \$90,000 a mile,” Wyatt, a House Appropriations Committee member, told the council in a recorded meeting. “I ... hope that my peers will consider legislation to regulate these folks and force them to come together and work with the ISPs.”)
- The West Virginia state broadband office [said](#) that pole attachment problems are the biggest impediment to deploying broadband in the state. (“State Broadband Office Director Kelly Workman told the council at last week’s meeting that pole agreements are ‘our biggest source of delay in ARPA (American Rescue Plan Act) funding projects so far,’ Workman said. She said it’s turning out to be a drain on resources for internet service providers (ISPs). ‘Costs have gone up exponentially the last three years compared to previous experience,’ Workman said. ‘We’re fighting through this issue, company by company. The policies do not appear consistent, the pricing does not compare consistent.’”)<sup>5</sup>
- Senator Mike Lee wrote a letter recently about how the Tennessee Valley Authority is inhibiting the operation of the free market by refusing to provide access to their poles. He said he has heard “troubling reports” that some local power companies regulated by the TVA are holding up broadband deployment by private internet service providers (ISPs) by delaying or refusing to negotiate pole attachment agreements, especially in those areas where the utility provides its own broadband service or is considering doing so.
- The Wall Street Journal recently reported that pole attachment disputes are “gumming up” the efforts to bring broadband to rural markets and schools in particular. (“The

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<sup>5</sup> Broadband Council Chairman Robbie Morris said “in some cases ISPs are being asked to pay up to 300% more than just a few years ago to the pole owners to attach. “The appearance is that with the rise in costs they are saying, ‘Okay, now federal money is out here and now let’s just jack-up our costs and we can take advantage of that money as well,’” Morris said. “These funds are meant to spread broadband across the state and for them to be going up 1, 2, 3, 400% is just astronomical.”

poles are owned by electric or phone companies that often aren't getting public money to build out broadband, triggering skirmishes that some internet providers blame for slowing needed upgrades. Disputes involving utility poles have gummed up broadband projects in Kentucky, Michigan and South Carolina. One squabble in Socorro, N.M., left two elementary schools without high-speed internet for several years. "Our students really suffered," said Ron Hendrix, superintendent of the Socorro school district. It is "years of not having high-speed network out to two schools that really need it.")

- The International Center for Law and Economics issued a [study](#) in 2021 finding that "costs to repair and upgrade poles that have not reached the end of their useful life should be shared between pole owners and attachers and, second, that pole owners should be compensated equitably to replace poles, but should not reap a windfall. New attachers should be responsible for the incremental costs associated with those attachments."
- West Springfield, MA is partnering with the local electric utility to deploy a fiber network, but Verizon and Eversource – the owners of the poles in that area – have [allegedly](#) delayed the make-ready work ("But efforts to launch a \$1.8 million pilot project have been on hold thanks to ongoing delays by Verizon and Eversource to prepare local utility poles for fiber attachment, West Springfield Chief Technology Officer Stephanie Straitiff tells local news outlet [The Reminder](#). . . . While locals are excited (the town has seen 272 applications from residents for the pilot project and 643 applications for service townwide), the make-ready work remains stuck at somewhere around 25 percent with little explanation from Verizon as to what's causing the delays.")

State broadband offices are expected to begin receiving bids for service under the BEAD program later this year, and the matter of pole replacement costs will be a significant factor in the states' decisions and budgets. This issue is particularly concerning in states that will not receive sufficient funding to provide fiber to all their unserved/underserved locations. If pole attachment and pole replacement costs are left unregulated, pole owners will have incentives to increase their pole attachment and pole replacement rates, knowing that BEAD sub-recipients will be operating under a tight deadline to complete their projects. At a minimum, the lack of clarity will create uncertainty in the market and make it difficult for states to determine who should

receive awards because the cost of obtaining access to poles is a “wild card”. Even worse, this could mean that BEAD awardees will increase their costs above the amount of funding available, which could mean that some locations are not served, or that states will have to make awards to lower-cost non-fiber providers using technologies that do not have the same capacity as fiber in order to make sure that every location is served. This result would contradict the Biden Administration’s expressed preference for fiber solutions for each location.

It is also worth noting that the Edison Electric Institute (EEI) itself noted that the lack of clarity around pole replacement cost allocation is problematic in its Petition for Reconsideration. According to the EEI Petition:

As regulated public utilities, electric utilities will be forced to evaluate on a case-by-case basis whether bearing some or all of the cost of the premature replacement of a grandfathered pole – *i.e.*, a pole that would not require replacement “but for” the need to accommodate a new attachment – would constitute a prudent investment. This will delay broadband deployment, especially since the *Declaratory Ruling* provides no guidance on how costs should be allocated for make-ready pole replacements involving grandfathered poles. Pole owners and attachers will have to negotiate cost allocation for every pole replacement involving a grandfathered pole—negotiations that will be, at best, inefficient and, at worst, will spawn costly and time-consuming disputes. [emphasis added]

We thus encourage the Commission to take another look at the issue and provide greater clarity so that all stakeholders – state broadband officials, pole owners, attachers and consumers such as anchor institutions – can proceed with greater confidence to implement the goals of the BEAD and other broadband programs as quickly as possible.

