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VIA ELECTRONIC FILING
Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Ex Parte Notice
WC Docket No. 17-84

Dear Ms. Dortch:

On July 19, 2018, Pam Ellis (Utility Business Development Service Manager, American Electric Power Service Corporation), Tom St. Pierre (Associate General Counsel, American Electric Power Service Corporation), Natalie Beasman (Senior Counsel, Georgia Power), Eric Langley and I participated in a conference call with Jay Schwarz (Chairman Pai's Wireline Advisor) regarding the draft Third Report and Order in the above-referenced proceeding.

During the conference call, we expressed our appreciation for the Commission's time and attention to the matters addressed in the draft order, and discussed the substantive issues set forth below.

One-Touch Make-Ready

We expressed our support for the Commission's proposed adoption of its one-touch make-ready ("OTMR") rules. We agree that OTMR is properly limited to make-ready within the communications space. We did, though, raise two practical concerns that the Commission might consider addressing in its OTMR rules:

1. Proposed Rule 1.1412(j)(2)(ii)) appears to make the pole owner the arbiter of what constitutes "complex make-ready" within the communications space. While this is the correct and necessary outcome with respect to make-ready above the communications space, electric utilities are not in a position to determine what constitutes complex make-ready in the communications space. In fact, the electric utility is the least appropriate party to make this determination. We suggested that the Commission task a different party—whether the existing attacher, the new communications attacher and/or its qualified contractor—with making the determination of whether communications space make-ready is simple or complex.

2. It is unclear how the Commission intends the OTMR process to unfold where a single application involves various categories of make-ready, including simple communications

space make-ready, complex communications space make-ready, and power supply space make-ready. Does the Commission contemplate that, if a OTMR application is determined to require complex and/or power space make-ready, the entire application should be denied and re-processed in the normal course? Any clarity the Commission could bring to this issue would be helpful to all stakeholders.

Joint Use Agreements between Electric Utilities and ILECs

We also expressed our agreement with the sharp distinction drawn by the Commission in the draft order between new agreements/infrastructure and existing agreements/infrastructure. The draft order acknowledges that the attachments made by ILECs pursuant to existing joint use agreements were made under different (and more advantageous) terms and conditions than those under which CATVs and CLECs make attachments to electric utility poles. We expressed our support for the proposition underlying the Commission's new presumption regarding new agreements/infrastructure—that where ILECs access electric utility poles on terms and conditions that are truly the same as those of CLECs and CATVs, ILECs should pay the same rates as CLECs and CATVs. The only concern we expressed with the text of the draft order (unrelated to the language of the actual rule) is that ILECs have a proven history of leveraging any remote ambiguity within the Commission's orders no matter how contradictory to the otherwise plain text and intent of the order. To that end, we requested that the Commission consider opportunities to eliminate ambiguities—however remote—in the draft order.

Overlashing

We also expressed our gratitude for bringing clarity to the issue of whether electric utilities are allowed to require advance notice of overlashing. While we believe that 45 days is a more reasonable timeframe within which to perform the engineering and analysis necessary to determine whether the proposed overlash can be made without make-ready, we recognize that 15 days is better than no advance notice.

Existing Violations

We expressed concern about the draft order's discussion regarding the cost responsibility for correcting existing violations, specifically the last sentence of ¶ 113, which states: "We also clarify that a utility cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the pre-existing violation." The Electric Utilities whole-heartedly agree that the new attacher to the pole should not be responsible for the cost of remedying existing communications space violations. But there is more to it. This text seems to put the onus on the electric utility to push forward with correcting the violation and hope to recover the cost later. There are at least two problems with this approach. First, by allowing make-ready to proceed before the cost-causer is identified, the draft rule would deprive the existing attacher of its contractual right to be notified of the violation and pursue a less-costly remedy, such as removal of the attachment. Second, if the violation is corrected before the attacher is notified, there is no "evidence" to back-up the assignment of cost causation. We believe the proper way to address existing violations is to give the new attacher the option of either (1) waiting for the corrective

action process to run its course, or (2) covering the cost of correcting the violation, without recourse, if time is of the essence.

Revisions to the Existing Access Process

We expressed support for the draft order's (1) retention of the 45-day period for review of applications, (2) clarification that communications space make-ready coordination is the responsibility of the new attacher, and (3) elimination of the previous rule requiring electric utilities to maintain a list of contractors for communications space make-ready work. We expressed concerns, though, with many other revisions to the existing process as set forth in the draft order.

At a high level, we believe this level of regulatory micro-management—especially as it relates to electric utility pole owners—is not the solution for efficient deployment of the next generation of advanced communications infrastructure. In fact, we believe this level of regulatory micro-management will have the exact opposite of the intended effect.

On a more granular level, we expressed our opposition to the new self-help remedy above the communications space. This new rule is particularly troublesome given that the new definition of make-ready in 1.1402(o) seems to include pole replacements. Allowing self-help above the communications space is at odds with the Commission's specific finding in the OTMR context that pole replacements are "usually not simple or routine and are more likely to cause service outages or facilities damage." (Draft Order, ¶18). Although the draft rule requires attachers to use a contractor approved by the electric utility, this is insufficient protection because it gives control of the make-ready to an entity whose primary motivation is speed to market—not safety and reliability. This issue, in particular, begs for a solution that incentivizes timely performance rather than penalizing untimely performance with an affront to the safety and reliability of the electric system.

Further, the Commission's draft rule providing a self-help remedy in the supply space is a bit of a surprise given that the Commission did not propose a draft rule on this issue, no such rule was proposed by the BDAC, and, to our knowledge, no state has adopted such a rule. If the Commission feels strongly that a self-help remedy in the supply space is necessary, we urge the Commission to issue a Further Notice of Proposed Rulemaking on this issue and allow all interested parties to develop a robust and precise record on the issue. This would allow any future rule to provide more finite parameters around such a remedy, given the grave risk to safety and reliability.

We also expressed concern regarding the draft rule relating to make-ready cost estimates. First, the rule that requires pole-by-pole estimates and charges will increase both the administrative costs of creating estimates and the actual cost estimates themselves. Fixed costs—like traffic-control, lock-out/tag-out, and rolling a truck to the work site—would ordinarily be priced into the total job (which almost always includes multiple poles). These fixed costs cannot be allocated on a pole by pole basis, because the costs do not change just because one pole is removed from the job. The Commission is setting up a situation where the required estimates simultaneously *increase* costs and offer *less* certainty to attachers. With this rule, the Commission is also insisting on a level of

itemization and detail that is incompatible with existing work order systems and that even an electric utility's core electric customers do not receive.

Second, the rule requiring electric utilities to estimate communications space make-ready just doesn't make sense. Many electric utilities will, quite frankly, be incapable of complying with this draft rule. Electric utilities do not perform communications space make-ready for the most part and are not knowledgeable regarding the cost of such make-ready. Perhaps more importantly, any such estimate might be useless because of the likelihood of its inaccuracy.

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The positions and data we discussed in our meeting were consistent with the positions and data set forth in our initial comments and reply comments on the NPRM and FNPRM in the above-referenced proceeding.

This ex parte notification is being filed electronically in the above-referenced docket pursuant to section 1.1206(b) of the Commission's rules. Please let me know if you have any questions.

Very Truly Yours,

Robin F. Bromberg

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cc: Jay Schwarz (jay.schwarz@fcc.gov)