

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

In the Matter of )  
 )  
Accelerating Wireline Broadband Deployment ) WC 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”) *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”) seeking comment on questions concerning the allocation of pole replacement costs and the resolution of pole attachment disputes generally to determine whether additional Commission action is necessary.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

INCOMPAS, the internet and competitive networks association, is the preeminent national industry association advocating for competition and innovation. Our members have been at the forefront of investing in and delivering broadband infrastructure throughout the U.S. in the middle and last mile. INCOMPAS members are building the next generation of communications networks across the country, and they have brought the fastest networks to market, offering consumers and businesses better service and pricing. With their experience building fiber, fixed wireless, and mobile networks in urban, suburban, and rural America, they know both the challenges and opportunities in delivering robust broadband network capability.

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<sup>1</sup> See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (rel. March 18, 2022), (“*Second Further Notice*”).

Our membership consists of competitive network builders that are making substantial investments in infrastructure and innovative technologies to offer urban and rural, residential and enterprise customers cutting-edge service offerings at affordable prices. Supporting the provision of 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 over the past two years, broadband availability and connectivity remain more essential than ever before as many services continue to move online. As the Commission previously 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. Deploying the network infrastructure that is used for the delivery of competitive BIAS and business broadband services requires access to public and private rights-of-way, including poles.

The significant investment being made in the deployment of networks by the federal government and the private sector through COVID-relief legislation such as the American Rescue Plan (“ARPA”) with Treasury’s \$10 billion Capital Projects Fund, and implementation of three new broadband programs authorized by the bipartisan Infrastructure Investment and Jobs Act (“IIJA”) and to be administered by the National Telecommunications and Information Administration (NTIA): the Broadband Equity, Access and Deployment (“BEAD”) program, the Enabling Middle Mile Broadband Infrastructure Program, and the State Digital Equity Planning Grant Program (collectively, “Broadband Programs”) which will all have significant

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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, FCC 19-44, para. 1 (rel. May 29, 2019).

consequences on bridging the digital divide. The \$48 billion investment contemplated by these NTIA programs is a once-in-a-lifetime infusion of capital that can help ensure everyone across the nation, including consumers and businesses, have access to robust, affordable future-proof broadband networks that promote learning, create jobs, and attract investment. As a result, it is important for the Commission to address these access issues in a timely fashion to ensure that deployment is speedy – ensuring that consumers can get access to new broadband networks as fast as possible. Concurrently, the Commission must take steps to ensure that the funding for these programs is spent effectively, and the limited public funding intended to bridge the digital divide does not provide an unintended windfall to utilities that use new attachment as an excuse to replace or add new capacity to utility poles.

INCOMPAS commends the Commission for its focus on broadband deployment, and its 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* which 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 the Ninth Circuit Court of Appeals upheld these items<sup>5</sup> is further proof that the Commission is taking a reasoned and thoughtful

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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*”).

<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).

approach to eliminating barriers to the deployment of the next generation of communications networks.

INCOMPAS has consistently advocated for policies that will reduce barriers to investment in communications infrastructure and will streamline the deployment process. Our members work with their local and state officials and other invested stakeholders to deploy their competitive network infrastructure which leads to better, faster, and more affordable broadband being available in wholesale and retail broadband markets. It is important for the Commission to recognize that pole attachment and replacement issues remain prevalent in urban, suburban, and rural America and are impeding competitive providers' deployment of their competitive services—services which are sorely needed given the lack of alternative broadband options available in most markets throughout the U.S. In our previous comments filed in this docket on NCTA's Petition for Expedited Declaratory Ruling on Pole Replacement and Upgrade Costs,<sup>6</sup> INCOMPAS argued that in order to speed up 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.

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 wireless infrastructure that carry telecommunications and broadband services have access and rights to poles on a non-discriminatory basis. In this proceeding, INCOMPAS encourages that the Commission adopt a more comprehensive set of

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<sup>6</sup> See *Wireline Competition Bureau Seeks Comment on a Petition for Declaratory Ruling Filed by NCTA—The Internet & Television Association*, Public Notice, WC Docket No. 17-84 (rel. July 20, 2020) (“Public Notice”).

rules that close the gaps on the “inconsistent practices” of utilities which have resulted in new attachers bearing the primary burden of pole replacement costs, even when utilities directly benefit from such replacement. Furthermore, the FCC should require utilities to share information with potential attachers concerning the condition and replacement status of their poles including both detailed engineering data that supports the need for pole replacement and detailed make ready cost estimates. Finally, the Commission should streamline the dispute process to expedite resolution and ensure rapid deployment of broadband facilities in both unserved and underserved communities.

