

July 12, 2018

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Re: Wireline Infrastructure, WC Docket No. 17-84

Dear Ms. Dortch,

On July 10, 2018, Jennifer McKee and Steve Morris of NCTA – The Internet & Television Association (NCTA), Paul Glist and Daniel Reing of Davis Wright Tremaine, on behalf of NCTA, David Don of Comcast, and Christianna Barnhart of Charter Communications (by phone), met with Kris Monteith, Daniel Kahn, Adam Copeland, Deborah Salons, Matthew Collins, John Visclosky, Annick Banoun, and Michael Ray (by phone) of the Wireline Competition Bureau, to discuss the above-referenced proceeding.¹

In the meeting, NCTA explained that cable operators strongly support balanced reforms to the Commission’s pole attachment rules that promote new investment in broadband while protecting the safety and reliability of existing networks. We expressed concern with some of the extreme one touch make-ready (OTMR) proposals advanced by companies such as Verizon and Google Fiber. According to Verizon, the fundamental goal of these proposals is “[e]liminating existing attachers’ right to do their own work” and transferring that right to new attachers, with no compensation and no contract between the affected parties.² There is no way to reconcile this proposed policy of “eliminating existing attachers’ rights” with the statutory regime governing pole attachments, which explicitly grants attaching parties the right to perform make-ready and the right to be held harmless from new attachments.³ Moreover, even if the Commission had such legal authority, requiring this sort of forced access arrangement without

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Notice*).

² Letter from Katherine Saunders, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 at 4 (filed July 2, 2018) (Verizon Letter) (“Eliminating existing attachers’ right to do their own work is not a bug but is instead the defining feature of OTMR.”); *id.* at 3 (“If a new attacher elects OTMR, existing attachers would not have the right to perform their own make-ready.”). Verizon erroneously suggests that the Broadband Deployment Advisor Committee (BDAC) recommended such an approach, but the BDAC recommendation includes no such prohibition.

³ 47 U.S.C. §§ 224(h), (i).

also requiring the establishment of contractual or tariff arrangements between the parties would be a recipe for constant disputes.

We identified three particular concerns with these extreme OTMR proposals and explained how NCTA's Accelerated and Safe Access to Poles (ASAP) Proposal⁴ remedies these concerns. First, we explained that it is critically important to provide existing attachers an expedited opportunity (30 days for simple projects and 45 days for complex projects) to move their own facilities before a new attacher can implement OTMR. A situation where existing attachers move their own facilities in a timely manner is a win/win scenario providing accelerated access for new entrants while eliminating disputes caused by the use of third-party contractors. Contrary to suggestions by Verizon that such an approach is unworkable,⁵ the ASAP Proposal makes clear that this initial period is a "use it or lose it" option for existing attachers and that 30 or 45 days is the longest period a new attacher would have to wait before commencing OTMR.⁶ Furthermore, we noted that under the ASAP Proposal, existing attachers would be required to inform the new attacher whether or not they intend to perform their own make-ready before the end of this initial period, potentially providing an even quicker opportunity for new entrants to use OTMR.

Second, we explained that the Commission must give existing attachers a meaningful role in the selection of contractors. Millions of customers rely on cable networks for a multitude of services, including access to 911, and therefore maintaining the security of the network is of paramount importance. A new entrant (or its contractor) will not have the interests of our companies or our customers in mind when it undertakes construction and many contractors either have no experience with cable networks or have a poor record of performance in working on such networks. To address those concerns, the ASAP Proposal would require new attachers to use contractors that have been pre-approved by the existing attacher.⁷ At a minimum, we explained that the Commission must provide existing attachers with meaningful control over the choice of any third-party contractors that will work on their networks, including the ability to veto any contractor that lacks experience or has a demonstrated record of poor performance in working with cable networks.

Third, we explained that new attachers should be required to fully indemnify existing attachers for harms caused by their contractors. If an existing attacher has no control over the contractor that moves its facilities, there is simply no justification for allowing the new attacher to evade responsibility for any consequences attributable to the work its contractor performs (e.g., diminished performance to a BDS customer, or worse, loss of access to 911). As NCTA

⁴ NCTA Accelerated and Safe Access to Poles (ASAP) Proposal, attached to Letter from Steven F. Morris, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed Mar. 5, 2018) (ASAP Proposal).

⁵ Verizon Letter at 3.

⁶ Letter from Steven F. Morris, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 at 3 (filed Apr. 4, 2018) (NCTA April 4 Letter) ("[T]he accelerated 30 or 45 day window applies to all existing attachers. It is therefore the responsibility of the communications attachers to coordinate their moves to meet that deadline. Existing attachers must use this window or lose it even if work is done sequentially.").

⁷ ASAP Proposal at 4-6.

has explained previously, the proponents of OTMR routinely require full indemnification from parties with whom they do business.⁸ Requiring full indemnity by rule is particularly critical if the Commission establishes a regime in which there is no contractual privity between existing attachers and new attachers (and their contractors). We explained that some cable operators already have encountered significant challenges in obtaining compensation from new entrants for damages caused by the shoddy work of their contractors.⁹ We also suggested that the Commission could limit these types of disputes by adopting the requirement from the ASAP Proposal that new attachers document all of their work through video or photographs.¹⁰

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: K. Monteith
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⁸ NCTA April 4 Letter at 6.

⁹ *See, e.g.*, Charter Comments at 39-43.

¹⁰ ASAP Proposal at 6.