



April 10, 2018

Via ECFS

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

Re: *Ex Parte* Filing of the Fiber Broadband Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

A year ago, the Federal Communications Commission (“Commission”) launched the above-referenced proceeding¹ to accelerate wireline broadband deployment by removing barriers to infrastructure investment, including barriers that undermine the ability of broadband providers to attach to utility poles expeditiously and at a reasonable cost. Since then, stakeholders from all sides, including the Fiber Broadband Association,² have weighed in raising numerous concerns with the pole attachment process and offered solutions to address those concerns. In addition, the Commission’s Broadband Deployment Advisory Committee (“BDAC”) has aired many of these same concerns and, after substantial discussion, adopted numerous proposals to facilitate

¹ *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); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 (2017).

² *See, e.g.*, Comments of the Fiber Broadband Association on the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (June 15, 2017) (“FBA NPRM Comments”); Comments of the Fiber Broadband Association on the Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (Jan. 17, 2018) (“FBA FNPRM Comments”); Reply Comments of the Fiber Broadband Association on the Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (Feb. 16, 2018) (“FBA FNPRM Reply Comments”).

the pole attachment process.³ In sum, after lengthy discussion and the development of a robust record, the Commission now has before it a series of proposals that have achieved substantial support that would reform the pole attachment process in meaningful ways. The Fiber Broadband Association believes the time has come to act on them and urges the Commission to adopt the following measures as soon as possible:

Codify the Commission’s Overlashing Precedent – The benefits of overlashing are clear: it significantly expedites and lowers the cost of fiber deployment.⁴ Overlashers possess strong incentives to attach responsibly to protect pole safety and reliability.⁵ After all, overlashers (or parties permitting third-party overlashing) already have existing attachments on the poles,⁶ and, in any event, pole owners can identify in post-overlashing inspections – and require remediation for – any “deficient” work.⁷ The Commission’s precedent is clear: providers overlashing consistent with generally accepted engineering practices need not submit an attachment application or comply with other utility conditions before overlashing.⁸ Yet, some utilities continue to throw roadblocks in the path of overlashers that increase deployment costs and result in delayed or abandoned buildouts. As a result, the Commission should codify existing law permitting overlashing without an attachment application or advance notice.

Permit New Attachers to Use One-Touch Make-Ready (“OTMR”) – Far too often, the make-ready process is a model of inefficiency, where new attachments are delayed and costs rise as multiple existing attachers each take a turn to “touch” the same pole. Moreover, under the existing make-ready process, existing attachers have no real incentive to move quickly to accommodate a new attacher, especially if the new attacher is a potential competitor. Because these substantial make-ready problems forestall broadband deployment, they are the very concerns that the Commission sought to – and should – address in this proceeding.⁹ Therefore, the Commission should, at a minimum, adopt the BDAC’s OTMR and Make-Ready Contractor Management proposals,¹⁰ and, as numerous stakeholders have commented, go further by permitting OTMR not only for

³ See BDAC, Report of the Competitive Access to Broadband Infrastructure Working Group (Jan. 23-24, 2018), available at <https://www.fcc.gov/sites/default/files/bdac-competitiveaccess-report-012018.pdf> (“BDAC Report”).

⁴ See FBA FNPRM Comments at 2-4; FBA FNPRM Reply Comments at 2-3.

⁵ See FBA FNPRM Comments at 4-5; FBA FNPRM Reply Comments at 3-6.

⁶ See FBA FNPRM Reply Comments at 5.

⁷ See Letter from Craig J. Brown, Senior Counsel, CenturyLink, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 3 (Apr. 6, 2018).

⁸ See FBA FNPRM Comments at 6-9; FBA FNPRM Reply Comments at 6-9.

⁹ See FBA NPRM Comments at 4-8.

¹⁰ See BDAC Report at 12-24.

