December 18, 2020

VIA Intervention Comment Form

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Regulatory

Dear Mr. Doucet,

Subject: **Telecom Notice of Consultation CRTC 2020-366: Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient**

1. The Canadian Communication Systems Alliance ("CCSA") speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 100 companies operating from sea to sea to sea, including across the North.

2. CCSA submits these comments in response to Telecom Notice of Consultation CRTC 2020-366.

Executive Summary

3. Ongoing issues surrounding pole attachment processes impose costs on attachers and introduce delays in completion of attachments. Those elements, in turn, create uncertainty which undermines competitive TSPs' ability to scope and plan network construction projects, to present viable applications for broadband funding and to secure private investment in their construction projects.

4. Each of those issues is a significant barrier to extension of broadband service to all Canadians.

5. In this submission, CCSA offers a number of recommended solutions to those issues based on the United States FCC's decisions in a parallel proceeding entitled "In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment". That FCC proceeding, begun in 2017 and continuing today, addresses precisely the issues raised by the present notice of Consultation.

6. Among the key initiatives implemented by the FCC during the course of that proceeding are:

- a One-Touch Make-Ready ("OTMR") regime whereby the attacher, who has the incentive to work quickly, is empowered to perform the work of "simple attachments" in the communications space on a pole rather than wait for the pole owner – who often has an incentive to delay – to do that work;
- firm, accelerated deadlines and associated deeming provisions for the various stages of the attachment permitting process under both the FCC's prior rules and the new OTMR regime;
- confirmation of the principle that permit applications are not required for overlashing on existing strand;
- prohibition of "blanket bans" on access to space on a pole such that the reasons given by the pole owner for denial of access must respond to the specific nature and facts of the application for attachment; and
- prohibition of pole owners from applying their negotiating power to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.

7. CCSA also introduces a model proposed by ACA Connects to the FCC for equitable sharing of pole repair and replacement costs based on the fundamental principle, as stated by the FCC, 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".

8. CCSA recommends that the basic principles underlying these rules should be implemented in the form of regulations or policy statements made by the Commission.

9. CCSA submits that the detailed provisions it recommends, such as process deadlines and associated deeming provisions, should be implemented in a standard-form, Commission-approved, mandatory Support Structure Licensing Agreement.

10. CCSA does not, at this time, see the need for amendment of ILEC or SILEC support structure service tariffs.

11. CCSA recommends that work be done to improve the consistency and transparency of safety and engineering standards that apply to attachment work so as to avoid the many delays which currently arise from inconsistent application of such standards.

12. CCSA emphasizes the absolutely critical need for a timely and effective dispute resolution mechanism, under the Commission's supervision, which can resolve pole attachment dispute in a matter of days or weeks rather than months. In stating this need, CCSA notes that most pole attachment disputes occur at a level below the written terms of applicable tariffs and agreements: they tend to be matters of interpretation which occur "at the coal face".

13. CCSA responds to the Commission's specific questions posed in TNC CRTC 2020-366 in **Appendix A** to this submission.

14. CCSA summarizes its recommendations in **Appendix B** to this submission.

15. Finally, CCSA emphasizes that the purposes of the Commission's intervention in this matter should be to:

- reduce the costs of attachment and, especially, to eliminate cost inefficiencies that result from current permitting and make-ready processes;
- reduce the time taken for permit approvals and make-ready work; and
- enhance certainty for all participants in the pole attachment process.

16. CCSA thanks the Commission for the opportunity to provide these comments in this extremely important proceeding.

Sincerely,

Christopher J. Edwards

Vice-President, Regulatory Affairs

Regulatory

CCSA

Regulatory

CANADIAN COMMUNICATION SYSTEMS ALLIANCE INC.

Before the Canadian Radio-television and Telecommunications Commission

Telecom Notice of Consultation CRTC 2020-366: Call for comments regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient

Initial Comments

December 18, 2020

Canadian Communication Systems Alliance
447 Gondola Point Road, Quispamsis, NB E2E 1E1
T: 506 849 1334 | info@ccsaonline.ca | ccsaonline.ca

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447 Gondola Point Road, Quispamsis, NB E2E 1E1
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CCSA

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Introduction

1. The Canadian Communication Systems Alliance ("CCSA") speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 100 companies operating from sea to sea to sea, including across the North.

2. CCSA submits these Initial Comments in response to Telecom Notice of Consultation CRTC 2020-366.

3. CCSA congratulates the Commission for recognizing the importance of existing issues with attachment to poles owned by Canadian carriers and poles for which the carriers have authority over attachment.

4. CCSA submits that the permitting delays and costs of attachment are among the most significant barriers to build-out of broadband networks to serve all Canadians, regardless of where they live and work.

5. The issues surrounding pole access are especially important in the context of initiatives, at all levels of government, to fund and accelerate extension of broadband networks, especially to rural and remote areas of the country. Those issues are among the most significant hurdles to participation in funding programs by independent TSPs and are adding greatly to the time and cost involved in network extension.

6. Given the timelines associated with the various broadband funding initiatives, resolution of issues in this area is urgent. The Commission should do whatever it can to expedite such resolution.

Issues

7. This matter engages three central issues:

- Cost of network builds – Current incumbent practices offload much of the cost of pole maintenance and replacement on new attachers. We note that, under current conditions, pole attachment costs alone can amount to as much as half the cost of a TSP's new network build;[1]

- Time required to obtain attachment approval – Indications from CCSA's members, as cited in CCSA RFI responses in the Commission's 2019-406, "Broadband Barriers" proceeding, are that such processes can take up to one-and-a-half to two years from initial permit application; and

- Certainty – The combination of the two factors just listed makes it extremely difficult for independent TSPs to estimate either the cost or the duration of planned broadband network builds. That fact, in turn, has a profound negative impact on the ability of independent TSPs to develop accurate project proposals for funding under various federal and provincial broadband funding programs, including the Commission's current broadband funding program. More generally, such uncertainty undermines the ability of such TSPs to invest or secure third-party investment in their planned network building projects.

8. Today, we operate in an environment in which the Government of Canada has made the extension of broadband service to all Canadians a matter of top priority. Each of those factors just listed amounts to a critical hurdle to accomplishment of Canada's national objectives for broadband connectivity for the benefit of Canadian citizens.

[1] *See*, e.g. Rogers, "Re: Telecom Notice of Consultation CRTC 2019-406 – Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas of Canada – Rogers' Intervention", May 7, 2020 at para. 15 which reads, "Fees to attach to incumbent local exchange carrier (ILEC) and electrical utility poles (e.g., audits, engineering, inspection, make-ready) can be unreasonably high and may account for as much as half the total cost of deploying fibre in rural and remote areas. Further, unreasonable recurring pole attachment fees have a material negative impact on the business case in these areas.

9. To address those hurdles, the rules for wholesale provision of support structure services must ensure that: costs are just, reasonable and non-discriminatory; attachment times are minimized; and the rules provide certainty for all parties engaged in the processes for permitting and attachment.

10. It is imperative that each of those hurdles be addressed and eliminated as quickly as possible.

Timely Response – Existing US Initiatives

11. In this submission, CCSA refers extensively to statements and decisions made by the United States Federal Communications Commission ("FCC") and industry submissions to the U.S. regulator.

12. We do that because, operating in the environment of the Connect America Fund, the FCC has already implemented or is in the process of considering rules to remove precisely the same hurdles that Canadian attachers face, as they apply in the United States.

13. In its WC Docket No. 17-84 proceeding, the FCC has built an extensive evidentiary base and has made decisions upon that evidentiary base which relate precisely to the issues raised by commenters in the Commission's TNC CRTC 2019-406 proceeding and which are the subject of the present proceeding.

14. First, CCSA refers the Commission to a 2018 FCC *Order* which established, among others, the following initiatives:

- implementation of a "One-Touch Make-Ready" policy;
- acceleration of permitted timelines for all stages of the permit application, survey, make-ready and approval process; and

- confirmation that permitting is not required for overlashing on existing strand[2].

