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October 29, 2020

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
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

Dear Ms. Dortch:

On October 28, 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 with Allison Baker, Economic Advisor to Chairman Ajit Pai, and Adam Copeland of the Wireline Competition Bureau to discuss the above-captioned proceeding.

In the meeting, ACA Connects Representatives renewed ACA Connects' request, as laid out in its filings in this docket, that the Commission take action to ensure that pole replacement fees and related practices are "just and reasonable".¹ ACA Connects has outlined a regulatory framework for pole replacements that would achieve this objective.²

The Commission could adopt ACA Connects' proposed framework in its entirety as its next step in this proceeding, or, as discussed in the meeting, it could proceed incrementally. In particular, the Commission could adopt an order affirming that pole owners are among the parties that "directly benefit" from replacements of their pole infrastructure and that pole

¹ See Comments of ACA Connects on NCTA Petition for Declaratory Ruling, WC Docket No. 17-84 (filed Sept. 2, 2020) ("ACA Connects Comments"); Reply Comments of ACA Connects on NCTA Petition for Declaratory Ruling, WC Docket No. 17-84 (filed Sept. 17, 2020); Letter From Brian Hurley, ACA Connects, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed Oct. 16, 2020); see also 47 U.S.C. § 224(b)(1).

² See ACA Connects Comments at 7-8.

replacement charges are not “just and reasonable” unless pole owners “share proportionately” in these costs.³ In conjunction with that order, the Commission could seek further comment on a more precise methodology for allocating pole replacement costs that would apply in particular situations.

The adoption of the more limited order described above would not ensure that the pole replacement charges imposed on new attachers are set at just and reasonable levels, but it would take an important step in that direction pending the adoption of a more precise cost-allocation methodology. The order would at least make clear that pole owners may not require new attachers to bear pole replacement costs in their entirety—a reality that ACA Connects members routinely face today. Moreover, because the order would clarify the effect of existing Commission rules, it could take the form of a declaratory ruling and could even be adopted at the Bureau level.⁴

ACA Connects Representatives also remarked during the meeting that adoption of the order would lead to more productive negotiations between pole owners and attachers. Because parties are generally reluctant to incur the expense, or the risk of an adverse ruling, that comes with filing a complaint, the order would encourage parties to work constructively to reach agreement on allocations of pole replacement charges that are fairer than the one-sided allocations typical today.⁵ Moreover, in seeking further comment on a more precise cost-allocation methodology for pole replacements, the Commission could encourage attachers and pole owners to work voluntarily towards a compromise solution, similar to the successful process that occurred in the first term of the Broadband Deployment Advisory Committee. In that forum, attachers and pole owners worked collaboratively along with other stakeholders to develop regulatory solutions addressing a number of pole attachment issues that had been teed up in the rulemaking proceeding in this docket. ACA Connects welcomes the opportunity to work with pole owners again to achieve this end for pole replacement charges.

³ See 47 CFR 1.1408(b) (“The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that *directly benefit* from the modification. Each party described in the preceding sentence shall *share proportionately* in the cost of the modification.”) (emphasis added).

⁴ Alternatively, the Commission could adopt final rules arising from its Notice of Proposed Rulemaking in this docket. See ACA Connects Comments at 22-23.

⁵ When complaints related to pole access are filed, expedited treatment is appropriate. See ACA Connects Comments at 23-24. The Commission may consider addressing this matter as part of the order proposed above.

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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,

A handwritten signature in blue ink, appearing to read "B Hurley", with a long horizontal flourish extending to the right.

Brian Hurley

Cc: Allison Baker
Adam Copeland