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FCC Mail Room

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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: GN Docket Nos. 09-47, 09-51, and 09-137
Comments – NBP Public Notice # 12

Dear Secretary Dortch:

By this letter Fibertech Networks, LLC ("Fibertech"), responds to the Commission's October 8, 2009, request for comments referenced above. These comments address a limited number of the questions posed in the request, focusing on the cost of fiber-network deployment. A fundamental theme of the comments is that the cost of fiber deployment varies dramatically from market to market based on the utility policies regarding make-ready work requirements and charges. In fact, as these comments should suggest, the regional differences in utility rules severely limit the usefulness of any model that seeks to predict the cost of deploying fiber-optic network on existing utility poles or within existing utility conduit. In addition, a model that assumes the possibility that providers other than ILEC's and electric companies may deploy broadband networks at relatively low cost will be rendered outdated at any time that a lapse of regulatory scrutiny or enforcement relating to pole attachments occurs, for the utilities are strongly motivated to raise the cost of fiber deployment by competing providers.

Question 4. b. Response. The Gates Foundation model ("Model") assumes that aerial deployment of fiber-optic cable costs between $2 and $4 per foot, or approximately $10,500 to $21,120 per mile. This range fails to account fully for the make-ready costs encountered in most areas. Make-ready costs vary according to both the construction standards imposed by pole owners and also the charges imposed for make-ready work by the owners and other licensees. Based on Fibertech's experience, the variance can be significant, with make-ready cost averages ranging from $3,000 to $42,000 per mile, depending on the rules imposed by the pole owners. In other words, while the Model apparently attributes to make-ready expenses a possible variation in network deployment costs of approximately $11,000 per mile, Fibertech's experience indicates that make-ready expenses vary, according to the utilities serving a market, by $39,000 per mile.

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Therefore, the Model understates the degree of possible variation in average aerial deployment costs by at least $28,000 per mile, or approximately $16,000 for each 3,000-foot deployment. Additionally, the model's $10,500-to-$21,120/mile range for overall deployment costs appears unreasonably low, even if make-ready costs are relatively constrained: a company deploying network must not only pay for make-ready work but also must pay for field surveys and for the labor and materials involved in installing its fiber-optic facilities.

Explanation of Variation among Make-Ready Costs. In markets where utilities allow new entrants regularly to attach their cables on the field side of the poles, make-ready work is rarely required. In markets where licensees are entitled to either install their cable on the pole's field side or use a permanent extension arm in order to avoid "onerous" make-ready costs, the costliest form of make-ready work – the pole replacement – is almost always avoided. In contrast, where pole owners allow neither boxing nor extension arms, more make-ready work is required, including pole replacements.

In addition, there are at least three other variables that can cause make-ready costs to rise significantly. First is the possibility that the electric company and ILEC will require the new entrant to pay for make-ready work that is unnecessary even under rules prohibiting use of boxing and extension arms. For example, the electric company may claim exclusive right to use a specific portion of the pole and the ILEC may recognize this claim. When an electric company claims "ownership" of the top ten feet of the pole, for example, the make-ready option of moving a communications line up to create room for the new entrant may be eliminated and can result in the new entrant being required to pay for replacing the pole.

Second is the possibility that the pole owners will require the new entrant to pay not only for the work necessary to create the space required to accommodate its equipment but also for work performed to correct pre-existing violations of applicable safety codes.

Third is the possibility that the pole owners or other licensees will charge exceptionally high prices for performing their make-ready work. For example, the cost of moving communications lines – the most common form of make-ready work -- varies greatly. Some cable television companies charge $100 per cable-move, while others charge as much as $250. The greatest potential for driving up network deployment costs through high make-ready charges, however, is posed by ILEC's. ILEC charges vary greatly, even within the same company. For example, Verizon charges between $225 and $250 per line in New York, Pennsylvania, Massachusetts, and Rhode Island. In New Jersey, however, beginning in early 2008, Verizon raised its charge for moving a single cable from approximately $250 to an average of $580. (Verizon now charges between $415 and $780 to move a single cable in New Jersey.) To put these costs into

perspective, Fibertech charges $60 to move one of its cables when its own employees do the work.