15. Second, CCSA refers the Commission to a 2020 FCC *Declaratory Ruling* in which the FCC:

    - prohibits "blanket bans" on access to space on a pole such that the reasons given by the pole owner for denial of access must respond to the specific nature and facts of the application for attachment; and

    - prohibits incumbent owners from applying their negotiating power to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.[3]

16. Third, CCSA refers the Commission to a September 2, 2020 filing in which ACA Connects, the U.S. advocacy group for independent TSPs, proposes a model for allocation of responsibilities for cost-sharing with respect to pole repairs and replacements.[4]

17. CCSA submits that adoption of the FCC's measures in this area is appropriate, first, because the FCC's statutory authority and duty to regulate in this area are substantially similar to the Commission's and, second, because the FCC, in making its rules, is addressing precisely the same concerns raised by the present CRTC 2020-366 proceeding.

18. With respect to the first point, the FCC's statutory authority to regulate in this area derives from s. 224 of the *Communications Act of 1934*, as amended.[5] As the FCC notes:

[2] Federal Communications Commission, "In the Matter of Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment: Third Report and Order and Declaratory Ruling" FCC 18-111, WC Docket No. 17-84, WT Docket No. 17-79, August 3, 2018 [hereinafter *FCC 2018 Third Order*].
[3] Federal Communications Commission, "In the Matter of Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment: Declaratory Ruling", WC Docket No. 17-84, July 29, 2020 [hereinafter *FCC 2020 Declaratory Ruling*].
[4] ACA Connects, "In the Matter of Accelerating Wireline Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84: ACA Connects Comments", September 2, 2020 [hereinafter *ACA Connects Pole Replacement Costs*].
[5] 47 U.S.C. §224.

> Section 224 of the Act grants us broad authority to regulate attachments to utility-owned and -controlled poles, ducts, conduits, and rights-of-way. The Act authorizes us to prescribe rules to: ensure that the rates, terms, and conditions of pole attachments are just and reasonable; require utilities to provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to telecommunications carriers and cable television systems (collectively, attachers); provide procedures for resolving pole attachment complaints; govern pole attachment rates for attachers; and allocate make-ready costs among attachers and utilities.[6]

19. The Commission has a broad corresponding authority and duty to regulate the same subject matters under ss. 27 and 43(5) of the *Telecommunications Act*.

20. With respect to the second point, we note the FCC's introductory comment to its *2018 Third Order*, as follows:

> Today, we continue our efforts to promote broadband deployment by speeding the process and reducing the costs of attaching new facilities to utility poles. Now, more than ever, access to this vital infrastructure must be swift, predictable, safe, and affordable, so that broadband providers can continue to enter new markets and deploy facilities that support high-speed broadband.[7]

21. Further, in its *2020 Declaratory Ruling*, the FCC said:

> The Commission's top priority is closing the digital divide so that all Americans can enjoy the many benefits of a high-speed broadband Internet connection—whether job opportunities, remote learning, telehealth, or staying connected to family and friends. To further this goal, in August 2018, the Commission adopted the *2018 Wireline Infrastructure Order*, which eliminated barriers to broadband deployment by streamlining the process for attaching new communications facilities to utility poles and reducing associated costs.[8]

22. Those statements align very closely with the Commission's stated objectives in conduct of the present proceeding; that is:

> . . . the Commission is hereby initiating a proceeding to seek proposals on potential regulatory measures that could facilitate access to poles owned by Canadian carriers (telecommunications poles) or poles to which Canadian carriers control access, which in turn would help accelerate the deployment of broadband-capable networks in regions of Canada with limited or no access to such networks.[9]

23. In a nutshell, the U.S. regulator, acting under a similar statutory mandate, has already

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[6] *FCC 2018 Third Order* at para. 5.
[7] *FCC 2018 Third Order* at para. 1.
[8] *FCC 2020 Declaratory Ruling* at para. 1.
[9] TNC CRTC 2020-366 at para. 5.

considered and acted in response to precisely the same issues raised by the present Commission proceeding.

24. CCSA submits that, especially given the urgency of those issues in the context of an over-arching and urgent agenda to accelerate broadband build-out in Canada, the Commission, whenever it can, should make use of the solutions already developed and implemented by the U.S. regulator. That is a quick and reasonable path to resolution of those same issues for the benefit of Canadians.

Recommendation 1: **To address the concerns raised by this proceeding in a timely fashion, the Commission, whenever it can, should make use of solutions already developed and implemented by the U.S. regulator.**

Scope of CRTC Authority

25. CCSA notes and agrees with the Commission's statement that "the Commission has the authority to regulate access to poles that are owned by Canadian telecommunications carriers and, as established in Telecom Decision 2008-62, to poles not owned by a Canadian carrier but to which a Canadian carrier has the right to grant access."[10]

26. For the sake of simplicity, CCSA refers, in this submission to "pole owners". By that term, CCSA means to include both the actual owners of poles and the carriers who have a right to grant access to poles pursuant to joint-use agreements.

27. For clarity, CCSA notes that the U.S. authorities cited in this submission generally refer to "utilities" as the relevant pole owners in the American context. In its citations of U.S. sources, CCSA has replaced that term with the term "[pole owners]".

[10] TNC CRTC 2020-366 at para. 4.

Measures in the FCC's *2018 Third Order*

One Touch Make Ready

28. The FCC's *2018 Third Order* implements "one large step and several smaller steps to improve and speed the process of preparing poles for new attachments, or 'make ready.'"[11] The FCC calls the "large step" "One-Touch Make-Ready" ("OTMR").

29. Adoption of that framework is consistent with the recommendations of commentary in the 2019-406 proceeding to the effect that the Commission should adopt a "dig once" policy.[12]

30. The FCC describes OTMR as follows:

> . . . we fundamentally shift the framework for the vast majority of attachments governed by federal law by adopting a new pole attachment process that includes "one touch make-ready" (OTMR), in which the new attacher performs all make-ready work. OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive—the new attacher—to prepare the pole quickly by performing all of the work itself, rather than spreading the work across multiple parties.[13]

31. OTMR responds to the inherent, unproductive delays in the existing process whereby multiple parties perform required survey, construction and repair work at different stages, often with extensive delays as, for example, when the attacher must wait for the pole owner to perform corrective work.[14]

32. As the FCC notes, OTMR places the responsibility for performance of needed work in the hands of the party, the attacher, which has the greatest incentive to get that work done

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[11] *FCC 2018 Third Order* at para. 2.
[12] *See*, e.g. FMCC, "Telecom Notice of Consultation CRTC 2019-406 Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada Submission of the First Mile Connectivity Consortium", April 23, 2020 at para. E28.
[13] *FCC 2018 Third Order* at para. 2.
[14] The delays which result from such iterative processes are particularly acute in rural and remote areas of the country. In a November 26, 2020 email to CCSA entitled "CRTC 2020-366", Eeyou Communications Network ("ECN") described a procedure involving multiple site visits by ECN's engineers and Bell's subcontractor. As ECN points out, in Northern Quebec, engineering teams may "need to travel 5 to 15 hours to go onsite". ECN continues, ". . . this makes absolutely no sense and it is wasting the government's money." Distances such as those are not unusual for CCSA members who serve more remote areas. Clearly, the cost and time involved in such a process can be very substantial.

quickly rather than in the hands of the pole owner who may well have an interest in delaying its competitor's network build.

33. In recognition that safety and quality of attachment work are paramount concerns, OTMR is subject to certain safeguards.

34. First, OTMR is available only with respect to "simple make-ready" work in the relatively "safe" telecommunications space on the pole and cannot be used for work in the upper, electrical space on the pole where the safety risk is higher.

35. The FCC defines "simple make-ready" as work where "existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment."[15] Pole replacements do not qualify as "simple make-ready work".

36. Second, OTMR requires the use of contractors approved by the pole owner except where the pole owner does not provide such a list. In the latter case, a "certified" and "qualified" contractor must be used, as that term is defined in other parts of the *Third Order*.

37. Third, attachers must provide notice of the intended attachment and provide opportunities for the pole owner and pre-existing attachers to be present "when surveys and OTMR work are performed".[16]

38. Fourth, attachers must allow the pole owner and pre-existing attachers to inspect the completed work and request corrective measures.[17]

[15] *FCC 2018 Third Order* at para. 17.
[16] *FCC 2018 Third Order* at para. 27.
[17] *Ibid.*

39. Finally, OTMR is optional: attachers may use the existing attachment regime with new accelerated timelines for that regime as set by the *2018 Third Order*.[18]

Recommendation 2: **The Commission should adopt a "One-Touch Make-Ready" option whereby the attacher, who has the incentive to move quickly, is able to perform simple make-ready work in the telecommunications space on a pole, subject to notice requirements and other safeguards needed to ensure the quality of the make-ready work.**

Accelerated Timelines

40. As is set out in the following paragraphs, the *2018 Third Order* introduced accelerated timelines for "simple" OTMR make-ready work in the telecommunications space on the pole.

