In the Matter of

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure

WC Docket No. 17-84

COMMENTS OF NEXT CENTURY CITIES

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I. Introduction

Next Century Cities (“NCC”)\(^1\) submits this reply in response to the Federal Communications Commission’s (“FCC” or “Commission”) request for comment on the NCTA — The Internet & Television Association’s (“NCTA”) petition for declaratory ruling in the above captioned docket.\(^2\) NCC is a nationwide coalition of more than 200 mayors and local government officials who are committed to ensuring the benefits of fast, affordable, reliable broadband Internet access for their communities. Working together, member communities collaborate on ways to build broadband networks, increase affordability, and identify unserved and underserved populations.

\(^1\) Next Century Cities is a nonprofit nonpartisan 501(c)(3) coalition of over 200 member municipalities that works collaboratively with local officials to ensure reliable and affordable broadband access for every community while helping others realize the economic, social, and public health importance of high-speed connectivity.

\(^2\) Petition of NCTA — The Internet & Television Association for declaratory ruling clarifying the application of its orders and cost allocation rules to pole replacements in areas that do not have access to broadband to ensure an equitable allocation of those costs between pole owners and attaching entities, WC Docket No. 17-84 (filed July 16, 2020), https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf (NCTA Petition).
II. Summary

Unquestionably, the COVID-19 pandemic has further exacerbated the inequities faced by those who do and do not have access to affordable and reliable broadband. NCC agrees that access to high-speed internet is essential for critical applications like distance learning, remote working, and telemedicine. However, NCC disagrees with the premise that diminishing local governments’ authority to determine the cost of replacing poles in their municipalities then assigning the FCC as the sole arbiter of what is to be considered “just and reasonable” will expedite efforts to close the digital divide. Moreover, placing pole attachment complaints onto the accelerated docket is highly problematic at a time when municipalities lack the time and resources to adequately respond to pole attachment complaints in an accelerated time frame.

NCC works to ensure that every community, regardless of zip code, has affordable and reliable high-speed connectivity and supports goals to accelerate broadband deployment and promote competition. That is why the impact of the current proposals cause concern. Ultimately, they would help deteriorate local authority in negotiating pole attachment agreements. What’s more, in granting this petition, the Commission could add to an ongoing trend of shifting costs away from providers onto under-resourced communities.

III. The Commission Should Continue Allowing Local Governments Flexibility Over Pole Attachment Costs and Timing.

In effect, NCTA’s petition would further diminish local control. NCTA proposes placing all pole attachment complaints arising in unserved areas on the Accelerated Docket\(^3\) which would reduce response time for resolving disputes. Another proposal would require pole owners

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\(^{3}\) NCTA Petition at 4.
to cover pole replacement costs without addressing the varying landscape of pole ownership.\(^4\) introducing additional costs to shrinking municipal budgets. While the Commission has the authority to determine what constitutes a fair and reasonable charge and regulate pole attachment access, NCTA is asking the Commission to take the additional step of eliminating remedies available to local government officials who are uniquely positioned to identify pole replacement costs.

Utility poles are operated by a range of entities, from local governments, to public utilities, to telecommunications companies.\(^5\) Because the landscape varies from locality to locality, the Commission should not seek to become the sole arbiter as to what constitutes “just and reasonable” pole attachment rates and timings. Instead, Commission rules should support a fair bargaining process and accommodate the rare instances in which local governments need to defend themselves, but lack the resources, time, or manpower to navigate the Commission’s processes.\(^6\)

The indirect impact of a decision in NCTA’s favor could add to an ongoing campaign to reduce costs for private stakeholders and eventually redistribute them to local taxpayers. Meantime, COVID-19 has “wreaked havoc on local governments, forcing furloughs, layoffs and projected revenue shortfalls in the coming fiscal year.”\(^7\) Local governments face an unprecedented amount of time-sensitive decisions that impact the safety and welfare of their

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\(^4\) See NCTA Petition at 4-5.
residents and are forced to grapple with drastically reduced resources. For example, in Ohio, many local government employees began working remotely in April and anticipated layoffs and hiring freezes, shrinking the capacity of governments. Despite the increase in responsibilities, local governments are losing revenue because taxable spending and incomes are down while unemployment remains high. Limiting their ability to recover costs in this proceeding only would permanently add to lost revenue and insurmountable budget deficits.

