December 5, 2023

SUBMITTED ELECTRONICALLY VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Ex Parte Filing
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, WC Docket No. 17-84

Dear Madam Secretary:

Pursuant to the Federal Communications Commission's *ex parte* rules, I hereby submit the following summary of our December 4 and 5, 2023 conversations with the Commission staff listed below regarding the draft Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking (Draft Order)(Declaratory Ruling)(Further Notice) regarding the Commission's efforts to reform its pole attachments rules.

Meetings were held with the following individuals:

- Marco Peraza, Wireline Legal Advisor, Office of Commissioner Nathan Simington (Dec. 4)
- Lauren Garry, Wireline Legal Advisor, Office of Commissioner Brendan Carr (Dec. 5)
- Elizabeth Cuttner and Rashann Duvall, Wireline Legal Advisors, Office of Chairwoman Rosenworcel (Dec. 5)
- Justin Faulb, Chief of Staff and Wireline Legal Advisor, Office of Commissioner Starks (Dec. 5)

The following individuals from the Schools, Health & Libraries Broadband Coalition (collectively "SHLB") participated in the call:

- John Windhausen, Jr., SHLB Coalition
- Kristen Corra, SHLB Coalition
- Charlene White, Unite Private Networks
- Kelley Boane, formerly Conterra Networks

We greatly appreciate that the Commission is moving forward to address certain outstanding pole attachment issues. SHLB previously filed a set of principles to encourage expeditious resolution of pole attachment issues, and we submitted comments in the current rulemaking proceeding, as many of our members support equitable pole attachment policies. SHLB's members include schools and libraries who have had difficulty obtaining adequate broadband access due to pole attachment barriers, as well as non-profit research and education networks and commercial companies that have faced frustrating delays and denials when they have requested access to poles on reasonable terms and conditions.

In our view, the proposed Draft Order and Declaratory Ruling make incremental progress in clarifying some issues, such as the definition of "red-tagged" poles and the scope of information-sharing obligations. We are a bit disappointed, however, that the Draft Order does not address the critical issue of cost allocation of pole replacement/make-ready costs in a meaningful and substantive way. Cost allocation is perhaps the biggest source of disagreement and delay between pole owners and attachers. The economic arguments were well briefed in the comments. If the Draft Order cannot be changed to clarify cost allocation responsibilities, we respectfully ask the Commission to commit to providing this clarification quickly (by June 2024 or within six months).

As an example, the SHLB Coalition recently became aware of a Vermont state statute that employs a specific formula to determine the amount paid by each pole attacher.[1] This formula determines the annual rental cost based on the amount of space used, the net investment, and the carrying costs, including maintenance and depreciation. SHLB has not had a chance to examine the impact of this specific formula, but we believe this formula provides a useful example of the type of guidance that the Commission could issue in the near future.

We are confused as to why the Draft Order defers establishing a processing timeline on projects of 3,000 poles or more. Many of the Broadband Equity Access and Deployment (BEAD) and Capital Project Fund (CPF) projects will involve many more than 3,000 poles. In general, a 3,000 pole project is equivalent to about 75 miles, and projects extending to the most rural and hard to reach unserved areas will be much longer than 75 miles. Our members find that some of the smaller electric co-ops are willing to find reasonable pole solutions, but not the larger investor-owned utilities – yet these larger projects will not be covered by the proposed rule. Shifting the decision to establish a defined timeline for larger pole projects into a Further Notice without any deadline to act could extend the delay. We respectfully ask that the Commission establish a defined processing timeline for pole applications containing 3,000 or more poles in the final Order. If the Commission decides to continue to defer this decision to the Further Notice, we suggest that there should be a reasonable time frame established for the Commission to act (such as in the next six months) given the sheer volume of buildout taking place now.

[1] See, https://puc.vermont.gov/sites/psbnew/files/doc_library/Rule-3.700-pole-attachment.pdf. Page 4.

We are also confused that the Draft Order only compels greater transparency on poles (size, condition, etc.) if the pole owner is already keeping track of the poles, with no requirement or incentive for owners to commence tracking their poles. We believe that the Draft Order should require this basic information.[2] As written, the Draft Order does not compel greater transparency on pole information generally; it only requires sharing of "cyclical inspection reports" – and then only after an application. Those cyclical inspection reports do not necessarily contain the information an attacher may need regarding size, condition, etc.

Further, if the pole owner does collect some information in the regular course of business, it should be made available to a prospective attacher upon request—and not only if the attacher submits an application or files a complaint. We are not asking the pole owners to create anything new, but to share the information they already keep. We do not believe that requiring information prior to an application would obligate pole owners to create a "pre application timeline." Moreover, we are concerned that the language stating that the Commission "decline[s] to require utilities to provide new attachers with information about poles prior to the attacher submitting a pole attachment application as requested by some commenters" may incentivize utilities to stop sharing any information altogether pre-application, which some already do voluntarily.

Finally, we support the Commission's intention to expedite the resolution of pole attachment problems by creating the proposed Rapid Broadband Assessment Team (RBAT). The SHLB Coalition has filed comments in support of creating such a working group or task force to help resolve these issues quickly, and we are pleased with the idea of the Wireline Competition Bureau staff working with the Enforcement Bureau staff. We are a bit concerned, however, that the creation of the RBAT might itself result in an additional administrative step, and associated delay, before an issue could be resolved through the Commission's accelerated docket process. Another approach would be to vest the RBAT itself with the authority to resolve disputes, without going through the additional step of a complaint process. Vesting the RBAT with decision-making authority would give all parties a stronger reason to negotiate a mutually acceptable solution in a shorter time frame.

[2] One SHLB member encountered a situation in which it received approval to add its fiber to a set of poles and then found that another fiber provider already occupied that space on the pole, and yet the pole owner had no idea who it was. Requiring the pole owner to keep this information could go a long way toward expediting resolution of these kinds of disputes.

Again, we sincerely appreciate the Commission's efforts to improve the pole attachment process, and we look forward to working with the Commissioners and the staff to fulfill our shared goal of deploying high-speed Internet access networks all across America.

Sincerely,

John Windhausen, Jr.
Executive Director
Schools, Health & Libraries Broadband (SHLB) Coalition
1250 Connecticut Ave. NW Suite 700
Washington, DC 20036
jwindhausen@shlb.org / 202-256-9616

cc via email: Marco Peraza
Lauren Garry
Elizabeth Cuttner
Rashann Duvall
Justin Faulb
Adam Copeland
John Windhausen, Jr.
Charlene White
Kelley Boane