

Via ECFS

EX PARTE

November 9, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

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

Dear Ms. Dortch:

INCOMPAS supports certain of the Commission's proposed actions in the item on circulation in the above-referenced proceeding,¹ as steps to accelerate deployment of next-generation networks and services and thereby promote much needed facilities-based competition. In particular, while much more is needed with respect to pole attachment reform—such as the adoption of a one-touch, make-ready policy—we support the exclusion of capital costs recovered via make-ready fees from pole attachment rates.

INCOMPAS, however, urges the Commission to refrain at this time from reducing the standard waiting period for copper retirements from 180 days to 90 days after the Commission issues its public notice.² Given the numerous significant barriers to competitive wireline broadband deployment that remain—that the Commission has recognized and not yet addressed—it is premature for the Commission to reduce the time that competitors relying on incumbent copper facilities receive to find alternative means to serve their customers. In particular, in this proceeding the Commission has sought comment on the unreasonable conditions and requirements, bad faith conduct, and “excessive delays in negotiations and

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC-CIRC1711-04, [DRAFT Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking], WC Docket No. 17-84.

² INCOMPAS supports (1) retaining objection procedures for short-term notices of network changes; (2) retaining the distinction between copper retirements and other, less impactful types of network changes; (3) retaining the feeder portion of loops in the definition of copper retirement; (4) retaining the direct notice requirement; (5) having the waiting period for copper retirements run from the date of release of public notice, rather than the date of the ILECs' notice; and (6) reinstating the previously applicable objection procedures for copper retirements.

approvals for rights-of-way agreements and permitting for telecommunications services” construction, licensure negotiations and processes.³ It has also recognized the urgent need to accelerate access to poles.⁴

Comments in the proceeding support the need for these critical issues to be addressed. For example:

- Carriers sometimes “must endure lengthy processes to secure local authorization for access to ROWs that may include *months or even years* of licensing and permitting, project review, and negotiations. Accordingly, infrastructure deployment is often delayed, and investment may be disincentivized.”⁵
- One party has identified at least 44 local jurisdictions that have implemented *moratoria*, some of which impact wireline broadband deployments.⁶
- Multiple parties point out that it can be *180 days or more* just for the make-ready process for pole attachments—a critical component to fiber deployment—to be completed.⁷
- It was also reported that a growing number of utilities require a “pre-application” process before they will accept an application – thus *preventing attaching entities from starting the clock* on the Commission’s four-stage timeline.⁸

The Commission has yet to address these critical barriers that substantially delay, or even prevent, competitive facilities-based competition. Instead, the item accelerates the loss of one of the primary sources of competition the ILECs currently face—that from competitors using incumbent copper loops. It is clear from the record that fiber deployment on three months’ notice is generally not feasible. The Commission must address the barriers to competitive broadband deployment *before* it further reduces the relatively short notification time for copper

³ *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84, FCC 17-37, at ¶¶ 100-108 (rel. Apr. 21, 2017) (“Notice” or “NPRM”).

⁴ *NPRM* at ¶¶ 6-31.

⁵ Reply Comments of Zayo Group, LLC, WC Docket No. 17-84, at 2, filed Jul. 17, 2017.

⁶ Letter of Ronald W. Del Sesto, Jr., Attorney for Uniti Fiber, to Marlene H. Dortch, FCC, WT Docket No. 17-79; WC Docket No. 17-84, at 2 and fn. 16, filed Oct. 20, 2017.

⁷ See e.g., Letter of Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, FCC, WC Docket No. 17-84, at 3, filed Jul. 28, 2017.

⁸ Letter of T. Scott Thompson, Counsel to Crown Castle, to Marlene H. Dortch, FCC, WT Docket No. 17-79; WC Docket No. 17-84, at 2, filed Aug. 28, 2017.

retirement. Otherwise the Commission will only foster the elimination of the already minimal competition ILECs face in wireline broadband services.⁹

The Commission claims its allowance of ILECs to disclose information about planned networks changes to certain parties in advance of a public notice—with no requirement that the ILECs at the same time notify impacted competitors—somehow mitigates concerns regarding the shortened copper retirement notification. Permitting advance notice cannot mitigate these concerns if there is no assurance that competitors will be brought into the loop. Instead of proceeding with these hasty changes to the copper retirement notification process, the Commission, as NTIA suggests, should seek focused input from the carriers as to how best to ensure that critical activities (of federal agencies or otherwise) that depend on communications services provided by competitors using incumbent copper-based facilities are not unexpectedly harmed by a copper retirement.¹⁰

Additionally, INCOMPAS urges the Commission not to conclude that a carrier customer need not seek approval from the Commission to discontinue, reduce or impair a service pursuant to section 214(a) of the Act when the change in service directly affects only carrier-customers. The Commission reasons that carrier-customer relationships are governed by Section 251, while retail customer relationships are covered under Section 214.¹¹ But this notion neglects the fact that carrier-customers purchase *services*, such as business data services, pursuant to section 201 and 202 of the Act, as do retail customers. This is distinct from carriers' leasing of facilities, such as unbundled elements via Section 251 of the Act. Customers—whether retail or wholesale—that purchase *services* under sections 201 and 202 of the Act should be treated as members of the community for purposes of Section 214 of the Act.

Respectfully submitted,

/s/ Karen Reidy

Karen Reidy

Vice President, Regulatory Affairs

⁹ Contrary to the claims, in the item, that there is prevalent intermodal competition and the incumbent no longer has a near-monopoly, evidence in the proceeding on business data services (“BDS”) shows the incumbent to be the *sole* facilities-based provider to the vast majority of locations with BDS demand. *Business Data services in an Internet Protocol Environment, Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54, at ¶ 220 (rel. May 2, 2016)

¹⁰ Ex Parte Comments of the National Telecommunications and Information Administration, WC Docket No. 17-84, at 12, filed Oct. 27, 2017.

¹¹ *Id.* at ¶ 115.

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