“simple” make-ready but “complex” make-ready as well.¹¹ Verizon and Google Fiber, for instance, explain that proposals that do not extend OTMR in both situations fail to address the fundamental inefficiencies and problems of the existing “multiple touch” make-ready process.¹² In addition, because new attachers are directly liable for any damage they cause to poles and other attachments and should not be subject to unlimited liability,¹³ the Commission should reject proposals to require broad indemnification by attachers for consequential damages.¹⁴

Define and Establish Processes for a “Complete” Application – The timeline for pole attachments adopted by the Commission in 2011 is triggered by a complete application,¹⁵ but the Commission neither set forth the information that would need to be provided in a complete application nor did it establish deadlines for application reviews by pole owners. As a result, requesting attachers often find themselves “at sea” when their applications are not processed promptly or rejected without any reason being provided.¹⁶ The BDAC recognized these shortcomings and adopted a proposed rule that defines the information required in an application so the utility can survey the affected poles and sets the time period for review of an application.¹⁷ The Commission should adopt the BDAC’s proposal, although with the shorter timeframes proposed by its Working Group.¹⁸

¹¹ See, e.g., Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (Mar. 8, 2018) (“Verizon *Ex Parte*”); Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (Mar. 14, 2018) (“Google *Ex Parte*”).

¹² Verizon *Ex Parte* at 2-3; Google *Ex Parte* at 2-3.

¹³ See FBA FNPRM Comments at 5.

¹⁴ For support for the Fiber Broadband Association’s position regarding indemnification, see Verizon *Ex Parte*, Google *Ex Parte*, and Letter from Karen Reidy, Vice President, Regulatory Affairs, INCOMPAS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (Apr. 4, 2018).

¹⁵ 47 C.F.R. § 1.1420(c).

¹⁶ See, e.g., *Ex Parte* Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, at 2-3 (Mar. 8, 2018) (“ACA *Ex Parte*”).

¹⁷ See BDAC Report at 32-36.

¹⁸ See *id.* at 25-28. The Working Group proposed a timeframe of seven days for a utility to determine whether an application is complete and three days to review a resubmitted application. *Id.* The full BDAC extended the timeframes for action by the utility from seven calendar to 10 business days after submission for an initial determination of a complete application and from three calendar to five business days for review of a resubmitted application.

Improve the Survey Process – All stakeholders recognize that pole owners, existing attachers, and new attachers often have conflicting objectives in the pole attachment process. The key is to establish practices that enable the parties to overcome these differences and lessen the risk that disputes will arise and escalate, especially when determining the extent to which make-ready work will be necessary.¹⁹ When new attachers elect OTMR, surveys should be conducted by the pole owner’s approved contractor. And, when new attachers do not elect OTMR, as the BDAC recommended, pole owners should permit new and existing attachers to participate in the survey conducted during the field inspections of poles.²⁰ The BDAC found that “this coordination would speed up the application process and lower the cost of attachments.”²¹ The Commission should adopt this proposal.

Improve the Viability of the Self-Help Make-Ready Remedy for Attachers Not Electing OTMR – Requesting attachers, for a variety of reasons, may decide to forgo OTMR and give existing attachers an opportunity to undertake make-ready on their attachments according to the Commission’s timeline. Requesting attachers, however, should have an adequate remedy if existing attachers fail to complete their work by the deadline, and the Commission’s existing self-help remedy rule²² has proven to be difficult to invoke.²³ The BDAC sought to fix the flaws with the self-help remedy by first making the requesting attacher responsible for overseeing the make-ready work by the existing attachers and then permitting the requesting attacher to immediately undertake make-ready using its own contractor if the existing attacher fails to complete its work.²⁴ The Commission should adopt this proposal.

¹⁹ See, e.g., *ACA Ex Parte* at 3.

²⁰ See BDAC Report at 29-33.

²¹ *Id.* at 29.

²² 47 C.F.R. § 1.1420(e)(v).

²³ See, e.g., *ACA Ex Parte* at 3-5.

²⁴ See BDAC Report at 34-43.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.²⁵



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²⁵ 47 C.F.R. § 1.1206.