Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	
	)	

COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION

Ken Mason
Michael Saperstein
AJ Burton
FRONTIER COMMUNICATIONS
1800 M Street, NW, Suite 850S
Washington, D.C. 20036
(202) 223-6807

June 15, 2017

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY. 1

II. THE COMMISSION OFFERS SEVERAL COMMON-SENSE POLE ATTACHMENT PROPOSALS THAT WILL PROMOTE BROADBAND DEPLOYMENT. 3

- A. Rationalizing ILEC Pole Attachment Rates Will Encourage Broadband Deployment and Remove Unnecessary Competitive Distortion. 4
- B. Reaffirming that the Telecom Rate Is Based on Space Occupied Will Further Promote Broadband Deployment. 7
- C. Preempting Unreasonable Pole Attachment Rates Imposed by Municipalities Would Remove a Barrier to Infrastructure Investment. 9
- D. Stopping the Tennessee Valley Authority – a Federal Entity – from Thwarting and Undermining Broadband Deployment Would Also Encourage Additional Broadband Infrastructure Investment. 10
- E. Adopting a 180-Day “Shot Clock” for Rate Disputes In Addition to Access Complaints Would Help Promote Broadband Deployment. 14
- F. Speeding Make-Ready Timelines Presents a Difficult Balance Between Expedited Deployment and Serious Network and Safety Concerns, and It Remains Too Early for Sweeping Nationwide Make-Ready Reforms. 15
- G. Requiring ILECs to Publish a Schedule of Rates or a Database of Poles Would be Cost-Prohibitive and Would Deter Broadband Rollout. 20

III. STREAMLINING COPPER RETIREMENT PROCESSES WILL PROMOTE BROADBAND DEPLOYMENT. 22

- A. The 2015 Copper Retirement Rules Have Proven to Add Additional Costs to and Slow Broadband Deployment with Limited to No Corresponding Benefits. 22
- B. Eliminating Section 68.110(b) Will Promote Deployment of Next-Generation Networks. 25

IV. CLARIFICATION OF SECTION 214 WILL FURTHER PROMOTE BROADBAND DEPLOYMENT. 26

V. PREEMPTING STATE AND LOCAL LAWS THAT ARE BARRIERS TO BROADBAND DEPLOYMENT WILL FURTHER INCENTIVIZE NEXT-GENERATION INFRASTRUCTURE. 29

- A. Clarifying that Broadband and VoIP Are Interstate Information Services Would Remove Regulatory Uncertainty and Avoid Regulatory Drag Created by Fifty-Plus Potential Regulators of the Internet. 29
- B. State Laws Requiring Telecom Carriers to Bear 100% of the Costs of Facility Relocation are a Barrier to Broadband Deployment. 31

C. State Moratoria Are Blunt Instruments that Impede Broadband Deployment. 32
D. Constraining Excessive Fees Will Promote Broadband Deployment. 33
E. Unfunded State Carrier-of-Last-Resort Mandates Are an Impediment to Broadband Deployment. 34
VI. CONCLUSION. 36

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	
	)	

COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION

I. INTRODUCTION AND SUMMARY.

Frontier Communications Corporation, on behalf of itself and its incumbent local exchange carriers operating in twenty-nine states ("Frontier") hereby submits comments to the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment in the above-referenced docket.[1] This item offers several common-sense proposals to remove barriers to infrastructure and accelerate next-generation broadband deployment.

First, rationalizing incumbent local exchange carrier ("ILEC") pole attachment rates so all broadband providers pay the same just and reasonable pole attachment rates will incentivize next-generation deployments and remove a legacy competitive market distortion. Based largely on historical pole ownership and status as an ILEC, Frontier has paid pole attachment rates several times that of its competitors offering the same broadband services. As part of its efforts to level the playing field and promote broadband deployment, the Commission can take further steps to ensure reasonable pole attachment rates for all broadband providers. For example,

[1] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (Apr. 21, 2017) ("*NPRM*," "*NOI*," or "*Request*," as appropriate).

clearly reaffirming that the federal telecommunications rate is calculated based on the space occupied, not the number of attachments, will deliver the reasonable rates the Commission intended. Likewise, supporting efforts to require *all* electric companies, including those owned by municipalities and cooperatives, to charge just and reasonable regulated rates will promote broadband. Until the exclusion for municipalities and cooperatives is removed from the just and reasonable rate requirements in 47 U.S.C. §224, however, the Commission should use its authority under Section 253 to preempt unreasonable rates charged by municipalities. Similarly, the Commission should oppose the decision by the Tennessee Valley Authority, a federal entity, requiring its municipalities and cooperatives to charge pole attachment rates roughly four times the federal rate, thus erecting barriers to broadband deployment in an area covering roughly nine million Americans.

At the same time, the Commission must be careful in adopting sweeping reforms to make-ready processes. Sweeping reforms to the make-ready process, such as significantly reduced timelines or one-touch make-ready proposals that cut pole owners out of the make-ready process could impose significant costs on Frontier or undermine the integrity of its service and safety of its infrastructure, as well as the safety of individuals who may not be appropriately experienced in the risks of pole work.

Second, expediting copper retirement timelines, and clarifying the interpretation of Section 214 discontinuance requirements will promote broadband deployment. Experience over the past two years has shown that the copper retirement rules adopted in 2015 and the "functional test" interpretation of Section 214 have slowed fiber deployment. Even though the Commission and customers desire next-generation fiber deployment, the copper retirement rules and Section 214 discontinuance procedures add red tape and delay infrastructure investment. By clarifying

that upgrades from copper to fiber do not require delays or burdensome paperwork, and narrowing when filings must be made, the Commission's proposals will correct this impediment to building next-generation networks.

Third and finally, preempting state and local laws that are barriers to deployment will help enable carriers to deploy next-generation infrastructure. For example, simply clarifying that broadband and VoIP service are interstate information services exempt from local regulations will remove the substantial uncertainty currently being created by the potential of fifty or more regulators seeking to impose service quality standards or additional obligations on these services. Likewise, ensuring that states and municipalities provide reimbursement for the costs imposed on telecommunications carriers required to relocate facilities during highway construction projects would ensure that states and localities do not levy significant capital costs on providers that takes away scarce dollars that could be better used for broadband investment. Further, preempting state moratoria on permitting and excessive fees will lessen two other problematic barriers to deployment. Additionally, preempting state carrier-of-last-resort ("COLR") obligations that carry no associated funding – a relic of outdated ILEC regulation – would further alleviate a serious potential drain on deployment funding.

Frontier applauds Chairman Pai and the Commission for asking the right questions about how best to remove barriers to broadband deployment and incentivize next-generation infrastructure, and Frontier looks forward to working with the Commission and the Broadband Deployment Advisory Committee throughout this process.

II. THE COMMISSION OFFERS SEVERAL COMMON-SENSE POLE ATTACHMENT PROPOSALS THAT WILL PROMOTE BROADBAND DEPLOYMENT.

In revisiting pole attachment rates and processes, the Commission appropriately recognizes the physical challenges of deploying next-generation infrastructure. For ILECs like

Frontier, one of the greatest challenges and expenses has been the disproportionately high pole attachment rates it has been forced to pay compared to cable and telecommunications competitors, particularly in some of the rural areas in which Frontier operates. Rationalizing ILEC pole attachment rates and adopting a clear, bright-line presumption as to those rates will go a long way towards promoting broadband deployment.

At the same time, sweeping reforms to make-ready processes considered in the *NPRM* could have unintended effects on public safety and the reliability of existing networks. While the Commission is right to move swiftly forward to rationalize ILEC pole attachment rates based on extensive experience since the *2011 Pole Attachment Order*, exercising caution as to make-ready processes while carefully considering the safety and reliability issues involved will best incentivize deployment of next-generation infrastructure.