Question 4.e. Based on Fibertech's experience, it is reasonable, for the purposes of modeling, to assume all-aerial installation in rural areas. Excavation can be expected to be sufficiently rare as to not appreciably affect cost estimates.

The assumption that 30% of poles will need replacing in rural areas is generally reasonable for areas where the pole owners refuse to seek efficient means of accommodating the new entrant, i.e., require the new entrant to pay for unnecessary work or to clean up existing safety violations. On the other hand, even if neither boxing nor extension arms are allowed as ways to avoid pole replacements but the pole owners otherwise make a good-faith effort to find efficient means of accommodating the new entrant, a better estimate of the likely rate of pole replacements is 12%. If boxing or use of extension arms is allowed, the rate of pole replacement should drop to between 2% and 4%.

Question 6. The potential that a right-of-way issue will lead to additional, upfront costs not recognized by the Model is highest when the anchor institution is the first user within a municipality to be connected by the company deploying the fiber. In such an instance, the municipality may seek to charge a one-time fee as a precondition of allowing the company to occupy the public right-of-way. Such a fee is frequently in the form of a charge to cover the municipality's administrative and legal costs associated with issuing a franchise or other authorization to the company, and it may exceed $20,000.

In some regions right-of-way issues may have a much larger effect on costs. For example, the New York State Department of Transportation has recently begun charging telecommunications service providers that are limited liability companies an annual rental fee for occupying the State highway right-of-way of $0.095 per fiber-strand-foot annually. This formula results in an annual charge of approximately $48,000 per mile for cable that contains 96 fiber-optic strands. Budgetary pressures may encourage other governmental entities also to attempt to raise revenue from companies seeking to deploy broadband facilities.

The extent to which right-of-way issues will affect timelines for building out to anchor institutions will vary widely. Where municipalities require only work permits as precondition of deploying network, the need for these permits will virtually never affect connection dates, because the licensing process for pole attachments will take longer than the process of securing municipal work permits. Similarly, a municipality that requires a telecom provider to enter into some sort of broad agreement, such as a franchise or generalized right-of-way agreement, but honors the constraints imposed by Section 253

of the 1996 Telecommunications Act will typically not affect the time at which the anchor institution is connected. Even if several legislative hearings are required, the approval process typically takes less than the 90-to-100-day period during which pole owners must issue attachment licenses in certain pro-competitive jurisdictions. However, a municipality that seeks to obtain benefits such as unlawfully high fees or free services as a condition of permitting the provider to install facilities along its streets can delay a connection for many months. Similarly, if a government entity imposes prerequisites that, by their nature, are time consuming, that also may slow the connection of anchor institutions. For example, the New York State Department of Transportation has recently begun requiring environmental impact reviews prior to installation of fiber-optic cable on existing poles.

Question 9. Among the factors weighed by a facilities-based provider considering whether to serve a new customer are:

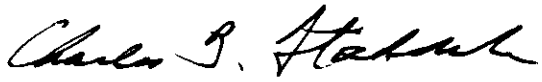
- Level of expected revenue;
- Cost of make-ready work required to reach the customer; and
- Pole rent, property taxes, and other governmental fees associated owning the additional network required to reach the customer.

Therefore, deploying fiber facilities to an anchor institution does encourage the provision of service to other, nearby users by reducing the amount of plant, and therefore the capital cost, required to reach such additional users and also by reducing the incremental operating expenses (such as pole rents and property taxes) associated with continuing to serve them.

Density of potential users can be a significant factor in determining where network facilities will be built, but this factor is greatest when the service provider is willing to invest in network facilities before signing service agreements with customers. Density is much less significant when the provider's business plan calls for extending network facilities in response to customer orders.

We hope these comments will be helpful. Please feel free to contact me if you wish clarification or additional information.

Very truly yours,



Charles B. Stockdale
Vice President & General Counsel