## **II. INCOMPAS MEMBERS REGULARLY ENCOUNTER BARRIERS TO DEPLOYMENT, INCLUDING UNREASONABLE POLE REPLACEMENT REQUIREMENTS, CAUSING UNDUE DELAY AND INCREASED COSTS**

As builders across the country, our members have extensive experience deploying middle-mile and last-mile infrastructure, residential and enterprise fiber, and wireless networks. INCOMPAS members continually experience significant barriers to deployment, including unreasonable delays and costs associated with access to poles, conduits, local permitting processes, and access to multiple tenant environments. These additional barriers to deployment, including unsubstantiated and unreasonable denials from utility pole owners, only serves to slow down the process and prevent these providers from offering their customers faster, more affordable options. This readily occurs because utilities simply do not want a broadband competitor to access their poles due to the fact it creates greater competition in the marketplace and that the utility may bear some responsibility for the costs. Furthermore, these added costs and barriers fundamentally restrict providers from reaching the most hard to reach, most unserved customers by frustrating an already challenging economic model in such areas.

Some of the most striking examples that INCOMPAS members often face as it relates to pole replacement requirements include: the imposition of costs for pole failure prior to new attachment, the owners' failure to provide individual, detailed pole-by-pole cost estimates and failure to upgrade the pricing quote systems that make such estimates possible, delays of approval outside shot clock windows, utility's use of unverifiable engineering reports,<sup>7</sup> delays in providing initial make ready reports within current required timelines, and delays in performing approved make ready work so construction can begin. Additionally, members have faced threats to terminate contracts for disputing actions which violate existing contracts and/or new FCC regulations. In these circumstances, some members have reported that contracts are terminated for simply questioning the pole owner's actions.

Other examples also worth mentioning include pole owners' not providing service standard documents upon request, subjectively changing the analysis of a third-party engineer after an analysis has been submitted for review, and manipulation of engineering rules to prevent competitors from attaching new facilities.

INCOMPAS members' efforts to attach facilities to poles is routinely stymied by pole owners unwilling to expand the capacity of their poles without recovering *unreasonable* pole replacement costs and timely consideration of pole attachment requests. 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

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<sup>7</sup> A Texas-based member indicated that when it attempted to verify the engineering reports being produced by one of the utilities it works with, it found that the utility uses non-standard and no longer supported pole engineering software from a company that no longer exists. As a result, there was no way to share data with the utility to verify those engineering reports.



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.

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

Another commonly faced challenge for INCOMPAS members that increases costs and regulatory burdens on their business operations 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>8</sup> our members indicate that many energy

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<sup>8</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, 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,

utilities have taken different approaches to 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.

INCOMPAS' member IdeaTek, which operates in rural Kansas, has experienced similar treatment, where it has been allocated 100 percent of the replacement costs on 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 cite to their pole replacement plans as a method of acknowledging the obligation to replace non-compliant poles while deferring action. IdeaTek, for example, has indicated that a large utility in its area has on more than one occasion refused to replace or bear any financial responsibility for non-compliant poles (prior to a new attachment) on the basis that said pole, although currently non-compliant and incapable of accepting a new attachment, is in a "grandfathered" state and will only be replaced at some later date as part of the utility's master pole replacement plan. As a result, IdeaTek is required to pay the full cost of pole replacement to bring these "grandfathered" poles into compliance with a new standard whenever it seeks to complete a new deployment.

Further, in those situations in which a pole replacement is not "necessitated solely" by a new attachment request other than when there is a pre-existing violation or the pole has been red-tagged, INCOMPAS argues that utilities should not be allowed to hide behind this

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thereby deterring deployment, and provides incentives for attachers to complete make-ready work irresponsibly and count on later attachers to fix the problem.")

“grandfathering” clause. Rather, the Commission should require more transparency from the pole owner that includes making available to requesting attachers information and documentation relaying details such as the age of the pole, plans for the pole, work order history, and other essential information which can be used to determine the pole status. Regardless, it should not be the attacher’s burden to prove that a pole is not in a grandfathered state. Instead, there should be an assumption that a pole is not grandfathered and the burden is on the utility to prove otherwise. It is only reasonable and fair that if the information documentation pertaining to a certain pole is not provided or made available to the attachers, then the utility should not be allowed to fall back on “grandfathering.” The definition of “necessitated solely” ties back into the classification of grandfathering and triggering an out of-compliance pole, so the FCC should address this immediately by including this information in its new rules.