A. Rationalizing ILEC Pole Attachment Rates Will Encourage Broadband Deployment and Remove Unnecessary Competitive Distortion.

As the Commission explains, "[r]eforms which reduce pole attachment costs and speed access to utility poles would remove significant barriers to broadband infrastructure deployment."[2] In particular, the Commission's proposal that the just and reasonable ILEC rate "should presumptively be the same rate paid by other telecommunications attachers, i.e., a rate calculated using the most recent telecommunications rate formula"[3] (the "New Telecom Rate") will foster broadband deployment and level the competitive playing field as ILEC attachers currently pay disproportionately higher rates compared to other broadband attachers.

---

[2] *NPRM* ¶ 3.

[3] *Id.* ¶ 45.

The Commission's proposal to rationalize ILEC pole attachment rates is much welcome and long overdue. Ten years ago, the Commission's 2007 Notice of Proposed Rulemaking "tentatively conclude[d] that all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service."[4] As USTelecom explained nearly a decade ago, "incumbent telephone companies typically are asked to pay on average more than 8 times the pole attachment rate paid by cable companies for attachments used to deliver competing broadband services."[5] Unfortunately, "[i]n the *2011 Pole Attachment Order*, the Commission declined to adopt a pole attachment rate formula for incumbent LECs, opting instead to evaluate incumbent LEC complaints on a case-by-case basis to determine whether the rates, terms, and conditions imposed on incumbent LEC pole attachments are consistent with Section 224(b) of the Act."[6]

As the Commission now recognizes, however, "this formulation has led to repeated disputes between incumbent LECs and utilities over appropriate pole attachment rates."[7] Since the *2011 Pole Attachment Order* alone, Frontier has been forced into litigation or formal proceedings in more than two dozen different instances, including seven before the FCC.[8] Of

---

[4] *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, 22 FCC Rcd 20195 ¶ 36 (2007).

[5] Comments of the United States Telecom Association, WC Docket No. 07-245 at 2 (Mar. 7, 2008).

[6] *NPRM* ¶ 44 (citing *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 ¶ 203 (2011) ("*2011 Pole Attachment Order*")).

[7] *See NPRM* ¶ 44.

[8] *See Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company and CTSI, LLC d/b/a Frontier Communications CTSI Company v. UGI Utilities, Inc. – Electric Division*, EB Docket No. 14-217; *Frontier Communications of the Carolinas LLC v. Duke Energy Progress,* EB Docket No. 14-213; *Frontier Communications of the Carolinas LLC, Complainant, v. Duke Energy Carolinas, LLC*, EB Docket No. 14-215;

course, this level of discord was not the goal of the *2011 Pole Attachment Order*. The Commission at that time believed its "guidance w[ould] provide greater clarity to the industry, improve the administrability of Commission complaint proceedings involving incumbent LEC attachers, and seek to strike the most appropriate balance in ensuring just and reasonable rates given the particular terms and conditions of an incumbent LEC's agreement for pole access."[9] It is only too clear that the Commission now must take further action to promote its polices.

Meanwhile, the fundamental underlying trends that drive unreasonable pole attachment rates for ILECs continue to worsen. In 2011, the Commission indicated that "incumbent LECs as a whole appear to own approximately 25-30% of the poles" and, thus, may not be in an equivalent bargaining position.[10] Currently, in FCC regulated states, Frontier owns only about 15% of the joint poles compared to investor-owned electric companies, evidencing Frontier's lack of bargaining power to negotiate more reasonable rates that reflect today's market realties. ILECs now compete head-to-head with cable, telecommunications, and broadband companies for the same customers, but lack the ability to negotiate competitive pole attachment rates.

Based on these inequities and the continuing disputes, the Commission's proposal that the just and reasonable ILEC rate is presumptively the New Telecom Rate is a common-sense solution to help avoid unnecessary litigation and level the playing field.[11] As a policy matter, it can hardly be challenged that "just and reasonable rates" should mean the same thing for

---

Frontier Communications of the Carolinas LLC v. Duke Energy Carolinas, LLC, EB Docket No. 14-214; *Frontier W.V. v. Appalachian Power Co.*, File No. EB-12-MD; *Frontier Florida LLC v. Florida Power and Light Company*, EB Docket No. 15-73; *Commonwealth Telephone Company LLC, et al. v. Metropolitan Edison Company, et al.*, EB Docket No. 14-218.

[9] *2011 Pole Attachment Order* ¶ 203.

[10] *Id*. at ¶ 206.

[11] *NPRM* ¶¶ 44-46.

providers of fundamentally identical services making fundamentally similar attachments. The historical legacy of ILEC pole ownership should not continue to impede ILECs' ability to compete on a level-playing field when deploying and operating broadband networks.

The Commission justly proposes to adopt the New Telecom Rate formula as the presumptive ILEC rate formula and that, in order to rebut this presumption, a pole owner must "demonstrate with clear and convincing evidence that the benefits to the incumbent LEC far outstrip the benefits accorded to other pole attachers."[12] This proposal certainly is a big step in the right direction, but greater clarity is needed to achieve the Commission's policy goals while avoiding unnecessary litigation. Without an objective test for what evidence would "be sufficient to show that an incumbent LEC attacher should not be entitled" to the New Telecom Rate, electric companies would have an incentive to avoid, or at least delay, meaningful rate reductions simply by alleging ambiguous or illusory "benefits." ILECs still would be forced to file complaints with the Commission to obtain just and reasonable rates – the issue would just shift to whether the presumption has been rebutted. The Commission's suggestion of majority ILEC pole ownership would constitute a reasonable, objective standard for clear and convincing evidence and avoid needless, repeated litigation.[13]

B. Reaffirming that the Telecom Rate Is Based on Space Occupied Will Further Promote Broadband Deployment.

The Commission's New Telecom Rate is plainly calculated using the "Space Occupied" by an attacher, not the number of attachments that the attacher has in that space.[14] Specifically, under the New Telecom Rate:

---

[12] *NPRM* ¶ 45.

[13] *Id.*

[14] *See* 47 C.F.R. § 1.1409(e)(2).

$$\text{Rate} = \text{Space Factor} \times \text{Cost}$$

$$\text{Where Space Factor} = \left[\frac{\begin{pmatrix} \text{Space} \\ \text{Occupied} \end{pmatrix} + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

Every input in the "Space Factor" is calculated on a "per pole" basis, including the "Space Occupied."

Nevertheless, certain utility pole owners have resisted negotiating a reasonable pole attachment rate by arguing that applying the New Telecom Rate to ILECs would actually result in rate *increases* for the ILEC. They argue that the New Telecom Rate is applied per attachment while the ILEC contract rate is applied per pole. Thus, those utility pole owners calculate the New Telecom Rate based on the one-foot presumption and then attempt to apply it to each piece of equipment attached to the pole regardless of the space occupied. For example, if an attacher is using one foot of space for two attachments, the utility pole owner would charge that attacher two times the new telecom rate for attaching to that pole, thus doubling the rate.

As the Commission is otherwise in the process of reviewing its pole attachment rules, reaffirming that the new telecom rate is a per-pole rate based on the amount of space occupied, not a rate applied to each individual piece of equipment in that space occupied, will help narrow rate disputes, remove additional barriers to infrastructure deployment, rationalize pole attachment rates, and remove uncertainty. The Commission never intended for pole owners to be able to distort pole attachment rates by charging per attachment rather than per pole based on

space occupied,[15] and attachers do not cause any additional costs if they do not occupy any additional space.