**B. The SHLB Coalition principles calls for fair allocation of pole replacement costs between pole owners and attachers.**

One June 28, 2021, the SHLB Coalition filed a letter with the Commission outlining various pole attachment recommendations that extend to pole replacement cost issues as well as

to other various considerations regarding barriers to access to poles.<sup>6</sup> These principles reflect a balance of interests among the various parties involved in pole attachment negotiations. The SHLB Coalition respectfully suggests that these principles could provide a basis for the Commission to provide some guidance on pole replacement cost allocation standards to balance the interests of both pole owners and attachers.

Over the years, the Commission has initiated several efforts to consider cost allocation for certain pole modifications, including replacements. In previous decisions, the Commission has also acknowledged the importance of cost sharing.<sup>7</sup> But the Commission has not yet taken the next step to provide greater clarity around the many types of situations faced by pole owners and attachers.<sup>8</sup> Pole owners derive a benefit when they acquire new poles because they can avoid future replacement and maintenance costs, and even utilize the new pole to upgrade their facilities and secure capacity for additional broadband attachers. Replacement costs should thus be shared equitably between both the owner and attacher, and also extend to those existing attachers who decide to use the replacement as an opportunity to upgrade their own facilities.<sup>9</sup> Accordingly, the Commission should now play a role in providing additional guidance so that pole negotiations remain just and reasonable.

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<sup>6</sup> *SHLB Ex Parte Notice with Pole Attachment Principles to Expedite Broadband Attachments for Anchor Institutions and Their Communities*, WC Docket No. 17-84 (Sept. 2, 2021) (attached).

<sup>7</sup> For example, the Commission determined that costs associated with pole modifications undertaken for a particular party's benefit should be assumed by the benefitting party only. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Report and Order, 11 FCC Rcd 15499, 16077, 16096, paras. 1166, 1211 (1996) (*Local Competition Order*). Further, if an existing attacher or utility uses a pole modification precipitated by another party as an opportunity to also modify its own attachments (or modify the pole or existing facilities to bring it into compliance with safety standards in the case of the utility), the Commission clarified that the existing attacher or utility should share in the costs of the pole modification. *Id.* at 16077, para. 1166 and 16096-97, para. 1212. These principles, known as the cost causation and cost sharing principles, are codified in section 1.1408(b).

<sup>8</sup> *Id.* at 783, para. 11.

<sup>9</sup> *Local Competition Order* at 16077, para. 1166.



In the case where a pole replacement is precipitated by a new attacher's request due to a lack of capacity, and there is considerable "life" still remaining on the pole, the Commission could set equitable cost allocation standards whereby the new attacher is responsible for paying a proportional share of the remaining life of the pole to compensate the owner for unexpected, up-front costs directly related to early retirement of the pole. Additionally, make-ready work for new attachers should not include those costs directly related to correcting any pre-existing violations caused by either the pole owner, its licensees, or other joint users. Also, a new attacher should not have to pay any share of additional costs for specific modifications or upgrades that the pole owner pursues during a replacement project that falls outside of the scope of work required to accommodate the new fixtures. These costs are neither initiated by the new attachment nor necessary for affixing the attacher's equipment and should thus not be included in the calculation of equitable cost allocation.

The Commission should additionally adopt cost allocation standards that encourage efficiency. For example, the full scope of a pole owner's attachment procedures, including applications, project timelines, and list of costs related to both make-ready and replacement work should be transparent from the beginning of a project. Records calculating the remaining life of the pole and the owner's estimated retirement schedule should be kept current and made readily available to the communications attacher up front. Pole owners should also maintain adequate records of and share any data that is necessary for the calculation of fair and reasonable rental charges. Such information contributes to the predictability of the project and allows the attacher an opportunity to efficiently assess whether it can successfully move forward without incurring exorbitant costs.

### **III. THE COMMISSION SHOULD ADOPT A TIMELINE FOR POLE PROJECTS GREATER THAN THREE THOUSAND POLES.**

In the Third FNPRM, the Commission tentatively concluded that it “should adopt a defined make-ready timeline for orders that exceed 3,000 poles or 5 percent of the utility’s poles in a state in order to facilitate the processing of pole attachment applications that are submitted in large numbers.” (Third FNPRM, para. 53). The SHLB Coalition supports this tentative conclusion. Several SHLB members have voiced the opinion that there will be many more projects involving well over 3,000 poles once the BEAD awards are made later this year. In fact, according to SHLB members, projects with over 3,000 poles are fairly common and are considered medium-sized, not “large”, projects. While we recognize that larger build-out projects could require pole owners to expend more effort and resources to resolving pole attachment issues, we believe that encouraging them to do so is necessary if we are going to reach our national broadband build-out objectives. We urge the Commission to adopt a presumption that projects above 3,000 poles will be handled in a defined period of time in order to emphasize to pole owners the importance of achieving the goal of solving the digital divide in the next few years.

Respectfully submitted,



John Windhausen, Jr  
Executive Director  
SHLB Coalition  
1250 Connecticut Ave. NW, Suite 700  
Washington, DC 20036  
[jwindhausen@shlb.org](mailto:jwindhausen@shlb.org)

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