The Commission previously determined that these types of behaviors from utilities amount to “inconsistent practices” with regard to cost responsibility for pole replacements.<sup>9</sup> INCOMPAS supports the FCC’s *Pole Replacement Declaratory Ruling* which clarified that, pursuant to section 1.1408(b) of the Commission’s rules and prior precedent, “utilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted.”<sup>10</sup> INCOMPAS also agrees that this confusion stems from a lack of clarity related to the Commission precedent on

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<sup>9</sup> *Second Further Notice* at para. 6.

<sup>10</sup> See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (rel. January 19, 2021), (“*Pole Replacement Declaratory Ruling*”).

betterment costs (attributable to the pole owner) and non-betterment costs (attributable to the attacher).

Broadband attachers are being taken advantage of by utilities because there is currently an economic advantage to do so due to the lack of clarity on pole replacement cost apportionment. While providers would normally avail themselves of the FCC's pole access complaint process, this lack of clarity and transparency can lead to prolonged disputes that delay new deployments. 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 access issues. Accordingly, the Commission should clarify how costs are allocated and to whom they benefit, and should specifically find that pole owners benefit from pole replacement and should not be permitted to receive the windfall that comes from competitors shouldering the costs to replace or upgrade poles. Not only would such clarity lead to the quicker resolution of such disputes but it would create an economic-based incentive, ensuring that utilities are engaged and properly incentivized to develop and apply fair policies.

With billions of dollars in broadband infrastructure funding being allocated to state and local governments in the upcoming months, it is imperative the Commission act to improve broadband providers' access to existing infrastructure in public rights-of-way to spur faster and more efficient deployments to unserved areas, ultimately benefiting consumers and businesses waiting for access to next-generation networks. Thus, 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. And 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.

### **III. THE FCC’S POLE REPLACEMENT COST ALLOCATION REQUIRES CLEAR STANDARDS THAT WILL ELIMINATE EXISTING AMBIGUITY**

INCOMPAS appreciates the opportunity to share the perspective of its members with the Commission in this proceeding because despite the agency’s best efforts to address cost causation and cost sharing in the *Pole Replacement Declaratory Ruling* and *Wireline Infrastructure Order*, sufficient ambiguity exists in the language of section 1.1408 of the Commission’s rules for significant disagreements to persist between utilities and attachers about when a pole replacement is not “necessitated solely” by a new attachment when the circumstances do not involve a preexisting violation or red-tagged pole. To address these ongoing disputes, INCOMPAS recommends that the Commission adopt clear and comprehensive rules that address these ambiguities and inconsistent practices.

#### **a. The Commission Rules Should Clarify Certain Terminology Used in Pole Replacement Disputes and Identify Other Instances in Which Pole Replacement is Not Necessitated Solely By New Attachment**

To avoid ambiguity that might otherwise cause pole replacement disputes, the Commission should either replace the term “red-tagged” or, at a minimum, clarify its meaning and implications under the Commission’s cost allocation rules.<sup>11</sup> Utilities tag poles as part of regular inspection and maintenance programs. The tags provide information regarding the pole’s status upon inspection. Typically, the tags identify whether the remaining groundline strength of

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<sup>11</sup> See *Second Further Notice* at para. 10 (seeking comment on whether to “codify a definition of ‘red-tagging’ or other terminology that distinguishes between priority replacements that need to be performed immediately due to the status of a pole from non-priority replacements that may be implemented at a later time”).

the pole has deteriorated below the level identified in the National Electrical Safety Code (“NESC”) as requiring that the pole be reinforced or replaced. Within those designations there may be multiple levels. For example, a severely deteriorated pole may be a “priority” to be replaced immediately, or it may be a non-priority pole that can be addressed with reinforcement rather than replacement.

Of specific concern to our members is that “red-tagged,” which the Commission uses throughout the *Second Further Notice*, is not a term with generally understood or agreed-upon meaning. The term is not used by the NESC and is not widely used by pole owners. Utilities also have divergent terminology for their tagging. Some may refer to “yellow” tags or “white” tags or combinations of tags to identify the status of the pole. Rather than have the Commission’s rules use such an ambiguous term, the Commission should clarify that, under its rules, a pole owner cannot require the new attacher to pay any of the cost of replacing a pole when the pole replacement is not directly and immediately caused by the need to expand capacity (either via vertical clearance or wind loading). Such circumstances would include a pole replacement that is the result of a planned replacement (for example, where it has been tagged as needing replacement due to loss of strength or if it is part of the utility’s existing pole hardening plan) or an unplanned replacement where the pole owner requires replacement for any reason other than to create capacity necessary to accommodate the new attacher.

