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August 3, 2017

Via ECFS

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

**Re: *Ex Parte* Filing of the American Cable Association on Accelerating Wireline
Broadband Deployment by Removing Barriers to Infrastructure Investment,
WC Docket No. 17-84**

Dear Ms. Dortch:

On August 1, 2017, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with the following staff of the Wireline Competition Bureau: Daniel Kahn, Michael Ray, Adam Copeland, John Visclosky, Zach Ross, and Timothy Graham. The purpose of the meeting was to discuss ACA’s comments filed in the above-referenced docket¹ and its proposals to address barriers in obtaining access to poles pursuant to Section 224 of the Communications Act.²

Mr. Lieberman opened the meeting by noting that ACA’s approximately 700 members are investing more than \$1 billion annually in aggregate to upgrade and extend their networks and that it is vital for them to obtain expeditious and reasonable access to poles. Attaching to poles is a significant cost of deploying and operating a network, amounting to over 13 percent of the total cost of ownership, and the alternative – digging and burying lines – is many times more expensive. Accordingly, Mr. Lieberman emphasized that in this proceeding the Commission

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017).

² 47 U.S.C. § 224.

Marlene H. Dortch
August 3, 2017
Page Two

has a real opportunity to accelerate broadband deployments by adopting recommendations proposed by ACA and others to facilitate access.

Mr. Lieberman then described the various ways ACA members have attached and are seeking to attach to poles. In areas where ACA members are extending their networks, they need new pole attachments, often for a limited number of poles to go short distances to serve a new community or building. In areas where they currently provide service, to deliver even higher performance service, they most frequently need to overlash fiber over existing coaxial cable as well as provide drops to customers. Each of these deployments poses different pole attachment issues, but the one constant is that expeditious and reasonable access is essential as current and future customers are demanding immediate access to high-performance broadband infrastructure.

Finally, Mr. Lieberman explained that because ACA members operate throughout the country, they have experience with numerous pole owners and existing attachers. This gives them the ability to compare and contrast the practices of “good” and “bad” actors. They also have experience with many state regulators that have obtained authority to oversee pole attachments by reverse-preemption. It is these experiences that underlie ACA’s proposals, each of which is designed to target a specific concern ACA members have identified.

Mr. Lieberman and Mr. Cohen then discussed ACA’s approach to addressing the pole attachment concerns of its members. ACA recognizes that pole attachment issues tend to be complex and may shift over time and that remedies need to be calibrated to addressing real problems, rather than symptoms. For instance, just shortening the timeline without addressing the underlying causes for delay will not be productive and only engender more frustration among attachers and lead to more disputes. Rather, they explained that the Commission will need to address a variety of concerns and do so from their root causes. ACA’s recommendations seek to achieve this objective and are focused on increasing transparency and cooperation among pole owners, existing attachers, and new attachers, and establishing clear rules so as to limit disputes that delay attachments and the eventual filing of complaints. ACA’s proposals further recognize the legitimate and important safety and reliability concerns of electric utilities and their regulators and the concerns of existing attachers that the integrity of their attachments be preserved. Mr. Lieberman and Mr. Cohen then reviewed the following ACA proposals:

Eliminate the Need to File Pole Attachment Applications for Certain Attachments

A key way to facilitate attachments is to avoid the application process for attachments where long-term experiences demonstrate there are significant benefits to expeditious access, minimal opportunities to harm safety and reliability, and ready and well-known measures to audit attachments and correct issues. Overlapping existing cable clearly fits these criteria, and ACA has recommended the Commission clarify that a “notify and attach” process should be used. The installation of customer drops also fits these criteria, and here ACA has recommended

Marlene H. Dortch
August 3, 2017
Page Three

an “attach and notify” process due to the additional benefits consumer would gain by getting service promptly and the lower chance these attachments would burden poles.

Akin to these two attachment processes are routine line extensions involving a limited number of poles by an existing attacher, which are usually intended to serve a specific customer, building, or small group of locations. Here, the existing attacher has a more immediate need to provide service, especially in areas where there is robust competition. In addition, the existing attacher has an ongoing relationship with the utility and is familiar with the attachment requirements of the National Electric Safety Code and the utility’s practices. By having a “notify and attach” procedure in this instance, a utility would have an opportunity during the notice period to determine whether the attachments might harm safety and reliability and, if so, halt or at least delay the work until the issue is resolved. A utility also would be able to conduct an audit post-attachment to determine whether the work was done properly.

Expedite the Processing of Applications

Where applications for attachments are necessary, there are a number of actions that the Commission should take to facilitate attachments while ensuring the needs of pole owners to protect the safety and reliability of their assets are met. First, because electronic databases of relevant pole information are in increasing use by pole owners, all utilities should be required to develop them over time – as they “touch” a pole – and make them available to attachers upon request, subject to confidentiality and security requirements. Second, utilities should make available their pole attachment application requirements and form, set forth their process for evaluating applications and adhere to such process. Third, utilities should provide attachers with the option to conduct joint pole surveys, which would enable owners and attacher to rapidly determine whether there are differences in pole loading and engineering issues.³ Fourth, utilities in reviewing applications should not be able to charge for unnecessary engineering design or pole loading analysis. Fifth, utilities should provide a web-based ticket management system to track the entire attachment process, which all attachers would be required to use.

