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July 25, 2018

Ex Parte

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

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

Dear Ms. Dortch:

On July 23, Verizon Senior Vice President Will Johnson spoke by telephone with Kris Monteith, Bureau Chief of the Wireline Competition Bureau, and with Erin McGrath, Legal Advisor to Commissioner O’Rielly. Mr. Johnson discussed Verizon’s continued support of the Commission’s adoption of a one-touch make-ready (OTMR) option for new pole attachers, consistent with our filed comments and prior ex partes in this proceeding.¹ Mr. Johnson applauded the Commission’s proposed order,² which would implement a one-touch make-ready process, as an important and critical step in promoting broadband deployment. As the *Draft Order* notes, permitting new attachers to use a pole-owner approved contractor to perform all make-ready at one time increases efficiency and predictability, while also reducing disruptions for municipalities and residents.³ The *Draft Order*’s adoption of a robust OTMR process resolves the fundamental issues of delay and uncertainties inherent in make-ready by multiple parties and will help open the way for greater broadband deployment.

Mr. Johnson also briefly suggested that the Commission consider some revisions to Part III.C of the *Draft Order* to better implement its intention to address outdated rate disparities. As the

¹ See, e.g., Verizon Comments (June 15, 2017) and Reply Comments (July 17, 2017), WC Docket No. 17-84; Verizon Comments (June 15, 2017) and Reply Comments (July 17, 2017), WT Docket No. 17-79 & WC Docket No. 17-84; Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WT Docket No. 17-79 & WC Docket No. 17-84 (Mar. 8, 2018); Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84 (June 21, 2018); Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84 (July 2, 2018).

² See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Draft Third Report and Order and Declaratory Ruling, WC Docket No. 17-84 & WT Docket No. 17-79; FCC-CIRC1808-03 (rel. July 12, 2018) (“*Draft Order*”).

³ See *id.* ¶¶ 22-23, 28.

Commission correctly recognizes, even as incumbent LEC pole ownership continues to decline, electric utilities continue to charge pole attachment rates significantly higher than the rates charged to similarly situated telecommunications attachers.⁴ Mr. Johnson explained that the current draft may inadvertently continue or exacerbate those disparities, rather than fully resolve them as the Commission intended. Thus, he urged the Commission to extend the proposed telecom rate presumption to all incumbent LEC contracts – rather than make distinctions based on when they were entered into.⁵ However, if the Commission declines to extend the presumption to all incumbent LEC contracts, then the Commission should at a minimum extend the presumption to those incumbent LEC contracts that were entered (or the rate term was amended) at a time when the incumbent LEC did not have equivalent bargaining power as defined by the Commission in the *2011 Pole Attachment Order* and affirmed in paragraph 13 of the *Dominion Order*.⁶

In either case, the Commission should confirm that, for existing agreements, the *2011 Pole Attachment Order*'s guidance continues to apply unchanged to the Commission's review of existing incumbent LEC pole attachment complaints, including complaints relating to contracts entered into before the *2011 Pole Attachment Order*. Further, the Commission should revise the *Draft Order*'s statements that the Commission has “previously found”⁷ that joint use agreements provide material benefits because the Commission did not previously make such findings, and also revise any statements about the substance of benefits under existing agreements.⁸ The cited text about previous findings points to footnote 654 of the *2011 Pole Attachment Order* – which merely summarized certain parties' claims without finding that such benefits actually exist.⁹ Additionally, the record contains multiple examples of incumbent LECs explaining that they either did not have equal bargaining power with utilities at the time they entered into pre-2011 contracts, or the contracts do not provide incumbent LECs with net material benefits relative to other telecommunications attachers.¹⁰ Indeed, the Commission itself has previously observed that some

⁴ *Id.* ¶ 114.

⁵ Under the *Draft Order* and the guidance in the *2011 Pole Attachment Order*, distinctions would be drawn for contracts entered into (1) on or after the effective date of the upcoming order; (2) on or after the *2011 Pole Attachment Order*'s effective date but before the effective date of the upcoming order, and (3) before the *2011 Pole Attachment Order*'s effective date. See *Draft Order* ¶ 117, n.392 (creating rebuttable rate presumption for “new pole attachment agreements” “entered into after the effective date of this Order”); *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, ¶ 218 (2011) (“*2011 Pole Attachment Order*”) (discussing Commission's review of pre-*2011 Pole Attachment Order* agreements and agreements entered into after the effective date of the *2011 Pole Attachment Order*).

⁶ See *Verizon Virginia, LLC and Verizon South, Inc. v. Virginia Electric Power Co. d/b/a/ Dominion Virginia Power*, 32 FCC Rcd 3750, ¶ 13 (2017) (“*Dominion Order*”).

⁷ *Draft Order* ¶ 119; see also ¶¶ 115, 118.

⁸ *Id.* ¶ 118.

⁹ See *2011 Pole Attachment Order* ¶ 216, n.654.

¹⁰ See Ex Parte Letter from Frank Simone, AT&T, to Marlene Dortch, FCC, WC Docket No. 17-84, at 4 (July 23, 2018) (explaining that “[b]ecause joint use agreements were negotiated decades ago, many of the terms perceived as beneficial are in fact not”); Ex Parte Letter from Kevin Rupy, USTelecom, to Marlene Dortch, FCC, WC Docket No. 17-84, at 4-7 (June 6, 2018) (discussing how higher incumbent LEC rates are not justified by the purported benefits of joint use); Ex Parte Letter

post-2011 contracts perpetuated pre-2011 disparities, recognizing a significant imbalance in pole ownership and disparity in the per-pole rates charged throughout parties' relationship (both pre- and post-2011).¹¹ In instances where there is a history of such disparity, the Commission has held that the incumbent LEC "genuinely lacks the ability to terminate the agreements" and found that "[a]ny unique advantages" received from the agreements "do not justify" the charged rate, and that rate "is unjust and unreasonable."¹² The Commission should reaffirm that its rules provide protections under these circumstances. A contrary approach would undermine the Commission's overriding goal of promoting broadband deployment.

For these reasons, the Commission should extend the proposed telecom rate presumption to all incumbent LEC contracts or, at a minimum, to those incumbent LEC contracts that were entered (or the rate term was amended) at a time when the incumbent LEC did not have equivalent bargaining power as defined by the Commission in the *2011 Pole Attachment Order* and affirmed in the *Dominion Order*. The Commission should also confirm that the *2011 Pole Attachment Order's* guidance continues to apply unchanged to the Commission's review of all existing incumbent LEC pole attachment complaints.

Please contact me if you need any additional information.

Very truly yours,



Katharine R. Saunders

cc: Kris Monteith
Erin McGrath

from Kevin Rupy, USTelecom, to Marlene Dortch, FCC, WC Docket No. 17-84, at 2 (Dec. 8, 2017) (same); *Dominion Order* ¶¶ 13, 18, 20, 22 (finding "consistent disparity in relative pole ownership levels . . . at all relevant times," holding that Verizon pays unjust and unreasonable pole attachment rates, and finding that the record suggests that "Dominion has overstated the value of a number of such alleged benefits" and "with only a few exceptions, Dominion does not quantify the purported material advantages that Verizon receives").

¹¹ See *id.* ¶ 13 ("The record also reflects a consistent disparity in relative pole ownership levels throughout the course of the parties' joint use relationship, with Dominion owning 65 percent and Verizon owning 35 percent of the joint use poles at all relevant times.").

¹² *Id.* ¶¶ 14, 17.