41. Notably, the FCC estimated that, under its new rules, "new attachers using the new OTMR process will save more than three months from application to completion as compared to the process provided for under our existing rules".[19]

42. Key aspects of the timeline include:

- Survey performed by attacher with initial survey results, including determination as to whether work is "simple" or "complex" and election as to whether to use OTMR, to be included in formal permit application;[20]

- Pole owner objection to attacher's "simple/complex" determination within a 15-day application review period or, for large orders, the corresponding 30-day period;[21]

[18] *FCC 2018 Third Order* at para. 29.
[19] *FCC 2018 Third Order* at para. 52.
[20] *FCC 2018 Third Order* at para. 53.
[21] *FCC 2018 Third Order* at para. 56.

- Pole owner's review of application for completeness must be completed within 10 business days of application, after which time the application is deemed to be complete;[22]

- The pole owner has 15 days for standard requests and 30 days for larger requests to approve permit applications;[23]

- The new attacher may proceed with OTMR by giving 15 days' prior written notice to the pole owner and all affected existing attachers, which period may run concurrently with the pole owner's evaluation of whether to grant the application;[24] and

- the new attacher must provide notice to the pole owner and affected existing attachers within 15 days after the new attacher has completed OTMR work on a particular pole. In its post-make ready notice, the new attacher must provide the pole owner and existing attachers at least a 90-day period for the inspection of make-ready work performed by the new attacher's contractors.[25]

43. With respect to non-OTMR attachments, key FCC statements regarding timelines include:

- . . . we adopt rules reflecting the same improvements to our definition of a complete pole attachment application and the same completeness review process as we do for the OTMR timeline, subject to one change to adjust for the fact that the [pole owner] conducts the survey under the non-OTMR process;[26]

- . . . we decline to shorten the 45-day period in our existing rules during which the [pole owner] must review a complete pole attachment application and survey the affected poles;[27]

- . . . we amend our rules to reduce the deadlines for both simple and complex make-ready from 60 to 30 days (and from 105 to 75 days for large requests in the

[22] *FCC 2018 Third Order* at para. 62.
[23] *FCC 2018 Third Order* at para. 64.
[24] *FCC 2018 Third Order* at para. 65.
[25] *FCC 2018 Third Order* at para. 70.
[26] *FCC 2018 Third Order* at para. 79.
[27] *FCC 2018 Third Order* at para. 81.

communications space). To account for the unique circumstances involved with attachments above the communications space, we maintain the current make-ready deadline of 90 days (and 135 days for large requests) for these attachments;[28]

- . . . we adopt a change to our rules that shortens the make-ready deadline for new pole attachments in the communications space to promote broadband deployment without imposing undue risk to safety or reliability. . . . a 30-day period for communications space make-ready (and 75 days for larger requests) "will ensure that existing attachers have the opportunity to control make-ready that is expected to affect their services, while reducing delays and increasing efficiency for new attachers."[29]

44. The above paragraphs are a simplified look at the timelines the FCC established in its *2018 Third Order*. That *Order* describes many other particular situations and the reasoning behind the timelines established for them.

45. CCSA commends this aspect of the FCC's *2018 Third Orde*r to give the Commission a sense of:

- the general length of the timelines that are considered reasonable and that now apply to the permitting processes in the U.S.; and

- the degree to which the FCC has shortened timelines for the permitting process for simple make-ready work in the telecommunications space to support rapid deployment of broadband networks, especially in rural and remote areas.

46. Above all, CCSA wishes to underscore the importance of defined deadlines for all stages of the attachment approval and work processes. CCSA cannot emphasize enough that any stage of the process which lacks a defined deadline represents an opportunity for delay and for imposition of costs on the attacher.

Recommendation 3: **The Commission should adopt accelerated timelines for completion of various stages of the permit application and approval process which correspond to**

[28] *FCC 2018 Third Order* at para. 84.
[29] *FCC 2018 Third Order* at para. 85.

timelines established by the FCC in its *2018 Third Order* to promote timely construction of broadband networks.

Recommendation 4: **The Commission should ensure that no stages of the permit application, approval and make-ready process are left open without clear deadlines. As needed, specified deadlines should have associated deeming provisions which permit the attacher to proceed where response deadlines are not met by the pole owner or pre-existing attachers.**

Recommendation 5: **To support reasonable flexibility in commercial arrangements between the parties, the Commission should establish process deadlines in a standard Support Structure Licensing Agreement applicable to all pole attachments. Subject to certain principles stated in this submission, parties then would be able to negotiate off the standard agreement to meet the particular circumstances of the proposed attachment arrangements.**

Overlashing

47. The FCC's *2018 Third Order* addresses concerns with hurdles presented to attachers by pole owners where the attachment request relates only to overlashing new telecommunications wires over existing strand.

48. In this case, the FCC said:

> We codify our longstanding policy that utilities may not require an attacher to obtain its approval for overlashing. Consistent with Commission precedent, the utility also may not require pre-approval for third party overlashing of an existing attachment, when such overlashing is conducted with the permission of an existing attacher. In addition, we adopt a rule that allows utilities to establish reasonable advance notice requirements. As the Commission has previously found, the ability to overlash often "marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months when delivery of service is dependent on a new attachment."[30]

[30] *FCC 2018 Third Order* at para. 115.

49. Rather, the FCC implemented a notice requirement whereby, pole owners "may, but are not required to, establish reasonable pre-notification requirements including a requirement that attachers provide 15 days (or fewer) advance notice of overlashing work."[31]

50. Further, the FCC emphasized that: "utilities may not use advanced notice requirements to impose quasi-application or quasi-pre-approval requirements, such as requiring engineering studies."[32]

51. To address concerns with safety and quality of overlashing work, the FCC provided that:

> . . . we require that an overlashing party shall notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage or any code (e.g., safety, electrical, engineering, construction) violations to its equipment caused by the overlash.

52. In fact, the existing Canadian tariffs already allow for such work without the necessity for permit application. Bell Canada's National Services Tariff provides, for example, that:

> Applications are not required for subscriber drop wires, strand equipment nor for repair or routine maintenance work on the Licensee's Facilities, which will not affect location and/or consume additional capacity on or in the Support Structure.[33]

53. In recent discussions with its members, CCSA has learned that those members routinely face bureaucratic obstacles to simple overlashing work, including where the overlashing is for nothing more than replacement of existing plant, be that, for example, replacement of "like for like" facilities or replacement of existing coaxial cable with lighter fibre.

54. That fact underscores the difference between what the tariffs may say and how matters actually take place "on the ground". Often, the ILEC representatives with whom members

[31] *FCC 2018 Third Order* at para. 116.
[32] *FCC 2018 Third Order* at para. 119 [emphasis added].
[33] Bell Canada National Services Tariff at 901.4, p. 902.10.

deal frustrate what should be, according to the tariff language, a very straightforward process.

55. That is why consistent and transparent engineering and safety standards are so important. It should be the case that, so long as an attacher follows the applicable standards, there should be no impediment to the attacher's performance of simple, low-risk work such as overlashing and placement of subscriber drops. However, our members tell us that it can be difficult to gain access to the standards that the owners apply at any given point in time.

56. It is also why a timely and effective dispute resolution mechanism is so important. Issues like these arise all the time "at the coal face". It is absolutely critical that there be some mechanism which pole owners and attachers alike can use to quickly break the often bureaucratic logjams that occur in relation to such issues.

Recommendation 6: **The Commission should confirm that the pole owner may not require an attacher to obtain its approval for overlashing work.**

Responsibility for Pre-Existing Violations

57. In its *2018 Third Order*, the FCC states an important principle which, CCSA submits, must be applied in the Canadian market. That principle is 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 [pole owners] 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. The new attachment may precipitate correction of the pre-existing violation, but it is the violation itself that causes the costs, not the new attacher. 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.[34]

58. The FCC continues:

[34] *FCC 2018 Third Order* at para. 121[emphasis added].