C. Preempting Unreasonable Pole Attachment Rates Imposed by Municipalities Would Remove a Barrier to Infrastructure Investment.

In the *Notice of Inquiry* portion of the item, the Commission asks whether it can "use its authority under Section 253 to regulate access to municipally-owned poles," and, if so, whether it could "use its Section 253 authority in states that regulate pole attachments under Section 224(c)."[16] The short answer: Yes and Yes – and the Commission should preempt municipalities from charging unreasonable pole attachment rates, even in states that regulate pole attachments. Providing a backstop against unreasonable municipal pole attachment rates would go a long way towards knocking down one of the larger barriers to rural broadband deployment.

In 1978, when Congress passed the Pole Attachment Act, Congress of course did not have a sense of the importance of broadband and rural broadband deployment, much less how municipalities and cooperatives would impede broadband deployment to their own citizens and members. Perhaps understandably at the time, Congress carved out an exception for municipalities and cooperatives under the theory that municipalities and cooperatives were accountable to their citizens and members in a way that privately-owned electric companies were not. With each passing year, it becomes increasingly clear that some of these organizations value the revenues they are able to demand for pole attachments over expanded broadband

---

[15] The Telecom Rate formula clearly focuses on space occupied not number of attachments. This is consistent with the Commission's policy on overlashing where the Commission has found that utilities are not entitled to additional compensation for overlashed attachments. *See Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103 ¶ 79 (2001); *see also* Cable *Television Ass'n of Georgia v. Georgia Power Co.*, Order, 18 FCC Rcd 16333, 16340-41 ¶ 13 (2003).

[16] *NPRM* ¶ 108.

deployment to their citizens and members – often some of the Americans most in need of faster broadband speeds and the associated economic benefits.

In 1996, however, Congress had an additional 18 years of experience and a little more foresight, and recognized affirmatively that municipalities may stand in the way of broadband deployment. With 47 U.S.C. § 253, Congress plainly explained "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Unreasonable attachment fees imposed by municipally-owned organizations are precisely the type of barriers that Section 253 is meant to empower the FCC to knock down.

The Commission's broad powers under the later-in-time Section 253 give it ample discretion to – and it should – preempt rates that are greater than the current federal telecommunications and cable rates. Because the later-enacted 47 U.S.C. § 253 allows the FCC to preempt unreasonable state actions, the Commission can even preempt unreasonable rates in states that have certified they regulate pole attachments under 47 U.S.C. § 224. No matter whether a state otherwise regulates pole attachments, municipally-owned utilities should no longer be able to impede rural broadband deployment.

D. Stopping the Tennessee Valley Authority – a Federal Entity – from Thwarting and Undermining Broadband Deployment Would Also Encourage Additional Broadband Infrastructure Investment.

The Tennessee Valley Authority ("TVA") and its recent decision requiring increased pole attachment rates provides an interesting case study in the abuses of cooperatives and municipalities and the willingness of electric utilities to delay and impede broadband services to the citizens and members they serve. The case of the TVA is especially disheartening because it is a federal agency directly contradicting the longstanding bipartisan support for just and

reasonable pole attachment rates by actively requiring the municipalities and cooperatives it serves to impose artificially inflated pole attachment rates.

As background, the TVA was formed as part of the New Deal in the 1930s to bring electricity to the Tennessee Valley, historically a very rural part of the country.[17] The TVA provides electricity to local power distributors serving 9 million people in parts of seven southeastern states – Tennessee, Kentucky, Mississippi, Alabama, Georgia, Virginia, and North Carolina.[18] Historically, the TVA has largely operated with little to no oversight,[19] even though the nine-member board is nominated by the President and confirmed by the Senate, and its budget is approved by Congress.[20]

At the beginning of 2016, the TVA adopted new, extreme pole attachment rates that are several times federally regulated rates.[21] Based on the TVA's own materials, it appears that the TVA took this action unilaterally and solely under the advisement of the cooperatives and their consultants.[22] There was no opportunity for public comment from communications companies and no indication that the TVA discussed its plans with the Commission or NTIA. Indeed, the TVA explained that it did not care at all about how its proposal affects rural broadband

---

[17] *See* TVA, *About TVA* (last accessed May 22, 2017), https://www.tva.gov/About-TVA.

[18] *See id.*

[19] *See* The Heritage Foundation, *Backgrounder: Time for the Sun to Set on the Tennessee Valley Authority* (May 6, 2014), http://www.heritage.org/government-regulation/report/time-the-sun-set-the-tennessee-valley-authority ("This lack of effective oversight from either the government or the private sector has resulted in costly decisions, excessive expenses, high electricity rates, and growing liabilities for all U. S. taxpayers.") ("*TVA Backgrounder*").

[20] *See, e.g., id.* at 2.

[21] TVA, *Minutes of Meeting of the Board of Directors* (Feb. 11, 2016), http://bit.ly/2q4qqqg.

[22] TVA, *Proposed Board Resolution* (Jan. 22, 2016), http://bit.ly/2ruO6DW. As the TVA explained, it consulted only with its power companies and the Tennessee Valley Public Power Association. *See id.* at 3.

deployment: "[B]ecause the FCC formulas are designed to further the policy goal of encouraging broadband investment, particularly in rural areas, they do not appropriately compensate the electric utility for the attachment."[23]

Describing its approach as "the fully allocated cost method," the TVA arrives at a pole attachment rate that is approximately *four times* the FCC rate.[24] Whereas the Commission allocates approximately 7.4% of the cost of the pole to each communications attacher, the TVA allocates, according to its calculations, approximately 28.4%. This is a radical departure from the longstanding bipartisan support for adopting just and reasonable pole attachment rates to promote broadband deployment and economic growth.

This issue is particularly disconcerting because the TVA has just announced that it is *competing directly with carriers* at the same time it is hiking their pole attachment rates. As the TVA explains, its Board "approved a $300 million strategic fiber initiative that will expand TVA's fiber capacity" that, among other things, "make fiber capacity available" to local cooperatives and municipally-owned utilities to compete directly with private enterprises.[25] The push for electric cooperatives to be eligible to receive state grant money for broadband deployment in some of these TVA states, such as Tennessee, coupled with the TVA middle mile network and the significant increase in pole attachment rates, gives the appearance of a group stifling the investment of others to provide themselves a competitive advantage.

---

[23] *Id.* at 6.

[24] *See generally id.*

[25] *See* TVA, *TVA Board Approves $300 Million Strategic Fiber Initiative* (May 11, 2017), http://bit.ly/2rlkzgu.

This large-scale municipal/public network is also disturbing given the recent research by Christopher Yoo showing how much financial pressure these types of networks put on the entities that try to fund them.[26] Looking at all of the municipal fiber projects in the United States that publicly report the financial results of their broadband operations, Yoo found that eleven of the twenty projects were cash-flow negative, and seven of the remaining nine projects would require more than sixty years to break even – twenty to thirty years longer than the projected useful life of the assets.[27] Perhaps not surprisingly given the general lack of accountability surrounding the TVA, five of the twenty projects in Yoo's study are municipalities with power supplied by the TVA.[28] Yoo's study convincingly suggests that the TVA's latest actions threaten to increase municipal debt in the region and further undermine private investment.

