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VIA ECFS

EX PARTE

July 25, 2018

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

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

Dear Ms. Dortch:

Windstream supports the reforms proposed by the Federal Communications Commission (“Commission”) in the draft *Third Report and Order* in the above-referenced proceedings and commends the Commission for its work on this issue.¹ In general, the proposed “One-Touch Make Ready” (OTMR) process will speed-up infrastructure deployment, reduce the overall costs associated with make-ready work and encourage the rollout of broadband. Windstream agrees with the Commission’s determination that “OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive—the new attacher—to prepare the pole quickly to perform all of the work itself, rather than spreading the work across multiple parties.”² However, some modifications to the Draft Order could help ensure that attachers receive, to the greatest extent possible, the benefits of the proposed reforms.

Rate Disparities

Windstream is grateful for the Commission’s recommendations seeking to address outdated rate disparities (“rate-leveling provisions”),³ but agrees with CenturyLink that it should grant incumbent local exchange carriers (ILECs) the same rate relief that has been given to their

¹ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Draft Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03, WT Docket No. 17-79, WC Docket No. 17-84 (rel. July 12, 2018) (“Draft Order”).

² *Id.* at para. 2.

³ *Id.* at paras. 114-120.

competitors.⁴ While Windstream supports the Commission's proposed adoption of a presumption that ILECs are similarly situated to other telecommunications attachers and are thus entitled to comparable attachment rates, terms and conditions,⁵ those benefits will not flow to ILECs without the large-scale termination and replacement of their current joint use agreements. This will be difficult or impossible because ILEC pole ownership is falling and, as the Commission has concluded, "[ILEC] bargaining power vis-à-vis utilities has continued to decline."⁶

Therefore, the Commission should clarify that, for the purpose of establishing rates, the presumption that ILECs are similarly situated to other telecommunications attachers shall apply to all ILEC pole attachment agreements at the sooner of: (1) two years from the effective date of the final *Third Report and Order* in the above-referenced proceedings; or (2) the date that such an agreement is renewed, extended or renegotiated. Eventually, given the aforementioned market context and dynamics, the Commission should seek to ensure that all communications providers are subject to the same attachment rates, terms and conditions.

Utilities Not Regulated by the Commission

Although the Draft Order usefully addresses some issues around rate disparities, there will continue to be significant differences in the rates that are charged by regulated and unregulated service providers, including cooperatively-organized entities ("co-ops"). For example, in a sample state, Windstream pays between approximately \$6.00 per pole attachment to other telecommunications and/or investor-owned electric utilities. By contrast, in that same state, Windstream pays approximately \$24.00 to several electric co-ops, or four times what Windstream pays to the other telecommunications and/or investor-owned electric utilities. This is not an outlier and is typical of co-op rates. Despite the co-ops' statements about their selfless desires to increase broadband deployment in rural America, charging this level of pole attachment rates belies those statements. At the very least, the Commission should not permit unregulated entities to receive the benefits of some provisions in the Draft Order (such as OTMR) while they do not agree to other critical provisions (such as those addressing rate disparities).

OTMR Process

The OTMR process outlined in the Draft Order helpfully realigns incentives to ensure that make-ready work is done in an efficient and cost-effective manner. However, the Draft Order only provides "electrical utilities" with the right to reasonably object to a contractor's determination that make-ready work is either "simple" or "complex" and therefore excludes all other providers.⁷ The relevant provisions should be clarified so that all utilities, as defined in the

⁴ Letter from Nicholas G. Alexander, Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed July 23, 2018) at 5.

⁵ Draft Order at para. 117.

⁶ *Id.*

⁷ See Draft Order at paras. 50-53.

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Communications Act of 1934, as amended (“the Act”),⁸ including local exchange carriers, have the right to object to a contractor’s simple/complex make ready determination.

Conclusion

Windstream supports the adoption of the Commission’s Draft Order on August 2nd and we anticipate that its OTMR and rate-leveling provisions will have a significant and positive impact on the ability of service providers like Windstream to rapidly deploy broadband infrastructure. However, Windstream urges the Commission to consider the clarifications and issues it has identified above. Addressing these recommendations will help ensure that the intent of the Draft Order is fulfilled.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas W. Whitehead', with a stylized, cursive script.

Thomas W. Whitehead

CC: Adam Copeland
Daniel Kahn
Travis Litman
Erin McGrath
Michael Ray
Jay Schwarz
Jamie Susskind

⁸ As defined in the Act, “utility” includes “any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” 47 U.S.C. § 224(a)(1).