

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comcast Cable Communications, LLC,	)	Proceeding No. 25-330
	)	Bureau ID Number EB-25-MD-002
<i>Complainant,</i>	)	
	)	
v.	)	
	)	
Appalachian Power Company,	)	
	)	
<i>Defendant.</i>	)	

MEMORANDUM OPINION AND ORDER

Adopted: February 4, 2026

Released: February 5, 2026

By the Commission:

I. INTRODUCTION

1. This Memorandum Opinion and Order resolves a formal complaint filed by Comcast Cable Communications, LLC (Comcast) against Appalachian Power Company (APCO).¹ APCO is an electric utility that owns and controls poles to which it and cable television systems or providers of telecommunications service (such as Comcast) attach wires and other equipment. An APCO policy affects some of the poles in Virginia to which Comcast seeks to attach. The policy applies to APCO's poles that have a preexisting violation of safety or engineering standards caused by a third party, but that would still require a pole replacement to accommodate a new attachment (like those sought by Comcast), even if the preexisting violation were removed.² Under the policy, APCO offers to replace these poles and provide Comcast with access to the new poles, but APCO charges Comcast up front for the full cost of the replacement poles, subject to a potential partial refund. Faced with these charges, Comcast filed its Complaint, asserting that APCO's policy is unlawful under the Communications Act (Act) and the Federal Communication Commission's (Commission) rules.

2. As explained below, we hold that APCO's policy violates section 224 of the Act, Commission precedents applying section 224, and sections 1.1411(e)(4)³ and 1.1408(b) of our rules. For

¹ Pole Attachment Complaint and Request for Assignment to Accelerated Docket, Proceeding No. 25-330, Bureau ID Number EB-25-MD-002 (filed Nov. 25, 2025) (Complaint).

² See Complaint, Ex. 1, Letter from APCO to Attachers in Virginia and Tennessee at 1 (Sept. 5, 2025) (Policy).

³ The currently effective version of this rule is codified at 47 CFR § 1.1411(d)(4). However, once the revisions to section 1.1411 adopted by the Commission in July 2025 become effective when approved by the Office of Management and Budget (OMB), that provision will be redesignated as 47 CFR § 1.1411(e)(4). See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, 40 FCC Rcd 5395, 5482, 5485-86, para. 153 and Appx. A (2025) (*Fifth Wireline Infrastructure Order*). The Commission will publish a document in the Federal Register announcing the effective date once it receives OMB approval.

over 20 years, the Act and our rules have been interpreted to preclude utilities from requiring a new attacher to pay the entire cost of a pole replacement when a pole already fails to comply with existing safety or engineering standards. We further hold that, as to the poles at issue, Comcast is obligated to pay only the incremental increase in the costs of a stronger and/or taller pole needed to enable its new attachment, not the full costs of a pole replacement.

II. BACKGROUND

A. The parties

3. Comcast “provides cable services, broadband internet access service, and other services via cable systems in Virginia.”⁴ According to Comcast, it is deploying broadband infrastructure to reach unserved and underserved areas across the United States.⁵ The Broadband Equity Access and Deployment (BEAD) program subsidizes some of Comcast’s buildout and establishes deployment deadlines and progress reporting obligations.⁶ For a portion of its deployment operations in Virginia, Comcast is a new attacher to poles owned by APCO.⁷

4. APCO, which is a subsidiary of American Electric Power Service Corporation (AEP), operates across portions of Tennessee, Virginia, and West Virginia.⁸ APCO is a “utility” subject to the provisions of section 224 of the Act and the Commission’s pole attachment rules.⁹

B. The dispute concerning APCO’s pole replacement policy

5. The Commission is authorized to resolve pole attachment disputes unless the relevant state certifies that it has “issued and made effective rules and regulations implementing the State’s regulatory authority over pole attachments.”¹⁰ Here, both Comcast and APCO agree that Virginia does not regulate pole attachments.¹¹ As such, the Commission has jurisdiction over this dispute under its authority in section 224 of the Act.¹²

⁴ Complaint at 5, para. 11.

⁵ *Id.* at 2, para. 2.

⁶ *Id.* at 2, para. 1 (“Comcast has been awarded a \$126 million grant from the [BEAD] fund to connect approximately 13,000 unserved and underserved locations in Virginia.”). *See also* National Telecommunications and Information Administration (NTIA), *Public Resources related to BEAD Plans and Milestones*, <https://broadbandusa.ntia.gov/public-resources-related-bead-plans-and-milestones>. For context, the BEAD Program “is a \$42.45 billion federal grant program that aims to connect every American to high-speed internet by funding partnerships to build infrastructure. In June 2023, NTIA announced allocation amounts for all 56 states and territories.” NTIA, *Broadband Equity Access and Deployment Program*, <https://broadbandusa.ntia.gov/funding-programs/broadband-equity-access-and-deployment-bead-program>.

⁷ Complaint at 2, para. 1 (“Comcast currently estimates that it will need to access thousands of [APCO]-owned utility poles” for its BEAD-funded operations in Virginia.).

⁸ *See* Appalachian Power, *About Us*, <https://www.appalachianpower.com/company/about/> (last visited Jan. 27, 2026). *See also* Complaint at 5.

⁹ *See* 47 U.S.C. § 224(a)(1); 47 CFR § 1.1402(a); *see generally id.* §§ 1.1401-1.1416.

¹⁰ 47 U.S.C. § 224(c)(3).

¹¹ *See* Complaint at 6, para. 16. *See also* Appalachian Power Company’s Answer to Comcast Cable Communications, LLC’s Pole Attachment Complaint and Request for Assignment to Accelerated Docket, Proceeding No. 25-330, Bureau ID Number EB-25-MD-002, at 9, para. 16 (filed Dec. 15, 2025) (Answer).

¹² 47 U.S.C. § 224(b).

6. There is a multi-stage process for new attachers to access utility poles for use in broadband deployment and the provision of other services like cable or telecommunications.¹³ The new attacher must apply to the pole owner for access, after which the pole owner must conduct any necessary surveys of the poles, and then either accept or reject the application.¹⁴ If the owner accepts, it must provide the new attacher an estimate of “all make-ready charges” required to effectuate the desired access.¹⁵ The new attacher may choose to withdraw its application, or accept the estimate and provide payment, in which case the parties will proceed with make-ready work on the agreed poles.¹⁶ If the final cost of the make-ready work differs from the estimate, the utility can present a detailed, itemized final invoice of the actual make-ready charges incurred.¹⁷

7. In this proceeding, Comcast (the new attacher) represents that it applied to APCO (the pole owner) for access to many of APCO’s poles in order for Comcast to meet BEAD buildout obligations.¹⁸ This dispute arises from the cost estimate stage, in which the parties have been unable to agree on the share of the pole replacement and make-ready costs that Comcast should bear as the new attacher after the pole is replaced.¹⁹ By resolving this dispute on an accelerated basis and providing guidance on the appropriate make-ready costs, the Commission is helping parties move more quickly to the broadband deployment stage, encouraging investment, and helping achieve high-speed broadband availability.

8. Some of the APCO poles to which Comcast seeks attachment have preexisting safety, capacity, or engineering violations, which APCO claims stem from the presence of a third-party violator.²⁰ The record does not contain detailed evidence of the types of safety or engineering violations on these poles to which the disputed policy applies. Comcast has asserted that a number of poles have clearance issues.²¹ APCO asserts that many of the violations are loading violations, where an attacher

¹³ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7708, para. 7 (2018) (*2018 Wireline Infrastructure Order*); 47 CFR §§ 1.1411(d)-(k).

¹⁴ See *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7708-09, para. 7.

¹⁵ See *id.*, 33 FCC Rcd at 7709, para. 7. The Commission’s rules define the term “make-ready” as “the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.” 47 CFR § 1.402(o). “Make-ready charges” are thus the non-recurring charges caused by accommodating the new attachment on a pole, and because the utility is directly compensated for those costs at this stage, the make-ready costs are excluded from expenses used in calculating recurring pole attachment rates. See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11131-32, para. 7 (2017); 47 CFR § 1.1406(b).

