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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

Verizon and others have urged the Commission to allow new attachers the option of using One-Touch Make-Ready (“OTMR”) to help speed fiber and small-cell deployment.¹ The record shows that OTMR is safe, effective, and will help speed broadband deployment.² Indeed, many providers today already safely use contractors in de-facto or informal OTMR arrangements to reduce costs and speed attachments.³ Some parties, however, assert that OTMR cannot be performed safely or they seek to impose limitations or expansive indemnification requirements that would undermine or needlessly complicate OTMR and limit its benefits.⁴ Neither the

¹ See, e.g., Google Fiber Inc. Comments, WC Docket No. 17-84, at 1-4 (June 15, 2017) (“Google Fiber Comments”); INCOMPAS Comments, WC Docket No. 17-84, at 5-10 (June 15, 2017) (“INCOMPAS Comments”); see also Verizon Comments, WC Docket No. 17-84, at 4-8 (June 15, 2017) (“Verizon Comments”); Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84 (Aug. 25, 2017); Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WT Docket No. 17-79 & WC Docket No. 17-84 (Sept. 11, 2017).

² See Ex Parte Letter from Eben Wyman, Power and Communication Contractors Association, to Marlene Dortch, FCC, WC Docket No. 17-84, at 2 (Nov. 30, 2017) (“PCCA Ex Parte”); INCOMPAS Comments, at 9 (stating that OTMR “minimiz[es] exposure of crews to safety risks”); Google Fiber Comments at 3 (similar); CMA Strategy Consulting, “Perspectives on the Current State of Make Ready and the Potential Impact of a One-Touch Make-Ready Policy,” at 13 (“Make-Ready Study”), attached to Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84, (Nov. 13, 2017) (“Verizon Nov. 13 Ex Parte”).

³ See PCCA Ex Parte at 2.

⁴ See Ex Parte Letter from Christopher Shelton, Communications Workers of America (“CWA”), AFL-CIO, CLC & D. Michael Langford, Utility Workers of America, AFL-CIO, to Marlene Dortch, FCC, WC Docket Nos. 17-83 & 17-84 (Jan. 3, 2018) (“CWA/UWUA Ex Parte”); Ex

Broadband Deployment Advisory Committee (“BDAC”) nor the Commission should be swayed by these arguments. Instead, the BDAC should recommend and the Commission should adopt policies that allow providers the option of using a fulsome OTMR process. Giving those seeking to deploy broadband the tools to do so swiftly and efficiently will best promote rapid deployment.

The record shows that the current make-ready process is characterized by inefficiencies and unpredictability that together can handicap rapid broadband deployment.⁵ Incentives in the current system are aligned against efficient deployment of new attachments, since many utility pole owners do not generate financial returns by managing pole attachments.⁶ Similarly, existing broadband attachers may not have economic incentives to quickly conduct make-ready that would enable a new competitor.⁷ Thus, pole owners and existing attachers often assign the lowest priority to make-ready work, leading to delays.⁸

Giving new attachers the option of using OTMR would remedy those disincentives, cure much of the current delays and lack of predictability, and provide significant economic benefits. Corning has provided an economic analysis that concludes that removing impediments to infrastructure deployment, including delays in attaching new broadband facilities to poles, will likely have significant and meaningful consumer benefits.⁹ This makes sense, as even a

Parte Letter from Frank S. Simone, AT&T & Debbie Goldman, CWA, to Marlene Dortch, FCC, WC Docket Nos. 17-83 & 17-84 (Jan. 16, 2018) (“AT&T/CWA Ex Parte”); *see also* Charter Comments, WC Docket Nos. 17-79 & 17-84, at 39-44 (June 15, 2017); Comcast Comments, WC Docket Nos. 17-79 & 17-84, at 20-22 (June 15, 2017).

⁵ *See* INCOMPAS Comments at 6 (stating that “the make-ready process is a frequent source of delay in the deployment of new pole attachments”); Next Century Cities Comments, WC Docket No. 17-84, at 5-6 (June 12, 2017) (“NCC Comments”) (stating that make-ready causes “substantial delay” and “accompanying increased costs [that] create a strong barrier to entry”); Verizon Nov. 13 Ex Parte at 2.

⁶ *See* Make-Ready Study at 6 (finding that because “[m]ake-ready related work is not a profit center for utilities,” they “often lack incentives to find innovative solutions to issues that arise.”).

⁷ Google Fiber Comments at 9 (noting that “existing attachers often lack the incentive to move quickly, keep costs down, or even ensure costs are predictable, because doing so could usher a new competitor into the market”); INCOMPAS Comments at 5-6 (explaining that existing attachers and pole owners often have incentives to delay make-ready); NCC Comments at 6 (similar); CompTIA Comments, WC Docket No. 17-84, at 2 (June 15, 2017) (explaining that OTMR would “prevent incumbents from intentionally slowing down the make-ready process to stifle their competition”).

⁸ *See* Crown Castle Comments, WC Docket No. 17-84, at 24 (June 15, 2017) (noting that make-ready is “low on the priority list for existing attachers, including the electric utility”); Make-Ready Study at 6 (finding that existing attachers have incentives to “assign the lowest priority to make-ready work and draw the process out as long as possible”).

