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Summary

WTA – Advocates for Rural Broadband (“WTA”) strongly supports the Commission’s efforts to reduce the delays and costs of obtaining the various governmental and private authorizations and arrangements necessary to upgrade and extend broadband networks and services.

WTA urges the Commission to eliminate the uncertainties, delays and expenses of the Section 214(a) discontinuance process by declaring that deployment of fiber-based broadband IP voice and data services constitute an upgrade rather than a termination or replacement of copper-based TDM voice and data services, such that the discontinuance application and approval requirements of Section 214(a) do not apply to such improvements. The Section 214(a) discontinuance process was adapted from the railroad industry and was intended to prevent common carriers from unilaterally terminating all or most of their service to a community or other area without adequate notice or alternatives for replacement. In stark contrast, the fiber-based IP service upgrades encouraged (and, in many cases, mandated) by Congress and the Commission provide affected customers with broader choices of competitive Voice over Internet Protocol (“VoIP”) services and of higher-speed and better quality broadband data services. Application of the Section 214(a) discontinuance process constitutes a particular barrier to broadband investment by WTA members and other rural local exchange carriers (“RLECs”) because they generally must deploy fiber-based IP facilities in multiple small steps that are likely to entail numerous Section 214(a) applications, expenses and delays; and because there is no evidence that their previous broadband deployments have resulted in service terminations or inadequate advance notifications for their residential and business customers or other entities.

In the alternative, the Commission can and should forbear on its own motion from applying or enforcing the Section 214(a) discontinuance process with respect to copper-to-fiber, TDM-to-IP upgrades that further the Congressional and Commission policies of deploying high-speed broadband and advanced services throughout the nation as rapidly as possible.

WTA, which represents pole owners, existing pole attachers and potential new pole attachers, supports measures to reduce the time and expense of maintaining and obtaining pole attachments. WTA recommends preliminary steps such as: (1) requiring pole owners to develop and maintain online data bases listing relevant information regarding their poles; (2) setting a just and reasonable pole attachment rate formula for incumbent local exchange carrier (“ILEC”) attachers; (3) mandating reciprocal access by ILECs and competitive local exchange carriers (“CLECs”) to each other’s poles; and (4) establishing an expedited process for the filing, consideration and resolution of pole attachment complaints.

The Commission can then streamline its existing four-stage timeline for access to utility poles, especially with respect to the orders for 50 or fewer poles that normally apply to RLECs and other small service providers. If a 50-pole timeline is established, WTA believes that the application review, engineering survey, cost estimate and attacher acceptance stages can all be accomplished within thirty days. WTA recognizes the complexities of the make-ready process, and urges that safety and service continuity considerations warrant the provision to existing attachers of a reasonable opportunity to arrange for the modification of their attachments, and that make-ready charges be permitted to include an allocation of capital costs (as long as pole owners are prevented from recovering more than 100 percent of the capital costs of their poles from their customer rates, pole attachment rates and make-ready charges).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Accelerating Wireline Broadband Deployment by) WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)

TO: The Commission

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA–Advocates for Rural Broadband (“WTA”) hereby submits its comments with respect to the *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment* (“NPRM”), FCC 17-37, released April 21, 2017, in the referenced proceeding. These comments are timely filed in accordance with the Public Notice (*Wireline Competition Bureau Announces Deadlines for Filing Comments and Reply Comments in the Wireline Infrastructure Proceeding*). WC Docket No. 17-84, DA 17-473, released May 16, 2017.

WTA members are actively engaged in the deployment of quality, high-speed broadband facilities and affordable broadband services within their rural service areas. WTA strongly encourages and supports efforts by the Commission to reduce the time and costs of obtaining the various grants, approvals, permits, agreements and other arrangements with federal, state, local and private entities that are necessary to upgrade and extend broadband networks. WTA urges the Commission to remove a substantial source of uncertainty, delay and expense by declaring that fiber-based broadband and Internet Protocol (“IP”) voice and data services constitute an upgrade rather than a replacement of copper-based Time Division Multiplex (“TDM”) voice and data services, such that the service discontinuance provisions and requirements of Section 214(a) of the Communications Act do not apply to such improvements. In the alternative, the

Commission can and should forbear on its own motion from applying or enforcing the Section 214(a) discontinuance provisions and procedures with respect to copper-to-fiber, TDM-to-IP upgrades that further the Congressional and Commission policies of deploying high-speed broadband and advanced services throughout the nation as rapidly as possible. WTA notes also that it represents pole owners, existing pole attachers and potential new pole attachers, and that it supports effective and efficient measures to reduce the time and expense of maintaining existing pole attachments and obtaining additional pole attachments.