¹⁶ See *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7709, para. 7.

¹⁷ 47 CFR § 1.1411(e)(3).

¹⁸ See Complaint at 7, paras. 20-21.

¹⁹ See *id.* at 6, 9-10, 12-13, paras. 9, 26-27, 36-43 (explaining that Comcast is awaiting approval of applications for access to thousands of APCO poles in Virginia, and that Comcast and APCO have repeatedly disputed the cost sharing aspect of the attachment process in forums including the West Virginia Public Service Commission, unsuccessful mediation with the FCC, and now via Commission complaint).

²⁰ See *id.* at 2, 11, 13, paras. 2, 32, 43; Policy at 1-2. APCO’s policy indicates that the preexisting violations it covers stem from a “pre-existing violator” that could be removed from the pole for remediation of the violation(s) afflicting the pole. Indeed, eight places in the policy letter mention a third-party “violator” as an entity whose equipment must be altered in some way (or the pole replaced) to make room for a new attacher (like Comcast) to attach.

²¹ Answer, Ex. 1 at 3 (Letter from T. Scott Thompson, counsel for Comcast, to Rosemary McEnery, Market Disputes Resolution Division, FCC Enforcement Bureau (Sept. 16, 2025)).

places equipment that is too heavy under applicable safety and engineering guidelines.²² In either case, the potential remedies for these violations include removal of the violative attachments or installing a replacement pole that is enhanced in some way, such as increasing width, strength, and/or height.²³

9. APCO's policy concerns any pole "with pre-existing violations, but which would still require replacement to accommodate a new attachment even if the pre-existing violation was removed from the pole."²⁴ Both parties agree with this description of the policy's scope.²⁵ The poles at issue in this proceeding fall within the policy's scope, i.e., they are poles that possess preexisting safety or engineering violations caused by an existing attacher, but would require replacement to accommodate Comcast even if the preexisting violations were removed.²⁶

10. Before the current policy took effect on September 5, 2025, APCO applied a policy that placed a more demanding requirement on applicants that sought access to poles with preexisting third-party violations.²⁷ The former policy had two key characteristics. First, like the current policy, it required new attachers to pay up front 100% of the make-ready replacement costs to remediate the preexisting third-party violation and to modify the pole to accommodate the new attachment.²⁸ Second, the new attacher also was required to remove the third party's violating equipment in order to "render the pole violation-free."²⁹

11. On May 22, 2025, Comcast filed a formal complaint with the West Virginia Public Service Commission (WV PSC) challenging APCO's former policy.³⁰ Comcast argued that APCO's former policy unlawfully delayed access to poles, that APCO failed to conduct make-ready operations within lawful timelines required by state law, and that the former policy represented an unjust and unreasonable condition of pole access.³¹ APCO argued that its requirements for up-front make-ready

²² See, e.g., Answer at 40, para. 80.

²³ See *id.* at 3, para. 4.

²⁴ Policy at 1. Neither Comcast nor APCO has presented evidence that any violative attachments are being removed from the poles to which Comcast seeks attachment, even though Comcast initially began seeking access many months ago. To the extent that all violative attachments actually were removed from a pole (such that there were no longer any preexisting violations of safety or engineering standards), but the pole nonetheless could not accommodate a new attacher because it lacked capacity or would introduce a violation of safety or engineering guidelines, then the new attacher's request would cause the need for a pole replacement, and the utility could charge the new attacher for the full cost of the pole replacement. See 47 CFR § 1.1411(e)(3)-(4) (although a utility "may not charge" new attachers for prior violations caused by third-party equipment, it may charge new attachers for make-ready costs associated with their attachment to the utility's infrastructure").

²⁵ See Complaint at 20, para. 69 ("At the time Comcast applies to attach, the pole has a preexisting violation that requires a pole replacement to remedy, regardless of whether Comcast attaches or not."). See also Answer at 21, para. 49 ("[T]he policies apply only when a pole replacement would be required even if the preexisting violation is removed from the pole.") (emphasis omitted).

²⁶ See Complaint at 19, para. 68. See also Answer at 21, para. 49. Our ruling in this case is thus limited to a general application of the Act and the Commission's rules to the costs billed for the poles at issue under APCO's policy. Further, because the record does not contain information on any particular APCO poles to which Comcast seeks access, we also are not making any factual determinations as to any particular pole or set of poles, i.e., the actual cause or nature of any violation, or the actual allocation of cost on a particular pole or set of poles.

²⁷ See Complaint at 2, 7-9, paras. 2, 23-25.

²⁸ See *id.* at 8-9, para. 25.

²⁹ *Id.* at 8, para. 25.

³⁰ See *id.* at 9, para. 26.

³¹ See *id.*, Ex. 5 at 6.

costs were not unjust restrictions or delays to access, because APCO could otherwise simply deny access for capacity reasons.³²

12. The WV PSC ruled against APCO on July 28, 2025, explaining that APCO's former policy unlawfully shifted remediation costs for existing violations onto new attachers and delayed pole access.³³ In doing so, the WV PSC relied in part on Commission precedent explaining that new attachers are "generally not responsible for the make-ready costs associated with installing the replacement pole" where there are existing violations, unless the pole owner can show that there are "incremental make-ready costs" that are "specifically associated" with "accomodat[ing] the new attachment."³⁴ Only then can the pole owner "charge the prospective attacher for such incremental make-ready costs."³⁵

C. The proceeding before the Commission

13. On July 22, 2025, Comcast filed a Request for Review with the Commission's Rapid Broadband Assessment Team (RBAT),³⁶ concerning Comcast's broadband deployment efforts in Virginia and alleging that APCO's former policy violated section 224 of the Act and section 1.1411 of the Commission's rules.³⁷ The parties entered into RBAT-supervised mediation on August 4, 2025,³⁸ but failed to resolve their dispute.

14. On September 5, 2025, APCO issued a letter to all Tennessee and Virginia providers (including Comcast) announcing that its former policy was "superseded and replaced" by the current policy, effective immediately.³⁹ Under APCO's current policy for processing new attachment requests for poles possessing preexisting third-party violations (i) APCO requires that the new attacher pay 100% of the "make-ready pole replacement cost" to resolve the preexisting violation on the old pole; (ii) APCO then proceeds with the pole replacement, allowing the new attacher's equipment to be added afterward; (iii) the preexisting violator may elect to leave the remaining "stub pole" and transfer to the new pole if it pays 50% of the full pole replacement cost to APCO;⁴⁰ and (iv) if the preexisting violator elects to leave

³² See *id.*, Ex. 5 at 6.

³³ See *Comcast Cable Comm'ns Corp. v. Appalachian Power Co.*, Case No. 25-0463-CTV-E-POLE, 2025 WL 2438546 (W.Va. P.S.C. July 28, 2025); see also Complaint, Ex. 5 at 12-13.

³⁴ See *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379, 12408, para. 48 (2023) (*Fourth Wireline Infrastructure Order*); Complaint, Ex. 5 at 13.

³⁵ *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12408, para. 48. West Virginia rules track the FCC's rules when discussing whether pole owners may shift remediation costs of existing pole violations onto to new attachers as a condition of access. Section 1.1411(e)(4) of the Commission's rules explains that "[a] utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance." 47 CFR § 1.1411(e)(4). West Virginia law replicates this language word-for-word. See W.Va. Code R. § 150-38-10.4.4. See also Complaint at 9 n.24.

³⁶ The Commission established the RBAT in 2023 to "expedite the resolution of pole attachment disputes" and thereby facilitate broadband deployment. See 47 CFR § 1.1415; 47 U.S.C. § 224(b)(1)-(2); see *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12380, para. 2. The RBAT prioritizes pole attachment disputes that are "impeding or delaying an active broadband deployment project," such as one where BEAD funding is involved. See 47 CFR § 1.1415(a)-(b). Upon receipt of a request, RBAT staff endeavor to reach a mutually-agreeable resolution by promptly engaging the parties in mediation. See 47 CFR §§ 1.1415(b), 1.737. When mediation is unsuccessful, a complainant may file a complaint and also can seek to have its complaint heard on the Commission's Accelerated Docket. See 47 CFR §§ 1.1415(e), 1.736.