Unfortunately, this issue with cooperatives and municipalities erecting barriers to broadband deployment plays out not only in areas served by the TVA but also throughout the country. While the FCC may not have jurisdiction to prevent cooperatives from imposing unreasonable pole attachment rates, it should, as described above, provide a backstop for unreasonable rates imposed by municipalities. Additionally, the Commission should recommend that Congress remove the municipality and cooperative exclusion from 47 U.S.C. § 224. Finally, as the Commission works through this rulemaking and the Broadband Deployment Advisory Committee process, it should consider sending an open letter to the TVA, perhaps together with

---

[26] Christopher S. Yoo and Timothy Pfenninger, *Municipal Fiber in the United States: An Empirical Assessment of Financial Performance* (2017), http://bit.ly/2rYZ4ys.

[27] *Id.*

[28] *See id.* at 13 (Electric Power Board of Chattanooga, Fayetteville Public Utilities, Tullahoma Board of Public Utilities, Bristol Tennessee Essential Services, and Morristown Utility Commission); *see also* TVA, *Local Power Companies* (last accessed May 30, 2017), https://www.tva.gov/Energy/EnergyRightSolutions/Local-Power-Companies.

NTIA, requesting that the TVA reconsider its decision and the effect it will have on rural broadband throughout the Tennessee Valley – a federal entity, in particular, should be held accountable for erecting such a large barrier to broadband deployment.

E. Adopting a 180-Day "Shot Clock" for Rate Disputes In Addition to Access Complaints Would Help Promote Broadband Deployment.

Frontier supports the Commission's proposal to establish a 180-day "shot clock" for Enforcement Bureau resolution of pole access complaints,[29] and Frontier believes that extending this shot-clock to complaints regarding pole attachment rates would further help promote broadband deployment and protect reasonable rates.[30] While establishing a bright-line standard as to reasonable rates, as discussed above, will help ILECs obtain just and reasonable rates and reduce pole attachment costs, Frontier's experience since the *2011 Pole Attachment Order* illustrates that rate disputes could also benefit from a 180-day "shot clock." In particular, Frontier filed a series of complaints regarding unjust and unreasonable pole attachment rates that were pending for an average of approximately two years before they were resolved.[31] While

---

[29] *NPRM* ¶ 47.

[30] *Id.* ¶ 51.

[31] *See Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company and CTSI, LLC d/b/a Frontier Communications CTSI Company v. UGI Utilities, Inc. – Electric Division*, EB Docket No. 14-217 (filed May 14, 2014; settled Oct. 19, 2016); *Frontier Communications of the Carolinas LLC v. Duke Energy Progress,* EB Docket No. 14-213 (filed Dec. 9, 2013; settled Nov. 9, 2015); *Frontier Communications of the Carolinas LLC, Complainant, v. Duke Energy Carolinas, LLC*, EB Docket No.14-215 (filed Jan. 29, 2014; settled Nov. 9, 2015); *Frontier Communications of the Carolinas LLC, Complainant, v. Duke Energy Carolinas, LLC*, EB Docket No. 14-214 (filed Jan. 17, 2014; settled Nov. 9, 2015); *Frontier W.V. v. Appalachian Power Co.*, File No. EB-12-MD (filed June 22, 2012; settled Feb. 12, 2014); *Frontier Florida LLC v. Florida Power and Light Company*, EB Docket No. 15-73 (filed Mar. 13, 2015; settled Feb. 16, 2017); *Commonwealth Telephone Company LLC, et al. v. Metropolitan Edison Company, et al.*, EB Docket No. 14-218 (filed June 11, 2014; docket remains open).

several factors contributed to this delay, any target timelines or guidelines to reasonably speed resolution of access and rate complaints will promote certainty and broadband deployment.[32]

F. Speeding Make-Ready Timelines Presents a Difficult Balance Between Expedited Deployment and Serious Safety and Network Reliability Concerns, and It Remains Too Early for Sweeping Nationwide Make-Ready Reforms.

Frontier applauds the Commission's dedication to broadband rollout and understands the interest in speeding make-ready processes; however, as the Commission recognizes, "speeding access to poles could raise meaningful concerns about safety and protection of existing infrastructure."[33] Because of these concerns, Frontier believes that it is premature to roll out dramatic changes to make-ready processes and timelines on a nationwide basis.

While existing timelines are already aggressive, if the Commission were to alter the current timeline framework at all, Frontier believes that removing the ability of a pole owner to request an additional 15 days to complete make-ready work when existing attachers fail to do so may be one of the only areas where a shorter timeline could reasonably be accommodated.[34] As a pole owner, Frontier does not regularly move other entities' attachments.

Similarly, the Commission asks about combining the cost estimate and attacher acceptance steps.[35] While Frontier routinely finds that it needs the 14 days provided in the current timeline to provide an estimate, this part of the timeline might be more flexible than

[32] Certainty surrounding timing of pole attachment dispute resolution is especially important to broadband deployment because delays make it difficult to enforce pole attachment rights, cast uncertainty over investment decisions, and cause litigation to become more expensive. When complaints take too long to be resolved, companies are forced to divert resources from infrastructure deployment because they do not know accurate costs or rights.

[33] *NPRM* ¶ 6.

[34] *See id.* ¶ 14.

[35] *See id.* ¶ 10.

others if the Commission finds that action is necessary. For example, Frontier finds that the 45 days for application review and engineering survey and the 60 days for make-ready are already aggressive timeframes, and these are essential parts of a safe and productive make-ready process. Further, if the FCC were to decide to alter the 14-day period for cost estimate, it should still retain that 14-day period for pole owners to prepare the make-ready estimate if a prospective attacher has invoked the self-help remedy of having its contractor perform the survey.

The Commission also should examine warily any proposals that reduce or compromise the rights of pole owners and other attachers to maintain full-functionality of their plant, such as one-touch make-ready policies.[36] Simply put, new attachers do not have the same incentives to maintain optimal connectivity for customers of existing attachers and to ensure that violations are not created for existing plant during the make-ready process. Due in part to these concerns, Frontier filed an amicus brief in the AT&T case challenging the Louisville one-touch make-ready ordinance.[37] Frontier explained that the Louisville "[o]rdinance strips the utility pole owner of the right to negotiate key terms of access that are designed to minimize disruption and delay to the consumer."[38] As the Commission notes, AT&T argued "that utility-approved contractors have on occasion moved AT&T's network facilities, with less-than satisfactory

---

[36] *See, e.g.*, Reply Comments of Verizon, WC Docket No. 07-245 and GN Docket No. 09-51 at 33-34 at 6 (Oct. 4, 2010) ("The Commission should likewise reject extreme proposals that would give new attachers an automatic, immediate right to use third-party contractors to perform make ready work. . . . [T]his proposal would unreasonably strip pole owners of their right to control their own attachments without any specific-findings of unreasonable delays on the pole owner.").

[37] *Bellsouth Telecommunications, LLC v. Louisville/Jefferson County Metro Government*, Brief Amicus Curiae of Frontier Communications Corporation, Case No. 3:16-cv-00124-TBR (filed June 24, 2016) ("*Frontier Louisville Ordinance Amicus Brief*"); *NPRM* ¶ 15.

[38] *Frontier Louisville Ordinance Amicus Brief* at 5.

results."[39] Likewise, in challenging Nashville, Tennessee's pole attachment ordinance, Comcast explained that third-party contractors "are significantly more likely to damage Comcast's equipment or interfere with its services."[40] Frontier also has experienced issues when others have moved its facilities and created safety code violations. Once facilities are moved, particularly when a new pole is installed and the old pole is removed, it can be very difficult to address issues, including whether there was an existing violation or whether it was created by the party performing the make-ready work.

The Commission also should avoid make-ready proposals that raise potential concerns with collective bargaining agreements. As explained by Verizon,[41] the Massachusetts Department of Telecommunications and Cable,[42] Hawaiian Telecom,[43] USTelecom,[44] and others, including a group of nine large electric companies calling themselves the Coalition of Concerned Utilities,[45] agreements with unions often preclude the use of outside contractors on their

---

[39] *NPRM* ¶ 15.