> We also clarify that [pole owners] may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation . . . . Simply denying new attachers access prevents broadband deployment and does nothing to correct the safety issue. We also clarify that a [pole owner] cannot delay completion of make-ready while the [pole owner] attempts to identify or collect from the party who should pay for correction of the preexisting violation.[35]

59. It is a common experience among CCSA members that they are denied access or, alternatively, required to pay the full cost of all remedial work needed to bring a pole into compliance, regardless of which party is, or should be, responsible for non-compliances on a pole. That situation often results in the latest attacher – the party which seeks permission to attach – paying the entire costs of remediation, including the entire cost of replacement of a substandard pole.

60. That result is patently unfair and, as the FCC notes, actually encourages the pole owner and existing attachers to avoid their own maintenance responsibilities.

61. More to the point, the current state of affairs in this regard is a critical impediment to pole attachments for the purpose of extending broadband networks, especially into rural areas where, because there are multiple poles per customer, pole remediation and replacement costs are disproportionately high.

62. CCSA submits that, with respect to repair and replacement of poles, the Commission should adopt, as a fundamental premise for regulation, that an attacher should be responsible only for the incremental costs caused by the new attachment.

Recommendation 7: **The Commission should state, in the regulations or as policy, the principle 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.**

[35] *FCC 2018 Third Order* at para. 122[emphasis added].

Measures in the FCC's *2020 Declaratory Ruling*

63. In July of 2020, the FCC issued a *Declaratory Ruling*[36] in response to a CTIA petition which asserted that some pole owners were "misinterpreting the Commission's pole attachment rules in a manner that hampers broadband deployment".[37]

64. The FCC found that the evidence supported two of CTIA's assertions and clarified two points as follow:

> (1) the imposition of a "blanket ban" by a [pole owner] on attachments to any portion of a utility pole is inconsistent with the federal requirement that a "denial of access . . . be specific" to a particular request; and (2) while [pole owners] and attachers have the flexibility to negotiate terms in their pole attachment agreements that differ from the requirements in the Commission's rules, a [pole owner] cannot use its significant negotiating leverage to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.

65. The FCC also found that the record of its proceeding in the matter showed that pole owners were "in fact imposing blanket bans and that such denials are impeding the Commission's overarching goal of promoting broadband deployment."[38]

Prohibition of Blanket Bans

66. With respect to its first finding, the FCC reaffirmed its existing rule, already affirmed in its *2018 Third Order*, that:

> . . . any denial by the [pole owner] must be issued in writing, and such denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.[39]

[36] *See* Note 3, *supra*, *FCC 2020 Declaratory Ruling*.
[37] *FCC 2020 Declaratory Ruling* at para. 2.
[38] *FCC 2020 Declaratory Ruling* at para. 9.
[39] *FCC 2020 Declaratory Ruling* at para. 7.

67. The FCC said, further, that "any denial must state the 'precise concerns' regarding the 'particular attachment(s) and the particular pole(s) at issue.'"[40]

68. The FCC noted that its ruling does not:

> . . . prohibit [pole owners] from adopting construction standards, nor does it dictate particular construction standards for utilities to adopt;

and that it does not:

> . . . prohibit [pole owners] from adopting reasonable, nondiscriminatory attachment requirements that let attachers know what the [pole owners] will limit or prohibit based on documented actual (not theoretical) safety, reliability, capacity, or engineering grounds.[41]

69. The FCC cautioned that it was:

> . . . troubled with evidence in the record suggesting that in some cases, [pole owners] deny attachments simply by reference to a construction standard without providing a specific explanation as to why a proposed attachment's alleged violation of a construction standard poses a safety, reliability, capacity, or engineering issue.[42]

70. The FCC therefore reiterated that: "mere citation or reference to a construction standard to justify a denial of access is insufficient" to meet the existing rule.[43]

71. CCSA understands from its members that they often face denials of access based on general references to failures of attachment applications to meet applicable standards.

72. Moreover, such standards are not necessarily consistent nor are they necessarily disclosed to the applying attacher.

73. Finally, CCSA members question whether the same standards are being applied to the pole owner's own attachments and attachments proposed by the applying attacher.

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[40] *FCC 2020 Declaratory Ruling* at para. 8.
[41] *FCC 2020 Declaratory Ruling* at para. 12.
[42] *Ibid.*
[43] *Ibid.*

74. That is, independent Canadian TSPs face precisely the same problem that the FCC addressed in this portion of its *2020 Declaratory Ruling*.

75. In addition, they have serious concerns about the consistency and transparency of the application of standards to their applications for attachment.

76. CCSA submits that the Commission's regulatory framework should ensure that all applicable standards are published and easily accessible by attachers and that the same standards apply to attachments by the pole owners and all other attachers.

77. In addition, CCSA recommends that the Commission should adopt a rule, similar to the FCC's, to the effect that all denials of access should be specific, include all relevant evidence and information supporting the denial, and explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or published engineering standards.

Recommendation 8: **The Commission should require that any denial of access by the pole owner must be issued in writing, and such denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.**

Recommendation 9: **The Commission should ensure that applicable engineering, construction and safety standards are as consistent as possible and are fully transparent to all attachers.**

Inappropriate Use of Negotiating Leverage

78. The second aspect of the *2020 Declaratory Ruling* is based on the premise that "there is unequal bargaining power between [pole owners] and attachers."[44]

[44] *FCC 2020 Declaratory Ruling* at para. 16.

79. We note that, as between the large Canadian pole owners and independent TSPs, there is also a very significant imbalance of bargaining power.

80. CCSA recognizes and supports the notion that, in certain circumstances, it may be reasonable and appropriate for parties to negotiate commercial arrangements which vary from specific rules set out in the general regulatory framework. The parties should have the flexibility to enter into commercial arrangements which best fit the circumstances.

81. However, given the imbalance of power, the FCC stated that, "parties have flexibility to negotiate 'superior solutions' to pole attachment issues in their agreements but any deviations from the Commission's rules must be mutually beneficial."[45]

82. Accordingly, the FCC ruled as follows:

> . . . a [pole owner] is not permitted to use its significant negotiating leverage to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.[46]

83. CCSA submits that adoption of a similar "corresponding benefit" rule in the Canadian framework would be a valuable protection for independent TSPs who seek to attach to the incumbents' poles.

84. We note in this respect, references in the *2020 Declaratory Ruling* to commentary regarding the sufficiency of the FCC's "sign and sue" rule, a rule which ACA Connects stated, is "a limited and commercially inefficient means of recourse available, at best, only to the largest attachers."[47]

85. Once again, effective operation of a "corresponding benefit" rule, as proposed by CCSA, would depend on the attachers' access to timely and effective dispute resolution administered by the Commission.

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[45] *FCC 2020 Declaratory Ruling* at para. 15.
[46] *Ibid.*
[47] As cited at *FCC 2020 Declaratory Ruling*, footnote 70.

Recommendation 10: **The Commission should state, in the regulations or as policy, the principle that pole owners are not permitted to use their significant negotiating leverage to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.**

ACA Connects September 2020 Comments

86. Another aspect of the U.S. discussion that CCSA wishes to introduce is ACA Connects September 2, 2020 Comments on an NCTA petition for an FCC declaratory ruling regarding allocation of pole replacement costs.[48]

87. NCTA has petitioned the FCC to declare, among other things, that:

> . . . it is unjust and unreasonable under section 224 of the Communications Act, section 1.1408(b) of the Commission's rules, and Commission precedent to shift all pole replacement costs to a new attacher, at least in unserved areas.[49]

88. The ACA Connects submission notes that: "[a]s with ACA Connects, NCTA reported that its members regularly face demands by [pole owners] that they pay the full cost of replacing poles to accommodate new attachments."[50]

89. In its discussions with its own members, CCSA has heard time and again that the practice of shifting pole repair and replacement costs to the most recent attacher has become a very substantial obstacle both to maintenance of existing networks and extension of broadband networks to new service areas.

90. That issue has become a significant obstacle to the proposal of new network projects for funding under the various broadband funding programs, at all levels, which are in play

[48] Note 5 *supra*, *ACA Connects Pole Replacement Costs.*
[49] *ACA Connects Pole Replacement Costs* at p.1.
[50] *ACA Connects Pole Replacement Costs* at p.4.

today.

91. As we noted previously, according to comments in the TNC CRTC 2019-406 proceeding, pole replacement costs, as matters stand today, can amount to fully half of the cost of a broadband network building project.