Shorten Timeline for Routine Attachments of a Limited Number of Poles

When the Commission adopted its pole attachment timeline, it recognized that the work often can proceed more rapidly for routine attachment requests for a smaller number of poles.⁴ However, comments demonstrated that utilities often take the maximum amount of time even for

³ Utilities should provide notice to all attachers at least three days before it conducts the survey.

⁴ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5252, para. 23 (2011).

Marlene H. Dortch
August 3, 2017
Page Four

relatively simple attachment requests involving a small number of poles.⁵ In effect, the Commission's maximum timeframes have become a floor, rather than a ceiling. As a result, the Commission should adopt a rule shortening the timeframe for routine pole attachment requests for 20 or fewer poles to a maximum of 90 days.⁶

Improve the Effectiveness of the Make-Ready "Self-Help" Remedy

The Commission in 2011 permitted a new attacher to complete make-ready in the communications space when an existing attacher fails to act on time. However, attachers have rarely invoked this right, and knowing this, uncooperative attachers can proceed according to their own timetable, irrespective of the Commission's rules, without penalty.

There are many reasons why new attachers are reluctant to take over the make-ready process, despite being subject to unreasonable delays. For instance, utilities often fail to provide lists of approved contractors that will undertake the work at a reasonable price. In addition, new attachers may anticipate having to deal with existing attachments that have been made improperly, but lack any assurance they will be compensated for this work. The remedy also is flawed because it does not apply to instances where the utility fails to complete the make-ready work on time. In sum, the Commission may have given new attachers a self-help remedy, but it now needs to make it effective by providing greater clarity on the rights and responsibilities of each party and how the process should work. ACA therefore recommends that the Commission clarify that new attachers have an enforceable right to undertake all necessary make-ready using utility-approved contractors, including work in the electric space, if a utility or an existing attacher fails to complete make-ready within the Commission's timeframe⁷ and require utilities to make publicly available, including on their websites, a list of at least five approved contractors to undertake make-ready. The Commission also should eliminate the 15-day period for the

⁵ See, e.g., Reply Comments of the American Cable Association on the Notices of Proposed Rulemaking, WC Docket No. 17-84, WT Docket No. 17-79, at 20 (July 17, 2017).

⁶ ACA agrees with NCTA that whenever routine make-ready for a small number of poles is not completed within the Commission's mandated timeframe, the attacher could install temporary extension arms compliant with standards pending permanent installations. See Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84, WT Docket No. 17-79, at 7-8 (June 15, 2017).

⁷ Under ACA's proposed self-help process, new attachers would need to notify existing attachers that they could be present while the work is performed and when the work is complete so they would have an opportunity to inspect the work.

Marlene H. Dortch
August 3, 2017
Page Five

utility to undertake make-ready at the end of the 60-day period, since utilities have made it clear that they do not want to engage in this activity.

Ensure Make-Ready Charges are Just and Reasonable

The Commission has refrained from adopting regulations governing make-ready work charges, instead addressing their reasonableness on a case-by-case basis. ACA members have found that utilities have exploited this regulatory gap to charge for work not directly related to the new attachment and to send attachers vague, un-itemized estimates of make-ready costs as well as final make-ready invoices that not only were un-itemized, but far exceeded these estimates. As a result, ACA members and other commenters often lack the information necessary to challenge – or otherwise need to challenge – unreasonable make-ready charges. ACA submits the Commission should address these concerns by prohibiting utilities from charging for make-ready work that is unrelated to the new attachment, including for work to fix existing attachment violations or to replace poles determined to be inadequate for existing attachers or scheduled for replacement; and require utilities to provide attachers with make-ready cost estimates and final invoices with itemized details for work on a per-pole basis and with regular updates on whether the costs of ongoing make-ready work are consistent with estimates.

Increase Pole Attachment Enforcement Effectiveness

ACA's recommendations set forth above seek to lessen the number of disputes between utilities and attachers, and thereby reduce their need to file complaints with the Commission. Having an effective and robust enforcement process also would motivate the parties to settle their differences, as well as enable parties to enforce their rights should a dispute arise. Therefore, to ensure the timeliness of the pole attachment enforcement process, ACA recommends that the Commission adopt its proposed 180-day shot clock for resolution of pole-related complaints filed with the Commission. ACA also recommends the Commission impose significant penalties on utilities found to have violated the pole attachment rules, including compensatory damages and legal fees. Finally, the Commission should limit the penalties for unauthorized attachments to an amount no greater than that provided for under the recent Oregon Public Utility Commission's ruling.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
August 3, 2017
Page Six

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



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