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March 8, 2018

**Ex Parte**

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

**Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84**

Dear Ms. Dortch:

On March 6, 2018, Roy Litland, Fred Moacdieh, and I from Verizon met with Adam Copeland, Lisa Hone, Daniel Kahn, and Michael Ray from the Wireline Competition Bureau; Paul LaFontaine from the Office of Strategic Planning and Policy Analysis; and Jiaming Shang from the Wireless Telecommunications Bureau. During the meeting we focused on the parts of the Commission's *NPRM* and *FNPRM* that address pole attachment reforms.<sup>1</sup> Our remarks were consistent with our filed comments and prior ex partes in these proceedings.<sup>2</sup>

A wide variety of parties in this proceeding have correctly urged the Commission to adopt rules that would permit new attachers the option of using a one-touch make-ready ("OTMR") process to help speed fiber and small-cell deployment.<sup>3</sup> The Commission's

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<sup>1</sup> See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3,266 (2017) ("*NPRM*"); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11,128 (2017) ("*2017 Wireline Infrastructure Order*" or "*FNPRM*").

<sup>2</sup> See, e.g., June 15, 2017, Verizon *NPRM* Comments; July 17, 2017, Verizon *NPRM* Reply Comments; Jan. 17, 2018, Verizon *FNPRM* Comments; Feb. 16, 2018, Verizon *FNPRM* Reply Comments; Aug. 25, 2017, Verizon Ex Parte Letter; Sept. 11, 2017, Verizon Ex Parte Letter; Jan. 19, 2018, Verizon Ex Parte Letter. Unless otherwise noted, all citations to comments or ex partes are to WC Docket No. 17-84.

<sup>3</sup> See *id.*; see also, e.g., Computer & Communications Industry Association *NPRM* Comments at 18 ("OTMR should be presented as an option for new attachers."); CompTIA *NPRM* Comments at 2 (stating that OTMR "would significantly shorten the pole attachment timeline and reduce deployment costs"); Crown Castle *NPRM* Comments at 3 (supporting OTMR with conditions);

Broadband Deployment Advisory Committee (“BDAC”) has now voted overwhelmingly to also recommend this approach.<sup>4</sup>

The record supports the Commission adopting the BDAC’s conclusions that “[t]he make-ready process is too long and is a significant barrier to faster broadband deployment” and that “[t]here are many parties involved, with varying obligations and sometimes competing interests, resulting in multiple trips to the utility pole and long waits in-between a confusing and often redundant sequence of steps.”<sup>5</sup> Evidence shows that because of these delays, a new attacher will routinely budget a worst-case scenario, which effectively shrinks the new attacher’s contemplated deployment radius.<sup>6</sup>

The evidence also shows that adopting the BDAC’s recommendation of an OTMR process will achieve substantial benefits in a very short time frame. According to Corning – a fiber manufacturer with every interest in promoting policies that spur deployment – the benefits of OTMR over a five-year time frame would be substantial:

- an additional \$12.6 billion in enabled capex investment for FTTP and an additional \$8.8 billion in enabled capex for 5G fixed wireless; and

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ExteNet Systems NPRM Comments at 54-55 (supporting OTMR because it allows for faster and safer construction and lowers barriers to entry); Fiber Broadband Association NPRM Comments at 6-7 (supporting “OTMR because it speeds access to poles, reduces administrative costs, is more efficient, and reduces total impact to the community”); Google Fiber NPRM Comments at 1-4; INCOMPAS NPRM Comments at 5-10 (stating that “the Commission should adopt rules that provide new attachers the option to invoke a . . . OTMR process”); Level 3 NPRM Comments at 2 (stating that Level 3 is a “strong supporter” of “properly crafted OTMR”); Lightower NPRM Comments at 4 (“OTMR . . . represents the speediest path to attachment, produces predictable delivery timelines for customers, and takes all stakeholders’ attachment and safety concerns into account.”); Next Century Cities (“NCC”) NPRM Comments at 7 (“NCC urges the Commission to promulgate OTMR rules, but to ensure that they are a framework and not a straightjacket.”); Ameren, *et al.* NPRM Comments at 5-6 (supporting OTMR in the communications space subject to conditions).