I. WTA – Advocates For Rural Broadband

WTA is a national trade association representing more than 325 rural telecommunications providers that offer voice, broadband and video-related services in Rural America. WTA members are generally small rural incumbent local exchange carriers (“RLECs”) that serve some of the most rugged, remote and/or sparsely populated areas of the United States. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. They must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to the lakes of Minnesota to the wilderness and villages of Alaska, and from the valleys of Oregon to the plains of Indiana to the hills of Tennessee to the mountains of Wyoming. The major common features of these diverse rural areas are the much longer than average distances that must be traversed, and the much higher per-customer costs of constructing, upgrading, operating and maintaining broadband networks than in urban and suburban America. WTA members are providers of last resort to many areas and communities that are both very difficult and very expensive to serve.

The typical WTA member has 10-to-20 full-time employees, and serves fewer than 3,500 access lines in the aggregate and fewer than 500 access lines per exchange. WTA members are all Rate-of-Return (“RoR”) carriers. Approximately forty-five percent (45%) of WTA’s members are included among the 207 RoR companies that have elected to receive federal high-cost Universal Service Fund (“USF”) support for the next ten years pursuant to the Alternative Connect America Cost Model (“ACAM”) Path.¹ With the exception of several Alaska Plan companies, the rest of WTA’s members have remained on the RoR Path.

For over twenty years, WTA members have been investing in broadband upgrades to their networks in order to give their rural customers access to telecommunications and information services that are reasonably comparable to those available in urban areas and that are available at rates that are reasonably comparable to the rates charged for similar services in urban areas. Some WTA members have been able to deploy fiber-to-the-home (“FTTH”) or fiber-to-the-curb (“FTTC”) facilities in some or all of their exchanges. However, most RLECs have elected or been forced by limited resources to take the more gradual approach of extending fiber optic trunks into their networks in multiple discrete steps, and completing their customer loops with hybrid fiber-copper technology such as digital subscriber lines (“DSL”). Starting in 2017, most WTA members are obligated by Sections 54.308(a)(1) [ACAM Path] or 54.308(a)(2) [RoR Path] of the Commission’s Rules to speed up their broadband and IP upgrades by deploying 25/3 Mbps or 10/1 Mbps facilities and services to specific numbers of locations within their service areas as a condition of receiving federal high-cost support.

¹ See Public Notice (*Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More Than \$51 Million Annually in Alternative Connect America Cost Model Support And Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*), WC Docket No. 10-90, DA 16-1422, released December 20, 2016; and Public Notice (*Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*), WC Docket No. 10-90, DA 17-99, released January 24, 2017.

II. Section 214(a) Discontinuance Process Should Not Apply To Or Delay IP Technology Upgrades

A. Congressional And Commission Policies And Mandates For Broadband Investment and Upgrades

It has long been the goal and the policy of both the Congress and the Commission to encourage the deployment and upgrade of advanced telecommunications and information services as widely and rapidly as feasible throughout the nation. Section 706(a) of the Communications Act of 1996 mandates that “[t]he Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” 47 U.S.C. §1302(a). Section 706(b) requires the Commission to initiate periodic inquiries concerning “the availability of advanced telecommunications capability to all Americans,” to determine whether such capabilities are “being deployed to all Americans in a reasonably timely manner” and, if not, to take action to accelerate deployment – for example, by “removing barriers to infrastructure investment.” 47 U.S.C. §1302(b). The desired “advanced telecommunications capability” is defined by statute “as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology” 47 U.S.C. §1302(d)(1).

Thirteen years later, Congress in the American Recovery and Reinvestment Act of 2009, directed the Commission to develop a National Broadband Plan to ensure that every American has “access to broadband capability.” Congress required this plan to include a detailed strategy for achieving affordability and maximizing the use of broadband to advance “consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector

investment, entrepreneurial activity, job creation and economic growth, and other national purposes.” *Connecting America: The National Broadband Plan* (March 2010), at pp. xi and 3.

The present Commission is acting to further these long-term goals, recognizing that “[h]igh-speed broadband is an increasingly important gateway to jobs, health care, education, information, and economic development” and proposing “actions designed to accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment.” *NPRM*, at par. 1. As then-Commissioner Ajit Pai recognized in a 2015 dissent:

. . . Fiber is the fastest, most reliable way to transport data, whether across a city or around the world. Fiber networks transport data at the speed of light and fail at only one-eighth the rate of copper networks. . . . The all-IP future brings with it exactly the high-quality, high-speed technologies and services that consumers are demanding.²

B. The Section 214(a) Discontinuance Process Does Not Apply To Broadband Upgrades

Given that broadband is “the great infrastructure challenge of the early 21st century”³ and that a primary and long-standing Commission goal is “to ensure that the deployment of innovative and improved communications services can continue without delay,”⁴ it does not appear that Section 214(a) service discontinuance applications, comments and processing periods, and grants are either relevant or necessary or useful to the broadband upgrade process. It is noteworthy that the Commission has long employed “blanket” Section 214 authorizations requiring no application filings or grants to avoid delaying the efforts of incumbent local exchange carriers (“ILECs”) and competitive local exchange carriers (“CLECs”) to construct

² Dissenting Statement of Commissioner Ajit Pai with respect to *In the Matter of Technology Transitions et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, GN Docket No. 13-5, WC Docket No. 05-25, RM-11358 and RM-10593, FCC 15-97, released August 7, 2015 (“*2015 Technology Transitions Order*”).

