

July 23, 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 19, 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, Barry Ohlson of Cox Enterprises, and Elizabeth Andrion and Christianna Barnhart of Charter Communications, met with Jay Schwarz, Wireline Advisor to Chairman Pai, and Kevin Costello, intern in the Pai office, to discuss the *Draft Third Report and Order* under consideration in the above-referenced proceeding.¹ The discussion covered all of the issues previously raised in an ex parte letter submitted by NCTA on July 18, 2018.²

In particular, we expressed concern that the one touch make-ready (OTMR) policy proposed in the item would jeopardize the safety and reliability of existing cable networks by requiring that existing attachers surrender complete control over work on, and relocation of, their networks to a new attacher, but not require the new attacher to take complete responsibility for its work. We also explained that OTMR will not result in make-ready that can be performed by a single crew in a single outing because existing attachers will need to send crews on three separate occasions (initial survey, performance of make-ready, post make-ready inspection) to protect the integrity of their networks.

The better and non-discriminatory approach is for existing attachers to be given the opportunity to move and protect their own networks in an expedited time frame, as proposed by NCTA.³ That is essentially the approach the *Draft Third Report and Order* takes for non-OTMR

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03 (rel. July 12, 2018) (*Draft Third Report and Order*).

² Letter from Steven F. Morris, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed July 18, 2018) (NCTA July 18 Letter).

³ 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).

situations and it should apply in all cases.⁴ Similarly, the BDAC recommended a 25-day period before a new attacher can begin OTMR.⁵ In situations where existing attachers move their own facilities, the need to actively monitor the work of new attachers is greatly reduced, as is the potential for disputes among the parties.

We also explained that the *Draft Third Report and Order* departs from other recommendations made by the BDAC in ways that undermine the safety and reliability of existing networks. For example, the BDAC appropriately recommended that existing attachers be given the opportunity to raise good faith objections to the contractor selected by a new attacher.⁶ In contrast, the *Draft Third Report and Order* provides existing attachers no input whatsoever in the contractor selection process, based on the erroneous assumption that they will always act in bad faith.⁷ The *Draft Third Report and Order* also cuts by half the time provided to an existing attacher to inspect the work performed by a new attacher and to seek repairs and ignores the recommendation of one working group to require that new attachers indemnify existing attachers.⁸

If the Commission adopts an OTMR regime, NCTA suggested that the *Draft Third Report and Order* should be revised to include the following items, which are more fully described in the NCTA July 18 Letter:

1. The right of an existing attacher to demand immediate correction of an outage in real time and an explicit statement in the rules that repairing outages to existing customers takes precedence over the completion of make-ready work.
2. The right of an existing attacher to object during a survey to a determination that make-ready is simple (e.g., to assert that the work will involve splicing, is likely to cause outage, or is other “complex” work).
3. The right of an existing attacher to disqualify a contractor selected by a new attacher if the existing attacher previously has terminated that contractor for poor performance.
4. The right of an existing attacher to avoid the risks associated with OTMR by moving its own facilities during the initial notice period, preferably the 25-day period proposed by the BDAC or the 30-day period proposed by NCTA.

⁴ *Draft Third Report and Order* at ¶ 80 (adopting 30-day period for existing attachers to move facilities before new attacher may exercise self-help).

⁵ Report of the Competitive Access to Broadband Infrastructure Working Group, Broadband Deployment Advisory Committee at 23 (Jan. 23-24, 2018) (BDAC Recommendation). Contrary to assertions made by Verizon, the BDAC recommendation did not prohibit existing attachers from moving their facilities during this window.

⁶ BDAC Recommendation at 30; Addendum to the Report of the Competitive Access to Broadband Infrastructure Working Group, Broadband Deployment Advisory Committee at 2-3 (Apr. 25, 2018).

⁷ *Draft Third Report and Order* at ¶ 41.

⁸ Compare Broadband Deployment Advisory Committee, State Model Code for Accelerating Broadband Infrastructure Deployment and Investment (BDAC State Model Code), Art. 5, §1.6 (recommending 60 days to inspect) with *Draft Third Report and Order* at ¶¶ 64-65 (proposing 30 days to inspect); see also BDAC State Model Code, Art. 5, §1.9 (recommending indemnification of existing attachers).

5. Reimbursement of “any of the costs” incurred by an existing attacher that are attributable to make-ready by a new attacher.
6. A requirement that new attachers indemnify existing attachers for liability attributable to outages caused by a new attacher that chooses OTMR.
7. A longer time frame for existing attachers (e.g., 60-90 days) to inspect make-ready work and raise claims about damage to existing networks.
8. The right of an existing attacher to file a complaint against a new attacher for failure to meet its obligations under the Commission’s rules.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: Jay Schwarz
Kevin Costello