



December 8, 2017

Ex Parte

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

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

Dear Ms. Dortch:

On Wednesday, December 6, 2017, Jeb Benedict (CenturyLink), Patrick Brogan (USTelecom), Alton Burton, Jr. (Frontier), Roy Litland (Verizon), Ola Oyefusi (AT&T), Dan Rhinehart (AT&T), and I met with Michael Ray, Lisa Hone, Daniel Kahn, Adam Copeland (by phone), and Annick Banoun of the Wireline Competition Bureau (Bureau) to discuss USTelecom's recent ex parte notice (the "USTelecom Survey")¹ filed in the above-referenced proceeding.² During our meeting we discussed several issues raised in the USTelecom Survey, as well as various issues relevant to the proceeding.

We provided the Bureau with an overview of how the USTelecom Survey was developed, conducted and analyzed. We noted that the findings of the USTelecom Survey provided compelling data demonstrating that: 1) the rate goals for ILECs set in the Commission's 2011 Pole Attachment Order³ remain unrealized;⁴ 2) due to the continuing pole-ownership disparity between investor-owned utilities (IOUs) and incumbent local exchange

¹ Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (November 21, 2017) (USTelecom Survey).

² Third Report and Order, Further Report And Order, and Order on Reconsideration, *Lifeline and Link Up Reform and Modernization*, FCC 16-38, 31 FCC Rcd. 3962, 81 FR 33025 (2016).

³ Report and Order and Order on Reconsideration, *Implementation of Section 224 of the Act*, 26 FCC Rcd. 5240, 76 FR 40817, FCC 11-50 (released April 7, 2011). *See also*, Order on Reconsideration, *Implementation of Section 224 of the Act*, 30 FCC Rcd. 13731, 81 FR 7999, FCC 15-151 (released November 24, 2015).

⁴ *See, USTelecom Survey*, pp. 3 – 11.

carriers (ILECs), ILECs remain in a lopsided bargaining position;⁵ and 3) significant disparities remain in pole attachment rates paid by ILECs to IOUs and those paid by CLEC and cable broadband competitors to ILECs.⁶

We also rebutted assertions by IOUs in this proceeding that the decrease in ILEC pole ownership has been intentional. We noted that the decrease in pole ownership by ILECs has not been intentional, and has instead resulted from external factors outside their control. For example, consistent with comments filed by USTelecom and others in this proceeding,⁷ we pointed out that the increase in IOU pole ownership has been driven by a number of such factors, including greenfield deployment of IOU networks, natural disaster recovery efforts, and IOU pole replacement activities.

We also responded to inquiries from Bureau staff regarding alleged “unique benefits” that accrue to ILECs as a result of joint use agreements. For example, we noted that the purported unique benefits cited by IOUs generally do not provide any advantage to ILECs that would justify charging ILECs a rate higher than the new telecom rate.⁸ We also discussed a recent pole attachment complaint decision by the Enforcement Bureau which concluded that the IOU’s claims regarding any such benefits were “overstated,” and that the IOU’s response to the complaint did not “quantify the purported material advantages” received by the ILEC.⁹

Finally, we discussed findings in the USTelecom Survey regarding the prohibitive pole attachment rates charged by cooperatives, including the problematic rate proposal recently implemented by the Tennessee Valley Authority (TVA). Given the location of electric

⁵ *Id.*, pp. 6 – 11.

⁶ *Id.*, pp. 4 – 6. USTelecom does not have access to the pole attachment rates that IOUs charge cable and CLEC attachers, but notes that the same formulas apply to the rates for pole attachments on ILEC poles.

⁷ See, Reply Comments of CenturyLink, WC Docket No. 17-84, pp. 3 – 4 (submitted July 17, 2017); see also, Comments of Verizon, WC Docket No. 17-84, p. 11 (submitted June 15, 2017).

⁸ Considering many of the joint use agreements have been in existence for many decades (*i.e.*, dating from the telecom monopoly era) it is doubtful if any alleged benefits present at the time still exist after the drastic changes the industry has experienced in the last couple of decades; and of course, the IOUs have not shown that the source of the purported benefits imposes any economic cost on them that would justify rates higher than the new telecom rate.

⁹ See, Order, *Verizon Virginia, LLC and Verizon South, Inc. v. Virginia Electric Power Co. d/b/a/ Dominion Virginia Power*, EB-15-MD-006, No. 15-190; DA 17-395, ¶¶ 18, 20, 22 (May 1, 2017) (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”).

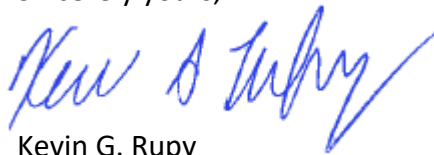
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cooperatives, we emphasized that excessive cooperative rates, including those being implemented by the TVA, will have a particularly acute impact on rural consumers and undermine the Commission's objectives.

In light of the data contained in the USTelecom Survey, we urged the Commission to expeditiously adopt a presumption that the most recent telecom formula yields a just and reasonable rate for ILEC attachments. Finally, we encouraged the Bureau to adopt its proposal that an ILEC would receive the telecommunications rate unless the utility pole owner can demonstrate with "clear and convincing evidence" that the benefits to the ILEC far outstrip the benefits accorded to other pole attachers.

Please contact the undersigned should you have any questions.

Sincerely yours,



Kevin G. Rupy
Vice President, Law & Policy

cc: Michael Ray
Lisa Hone
Dan Kahn
Adam Copeland
Annick Banoun