

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

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

**COMMENTS OF INCOMPAS**

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INCOMPAS, by the undersigned, respectfully submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice* seeking comment on the petition by NCTA—The Internet & Television Association’s Petition for Expedited Declaratory Ruling seeking clarification of the Commission’s rules on costs associated with pole replacement and the process by which disputes over pole attachments are settled.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

INCOMPAS, the internet and competitive networks association, is the preeminent national industry association advocating for streaming, internet content and the deployment of new communications networks. INCOMPAS represents a diverse membership, including competitive network companies that are building the next generation of communications networks across the country—fiber, fixed wireless, and mobile broadband networks. These companies are making substantial investments in infrastructure and innovative technologies to offer residential and enterprise customers cutting-edge services at affordable prices in urban,

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<sup>1</sup> See Wireline Competition Bureau Seeks Comment on a Petition for Declaratory Ruling Filed by NCTA—The Internet & Television Association, WC Docket No. 17-84 (rel. July 20, 2020) (“*Public Notice*”).

suburban, and rural areas. Each of these members is providing and/or relying upon broadband capability, and the Commission's role in encouraging broadband deployment and protecting and promoting fixed broadband competition is key to ensuring that residential and business customers will have choice for their broadband provider, as well as the services and applications they may choose to take over those broadband connections.

Supporting affordable, competitive BIAS and dedicated broadband services is critically important to the nation's development and with the COVID-19 crisis further exposing the digital divide across the country, broadband availability and connectivity remain more essential than ever before as many services continue to move online. As the Commission recently indicated, “[m]odern society is an increasingly digital one, and accessing advanced services is essential to ensuring that all Americans can participate and thrive.”<sup>2</sup> Indeed, almost every business requires access to the internet (and other broadband services) today.

Unfortunately, due to the pandemic, it also is the case that households need greater access to broadband as well—whether it is for telework, distance learning, remote telehealth monitoring, or engaging in commerce—and most Americans agree that they need access to reliable and robust high-speed internet at home. Our dependence on broadband services has only been amplified in recent months, and now high-speed broadband connectivity has become a necessity in American homes as social distancing guidelines and stay-at-home orders have required more Americans to work and learn from home, and to be able to connect with their communities, vital services, jobs, schools, and commerce through online resources. INCOMPAS

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<sup>2</sup> *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, 2019 Broadband Deployment Report, FCC 19-44, ¶ 1 (rel. May 29, 2019), *available at* <https://docs.fcc.gov/public/attachments/FCC-19-44A1.pdf>.

has consistently advocated for policies that will reduce barriers to investment in communications infrastructure and will streamline the deployment process. As our lives continue to adapt and rely more heavily on broadband services to meet the challenging circumstances of social distancing and the coronavirus pandemic, the commitment to reach all Americans and to deliver the broadband connectivity needed during and after this crisis must be embraced.

Moreover, INCOMPAS and its members advocate for *competitive* broadband deployment because competition delivers more robust networks that offer faster speeds and better customer service and pricing. In turn, incumbent providers respond by upgrading their networks, increasing their speeds and lowering their prices. Wholesale and retail customers benefit with competitors in the marketplace, and the Commission’s work to streamline and improve broadband deployment for fixed and mobile networks enables both competitive and incumbent providers to deploy their networks more efficiently—driving better services and prices to more end users faster.

INCOMPAS commends the Commission for its focus on broadband deployment which is helping to bridge the digital divide. The Commission’s actions to remove barriers to broadband deployment, including its adoption of a “one-touch, make-ready” regime for pole attachments<sup>3</sup> and the *5G Small Cells Order* are already making a difference.<sup>4</sup> INCOMPAS members report that they have been able to deploy faster, benefitting more customers since these decisions. That

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<sup>3</sup> See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7711-75, paras. 13-139 (2018) (“*Third Wireline Infrastructure Order*”).

<sup>4</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-29, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) (“*5G Small Cell Order*”).

the Ninth Circuit Court of Appeals recently upheld these items<sup>5</sup> is further proof that the Commission is taking a reasoned and thoughtful approach to eliminating barriers to the deployment of the next generation of communications networks.