³ *Connecting America: The National Broadband Plan* (March 2010), at pp. xi.

⁴ *2015 Technology Transitions Order*, at para. 1.

new domestic lines and/or to enter new domestic service areas.⁵ It would encourage and facilitate broadband deployment, as well as reduce barriers and costs inhibiting broadband investment, if the Commission were to declare that the replacement of TDM services running on copper with IP multimedia services using fiber or fiber-copper facilities constitutes an improvement or enhancement of existing voice and data services, and not a service discontinuance requiring a Section 214(a) application and grant. In the alternative, the Commission can and should forbear from enforcing the Section 214(a) discontinuation provisions in circumstances where carriers are upgrading their networks to comply with the Commission's broadband deployment goals and policies.

C. History And Intent Of Section 214(a) Discontinuance Process

Section 214(a) of the Communications Act, in relevant part, states:

. . . No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. . . . *Provided, however,* That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

The Section 214(a) discontinuance provision was originally transplanted from railroad law where it had been designed to discourage the improvident construction of unprofitable railroad lines (often in conjunction with questionable securities practices), and the subsequent abandonment of rail service to communities that had built up around and become dependant

⁵ *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11372 (1999).

upon the discontinued rail routes.⁶ As indicated by then-Commissioner Pai, the Communications Act version of Section 214(a) “was adopted by Congress to guard against loss of service during wartime, such as ‘abandonment of existing telegraph offices’ or ‘discontinuance of service to military establishments and industries’.”⁷ He made the critical point that “[t]raditionally, the Commission has interpreted the section to apply only when a carrier discontinues service to a particular community entirely, such as by the ‘severance . . . of physical connection,’ the ‘dismantling . . . of any trunk line’ or the ‘closing . . . of a telephone exchange’.”⁸

The specific language of Section 214(a) fully supports Chairman Pai’s reading. The statute states that “no carrier shall discontinue, reduce, or impair service to a community, or part of a community” without prior application and authorization. Note that the term is “service” not “a service,” indicating that the application and authorization requirements apply only if a carrier is abandoning all or a very substantial portion of the overall service it has been providing to the affected area and customers. As noted by Commissioner Michael O’Rielly, interpretation of “service” as “a service” instead of overall service would create a dangerous situation discouraging investment and the introduction of new services because “as soon as a carrier starts offering ANY telecommunications service, regulated or not, it [would have] to seek permission to discontinue it and may have to provide an alternative.”⁹

Note also that the ending proviso of Section 214(a) exempts from the scope of discontinuance applications and authorizations “any installation, replacement, or other changes

⁶ House Committee on Interstate and Foreign Commerce, *Communications Act of 1934: Section 214 Legislative Background*, Committee Print 96-IFC 18 (1979) at pp. 7-8.

⁷ Dissenting Statement of Commissioner Ajit Pai with respect to *2015 Technology Transitions Order*, citing *Western Union Telegraph Company Petition for Order to Require the Bell System to Continue to Provide Group/Supergroup Facilities*, Memorandum Opinion and Order, 74 FCC 2d 203, 295 n.4 (1979).

⁸ *Id.*, citing 47 C.F.R. §63.60(b)(1), (4), (5).

⁹ Dissenting Statement of Commissioner Michael O’Rielly with respect to *2015 Technology Transitions Order*.

in plant or equipment, other than new construction, which will not impair the adequacy or quality of service provided.” There should be no reasonable dispute that upgrades and replacements of copper lines by fiber lines constitute “installations, replacements, or other changes in plant or equipment” that will significantly increase and improve -- rather than “impair” -- the adequacy or quality of the voice and data services provided to the affected areas and customers. The Voice over Internet Protocol (“VoIP”) services available over broadband networks not only are the functional equivalents of traditional TDM voice services, but also are frequently less expensive and available from a broader selection of competing service providers. Likewise, fiber-based IP networks can provide the same broadband data speeds as copper-based TDM networks and in addition a variety of higher speeds and better quality services.