In addition, granting NCTA’s petition would increase the number of time-sensitive decisions for municipalities without guaranteeing any improvement in broadband access. For some local governments, sixty days is not nearly enough time to learn how to effectively engage with a federal agency in an unfamiliar process. Particularly in unserved areas, local leadership may be new to public service as well as the Commission’s policies and struggle to navigate through agency requirements online. In-person inspections that are part and parcel to negotiating pole attachment agreements have also been limited due to COVID-19 restrictions. And even under ordinary circumstances, the burden of travelling or the delay of having documents mailed would eat into the time period for an expedited proceeding. All the while, another cost-cutting

9 Bureau of Labor Statistics, The Unemployment Situation-July 2020, https://www.bls.gov/news.release/pdf/empsit.pdf (Aug. 7, 2020); Bill McBride, Matthew Chase, Clarence Anthony, Marc A. Ott, Tim Storey, David Adkins And Tom Cochran, If State And Local Governments Continue to Struggle, So Will America, National Association of Governors, https://www.nga.org/news/commentary/if-state-and-local-governments-continue-to-struggle-so-will-america/ (July 31, 2020) (“Nearly every category of state and local revenue is experiencing pandemic-related losses. States and localities that rely on income taxes are seeing much lower revenue due to high unemployment. Sales tax income is also declining due to the sharp drop in consumer spending and store closures. Limited travel means less revenue from gasoline taxes for transportation projects. As a result of necessary measures to contain the spread of the coronavirus, states alone are facing up to $500 billion in fiscal shock through fiscal year 2022, according to Moody’s Analytics. For counties, the number comes to $202 billion. And the nation’s 19,000 cities, towns, and villages face a projected $360 billion loss.”).
win for providers would not necessarily entice them to service the unserved and underserved areas that they have already made economic decisions to avoid.

IV. The Commission Cannot Preempt State and Local Regulations at This Phase.

NCTA’s petition suggests that the Commission has the authority to preempt under Section 253 of the Communications Act. The Commission may, after notice and an opportunity for public comment, preempt a state or local government that has permitted or imposed any statute, regulation, or legal requirement that violates subsection a or b of Section 253. However, this would undo years of precedent the Commission has set in allowing states to reverse preempt the Commission’s rules regarding pole attachments. Currently, 22 states and the District of Columbia that have exercised authority over pole attachments and reverse preempted the Commission’s rules.

In this instance, NCTA is asking the Commission to preempt state law, but the Commission has neither issued a notice of its intent to preempt nor has it allowed the public to comment on any Commission proposals. The Commission may have the authority to act in the States that have not reverse preempted the Commission’s rules, but would need to initiate a separate rulemaking in order to preempt those states which have taken control of their own pole attachment regulations.

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14 Id.
Seeking to preempt the Commission rules here would create a new rift between regulations that small and midsize providers must comply with and, in turn, promote regionality of providers and inhibit the growth of competition across the nation. Sound policymaking analysis call for the Commission to streamline broadband deployment by including stakeholders, not by refusing to engage with the stakeholders most impacted by these decisions.

V. NCTA’s proposal shifts costs from private companies without any countervailing public benefit.

NCTA states that “Any national strategy to expand broadband access by encouraging investment in unserved areas will need to address these issues. Otherwise, a significant amount of capital that broadband providers devote towards broadband buildout to unserved areas risks instead being diverted into upgrading the existing utility pole infrastructure—and benefitting utility investors at the expense of unserved Americans.” On the other hand, upgrading existing pole infrastructure will encourage investment by attracting new providers who can share the costs of utility pole upgrades in the future and improve competition.