³⁷ RBAT Request at 2-4.

³⁸ See Letter from J. Adam Suppes, Market Disputes Resolution Division, FCC Enforcement Bureau, to T. Scott Thompson, counsel for Comcast, and Robin Bromberg, counsel for APCO (Aug. 4, 2025) (Mediation Letter).

³⁹ See Policy at 1.

the stub pole and pays APCO, APCO will transfer that 50% to the new attacher as a true up.⁴¹ As discussed above, the current policy only applies to poles that would *still* require replacement to accommodate a new attachment even if the violative third-party attachments were removed.⁴²

15. On November 25, 2025, Comcast filed its Complaint with the Commission.⁴³ The Complaint alleges that APCO's policy violates the Act and Commission rules by shifting to new attachers like Comcast the burden of policing APCO's poles and remediating preexisting safety violations on those poles.⁴⁴ Specifically, Comcast alleges that section 224 of the Act and section 1.1411(e)(4) of our rules prohibit APCO from requiring Comcast to pay up front the entire cost of replacing poles with such preexisting violations, with only a possible 50% recovery of that cost.⁴⁵ In addition, Comcast more broadly argues that it may not be charged for any portion of the cost of a replacement pole where there is a preexisting violation.⁴⁶

16. APCO answered Comcast's Complaint on December 15, 2025. In its Answer, APCO disagrees with Comcast's cost allocation arguments and contends that its policy is a means of expediting—not delaying—access to poles encumbered with preexisting third party violations.⁴⁷

17. Comcast replied on December 22, 2025, reiterating its objection to bearing any financial burden stemming from “violations that existed before its application.”⁴⁸ Nevertheless, the Reply argues in the alternative that, if the Commission “disagrees with Comcast's position,” Comcast could be responsible for “the incremental cost of the additional amount of bare pole space used by Comcast.”⁴⁹

18. For the reasons explained below, we grant Count I of the Complaint in part. Specifically, we hold that APCO's policy unlawfully applies terms and conditions for the pole attachments at issue that

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⁴⁰ A “stub pole” is a shortened pole that remains adjacent to a new pole after installation. *See* Complaint at 3, para. 15 (explaining that preexisting attachers would have to transfer from their previous location [the stub] to the new pole). The stub pole remains in place to retain pole attachments until all preexisting attachers transfer to the newly installed pole. *See* Policy at 1-2.

⁴¹ *See* Policy at 1.

⁴² *See id.* at 1.

⁴³ The Complaint contains two counts. Part of Count I and all of Count II contain allegations as to APCO's former policy, but this policy is not being enforced or applied to any of the poles at issue in this dispute. *See* Policy at 1 (stating that the former policy is overridden “immediately” in Virginia); Answer at 55, para. 108 (“APCo does not intend to enforce the Original Policy in Virginia [. . .]. The Revised Policy replaced and superseded the Original Policy.”); *see also* Answer, Ex. 2, Declaration of D. Robinson at 5, para. 10 (APCo0019) (Robinson Decl.). In its Reply, Comcast acknowledged that APCO was no longer enforcing its superseded policy, and Comcast asked that the Commission find that the “Revised Policy [i.e., the policy adopted in September 2025] violates Section 1.1411(e)(4) of the Commission's rules and Commission precedent.” Reply of Comcast Cable Communications, LLC to Appalachian Power Company's Answer to Pole Attachment Complaint and Request for Assignment to Accelerated Docket, Proceeding No. 25-330, Bureau ID Number EB-25-MD-002 (filed Dec. 22, 2025) (Reply) at 2 & n.2. Because the former policy is not being enforced, and Comcast, as stated in its Reply, is now seeking relief only as to the current policy, we need not evaluate the legality of the former policy in this Order. Accordingly, we dismiss without prejudice Count II and the portions of Count I relating to the former, superseded policy, and our references in this order to APCO's “policy” refer to the current policy.

⁴⁴ *See* Complaint at 1, 11, para. 32.

⁴⁵ *Id.* at 1, 17, 34, paras. 57-59, 106.

⁴⁶ *See infra* note 95.

⁴⁷ Answer at ii.

⁴⁸ Reply at 2.

⁴⁹ *Id.* at 2-3, 18.

are not just and reasonable under Section 224(b) of the Act, and that the policy violates sections 1.1411(e)(4) and 1.1408(b) of the Commission's rules regarding preexisting violations to poles and cost allocation rules for pole replacements.

III. DISCUSSION

A. Commission precedent prohibits pole owners from requiring new attachers to pay to correct preexisting safety or engineering violations

19. Under section 224 of the Act, Congress provided that the Commission “shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable.”⁵⁰ To do so, Congress authorized the Commission both to “prescribe by rule regulations to carry out” these standards and to “hear and resolve complaints concerning such rates, terms, and conditions.”⁵¹

20. In the 1996 *Local Competition Order*, although not expressly addressing preexisting violations, the Commission promulgated rule 1.1408 and offered general guidance for allocating pole attachment modification costs, including pole replacements.⁵² The Commission explained that:

section 224(h) imposes the cost of modifying attachments on those parties that benefit from the modification. If, for example, a cable operator seeks to make an attachment on a facility that has no available capacity, the operator would bear the full cost of modifying the facility to create new capacity, such as by replacing an existing pole with a taller pole.⁵³

The Commission codified this principle into its regulation, which also provides that “[i]f a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.”⁵⁴

⁵⁰ 47 U.S.C. § 224(b)(1), (c).

⁵¹ *Id.* §§ 224(b)(1), (b)(2). When first enacting section 224(b)(1) in 1978, the Senate Committee explained that it purposefully did not want to provide “specific guidelines” for the Commission to use in determining “whether any term or condition for [] pole attachments was just and reasonable.” S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 21 (1977). Rather, consistent with the longstanding use of the “just” and “reasonable” language in other regulatory statutes, Congress expected that the Commission would use its “informed judgment and discretion” to decide these “questions of fact.” See *Swayne & Hoyt Ltd. v. United States*, 300 U.S. 297, 303-04 (1937); *Virginian Ry. Co. v. United States*, 272 U.S. 658, 665-66 (1926); *ICC v. Union Pacific R. Co.*, 222 U.S. 541, 546-48 (1912).

⁵² *Implementation of the Local Competition Provisions in the Telecommunications Act Of 1996*, First Report and Order, 11 FCC Rcd 15499, 15518, 16059, paras. 36, 1122 (1996) (*Local Competition Order*). Although originally codified at 47 CFR § 1.1416, the modification cost regulation now appears in 47 CFR § 1.1408.

⁵³ *Local Competition Order*, 11 FCC Rcd at 16077, para. 1166 (in that case, “[o]ther parties with attachments would not share in the cost, unless they expanded their own use of the facilities at the same time. If the electric utility decides to change a pole for its own benefit, and no other parties derive a benefit from the modification, then the electric company would bear the full cost of the new pole.”).

⁵⁴ 47 CFR § 1.1408(b) (“The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification as provided in subpart J of this part, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.”).

21. Since then, the Commission has used both its adjudicative and rulemaking authority to address the just and reasonable allocation of costs when an attacher seeks access to a pole with preexisting safety and engineering violations. In a 1999 complaint proceeding, for example, the Cable Services Bureau considered a claim raised by an attacher that it was being denied access to poles “that need replacement” due to violations of safety standards that arose “prior to attachment” by the complainant and that were not caused by its proposed attachments.⁵⁵ The Bureau held that the “[c]orrection of the pre-existing code violation is reasonably the responsibility of [the existing attacher, which was the utility] and only additional expenses incurred to accommodate [the complainant’s] new attachment to keep the pole within [safety and engineering] standards should be borne by [the new attacher].”⁵⁶

22. Subsequently, in a 2003 complaint proceeding, the full Commission held that, absent an arms-length agreement to the contrary, it is “an unjust and unreasonable term and condition of attachment, in violation of section 224 of the Act, for a utility pole owner to hold an attacher responsible for costs arising from the correction of other attachers’ [prior] safety violations.”⁵⁷ The attacher in that case complained that the utility was improperly billing “the replacement of poles” when “pole changeouts . . . need to be performed whether or not [the complainant] attaches to the poles.”⁵⁸

23. In 2018, after considering public comments as well as recommendations from a committee formed to examine how the Commission could amend its rules to promote expanded deployment of broadband services, the Commission invoked its rulemaking authority to issue a new regulation to address poles with preexisting violations. The rule provides:

A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.⁵⁹

The Commission explained that this rule was needed because, “[a]lthough utilities have sometimes held new attachers responsible for the costs of correcting preexisting violations, this

⁵⁵ *Kansas City Cable Partners v. Kansas City Power & Light Co.*, Consolidated Order, 14 FCC Rcd 11599, 11606-07, para. 19 (Cable Serv. Bur. 1999) (*Kansas City Cable*).