**D. Additional Circumstances Supporting Non-Application
Of Section 214(a) Discontinuance Process To RLEC IP Upgrades**

As noted above, very few WTA members and other small RLECs have the resources to upgrade their networks in a single step to replace copper-based TDM facilities and services with FTTH, FTTC or other fiber-based broadband IP facilities and services. Rather, the most prevalent RLEC broadband deployment strategy is to extend fiber optic trunks in multiple discrete steps further and further into the routes comprising their networks (often on an exchange-by-exchange basis) in order to increase the ranges and speeds of the copper-based DSL facilities that traverse the final miles to customer locations.

In the typical gradual RLEC evolution from legacy TDM to IP facilities and services, it is not clear when or how often Section 214(a) discontinuance application and approval requirements might apply. Customers subscribing to data services have the choice of additional higher-speed broadband service options (while generally retaining their existing data service options) as DSL speeds increase. Likewise, voice service customers are generally able to retain

their TDM voice services over their DSL links while obtaining access to multiple competing VoIP service alternatives that are available as broadband applications. Meanwhile, as the Commission has recognized, subscribership to traditional TDM voice telephone services continues to plummet to new lows. As of 2015, it was estimated that almost 75 percent of U.S. residential customers no longer receive telephone service over traditional copper facilities, and that only 16 percent of U.S. households retain ILEC switched access lines.¹⁰

It not clear or readily discernible at what point during this gradual evolution from TDM voice to IP voice, from lower-speed to higher-speed data services, from hybrid fiber-copper to predominately or entirely fiber, that Section 214(a) application requirements and approvals come into play for RLECs. And if an RLEC converts exchanges or customer clusters one-by-one over several years to more fiber-based broadband IP, is it required to go to the time and expense of filing multiple Section 214(a) applications and obtaining multiple grants over the months and years each time that it is ready to turn up a new area or to further upgrade a previously upgraded area?

Whether or not Section 214(a) discontinuance or Section 251(c)(5) network change notice requirements may apply, the customers¹¹ of WTA members and other RLECs are kept fully aware in advance of any facility and service changes that may affect them. Network upgrades and construction projects generally must be approved by the member-owners of the many telephone cooperatives in the RLEC industry; and their progress is certain to be a topic

¹⁰ *In the Matter of Technology Transitions*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, GN Docket No. 13-5 and WC Docket No. 13-3, FCC 16-90, released July 15, 2016, at par. 16.

¹¹ The “customers” of RLECs are virtually entirely residential and business end users. Most WTA members continue to hold Section 251(f)(1) rural exemptions that have not been terminated by their state commissions, and hence are not required to comply with Section 251(c) provisions such as those requiring the sale of unbundled network elements and wholesale local exchange services to competitors. Where they have competitors, RLECs generally enter into Section 251(b) traffic exchange agreements with such entities, and those entities (which are predominately VoIP or other IP-based service providers themselves) are not affected by RLEC broadband and IP upgrades.

covered at cooperative membership and Board meetings and in cooperative newsletters. Most commercial companies are family-owned and/or locally-managed, and also stay in close contact with their customers and the local media. If nothing else, RLECs have very strong incentives to keep their local customers fully informed as to the nature and timing of IP and other broadband upgrades because they will need permissions and easements to modify their lines to customer homes and install any necessary improved terminal equipment on customer property, and because they will want to sell the resulting additional and enhanced IP services to their customers. Most RLECs have a well-deserved reputation for quality technical service and responsive customer service, and can be trusted to work with their customers to ensure that broadband, IP and other service upgrades are implemented without disruption – for example, that customers will be conspicuously put on notice and repeatedly reminded that they will need to have sufficient back-up battery power to maintain their service during electric power outages and that they will need to notify their burglar and fire alarm services to avoid interruptions.¹²

In sum, the copper-based TDM to fiber-based broadband IP transition should not be subjected to the uncertainties, delays and costs of the Section 214(a) discontinuance application and approval process. This transition has no resemblance to the circumstances sought to be addressed by Section 214(a) discontinuances – situations where the residents of a community or substantial area wake up one day to find that the railroad, telegraph or telephone service on which they had come to depend is or will be no longer available and that they have not been given adequate notice or alternatives. The transition to broadband IP presents virtually the exact

¹² WTA members recognize the importance of continuous and uninterrupted burglar and fire alarm service. However, other than observing signs on customer properties, most WTA members and other RLECs have minimal ability to determine the identity and contact information for the burglar and fire alarm services used by their customers, or to keep up with customer purchases, terminations and changes affecting such services. The most accurate, efficient and effective way for RLECs to “notify” burglar and fire alarm companies of upgrades to their networks is to notify their residential and business customers of such upgrades and urge them to contact their burglar and fire alarm services in order to make the arrangements necessary for service continuity.

opposite state of affairs – the existing TDM voice and data services are not being discontinued, but rather are being significantly upgraded and expanded to include multiple VoIP alternatives and a variety of higher-speed and more reliable data services. Put another way, it makes no apparent sense for the Commission to require carriers to file Section 214(a) discontinuance applications, and to wait several months for such applications to be processed and approved, in order to make the transitions from copper-to-fiber, and from TDM-to-IP, that the Commission has long urged and that consumers are demanding and making on their own wherever they have the option to do so.

