

Via ECFS

EX PARTE

December 20, 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 encourages the Commission to move expeditiously to adopt a one-touch make-ready (“OTMR”) process—without unreasonable conditions and limitations that would negate the process¹—and address other barriers to pole attachments. The Commission cannot count on carriers’ ability to revisit and build in areas where they have been initially denied access to poles.² Consequently, delayed action by the Commission may squash—not just stall—competitive network deployment plans, denying consumers the competition that brings Gigabit Internet connectivity starting at \$40 a month.³

¹ See e.g., Letter of Kristine Laudadio Devine, Counsel to Google Fiber, Inc, to Marlene H. Dortch, FCC, WC Docket No. 17-84 (Nov. 30, 2017).

² For example, “Sonic said that it is unlikely it would add more fiber to the network in the areas where it could not get initial access [to poles].” Sean Buckley, “Sonic’s FTTH expansion continues, but California pole access remains a challenge,” Fierce Telecom, Dec. 4, 2017, available at: https://www.fiercetelecom.com/telecom/sonic-s-ftth-expansion-continues-but-california-pole-access-remains-a-challenge?mkt_tok=eyJpIjoiWm1GbE1qRTJOalU1WW1VeCIsInQiOiJOdF0ZlpxQWRCMEZKazlObHcyem1tb3NOQmljbTVZUmlTbXF0MXJCeWU5d3RxBjJCc1JYb1hldmx5ZXU0dEFVNW5NekR2SHkxV2ZFajFEWIRITUZ2NkxsUVwvcUdQbG5IN0dVM3FNUnlLdEdBeDBBbzNBS0xOT2ZvTXl1MTdZbVgifQ%3D%3D&mrkid=3250515&utm_medium=nl&utm_source=internal

³ *Id.*; See also, Ian Thibodeau, “Rocket Fiber on-line in Detroit, announces 10-gig option for home internet,” Nov. 12, 2015, available at: http://www.mlive.com/business/detroit/index.ssf/2015/11/rocket_fiber_on-line_in_detroi.html.

One of the most obvious steps to accelerating deployment is the adoption of an OTMR process. As the PCCA states, “OTMR can provide quality construction of new broadband and power attachments safely, more efficiently and expeditiously than traditional processes by avoiding multiple crews and bureaucratic hurdles.”⁴ OTMR benefits pole owners by shifting the responsibility for providing notification to existing attachers and obtaining survey/make-ready estimates to the attaching party from the pole owner.⁵ It also benefits residents and municipalities by reducing the frequency of road and sidewalk closures.⁶ In contrast, as demonstrated in a recent report on the make-ready process, the current approach—with its sequential make-ready performed by different parties—results in substantial delays, lack of predictability, higher costs, and reduced fiber network expansion.⁷

The current rules are not only ineffective in hastening the process for pole attachments and ultimately network deployment, they impede certain municipalities (in states that have not opted for reverse preemption) from adopting rules to improve the process and, thereby, promote competitive broadband for their residents. For example, the U.S. District Court in Nashville noted the time-consuming process for pole attachments that occurs when each existing attacher performs its own make-ready work. Yet, it nonetheless found that the ordinance passed adopting OTMR “to facilitate the efficient construction or upgrade of communications networks on utility poles located in the public rights-of-way while promoting and protecting public safety and reducing inconvenience to [Metro Nashville] residents and businesses from the construction”

⁴ Letter of Eben M. Wyman, representing Power and Communication Contractors Association (PCCA), WC Docket No. 17-84, at 2, filed Nov. 30, 2017.

⁵ See, Letter from Katharine R. Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84, at 2 (Nov. 21, 2017); See also, Letter of Brett Kilbourne, Utilities Technology Council, to Marlene H. Dortch, FCC, WC Docket No. 17-84, at 3 (Oct. 20, 2017) (“Speeding access for pole attachments can be accomplished cooperatively through one-touch-make-ready.”); Letter of Eric Langley, on behalf of Southern Company, to Marlene H. Dortch, WC Docket No. 17-84, at 1 (Jul. 24, 2017) (expressing support for OTMR within the communications space.)

⁶ See Fiber to the Home Council, “Role of State and Local Governments in Simplifying the Make-Ready Process for Pole Attachments,” at 3-4, November 2015, available at: http://www.ct.gov/broadband/lib/broadband/ctgig_project/attachment_c__fth_council_makereadywhitepaper25october2015.pdf Id at 3-4. See also Defendants’ Memorandum of Law in Support of Motion for Summary Judgement, *In the United States District Court for the Middle District of Tennessee at Nashville*, Case 3:16-cv-02509, Document 78, at 3, 29-30 filed Feb. 8, 2017 (“Nashville Memorandum of Law”).

⁷ CMA Strategy Consulting, “Perspectives on the Current State of Make Ready and the Potential Impact of a One-Touch Make-Ready Policy,” attached to Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84, at 5 (Nov. 13, 2017).

was preempted by the FCC's rules.⁸ Therefore, instead of encouraging local action to remove barriers to broadband deployment, the Commission's current rules thwart such action.⁹

The Commission should also seek comment on ways to streamline the pole reinforcement process. Carriers are deterred from deploying in areas where a pole needs reinforcement or replacement because reinforcement/replacement workarounds are expensive, time-consuming or not available¹⁰—yet there is growing number of poles that need to be reinforced or replaced. For example, the Commission should consider the feasibility of engineering innovations and other process improvements used by pole attachers (or pole-owner-approved contractors) that could be safely used to upgrade poles in lieu of the time and expense currently associated with pole replacements by pole owners.¹¹

Respectfully submitted,

/s/ Karen Reidy

Karen Reidy

Vice President, Regulatory Affairs

cc: Jay Schwarz
Claude Aiken
Amy Bender
Jamie Susskind
Travis Litman

⁸ *BellSouth Telecomm. LLC v Metro. Gov't of Nashville and Davidson Cnty.*, No. 16-25909, slip op at 2, 7, and 9-15 (M.D. Tenn 2017).

⁹ *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 ¶ 111 (rel. Apr. 21, 2017) (“Notice” or “NPRM”) (The Commission sought comment on steps it could take to work with states and localities to remove the barriers to broadband deployment and discussed the formation of the Broadband Deployment Advisory Committee (BDAC) which has been charged with working to develop model codes for municipalities and states and additional steps that can be taken to remove state and local regulatory barriers.)

¹⁰ *See supra* n. 2. Prehearing Conference Statement of the California Association of Competitive Telecommunications Companies, Before the Public Utilities Commission of the State of California, 17-06-027, R. 17-03-009, R. 17-06-028, at 9 (Nov. 30, 2017) (“CalTel Statement”)

¹¹ CalTel Statement at 7.