[40] *Id.*

[41] Reply Comments of Verizon, WC Docket No. 07-245 and GN Docket No. 09-51 at 33-34 (Oct. 4, 2010).

[42] Comments of Massachusetts Department of Telecommunications and Cable, WC Docket No. 07-245 and GN Docket No. 09-51 at 3 (Aug. 16, 2010).

[43] Reply Comments of Hawaiian Telcom, WC Docket No. 07-245 and GN Docket No. 09-51 at 12 (Oct. 4, 2010).

[44] Comments of United States Telecom Association, WC Docket No. 07-245 and GN Docket No. 09-51 at 23 (Aug. 16, 2010).

[45] Reply Comments of the Coalition of Concerned Utilities, WC Docket No. 07-245 and GN Docket No. 09-51 at 10 (Oct. 4, 2010). This coalition included: Allegheny Power, Baltimore Gas and Electric Co., Dayton Power and Light Co., FirstEnergy Corp., National Grid, NSTAR, PPL Electric Utilities, South Dakota Electric Utilities, and the Wisconsin Public Service Company.

facilities. Frontier similarly has certain collective bargaining agreements that place restrictions on the use of outside contractors for Frontier's facilities.

Additionally, pole attachment processes that cut out existing attachers or pole owners invite finger pointing and disputes. Specifically, third-parties may introduce a safety hazard or violation, which is only discovered after the fact, and there are then significant questions of evidence as to which party should be financially responsible for the violation. Again, new attachers have the incentive to deploy as quickly (but not as safely) as possible and have only limited incentives to protect existing attachers' facilities.

To the extent the Commission moves forward with any changes to the existing make-ready rules and processes, such changes must protect the safety and reliability of existing facilities. At a minimum, any changes must ensure that existing attachers and infrastructure owners are not adversely impacted, including that they are: (1) notified in advance; (2) not penalized for failing to meet timelines; (3) given adequate time – at least 60 days – to review make-ready work; and (4) protected from customer-impacting outages, including by ensuring full compensation by new attachers when something goes wrong.

First, regarding notice, it is critical that pole owners and existing attachers are given advance notice of all make-ready work to be able to review whether there are any safety risks or the potential for customer service to be impacted. Again, the fundamental issue is that new attachers are primarily focused on speed and not the safety or reliability of existing attachments. What new attachers may deem to be a simple or non-customer-impacting attachment may in fact have dramatic effects. Additionally, for make-ready work that has the potential to impact customer service, an existing attacher must be provided a reasonable opportunity to do the make-ready work. The existing timelines already can be very challenging and should not be modified.

Second, any significant penalties for existing attachers failing to act in a certain timeframe, such as the $500 per pole per month "right-touch make-ready" proposal the Commission mentions, would unfairly shift significant costs and risks to existing attachers and pole owners.[46] Pole owners and existing attachers already are required to divert limited resources for their core business of providing service to consumers, and a penalty is an inappropriate way to enforce a timeline in this context. The existing self-help remedies provide a better balance of competing equities.

Third, in addition to adequate notice in advance of make-ready work, existing attachers and pole owners must be given adequate time – at least 60 days – to review make-ready work that a new attacher has used a utility-approved contractor to complete.[47] If the timeline is too short, existing attachers will not have a meaningful opportunity to inspect the work for safety and reliability issues. If the new attacher is already on the pole, pole owners and existing attachers should be given adequate time to balance the need to inspect the modified facilities with all of their existing service needs. Unfortunately, the right to inspect does not provide full protection against any problems that might be created by taking the right to perform make-ready work away from the owner of the existing attachments and putting it in the hands of the new attacher. Improperly performed make-ready work may cause outages or injury to people or property before it can be discovered.

Fourth, before the Commission makes sweeping changes to existing rules and procedures that may put new attachers in a position to create safety and reliability issues for existing facilities, the framework must include adequate safeguards that require new attachers to

---

[46] *Id.* ¶ 25.

[47] *Id.* ¶ 20.

appropriately compensate existing attachers and pole owners for injury to people or property. In addition, the Commission should require new attachers to fix any safety violations they have caused in accordance with appropriate timelines (i.e., imminent-danger or service-affecting violations fixed immediately, and all others within 30 days or mutually agreed timeline). As the Commission discusses, this should also include bonds and indemnification provisions for damages.[48]

In sum, due to the high-stakes and all of the complexities associated with the make-ready process, Frontier urges the Commission to make any changes to the make-ready process on a careful, incremental basis if it determines that changes are needed. Sweeping reforms remain largely untested, and it is too early for drastic changes nationwide without more data and certainty. With the amount of ongoing new construction for broadband deployment, such changes could create very large problems.

G. Requiring ILECs to Publish a Schedule of Rates or a Database of Poles Would be Cost-Prohibitive and Would Deter Broadband Rollout.

Like with the Commission's discussion of make-ready timelines, Frontier appreciates the Commission reviewing all potential areas for accelerating broadband deployment. Some of the Commission's proposals, such as a requirement to publish a schedule of make-ready rates or an unfunded mandate to provide a pole database would divert scarce resources from broadband deployment. For example, in the State of Connecticut alone, Frontier estimated that it would cost $75 million to $100 million to be able to create a database of its poles.[49]

---

[48] *Id.* ¶ 15.

[49] Written Exceptions of Frontier Communications, *DPUC Investigation into the Appointment of a Third-Party Statewide Utility Telephone Pole Administrator for the State of Connecticut – Overlash*, Docket No. 11-03-07RE01 at 7 (Mar. 29, 2017).

Frontier appreciates the Commission's questions about what pole information is available and what incentives can be offered.[50] In Frontier's case, an unfunded mandate to create a pole database would take money directly from broadband deployment and infrastructure investment. Like many ILECs, Frontier has acquired different companies over time. Those companies had, and oftentimes still have, many different types of paper and electronic pole records. Frontier does not have a centralized database containing the types of pole information that would expedite pole attachment applications. It would be extremely costly and time-consuming for Frontier to build and maintain such a database. Even if such an effort were fully-funded, it would take significant resources just to evaluate how much it would cost and how long it would take to create such a centralized database.

As to publicly posting a common schedule of make-ready rates,[51] the many different factors involved make it impossible to create a useful schedule and likely would lead to more, not fewer, disagreements. Frontier's make-ready charges are reasonable and cost-based – owning poles is not a revenue-generating function for Frontier – but they can and do vary on a pole-by-pole basis.[52] Multiple factors can drive significantly different costs that cannot be adequately captured in a schedule. Some of these factors are: differences in geography, complexity of request, number and type of facilities involved, construction environment, contractor versus in-house resources, need for power-qualified workers if power is on the pole, unit descriptions and interpretations. Additionally, Frontier operates in 29 different states and must rely on many different contractors in addition to its own employees. In fact, Frontier often

---

[50] *NPRM* ¶ 27.

[51] *See id.* ¶¶ 33-34

[52] *See, e.g.*, *USTelecom 2011 Comments* at 24; Reply Comments of Verizon, WC Docket No. 07-245 and GN Docket No. 09-51 at 33 (Oct. 4, 2010).

deals with several different contractors in different parts of the same state, whose own costs may vary based on different factors, including whether the area is urban or rural. This variability would make trying to publish reliable schedules an impossibility and cause disputes between the pole owner and new attachers who attempt to rely on such schedules.

