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April 13, 2017

Via ECFS

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

Re: ***Ex Parte*** **Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, and Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, WT Docket No. 16-421**

Dear Ms. Dortch:

On April 11, 2017, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association ("ACA"), and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Chairman Pai's Acting Wireline Advisor, Jay Schwarz. On April 13, 2017, Mssrs. Lieberman and Cohen met Commissioner Clyburn's Wireline Advisor, Claude Aiken, and, in a separate meeting, with the following staff of the Wireline Competition Bureau: Madeleine Findley, Daniel Kahn, Terri Natoli, Michael Ray, Deborah Salons, and (by telephone) Adam Copeland. The purpose of these meetings was to discuss actions the Commission could take to accelerate the deployment of wireline broadband networks and the proposed Notice for Proposed Rulemaking ("NPRM"), Notice of Inquiry ("NOI"), and Request for Comment in WC Docket No. 17-84.[1]

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[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 Comments, FCC-CIRC1704-02.

ACA supports initiation of the NPRM because, as explained by it members in March 30 2017 meetings with Commission staff,[2] regulated and unregulated pole owners continue to erect barriers that can substantially raise their costs to upgrade and expand their networks. ACA is particularly heartened the NPRM addresses concerns about the speed of the pole attachment process and costs and timing of make ready, including by seeking to shorten the "attachment timeline" the Commission adopted in 2011.[3] While the NPRM raises many of its members' concerns and proposed solutions, ACA representatives requested the Commission seek comment on the following additional pole attachment proposals, which would further the Commission's goal of accelerating "the deployment of next-generation networks and services by removing barriers to infrastructure investment:"[4]

First, ACA members find that delays in the pole attachment process often stem in part from the fact that the majority of pole owners: do not provide online access to digital databases of key information about the location and availability of and other relvant data related to poles, ducts, and conduits for existing and potential new attachers; and do not employ a web-portal for the pole attachment application and approval process that allows the applicant to track the status of the application, the progress of the make-ready works, and related activities. At the same time, it is clear that pole owners are increasingly adopting and implementing, often first for their own internal purposes, the use of web portals for submitting and managing attachment applications with customized solutions from the marketplace[5] and notification systems among pole owners and electric utilities to communicate efficiently and coordinate the works related to

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2 *Ex Parte* Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, WT Docket Nos. 17-79 and 16-421 (Apr. 3, 2017) ("All [ACA members] noted that their companies have slowed broadband deployment or expansion efforts (and some have even abandoned builds) due to pole owners delaying attachments, charging unreasonable make ready or rental fees, or even worse, engaging in both harmful practices. All also noted that the problems have grown recently as ACA members and other providers need to undertake major broadband deployment projects to meet the demands of their customers for greater bandwidth. All noted that pole owners provide no reasoned justifications for their delays and rate increases.").

3 *NPRM*, ¶¶ 6-12. *Implementation of Section 224 of the Act et al.*, Report and Order and Order on Reconsideration, WC Docket No. 07-245 *et al*., 26 FCC Rcd 5252, ¶¶ 22-23 (2011) ("2011 Pole Attachment Order").

4 *NPRM*, ¶ 1.

5 *See, e.g.*, "PPL Pole Attachment Services," available at http://katapultengineering.com/serivces/web-services/pole-attachment/.

See, e.g., "SPIDA Min Product description", available at http://spidasoftware.com/products/spidamin_asset_management.

pole transfers, pole make-ready, and joint trenching.[6] As a result of this burgeoning "automation," ACA members believe the Commission should consider requiring the adoption of such practices by all pole owners, which, among other things, would enable each attacher to connect with a single point of contact of the pole owner that aggregates relevant digital information and that expedites attachments. Accordingly, the NPRM should seek comments on having the Commission require that pole owners (as well as owners of ducts and conduits) adopt the following online databases and application processes:

- Online Database with relevant information on poles, ducts, and conduit. In 2010, the Commission considered mandating that pole owners collect and make available data about their assets, but in the *2011 Pole Attachment Order*, it declined to adopt such a requirement finding the burdens of creating the database outweighted the potential benefits.[7] However, ACA submits that calculation has changed materially since then and now favors mandating collection of this data. First, many utilities and pole owners, particularly large ones, have already geolocated all of their poles and conduit information for their internal processes. Second, the cost of creating digital databases has and will continue to decrease as pole owners increasingly adopt automated internal management systems for their assets. Third, the benefits from having access to such data have increased (and are continuing to increase) significantly as providers accelerate their broadband deployments and seek greater access to these assets. For instance, survey and engineering proposal review, which is perhaps the most time-consuming and labor intensive part of the application process, could be more quickly and efficiently facilitated if attachers have online access to a digital map and centralized database showing pole location, physical condition, number of attachers, recent pictures, engineering drawing "as-is," and available communications space.[8] The NPRM therefore should seek

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6 *See e.g.*, "National Joint Utilities Notification System (NJUNS) - Pole Attachment (PA) Module" available at http://web.njuns.com/wp-content/uploads/PA_PT_UsersGuide-1.pdf.