To help increase competitive choice and more broadband connectivity and availability, INCOMPAS urges the Commission to take additional action to remove barriers and streamline processes for fiber, fixed wireless, and mobile wireless providers. It is critical that competitive providers deploying fiber facilities and infrastructure that carry telecommunications and broadband services have access and rights to poles on a non-discriminatory basis. INCOMPAS urges the Commission to take the necessary action to level the playing field with respect to all providers seeking to attach telecommunications facilities to poles and apply uniform standards for the deployment of broadband infrastructure. To that end, NCTA—The Internet & Television Association has filed a Petition for Declaratory Ruling that asks the Commission to clarify that its existing rules require pole owners to share in the cost of pole replacement in unserved areas and to prioritize and expedite pole attachment complaints arising in unserved areas.<sup>6</sup> INCOMPAS sees this petition as the next logical step in clarifying the Commission’s previous actions and increasing competition in the broadband market. INCOMPAS supports the petition and urges the Commission to adopt the reforms for which it calls. However, as we describe below, these issues are not just present in unserved areas. It also is important for the Commission to recognize that pole replacement issues are prevalent in urban and suburban America and are impeding competitive providers’ services. As such, in this comment,

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<sup>5</sup> See *City of Portland v. United States, et al.*, No. 18-72689, *et al.* at 19-21 (9th Cir. Aug. 12, 2020).

<sup>6</sup> See Petition for Expedited Declaratory Ruling, NCTA—The Internet & Television Association, WC Docket No. 17-84 (filed July 16, 2020), *available at* [https://ecfsapi.fcc.gov/file/107161552527661/071620%2017-84%20NCTA%20Petition\\_for\\_Declaratory\\_Ruling.pdf](https://ecfsapi.fcc.gov/file/107161552527661/071620%2017-84%20NCTA%20Petition_for_Declaratory_Ruling.pdf) (“Petition”).

INCOMPAS shares specific examples from its membership to demonstrate how added costs and project delays on pole attachments are having a direct impact on slowing down competitive network builds. INCOMPAS believes in order to speed competitive broadband deployment in both rural and urban areas, there must be a more transparent, just, and reasonable process that ensures a fair allocation of replacement costs between pole owners and new attachers seeking to use the poles. Also, the Commission should make clear that, in accordance with section 1.1408(b) of the Commission's rules,<sup>7</sup> the parties that directly benefit from the replacement of a utility pole should share proportionate costs of the upgrade or modification to the pole. Finally, INCOMPAS urges the Commission to prioritize and arbitrate as necessary to resolve pole utility attachment disputes so that quick decisions can speed up broadband deployment in both unserved and underserved communities.

## **II. INCOMPAS MEMBERS REGULARLY ENCOUNTER BARRIERS TO DEPLOYMENT, INCLUDING UNREASONABLE POLE REQUIREMENTS**

As builders, INCOMPAS members have extensive experience deploying middle-mile infrastructure, residential and enterprise fiber, and fixed and mobile wireless networks. Similar to NCTA's members, INCOMPAS members have also experienced significant barriers to deployment, including unreasonable delays and costs associated with access to poles, conduits, local permitting processes, and access to multiple tenant environments (both commercial and residential).<sup>8</sup> INCOMPAS members' efforts to attach facilities to poles are routinely stymied by

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<sup>7</sup> 47 C.F.R. § 1.1408(b) ("The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification.")

<sup>8</sup> NCTA members likely do not face all of these barriers. For example, NCTA's traditional cable operators have a significant presence in residential MTEs whereas INCOMPAS' broadband providers have highlighted the practices of incumbents and MTE owners/managers that restrict

pole owners who are unwilling to expand the capacity of their poles without recovering *unreasonable* pole replacement costs.

GWI, a Maine-based broadband service provider operating since 1994, has been successful in building high-speed broadband networks across its state and helping create new online opportunities for both commercial and residential customers. Unfortunately, due to the expansive nature of its business over the last 25 years, GWI has faced numerous instances where pole replacements caused either an unreasonable increase in project cost or length of time.

In 2019, GWI was awarded a 2.5 mile dark fiber project for a public sector client in Brunswick, ME. Following a survey of poles along the project route, GWI was informed by the owner that 28 percent of the poles would need to be replaced. Half of the replacements were due to non-compliance by the current attachers. The actual make-ready cost for this route was roughly 250% more than what was budgeted. Due to this, GWI had to find an alternative path that resulted in additional engineering time and a two-month delay to the project timeline. For another project at the end of 2019, GWI began the process of deploying fiber services to a residential community in Brunswick. During the make-ready stage, another attacher's oversight with respect to moving its cable on two separate poles caused a two-week delay to finish the entire network.