92. Also as noted previously, where these costs are essentially unknowable until the time that attachment applications are processed by the pole owners, it has become exceptionally difficult for independent TSPs to estimate both the cost and timelines of the projects they propose for funding.

93. The solution to this problem goes back to the principle we emphasized previously under the sub-heading of this submission, "Responsibility for Pre-Existing Violations", that "an attacher should be responsible only for the incremental costs caused by the new attachment".

94. Only through application of that principle can the Commission discharge its duty to ensure that "[e]very rate charged by a Canadian carrier for telecommunications services shall be just and reasonable".[51]

95. ACA Connects urges the FCC to "adopt rules that codify or confirm the following policies":

- A [pole owner] may not assess fees for pole replacement if there is not "insufficient capacity" on an existing pole, as that term is used in the Commission's rules and orders;
- Where an existing pole is deteriorated such that its structure strength is 2/3 of that required when installed (as per NESC Table 261-1) or is scheduled to be replaced by the [pole owner] as part of its regular maintenance (i.e., a pole that the [pole owner] has "red tagged"), a [pole owner] that puts in a new pole to accommodate a new attachment request may not charge the new attacher to replace the pole, including to move attachments to the new pole or remove the old pole;

[51] *Telecommunications Act*, s. 27(1).

- For poles that have remaining useful life but "insufficient capacity," a [pole owner] that puts in a pole to accommodate a new attachment request may charge the new attacher a make-ready fee only to recover (i) the remaining net book value, if any, of the existing (to be replaced) pole less salvage value (ii) the incremental costs of installing a pole larger than the existing pole to accommodate the new attachment; and (iii) a proportion of the costs to transfer existing electrical attachments to the new pole that is equal to the percentage of the original net book value that remains in the pole;

- Where a make-ready cost estimate includes pole replacement costs, a [pole owner] is required to disclose to the new attacher sufficient information about the condition of the poles and the attachments thereto at issue to ensure that pole replacement costs are being allocated justly and reasonably and consistent with the other rules proposes herein;

- Where a pole is being replaced, a new attacher shall not be charged any portion of the cost of moving the attachment of a communications provider that has a preexisting violation on that pole;

- [Pole owners] shall comply with make-ready timelines and processes for pole replacements; and

- Make-ready costs paid by a new attacher in connection with a pole replacement that relates to an incremental increase in pole size may not be included in a [pole owner]'s corresponding pole line capital account.[52]

96. Certain adjustments may need to be made to apply those rules to the Canadian context. However, two key aspects of those proposed rules stand out:

- Attachers should be responsible only for their fair share of the costs caused by their attachments; and

- Pole owners should be required to disclose sufficient cost information to enable the attacher to assess whether the portion of costs for which it is being charged is in accordance with the rules and is, in fact, "just and reasonable".

97. The ACA Connects submission raises another important issue, namely the prospect of the

[52] *ACA Connects Pole Replacement Costs* at pp.7-8.

pole owners "double recovering" by forcing repair and replacement costs on attachers at the time of attachment while maintaining an element of pole maintenance costs in the ongoing pole rental fees.[53]

98. CCSA submits that the Commission should clarify that those maintenance cost elements which are included in the tariffed pole rental fees are excluded from any make ready costs eligible to be charged to a new attacher at the time of attachment and should apply such a rule in its dispute resolution processes.

Recommendation 11: **With respect to pole replacement and repair, the Commission should implement a cost-allocation model substantially similar to that proposed by ACA Connects in it September 2020 filing with the FCC, as described in this submission.**

Recommendation 12: **With respect to pole replacement and repairs, the Commission should include in a Commission-approved standard Support Structure Licensing Agreement applicable to all pole attachments that pole owners should be required to disclose sufficient cost information to enable the attacher to assess whether the portion of costs for which it is being charged is in accordance with the rules and is, in fact, "just and reasonable".**

Recommendation 13: **The Commission should state, in the regulations or as policy, the principle that maintenance cost elements which are included in the tariffed pole rental fees are excluded from any make ready costs eligible to be charged to a new attacher at the time of attachment and should apply that rule in its dispute resolution processes.**

Implementation of Regulatory Framework

99. CCSA notes that, in Canada, the issues described in this submission apply to attachments to poles owned by the large incumbent carriers and to poles for which those incumbent carriers exercise authority over telecommunications attachments.

[53] *ACA Connects Pole Replacement Costs* at pp.21.

100. CCSA recommends the development, implementation and publication of an updated standard Support Structure Licensing Agreement ("SSA") which should be used as a default for all wholesale support structure service licensing arrangements.

101. To the extent that the initiatives discussed above have not been incorporated into the standard form, Commission-approved SSA, CCSA recommends that they should be. Incorporation of such terms into the SSAs that must be used to govern all pole attachment licensing arrangements is a more flexible approach than extensive amendments to the incumbents' tariffs.

102. Importantly, the parties can choose to negotiate off of the standard SSA terms where to do so is appropriate to the specific circumstances of the case. As described above, such negotiation should be governed by the principle that the attacher must receive a benefit in exchange for any restrictions on the rights to which it would otherwise be entitled under the terms of the standard SSA and the applicable tariff.

103. CCSA submits that the FCC has built an extensive evidentiary record in its Docket No. 17-84, has made rules based on that record and continues to consider further rule-making initiatives, all of which deal with precisely the same issues, for precisely the same reasons, as are engaged in the Commission's TNC CRTC 2020-366 proceeding.

104. As CCSA has pointed out, especially in view of current urgent demand for connectivity and the status of current funding initiatives at various levels of government, it is important for the Commission to implement a new framework in this area as quickly as possible.

105. CCSA submits that reliance on the reasoning and decision-making which has already taken place in the United States – in which the legal principles and the environment on the ground are very much similar to those in Canada – can and should be used to great effect by the Commission in the rapid, effective development of a regulatory framework to respond to attachment issues in Canada.

Dispute Resolution Process

106. CCSA is pleased to see that the Commission has expressly sought comment on how its dispute resolution processes can be improved specifically to "expedite and streamline the resolution of disputes regarding access to telecommunications poles".[54]

107. Timely and effective dispute resolution is absolutely vital to effective regulation of pole attachment matters.

108. Regardless of how carefully the Commission crafts its policies and rules in this area, there will always be opportunities for pole owners to delay attachments and impose costs on prospective attachers, even while maintaining compliance with the letter of the rules.

109. As the NCTA said to the FCC in its petition referenced above:

> . . . clarification of [pole owners]' obligations to share in pole replacement fees will mean nothing if new attachers cannot vindicate their pole attachment rights in a timely manner through the Commission's complaint processes.[55]

110. That comment is generally true with respect to all pole attachment issues, especially in view of Canada's current, pressing broadband build-out objectives. We cannot, as a nation, afford to have unresolved pole attachments issues significantly delay or increase the costs of broadband network building projects.

111. CCSA submits that the industry needs a mechanism for expedited resolution of pole attachment disputes within a time frame that is measured in days or weeks, not months.

112. In this respect, CCSA recommends that the Commission define and implement the processes, the resources and expertise needed to conduct timely and effective dispute resolution in response to pole access complaints.

113. The first key to timely and effective dispute resolution is clarity, comprehensiveness and

[54] TNC CRTC 2020-366 at para. 24.
[55] As cited in *ACA Connects Pole Replacement Costs* at p.23.

transparency of the underlying rules of engagement; that is, the terms of the applicable tariffs, Support Structure Agreements and standards.

114. In CCSA's assessment, much of the delay and cost associated with "gamesmanship" and indeed, with innocent inefficiencies in pole attachment administrative processes arise from a lack of consistency and transparency in the various levels of standards and rules that underlie those processes.

115. To the degree that terms of applicable tariffs, Support Structure Agreements and engineering and safety standards are made consistent, are set out fully and clearly and are made transparent to all parties:

- the number and scope of disputes should be greatly diminished; and
- it should be possible to greatly standardize and simplify the CRTC dispute resolution processes to be applied to pole attachment complaints.

116. Having said that, we do consider that a more streamlined process than is currently available under IB CRTC 2019-184 is required to meet the special urgency of pole attachment issues.