⁹ *See* Corning Comments, WC Docket No. 17-84 (June 15, 2017); *see also id.*, at Attachment A: Hal Singer, Economists Incorporated, “Assessing the Impact of Removing Regulatory Barriers

relatively short delay – or a lack of predictability – can multiply as providers work to attach to thousands of poles.¹⁰ Instead of multiple parties performing sequential make-ready work on the pole, our OTMR proposal would allow attachers the option to use pole-owner-approved contractors to coordinate and do all work to add a new attachment or perform other make-ready work.¹¹ OTMR thus replaces multiple truck rolls with one, thereby speeding the attachment timeline and reducing aggregate make-ready costs.¹² OTMR also benefits pole owners because in an OTMR structure, the attaching party – not the pole owner – would be responsible for obtaining a survey and make-ready estimate and for notifying existing attachers that make-ready work will be performed.¹³ And, municipalities and residents benefit because there will be reduced closures or disruption of streets and sidewalks for make-ready work.¹⁴

Despite recent claims by some opponents of OTMR,¹⁵ no party disputes that make-ready work must be performed reliably and safely. Indeed, the evidence in this proceeding shows it can and will be performed safely. Our proposal would require contractors to be qualified and approved by the pole owner to perform the necessary work – either in the communications space, or the electrical space, or both – and to be permitted to complete both simple and complex work in either of those spaces pursuant to their qualifications and any necessary certifications.¹⁶ Under this approach, the new attacher would be required to correct any deficiencies that the pole owner or existing attachers identify regarding the contractor’s make-ready work.¹⁷

Despite parties’ recognition that contractors must be preapproved and qualified, the Communications Workers of America and the Utility Workers Union of America (collectively, “CWA/UWUA”) suggest that any use of contractors to perform OTMR would lead to significant safety hazards.¹⁸ But the Power and Communication Contractors Association (“PCCA”) – which “represents 85 percent of the construction companies performing [broadband] construction

on Next Generation Wireless and Wireline Broadband Infrastructure Investment” (June 2017) (“Economists Inc. Analysis”).

¹⁰ See INCOMPAS Comments at 10 (explaining that “[d]elayed attachment to one pole can disrupt the ability to serve an entire area”).

¹¹ Under our proposal, attachers who do not elect to use OTMR can continue to use the existing pole attachment timeframes and processes.

¹² See Google Fiber Comments at 9-10 (stating that “OTMR will make network deployment faster and more efficient”); INCOMPAS Comments at 9-10 (similar).

¹³ See Verizon Comments at 7.

¹⁴ See ExteNet Systems Comments, WC Docket Nos. 17-79 & 17-84, at 54-55 (June 15, 2017) (“ExteNet Comments”) (supporting OTMR because it “benefits residents by allowing access to new services more quickly and decreasing inconveniences caused by make-ready work, including noise, traffic disruptions, and service outages”); NCC Comments at 6 (similar); INCOMPAS Comments at 9 (similar).

¹⁵ See CWA/UWUA Ex Parte.

¹⁶ See Verizon Comments at 6.

¹⁷ See Verizon Comments at 6.

¹⁸ See CWA/UWUA Ex Parte at 1.

work” – has explained that “[s]afety is paramount in contractor operations” and that “OTMR can be, and already is performed in the field safely and efficiently.”¹⁹ Indeed, PCCA notes that “OTMR work could be considered safer in some cases when a limited number of experienced contract personnel perform the work” rather than multiple crews.²⁰ Similarly, interviews of construction vendors, fiber network operators and utilities “did not find significant concerns raised about the safety of having approved contractors work in either the communications or the electrical space, so long as those contractors were properly trained or licensed.”²¹ The record shows that “construction companies advised that they today often have crews trained to work in either space and can coordinate the work among their personnel to safely manage both wireline and wireless attachments.”²²

CWA/UWUA express concerns that certain proposals in the BDAC record allowing contractors to self-certify that they are qualified would open the door to “poor or unsafe work.”²³ But the text of the proposals demonstrates that this concern is baseless. Under the proposals, a contractor would have to certify that it, among other things, “agrees to follow published safety and operational guidelines of the pole owner,” “knows how to read and follow licensed-engineered pole designs for make-ready work,” “agrees to follow all local, state, and federal law and regulations,” and “meets or exceeds any uniformly applied and reasonable safety record thresholds set by the pole owner, *i.e.*, the contractor does not have an unsafe record of significant safety violations or worksite accidents.”²⁴ The proposals further state that “the pole owner may not unreasonably withhold permission [to work on the pole] for contractors that otherwise maintain the minimum self-certification requirements.”²⁵ CWA/UWUA have no grounds to claim that these protections are inadequate.

Further, the BDAC and the Commission should reject efforts to undermine the benefits of OTMR. For example, AT&T/CWA argue that OTMR should be limited to “routine” make-ready because they claim uncertainty over whether existing attachers would receive advance notice of “complex” OTMR and they say existing attachers are best positioned to reduce or minimize the impact of an outage that could occur during complex work.²⁶ But our OTMR

¹⁹ See PCCA Ex Parte at 2.