⁵⁶ *Id.*, 14 FCC Rcd at 11606-07, para. 19. In addition, in 2000, the Cable Services Bureau adjudicated a complaint where the pole owner “imposed the costs of all make-ready work associated with its poles on Complainant, even though the work may have been required only to correct another attaching entity’s pre-existing safety violations,” when it should have allocated the costs “among the attaching entities that are responsible for these costs.” *Cavalier Tel., LLC v. Virginia Elec. & Power Co.*, Order and Request for Information, 15 FCC Rcd 9563, 9571, para. 16 (Cable Serv. Bur. 2000) (*Cavalier Tel.*). The pole owner contended that “it is not required to ensure that other attachers pay their share of correcting safety violations.” *Id.* The Bureau rejected the pole owner’s claim as “unacceptable,” and held that the attacher is “only responsible for make-ready costs generated by its own attachments. [The pole owner] is prohibited from holding [the attacher] responsible for costs arising from the correction of [other attachers’] safety violations.” *Id.* The Enforcement Bureau later vacated this order because of a settlement, but explained that its vacatur “does not reflect any disagreement with or reconsideration of any of the findings or conclusions” in the order. *Cavalier Tel., LLC v. Virginia Elec. & Power Co.*, Order, 17 FCC Rcd 24414, 24420, para. 19 (Enf. Bur. 2002).

⁵⁷ *Knology, Inc. v. Georgia Power Co.*, Memorandum Opinion and Order, 18 FCC Rcd 24615, 24629, para. 37 (2003) (*Knology*).

⁵⁸ *Id.*, 18 FCC Rcd at 24629-30, paras. 36, 38. See also *Salsgiver Communications, Inc. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 20536, 20546, para. 29 & n.87 (Enf. Bur. 2007) (“[C]osts not required to accommodate the attacher may not be imposed on the attacher.”).

⁵⁹ 47 CFR § 1.1411(e)(4).

practice is inconsistent with our long-standing principle that a new attacher is responsible only for actual costs incurred to accommodate its attachment.”⁶⁰

24. More recently, the Commission addressed the costs of pole replacements under its cost allocation rule in section 1.1408(b).⁶¹ In 2021, the Wireline Competition Bureau issued a declaratory ruling clarifying that, consistent with the cost causation and cost allocation principles in section 1.1408(b), it is unlawful to “require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made.”⁶² In 2023, the Commission reaffirmed the Bureau’s reading of the rule and declared that, in such instances, “based on cost causation principles, the prospective attacher is responsible for the incremental cost of a taller or stronger pole needed to support its new facilities, not the cost to replace the defective or deteriorated pole with an equivalent-sized replacement pole.”⁶³

25. In sum, Commission precedent makes one overriding principle clear: Under section 224, pole owners cannot saddle new attachers with the costs of remedying violations that existed before the new attachers sought access. Because APCO’s policy does precisely that, we find it to be unlawful.⁶⁴

⁶⁰ 2018 *Wireline Infrastructure Order*, 33 FCC Rcd at 7766-67, para. 121 (emphasis added) (citing *Kansas City Cable*, 14 FCC Rcd at 11606-07 and *Knology*, 18 FCC Rcd at 24615) (footnotes and subsequent history omitted). The rule was challenged, and the Ninth Circuit upheld it, finding that the rule “prevents the utilities from passing the costs off on entities that did not cause the safety problem in the first place.” *City of Portland v. United States*, 969 F.3d 1020, 1051 (9th Cir. 2020).

⁶¹ 47 CFR § 1.1408(b).

⁶² *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, Declaratory Ruling, 36 FCC Rcd 776, 780–81, para. 8 (2021) (internal citations omitted) (2021 *Pole Replacement Declaratory Ruling*); *id.* (“Even if the new attacher might ‘benefit’ from that pole replacement, the pole replacement is not ‘necessitated solely as a result’ of the new attachment, and therefore the utility may not use the cost causation language of section 1.1408(b) to impose all make ready costs of that pole replacement on the new attacher.”) (internal citations omitted). In 2022, the Commission issued a Notice of Proposed Rulemaking that sought comment on a variety of issues including “the allocation of costs for pole replacements.” *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 4144, 4145, para. 1 (2022) (*Second Further Notice*). The Commission addressed some issues raised in the *Second Further Notice*, but other issues remain pending. See *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12382, para. 6 & n.20.

⁶³ *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12382, 12408, paras. 5, 48 (internal quotation omitted). In 2025, the Commission considered petitions for reconsideration of the *Fourth Wireline Infrastructure Order*, but denied reconsideration of this aspect of its order. See *Fifth Wireline Infrastructure Order*, 40 FCC Rcd at 5468-69, paras. 117-18.

⁶⁴ The dispute here concerns section 224(b)(1) of the Act, which requires the Commission to ensure that the rates, terms, and conditions of pole attachments are just and reasonable, rather than section 224(f), which requires a utility to provide eligible attachers with nondiscriminatory access to the utility’s poles. This is because, under APCO’s policy, it is not denying Comcast access to poles, but rather is granting access on rates, terms, and conditions that Comcast contends are unreasonable. See Complaint at 34, para. 106 (alleging an unjust and unreasonable term and condition); Answer at 1, para. 2 (agreeing that the dispute is not about access). Although the parties at times mention section 224(f) and denials of access, see, e.g., Complaint at 29-30, paras. 93-98; Answer at 50-53, paras. 93-98, this Order does not address that provision of the Act. Further, although APCO threatens that, if it cannot charge new attachers for the costs of replacing poles subject to its policy, it may deny access entirely, that has not yet occurred, and we thus do not address it in this Order. We note, however, that APCO’s declarant recognizes that, if APCO were to deny access to Comcast on the grounds that Comcast’s proposed attachment violates capacity or safety standards, APCO could not “favo[r] the preexisting violator over the new attacher,” Robinson Decl. at 7, para. 14 (APCo0021), because the Act’s plain language requires that such denials be “on a non-discriminatory basis.” 47 U.S.C. § 224(f)(2).

B. APCO's policy is unjust and unreasonable under section 224 of the Act and violates sections 1.1411(e)(4) and 1.1408(b) of the Commission's rules by requiring Comcast to pay up front the full cost of pole replacements caused by third parties

26. APCO's policy is unlawful under section 224 of the Act, sections 1.1411(e)(4) and 1.1408(b) of the Commission's rules, and the Commission orders described above interpreting the Act and the Commission's rules. On its face, APCO's policy requires Comcast to pay "100% of the make-ready pole replacement cost" even when there is a violation by an existing attacher that has caused the pole to lack sufficient clearance or strength under applicable safety and engineering guidelines.⁶⁵ This is unjust and unreasonable under section 224(b)(1) as demonstrated in the above-described Commission decisions applying that section.⁶⁶ In each of those cases, the Commission found that requiring a new attacher to bear the cost of remedying the violation caused by a prior attacher is unreasonable. In particular, in *Knology*, the Commission declared broadly that, absent an agreement to the contrary, it was not just and reasonable under section 224(b)(1) of the Act for a "utility pole owner to hold an attacher responsible for costs arising from the correction of other attachers' [prior] safety violations."⁶⁷ APCO's policy does precisely what the Commission declared to be unjust and unreasonable. Given the express authority Congress provided the Commission in section 224(b)(1) to interpret what conditions to pole attachments are not just and reasonable (and the discretion to proceed either by rule or adjudication), these authorities alone are sufficient to find that APCO's policy is unjust and unreasonable because it holds Comcast responsible for "costs arising from the correction of other attachers' safety violations."⁶⁸