117. We note that the FCC is authorized by the *Code of Federal Regulations* to operate an Accelerated Docket system under which "parties to . . . a pole attachment complaint proceeding against a cable television system operator, a utility, or a telecommunications carrier, may request inclusion on the Accelerated Docket."[56]

118. The U.S. regulations provide that: "Proceedings on the Accelerated Docket must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings."[57]

[56] 47 CFR § 1.736.
[57] *Ibid.*

119. While the Commission does not have a corresponding regulatory mandate in this area, the particulars of the accelerated docket system do at least indicate what might be a reasonable time frame for final resolution of pole access complaints.

120. The Commission can undertake certain measures, within its own authority, to approximate the effect of such an accelerated system.[58] Such measures could include:

- delegation of its authority to decide pole access complaints to a special or standing committee of the members charged with a specific mandate to adjudicate such complaints;[59]

- amendment of the service standards established by Telecom Circular CRTC 2006-11 to include specific timelines for adjudication of pole attachment complaints and issuance of final decisions in such matters, with a deadline for issuance of final decisions no later than 60 days after receipt of a complaint;

- definition in an amended Information Bulletin concerning "practices and procedures for dispute resolution"[60] of "shorter pleading deadlines and other modifications to the procedural rules", specific to adjudication of pole attachment complaints, as needed to support an overall 60-day decision deadline.

121. CCSA submits that the timelines for the various dispute resolution mechanisms, as currently set out in IB 2019-184, are simply too long to support adjudication of pole attachment complaints in a manner which does not impede network-building projects.

122. In addition, the procedures set out in IB 2019-184 are too open to abuse by parties with dominant power and legal resources. A simplified process with short, hard deadlines is

[58] The *Telecommunications Act*, at s. 67(1)(b) authorizes the Commission to make regulations "establishing rules respecting its practice and procedure". The *Act*, at s. 67(2), provides that such regulations may be made applicable to "a particular case or class of cases" which, here, would be the class of pole attachment complaints.
[59] This may be done pursuant to s. 12(3) of the *Canadian Radio-television and Telecommunications Commission Act.*
[60] Currently, Broadcasting and Telecom Information Bulletin CRTC 2019-184.

needed to ensure that parties who lack power are protected from being denied the benefit of the complaints process by means of process abuses and foot-dragging.

123. CCSA's own experience with the Commission's existing dispute resolution mechanisms suggests that the Commission's staff-assisted mediation processes, which do not have set deadlines, can be never-ending. The Commission should be very careful not to rely on mediation processes which are not time-limited. Rather, it should ensure that all steps in the dispute resolution process have short, well-defined deadlines.

124. The *Telecommunications Act* empowers the Commission to make interim decisions.[61] The Commission should be prepared to use that power in cases where denials of access may result in substantial direct impact to a network construction project such that the priority objective of connecting Canadians to broadband is frustrated by the denial.

125. CCSA recognizes the magnitude of the administrative challenge that such a framework would impose on the Commission and its staff.[62] However, given the criticality of pole attachment issues to the effectiveness of Canada's plan to extend broadband service to all Canadians, CCSA submits that measures such as these are proportionate to the need.

126. We also suggest, given the relatively narrow scope of pole attachment issues that exist, that adjudication of pole attachment complaints is likely to evolve fairly quickly into treatment of a few, standardized forms of complaint. To the extent that is true, the Commission's adjudication role may not be as daunting as it might initially appear.

[61] *Telecommunications Act*, s. 61(2).

[62] CCSA acknowledges the Commission's concerns, particularly with the former Part VII complaints, which were expressed in Telecom Circular CRTC 2006-11as follows: "The Commission notes that meeting the internal standards established for the disposition of Part VII applications has been challenging due to the sometimes wide-ranging and complex issues raised, the volume of applications received, and the competing priorities for limited resources." In this respect, CCSA suggests that, especially if applicable tariffs, standards and Support Structure Agreements are sufficiently well defined, both the number and variety of complaints should be much lower than was the case with Part VII applications.

Recommendation 14: **The Commission should establish an expedited dispute resolution mechanism which is capable of resolving telecommunications attachment complaints within a matter of days or weeks as a norm and within a maximum of 60 days of the Commission's receipt of a complaint. Measures to support such a process could include:**

- **delegation of the Commission's authority to decide pole access complaints to a special or standing committee of the members charged with a specific mandate to adjudicate such complaints;**

- **amendment of the service standards established by Telecom Circular CRTC 2006-11 to include specific timelines for adjudication of pole attachment complaints and issuance of final decisions in such matters, with a deadline for issuance of final decisions no later than 60 days after receipt of a complaint;**

- **definition in an amended Information Bulletin concerning "practices and procedures for dispute resolution" of "shorter pleading deadlines and other modifications to the procedural rules", specific to adjudication of pole attachment complaints, as needed to support an overall 60-day decision deadline.**

Conclusion

127. In this submission, CCSA has cited a number of initiatives undertaken by the FCC to address precisely the issues raised by the present Notice of Consultation. In so doing, CCSA's intention has been to offer readily applicable solutions to the Commission for removal of some of the key barriers to broadband network construction.

128. We have also indicated that work needs to be done to improve the consistency and transparency of standards that apply to pole attachment work. Lack of such consistency and transparency appears to CCSA to be a substantial barrier to timely, cost-effective pole attachments and, thereby, extension of broadband service to Canadians.

129. CCSA is of the view that the needed changes to the regulatory framework can be implemented largely through policy statements with respect to underlying principles and a Commission-approved standard SSA with respect to detailed provisions such as process deadlines and associated deeming provisions.

130. Finally, CCSA cannot emphasize too strongly the importance of the availability of timely and effective dispute resolution under the Commission's supervision. That is because, in many cases, the imposition of costs and delays on attachers, occurs below the level of the regulations and the tariffs. Parties need access to quick dispute resolution in order to break logjams which routinely result from bureaucratic delays and anti-competitive actions "at the coal face".

131. The purposes of the Commission's intervention in this matter should be to:

- reduce the costs of attachment and, especially, to eliminate cost inefficiencies that result from current permitting and make-ready processes;
- reduce the time taken for permit approvals and make-ready work; and
- enhance certainty for all participants in the pole attachment process.

132. CCSA thanks the Commission for the opportunity to provide its comments in this extremely important proceeding.

CCSA

APPENDIX A – Answers to Commission Questions in TNC CRTC 2020-366

Regulatory

Support structure tariffs

Q1. Identify aspect(s) of the support structure service tariffs of ILECs or SILECs that, if modified, would have the greatest impact on timely and competitive access to telecommunications poles. More specifically:

(i) Identify the specific section(s) of the tariffs.

(ii) Demonstrate, with examples, how the section(s) identified contributes to untimely and/or costly access to telecommunications poles.

(iii) Propose modifications to the sections identified in the answer to Q1 (i) above.

(iv) Explain how the proposed modifications would contribute to more efficient access to telecommunications poles.

CCSA Response:

CCSA does not have any specific recommendations for amendment to the support structure service tariffs of the ILECs or SILECs. The delays and costs imposed upon attachers generally occur at a level below the tariffs; that is, in the way the pole owners interpret and apply their tariff obligations in response to actual attachment requests on a day-to-day basis.

CCSA's recommendations include certain broad matters which are appropriate for incorporation in regulations or policy statements. Such recommendations include:

- implementation of a "One-Touch Make-Ready" regime;
- prohibition of "blanket ban" responses to attachment applications;
- establishment of principles for equitable sharing of pole repair and replacement costs; and, most importantly
- establishment of a timely and effective dispute resolution mechanism capable of addressing issues that arise from the pole owners' interpretation and application of the tariffs and the licensing agreements.

Other CCSA recommendations relate to matters which are more appropriately dealt with at a level below the tariffs. Those include:

- specifying deadlines and associated deeming provisions which apply to various stages of the application, survey, permitting and make-ready processes; and
- enhanced cost disclosure obligations.

We do not consider that the level of detail needed should be incorporated in the tariffs. Rather, we recommend that the Commission incorporate such details in a mandatory standard-form Support Structure Licensing Agreement.

Make-ready work

Q2. Should there be a maximum amount of time within which owners of telecommunications poles must complete make-ready work? If so, suggest what the maximum amount of time should be and when that time period should start. If not, provide rationale.

