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April 3, 2017

**Via ECFS**

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

**Re: *Ex Parte* Filing of the American Cable Association on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, WT Docket No. 16-421; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; and Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84**

Dear Ms. Dortch:

On March 30, 2017, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), Patrice Carroll, IMON Communications (“IMON”), Jake Cowen, Troy Cablevision (“Troy”), Danny Jobe, Metrocast, Patrick Knorr, Wave Broadband (“Wave”), Earle MacKenzie, Shentel, and Thomas Cohen and Jennifer Wainwright, Kelley Drye & Warren LLP, Counsel to ACA, met with the following staff of the Wireline Competition Bureau and the Wireless Telecommunications Bureau: Kris Monteith, Madeleine Findley, Daniel Kahn, Adam Copeland, Terri Natoli, Nese Guendelsberger, Garnet Hanley, Peter Trachtenberg, and Brian Hurley. The same ACA representatives (except for Jake Cowen and Jennifer Wainwright) also met with Chairman Pai’s Senior Counsel, Nicholas Degani, and his Acting Wireline Advisor, Jay Schwarz. The purpose of these meetings was to discuss ACA members’ views in the above-referenced dockets, which address actions the Commission could take to accelerate the deployment of broadband networks.

Mr. Lieberman began the meeting by explaining that ACA members have spent more than ten billion dollars to deploy video and broadband networks that pass approximately 19 million homes in the U.S. and serve approximately seven million residential and commercial subscribers. ACA members plan to continue to invest in these networks to meet the ever-growing demands of their residential, business and institutional customers for broadband

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services, as well as to provide fiber backhaul service to mobile providers. However, ACA members continue to face barriers from both public and private entities that add “friction” to the deployment process, which, in some instances, may be so substantial that these providers delay or even stop builds. These barriers and the associated cost increases are a significant problem for smaller providers, that lack the resources of larger providers, and are particularly harmful for smaller providers that serve smaller communities and rural areas, due to cost and other deployment challenges in those areas.

Mr. Lieberman noted that ACA has long sought to have the federal government address these issues and appreciates that the Chairman and Commission recognize these problems exist and are seeking to address them in the above-referenced proceedings, as well as in the Broadband Deployment Advisory Committee<sup>1</sup> and as part of the Chairman’s Digital Powerment Agenda.<sup>2</sup> ACA representatives also noted that in many instances state and local governments have worked with providers to tear down the barriers to deployment, which can be especially fruitful in making the difference about whether to deploy to more rural areas. They recommended the Commission collect examples of these “positive models” to provide a roadmap for regulatory action or development of model local codes.

Mr. Lieberman then asked the ACA members, who have firsthand experience in the deployment of high performance broadband networks, to discuss major barriers they face, as well as positive experiences they have had in dealing with public and private entities.

Ms. Carroll and Mssrs. Cowen, Jobe, Knorr, and MacKenzie began by discussing the many significant pole attachment problems that continue to vex them. All noted that their companies have slowed broadband deployment or expansion efforts (and some have even abandoned builds) due to pole owners delaying attachments, charging unreasonable make ready or rental fees, or even worse, engaging in both harmful practices. All also noted that the problems have grown recently as ACA members and other providers need to undertake major broadband deployment projects to meet the demands of their customers for greater bandwidth. All noted that pole owners provide no reasoned justifications for their delays and rate increases.

Ms. Carroll noted that providers generally first try to attach to poles since the cost to string wires on existing poles is much less than having to dig trenches or bore underground and then install conduit and cable. However, she explained that in recent years IMON has seen new demands from pole owners, especially in make-ready, that have often made pole attachments “extraordinarily expensive.” For example, she explained that pole owners are now requiring

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<sup>1</sup> “Chairman Pai Forms Broadband Deployment Advisory Committee,” *FCC News* (Jan. 31, 2017).

<sup>2</sup> Remarks of FCC Commissioner Ajit Pai at the Brandery, “A Digital Empowerment Agenda” (Sept. 13, 2016).