Whereas the Commission can and should declare that the Section 214(a) discontinuance process is not applicable to copper TDM-to-fiber IP upgrades for any carriers, exemption is particularly appropriate for RLECs. Given the gradual way in which most RLECs are required to extend fiber into their networks in order to upgrade the broadband capabilities of their fiber-copper DSL facilities, it is not clear at what point during this evolution that RLECs would be required to file Section 214(a) discontinuance applications or how many such applications the typical RLEC would have to file as it upgrades its network in stages over multi-year periods. Second, given that most RLECs on the ACAM Path and the RoR Path are required to deploy 10/1 Mbps or 25/3 Mbps broadband facilities to specific numbers of “unserved” locations and to report on their progress periodically, what purpose does it serve to require them to seek and obtain multiple separate Section 214(a) authorizations to perform some or all of the already Commission-required upgrades? If nothing else, the expense of the Section 214(a) processes reduces the net high-cost support available to RLECs to make the required broadband improvements. Third, the Section 214(a) process is not needed to provide notice of service changes to RLEC customers. WTA is aware of no instances where a WTA member or other

RLEC has made significant upgrades in its broadband or other services without undertaking substantial notification and outreach efforts to ensure that its residential and business customers understood and prepared for the changes. Finally, RLECs generally have Section 251(b) traffic exchange arrangements with competitors, rather than Section 251(c) unbundled network element and resale arrangements. The Section 251(b) parties and their customers (who are often providing VoIP and other IP-based services themselves) are not affected by broadband and IP upgrades, and do not require any of the Section 214(a) protections that the prior Commission sought to give competitors and their customers.

**E. Alternative: Forbearance From Enforcement Of Section 214(a)
Discontinuance Process For IP Technology Upgrades**

If, for any reason, the Commission believes that it can not or should not declare that the Section 214(a) discontinuance process does not apply to upgrades from copper-based TDM service to fiber-based broadband IP service, it can in the alternative forbear pursuant to Section 10 of the Communications Act, 47 U.S.C. §160, from enforcing the Section 214(a) discontinuance provisions with respect to such transitions and/or with respect to RLECs and other small carriers. Forbearance would meet all three conditions of Section 10(a) of the Act. First, enforcement of the Section 214(a) discontinuance provisions is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the affected carriers, the existing copper-based TDM services, or the existing or future fiber-based broadband IP services are just and reasonable, and are not justly or unreasonably discriminatory. The principal effects of the Section 214(a) discontinuation process would be to delay the offering of new or enhanced IP services demanded by a substantial majority of the public and to increase the applying carrier's costs. These effects are likely to increase the charges that must be recovered from the customers of at least some of the carrier's services. Second, enforcement of the Section

214(a) discontinuance provision is not necessary for the protection of consumers. In addition to avoiding the aforementioned increases in charges, forbearance would give customers of the affected carriers access at an earlier date to a variety of alternative competing VoIP services and a choice among higher-speed and more reliable data services. Third and finally, forbearance from applying the Section 214(a) discontinuance process is consistent with the public interest, particularly the Congressional and Commission goals to accelerate the deployment of the next-generation networks and services desired by the public by removing barriers to infrastructure investment. For these and other reasons stated above, the Commission, in the alternative, can and should forbear from enforcing the Section 214(a) discontinuance provisions in circumstances where copper-based TDM services are being upgraded to fiber-based broadband IP services by carriers, or at least by RLECs and other small carriers.

F. Targeted Reduction Of Section 214(a) Timelines And Procedures

Finally, WTA supports the various targeted measures advanced by the Commission to shorten the time frames and eliminate unnecessary encumbrances of the Section 214(a) discontinuance process that force carriers to maintain legacy services. These include: (a) streamlining processing for applications that “grandfather” existing customers; (b) shortening the processing and auto-grant periods for certain applications; (c) limiting the scope of notified customers to the carrier’s own retail customers; (d) broadening the consideration of alternative services available in the affected community; and (e) streamlining processing for discontinued services having no customers. WTA believes that the preferred and most effective approach is a declaration that the Section 214(a) discontinuance process is not applicable to copper-based TDM-to-fiber-based broadband IP upgrades or, in the alternative, forbearance from application and enforcement of Section 214(a) in those circumstances. However, if full-fledged relief is not

practicable or possible at this time, any reductions in the uncertainties, delays and costs of the Section 214(a) discontinuance process are welcome.