CCSA Response:

In the main body of its comments, under the sub-heading "Accelerated Timelines", CCSA has cited recent rule changes by the FCC whereby deadlines for both simple and complex make-ready have been reduced from 60 to 30 days (and from 105 to 75 days for large requests in the communications space). To account for the unique circumstances involved with attachments above the communications space, the FCC maintained its existing make-ready deadline of 90 days (and 135 days for large requests) for these attachments.[63]

The FCC's reasons for shortening the make-ready deadline for new pole attachments in the communications space were "to promote broadband deployment without imposing undue risk to safety or reliability".

CCSA recommends that the Commission adopt the same timelines for make-ready work.

[63] *FCC 2018 Third Order* at para. 84.

The deadlines established by the FCC apply both to attachments under its pre-existing rules and under a recently authorized One-Touch Make-Ready ("OTMR") process which the FCC implemented precisely to minimize barriers to broadband network building projects. CCSA recommends that the Commission also adopt the same approach.

Q3. Should parties requesting access to telecommunications poles be permitted to commence preparatory work on the poles if the owner does not meet a relevant timeline established in the support structure service tariff (assuming that all permit applications include capacity plans prepared by a duly authorized engineer which validate the safety of the proposed installations)? Provide rationale.

CCSA Response:

Both the FCC's 2011 pole attachment rules and the OTMR initiative implemented in 2018 include deeming provisions whereby if either the pole owner or a pre-existing attacher fails to meet the stipulated deadline for completion of make-ready work after the pole owner's approval of an attachment application, the new attacher may commence make-ready work using its own qualified contractor.

Those deeming provisions can be found at 47 CFR § 1.1411(e) with respect to attachments conducted under the 2011 rules and 47 CFR § 1.1411(j) with respect to the OTMR process available for "simple" attachments in the communications space of the pole. We note that other provisions in 47 CFR § 1.1411 ensure that the pole owner has sufficient means to ensure the safety and quality of the attacher's work.

CCSA recommends that the Commission adopt similar deeming provisions to eliminate the prospect of open-ended delays in completion of the make-ready work required to support the new attachment.

Q4. Should all occupants of a telecommunications pole be responsible for the costs associated with the maintenance required to keep the pole at its optimum capacity? Provide rationale.

CCSA Response:

CCSA's short answer to this question is "yes". We point out that a portion of maintenance costs is already captured in the pole rental rates paid by all attachers and that a pole owner should not be permitted, as part of its authorization of a new attachment, to double-recover any amounts for maintenance items already covered by the pole rental fee.

As one CCSA member put it: "We're a licensee – it's similar to the landlord/tenant relationship. Why should we pay for the broken faucet?"[64]

As emphasized under the sub-heading "Responsibility for Pre-Existing Violations" in the main body of these comments, CCSA strongly endorses the following principle as stated by the FCC:

> . . . 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 [pole owners] 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.[65]

Q5. When a telecommunications pole requires repair or replacement, should all current occupants, as well as any party requesting access that necessitates an upgrade, be required to share the costs? Provide rationale.

CCSA Response:

See response to Question 4, above.

[64] CityWest email to J. Holmes of ITPA, November 13, 2020.
[65] Federal Communications Commission, "In the Matter of Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment: Third Report and Order and Declaratory Ruling" FCC 18-111, WC Docket No. 17-84, WT Docket No. 17-79, August 3, 2018, para. 121 [emphasis added].

With respect to pole replacements, CCSA agrees with the position of ACA Connects in a September 2, 2020 submission to the FCC concerning a petition by NCTA for a declaratory ruling on matters relating to allocation of pole replacement costs.

ACA Connects' position includes the following elements:

- A [pole owner] may not assess fees for pole replacement if there is not "insufficient capacity" on an existing pole, as that term is used in the Commission's rules and orders;

- Where an existing pole is deteriorated such that its structure strength is 2/3 of that required when installed (as per NESC Table 261-1) or is scheduled to be replaced by the [pole owner] as part of its regular maintenance (i.e., a pole that the [pole owner] has "red tagged"), a [pole owner] that puts in a new pole to accommodate a new attachment request may not charge the new attacher to replace the pole, including to move attachments to the new pole or remove the old pole;

- For poles that have remaining useful life but "insufficient capacity," a [pole owner] that puts in a pole to accommodate a new attachment request may charge the new attacher a make-ready fee only to recover (i) the remaining net book value, if any, of the existing (to be replaced) pole less salvage value (ii) the incremental costs of installing a pole larger than the existing pole to accommodate the new attachment; and (iii) a proportion of the costs to transfer existing electrical attachments to the new pole that is equal to the percentage of the original net book value that remains in the pole;

- Where a make-ready cost estimate includes pole replacement costs, a [pole owner] is required to disclose to the new attacher sufficient information about the condition of the poles and the attachments thereto at issue to ensure that pole replacement costs are being allocated justly and reasonably and consistent with the other rules proposes herein;

- Where a pole is being replaced, a new attacher shall not be charged any portion of the cost of moving the attachment of a communications provider that has a preexisting violation on that pole;

- [Pole owners] shall comply with make-ready timelines and processes for pole replacements; and

- Make-ready costs paid by a new attacher in connection with a pole replacement that relates to an incremental increase in pole size may not be included in a [pole owner]'s corresponding pole line capital account.[66]

Spare capacity

Q6. When access to telecommunications poles is denied due to a lack of spare capacity, should the pole owner be required to provide the party requesting access with supporting documentation, stating the current load on the poles, the amount of capacity reserved by the owner for its own future use, and giving the date by which the owner intends to use that capacity? Provide rationale.

CCSA Response:

Yes, absolutely. Based on input it has received from members, CCSA considers that open-ended reservation of spare capacity to the pole owner's use, without detailed reasons, is a common and significant source of delays in, and limitations of, access to poles.

We note, as well, that this issue has been identified as a key impediment to broadband network construction by a number of commenters, including Xplornet, Rogers and Shaw, in the TNC 2019-406 proceeding.

The FCC has addressed the general problem of unsupported denials of access ("blanket bans"), including denials based on reservation of spare capacity, with the following rule:

> . . . any denial by the [pole owner] must be issued in writing, and such denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards."[67]

We recommend that the Commission implement a corresponding rule as a policy decision.

[66] ACA Connects, "In the Matter of Accelerating Wireline Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84: ACA Connects Comments", September 2, 2020 at pp.7-8.
[67] Federal Communications Commission, "In the Matter of Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment: Declaratory Ruling", WC Docket No. 17-84, July 29, 2020at para. 7.

Q7. Should there be a limit on the amount of time for which a pole owner can reserve spare capacity? If so, provide, with rationale, suggestions on the maximum amount. If not, provide rationale.

Q8. Should there be a limit on the amount of capacity a pole owner can reserve for future use? If so, provide, with rationale, suggestions on the maximum amount of capacity to be reserved. If not, provide rationale.

CCSA Response:

This response is to both Questions 7 and 8.

The basic issue here is that the existing provisions of the tariffs and Support Structure Licence agreements are very broadly worded such that the pole owner "has priority access to Support Structures in order to meet its current and anticipated future service requirements"[68] and the attacher may obtain a licence "where Spare Capacity is available".[69] In short, there is no definition of what constitutes "spare capacity" and no formal requirement or process for demonstrating whether such capacity exists.

It is worth pointing out that a number of commenters in the TNC 2019-406 proceeding, including Rogers, Xplornet and TekSavvy, specifically recommended that reservations of spare capacity be time-limited. Xplornet recommended that the time limit be accompanied by a duty on the pole owner either to begin deployment of facilities within the time limit or to release the reserved capacity for use by third-party attachers.[70]

[68] *See*, e,g, Bell Canada National Services Tariff Item 901.2.
[69] *See*, e,g, Bell Canada National Services Tariff Item 901.3(d).
[70]Xplornet Communications Inc., "Telecom Notice of Consultation CRTC 2019-406, Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada (Public record: 1011-NOC2019-0406) – Intervention", May 7, 2020 at para. 26, which reads, "ILECs should be required to formally reserve capacity on their support structures. Once the ILEC has reserved capacity for its own use, it should then be required to begin deploying its facilities within 60 days. If the ILEC has not begun its deployment within this window, the space should be available to other providers."

Other commenters have recommended limits on both the time of reservation and the amount of capacity that may be reserved.