III. STREAMLINING COPPER RETIREMENT PROCESSES WILL PROMOTE BROADBAND DEPLOYMENT.

In the two years since the 2015 copper retirement rules have been adopted, experience has shown that these complex procedures unnecessarily delay and complicate upgrading copper infrastructure to fiber. The Commission's proposals would fix this unfortunate state of circumstances.

A. The 2015 Copper Retirement Rules Have Proven to Add Additional Costs to and Slow Broadband Deployment with Limited to No Corresponding Benefits.

Frontier applauds the Commission for recognizing the delays and increased burdens introduced by the revised copper retirement rules.[53] In Frontier's experience, these rules have already delayed deployment of next-generation fiber infrastructure and caused Frontier's engineers to consider deploying copper instead of fiber in order to comply with the rules. Frontier was particularly confused by the decision to erect these additional hurdles to fiber broadband deployment when they were adopted in 2015, especially because there was no evidence of problems with the old rules, and there is so little business related to resale of residential copper. In the short time these rules have been in effect, Frontier has had to divert significant engineering, regulatory, and legal resources to compliance with these rules as it

[53] *NPRM* ¶¶ 57-58.

endeavors to improve its network – resources that cable, wireless, and other providers need not expend.

Frontier wholeheartedly supports the Commission's proposed reforms to this unnecessarily burdensome process and believes that these proposals will incentivize and speed next-generation deployments. The Commission elsewhere so fervently endorses and funds infrastructure upgrades – including the $4.5 billion annual budget for the Universal Service High-Cost Fund – it makes little sense to deter those upgrades, particularly with rules that show so little benefit. As the Commission notes, "the transition from copper to fiber has been occurring for well more than a decade now," and "interconnecting carriers are aware that copper retirements are inevitable and . . . should be familiar by now with the implications of and processes involved in accommodating such changes."[54]

Updating the rules to make them as simple as possible will best promote next-generation infrastructure deployment. For example, there is no longer (if there ever was) a basis for having different network change rules than copper retirement rules.[55] In Frontier's experience, there are already a very limited number of interconnecting entities actually affected. Thus, repealing 47 C.F.R. § 51.332, and returning copper retirement to a general network change rule would best streamline and incentivize the next-generation fiber deployments that consumers and communities demand.[56]

---

[54] *Id.* ¶ 62.

[55] *Id.*

[56] The Commission's proposal to harmonize the copper retirement rules with the network change notification rules obviates the need to more specifically address several of the more granular concerns Frontier has with the Commission's current rules. For example, the Commission asked if it continues with the current copper retirement rule, Section 51.332, in some form, whether it should "remove the notification requirements in emergency situations." *Id.* ¶ 63. While Frontier found several instances where it was difficult or impossible to comply with the current rules due

There are other changes the Commission can make that would promote infrastructure deployment. For example, it does not make any sense for there to be a right of objection to a network change.[57] It does not appear that there is any legitimate reason for a party to object to the deployment of new fiber infrastructure, and instead, retaining some type of objection provision would just introduce opportunity for gaming and parties to seek to delay deployments.

Likewise, the Commission's (a) expanded definition of copper retirement;[58] (b) expanded list of interconnecting entities requiring direct notice;[59] and (c) expanded list of state, federal, and tribal actors requiring notice;[60] served only to increase compliance costs without any corresponding benefit. For example, with respect to feeder loop, the definition is unnecessarily broad because it triggers notice requirements on the mere theory that a carrier could be interested in the information despite the fact that no interconnecting entity is using that plant or is actually affected. In other words, even if no interconnecting carrier was relying on that feeder loop, fiber upgrades are subject to a long and costly notification process to complete an upgrade. Likewise, for *de facto* copper retirement, it makes little to no sense to require notice on the mere theory that someday in the future someone may care about the copper. While carriers like Frontier do not seek to allow copper plant to degrade, they are unable to continuously monitor the state of all infrastructure, even if it is not currently in use. So too for the expanded list of interconnecting

---

to short timelines associated with emergency repairs and state and local construction schedules, Frontier believes the short term network change notification rule adequately accounted for these types of situations. However, should the Commission retain Section 51.332 in any manner, it is imperative to accommodate these types of emergency situations.

[57] *Id.* ¶ 59.

[58] *Id.* ¶ 60.

[59] *Id.* ¶ 61.

[60] *Id.*

entities – Frontier finds itself notifying cable companies and other carriers that have never even considering the potential for purchasing residential copper loops for resale. The expanded list of government entities suffers from the same problem. It is unclear that any entity actually uses this information, and instead the rules serve just to add costs to what virtually all these parties desire – faster broadband networks.

The Commission should also consider taking the regulatory relief a step further. For example, if no existing carrier is actually using the copper plant at issue, it is unclear why copper retirement notice is required at all. Similarly, in areas where the FCC is actively financing broadband deployment because it has determined there is inadequate competition – i.e., Connect America Fund ("CAF") areas – it should create an affirmative carve out for copper retirement notifications. The Commission has already determined the costs of deployment are too costly in these areas, and it is vanishingly likely that another carrier is interested in the copper; there is thus no reason for the Commission to require notifications.

In short, after two years under the new rules, it has become clear that the significant costs and delays imposed on providers seeking to deploy next-generation networks far outweigh the limited benefits, if any, of the greatly expanded rules.

B. Eliminating Section 68.110(b) Will Promote Deployment of Next-Generation Networks.

Section 68.110(b), like the 2015 Copper Retirement Rules, adds additional hoops for carriers to jump through when they seek to upgrade networks and thus slows broadband deployment.[61] In particular, carriers have little window into what network equipment customers are using. Additionally, this rule already applies to a shrinkingly small number of customers –

[61] *See id.* ¶ 70.

while 93% of voice households subscribed to ILEC switched service as recently as 2003, subscription has fallen to 18% as of 2015,[62] showing that in many ways, this rule is already outdated. At the same time, this rule is redundant of the market incentives carriers already have without the need for any formal rules. In order to retain customers, carriers have incentives to ensure a smooth transition process, including by providing improved replacements services. When Frontier upgrades infrastructures, its business teams directly contact customers to offer new services. If carriers fail to do so, customers usually have the option of switching to another provider. Accordingly, eliminating Section 68.110(b) will remove unnecessary red tape and promote broadband deployment.

IV. CLARIFICATION OF SECTION 214 WILL FURTHER PROMOTE BROADBAND DEPLOYMENT.

Like the 2015 Copper Retirement Rules, Section 214 discontinuance procedures have unfortunately and unnecessarily been contorted to add additional hurdles to the process of upgrading copper to fiber. Consumers demand the next-generation Internet services made possible through these types of upgrades, and, indeed, the FCC helps fund these upgrades through the CAF program. Clarifying that upgrading from copper to fiber does not require long and complex notification and discontinuance procedures, and that no application or FCC approval is required will help promote broadband deployment through the removal of another unnecessary barrier.

In particular, the Commission asks the common-sense question of whether it should interpret, "'service' within the meaning of Section 214's discontinuance requirement as

---

[62] *See* USTelecom, *Residential Voice Competition* (last accessed June 9, 2017), http://bit.ly/2s4LcG5.

encompassing the entire range of offerings that are available to a community," rather than looking at each service option separately.[63] Fundamentally, the purpose of Section 214 is to ensure that a community is not left disconnected because a provider exits the business; it was never intended to micromanage every aspect of how a carrier provides its service. In other words, Section 214 itself requires no action if a carrier upgrades its network from copper to fiber. Complex multi-factor tests to ensure the new service is an "adequate replacement" have instead been used as a hook for backdoor regulation of next-generation services. Interpreting the term "service" in this fashion would meet the purposes of Section 214 while avoiding unnecessary red tape.