III. The Commission Should Take Steps To Reduce The Delays And Costs Of The Pole Attachment Process

WTA members and other RLECs are generally familiar with all facets of pole attachments and the pole attachment process. Some WTA members own their own poles and provide pole attachments to other entities. Some WTA members have existing attachments on the poles of other entities. Some WTA members will need to make arrangements in the future to attach and extend new lines on the poles of other entities and/or to upgrade their lines and attachments on the poles of other entities. Some WTA members are pole owners, existing pole attachers and/or prospective future pole attachers.

As the representative of carriers with interests on all sides of the pole attachment process, WTA supports reasonable steps that the Commission can take to reduce the delays and costs of the pole attachment process. Anything and everything the Commission can do to simplify and speed access to utility poles and to reduce pole attachment costs will encourage and enable increased broadband investment and deployment by removing barriers to them.

A. Some Preliminary Steps

The main focus of the Commission's efforts should be the pole attachment process and timelines. However, before getting into these issues, there are number of other matters that the Commission could address and resolve in order to simplify pole attachment procedures. These include: (a) requiring utilities to establish and maintain online data bases listing the locations, availability, age, costs and other critical information regarding their poles; (b) setting a just and reasonable pole attachment rate formula for ILEC attachers; (c) mandating reciprocal access by

ILECs and CLECs to each other's poles; and (d) establishing an expedited process for the filing, consideration and resolution of pole attachment complaints.

Online pole databases. The service deployment and extension process could be simplified and shortened considerably if utilities (including ILECs and CLECs) were required to establish and maintain online databases listing the locations and availability of their poles. The information included in these databases should include the specific location of each of the utility's poles, the height of each pole, the date each pole was deployed, the amount of available space (if any) on each pole, and the estimated cost of an additional attachment on the pole. These online databases would be very useful to both pole owners and prospective attachers in the preparation and review of pole attachment applications. For example, the deployment date – *i.e.*, age – of poles will alert both parties to the locations of poles that need to be physically inspected to ensure that they are safe to climb and that they can bear the weight of additional attachments, or that they need to be replaced before further lines can be attached.

ILEC pole attachment rate formula. WTA strongly supports the Commission's proposal that the just and reasonable rate under Section 224(b) of the Act for ILEC attachers should presumptively be the same rate paid by other telecommunications attachers – *i.e.*, a rate calculated using the most recent telecommunications rate formula. *NPRM*, at par. 45. This approach will produce certainty regarding the pole attachment rates applicable to ILEC attachers, and will avoid case-by-case determinations that can generate disputes and significantly lengthen the time and cost of the pole attachment process. Case-by-case rate calculations and litigation may be necessary when a service or arrangement is new, and neither the parties nor the regulators have the experience or data to set appropriate generalized rates. However, in relatively common and established arrangements like pole attachments, case-by-case approaches

tend to be sources of delay and additional costs, particularly when larger utilities can inundate smaller RLECs with onerous interrogatories and information requests, and then bury them with voluminous data and documents that need to be reviewed. Use of the same readily ascertainable rate paid by other telecommunications attachers will resolve the pricing issue for ILEC attachers at much reduced delay, dispute and expense.

Reciprocal ILEC-CLEC pole access. Section 251(b)(4) of the Communications Act expressly states that “each local exchange carrier” – that is, both ILECs and CLECs – has the “duty to afford access to [its] poles, ducts, conduits, and rights-of-way to competing providers of telecommunications services.” The provision further states that the required access must be provided “on rates, terms and conditions that are consistent with Section 224 of the Act.” It is clear from the language of Section 251(b)(4) that the duty to provide access applies to all local exchange carriers (CLECs as well as ILECs), but that the rates, terms and conditions of such access must be consistent with Section 224. Hence, the Commission can and should read Section 251(b)(4) to allow ILECs to demand access to CLEC poles, and vice versa, subject to rates, terms and conditions consistent with those required by Section 224. This constitutes the equitable, reciprocal and pro-competitive access required by Section 251(b)(4).

WTA notes further that telecommunications industry markets and conditions have changed considerably since Section 251(b)(4) was enacted as part of the Telecommunications Act of 1996. Of particular relevance is the fact that many CLECs are no longer much smaller and weaker, and in need of greater protection, than the ILECs with which they are competing. In many cases, WTA members and other RLECs must deal today with much larger CLECs such as Sprint, Level 3, Comcast and Time Warner that dwarf them in size and financial resources. Under these circumstances, it is inequitable and anti-competitive, as well as contrary to the clear

language of Section 251(b)(4), to give CLECs the right of access to ILEC poles and conduits, but to deny reciprocal access rights to ILECs.