<sup>4</sup> At its January 23-24 meeting, the BDAC approved the Competitive Access Working Group’s OTMR recommendations with minimal changes. The as-approved recommendations, however, are not available on the BDAC’s website. Therefore, we will refer to the Competitive Access Working Group’s January 23 recommendations. *See* Competitive Access to Broadband Infrastructure Working Group Report and Recommendations, at 12-24 (Jan. 23, 2018), <https://www.fcc.gov/sites/default/files/bdac-competitiveaccess-report-012018.pdf> (“BDAC OTMR Recommendations”).

<sup>5</sup> BDAC OTMR Recommendations at 12. *See also* INCOMPAS NPRM Comments at 6 (stating that “the make-ready process is a frequent source of delay in the deployment of new pole attachments”); NCC NPRM Comments at 5-6 (stating that make-ready causes “substantial delay” and “accompanying increased costs [that] create a strong barrier to entry”).

<sup>6</sup> *See* CMA Strategy Consulting, “Perspectives on the Current State of Make Ready and the Potential Impact of a One-Touch Make-Ready Policy” at 2, *attached to* Nov. 13, 2017, Verizon Ex Parte.

- 8.3 million incremental premises passed by fiber and 5.9 million incremental premises passed by 5G fixed wireless.<sup>7</sup>

Further, there is substantial evidence that an OTMR process is safe. The Power and Communication Contractors Association (“PCCA”) – which “represents 85 percent of the construction companies performing [broadband] construction 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.”<sup>8</sup> 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.<sup>9</sup> The BDAC rejected claims that OTMR is unsafe, finding that such risks would be appropriately addressed if a contractor certifies that it “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.”<sup>10</sup> No party has grounds to claim that the Commission’s adoption of these protections would be inadequate.

As we and others have shown elsewhere, offering new attachers the option of using OTMR is safe and will increase incentives for broadband deployment.<sup>11</sup> These same benefits do not, however, flow from the late-filed suggestions recently offered by NCTA, Charter, Comcast, and Cox.<sup>12</sup> In short, NCTA’s “Accelerated and Safe Access to Poles” proposal does not rectify the most significant problems identified with the existing process. Instead, the NCTA approach would continue today’s problematic make-ready approach, allowing each attacher to individually move its attachment.<sup>13</sup> Although NCTA asserts that existing attachers must do their make-ready concurrently,<sup>14</sup> the reality is that make-ready is typically completed sequentially because a secondary attacher usually must wait until the attacher above has completed its work. Thus, NCTA’s proposal would perpetuate, rather than remedy, the already unwieldy and unpredictable process of multiple truck rolls and uncertain timing. Further, rather than enabling new attachers to help drive the application review, survey, and make-ready estimate process, the NCTA proposal would place increased burdens on pole owners and existing attachers to process

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<sup>7</sup> See Jan. 25, 2018, Corning Ex Parte, Attach. A at 6.

<sup>8</sup> See Nov. 30, 2017, PCCA Ex Parte at 2.

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

<sup>10</sup> See BDAC OTMR Recommendations at 22.

<sup>11</sup> See note 3 above. Additionally, although not addressed by the BDAC, the Commission should also confirm that OTMR applies to light poles. In doing so, the Commission should declare that Section 224(f)(1) requires access to all poles, including light poles, owned by covered utilities. The statute requires access to “any pole.” 47 U.S.C. § 224(f)(1). The plain language of the statute is broad enough to encompass poles that function exclusively as street lights.

<sup>12</sup> See Mar. 5, 2018, NCTA Ex Parte.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.* (“These timelines would run concurrently, not sequentially, in situations where there are multiple existing attachers, thereby addressing the most frequent complaint from new attachers.”).

applications and complete make-ready.<sup>15</sup> NCTA's proposal was not supported by the BDAC; indeed, one of the parties to NCTA's proposal was a member of the working group that crafted and approved the BDAC's recommendation. The Commission should not endorse this approach.

Instead, the Commission should adopt the BDAC's recommendation, with a few modifications that would allow all new attachers to take advantage of this approach. Important aspects of a new OTMR policy should include the following:

- **OTMR can apply to both “simple” and “complex” make-ready.** We have explained that OTMR is appropriate for both simple and complex make-ready, perhaps with a longer period for review and consultation with existing attachers before OTMR begins for complex work.<sup>16</sup> Similarly, the Commission should not adopt the BDAC's conclusion that every attachment outside of the communications space is beyond the scope of OTMR. If a contractor is qualified to work above the communications space, the new attacher should be allowed to use the contractor to do OTMR.