The Commission's own CAF program perhaps best illustrates the schizophrenic approach to fiber deployment with the existing narrow interpretation of Section 214. Through the CAF program, the Commission is spending billions annually to ensure that rural customers can have access to faster internet speeds – in many cases through fiber deployment or other next generation technologies. At the very same time, through the 2015 Copper Retirement rules and its interpretation of Section 214, the Commission sought to manage every aspect of this upgrade process and implemented timelines and costs that greatly slowed and complicated deployment.

At a minimum, for all of the reasons USTelecom states in its appeal of the "functional test" interpretation of Section 214,[64] Frontier agrees the Commission should reject the "functional test" standard. In addition to the rationale laid out in the appeal, as a practical matter, the "functional test" requires a carrier like Frontier to delay by months and file several applications every time it upgrades from copper to fiber – a seemingly nonsensical result. Even

---

[63] *Id.* ¶ 123.

[64] *See generally* Brief for Petitioner USTelecom, *United States Telecom Ass'n v. FCC*, No. 15-1414 (D.C. Cir. June 14, 2016) (USTelecom Brief).

though Frontier by all accounts would be deploying improved services; even though this is a result that the Commission in other contexts wants to encourage; even though consumers really crave these advanced services; even though no other competitors are subject to this level of regulation when they make next-generation deployments; even though ILECs continue to suffer line-loss, and have a voice market share for switched voice below 20%; and even though Frontier already has hundreds of thousands of customers subscribing to upgraded fiber services, the current "functional test" framework adds months of delay, layers of Commission regulation, and significant disincentives to deployment.

Additionally, at a minimum, even if the Commission does not adopt an interpretation of "service" that goes beyond a single offering or product, the Commission should explicitly clarify that no formal application is required in the context of upgrading copper to fiber.[65] For example, if a carrier upgrades copper service to a widely commercially deployed fiber service – for instance a service with 100,000 or more subscribers – no application should be required. The competitive market, as judged by a sufficient number of subscribers, is likely a better test than any rigid administrative review. Whether the Commission achieves this result through forbearing on this limited basis from Section 214 or grants blanket forbearance authority from the application requirement,[66] the Commission will significantly incentivize fiber deployment.

[65] *NPRM* ¶ 95 (asking whether the Commission should "conclude that Section 214(a) discontinuances will not adversely affect the present or future public convenience and necessity, provided that fiber, IP-based, or wireless services are available to the affected community," and thus not require an application).

[66] *Id.* ¶ 96.

V. PREEMPTING STATE AND LOCAL LAWS THAT ARE BARRIERS TO BROADBAND DEPLOYMENT WILL FURTHER INCENTIVIZE NEXT-GENERATION INFRASTRUCTURE.

While the following is by no means an exhaustive catalog of the state and local laws that Frontier is subjected to that create barriers to broadband deployment, Frontier provides the following examples to help start building the record of areas where federal preemption could remove barriers and promote next-generation broadband deployment.

A. Clarifying that Broadband and VoIP Are Interstate Information Services Would Remove Regulatory Uncertainty and Avoid Regulatory Drag Created by Fifty-Plus Potential Regulators of the Internet.

Clearing the jurisdictional uncertainty surrounding broadband and VoIP would remove a great specter of regulation surrounding these next-generation services. The potential for broadband dampening regulation is perhaps best illustrated by state attempts to regulate Internet privacy. Following the Congressional Review Act reversal of the Commission's broadband privacy rules, several states, and even some municipalities, introduced legislation that have created significant uncertainty for Internet service providers.[67] As, for example, Commissioner O'Rielly explains, "it is both impractical and very harmful for each state to enact differing and conflicting privacy burdens on broadband providers, many of which serve multiple states, if not the entire country."[68]

---

[67] *See, e.g.*, ACLU, *Status of Internet Privacy Legislation in the States* (last accessed June 3, 2017), http://bit.ly/2qMCcpz.

[68] Remarks of FCC Commissioner Michael O'Rielly before the American Legislative Exchange Council's Spring Task Force Summit Annual Summit, Charlotte, NC (May 5, 2017), http://bit.ly/2rORo5G.

While the Commission is currently examining the issue of the proper classification as to broadband in the Internet freedom proceeding,[69] a reaffirmation that broadband is an information service and that it is interstate will remove this cloud of uncertainty not only as to privacy laws, but also to Internet service quality regulation and other efforts by states to regulate the Internet.

Similarly, reaffirmation that VoIP is an interstate information service[70] would reduce the potential costs imposed by states testing how far the can push the bounds of VoIP regulation, especially considering that it is essentially "becoming just another application riding over the Internet backbone."[71] While the Federal District Court for the District of Minnesota recently found that VoIP was indeed an information service, and thus that any state regulation conflicted with the federal policy of non-regulation,[72] the Minnesota Public Utilities Commission had asserted jurisdiction over VoIP, and Charter was forced to take the issue to court. Additionally, the district court had to go through a somewhat complex analysis regarding whether VoIP was indeed an information service. Reaffirming that VoIP is both (a) an information service; and (b) jurisdictionally interstate would lay to rest quixotic state attempts to regulate VoIP and associated time-consuming and expensive legislation.

---

[69] *See Restoring Internet Freedom*, Notice of Proposed Rulemaking, FCC 17-60 (May 23, 2017).

[70] *See, e.g.*, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004); Remarks of FCC Commissioner Ajit Pai at the International Institute of Communications, Telecommunications, and Media Forum, Miami, Florida (May 27, 2015), http://bit.ly/2skb3dM ("[W]e made it easier for cable television providers to get into the voice business by preventing states from regulating Voice over Internet Protocol as they did traditional telephone service.").

[71] *See* Remarks of FCC Commissioner Ajit Pai at the Hudson Institute, Washington, DC, *Two Paths to the Internet Protocol Transition*, at 5 (Mar. 7, 2013), available at http://go.usa.gov/B4gB.

[72] *See Charter Advanced Services (MN), LLC, and Charter Advanced Services VIII (MN), LLC, v. Nancy Lange, in Her Official Capacity as Chair of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, Case No. 15-cv-3935 (D. Minn. May 8, 2017).

B. State Laws Requiring Telecom Carriers to Bear 100% of the Costs of Facility Relocation are a Barrier to Broadband Deployment.

State laws that impose 100% of the costs of relocating telecommunications facilities relocation on carriers during highway and other construction projects are also barriers to broadband deployment.[73] For Frontier, these costs are significant – tens of millions of dollars annually. Of course, every dollar of capital spent in this manner to move facilities around and maintain current service is one less dollar to be spent on deploying new broadband and upgrading speeds. When states place all of the costs of facilities relocations on telecommunications carriers, these costs have a tendency to balloon upwards.

In many ways, the facilities relocations issue is a simple problem of incentives. When state and municipalities are not responsible for any of the costs they impose on broadband carriers and their customers, these costs expand too quickly. States and localities may treat carriers assuming responsibility of facilities relocation as a cost of accessing the right-of-way, but a requirement to bear 100% of the costs of facilities relocations fundamentally assures that states and localities do not account for the drag they are placing on broadband deployment when they plan construction projects. Frontier sees this in practice, with localities showing little regard

[73] To take just a few examples at this time from states in Frontier's footprint that have problematic policies, West Virginia, Washington, Indiana, and North Carolina effectively exempt municipalities from considering the costs imposed on broadband deployment by projects requiring facilities relocation. *See* W. Va. Code § 17-4-17b (requiring utilities relocate facilities at their own cost for all state highway construction projects); Ind. Code § 8-1-9-1 ("[I]t is hereby declared that it is inequitable for rate payers of utilities to bear the cost of relocation of utility facilities necessitated by said highway construction, reconstruction, change or modification and that such cost of relocation of utility facilities should constitute a cost of construction of all of said highway projects in Indiana."); Ind. Code §§ IC 8-23-1-22.5 & 8-23-2-6; Wash. Rev. Code § 35.99.060 (effectively requiring utilities to pay all costs of facilities relocations); N.C. Gen Stat. § 136-18 ("[T]he [utilities] shall at their own expense . . . move or change [their facilities] to conform to the order of said Department of Transportation.").

for the control of these costs. In many cases the original estimates are significantly understated, further constraining the use of capital for customer-benefiting projects.

