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VIA ECFS

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

Re: *Ex Parte* Presentation of ACA Connects—America's Communications Association; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, WT Docket No. 19-250

Dear Ms. Dortch:

On March 24, 2020, Ross Lieberman of ACA Connects—America's Communications Association ("ACA Connects"); Tom Cohen of Kelley Drye & Warren LLP, outside counsel to ACA Connects; and the undersigned (collectively, "ACA Connects Representatives") met, by teleconference, with the following staff of the Federal Communication Commission ("Commission") Wireline Competition Bureau: Adam Copeland, Michael Ray, Matthew Collins, Elizabeth Drogula, and Janice Gorin. The meeting was in reference to the above-captioned proceedings.

In the meeting, ACA Connects Representatives discussed how the spread of COVID-19 has brought with it widespread "social distancing" practices that have led to increased reliance on its members' broadband networks for telework, distance learning, and telehealth. To participate in these activities, broadband customers must be able to stay connected,¹ and those Americans that lack broadband service today, including students, workers, and others, must get connected as rapidly as possible. ACA Connects members are working tirelessly to meet these

¹ACA Connects, and many of its member companies, support the "Keep Americans Connected" Pledge. See, e.g., Federal Communications Commission, News Release, "Chairman Pai Launches the Keep Americans Connected Pledge" (rel. Mar. 13, 2020).

urgent demands for broadband in their communities, while also ensuring the health and safety of their employees and consumers.

To help get new customers connected quickly, ACA Connects Representatives requested that the Commission affirm common industry practice by ruling that “customer drop” pole attachments—which are adjuncts to existing, approved attachments—can be performed without providing advance notice to investor-owned utilities. In other words, on an “attach-and-notify” basis. ACA Connects Representatives explained that this targeted action, which has been well-vetted by the Commission in pending proceedings, would provide greater clarity for attachers and utilities and is an immediate step the Commission can take to help new broadband customers get online rapidly—a matter that has taken on heightened urgency during the COVID-19 epidemic.

“Customer Drop” Pole Attachments

In building out their networks, many broadband providers attach wires to utility poles that line a street, often pursuant to Commission or state pole attachment rules.² Lighter cables are then connected from these poles to homes or businesses along the route to provide service to customers, usually after a customer signs up for service. In making these “customer drops,” the broadband provider sometimes must connect the customer line to additional poles – for instance, to cross a street to reach a home on the other side. Because providers operate in a competitive environment, they need to turn on service promptly or they will lose the sale. In addition, franchising authorities or regulators may require providers to turn up service within a limited time. As a result, providers generally advertise “same-day installation” or “rapid installation,” which in many cases can be achieved only if the provider can make a drop – attaching to additional poles if necessary – immediately after the customer places its order.

Because of the need to connect customers quickly, many broadband providers seek to install a customer drop (with the express permission of a pole owner) on an “attach-and-notify” basis rather than follow the ordinary, months-long timeline and process for pole attachments. That is, the provider notifies the pole owner after the fact that it has attached a customer line to additional poles for the sole purpose of completing a drop. The pole owner then has the right to inspect the attachment to ensure it complies with safety and reliability requirements and, in the rare event it does not, to seek modifications. This policy is reasonable for pole owners because customer drop pole attachments put far less strain on poles than normal attachments,³ and there is no need to rearrange existing wires. Moreover, customer drop attachments are only performed after a provider has secured approval from a utility to attach to its poles, as an adjunct to the provider’s approved attachments. Those ACA Connects members that are able to attach-and-

² See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* et al., WC Docket No. 17-84 et al., Report and Order, FCC 18-111, ¶ 5 (2018) (explaining the scope of the Commission’s jurisdiction over utility poles and the right of states to “reverse preempt” that jurisdiction).

³ The lighter cables used for customer drops are typically “j-hooked” or clamped to poles rather than through-bolted, resulting in *de minimis* impacts on pole loading and *de minimis* risks to public safety.

notify for their customer drops find that this practice helps meet customer expectations to get service initiated promptly.

As ACA Connects Representatives discussed in the meeting, some investor-owned utilities have used their leverage in negotiations with ACA Connects members to insert provisions in pole attachment agreements requiring that the member notify the utility in advance, or even file a new application, when making customer drops.⁴ Where they are applied, these unreasonable policies present ACA Connects members with a dilemma: either follow the utility's policy (and risk losing the new customer) or else face the legal consequences of violating the policy. This is an unfair outcome, and one that runs counter to the Commission's broadband deployment objectives in this proceeding.

Overly restrictive utility policies regarding customer drops pose an added concern during the COVID-19 epidemic. With telework, telehealth, and distance learning having become "the new normal," and likely to persist for months, there is heightened urgency to connect homes that lack broadband connectivity today, and to do so quickly. A months-long timetable for customer drops directly undermines this goal. In addition, the normal pole attachments process involves a complex series of coordinated steps involving many parties. Resources are better spent elsewhere at any time but especially during the COVID-19 epidemic.

Streamlining Customer Drops to Help Get More Americans Connected

The Commission can take a step to help get customers online by ruling that attaching parties have the right to perform customer drop pole attachments on an "attach-and-notify" basis. This could take the form of a Bureau-level Order interpreting the Commission's existing pole attachment rules to provide that customer drop pole attachments are adjuncts to a provider's existing, approved attachments, and so investor-owned utilities' requirements to receive advance notice of such drops are unreasonable. In other words, drop attachments can lawfully be performed through an "attach-and-notify" process.⁵ Under the ruling we propose, investor-owned utilities would retain their existing right to inspect any attachments to their poles, including drop attachments, and to demand that the attacher correct any violations. This approach balances the benefits of getting more Americans online as fast as possible, especially during this epidemic, while respecting pole owners' rights to manage the safety and integrity of

⁴ See Comments of American Cable Association, WC Docket No. 17-84 et al., at 10-11 (filed June 15, 2017).

⁵ Alternatively, the Commission could adopt a Report and Order codifying an "attach-and-notify" rule for customer drops. The Commission has already provided adequate notice and gathered a sufficient record to move immediately to a final rule on this issue. However, it could take the Commission a few months to bring any new rule into effect.

their poles.⁶ Moreover, the rule would eliminate the risk of legal consequences for many smaller providers who prioritize meeting the public need for broadband services in a timely manner.

Over the years, the Commission has adopted pole attachment reforms to meet the need for more rapid connectivity. The targeted reform proposed above would further advance this goal, particularly during the COVID-19 epidemic,⁷ and we encourage the Commission to adopt it expeditiously.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please address to the undersigned any questions regarding this filing.

Sincerely,



Brian Hurley

Cc: Adam Copeland
Michael Ray
Matthew Collins
Elizabeth Drogula
Janice Gorin

⁶ Notably, though a few utilities have challenged factual assertions in ACA Connects' filings in this docket related to customer drops, we are not aware of any commenter that has defended the view that a process other than attach-and-notify is the most reasonable and balanced process for customer drop pole attachments.

⁷ See Federal Communications Commission, "More Ways the FCC is Keeping Americans Connected", <https://www.fcc.gov/keep-americans-connected> (last visited Mar. 26, 2020) (identifying recent steps the Commission has taken to meet enhanced connectivity needs during COVID-19).