The efficiencies that NCTA’s petition purports to create leave thousands of local officials to work out for themselves how to comply with Commission regulations while recouping costs for municipalities that are entrenched health, employment, and learning crises. Local governments may face limitations of their own that extend the time it takes to achieve greater efficiencies. Dig once and one touch make ready policies, for example, often require collaboration among a range of public and private stakeholders each imposing external time

15 NCTA Petition at 9.
constraints on municipalities that apparently slow down the process, but ultimately achieve a
more efficient outcome for connecting their communities with broadband.\textsuperscript{16}

Broadband providers are not regulated in the same way as other pole attachers. Telephone
service providers are subject to Title II regulation and electric utilities are highly regulated by
state utility authorities. However, broadband providers are not subject to the same consumer
protection regulations as telephone and electric utilities, meaning that unserved areas may not be
provided \textit{affordable} broadband, even if service is generally available.\textsuperscript{17} While costs are diverted
from providers, costs will rise for municipalities that will have to adapt to increased federal
control, taking crucial resources away from initiatives that improve connectivity.

**VI.** Rather than pushing municipal leaders away, the Commission should
invite them into conversations about pole attachment regulation and
unite public and private efforts to expand broadband access.

In its petition, NCTA states that its proposal will “resolve recurring disagreements that
have the potential to impede broadband deployment and deplete funds and resources that could
otherwise be used to reach more unserved homes and businesses.”\textsuperscript{18} However, there is no
enforceable agreement that private cost-savings will be reinvested in unserved and underserved
communities. It is more likely that this proposal results in shifting the costs of deployment from
carriers, who will ultimately profit from their investments, to local governments, regulated
utilities, and ultimately, to the public at large.

\textsuperscript{18} NCTA Petition at 10.
Rather than uniting efforts, a federal approach that embraces only NCTA’s proposal will fragment relationships between providers and local governments. NCTA’s petition wants for local insights and pits local governments against the Commission and providers in a struggle for control over locally centralized infrastructure. A united approach between providers and government is essential to improving and expanding broadband access.\textsuperscript{19}

Despite new challenges, local governments continue thriving, adapting to changing circumstances and keeping their communities informed.\textsuperscript{20} Additionally, local governments can bring their creativity and insight to the federal level, offering solutions that best address the growing inequities that result from communities that entirely lack broadband access.

We urge the Commission to intentionally seek input from local stakeholders who have valuable insights into ways that NCTA’s proposal may hinder shared goals to closing the digital divide. In our April 3, 2020, letter to the Commission, we urged the Commission to collaborate with local leadership to develop connectivity solutions.\textsuperscript{21} Local partnerships can similarly help inform the Commission’s pole attachment regulation. Otherwise, the Commission risks reducing local authority to address the unique needs of each community, an outcome that would offer providers far greater leverage in their negotiations.


\textsuperscript{21} Letter from Next Century Cities, to Federal Communications Chairman Ajit Pai, Commissioner Michael O’Rielly, Commissioner Brenden Carr, Commissioner Jessica Rosenworcel, and Commissioner Geoffrey Starks (April 3, 2020), available at https://nextcenturycities.org/nccs-letter-on-covid-19-response-and-broadband/ (“We strongly urge the Commission to work with local officials – within and beyond our coalition – to develop lasting connectivity solutions. Local leaders have the expertise and a vested interest in building networks communities that federal and state governments are unable to reach. They can also provide valuable insights on how the agency’s policies trickle down to local networks.”).
This is an opportunity reset. Now more than ever, the Commission should work to empower local governments to innovate and determine the best response to better connecting their communities with broadband opportunities.

VII. Conclusion

The COVID-19 pandemic has placed an undue strain on localities across the country. Municipalities are on the frontlines of dealing with health, connectivity and other crises across the nation and rely on their relationships with utilities and pole owners to bring reliable, high-speed connectivity to their citizens. However, NCTA’s proposal seeks to shut local leaders out from these discussions and leave the Commission as the sole arbiter of disputes. This petition is antithetical to the position the Commission should be taking with little promise of accelerating broadband deployment to the communities most in need.

Unfortunately, if the proposals by NCTA are adopted, it will drive an even larger wedge between internet service providers and the communities in which they do business. These are communities that do not want to stifle deployment, but want a fair process. Accordingly, NCC respectfully requests that the Commission deny NCTA’s petition.