The Commission should consider several avenues for addressing road move requirements that do not consider the costs of moving telecom facilities. For example, the FCC could preempt road move legislation that requires communications carriers to pay 100% of the costs of moving their plant. Barring telecom carriers from being 100% responsible for the costs of moving facilities will assure that states and localities have some incentives to account for the costs they are imposing on broadband deployment. Alternatively, the Commission could support legislation requiring projects that receive federal funding to compensate communications providers for costs associated with relocating communications infrastructure. Whatever the solution, the external cost of road moves currently passed on to telecommunications providers – and ultimately to consumers – should be taken into consideration and minimized so that the dollars spent on this today would be freed up further broadband investment.

C. State Moratoria Are Blunt Instruments that Impede Broadband Deployment.

Frontier continues to collect information on deployment moratoria, but Frontier agrees that state and local moratoria slow broadband deployment and should be preempted to the extent feasible.[74] Simply put, it is difficult to think of a scenario where completely halting broadband deployment and the granting of permits is the correct response to a situation or issue.

Taking just a couple of examples of moratoria that Frontier has experienced, the Indiana Department of Transportation issued a complete moratorium in March 2017 due to "a significant

[74] *See NPRM* ¶ 102.

increase in the number of requests for fiber optic placement within its right of way."[75] Fortunately, this issue has since been corrected. Likewise, in Illinois, for example, localities will often refuse to issue work permits unless a carrier pays even though these payments directly violate state law.[76] States may also issue moratoria for portions of the year, which cause similar problems. In Michigan, for example, the State has frost and freeze laws that prevent construction of facilities for extended periods of time during the winter.

In the State of Washington, the State issued a moratorium banning Frontier from building new infrastructure for nearly 6 months (August 2016-January 2017), causing significant challenges as Frontier sought to deploy CAF infrastructure. The state imposed this moratorium due to the combination of a law that required rights-of-way permits to be renewed every fifteen to twenty years and a new mandate on existing infrastructure regarding the placement of pedestals. The State refused to issue a new permit until Frontier paid over $10.5M.

Ultimately, complete halting of broadband projects is contrary to the public interest, and reducing instances of state moratoria will promote broadband deployment.

D. Constraining Excessive Fees Will Promote Broadband Deployment.

Frontier also continues to gather data on excessive permitting fees that it has experienced, but it agrees that excessive fees unnecessarily slow broadband deployment.

One example of excessive fees are bonds that are required to be maintained for the life of a project. In Michigan, for instance, a county drain Commissioner recently required Frontier to

---

[75] *See* Letter from Todd May, Statewide Director, Indiana Division of Utilities and Railroad (March 2017) (attached as Attachment A).

[76] *See* 35 I.L.C.S. § 635/30; *Metro Communications Company, Inc., v. City of Altamont*, Case No. 16-CH-20 (4th Cir. of Effingham Cty., IL, Aug. 17, 2016). Illinois allows municipalities to charge a municipal simplified tax at a rate of up to 4% of intrastate revenues. Localities are otherwise banned from levying fees but nonetheless refuse to issue permits unless fees are paid.

pay a cash bond of approximately $120,000 on a project that cost less than $500,000, and this bond is required to be maintained for the life of the project. Plainly, money sitting in a bond is being diverted from broadband deployment, and there is no public interest justification for making a publicly traded company maintain a bond for facilities held in the rights-of-way.

Similarly, discriminatory rights-of-way fees that apply only to communications providers are a barrier to broadband deployment. In Michigan, for example, the state imposes an annual occupancy fee on telecommunications providers but not on any other public utilities.[77] This fee is particularly problematic because it is levied on a per foot basis, which makes it even harder to deploy to the rural areas that need broadband the most. Frontier annually pays $0.35 a foot of plant in the right of way.

Additionally, carriers should not be required to obtain permits to conduct repairs. Indiana, for example, unreasonably, requires a permit for each different right-of-way location when fixing service at a cost of $45.

Anything the Commission can reasonably do to help rein in excessive fees will help further promote broadband deployment.

E. Unfunded State Carrier-of-Last-Resort Mandates Are an Impediment to Broadband Deployment.

Unfunded state COLR obligations are also barriers to broadband deployment. The Commission should consider finding that state COLR obligations that apply only to ILECs and that do not carry any associated funding are barriers to broadband deployment under 47 U.S.C. § 253 and inconsistent with 47 U.S.C. § 254's directive that any universal service mechanisms be

[77] Mich. Comp. Laws § 484.3101 et seq.

"sufficient." Similarly, the Commission should clarify that states cannot seek to impose unfunded buildout obligations on carriers based on their designation as ETCs.

Frontier is subject to unfunded COLR obligations in several states, including Illinois[78] and Washington. In these cases, states have attempted to require Frontier to build out new phone service or repair phone service, even if there are wireless providers or even if other entities are better situated to provide this service. Not only does this impose additional costs if Frontier builds out new voice telephone service, but it also potentially forces additional costs related to litigation. In a recent instance, Frontier negotiated to relinquish a portion of its subdivision to a rate-of-return carrier (which, of course, is fully compensated for the buildout) rather than going through the costs of litigation.

Recognizing unfunded state COLR obligations inhibit broadband deployment would also be consistent with universal service principles under the Communications Act. Section 254 specifically requires that any support be "sufficient" to meet obligations. At the same time, if states impose obligations on just one provider, as these states do, it creates a distorted competitive landscape, disadvantaging only one competitor, and directly detracting from broadband deployment. Preempting these types of unfunded mandates would thus promote broadband deployment and level the playing field.

[78] 220 I.L.C.S. 5/13-406, http://bit.ly/2q6SEgL; 220 I.L.C.S. 5/13 103, http://bit.ly/2salsIW. While it is less than clear whether these laws actually mandate new buildout without funding, Illinois Public Service Commission Staff has indicated based on this vague language and based on ETC designation that a carrier may have an obligation to provide service to anyone within the ETC territory at no additional cost.

VI. CONCLUSION.

The Commission's proposals in this item would significantly remove barriers and incentivize broadband deployment, and Frontier applauds the Commission for undertaking this effort. Specifically, the Commission should: (1) adopt common-sense pole attachment proposals, including rationalizing the rate that ILECs pay and, avoiding untested sweeping reforms to make-ready processes; (2) streamline the copper retirement framework; (3) clarify that upgrading from copper to fiber does not require a complex 214 application; and (4) preempt state regulation of VoIP and the Internet, as well as unreasonable fees, unreasonable processes, and unfunded state COLR obligations. These steps will help to level the regulatory playing field, promote broadband investment, and ensure that Americans everywhere can have the 21st century networks they deserve.

Respectfully submitted,

FRONTIER COMMUNICATIONS

/s/ *AJ Burton*

Ken Mason
Michael Saperstein
AJ Burton
FRONTIER COMMUNICATIONS
1800 M Street, NW, Suite 850S
Washington, D.C. 20036
(202) 223-6807

June 15, 2017