If the Commission wishes to use specific terminology, it should use a more general term, such as “reject” poles, which would refer to any pole that requires replacement due to loss of groundline strength, regardless of whether that status was identified in an earlier inspection or it is discovered during the new attachment application process. The pole owner is ultimately responsible for maintaining its pole plant and would be required to replace such a pole. The

mere fact that a new attachment application may occur before the pole owner had replaced the pole is not grounds to shift the cost to the new attacher—as the Commission has recognized.<sup>12</sup>

In addition to clarifying the terminology used by the Commission in determining the applicability of cost causation and cost sharing, there are also additional instances in which pole replacement is not necessitated solely by a new attachment request and for which the utility should bear the full cost of replacement. Specifically, there are instances in which a utility replaces poles in a forced relocation. Although Section 1.1408(b) requires existing attachers to pay a proportional share of the replacement cost if they “directly benefit” from the replacement, the Commission should determine through this proceeding that any such benefits in this specific instance are incidental, and therefore, it is unreasonable to assign costs for pole replacement to the existing attachers.

**b. The Commission Rules Should Reflect That Utilities Receive a Direct Benefit From Pole Replacement and Should Be Responsible for a Proportional Share of the Pole Replacement Costs**

The *Second Further Notice* makes clear that there are utilities that seek to hold new attachers accountable for “all costs of replacing a pole that is needed to make space for a new attachment, even if all of those costs are not needed to accommodate the new attachment.”<sup>13</sup>

These brazen attempts to shakedown new attachers for unreasonable pole replacement costs will continue unless the Commission adopts broad reforms to its cost allocation rules. INCOMPAS posits that it is reasonable that any time a utility benefits from a pole replacement it shares in the

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<sup>12</sup> See *Pole Replacement Declaratory Ruling* at para. 6 (“[U]tilities may not require requesting attachers to pay the entire cost of pole replacements that are not necessitated solely by the new attacher, and thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted.”)

<sup>13</sup> *Second Further Notice* at para. 16.

cost of a pole replacement. The adoption of clear standards would eliminate any ambiguity and streamline the pole replacement process. It would also eliminate incentives for pole owners to view the placement of a new attachment as an opportunity to replace its poles.

INCOMPAS recommends that the Commission revise its pole attachment rules to expressly recognize that utilities directly benefit from pole replacements that are precipitated by a new attachment request. Clear standards would resolve current discrepancies regarding the proportion of the costs that new attachers must bear. Where a pole replacement is required by an attachment, the Commission should develop an allocation equation that determines a reasonable percentage of the cost to upgrade the pole based on the remaining pole life of the original pole and what a standard pole would cost without upgrades including a more utility-weighted cost sharing calculation when the pole replacement is solely caused by the utility using a self-imposed safety standard above the requirements of the NESC, especially when it involves the use of fiberglass, steel, or cast iron poles, which are exceedingly more costly than wood poles. Further, the Commission should revise section 1.1408(b) to expressly create a presumption that utilities directly benefit from every pole replacement. In these instances, the Commission should require utilities to pay a proportional share of the pole replacement costs. Clarifying that pole replacement costs should be allocated proportionally between pole owners and new attachers seeking to rent space on the poles is: (1) consistent with Section 224(b) of the Communications Act; (2) in line with Commission's orders limiting make-ready costs; and (3) follows Section 1.1.408(b) of the Commission's rules on the apportionment of costs across entities that benefit from a modification to the pole owner facilities.



#### **IV. ADDITIONAL MEASURES THAT REQUIRE TRANSPARENCY AROUND POLE REPLACEMENT WILL EASE THE NUMBER OF COST DISPUTES**

In addition to seeking comment on the implications of the agency's pole replacement cost allocation rules on attachers, the Commission also seeks comment on measures that can be taken to avoid or resolve disputes between attachers and utilities.<sup>14</sup> While the Commission's establishment of a 180-day shot clock to resolve pole access complaints in 2017 has alleviated concerns that these disputes will drag on indefinitely,<sup>15</sup> disputes over pole access and replacement cost allocation remain an unfortunately regular and consistent barrier to speedy network deployment. INCOMPAS supports the Commission's efforts to identify ways to avoid these disputes altogether or resolve instances in which utilities and attachers are incapable of reaching agreement on a reasonable allocation of pole replacement costs. Prioritizing the resolution of utility pole attachment disputes is justified, not only for the success of new federal broadband deployment programs, but to speed deployment to those on the wrong side of the digital divide.

With respect to additional measures the Commission can take to avoid pole replacement disputes, INCOMPAS recommends that the agency make further refinements to its cost allocation and dispute resolutions rules for pole attachments. Specifically, to address instances of "grandfathering," as described above, the Commission should place the burden on utilities and require them to provide, or at least make readily available, pole-by-pole information that would

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<sup>14</sup> See *Second Further Notice* at para. 35.