27. APCO's policy also flatly contravenes rule 1.1411(e)(4)'s prohibition on "charg[ing] a new attacher to bring poles . . . into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles . . . were out of compliance because of work performed by a party other than the new attacher prior to the new attachment."⁶⁹ The policy, by its terms, applies to "poles with pre-existing violations," and thus the condition in section 1.1411(e)(4) is met because the poles at issue were "out of compliance because of work performed by a party other than the new attacher prior to the new attachment."⁷⁰ APCO's policy of charging Comcast up front 100% of the pole replacement cost is flatly inconsistent with the command of the regulation that, when poles are already out of compliance, a "utility may not charge a new attacher to bring poles . . . into compliance" with safety and construction guidelines.⁷¹ APCO's policy likewise ignores the *2021 Pole Replacement Declaratory Ruling*'s prohibition on requiring a new attacher "to pay the entire cost of a pole replacement" when a pole's safety violation necessitates replacement "at the time a request for a new or modified attachment is made."⁷²

28. Even though its policy is to charge new attachers upfront the full costs of a pole replacement where there is a preexisting violation, APCO contends that its policy complies in full with

⁶⁵ See Policy at 1.

⁶⁶ See 47 U.S.C. § 224(b)(1); *Knology*, 18 FCC Rcd at 24629, para. 37; *Cavalier Tel.*, 15 FCC Rcd at 9571, para. 16; *Kansas City Cable*, 14 FCC Rcd at 11606-07, para. 19.

⁶⁷ *Knology*, 18 FCC Rcd at 24629, para. 37.

⁶⁸ 47 U.S.C. § 224(b); *Knology*, 18 FCC Rcd at 24629, para. 37; see *Cavalier Tel.*, 15 FCC Rcd at 9571, para. 16; *Kansas City Cable*, 14 FCC Rcd at 11606-607, para. 19 (finding a new attacher not responsible for correcting pole safety violations that arose prior to its attachments). Although neither party addresses these Commission cases, we find them to apply as valid precedents relevant to this dispute.

⁶⁹ 47 CFR § 1.1411(e)(4).

⁷⁰ Policy at 1; 47 CFR § 1.1411(e)(4).

⁷¹ See 47 CFR § 1.1411(e)(4).

⁷² *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8 (applying 47 CFR § 1.1408(b)).

Commission regulations and precedents. APCO's primary argument in defense of its policy is that, at the time the new attacher applies for access to the poles in dispute, that new attacher is "the only then-known beneficiary or cost-causer of the replacement pole."⁷³ APCO insists that the preexisting violations do not always require a pole replacement because the existing attacher instead could remove its equipment from the pole.⁷⁴ According to APCO, in that event, a pole replacement would only be needed to accommodate Comcast.⁷⁵

29. We disagree. The problem with APCO's argument is that it depends on a future event that may never occur—that is, an existing attacher removing its violative attachment. APCO has presented no evidence that the existing attachers responsible for the preexisting violations on the poles at issue have removed their attachments, even though Comcast began submitting applications for the poles in dispute many months ago.⁷⁶ On the contrary, APCO's policy acknowledges that a preexisting attacher may never do so: The policy states that the violative attachment may remain on a "stub pole" after Comcast pays for the pole replacement.⁷⁷ APCO's argument is, therefore, directly at odds with authorities prohibiting utilities from imposing the full cost of a pole replacement on a new attacher when a preexisting violation necessitates replacement "at the time a request for a new or modified attachment is made."⁷⁸ At the time that Comcast sought access to the poles in dispute, the poles had a preexisting violation, and the attachment or attachments that were causing the violation remained on the pole. Given this reality, it is unreasonable for APCO to assume that those attachments might be removed and look to Comcast, as a new attacher, to fund the full cost of a replacement pole.

30. Rather than seeking the full pole replacement costs up front from the new attacher, APCO should instead be pursuing remedies against the violative attacher, including, for example, seeking to recover the pole replacement costs from the existing attacher that caused the violation. As the Commission has previously explained, when a pole has a preexisting violation, "the party that is responsible for the violation is responsible for the costs of correcting the violation, and the utility is authorized to seek recovery from the violating party."⁷⁹ The Commission's rules and orders have also provided that when "a modification, such as a pole replacement, is undertaken for the benefit of a particular party, under cost causation principles, the benefiting party is obligated to assume the cost of the modification."⁸⁰ Where an existing attacher has caused a violation on a pole that can be remedied only by removal of the attachment or pole replacement, failure to remove the violative attachment (as with the poles at issue) necessitates pole replacement. In those circumstances, the pole replacement is undertaken primarily for the benefit of the existing attacher, and thus the utility should pursue remedies against the existing attacher to recover pole replacement costs as explained below.

⁷³ Answer, Summary at ii; *see, e.g., id.* at 2, para. 3.

⁷⁴ *Id.*, Summary at ii; *see id.* at 3, 15, 25, 31, 34, paras. 4, 32, 58, 66, 69.

⁷⁵ *Id.* at 7, 16, paras. 9, 32.

⁷⁶ Nor is there evidence that APCO has removed violative attachments. Indeed, APCO admits that its "contractual rights to remove the preexisting violator in this situation are inconsistent." Robinson Decl. at 4, para. 9 (APCo0018).

⁷⁷ Policy at 1-2.

⁷⁸ *See 2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8. APCO's further assertion that the remedy of removing the violative attachment is less expensive than pole replacement is irrelevant to this dispute, as relative cost is not a factor under the governing law. *See Answer* at 3, para. 4. In all events, even if this remedy were less expensive, the record does not establish that the remedy is actually occurring in practice.

⁷⁹ *Second Further Notice*, 37 FCC Rcd at 4149, para. 12.

⁸⁰ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 777, para. 4 (internal citation omitted).

31. We recognize that the Commission's rules require utilities to respond to a request for access to a pole under specified deadlines.⁸¹ APCO's policy is based on its view that it must first seek recovery of pole replacement costs from the new attacher because, under the deadlines, there is insufficient time for it to notify the existing attacher of the violation and allow it to remediate it by removing the equipment or by paying for the costs to replace the pole.⁸² To the extent the timing for access to poles creates a problem, however, we think the solution proposed in APCO's policy—to assume that the violative attachments will be removed and that new attachers should fund the full costs of pole replacements—transgresses the Commission's well-established directive prohibiting pole owners from delaying make-ready while they pursue recovery to address violating attachments.⁸³

32. APCO also defends its policy on the basis that it provides a new attacher with the potential of a 50% refund.⁸⁴ Even so, this feature of the policy is insufficient to cure it. As an initial matter, the availability of a potential future refund cannot make whole a new attacher that is required to pay up-front the full cost of pole replacement, despite not owing that full amount. This is all the more true where the new attacher's ability to obtain the partial refund is beyond its control.⁸⁵ As the pole owner, APCO "cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation"⁸⁶—and it may not impose this cost on the new attacher.⁸⁷ What is more, APCO's establishment of a 50% figure for its potential refund, which appears to be based solely on APCO's assessment that "the new attacher and preexisting violator benefit equally from the new space created by the pole replacement,"⁸⁸ is inconsistent with our cost allocation and cost causation rules, as discussed at *infra* section III.C.⁸⁹

33. APCO also tries to defend its policy by asserting that, given the large number of poles it owns, as well as the types of violations that exist on those poles (i.e., violations that cannot be discovered easily, even in periodic pole inspections), it does not know, and reasonably cannot know, whether particular poles have preexisting violations until it receives a new request for access and conducts a survey.⁹⁰ Comcast argues that utilities have the ongoing duty to identify and remedy safety and engineering violations on poles they own.⁹¹ It is not necessary, however, to address this issue in order to determine that APCO's policy is unreasonable and contrary to the rules. Even assuming, *arguendo*, that APCO cannot reasonably discover preexisting violations until new attachers seek access, the question

⁸¹ 47 CFR § 1.1411.

