



HARRIS, WILTSHIRE
& GRANNIS LLP

1919 M STREET NW
SUITE 800
WASHINGTON DC 20036

TEL +1 202 730 1300
FAX +1 202 730 1301
HWGLAW.COM

ATTORNEYS AT LAW

July 26, 2018

VIA ECFS

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:

Google Fiber submits this letter to respond to certain points raised by various stakeholders in the above-captioned proceeding after the release of the draft order proposing to adopt one-touch make-ready (“OTMR”) rules.¹

As Google Fiber noted in its meetings with the Chairman’s and Commissioners’ offices, the draft order sets out new rules that align incentives as between pole owners, existing attachers, and new attachers to speed new deployment and increase safety.² At the same time, Google Fiber agrees that certain clarifying points would be beneficial for all stakeholders.³

To that end, Google Fiber agrees with NCTA that existing attachers should have the right to demand the new attacher take immediate action to correct any outage caused by OTMR work, if the existing attacher chooses not to remedy the outage itself.⁴ Where a new attacher causes an outage, the draft order already requires it to immediately notify the existing attacher of the

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

² Letter from Kristine Laudadio Devine, Counsel, Google Fiber Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed July 23, 2018).

³ *See id.*

⁴ *See* Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed July 18, 2018) (“*NCTA Letter*”).

outage; Google Fiber agrees that it should also immediately commence any necessary repairs, and that those repairs should take priority over make-ready work. Google Fiber also agrees with NCTA that existing attachers could be given a longer period of time in which to conduct inspections of completed make-ready work, provided that time period does not extend beyond 90 days.⁵

However, many of NCTA's proposals would undermine the benefit of an OTMR regime, and the Commission should reject them. For instance, existing attachers should not be able to veto a new attacher's choice of contractor, nor should existing attachers have the last word on whether make-ready is simple or complex.⁶ Veto rights over contractors could effectively remove any viable OTMR contractors, and final say over whether make-ready is simple or complex is likely to result in far more work being deemed complex than is actually the case.⁷

Google Fiber also urges the Commission to reject calls from NCTA to allow existing attachers to self-perform simple make-ready during the OTMR notice period.⁸ Adopting this change would eviscerate nearly all of the benefits of OTMR. It would subject residents to multiple truck rolls (and the associated disruption and risks), as well as impose duplicative costs, as new attachers would be required to pay each existing attacher separately for work done by their contractors (which, in many cases, might be the same workers).⁹

Finally, as Google Fiber has emphasized many times, requiring indemnification of existing attachers would similarly threaten new deployments by raising new providers' risk profile—without providing additional recourse to existing attachers than what is currently available under state tort law.¹⁰ Google Fiber believes the draft order correctly concludes that

⁵ See *id.* at 4.

⁶ NCTA justifies this proposal by explaining that “a substantial number of incidents...already have occurred even in the very limited implementation of OTMR to date.” *Id.* at 2. But none of the incidents cited in the record by NCTA and Comcast occurred, as Google Fiber has explained, while a new attacher was using OTMR. See Reply Comments of Google Fiber Inc. at 12-13, WC Docket No. 17-84 (filed July 17, 2017). Moreover, as CPS Energy noted, with respect to the incidents in San Antonio, the notice and inspection procedures CPS Energy adopted “worked as designed: Charter experienced no outages.” Reply Comments of CPS Energy at 23, WC Docket No. 17-84 (filed July 17, 2017) (cited in *Draft Third Report and Order* ¶ 26).

⁷ The Commission should not prohibit utility pole owners from soliciting input from existing attachers on these matters, but final decision-making authority on these issues must rest with the pole owner.

⁸ See *NCTA Letter* at 3-4.

⁹ It is also unclear how the make-ready process would be managed if, for instance, the lowest attacher on the pole consents to a new provider's use of OTMR, but the second lowest attacher does not. The second lowest attacher would be unable to move its facilities during the notice period because the lowest attacher's facilities would not yet have been moved—and the lowest attacher's facilities would not be moved using OTMR until the expiration of the notice period. The result—if the parties did not end up in stalemate—would likely be something that looks like today's sequential make-ready process.

¹⁰ Existing attachers may also have remedies under state contract law, depending on the terms of their and new attachers' agreements with utility pole owners.

indemnification is unnecessary and would not serve the Commission's goal of promoting efficient, speedy broadband deployment.¹¹

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLD', with a stylized flourish at the end.

Kristine Laudadio Devine
Counsel to Google Fiber Inc.

Cc: Kate Black
Adam Copeland
Madeleine Findley
Dan Kahn
Erin McGrath
Betsy McIntyre
Kris Monteith
Jay Schwarz
Jamie Susskind

¹¹ See Draft Third Report and Order ¶ 68.