Some parties argue that OTMR should be limited to simple 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 minimize the impact of an outage.<sup>17</sup> But our OTMR proposal would provide existing attachers with notice of all OTMR.<sup>18</sup> 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. Some parties also argue that because most make-ready is simple make-ready, there's little benefit in extending OTMR to complex make-ready.<sup>19</sup> But, as INCOMPAS has noted, sometimes delayed access to a single pole can delay an entire project.<sup>20</sup> 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.

To the extent that the Commission's OTMR rules draw a distinction between simple and complex work, clear, objective criteria are necessary to minimize disputes. We agree with the BDAC that a reasonable definition of “complex” make-ready is work that is “reasonably likely to cause a service outage(s) or

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<sup>15</sup> See *id.*, ASAP Proposal at 1-2.

<sup>16</sup> See Jan. 19, 2018, Verizon Ex Parte at 4-5.

<sup>17</sup> See Jan. 16, 2018, AT&T & Communications Workers of America Ex Parte (“AT&T/CWA Ex Parte”) at 1-2.

<sup>18</sup> See Verizon NPRM Comments at 7 (discussing advance notice).

<sup>19</sup> See Jan. 16, 2018, AT&T/CWA Ex Parte at 2.

<sup>20</sup> See INCOMPAS NPRM Comments at 10 (explaining that “[d]elayed attachment to one pole can disrupt the ability to serve an entire area”).

facility damage,” and splicing or activities that involve relocating existing wireless antennas could be included as examples of complex work.<sup>21</sup>

- **The pole owner should keep the list of approved contractors.** The Commission should follow the BDAC’s proposal and adopt OTMR rules under which the pole owner holds the list of approved contractors that satisfy objective safety and reliability criteria, and attachers can propose adding additional contractors that satisfy that criteria.<sup>22</sup> The Commission’s current rules already require the pole owner to maintain a list of approved contractors that new attachers can use if they invoke the self-help remedy.<sup>23</sup> NCTA’s proposal that each existing attacher would create its own list of approved contractors<sup>24</sup> would be an administrative nightmare as it would require a pole-by-pole analysis to determine if a common contractor appears on each attacher’s list for a particular pole. While existing attachers could provide input, the ultimate authority to maintain the list of approved contractors must continue to rest exclusively with the pole owner. Further, existing attachers should not be allowed to raise objections at the last minute when a new attacher is ready to deploy, and should bear the burden of showing that a contractor on the approved list is not qualified based solely on substantial and factual evidence regarding the objective safety and reliability criteria.
- **If applicable, the new attacher’s contractor should determine whether make-ready work is complex.** The Commission should adopt the BDAC’s proposal that the new attacher’s contractor determine whether make-ready work is simple or complex, subject to a pole owner’s right to object.<sup>25</sup> As Google Fiber explains, “[t]he approved contractor – which wants to preserve relationships with *all* attachers as well as with the pole owner – has appropriate incentives to make this decision” and will likely be “conservative in their determination of whether work is simple or complex.”<sup>26</sup> The Commission should reject calls for existing attachers to make this determination<sup>27</sup> because existing attachers may have incentives to over-designate work as complex in order to slow the new attacher’s deployment.
- **The Commission should not require broad indemnification for consequential damages.** No party disputes that providers using OTMR should be directly liable for damage caused to poles or other attachments during make-ready.<sup>28</sup> But some

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<sup>21</sup> BDAC OTMR Recommendations at 13.

<sup>22</sup> BDAC OTMR Recommendations at 21.

<sup>23</sup> See 47 C.F.R. § 1.1422.

<sup>24</sup> See Mar. 5, 2018, NCTA Ex Parte at 2 (“If existing attachers do not perform their own make-ready work within the 30/45 day period, a new attacher may perform the work using a qualified contractor pre-selected by the existing attacher”).

<sup>25</sup> BDAC OTMR Recommendations at 14.

<sup>26</sup> Feb. 1, 2018, Google Fiber Ex Parte at 3 (emphasis retained).

<sup>27</sup> See AT&T NPRM Comments at 15-16.

<sup>28</sup> See, e.g., Jan. 19, 2018, Verizon Ex Parte at 5 (discussing indemnification).

parties go further and ask the Commission to impose broad indemnification for third-party claims related to OTMR.<sup>29</sup> The BDAC properly rejected this argument, finding that “[a]ny third party or indirect damages should be addressed in the attachment agreement(s) between the parties already in place.”<sup>30</sup>

Consistent with the BDAC’s proposal, the Commission should not impose broad third-party indemnification requirements on OTMR. As Google Fiber explains, such “[a] broad third-party indemnification obligation could expose competitive entrants to potentially unbounded liability”<sup>31</sup> and would have a chilling effect on OTMR. Although AT&T/CWA state that the existing attacher’s limitations on liability should flow to the new attacher,<sup>32</sup> 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.”<sup>33</sup> The Commission should not require broad third-party indemnification as a condition of using OTMR.