⁸² See generally Answer at 19-21, para. 49. The Commission's rules do not address the procedures for removal of attachments other than to require utilities to provide an attacher written notice of 60 days before removing facilities pursuant to the terms of a pole attachment agreement. 47 CFR § 1.1403(c).

⁸³ 2018 Wireline Infrastructure Order, 33 FCC Rcd at 7767, para. 122 (explaining that "a utility cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation"). We note that, under the rules, after make-ready is complete and if the final cost of the work differs from the estimate, a utility should present a detailed, itemized final invoice of the actual make-ready charges incurred. 47 CFR § 1.1411(e)(3).

⁸⁴ See Answer at 2-3, 21, 25-26, 54, paras. 3, 4, 49, 58, 106.

⁸⁵ See Policy at 1-2.

⁸⁶ See 2018 Wireline Infrastructure Order, 33 FCC Rcd at 7767, para. 122.

⁸⁷ See 47 CFR § 1.1411(e)(4).

⁸⁸ See Answer at 28, para. 62.

⁸⁹ These include the rules providing that the utility and other attachers that elect to use the pole replacement as an opportunity to modify their attachments may need to share in the replacement costs. See, e.g., 47 CFR § 1.1408(b).

⁹⁰ See Answer at 40-41, 49-50, paras. 80, 92.

⁹¹ Complaint at 29, para. 94.

presented by its policy is whether, upon a request for access and its discovery of a preexisting violation, APCO may reasonably and lawfully charge Comcast or other new attachers up front for the full cost of pole replacements (subject to at most a 50% refund). It may not. As the Commission previously held, the “new attachment may precipitate correction of the preexisting violation, but it is the violation itself that causes the costs, not the new attacher.”⁹² As discussed above, rather than assess the full replacement costs up front from the new attacher, APCO must take other steps when it learns of preexisting violations, such as pursuing remedies against the existing attacher.

34. APCO also asserts that the Commission’s rules and its *2018 Wireline Infrastructure Order* do not obligate a pole owner to correct a preexisting violation by a third party at its own expense before obtaining any reimbursement.⁹³ It contends, relatedly, that its policy is necessary to ensure that APCO’s electric ratepayers do not bear the expense associated with curing pole violations caused by communications and cable attachers.⁹⁴ We reaffirm that the costs associated with correcting preexisting violations on poles—whether removing attachments or replacing poles—should be borne by the entity or entities that cause the violation. If the utility does not cause these issues, then neither it nor its ratepayers should ultimately bear those costs. We support solutions that require existing attachers to remedy violations that they in fact cause. However, as explained above, for at least 25 years, the Act and the Commission’s rules have prevented a utility from recovering the costs of preexisting violations from new attachers, which by definition cannot cause violations that exist before they even seek access to a pole.

C. Cost causation and cost sharing principles require a new attacher to pay incremental costs that enable it to attach its equipment, but preclude it from being charged any of the costs needed to remedy preexisting violations

35. Comcast’s Complaint can be read to argue broadly that, for the poles at issue, it “cannot be charged anything,” and that the entire cost of a new pole that replaces a pole with preexisting violations should be borne solely by existing attachers, including the utility.⁹⁵ Comcast’s argument is

⁹² *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766-67, para. 121; *see also 2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 779, para. 6 (explaining that “utilities may not require requesting attachers to pay the entire cost of pole replacements that are not necessitated solely by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted”).

⁹³ *See Answer at 18-19, 23, 30-31, paras. 48, 55, 64* (quoting in part Complaint Ex. 10 at 5 (Cst-0093) (July 26, 2018 Letter), and Complaint at Ex. 9 at 3-4 (Cst-0085-Cst-0086) (July 23, 2018 Letter)).

⁹⁴ Complaint at 14, 16, paras. 32, 35. The parties devote considerable resources to contesting whether *ex parte* communications filed by AEP in 2018, after the release of a draft version of the *2018 Wireline Infrastructure Order*, foreclose APCO’s policy. *See, e.g.,* Complaint at 19-21, paras. 67-73; Answer, at 31-34, paras. 67-73. The Commission “reject[ed]” and disagree[d] with aspects of the AEP *ex parte* letters in its *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7767, para. 122 n.457. Further, APCO “admits that the Commission did not amend the 2018 Pole Attachments Order as proposed in AEP Service Corp.’s *ex parte* advocacy on the issue of preexisting violations.” Answer at 19, para. 49. Nevertheless, our determination that APCO’s current policy, adopted in 2025, is unreasonable and unlawful does not rest on inferences derived from these *ex parte* filings, and rather applies the Act and the Commission’s precedents and rules to the 2025 policy and the record submitted by the parties that concerns this policy.

⁹⁵ Complaint at 17, para. 60 (arguing that “charging the new attacher *any part* of the pole replacement” would be improper) (emphasis added). Comcast amplifies these arguments in its Reply. *See, e.g.,* Reply at 11 (arguing that section 1.1411(e)(4) “prohibits charging the attacher,” which cannot be charged “any, or a ‘proportionate’ amount,” even if the new attacher will benefit by making the pole available for its attachment); Reply at 18 (arguing the rules “prohibit imposing any cost on the new attacher to replace a pole needed to cure a preexisting violation”). Moreover, in its Reply, Comcast expressly adopts an argument “in the alternative,” contending that “if the Commission disagrees with Comcast’s position and concludes in this case that some amount of the costs can be allocated to Comcast when a pole must be replaced to remedy a preexisting violation, the amount to be allocated must be limited to the incremental cost of the additional amount of bare pole used by Comcast.” Reply at 18. Other parts of Comcast’s pleadings, however, can be read to object to being charged only those costs needed to correct the

(continued....)

based on its view that, in section 1.1411(e)(4), the Commission created a more “specific rule” than section 1.1408(b); Comcast argues that only section 1.1411(e)(4) applies to pole replacements when there is a preexisting violation and provides that the new attacher pays nothing.⁹⁶

36. To the extent that Comcast takes this position, we reject it, and find that both rules apply in concert to the situation in dispute here, i.e., where a pole has a preexisting violation caused by equipment that is not removed, and the utility replaces the pole with a new pole that afterward enables the new attacher to place its equipment.⁹⁷ In this circumstance, section 1.1411(e)(4) makes clear that the new attacher cannot be charged any of the costs of a pole replacement to remedy the violation; rather, those costs should be paid by the existing attacher causing the violation.⁹⁸ Section 1.1408(b) in this context speaks to how to allocate the costs of modifications that go beyond remedying an existing violation (such as installation of a pole that is taller or stronger than needed to remedy the preexisting violation, and that allows for additional new attachments), making a new attacher responsible for a proportional share of those costs.⁹⁹

37. A practical example illustrates these principles: A utility owns a 40-foot pole, but an existing third-party attacher has equipment that violates the standards for clearance with other attachments on the pole. A 45-foot pole would be needed to allow the existing attachments to satisfy clearance standards, and the full cost to install the 45-foot pole is \$5,000.¹⁰⁰ Before this violation is remedied, a new attacher seeks to access the pole, requiring an additional one foot of space for its attachment—meaning that its attachment would not fit on a 45-foot pole. After considering the existing violation and the new attacher’s request for access, the pole owner plans to build a 50-foot replacement pole. The full cost to install a 50-foot pole, including adding the new attachment, is \$5,500.

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preexisting violation. *See, e.g.,* Complaint at 18, para. 61 (arguing that “[i]mposing any part of the cost of correction” on the new attacher is unlawful); Complaint at 33-34, paras. 104-06 (in Count I, alleging that the violation is charging Comcast “the cost to bring poles . . . into compliance”) (emphases added).