See e.g., "NOTIFY system – Product features" available at https://www.aldensys.com/notify#overview-sectionNOTIFY.

See e.g., "Spatially-enabled Permitting and Notification System (SPANS) – Product features" available at https://spans.us/features/.

7 *2011 Pole Attachment Order*, ¶ 89.

8 Some European countries have required service providers to provide digital databases of poles and conduit networks to competitive service providers to increase Physical Infrastructure Access for broadband deployment. In the United Kingdom, Openreach launched in 2016 a digital map of its passive infrastructure to be available to all communications providers (*see* https://www.openreach.co.uk/orpg/home/updates/briefings/generalbriefings/generalbriefingsarticles/gen08516.do). In Portugal, PT Communicacoes launched in 2015 a website

comment on requiring that pole owners collect and make available data about their poles, ducts, and conduits. Such an inquiry also should examine how to minimize collection burdens, including for smaller pole owners, and protect information that is proprietary and concerns critical infrastructure.

- Online Management Process for Pole and Conduit Attachment. As discussed above, some poles owners have implemented an online application process for existing and potential new attachers.[9] Accordingly, in the NPRM, the Commission should ask for comment on whether it should require all pole owners to provide applicants with access to an online application system via a web portal, which would accept applications online, track application status, and contain a repository of all application requirements and other relevant information. The Commission also may consider having the Broadband Deployment Advisory Committee adopt a model standardized application.

- Online Tracking for Make-Ready Process. Just as the application status should be accessible through a web portal, so should all stages of make-ready. The use of online notification systems for make-ready will facilitate communications among a new attacher, the pole owner, and existing attachers for the correct and timely execution of the work. Also this practice will bring transparency to the pole attachment process, enabling the applicant to visualize problems and expedite the sequence for moving cables and equipment among existing attachers.[10] Thus, the NPRM should ask for comment on

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portal with information regarding its pole and conduit infrastructure as part of the country's regulation of conduit and pole access. (*See* "Servico de informacao via Extranet - Oferta de Referencia de Acceso a Postes (ORAP)" available at http://ptwholesale.pt/pt/servicos-nacionais/infraestruturas/Paginas/orap.aspx; "Servico de informacao via Extranet - Oferta de Referencia de Acceso a Condutas (ORAC)" available at http://ptwholesale.pt/pt/servicos-nacionais/infraestruturas/Paginas/orac.aspx.) While the markets in both countries may differ, these examples demonstrate the value and efficiencies that can be gained by requiring universal adoption of a database requirement.

Additionally, having an online database may have value for other Commission proceedings and activities. For instance, it would improve the accuracy of inputs into the Connect America Model, specifically in terms of plant mix (aerial vs. underground vs. conduit) in specific geographic areas. This would ensure that the output of the model—subsidy amounts due operators on a geographic basis—would better reflect their actual deployment costs.

9 *See, e.g.*, "Nashville Electric Service Standard Pole Attachment – Submitting an Application", available at https://nespower.com/documents/PoleAttachmentGuidelines.pdf.

10 The National Joint Utilities Notification system (NJUNS) facilitates the exchange of information and the coordination among utilities about shared activities such as pole

whether (and how) to require pole owners to establish an online notification system for make-ready works.

In addition to considering these online process management solutions to expedite the attachment process, ACA also requests the NPRM include the following proposals to fix other pole attachment problems:

- Disputes about make-ready costs often stem from the fact the pole owner alone conducts the field survey and reviews the engineering proposal. Joint field surveys by the applicant and pole owner, which are becoming a more common industry practice, would address this concern, often facilitating agreement in real time about make-ready criteria and forecast costs.[11] Use of joint surveys also will enable the applicant to receive much faster survey results and proceed to find an alternate route or attaching solution where an attachment is not feasible and thus denied. Therefore, ACA suggests that the NPRM seek comment on the alternatives to incorporate the use of joint field surveys as mandatory or optional for the applicant in the pole attachment process, bringing more transparency to make-ready works, speeding up the engineering review timeline, and reducing the number of disputes on make-ready costs.

