

January 16, 2018

Via Electronic Filing

Ex Parte Communication

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84; *Broadband Deployment Advisory Committee*, GN Docket No. 17-83

Dear Ms. Dortch:

AT&T Services, Inc. (“AT&T”) and Communications Workers of America file this letter to clarify the main areas of apparent consensus and disagreement that remain in the one-touch make-ready (“OTMR”) debate. There appears to be a consensus that OTMR can be beneficial in at least some limited situations, but commenters disagree on when those situations arise and how OTMR should apply in those instances. AT&T proposes a balanced, sensible OTMR approach with safeguards that would minimize disruptions in service provided to consumers by existing attachers.¹ To achieve this balance, a OTMR regime would (1) apply to routine transfers only with 30-days prior notice to existing attachers; (2) be performed by contractors pre-approved by the pole owner while respecting existing attachers’ collective bargaining agreements; (3) allow post-OTMR work inspections by pole owners and/or existing attachers; and (4) require new attachers to indemnify pole owners and existing attachers from liabilities associated with OTMR work.

Limiting OTMR to routine transfers would minimize service disruptions, which are inherent in complex make-ready work such as transfers involving wireless equipment and cable splicing. Even Google Fiber, one of the staunchest OTMR advocates, recognizes that “existing attachers should have the first opportunity to perform their own complex make-ready, since service outages could affect their businesses.”² More importantly, service outages would affect customers, including public safety organizations, national security organizations, critical facilities, government entities, and individual consumers. Other commenters argue that pre-approved contractors are qualified to and thus should perform complex make-ready work,³ although it is unclear whether existing attachers would receive prior notice under those proposals. While pre-

¹ See Comments of AT&T Services, Inc., WC Docket No. 17-84 (filed June 15, 2017); Letter from Ola Oyefusi, Director-Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission WC Docket No. 17-84 (Aug. 17, 2017).

² Reply Comments of Google Fiber, Inc., WC Docket No. 17-84, at 5-6 (filed July 17, 2017).

³ See, e.g., Letter from Katharine R. Sanders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (Nov. 21, 2017) (“Verizon Nov. 21 Letter”).

approved contractors can perform make-ready work, existing attachers are in the best position to reduce customer outages because they can best determine how complex make-ready work will adversely impact their service and how to minimize *or eliminate* that risk. For example, an existing attacher serving a public safety or national security agency may be able to reroute that agency's communications traffic before an outage caused by a complex transfer or, at least, notify those key customers of the date, time, and duration of a temporary service interruption.⁴ Conversely, new attachers have no incentive to eliminate the risk or reduce the duration of outages associated with OTMR work and, as competitors of existing attachers, may benefit if customers attribute the outage to their existing provider. In fact, it is no coincidence that proponents of applying OTMR to complex transfers have provided no timelines to perform OTMR work or the duration of an outage arising from OTMR work.

These commenters also seek to escape liability for third-party damages caused by their OTMR work.⁵ But, if new attachers make-ready work causes an outage to their competitors' services and consequent damage to their competitors' customers, they should be responsible for those damages, including claims made by those customers. Existing attachers should be immune from that liability. To the extent that state or local law or customer contracts limit third party liability for a service outage, those limits should flow to the new attacher.⁶

All of these complications argue against applying OTMR to complex transfers without first affording existing attachers the opportunity to perform the necessary work. This is especially the case in light of the marginal benefit that would be generated by applying OTMR to complex transfers. As Google Fiber acknowledges, "most make-ready is simple and does not carry any substantial risk of interruption to service."⁷ Thus, applying a OTMR regime only to routine transfers, at least initially, would resolve any concerns about delays in performing make-ready work for most new attachments, provide the Commission with a valuable data set with which to evaluate whether extending OTMR to complex transfers will provide any appreciable incremental benefit, and recognize the real world concerns service providers have in maintaining service continuity. It is also the most reasonable approach, balancing the desire of new attachers to accelerate make-ready on the one hand with the interests of existing attachers and the need to ensure reliable service for their customers on the other hand.⁸

Other commenters (also alleging delays) oppose the sensible suggestion to honor existing attachers' collective bargaining agreements, which would enable its union workers to perform CBA covered make-ready transfers. But, concerns about delays are insufficient to justify

⁴ This crucial engagement with critical customers would not be possible under those OTMR proposals that deny notice to existing attachers before performing complex transfers.