²⁰ See *id.* See also ExteNet Comments at 54-55 (stating that OTMR will result in faster and safer construction); INCOMPAS Comments at 9 (stating that OTMR “minimiz[es] exposure of crews to safety risks”); Google Fiber Comments at 3 (similar).

²¹ Make-Ready Study at 13.

²² *Id.*

²³ See CWA/UWUA Ex Parte at 3.

²⁴ See Competitive Access to Broadband Infrastructure Working Group Final Report, at 26-27 (Nov. 9, 2017), <https://www.fcc.gov/sites/default/files/bdac-11-09-2017-competitive-access-to-broadband-infrastructure-dis.pdf> (“Nov. 9, 2017, Competitive Access Working Group Final Report”).

²⁵ See Nov. 9, 2017, Competitive Access Working Group Final Report at 23.

²⁶ See AT&T/CWA Ex Parte at 1-2.

proposal would provide existing attachers with notice of all OTMR.²⁷ Further, any concerns about minimizing the impact of an outage can be remedied by requiring the new attacher and its contractor to coordinate with the existing attacher regarding the scheduling and duration of an outage, if one is necessary. Such coordination would allow the existing attacher to reroute traffic, inform customers, or take other steps to reduce the impact of an outage. AT&T/CWA also claim that most make-ready is simple make-ready and therefore there's little marginal benefit in extending OTMR to complex make-ready.²⁸ But, as INCOMPAS has noted, sometimes delayed access to a single pole can delay an entire project.²⁹ Instead of excluding complex make-ready from OTMR, the Commission should at most require that existing attachers be given a slightly longer notice period before a contractor performs complex OTMR.

The Commission should also reject calls to impose broad third-party indemnification requirements on OTMR.³⁰ No party disputes that providers using OTMR should be directly liable for damage caused to poles or other attachments during make-ready.³¹ But some parties go further and ask the Commission to impose broad indemnification for third-party claims related to OTMR.³² As Google Fiber explains, such “[a] broad third-party indemnification obligation could expose competitive entrants to potentially unbounded liability”³³ and would result in little use of OTMR. Although AT&T/CWA state that the existing attacher's limitations on liability should flow to the new attacher,³⁴ they do not address the concern that “an incumbent provider would have a strong incentive to waive or not enforce its limitation of liability and allow the claim to go forward—with the competitive entrant taking on all of the costs.”³⁵ The Commission should not require broad third-party indemnification as a condition of using OTMR.

The Commission should also not be swayed by parties' claims that any OTMR rule must have exceptions respecting unions “jurisdiction over make-ready work” as determined by their collective bargaining agreements.³⁶ Under 47 U.S.C. § 224, the Commission or the states – not labor unions or private companies – have jurisdiction over pole attachments.³⁷ In exercising this jurisdiction (or in advising the Commission in the case of the BDAC), neither the Commission nor the BDAC should tailor their make-ready or other pole attachment policies based on how

²⁷ See Verizon Comments at 7 (discussing advance notice).

²⁸ See AT&T/CWA Ex Parte at 2.

²⁹ See INCOMPAS Comments at 10 (explaining that “[d]elayed attachment to one pole can disrupt the ability to serve an entire area”).

³⁰ See AT&T/CWA Ex Parte at 2.

³¹ See, e.g., Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84 (Nov. 21, 2017) (discussing indemnification).

³² See AT&T/CWA Ex Parte at 2.

³³ See Ex Parte Letter from Kristine Laudadio Devine, counsel to Google Fiber, to Marlene Dortch, FCC, WC Docket No. 17-84, at 2 (Nov. 30, 2017) (“Google Fiber Ex Parte”).

³⁴ See AT&T/CWA Ex Parte at 2.

³⁵ See Google Fiber Ex Parte at 2.

³⁶ See CWA/UWUA Ex Parte at 1; AT&T/CWA Ex Parte at 2-3.

³⁷ See 47 U.S.C. § 224(b)-(c).

they would affect individual companies or their workforces. Instead, the Commission and the BDAC should look to adopt policy approaches – such as OTMR – that best promote broadband deployment overall.

Finally, the Commission should reject AT&T/CWA's suggestion that AT&T's proposal to shorten the pole attachment timeline by 29 days would somehow reduce the need for OTMR or justify imposing limitations on OTMR.³⁸ As we have noted, pole owners and existing attachers struggle to meet the current timelines and, regardless, shorter timelines will not address the fundamental inefficiencies of sequential make-ready performed by different parties.³⁹

We urge the BDAC to recommend and the Commission to adopt one-touch make-ready as quickly as possible.

Very truly yours,

A handwritten signature in black ink, reading "Katharine Saunders", with a stylized flourish at the end.

Katharine R. Saunders

³⁸ See AT&T/CWA Ex Parte 2-3.

³⁹ See Verizon Reply Comments, WC Docket No. 17-84, at 10-11 (July 17, 2017). Although we agree with AT&T's proposal to eliminate the pole owner's right to invoke an additional 15 days to complete other parties' make-ready work, in our experience pole owners rarely invoke this right and therefore this proposal won't save much time in practice.