Streamlined pole attachment complaint process. WTA vigorously supports a streamlined complaint process involving pre-complaint meetings and “shot clocks” that will minimize the cost of preparing and prosecuting pole attachment complaints and the time required to resolve them. The Commission should require one or two pre-complaint meetings in person or via telephone, and use these meetings not only to resolve procedural matters and deadlines, but also to specify the precise issues to be addressed and the nature and types of relevant evidence necessary to evaluate and decide them. In some instances, all topics and issues may be able to be considered and resolved during the initial meeting; in others, discovery and/or negotiations may be required before the issues can be narrowed and specified. The Commission staff involved should be delegated the discretion to schedule the meeting(s), to designate and define the issues relevant to the dispute and the nature of the evidence needed to evaluate them, to set the filing deadlines for the complaint and opposition, and to determine if and when any replies will be permitted. Once this schedule is set, no further formal or *ex parte* filings should be authorized or accepted, and the parties should be strictly limited to the arguments and evidence included in their authorized filings.¹³ The proceeding should then be resolved by the Commission staff on the basis of the authorized filings, with the order setting forth the Commission’s findings of fact and conclusions of law required to be issued no more than ninety (90) days after submission of the final authorized filing.

A streamlined process such as the foregoing would minimize the time, effort and cost expended by the parties and the Commission to resolve pole attachment complaints. At the

¹³ If determined to be necessary, the Commission could limit the page lengths of complaints, oppositions and/or replies.

most, there would be two in-person or telephone meetings to which the participants would have to come prepared to refine the issues and to specify the nature and types of evidence needed to evaluate them. Each party would then have to make its entire case in one or two authorized filings, and the Commission staff would have to decide the matter on the basis of two to four filings - with 90 days being a reasonable period for reviewing and deciding specifically targeted issues on a limited record. Once the initial schedule was set, neither party could extend or delay resolution of the proceeding by making additional filings. This or a similar process could take approximately six (6) months to resolve – which could delay broadband deployments for a year in portions of the country where the construction season is weather-limited, but which is still shorter than the time periods traditionally necessary to resolve pole attachment complaints.

B. Streamlined Pole Attachment Application And Implementation Processes

WTA is encouraged by the Commission’s proposals to streamline and shorten its existing four-stage, 133-to-148 day timeline for access to utility poles. WTA believes that this timeline can be substantially reduced, particularly for the relatively manageable orders for access to 50 or fewer poles that are common in the segments of the telecommunications industry with which WTA members are familiar. WTA understands that larger orders – particularly the defined “large orders” of 3,000 poles or more – will require longer timelines. However, given that it is the experience of WTA members that typical RLEC network upgrade and extension projects require new or modified attachments for 50 poles or less, and that many power companies and other utilities will not accept and process orders for more than 50 pole attachments at one time, a timeline focusing upon orders for 50 or fewer pole attachments would be very relevant and practicable for WTA members and other small carriers.

If such a 50-pole timeline is established by the Commission, WTA believes that the application review, engineering survey, cost estimate and attacher acceptance stages could all be accomplished within thirty (30) days. Particularly if pole owners are required to construct and maintain online databases indicating the locations, height, age, current usage and capacity of their poles, both pole owners and prospective attachers should be able to readily assess which poles need to be physically inspected to determine whether they need replacement or extensive make-ready work and which are likely to be usable with minimal additional investment and work. Likewise, as the usage and capacity of poles is available on the online databases and as pole attachment rate formulas cover more potential pole attachers including ILECs, it should be much easier to calculate, check, evaluate and accept both make-ready and pole attachment cost estimates.

Make-ready timelines comprise a much more difficult and complex issue, given the need to protect the property and safety interests of existing attachers and the need to prevent recalcitrant existing attachers from unreasonably delaying access by new attachers. WTA notes that some potential make-ready and availability issues should be alleviated by the fact that the National Electrical Safety Code specifies how various types of electrical, telecommunications and cable television lines need to be situated and separated on poles. However, there are still many cases where existing lines have to be moved when poles are replaced for various maintenance, safety and capacity purposes, or where space and lines have to be rearranged on existing poles to accommodate additional attached lines. In those situations, WTA strongly believes that the interests of safety and of the reliability and continuity of existing services require that existing line attachments should be moved, to the maximum extent feasible, only by the employees or approved contractors of the existing attachers. WTA members attaching their

lines to the poles of other entities have worked, and will continue to work, cooperatively with the pole owners to make sure that their existing pole attachments are moved promptly and safely when necessary with minimal impact on their service. WTA members owning poles have worked, and will continue to work, cooperatively with entities attaching to their poles to make sure that existing attachments on their poles are moved, when necessary, by the employees or approved contractors of the attaching entities to the greatest extent possible.

