



April 12, 2018

VIA ECFS

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

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

Dear Ms. Dortch:

NCTA continues to tout its delayed alternative make-ready proposal¹—a proposal which, as Google Fiber has noted, is not very different from the status quo.² In addition, NCTA raises numerous points that are essentially red herrings, and distract from the core issues the Commission is faced with in the above-captioned proceeding.

First, the BDAC recommendation for one-touch make-ready (“OTMR”) deliberately focused on make-ready in the communications space.³ Communications space make-ready has the most room for improvements that are likely to have a real, concrete impact on overall deployment timelines, because it involves so many different parties. Today’s process requires substantial coordination among all existing attachers in the communications space, as well as with the pole owner, making it extremely difficult to complete communications space make-ready within 60 days. In addition, incumbent communications attachers have little to no incentive to work cooperatively in that process with new providers who may be their competitors. Thus, any process (including the one set out in the current rules as well as NCTA’s

¹ Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, WC Docket No. 17-84 (filed Apr. 4, 2018) (“April 4, 2018 NCTA Ex Parte”).

² Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, WC Docket No. 17-84 (filed Mar. 13, 2018).

³ See Report of the Competitive Access to Broadband Infrastructure Working Group, presented to the Broadband Deployment Advisory Committee of the Federal Communications Commission, Washington, DC, at 12 (Jan. 23-24, 2018) (“Competitive Access Working Group Report”) (“The Commission should create rules for a streamlined application, permitting and make-ready process that utilize a one-touch make-ready model *in the communications space* to expedite the deployment of broadband infrastructure.”) (emphasis added).

alternative proposal) that relies on incumbents to perform make-ready work quickly and efficiently to benefit a new provider not only ignores the practical realities of coordinating work among multiple parties, but also could be undermined by competitive bias. The results are delays and high, unpredictable costs.

But NCTA claims that OTMR will be no improvement over the current process because electrical make-ready—that is, work that must be done by the electric utility, including pole replacements—is exempted from OTMR. NCTA may be correct that there is room for improvement in timelines related to make-ready in the electric supply space, but that has nothing to do with the need to improve make-ready in the communications space. Moreover, as almost all stakeholders agree,⁴ the vast majority of make-ready work is simple make-ready work that occurs in the communications space—work that does not require a cut or splice resulting in a network outage, as may be required where a pole replacement is necessary. Any “concerns” about electrical make-ready are irrelevant to make-ready in the communications space and should instead be considered an effort to complicate the proceeding and obstruct the adoption of improvements to the make-ready process.

In reality, what NCTA’s proposal does is double-down on the existing, multi-party process. NCTA reiterates that the accelerated make-ready deadline it proposes “applies to all attachers”⁵—but that is the case today as well. Nevertheless, today, make-ready is almost never completed within 60 days; shaving 15 or 30 days off of that deadline will not somehow make existing attachers get their work done. And NCTA’s shorter timeframe does nothing to ameliorate the other big problem with today’s procedures—high, unpredictable costs incurred by existing attachers and charged back to new providers, who have no visibility into the basis for those costs or ability to negotiate lower rates. Combined with NCTA’s proposed 90-day advance look at a new competitor’s deployment—which would be completely unnecessary under OTMR because incumbent attachers would not themselves be “engaging in large-scale make-ready activity on hundreds or thousands of poles”⁶—this alternative proposal looks less like an improvement over today’s inefficient and uncertain process and more like a proposal designed to give existing attachers an expanded ability to delay new deployment by competitive entrants (not to mention more advance warning of their deployment plans). And competitive entrants would be left with little recourse.

On certain key points, Google Fiber agrees with NCTA—for instance, Google Fiber thinks joint surveys are a good idea, insofar as everyone participates.⁷ But, as noted by a representative of Southern Company at January’s BDAC meeting,⁸ it is far more common that no one shows up for a joint survey, leading to wasted time, money, and effort. Google Fiber also

⁴ See Letter from Ola Oyafusi, AT&T, to Marlene H. Dortch, WC Docket No. 17-84, at Attachment at 2 (filed Apr. 9, 2018).

⁵ April 4, 2018 NCTA Ex Parte at 3.

⁶ See *id.*

⁷ See *id.*

⁸ See FCC, Broadband Deployment Advisory Committee Meeting – Day 1, at 129:43 (Jan. 23, 2018), <https://www.fcc.gov/news-events/events/2018/01/broadband-deployment-advisory-committee-meeting-day-1>.

believes that existing attachers should have the ability to participate meaningfully in (including objecting to) a pole owner's selection of approved contractors and has advocated for that right on the BDAC. But the time to make objections to an approved contractor is when the pole owner selects the contractors—a process that should ideally take place well before a new deployment is underway. In contrast, allowing each attacher to mandate, at the time a new deployment is commencing, that a new entrant use only its approved contractors would not only introduce additional delay in the make-ready timeframe, but would also perpetuate the existing inefficient and costly sequential process. New attachers would still be forced to pay for multiple trips to the pole by multiple contractors—and each trip would disrupt streets and sidewalks and create an opportunity for damage to facilities or injury to people. NCTA's claims that this sequential process is necessary to avoid damage to existing attachers' facilities rests on anecdotal evidence from deployments where OTMR was not in use or even proposed⁹ and in which, in at least one case, NCTA's members actively resisted efforts for cooperative make-ready procedures.¹⁰

Finally, NCTA's last red herring is indemnification. No one disputes that new attachers should be liable for damage they or their contractors cause to existing attachers' facilities; indeed, such liability has been a core feature of every OTMR proposal to date. The Commission can and should mandate that new attachers using OTMR be liable for such damage. But extending that liability to third party claims for consequential, incidental, special, or even punitive damages—particularly such damages that arise out of service outages—would create a risk profile so immense that new deployments, which are economically difficult under the best of circumstances, would be financially impossible.¹¹ In support of its position, NCTA notes that Google Fiber has agreed to broad third party indemnification provisions in its pole and right of way agreements, and that is correct. But those agreements are negotiated, two-party contracts in which each party owes the other consideration. Indemnification in such agreements does not bear the same unbounded risk because of the relationship of the parties. NCTA does not propose that new attachers should, as it puts it, “enter into privity” with existing attachers so that the parties can negotiate a properly bounded indemnity obligation. Instead, it asks the Commission to adopt a one-size-fits-all indemnification requirement that is without precedent.

Numerous stakeholders agree that the current make-ready process is untenable. It is inefficient, time-consuming, and costly for all parties, and creates myriad opportunities for injury and damage to people and property. Proposals that do nothing more than reduce timeframes without changing the fundamental approach to preparing poles for new deployments do almost nothing to resolve those problems. One-touch make-ready, on the other hand, represents an efficient use of resources, speeds deployment, makes costs lower and more predictable, and reduces the opportunity for injury and property damage. And it does so while providing incumbents a meaningful opportunity for input into the selection of approved contractors as well as the chance to self-perform complex make-ready.

⁹ See Reply Comments of Google Fiber Inc. at 11-13, n.24, WC Docket No. 17-84 (filed July 17, 2017) (responding to claims of damage caused during make-ready).

¹⁰ See *id.* at n.24.

¹¹ See Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, WC Docket No. 17-84 (filed Nov. 30, 2017).

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLD', written in a cursive style.

Kristine Laudadio Devine
Counsel to Google Fiber Inc.

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