⁹⁶ Complaint, at 17, para. 60; *id.* at 25-26, paras. 82-85 (citing *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, para. 121 and arguing that as to preexisting violations, “the Commission’s specific rule (1.1411(e)(4)) governs over the more general cost allocation rule (1.1408(b))”). Although Comcast also argues that sections 1.1408(b) and 1.1411(e)(4) “work together” (Complaint at 26, para. 85; Reply at 11), what it means is that section 1.1408(b) applies “only if” the new attachment causes the need for a new pole, and that only section 1.1411(e)(4) applies to “cases where there is a preexisting third party violation.” *Id.*

⁹⁷ *See, e.g., Montoya v. CRST Expedited, Inc.*, 88 F.4th 309, 323 (1st Cir. 2023) (declining to apply the principle that the “specific provision ordinarily governs” when the “two provisions are not in conflict with one another” and can be “read harmoniously to avoid direct contradiction”); *see also* Answer at 43, para. 83 (“[I]f the Commission intended for Rule 1.1411(e)(4) to override Rule 1.1408(b), rather than intending for the rules to be read *in pari materia*, the Commission would have said so expressly.”).

⁹⁸ 47 CFR § 1.1411(e)(4); *see 2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, para. 121; *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 777, 780, paras. 4, 8; *Knology*, 18 FCC Rcd at 24629, para. 37.

⁹⁹ 47 CFR § 1.1408(b) (“The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. . . . If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment”); *see Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12408, para. 48 (explaining that “the prospective attacher is responsible for the incremental cost of a taller or stronger pole needed to support its new facilities”); *Kansas City Cable*, 14 FCC Rcd at 11606-07, para. 19.

¹⁰⁰ In this example, we assume that the 45-foot pole replacement would be necessitated solely by the preexisting violation caused by the existing attacher. 47 CFR § 1.1408(b).

38. Under the cost principles in the Commission’s rules, the cost to remediate the violation—which the utility should recover from the existing attacher that caused the violation—is \$5,000, the cost of a 45-foot pole. Under section 1.1411(e)(4), none of the costs associated with the installation of a 45-foot pole could be billed to the new attacher, because those costs were incurred to “bring . . . [existing] attachment[s] into compliance” with current safety guidelines.¹⁰¹ However, in this example, under section 1.1408(b), a new attacher “shall share proportionately” in the costs of the 50-foot pole replacement because the taller, 50-foot pole “render[s] possible the added attachment” of the new attacher (as its equipment would not fit on a 45-foot pole).¹⁰² Because section 1.1411(e)(4) makes clear that the new attacher cannot pay any share of the \$5,000 in costs incurred to install a 45-foot pole, a proper reading of the two regulations in concert means that the proportionate share to be paid by the new attacher under section 1.1408(b) must exclude those remediation costs. Of the \$5,500 in total costs to install a 50-foot pole, the new attacher should pay \$500, the difference between the full costs to install a 50-foot pole and the full costs to install a 45-foot pole.

39. Comcast also argues that it and other new attachers should pay nothing “in the case where correction of the preexisting violation requires a taller replacement pole” that can accommodate new attachments by Comcast.¹⁰³ If, for example, a preexisting violation on a 35-foot pole could be remediated with a new 37-foot replacement pole, but the utility purchases and installs a 40-foot replacement pole for reasons of commercial availability, Comcast would contend that it should pay nothing, so long as its attachment to the 40-foot replacement pole does not exceed three feet. We disagree. As in the prior example, the rules—when properly read in tandem—preclude Comcast from being assessed any of the costs of a 37-foot pole, because these are the costs that were incurred to “bring . . . [existing] attachment[s] into compliance” with current guidelines. However, Comcast can be billed the difference in costs between installing a 37-foot pole and installing a 40-foot pole because it benefits directly from the additional 3 feet of space.¹⁰⁴

40. As these examples illustrate, sections 1.1411(e)(4) and 1.1408(b) can be read in harmony, and, in doing so, these regulations do not prohibit the billing of any charges whatsoever to the new attacher on the poles at issue in this dispute. Arguments to the contrary are inconsistent with the text of the regulations and with our longstanding precedents. Starting with section 1.1411(e)(4), the text does not bar all charges to a new attacher.¹⁰⁵ Instead, section 1.1411(e)(4) bars the charges needed to remediate preexisting violations, i.e., “to bring poles, attachments, or third-party equipment into compliance with” current safety or engineering standards when there was a preexisting violation.¹⁰⁶ Those costs, as explained above, should be recovered from the existing attacher that caused the violation. The new

¹⁰¹ 47 CFR § 1.1411(e)(4).

¹⁰² *Id.* § 1.1408(b).

¹⁰³ Complaint at 28, para. 90.

¹⁰⁴ 47 CFR § 1.1411(e)(4). Comcast claims that, in this situation, it “has not even ‘caused’ the extra pole height.” Complaint at 28, para. 90. However, because of the extra pole height, Comcast “obtain[s] access” to the pole and “directly benefit[s] from” the pole replacement by adding its new attachment. 47 CFR § 1.1408(b). Because Comcast falls squarely within the plain text of section 1.1408(b), it is among the parties that “shall share proportionately in the cost of modifying the facility.” *Id.*

¹⁰⁵ 47 CFR § 1.1411(e)(4). Although Comcast highlights the language in section 1.1411(e)(1) saying that a “utility may not charge” a new attacher, *see* Complaint at 25, para. 83, the complete text of the rule explains the types of costs that a utility may not charge to a new attacher.

¹⁰⁶ 47 CFR § 1.1411(e)(4) (“A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.”) (emphasis added); *see also* Answer at 27, para. 60.

attacher cannot be charged the costs to correct the violation, but under Section 1.1408(b) it can be charged the incremental costs associated with installation of a pole that is taller or stronger than needed to remedy the preexisting violation, and that allows for its additional new attachments.¹⁰⁷

41. Likewise, section 1.1408(b) mandates that the “costs of modifying a facility *shall be borne by all parties*” that “obtain access” and that “directly benefit from the modification” (in this case, a pole replacement).¹⁰⁸ The regulation further provides that “[i]f a party makes an attachment to the facility after the completion of the modification, *such party shall share proportionately* in the cost of the modification if such modification rendered possible the added attachment.”¹⁰⁹ Comcast fits squarely within the parameters of section 1.1408(b). The modification (i.e., the replacement pole) occurs before Comcast attaches and makes Comcast’s attachment possible. And the ability to attach new equipment to the pole constitutes a direct benefit to Comcast. Consequently, section 1.1408(b) also applies to the poles in dispute here, and by its plain terms requires that Comcast “shall share proportionately” in the costs of the pole replacement.

42. We also reject the view that the Commission’s prior precedents preclude a new attacher from being billed any amounts on the poles at issue, and instead reaffirm long-standing cost causation principles.¹¹⁰ Nothing in the Commission’s *2018 Wireline Infrastructure Order* states that, where a pole has a preexisting violation, “the new attacher cannot be charged anything because it does not cause the costs.”¹¹¹ Contrary to Comcast’s suggestion, the Commission explained that its new regulation—codified as section 1.1411(e)(4)—means that, when there is a preexisting violation, “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.”¹¹² This language does not say that new attachers

¹⁰⁷ As noted above, the poles at issue are APCO’s poles that have a preexisting violation of safety or engineering standards caused by a third party, but that would still require a pole replacement to accommodate a new attachment. Neither the policy nor this Order addresses instances where the pole owner on its own accord decides to install a larger pole.

¹⁰⁸ 47 CFR § 1.1408(b) (emphasis added); *see also* Answer at 27, para. 60 (arguing that the Commission has held that the principles of Rule 1.1408(b) apply in the context of replacing poles with preexisting violations) (citing *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 4144, 4148, para. 9 (2022)). A pole replacement fits within the meaning of the term “modification” as used in section 1.1408(b). *See 2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780 n.23 (citing *Local Competition Order*, 11 FCC Rcd at 16075-77, 16091, paras. 1161, 1163, 1166, 1200).

¹⁰⁹ 47 CFR § 1.1408(b) (emphasis added).