CCSA's members have suggested an alternative approach which, may, in fact, provide a more proactive and workable solution to the issue. That approach would require the pole owner to pre-define and allocate spare capacity on its poles in a given area for use by third-party attachers. As one CCSA member put it: "This would guarantee at least min[imum] access while still maintaining owner's premium real estate eg front side of pole."[71]

That approach would largely avoid the difficulties of quantifying and enforcing time and capacity limits for the spare capacity that a pole owner is permitted to reserve. Rather, CCSA considers that it should be possible for the pole owner proactively to define a given amount of capacity, consistent with applicable safety and engineering standards, which it will set aside for the use of third-party attachers.

Under that model, third party attachments would be on a first-come, first served basis for so long as dedicated capacity for the purpose remains. Once the pre-allocated capacity for such attachments is used, the process could revert to the one currently set out in the tariffs and SSAs today, although with more careful definition of the key terms.

Such an approach offers the possibility that an entire stage of the permitting process loop – and the time it takes – can simply be removed, at least until the pre-dedicated capacity for third-party attachment use is fully consumed.

CCSA urges the Commission to consider carefully whether such an approach could be an effective response to this widely-acknowledged problem.

[71] Seaside Communications email to C. Edwards, November 17, 2020.

Should the Commission choose not to go that way, CCSA advocates a maximum time limit for reservation of capacity for future use by the pole owner of three years and a limits on reservation of capacity for use by the pole owner at maximum of 30% of total available capacity in the communications space of the pole.

Joint-use agreements

Q9. How can the Commission, within the limit of its jurisdiction, best minimize the challenges that parties face when trying to access poles that are subject to a joint-use agreement?

CCSA Response:

As indicated in our response to Question 11, below, CCSA members have encountered considerable difficulty as a result of having to deal with the bureaucracies of both joint-use partners and getting caught between the differing demands of those bureaucracies.

CCSA submits that, in this proceeding, regardless of how pole ownership and sharing is structured, the only relevant subject is telecommunications attachments. To CCSA's understanding, joint-use agreements for poles generally assign complete authority for permitting of telecommunications attachments to the carrier partner.

The Commission should stipulate that any joint-use pole agreement must assign complete authority for approval of telecommunications attachments to the carrier partner. Given that requirement, it remains open to the joint use partners to ensure that their agreement provides each partner with the protections it needs, including, for example, coordination of standards.

CCSA submits that the Commission has the jurisdiction needed to require Canadian carriers to ensure that joint-use agreements into which they enter satisfy that requirement. If that measure is in place, it should be possible for the Commission to supervise the all matters concerning telecommunications attachments to poles without any need to interfere with provincial jurisdiction over utilities.

Most importantly, from CCSA's point of view, that approach would create an environment in which attachers need look only to the carrier partner for authorization. The present circumstance in which attachers deal with both joint-use partners – who may well have differing standards – is untenable, as we describe below.

Q10. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should this authority be limited to the pole space that is assigned exclusively for the attachment of communication facilities? Provide rationale.

CCSA Response:

The carrier's authority should not be limited in terms of the "space" on the pole. Rather, it should be limited by the function of the attachment. Limitation to the "communications space" on the pole will work for traditional cable and telecommunications wiring and aerial equipment but it will not accommodate anticipated 5G needs such as pole-top placement of radio transmitters.

For that reason, the carrier's authority in relation to joint-use poles should be limited to authorization of "telecommunications attachments," regardless of where an attachment is placed on the pole, all of which are subject to the Commission's supervision as being within its mandate to supervise the telecommunications system.

CCSA does understand that attachments above the "telecommunications space" engage safety considerations that do not apply in the safer work area below the electrical space on the pole. However, based on its own review of joint-use agreements, it appears to CCSA that sufficient procedures are in place between the electrical utilities and their carrier partners to manage any added safety issues.

Q11. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should all obligations relating to the review, approval, or denial of the requests be the same as those in the support structure tariffs for poles owned by the carrier? Provide rationale.

CCSA Response:

The special considerations which apply to management of joint-use poles are appropriately dealt with in the joint-use agreement between the utility and carrier partners. Provided that the carrier has full authority over all telecommunications attachments to a pole, there is no need to differentiate between utility and carrier-owned poles for the purposes of managing such attachments.

CCSA does wish to say that a number of its members, especially those in Quebec, have found themselves caught in a "Catch 22" bureaucratic process whereby the owner utility does not object to an attacher performing work to correct a minor anomaly on a pole but the utility's carrier partner will not issue a permit until the anomaly is corrected. Without the permit, the corrective work cannot be performed. As a result, the required attachment is delayed indefinitely.

This is, to CCSA's understanding, a common occurrence that is frustrating existing network construction projects.

For those reasons, CCSA considers it important that the authority over telecommunications attachments to joint-use poles be clearly and completely vested in the carrier partner. Third party attachers should be able to rely on a single person, the telecommunications carrier with authority over telecommunications attachments, for all permits and conditions related to such attachments.

CCSA

Regulatory

APPENDIX B – Summary of Recommendations

Recommendation 1: To address the concerns raised by this proceeding in a timely fashion, the Commission, whenever it can, should make use of solutions already developed and implemented by the U.S. regulator.

Recommendation 2: The Commission should adopt a "One-Touch Make-Ready" option whereby the attacher, who has the incentive to move quickly, is able to perform simple make-ready work in the telecommunications space on a pole, subject to notice requirements and other safeguards needed to ensure the quality of the make-ready work.

Recommendation 3: The Commission should adopt accelerated timelines for completion of various stages of the permit application and approval process which correspond to timelines established by the FCC in its *2018 Third Order* to promote timely construction of broadband networks.

Recommendation 4: The Commission should ensure that no stages of the permit application, approval and make-ready process are left open without clear deadlines. As needed, specified deadlines should have associated deeming provisions which permit the attacher to proceed where response deadlines are not met by the pole owner or pre-existing attachers.

Recommendation 5: To support reasonable flexibility in commercial arrangements between the parties, the Commission should establish process deadlines in standard Support Structure Licensing Agreement applicable to all pole attachments. Subject to certain principles stated in this submission, parties then would be able to negotiate off the standard agreement to meet the particular circumstances of the proposed attachment arrangements.

Recommendation 6: The Commission should confirm that the pole owner may not require an attacher to obtain its approval for overlashing work.

Recommendation 7: The Commission should state, in the regulations or as policy, the principle 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.

Recommendation 8: The Commission should require that any denial of access by the pole owner must be issued in writing, and such denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

Recommendation 9: The Commission should ensure that applicable engineering, construction and safety standards are as consistent as possible and are fully transparent to all attachers.

Recommendation 10: The Commission should state, in the regulations or as policy, the principle that pole owners are not permitted to use their significant negotiating leverage to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.

Recommendation 11: With respect to pole replacement and repair, the Commission should implement a cost-allocation model substantially similar to that proposed by ACA Connects in it September 2020 filing with the FCC, as described in this submission.

Recommendation 12: With respect to pole replacement and repairs, the Commission should include in a Commission-approved standard Support Structure Licensing Agreement applicable to all pole attachments that pole owners should be required to disclose sufficient cost information to enable the attacher to assess whether the portion of costs for which it is being charged is in accordance with the rules and is, in fact, "just and reasonable".

Recommendation 13: The Commission should state, in the regulations or as policy, the principle that maintenance cost elements which are included in the tariffed pole rental fees are excluded from any make ready costs eligible to be charged to a new attacher at the time of attachment and should apply that rule in its dispute resolution processes.

Recommendation 14: The Commission should establish an expedited dispute resolution mechanism which is capable of resolving telecommunications attachment complaints within a matter of days or weeks as a norm and within a maximum of 60 days of the Commission's receipt of a complaint. Measures to support such a process could include:

- delegation of the Commission's authority to decide pole access complaints to a special or standing committee of the members charged with a specific mandate to adjudicate such complaints;

- amendment of the service standards established by Telecom Circular CRTC 2006-11 to include specific timelines for adjudication of pole attachment complaints and issuance of final decisions in such matters, with a deadline for issuance of final decisions no later than 60 days after receipt of a complaint;

- definition in an amended Information Bulletin concerning "practices and procedures for dispute resolution" of "shorter pleading deadlines and other modifications to the procedural rules", specific to adjudication of pole attachment complaints, as needed to support an overall 60-day decision deadline.

*****END OF DOCUMENT*****