- **The Commission should not exempt parties with labor agreements from OTMR.** The BDAC did not exempt parties with collective bargaining agreements from OTMR and neither should the Commission. Under 47 U.S.C. § 224, the Commission or the states – not labor unions or private companies – have jurisdiction over pole attachments.<sup>34</sup> In exercising this jurisdiction, the Commission should adopt policy approaches – such as OTMR – that best promote broadband deployment rather than grant some parties’ requests that any OTMR rules include “carve-out language” for existing attachers with collective bargaining agreements.<sup>35</sup>
- **The Commission should allow attachers who elect OTMR to assume more responsibility for pre-make-ready activities.** As we have explained,<sup>36</sup> if an attacher chooses one-touch make-ready, the Commission should allow the attacher to shorten significantly the 45-day application review and survey period by retaining an approved contractor to conduct the survey as quickly as practicable. Similarly, an attacher can shorten the 28-day period for make-ready estimate and acceptance by quickly obtaining and accepting a cost estimate from an approved contractor.
- **The Commission should keep the current process, perhaps with minor adjustments, for those attachers who do not elect OTMR.** For those attachers

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<sup>29</sup> See Jan. 16, 2018, AT&T/CWA Ex Parte at 2.

<sup>30</sup> BDAC OTMR Recommendations at 17. Compare to Jan. 16, 2018, AT&T/CWA Ex Parte at 2.

<sup>31</sup> See Nov. 30, 2017, Google Fiber Ex Parte at 2.

<sup>32</sup> See Jan. 16, 2018, AT&T/CWA Ex Parte at 2.

<sup>33</sup> See Nov. 30, 2017, Google Fiber Ex Parte at 2.

<sup>34</sup> See 47 U.S.C. § 224(b)-(c).

<sup>35</sup> See Jan. 3, 2018, Communications Workers of America & Utility Workers Union of America Ex Parte at 1. See also Jan. 16, 2018, AT&T/CWA Ex Parte at 2-3.

<sup>36</sup> Verizon NPRM Comments at 7.

who do not elect OTMR, the Commission should maintain the existing pole attachment process (except as noted above).<sup>37</sup> Proposals such as NCTA's that would dramatically shorten the pole owner's pre-make-ready period from 73 to 29 days<sup>38</sup> would not work because pole owners and existing attachers often struggle to meet the existing deadlines. More importantly, imposing shorter timelines wouldn't address the fundamental inefficiencies of multiple parties performing make-ready.<sup>39</sup> At most, any change to the existing timelines should include only targeted, incremental reforms, such as eliminating the additional 30 days for make-ready work on wireless attachments above the communications space, as pole owners and attachers today have much more experience with pole-top attachments than they had in 2011.<sup>40</sup>

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For the reasons discussed above, 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.

Very truly yours,



Katharine R. Saunders

cc: Adam Copeland  
Lisa Hone  
Daniel Kahn  
Paul LaFontaine  
Michael Ray  
Jiaming Shang

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<sup>37</sup> See *id.* at 7-8.

<sup>38</sup> See Mar. 5, 2018, NCTA Ex Parte at "NCTA ASAP Timeline Comparison." See also Jan. 22, 2018, AT&T Ex Parte at "Pole Attachment and OTMR Timeline Comparison" (proposing to shorten period for application review, survey, and make-ready estimate from 73 to 59 days).

<sup>39</sup> See Google Fiber NPRM Comments at 12 ("Today, existing attachers struggle to meet the 60-day deadline; unless the Commission reforms its rules to streamline make-ready procedures themselves, shorter deadlines alone will not improve make-ready."); Verizon NPRM Reply Comments at 10-11.

<sup>40</sup> See AT&T NPRM Comments at 13-14. Although we also support eliminating the pole owner's right to invoke an additional 15 days to complete other parties' make-ready work, this right is rarely invoked and therefore eliminating it won't save much time in practice. See AT&T NPRM Comments at 13 (proposing to eliminate pole owner's right to complete other parties' make-ready); Frontier NPRM Comments at 15 (same).