- ACA members, in their March 30th meeting, expressed frustration with both the timing and costs of the make-ready process. The Shentel representative, for instance, commented that unreasonable make-ready costs have become a growing problem, including because pole owners frequently seek to have new attachers pay most, if not all, of the cost to upgrade or replace an existing pole, or force new attachers to incur the cost of repairing mistakes made by existing attachers. ACA, thus, appreciates that NPRM seeks comment on various remedies to address these concerns. ACA suggests the NPRM also inquire about the value of and procedures for an open-bidding process among a pool of contractors approved by the pole owner and existing attachers. Such a process would select a contractor based on bid price, execution time, and possibly other criteria, and it would be similar to open-bidding processes used, for example, by federal agencies to purchase goods and services from private contractors.[12] The NPRM should seek

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attachments (*See* "NJUNS's Pole Attachment module" available at http://web.njuns.com/wp-content/uploads/PA_PT_UsersGuide-1.pdf).

[11] *See, e.g.*, "Application to Georgia Power Company for Make-Ready Work and Attachment Permit – Pre-Engineering Joint Ride" available at https://www.georgiapower.com/docs/business/products-programs/application.pdf.

[12] *See, e.g.*, "Bidding on Federal Construction Projects - General Services Administration (GSA)", available at https://www.gsa.gov/portal/content/103328.

comment on whether this practice could be instituted in combination with a One-Touch Make-Ready process, where an attacher would issue a request for proposal, or separately.

- The NPRM focuses exclusively on access to poles, but ACA members have faced difficulties and delays getting information about the availability of vacant conduit from conduit owners. ACA therefore believes, as discussed above in reference to the establishment of a database and application process, that the Commission also should address facilitating access to conduit.

- ACA members additonally are open to sharing the costs of installing conduit via coordinated builds with private and public entities. The practice of sharing information to coordinate excavation and digging activities has been used over many years by some states and local governments to prevent damages and accidents in utilities infrastructure such as gas and water sewer pipes.[13] ACA believes that the implementation of a similar practice, inviting other interested parties to lay conduit during excavation works, can lead to more rapid and cost-efficient deployment of broadband networks. ACA, therefore, suggests the NPRM seek comment on whether conduit owners or parties controlling access to rights-of-way subject to Sections 224 and 253 should be required to notify cable and telecommunications networks providers operating in the same area that they plan to open a trench (or otherwise install conduit) and give the providers an opportunity to place conduit in the trench and share in the cost.

- At their meeting with Commission staff, ACA members explained that municipalities recognize the economic and social benefits of broadband service and will enter into reasonable pole attachment deals with providers to accelerate deployments. However, often municipal pole owners either charge unreasonable fees or delay attachments. While local governments are not subject to the Communications Act's pole attachment provision (Section 224), ACA submits that the Commission can regulate access to municipally owned poles pursuant to Section 253 when local government actions prohibit or effectively prohibit the provision of telecommunications services. Accordingly, the NPRM should inquire about the extent of the Commission's authority under Section 253 to address concerns with poles, ducts, and conduit owned by local governments, the extent of problems with access to these assets, and remedies to address concerns.

ACA representatives closed the meeting by expressing their support for the NOI sections that address issues concerning access to state and local government rights-of-way. ACA members too frequently find that public entities controlling access to and use of rights-of-way continue to delay access and charge unreasonable fees. Moreover, these problems occur even for

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[13] *See, e.g.*, "Oregon Utility Notification Center" available at http://callbeforeyoudig.org/oregon/index.asp.

providers that are already occupying and compensating the franchising authority for access to and use of rights-of-way. For example, some municipalities have been seeking to impose additional fees as these providers offer additional services without making material changes to their use of public rights-of-way. ACA believes this is a clear violation of the statute since no additional rights-of-way are being burdened.[14] In addition to inquiring about additional requirements to address these concerns, ACA suggests the NOI also examine ways to streamline the process by encouraging one-stop state-issued franchises or to encourage or mandate local franchises to adopt more uniform practices. This is especially important to facilitate deployments by providers that are expanding their networks across different local government boundaries to meet the needs of commercial, institutional, and wireless customers.

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[14] ACA agrees with the recent comments by NCTA on this issue. *See* Reply Comments of NCTA – The Internet & Television Association, WT Docket No. 16-421 at 6 (Apr. 7, 2017) ("Certain types of fees generally are not reasonable for purposes of Section 253(c). In particular, for companies with existing authority to place equipment in public right of way (e.g., a franchised cable operator), no additional authority or fees should be required for activities or equipment that does not place any significant new burden on the right-of-way (e.g., providing a new service over existing plant or overlashing on existing strand.)").

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

Sincerely,

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