⁵ Letter from Kristine Laudadio Devine, Counsel to Google Fiber, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (Nov. 30, 2017); Verizon Nov. 21 Letter ("The new attacher and approved contractor would indemnify those parties for harm to the pole or existing attachments caused by such work.").

⁶ Even indemnification from damages to existing attacher equipment and third party damages would not protect existing attachers from intangible losses, such as loss of goodwill and brand equity.

⁷ Comments of Google Fiber, Inc., WC Docket No. 17-84, at 8 (filed June 15, 2017).

⁸ See, e.g., Comments of Crown Castle Int'l Corp, WC Docket No. 17-84, at 24 (filed June 15, 2017) ("Crown Castle generally supports the processes that are loosely termed "one-touch" make-ready. However, Crown Castle believes the Commission should carefully evaluate the details of such plans to reach an alternative process that will facilitate deployment while protecting the legitimate interests of existing attachers.")

impairment of the contractual obligations of existing attachers with CBAs (or from extended or unnecessary outages caused by OTMR work), especially with the additional measures that AT&T has proposed to streamline the current pole attachment timeline. AT&T's proposal to remove 29 days from that timeline relies on proven "business as usual" processes to eliminate redundancy and useless steps. (See the attached comparison timeline.) And, contrary to Google Fiber's claims, using existing make-ready timelines, with or without the revisions proposed by AT&T, would not subject new attachers to sequential 60-day timelines for each existing attacher.⁹ Sequential timelines are not and have never been contemplated or required by existing Commission rules. Commission rules provide all existing attachers with a single 60-day period to transfer all of their facilities in the communications space. Delays beyond that 60-day period can be resolved by new attachers' right to self-help make-ready when necessary to allow the new attacher's construction and the Commission's clarification that such self-help make-ready can occur after this single 60-day period.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Frank S. Simone
Vice President—Federal Regulatory
AT&T



Debbie Goldman
Telecommunications Policy Director
Communications Workers of America

⁹ Letter from Kristine Laudadio Devine, Counsel to Google Fiber, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (July 3, 2017).

Pole Attachment and OTMR Timeline Comparison

| Number of days (15-day blocks of time) | | | | | | | | | | | | |
|---|--|-------|-------|--|-----------------------------------|-------------------------|--------|---------|--|--|--|--|
| | 1-15 | 16-30 | 31-45 | 46-60 | 61-75 | 76-90 | 91-105 | 106-120 | 121-135 | 136-150 | 151 - 165 | |
| Existing Pole Attachment Timeline | Application, Review, Survey (45 days) | | | Estimate (14 days) | Acceptance (14 days) | Make Ready (60 days) | | | | Pole Owner could complete Make Ready (optional) (15 days) | Self Help, plus completion notice (15 days) | |
| AT&T Proposed Pole Attachment Timeline - (Complex Make Ready) | Application, Review, Survey AND Estimate AND Notice whether Simple or Complex (45 days) | | | Acceptance (14 days) | Make Ready / Complex (60 days) | | | | Self Help, plus completion notice (15 days) | | | |
| AT&T Proposed Pole Attachment Timeline - (OTMR) | Application, Review, Survey AND Estimate AND Notice whether Simple or Complex (45 days) | | | <div>Simple OTMR (New Attacher determines time frame and notifies Pole Owner / existing attachers of completion)</div> | | | | | | | | |

* OTMR – One Touch Make Ready

| | |
|-------------------|---|
| Existing Process: | 163 days |
| AT&T Proposed: | 134 days |
| OTMR Timeline: | Dependent on New Attachers "Make Ready" schedule. |