GWI now automatically includes in its project estimates an increase of make-ready costs by 20% per pole to take any pole replacements into account. This is done for all urban and rural areas. GWI also has to prioritize potential projects based on the pole conditions and the number of attachments currently on the poles. In GWI's experience, the higher the number of current

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competitive access. *See* Comments of INCOMPAS, GN Docket No. 17-142 (filed July 24, 2017).

attachments, the more likely it is that the company will incur additional costs and delay due to owners' requests for pole replacements.

Other INCOMPAS members that have faced similar increased cost and regulatory burdens on their business operations include IdeaTek which operates in rural Kansas and Uniti Fiber which is based in Arkansas, but offers network services in the South and in states along the East Coast. Both leading providers of infrastructure solutions and fiber builds in different rural parts of the country, IdeaTek and Uniti have been regularly subjected to added engineering costs or requests by pole owners to correct existing violations caused by other attachers. In many cases, they have had pole attachment applications some pending with utilities for months and others, like Uniti, for *years*, while in the meantime the pole owners have done little to nothing to address existing violations on the poles.

To try to remedy their past inattention to violations and safety standards, many pole owners have recently hired outside contractors to review the engineering requirements for new pole attachments and find currently existing problems on the poles. For example, application and engineering costs are about \$150 per pole, but Uniti is now forced to pay an excessive amount of money to these contractors in order for them to review the engineering plans for the build. For Uniti specifically, typical invoices for a 25-pole application costs are around \$10K for engineering alone. The utility companies have no incentive to control these costs because they are passed to the attaching party or applicant. Essentially, these providers are being charged for the utility to audit their own poles and to discover pre-existing problems. This is simply a way of passing some of the cost to address pre-existing violations on to new attachers, but it has a significant impact on raising the costs for competitive providers to attach their fiber and it delays deployments.

Several of our members have also reported that utilities have developed proprietary standards for the installation, maintenance, and operation of electric utilities and communications facilities on poles that differ in significant respects from the National Electric Safety Code (“NESC”), which is generally considered the national standard. In the case of Uniti, one utility in Pennsylvania developed its own pole attachment safety standards and refused to share or disclose with the company what those exact standards were. In response, Uniti requested a copy of the utility’s standards in hopes of developing a better understanding of the applicable specifications so that they could correctly design their build according to these requirements. To date, the utility has refused. Similarly, IdeaTek reported that a Kansas utility has significantly increased the clearance requirements from grounded street light brackets from the current NESC standard. The utility has also removed options for spot poles, which otherwise comply with NESC, and service standards that resolve mid-span clearance issues. Moreover, IdeaTek has noticed a willingness by the utility to deviate from its own standards particularly when projects only involve the utility, as opposed to third-party applicants. In all of those situations, our member providers are left trying to guess what the utility’s attachment standards are, and then they ultimately bear the cost of re-designing their respective projects when they fail to meet those unknown specifications.

Another commonly faced challenge by INCOMPAS members includes whether and the extent to which new attachers are responsible for pre-existing violations. Despite the Commission’s clarity on this issue in the *Third Wireline Infrastructure Order*,<sup>9</sup> our members

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<sup>9</sup> See *Third Wireline Infrastructure Order* at paras. 121-122 (“[W]e clarify that new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment. Although utilities have sometimes held new attachers responsible for the costs of correcting preexisting violations,

indicate that many energy utilities have taken different approaches on the FCC's Order, including various interpretations of other attachers' pre-existing pole violations. Each utility has a different timeline for steps in the attachment process, and while the *Order* makes clear that new attachers should not be responsible for pre-existing violations, many utilities openly flaunt this directive and require new attachers to correct (and pay for) these violations.

For example, Uniti has engaged with one utility in Pennsylvania that has taken the stance that if there are companies in violation on a pole currently, those companies along with the new requesting attacher all equally bear responsibility to correct the pole violations (thus, if there are two existing communications attachers, then the costs are split three ways). This practice, besides being in violation of the Commission's rules, clearly disadvantages the new attacher, as well as communications companies generally because, in some cases, the violation may be caused by an electric utility.<sup>10</sup> Another Pennsylvania utility has very noticeably shifted its pre-existing violation policy over the past two years in direct violation of the Commission's rules, now requiring new attachers to pay the full cost to correct any pre-existing violations on a utility pole. Thus, companies like Uniti are required to bear the cost of correcting the violations of others on the pole in order to make its new attachment. In Kansas, IdeaTek has also experienced similar treatment, where it has been allocated 100 percent of the replacement costs on

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this practice is inconsistent with our long-standing principle that a new attacher is responsible only for actual costs incurred to accommodate its attachment. . . . Holding the new attacher liable for preexisting violations unfairly penalizes the new attacher for problems it did not cause, thereby deterring deployment, and provides incentives for attachers to complete make-ready work irresponsibly and count on later attachers to fix the problem.”)

<sup>10</sup> For example, a power company may have had a new customer order and placed a transformer on a pole with no regard for how far away from the existing communications infrastructure they have placed the new piece of equipment. The cost to fix that issue is borne by the communications companies, including the new attacher.

applications that require make-ready and pole replacement, with no consideration given to the enrichment and benefit this confers to the utility or the current value or condition of the pole.

Our members also report that utilities will cite the deferral of replacement liabilities of non-compliant poles as a means of acknowledging the obligation without action. IdeaTek, for example, has indicated that a large utility refused to replace non-compliant poles (prior to a new attachment) on the basis that the pole will be replaced at some later date in a master pole replacement plan, a practice that is explicitly prohibited in the *Order*.<sup>11</sup>

INCOMPAS suggests that much of the deviation from the Commission's rules could be solved by the Commission addressing the cost share and investment benefit more explicitly. Broadband attachers are being taken advantage of by utilities because there is currently an economic advantage to do so through the lack of clarity on pole replacement cost apportionment. Instead, the Commission should clarify how costs are allocated and to whom they benefit. An economic-based incentive can then be created, ensuring that utilities are engaged and properly incentivized to develop and apply fair policies.

While the FCC's *Third Wireline Infrastructure Order* has made some headway on pole attachment issues, utility companies are still finding new ways to squeeze broadband companies for costs that they did not cause, for upgrade investments that disproportionately benefit the utility, and for setting rates and safety standards in a way that conflicts with the underlying premise of the FCC's pole attachment and cost allocation rules. Because most disputes typically involve only a moderate number of poles (*i.e.* 10-25), many competitive, small broadband providers are reluctantly willing to swallow these costs. But, taken together, these problems are

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<sup>11</sup> See *Third Wireline Infrastructure Order* at para 121 (“We also clarify that a utility cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation.”)

a major anchor around the neck of competitive fiber broadband providers, like GWI, IdeaTek, Uniti and other INCOMPAS members across the country. Accordingly, INCOMPAS urges the Commission to consider this additional evidence and further moderate the excessive behaviors of some pole owners in this space.

### **III. CONSISTENT WITH THE PETITION, THE COMMISSION SHOULD ISSUE A DECLARATORY RULING REQUIRING POLE OWNERS TO SHARE IN THE COST OF POLE REPLACEMENT IN UNSERVED AREAS**

INCOMPAS appreciates the Commission's efforts to lower and eliminate barriers to broadband deployment and believes the Commission's recent actions to promote both wired and wireless broadband deployment are critical steps to encouraging and enabling the fiber, fixed wireless, and mobile wireless builds that are crucial to the next generation of competitive communications networks. To further promote competitive fiber builds and enable broadband competition in more geographic areas, we encourage the Commission to issue a declaratory ruling in response to NCTA's petition. NCTA asks the Commission to clarify that utility pole owners cannot require broadband facility attachers in unserved areas to bear the entire cost of pole replacement. To speed broadband deployment in rural areas, NCTA has also asked the Commission to ensure a fair allocation process of replacement costs between pole owners and new entities seeking to use the poles, as mandated by the just and reasonable requirements of section 224(b) of the Communications Act. INCOMPAS agrees with NCTA's position that, in accordance with section 224(b), pole replacement costs should be allocated equitably between pole owners and new attachers seeking to lease space on the poles in unserved areas. This is a finding, however, that should apply to all poles under the Commission's jurisdiction—not just in rural, unserved areas.

INCOMPAS network builders' ability to add equipment on timely and reasonable terms and conditions to a utility pole, duct, conduit, or right-of-way is a critical factor in their deployment of new networks.<sup>12</sup> Congress, the Commission, and the Courts have recognized that, due to factors such as zoning restrictions, environmental regulations, and start-up costs, utilizing space on existing poles is generally the only feasible means for network deployment.<sup>13</sup> Pole owners and existing attachers, however, generally lack the incentive to provide access to poles on reasonable terms and conditions, especially when they compete with those seeking access in downstream retail markets. As such, Congress directed the Commission to "regulate the rates, terms, and conditions of pole attachments to provide that such rates, terms, and conditions are just and reasonable."<sup>14</sup> Additionally, the Commission has a duty to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."<sup>15</sup>

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<sup>12</sup> See generally White Paper on Pole Attachments Rates Applicable to Competitive Providers of Broadband Telecommunications Services, Time Warner Telecom, Inc., RM-11293 and RM-11303, at 3 (filed Jan. 16, 2007) ("Although they currently receive little attention in the discourse concerning the nation's telecommunications infrastructure, pole attachments are a critical input for the deployment of wireline broadband facilities.")

<sup>13</sup> See *Gulf Power Co. v. FCC*, 208 F.3d 1263 (11th Cir. 2000) ("[C]able television industry has attached its cables to the utility poles of power and telephone companies . . . because factors such as zoning restrictions, environmental regulations, and start-up costs have rendered other options infeasible. . . . [Additionally,] utility poles afforded [telecommunications providers] the only feasible means for stringing their wires."); see also S. Rep. No. 580, 95th Congress, 1st Sess. at 13 (1977) (1977 Senate Report), reprinted in 1978 U.S.C.C.A.N. 109.

<sup>14</sup> 47 U.S.C. § 224(b).

<sup>15</sup> 47 U.S.C. § 1302(a).

Requiring pole owners to share in the cost of pole replacement is consistent with the Commission's rules and will remove a significant barrier to broadband deployment. While the Commission has taken steps in the one-touch, make-ready provisions of the *Third Wireline Infrastructure Order* to meet the objectives Congress put forth as they relate to pole attachments, further clarification of the Commission's rules is necessary to provide more affordable, timely and efficient construction of competitive networks and to minimize inconvenience and safety concerns experienced by the public. As then-Commissioner Pai remarked, numerous providers have complained that "many pole-attachment disputes arise from these particular pole owners, who may have little interest in negotiating just and reasonable rates for private actors to access their rights of way."<sup>16</sup>

As it relates to the imposition of extraordinary fees and costs from pole owners, INCOMPAS has previously argued in this proceeding that pole attachment rates should not include capital costs,<sup>17</sup> and remains steadfast that it is critical that the Commission fulfill its statutory obligations under section 224(b) that assessed charges are just and reasonable. Pole owners are already able to sufficiently recover costs from attachers arising from the make-ready process, and the Commission has concluded that it is likely that the attacher is the "cost causer" for, at most, a *de minimis* portion of all remaining costs.<sup>18</sup> Pole owners' brazen attempts to require competitive network builders to cover the full replacement costs of utility poles is therefore unjust and unreasonable given that attachers are already covering the actual expenses

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<sup>16</sup> See Remarks of FCC Commissioner Ajit Pai, "A Digital Empowerment Agenda," at The Brandery, Cincinnati, Ohio, at 8 (Sep. 2, 2016).

<sup>17</sup> See Comments of INCOMPAS, WC Docket No. 17-84 (filed June 15, 2017) at 10-12.

<sup>18</sup> See *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Order and Further Notice of Proposed Rulemaking, FCC 10-84, ¶ 135 (2010) ("2010 Pole Attachment Order").

for make-ready costs and have only incremental responsibility for advancing the retirement of the existing pole. INCOMPAS concurs with NCTA's assessment that requiring pole owners to share in the cost of pole replacement is consistent with section 224(b)(1) of the Act and section 1.1408(b) of the Commission rules and that proportionate sharing of the costs to modify the facility will ensure that pole owners do not experience a windfall from requiring new attachers to replace and upgrade an existing pole.

Finally, prioritizing and expediting the resolution of pole utility attachment disputes is justified so that quick decisions can speed up broadband deployment and help builders provide greater internet access to those communities on the wrong side of the digital divide. Our members indicate that going through a formal complaint process either with state PUCs or at the FCC can take considerable time and resources, ultimately causing deployment delays or significant deployment cost increases. Often a lack of complaints at the PUC or FCC are due to time and cost constraints, as opposed to a lack of complaint-worthy attachment issues. Resolving these complaints in a rapid fashion and including options for more initial and informal mediation from the Commission will better illuminate ongoing attachment disputes and ensure that competitive providers can quickly get back to the business of making fast and affordable broadband available to communities with limited connectivity. Also, due to COVID-19, we are experiencing a greater dependence on our networks than at any other time in our nation's history. The availability and adoption of broadband infrastructure and the use of online digital tools are necessary components to achieving the full economic benefits from such infrastructure, and studies show that broadband infrastructure and the digital services it supports benefit the entire

economy.<sup>19</sup> For unserved and underserved communities, time is of the essence, and expedited decision-making over pole attachment disputes would allow competitive broadband providers to connect urban, suburban, and rural areas more quickly to valuable online resources.