<sup>15</sup> See 47 C.F.R. § 1.1414; *2017 Wireless Infrastructure Order*, 32 FCC Rcd at 11132-34, paras. 9-13. Despite the Commission's adoption of a shot clock, members report that utilities routinely use the complaint process as a stall tactic and use providers' interest in completing new deployments in less than six months as a method to exact a larger portion of pole replacement costs.

allow attachers to determine the last time a pole was inspected, had make-ready work conducted, or had pre-existing violations fixed. Without this new information, attachers will continue to have limited visibility into the changes that occurred on a utility pole or its compliance with current standards before the attacher's new deployment and will continue to be a barrier to deployment as well as an unreasonable and unnecessary drain on valuable resources and expenses. Furthermore, INCOMPAS recommends that the Commission further refine its complaint process by establishing an expedited dispute resolution process for claims associated with a utility or attacher's failure to respond to make-ready or replacement requests in a timely manner.

In addition, as indicated above, INCOMPAS members have reported that one of the primary causes of pole replacement disputes is the lack of transparency into the cost structure and data that utilities keep on their poles. INCOMPAS agrees with stakeholders that have argued for the Commission to require utilities to provide attachers, upon their request, with certain information, including the condition of and replacement plans for their poles.<sup>16</sup> Planning a deployment is a capital and time intensive process and competitive providers in particular must be judicious when committing resources to a new project. Having access to as much information as possible, particularly related to the public and private rights-of-way, including poles, allows our members to develop a financial forecast and deployment plans that carefully balances the needs of the newly served area while minimizing unnecessary outlays.

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<sup>16</sup> See, e.g., ACA Connects Ex Parte Notice, WC Docket No. 17-84 (filed Mar. 9, 2022) at 2 (When information concerning the condition of poles and replacement plans “is made available, the prospects for avoiding disputes is increased, which means that providers tend to be able to attach more quickly and bring competitive services to consumers, businesses, institutions, and governments.”)

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. Utilities have seemingly kept this information inaccessible in an effort to maintain the ability to charge new attachers more than is reasonable for new attachments or pole replacements. Pole attachment and replacement disputes have frequently led to delayed, less efficient, and more costly broadband deployment. Requiring utilities to provide access to such information to new attachers planning their deployments would reduce the number of disputes over pole replacement and increase the level and speed of the development and deployment of new networks to unserved and underserved communities.

In addition to basic information about the condition of a pole or a utility's plan to adjust or replace a pole, utilities regularly obfuscate the engineering and safety standards that are being used to determine pole attachment and replacement. As the association noted in 2020:

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[al] 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.<sup>17</sup>

Where utilities have introduced their own safety standards or are using safety standards that are different than or exceed the NESC, INCOMPAS posits that requiring utilities to provide attachers with access to these materials as well would also reduce the number of disputes over these standards.

To ease the burden on utilities, INCOMPAS suggests that the Commission either require or establish a subscription-based digitized utility database. Specific data such as a standardized rate structure, pole retirement and replacement plans, pole audit information, previous work order details, and safety and engineering standards can be regularly uploaded by pole owners and the database can be maintained by making this information available to users through a per report fee. A single repository for such critical information will also benefit attachers that will be able to access a comprehensive set of data from a trusted and reliable source.

Finally, INCOMPAS posits that further reforms and clarification of federal standards for pole replacement cost allocation and sharing would enable attachers and utilities to avoid pole replacement disputes and quickly resolve them when they occur. Even states that have preempted the Commission's regulatory authority over pole attachments are likely to emulate federal processes that improve and streamline the Commission FCC's cost allocation rules. This

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<sup>17</sup> See Comments of INCOMPAS, WC Docket No. 17-84, 10 (filed Sep. 2, 2020); see also INCOMPAS Ex Parte Notice, WC Docket No. 19-308 (filed Mar. 6, 2020) at 2-3 (“SmartCom stated that the pole owner in its area has set the wind rating significantly higher than National Electric Safety Code requirements such that SmartCom cannot attach to the pole 75% of the time unless it replaces the entire pole—adding significant engineering costs, construction costs, and time.”) Smartcom also indicates that it has noticed utilities deviating from its own safety standards for its own projects, particularly when the utility places their own fiber on poles that had previously been red-tagged for structural failure.

will likely lead to significant reduction in disputes between utilities and attachers both at the Commission and in states that have certified that they will regulate pole attachments.

**V. CONCLUSION**

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its comments as it further examines these pole replacement and dispute resolution issues.

Respectfully submitted,

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