

July 2, 2021

VIA ECFS

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

Re: *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (WC Docket No. 17-84)

Dear Ms. Dortch:

On June 30, 2021, the undersigned and Patrick Halley, Senior Vice President of Policy & Advocacy and General Counsel of USTelecom – the Broadband Association (“USTelecom”), along with Claire Evans of Wiley on behalf of USTelecom spoke, via teleconference with Pam Arluk, Adam Copeland, Liz Drogula, and Mike Ray of the Wireline Competition Bureau. During the call, USTelecom expressed its strong opposition to Edison Electric Institute’s (“EEI”) Petition for Declaratory Ruling (“EEI Petition”), which is really an untimely Petition for Reconsideration, requesting that the Federal Communications Commission (“Commission”) reconsider and reduce its authority to award refunds under the remedies rule governing pole attachment complaint proceedings.¹ On July 1, 2021, the undersigned and Patrick Halley spoke via teleconference with Ramesh Nagarajan of the Office of Acting Chairwoman Jessica Rosenworcel about the same. In light of EEI’s suggestion that the Petition is unopposed because “no interested parties have lodged any opposition”² to it (an unsurprising fact since the Commission has not sought comment on the Petition), USTelecom made clear that the Petition is, and will be, opposed.

At the meetings, we discussed reasons why the Commission can and should dismiss EEI’s Petition. At a threshold level, the EEI Petition does not meet the legal requirements for a declaratory ruling because there is no controversy, uncertainty, or lack of guidance under the Commission’s existing rules. Instead, we explained why EEI is inappropriately attempting to

¹ *Petition for Declaratory Ruling of the Edison Electric Institute*, WC Docket No. 17-84, (filed April 20, 2021), <https://ecfsapi.fcc.gov/file/10420059605067/EEI%20Petition%20for%20Declaratory%20Ruling%20Regarding%20FCC%20Refund%20Rule%20WC%20Docket%20No.%2017-84.pdf>. (*EEI Petition*).

² Letter from Areyh Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 <https://ecfsapi.fcc.gov/file/10610181351652/EEI%20Ex%20Parte%20Letter%20WC%20Docket%20No.%2017-84%20June%208%20meeting%20with%20Ramesh%20Nagarajan.pdf>.

seek reconsideration of Commission precedent that correctly rejected a notice requirement and a one-size-fits-all statute of limitations for pole attachment complaints.³

We also discussed why the EEI Petition’s proposals would not create a uniform nationwide statute of limitations for pole attachment disputes and why they are bad policy. USTelecom supports the purported goal of the Petition – to “facilitate broadband deployments.”⁴ But, that is not what the proposals in the EEI Petition would do. Instead, they would frustrate broadband deployment by undermining negotiations, complicating disputes, accelerating the filing of pole attachment complaints, rewarding utilities that violate federal law, and providing a strong incentive to further delay pole attachment rate reductions the Commission found essential to its broadband deployment efforts a decade ago. The best way to minimize disputes and promote broadband deployment is to ensure that rates charged are just and reasonable consistent with the statute and to retain the Commission’s full authority to remedy unlawfully high pole attachment rates with refunds consistent with the applicable state law contract statute of limitations.

For all these reasons, we explained that the Commission should reject the Petition on procedural grounds and on the merits.

Please contact the undersigned with any questions.

Sincerely,

//s//Kristine Hackman

Kristine Hackman

Vice President, Policy & Advocacy

cc: Ramesh Nagarajan
Pamela Arluk
Adam Copeland
Elizabeth Drogula
Michael Ray

³ See *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5289-5290 at paras. 110-112 (2011), *aff’d*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183, 190-191 (2013); see also *Verizon Maryland LLC v. Potomac Edison Company*, Proceeding No. 19-355, Bureau ID No. EB-19-MD-009, Memorandum Opinion and Order, 35 FCC Rcd 13607, 13626-13628, paras. 40-46 (2020); *BellSouth Telecommunications, LLC d/b/a AT&T Florida v. Fla. Power and Light Co.*, Proceeding No. 19-187, Bureau ID No. EB-19-MD-006, Memorandum Opinion and Order, 36 FCC Rcd 253, 255-257, paras. 9-11 (EB 2021).

⁴ *EEI Petition* at 1.