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IMON to pay a significant engineering fee upfront for each pole just to provide it with an estimate of the make-ready cost should IMON choose to attach. As a result of these increased costs to attach to poles, IMON has found that in numerous instances, it costs virtually the same to attach to poles as to build underground – and because of these inflated attachment costs, IMON has been forced to reduce its rate of expansion.

Mr. Cowen explained that Troy Cablevision faces these same pole attachment problems and has opted to build 80 percent of its network underground, but as with IMON, because the builds now cost more than planned, it has reduced its network expansion by 100 miles of fiber per month. Mr. MacKenzie added that while underground deployments may be economically feasible in Troy's territory, that was not the case for Shentel since it would cost as much as \$60 per foot to cut through "West Virginia" rock.

In terms of the cost for attachments, Mr. MacKenzie commented that unreasonable make-ready costs have become a growing problem for Shentel, including because pole owners frequently seek to have new attachers pay most, if not all, of the cost to upgrade or replace an existing pole, or force new attachers to incur the cost of repairing mistakes made by existing attachers. Mr. Knorr added that requiring Wave to "fix the sins" of prior attachers has become a standard demand of many pole owners and often causes Wave to either go underground or not deploy at all.

Mr. MacKenzie also stated that Shentel has an expectation based on the Commission's pole attachment guidelines that the entire process should be completed in less than approximately five months. However, in numerous instances, pole owners fail to meet the timeframes in the guidelines. Moreover, the Commission's enforcement process provides no real recourse, since Shentel will only consider using it after a pole owner fails to comply and the process itself takes too long and is too costly. In the meantime, customers relying on Shentel for service are left in a lurch. Mr. MacKenzie, for instance, commented that because one pole owner has taken so long to allow Shentel to attach, it has been unable to meet its commitment to connect one school district in Virginia under the E-Rate program.

The ACA providers also discussed attachment issues with electric cooperatives and municipalities, neither of which is subject to Section 224 of the Communications Act but many of which own poles in areas the Commission considers unserved. The providers explained that many of these cooperatives charged pole attachment rental fees that were three to four times greater than those charged by investor-owned utilities. They further explained that these inflated costs deter them from bringing broadband service to consumers in these areas. These utility pole owners claim that their pole rates must be high to keep energy rates low, but ACA providers averred that this claim was unfounded. The impact on the cooperatives from offering the same attachment rates as investor-owned poles would be minimal since pole fees are relatively insignificant in relation to the overall electric rate base.

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As for municipal pole owners, Ms. Carroll and Mr. MacKenzie noted that there are communities that recognize the economic and social benefits of broadband service and will enter into reasonable pole attachment deals with providers to accelerate deployments. However, often municipal pole owners either charge unreasonable fees or delay attachments. Mr. Knorr, for instance, stated that Wave was planning to deploy fiber-to-the-home facilities in Seattle, Washington, but that it had to abandon this effort because, among other issues, obtaining approval from the municipal pole owner to attach its facilities would have taken at least 18 months.

Apart from pole attachment issues, the ACA representatives explained that public and private entities controlling access to and use of rights-of-way continue to delay access and charge unreasonable fees. For instance, Mr. Knorr discussed the unreasonable “per foot” fee that Oregon franchising authorities were imposing, which could be especially burdensome for a new entrant. The representatives also explained that even for providers that were already occupying and compensating the franchising authority for access and use of rights-of-way, some municipalities were seeking to impose additional fees as these providers offered additional services. This is a clear violation of the statute since no additional rights-of-way are being occupied.

Finally, the ACA providers briefly touched on concerns with private owners of rights-of-way, especially railroads. Ms. Carroll explained that even though IMON had rights to use state government rights-of-way in a road at a reasonable cost, the cost to cross a single railroad crossing was so excessive – \$10,000 – that IMON had to choose another route for the build. All ACA providers noted they had experienced similar problems with crossing railroad tracks, and they hoped the federal government would address this issue.

These examples are illustrative of similar issues encountered by other ACA members. As such, ACA urges the Commission to use the above-referenced proceedings to act swiftly to reduce such barriers and facilitate the deployment of broadband networks.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



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