In order to improve on our communities' well-being and to reduce the extra burdens on competitive providers to meet the growing demands of customers across America, INCOMPAS urges the Commission to take all available steps to help speed up the deployment process and address those continued barriers for accessing pole attachments, including granting NCTA's Petition for Declaratory Ruling. Creating a more transparent, just, and reasonable cost allocation process will provide greater cost savings across the board for those competitive broadband service providers trying to build out to unserved and underserved communities. In turn, competitive providers can use these cost savings to expand their networks and deliver broadband that is readily available to meet growing demand by providing greater access with faster speeds and at more affordable options.

#### **IV. GIVEN SIMILAR CONCERNS OVER POLE REPLACEMENT IN URBAN AND SUBURBAN MARKETS, THE COMMISSION SHOULD EXPAND ITS DECLARATION TO EVERY POLE OVER WHICH THE AGENCY HAS JURISDICTION**

Although NCTA insists that “a comprehensive examination of pole replacement issues in all cases is beyond the limited scope” of the Petition,<sup>20</sup> our members, which serve residential and business customers in urban, suburban, and rural areas, have indicated that the pole replacement concerns at the center of this request frustrate broadband deployment by competitive providers in

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<sup>19</sup> See, e.g., International Telecommunications Union, *Impact of Broadband on the Economy* (Apr. 2012), available at [https://www.itu.int/ITU-D/treg/broadband/ITU-BB-Reports\\_Impact-of-Broadband-on-the-Economy.pdf](https://www.itu.int/ITU-D/treg/broadband/ITU-BB-Reports_Impact-of-Broadband-on-the-Economy.pdf).

<sup>20</sup> See NCTA Petition at 12.

communities across the country. And while clarifying the Commission's rules to speed deployment to unserved areas to close the digital divide is in the immediate public interest, INCOMPAS suggests that the statutory language of section 224(b) and the agency's rules and precedent are sufficiently clear that, in issuing a ruling in this matter, the Commission should declare that the scope of its ruling on pole replacement costs applies to every pole over which the Commission has jurisdiction.

As noted above, INCOMPAS members continue to have challenges with pole reinforcement and replacement in urban and suburban markets,<sup>21</sup> and as a result, are unable to build or extend their networks to large segments of the municipalities in their service area. For example, Sonic Telecom, which serves urban and suburban communities surrounding Santa Rosa, California, has repeatedly faced pole replacement requests from the incumbent, which owns utility poles throughout the Bay Area. The incumbent provider has consistently refused to attach Sonic's fiber facilities without an agreement to replace the pole due to "overload" concerns, despite the facts that the company continues to overlash its own fiber onto its legacy copper facilities on those same poles.<sup>22</sup> Similarly, SmartCom, which serves communities near the border in South Texas (as well as customers like U.S. Customs and Border Protection), has indicated in a separate proceeding that the pole owner in its area has set the wind rating on its poles significantly higher than NESC requirements such that SmartCom cannot attach to the pole

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<sup>21</sup> IdeaTek notes that it has pole attachments in Kansas in both urban and rural markets and finds that utilities engage in the same, anticompetitive behavior in both types of markets. Urban deployments are also often essential to support rural deployments, i.e. rural broadband requires backbone connections into urban markets.

<sup>22</sup> See Comments of Sonic Telecom, LLC, WC Docket No. 19-308, at 9 (filed Feb. 5, 2020). While California is a reverse preemption state, we understand that similar tactics are used in states where the FCC has jurisdiction over poles.

75 percent of the time unless it agrees to replace the entire pole—adding significant engineering costs, construction costs, and delays.<sup>23</sup> INCOMPAS posits that deployment in both of these circumstances could be vastly improved by a clarification that the Commission’s cost allocation rules apply to all poles within the agency’s jurisdiction.

Not only would Commission action impact the poles within its jurisdiction, but a declaratory ruling clarifying that its cost allocation rules on poles extends beyond unserved areas may also have an impact on those states that have preempted the Commission’s regulatory authority. Twenty-one states and the District of Columbia have elected to implement regulatory authority over pole attachments, and improved and streamlined federal processes may lead states that have preempted the Commission’s rules to emulate how the agency has interpreted its cost allocation rules.

## V. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its comments as it further examines the issues raised by NCTA’s Petition for Expedited Declaratory Ruling.

Respectfully submitted,

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<sup>23</sup> See Ex Parte Letter of INCOMPAS to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-308, at 2-3 (filed Mar. 6, 2020).

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