¹¹⁰ *Id.* (“If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment”); *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 779-80, para. 7 (“[S]ection 1.1408(b) stands for the proposition that parties benefitting from a modification share proportionately in the costs of that modification, unless such a modification is necessitated solely as a result of an additional or modified attachment of another party, in which case that party bears the costs of the modification.”) (citing, *inter alia*, *Local Competition Order*, 11 FCC Rcd at 16077, 16096, paras. 1166, 1211); *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12408, para. 48 (“[B]ased on cost causation principles, the prospective attacher is responsible for the incremental cost of a taller or stronger pole needed to support its new facilities, not the cost to replace the defective or deteriorated pole with an equivalent-sized replacement pole.”) (quotation omitted); *Kansas City Cable*, 14 FCC Rcd at 11606-07, para. 19 (stating that “only additional expenses incurred to accommodate [a new] attachment to keep the pole with [established safety and engineering] standards should be borne” by the new attacher).

¹¹¹ Complaint at 17, para. 60 (citing *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, para. 121).

¹¹² *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, para. 121; *see also* Answer at 27, para. 60 (arguing that paragraphs 121 and 122 of the *2018 Wireline Infrastructure Order* “did not even mention Rule 1.1408(b) let alone purport to abrogate it in any way”).

can never be required to pay any costs for pole replacements where there is a preexisting violation, only that they cannot be charged the costs associated with remediating the violation. Likewise, in the *2021 Pole Replacement Declaratory Ruling*, the Commission made a “narrow” ruling that “utilities may not require requesting attachers to pay *the entire cost* of pole replacements” where there is a preexisting violation.¹¹³ Saying that the new attacher cannot be required to pay the entire cost does not mean that it never can be required to share proportionately in some of the costs of a taller replacement pole.¹¹⁴

43. Although we do not accept the view that new attachers need not pay any costs on the poles in dispute, we also reject the cost allocation method that underlies APCO’s policy.¹¹⁵ Under APCO’s policy, when there is a preexisting violation on a pole to which a new attacher seeks access, APCO proposes to build a replacement pole for which the new attacher pays the full replacement costs. If the existing attacher that caused the violation moves to the new pole, it pays half the pole replacement costs, and the new attacher is refunded half its initial payment of the full pole replacement cost, thereby ultimately paying the other half.¹¹⁶

44. APCO’s only explanation for its 50/50 split is that it is “logica[l]” to conclude that “the new attacher and preexisting violator benefit equally from the new space created by the pole replacement.”¹¹⁷ Like Comcast’s argument, APCO’s position fails to harmonize properly sections 1.1411(e)(4) and 1.1408(b). Under APCO’s policy, Comcast would be paying either all or half of the *full* replacement costs of a new pole. However, those full pole replacement costs include the costs of remediating the existing violations on a pole, even though section 1.1411(e)(4) unambiguously provides that utilities “may not charge” new attachers the costs to bring such a pole into compliance with safety violations caused by third parties.¹¹⁸ Accordingly, the amounts Comcast should be billed under section 1.1408(b) must exclude those costs.¹¹⁹

45. In addition to this flaw, APCO’s logic and reading of section 1.1408(b) to require an even split in all cases where the existing attacher moves to the new pole is oversimplistic.¹²⁰ For example,

¹¹³ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 779, para. 6 (emphasis added); *see id.* at 780, para. 8 (“[W]hen section 1.1408(b) is applied to pole replacements, it would be contrary to the Commission’s rules and policies to require a new attacher to pay *the entire cost* of a pole replacement when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made.”) (emphasis added) (citations omitted).

¹¹⁴ In fact, Comcast agrees that new attachers can be charged for a pole replacement with a preexisting violation when “the new attacher requests more than is necessary to remedy the preexisting violation, such as a taller or stronger pole.” Complaint, at 27, para. 88; *see id.*, para. 89 (citing *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12408, para. 48).

¹¹⁵ In its letter announcing its new policy, APCO asserted that the policy will “ensure the fair allocation of costs, and align with FCC Rule 1.1408(b).” Policy at 2.

¹¹⁶ Answer at 3, para. 4.

¹¹⁷ *Id.* at 28, 30, paras. 62-63 (arguing that a 50/50 split is “the sort” of proportionate cost allocation envisioned by the rule).

¹¹⁸ 47 CFR § 1.1411(e)(4); *see* Answer at 27, para. 60 (admitting that section 1.1411(e)(4) “holds that new attachers cannot be charged for correcting a preexisting third party violation”) (emphasis omitted).

¹¹⁹ Even if the existing attacher moves to the new pole, and Comcast receives a 50% refund, the remaining half of the costs that Comcast paid improperly includes costs that were incurred to remedy the violation. Under sections 1.1408(b) and 1.1411(e)(4), Comcast cannot be allocated these remediation costs. 47 CFR §§ 1.1408(b), 1.1411(e)(4).

¹²⁰ This flaw would be further magnified should there be more than one preexisting violation on the pole (though such a circumstance was neither raised nor addressed by either party in the proceeding).

APCO's policy of splitting pole replacement costs evenly between an existing and the new attacher would apply to a situation in which APCO itself adds or modifies its equipment when replacing the new pole. In those circumstances, the plain text of section 1.1408(b) mandates that APCO share in the costs because it obtains access and directly benefits from the new pole.¹²¹ The same would be true if the original pole has an attacher that does not cause the preexisting violation, but elects to add or modify its equipment when moving to the new pole.¹²²

D. Relief

46. Under the Act, Congress provided that "[f]or purposes of enforcing any determinations resulting from complaint procedures established pursuant to [section 224(b)(1)], the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title."¹²³

47. In this case, we find that the following relief is necessary and appropriate: First, APCO should issue revised make-ready estimates for the poles at issue with preexisting violations, under the time frames set forth in the rules (using the date of the Commission order as day 1), and consistent with the cost allocation principles in the Commission's rules and as discussed in this Order.¹²⁴

48. Second, if Comcast wants to proceed to attach, it should promptly pay those make ready costs, and the parties should jointly report to the RBAT on the progress of pole replacement, with the understanding that these pole replacements should be performed on an expedited basis.

49. Third, to the extent Comcast disagrees with APCO's cost allocation methodology, it may seek additional relief from the Commission, including RBAT mediation.¹²⁵

IV. ORDERING CLAUSES

50. For the reasons stated herein, we find that APCO's policy is unjust and unreasonable under Section 224(b)(1) of the Act, sections 1.1408(b) and 1.1411(e)(4) of the Commission's rules, and its orders. We thus grant in part Count I of the Complaint as to the APCO policy as currently in effect. We further deny without prejudice the remainder of Comcast's Complaint, including its claims regarding APCO's former, superseded policy alleged in Counts I and II.

¹²¹ 47 CFR § 1.1408(b). *See also* 2021 Pole Replacement Declaratory Ruling, 36 FCC Rcd at 779, para. 7 n.20 ("We disagree with the argument of USTelecom and Edison Electric Institute et al. that a utility cannot be considered a party that directly benefits from a modification and, as such, cannot be required to share in the costs of a pole replacement ... Rather, we agree with NCTA that the *Local Competition Order* recognized the general principle that a utility may be among the parties and beneficiaries of a pole replacement required to share in its costs.") (internal citations omitted).

¹²² *See* 47 CFR § 1.1408(b) ("The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. . . . A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification[,] . . . it adds to or modifies its attachment.").

¹²³ 47 U.S.C. § 221(b); *see also* 47 CFR § 1.1407 (providing for remedies, including the "[t]erminat[ion of] the unjust and/or unreasonable rate, term, condition").

¹²⁴ This relief is not intended to require that APCO allocate the costs with perfect accuracy, but we emphasize that it may not arbitrarily allocate costs, or seek to shift the costs of remediation of preexisting violations to Comcast.

¹²⁵ In this case, the parties have not provided the Commission with either generalized cost information about pole replacements, or specific cost data about the poles to which Comcast seeks access. Consequently, we emphasize that our determination in this case is limited to rejecting the general approaches to cost allocation advocated by each party, and to re-affirming the general cost causation and allocation principles that the Commission has previously outlined.

51. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 1, 4(i), 4(j), 224 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 224, and sections 1.1401-1.1416, of the Commission's rules, 47 CFR §§ 1.1401-1.1416, that Count I of the Complaint is GRANTED as described herein, and that the Complaint is otherwise DENIED without prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary