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Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Wireline Infrastructure, WC Docket No. 17-84**

On October 18, 2017, Steve Morris and Jennifer McKee of NCTA – The Internet & Television Association (“NCTA”) and Paul Glist and Daniel Reing of Davis Wright Tremaine, on behalf of NCTA, met with Lisa Hone, Daniel Kahn, Pam Arluk, Eric Ralph, Adam Copeland, Michael Ray, Marv Sacks, and Dick Kwiatkowski of the Wireline Competition Bureau to discuss the above-referenced proceeding.<sup>1</sup>

NCTA explained that the cable industry has been a leader in the deployment of broadband infrastructure in the United States and that, with appropriate policies in place, cable operators would continue to take the lead in expanding and upgrading their broadband networks. As described in NCTA’s comments, all major cable operators have plans to dramatically increase the availability of gigabit broadband services to residential customers, either through the deployment of next-generation DOCSIS equipment or deployment of fiber-to-the-home capability.<sup>2</sup> In addition, as the Commission recognized in its *Business Data Services* proceeding, cable operators are a leading competitor in the marketplace for commercial services, with future plans for significant growth in high-capacity services, including backhaul services that will be the foundation for 5G wireless services.<sup>3</sup>

To promote these substantial investments, it is critical that the Commission preserve the elements of its pole attachment policies that are working and fine tune those elements that can be improved. As a general matter, the Commission’s 2011 reforms to its pole attachment rules have been successful and dramatic changes in that regime are not warranted. The current regulatory

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<sup>1</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Notice*).

<sup>2</sup> Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84 (filed June 15, 2017) at 2 (NCTA Comments).

<sup>3</sup> *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, ¶¶ 55-62 (2017).

regime has enabled cable operators and all types of other providers to deploy fiber optic networks in a reasonably efficient manner, while at the same time protecting the safety and reliability of communications and electric networks and the services running over these networks, including 911 service. Any significant disruption to this regime would not be in the public interest.

*Overlashing.* NCTA explained that one of the most important elements of the Commission's current regulatory regime is the policy that encourages overlashing of facilities to efficiently upgrade plant, serve customers and repair damaged facilities.<sup>4</sup> In a series of decisions over the last two decades, the Commission has determined that attaching parties do not need prior approval of the pole owner to overlash fiber or coaxial cable to existing facilities that already have been approved by the pole owner.<sup>5</sup> The Commission's overlashing policy has served as a foundation for billions of dollars in facilities deployment by cable operators. To maintain that policy and protect future investment, NCTA expressed support for codifying the overlashing policy in the Commission's rules. For example, such a rule could state that *an attacher shall not be required to obtain approval from or provide advance notice to a pole owner before overlashing additional wires, cables, or equipment to its own facilities. The attacher shall inform the pole owner of the location and type of any facilities that have been overlashed.*

*One Touch Make Ready.* While the current pole attachment regime has been successful, NCTA expressed support for additional changes to the Commission's rules that would enable more timely and efficient pole attachments. NCTA encouraged the Commission's efforts to develop an approach that "balances the legitimate needs and interests of new attachers, existing attachers, utilities, and the public"<sup>6</sup> and explained that some proposals for "one touch make ready" (OTMR) do not strike the necessary balance. NCTA identified three particular concerns with the OMTR proposals in the record – the absence of any meaningful opportunity for an existing attacher to perform its own make-ready in a timely manner; the failure to provide an existing attacher any role in the selection of contractors that will move its facilities; and the failure to provide indemnification to an existing attacher in the event its facilities are damaged or services disrupted. We noted that the Commission itself acknowledged similar concerns when it

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<sup>4</sup> *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, 6807 ¶ 62 (1998) ("[O]verlashing is important to implementing the 1996 [Telecommunications] Act as it facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities. Overlashing promotes competition [and helps] provide diversity of services over existing facilities, fostering the availability of telecommunications services to communities, and increasing opportunities for competition in the marketplace.").

<sup>5</sup> *See Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141 ¶ 75 (2001) ("We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment"), *aff'd* *Southern Company v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002) ("Overlashers are not required to give prior notice to utilities before overlashing.").

<sup>6</sup> *Notice*, ¶ 6.

adopted rules in 2011 permitting new entrants to move facilities already on the pole under certain circumstances.<sup>7</sup>

NCTA explained that providing parties a meaningful opportunity to move their own facilities was important because it could avoid the type of disputes that arise when construction by a new entrant causes damage to existing facilities or disrupts service to existing customers. As the record makes clear, such situations are commonplace in areas with OTMR.<sup>8</sup> We also rebutted the notion advanced by some parties that requiring the contractor to be approved by the pole owner is sufficient to protect the interests of existing attachers.<sup>9</sup> We explained that utilities and their contractors are not necessarily familiar with the networks that are attached to their poles<sup>10</sup> and that the suggestion that all parties tend to use the same contractors (and therefore existing attachers should be fine with the utility-approved contractor) does not reflect the reality experienced by most cable operators.

We explained that the better approach was for the Commission to find a middle ground that addresses the delays that result from sequential make-ready under the current regime without depriving existing attachers of control over their facilities as would be the case under the OTMR proposals in the record. At a minimum, such an approach would (1) provide existing attachers a reasonable period of time after receiving notice to perform such work; (2) create a process in which all parties work in good faith to identify and approve contractors in a timely manner; and (3) require new entrants to indemnify existing attachers for any losses due to damaged property or service outages. NCTA committed to working with the Commission staff to develop such a regime.

*Pole Attachment Transparency.* NCTA encouraged the Commission to promote transparency around pole attachment rates, terms and conditions. We explained that there was significant support for requiring pole owners to publish a list of all common fees and charges. In addition, we strongly encouraged the Commission to grant NCTA's petition for reconsideration of the *Part 32 Order*.<sup>11</sup> If that order is allowed to take effect without change, the Commission will be inundated with complaints because filing a complaint will be the only

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<sup>7</sup> *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5265, 5266-5269, ¶¶ 49, 52-58 (2011).

<sup>8</sup> *See, e.g.*, Reply Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84 (filed July 17, 2017) at 16-18 (highlighting significant concerns that have arisen in the handful of communities that have implemented OTMR policies); *see also* Comments of Charter Communications at 39-44; Comments of Comcast Corp. at 20-22.

<sup>9</sup> *See, e.g.*, Letter from Kristine L. Devine, Counsel for Google, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed July 3, 2017).

<sup>10</sup> *See, e.g.*, Reply Comments of the Edison Electric Institute, WC Docket No. 17-84 (filed July 17, 2017) at 21 (“[U]tilities are not aware of the standards some communications attachers may require concerning specialized equipment at the pole location. Therefore, utilities alone will not be able to certify contractors that are qualified to handle all make-ready work at the pole.”).

<sup>11</sup> *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Petition for Reconsideration of NCTA – The Internet & Television Association (filed June 5, 2017).

possible way for an attacher to obtain the data necessary to verify that a rate is reasonable and cost-based. Ensuring that all attachers have public access to pole cost data, including any underlying assumptions and allocations, will enable them to confirm that rates are reasonable without involving the Commission.

*Excessive Municipal Fees.* In addition to pole attachment issues, NCTA also encouraged the Commission to address concerns about the recent practice of local governments imposing fees on the provision of broadband and telecommunications services offered by cable operators. The offering of broadband and telecommunications services over a cable network places no additional burden on the public right-of-way and should not be used as an excuse by local governments to impose additional fees beyond the cable franchise fee. Although the Commission has explained its opposition to municipal fees on broadband services on multiple occasions,<sup>12</sup> cable operators have experienced problems with such fees in the state of Oregon and are concerned that other states will follow unless the Commission takes action.<sup>13</sup> We encouraged the Commission to issue a declaratory ruling that a franchise issued for the construction of a cable system under Title VI authorizes the cable operator to provide all broadband and other services and to install equipment and facilities to provide such services over its cable system, and that no fee may be assessed for such additional services, equipment, or facilities beyond the franchise fee on cable services authorized by the Communications Act.<sup>14</sup>

Respectfully submitted,

**/s/ Steven F. Morris**

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<sup>12</sup> See *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5804, ¶ 433 n.1285 (2015); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798, 4849-50, ¶ 102 (2002).

<sup>13</sup> See *City of Eugene v. Comcast of Or.* II, 359 Or. 528 (2015) (rejecting challenge to municipal license fee of seven percent on broadband and telecommunications revenues).

<sup>14</sup> See, e.g., NCTA Comments at 24.