Threading the needle between legitimate safety and service continuity concerns on one hand, and avoidance of unreasonable make-ready and deployment delays on the other, is difficult. WTA finds intriguing the idea of incentives such as “bonus payments” for existing attachers that complete make-ready work on an accelerated or timely basis, but is concerned that such payments may unduly increase the costs of deployment for new attachers, particularly if incentive payments have to become very large in order to obtain the attention and cooperation of large existing attachers and/or direct competitors. Perhaps the most practicable way of threading the needle is to require pole owners, after a pole attachment application for their poles is approved and accepted, to notify existing attachers regarding the make-ready work that will need to be performed on the affected poles and to give the existing attachers a reasonable period (*e.g.*, 30 or 45 days) to make the required modifications to their existing attachments or to enter into an arrangement with the pole owner for the scheduling and prompt completion of such changes. Where existing attachers do not respond within the designated period, pole owners should be required by the Commission to retain a “utility-approved” contractor to perform the necessary make-ready work at the shared (50%-50%) expense of the existing attacher and the new attacher.

WTA does not claim that the foregoing solution is perfect; in fact, it does not believe that there is a perfect solution that works under most or all circumstances. However, the proposal

does respect the property rights and service obligations of existing attachers, and gives them a fair and reasonable opportunity to modify their own attachments and to select the employees or contractors that do the work - albeit at their own expense. Where existing attachers do not take advantage of the opportunity to make their own modifications, the proposal requires the pole owner and new attacher to move forward and select a contractor approved by the pole owner in order to avoid unreasonable delays to the new attacher's deployment. The make-ready work will then be paid for on a 50/50 basis by the new attacher for whom the work is necessary and by the existing attacher that did not elect to arrange for the modification of its own attachments.

Finally, WTA believes that the main issue regarding make-ready charges is who bears the capital costs of replacements for poles that have deteriorated to the point that they are no longer safe to climb or are unable to bear the weight of additional attachments and for poles that are too short or lacking in space to accommodate additional attachments. This issue is equally complicated – for the pole owner will be the owner of the new pole and be able to depreciate it, the existing attachers may have more room and safer access to the pole, and the new attacher is likely to be the primary reason why the pole was found to need replacement or upgrading. WTA believes that the controlling principle should be that the pole owner is allowed to recover the actual costs of its poles, but not to recover more than such costs. If the pole owner purchases and installs a pole, it should be able to recover the capital costs of the pole in some combination of its customer rates, pole attachment rates and make-ready charges. For example, if a pole owner has to purchase and install a taller pole at a capital cost of \$5,000 to accommodate a new attacher and charges the new attacher \$1,000 for the capital cost portion of the pole upgrade it required, the pole owner should be limited to recovering the remaining net \$4,000 capital cost of the pole from its customer and pole attachment rates. Given that utility pole owners may be regulated by

a variety of federal and state agencies, they should be required to report the manner in which they allocate and recover the capital costs of their poles, to make such reports to all federal and state agencies having jurisdiction over them and to certify that they recover no more than 100 percent of the capital costs of their poles from their customer rates, pole attachment rates and make-ready charges.

IV. Conclusion

WTA applauds and supports the Commission's efforts to reduce the delays and costs of obtaining the various federal, state, local and private authorizations and arrangements that are necessary to upgrade and extend broadband networks and services.

WTA particularly urges the Commission to eliminate the uncertainties, delays and expenses of the Section 214(a) discontinuance process by declaring that fiber-based broadband IP voice and data services constitute an upgrade rather than a termination or replacement of copper-based TDM voice and data services, such that the discontinuance application and approval requirements of Section 214(a) do not apply to such improvements. In the alternative, the Commission can and should forbear on its own motion from applying or enforcing the Section 214(a) discontinuance provisions and procedures with respect to copper-to-fiber, TDM-to-IP upgrades that further the Congressional and Commission policies of deploying high-speed broadband and advanced services throughout the nation as rapidly as possible.

WTA, which represents pole owners, existing pole attachers and potential new pole attachers, supports effective and efficient measures to reduce the time and expense of maintaining existing pole attachments and obtaining additional pole attachments. In particular, WTA recommends that the Commission take preliminary steps such as: (1) requiring pole

owners to develop and maintain online data bases listing relevant information regarding their poles; (2) setting a just and reasonable pole attachment rate formula for ILEC attachers; (3) mandating reciprocal access by ILECs and CLECs to each other's poles; and (4) establishing an expedited process for the filing, consideration and resolution of pole attachment complaints. The Commission can then streamline and shorten its existing four-stage timeline for access to utility poles, especially with respect to the orders for 50 or fewer poles that normally apply to RLECs and other small service providers. If a 50-pole timeline is established by the Commission, WTA believes that the application review, engineering survey, cost estimate and attacher acceptance stages can all be accomplished within thirty (30) days. Finally, WTA recognizes the complexities of the make-ready process, and urges that safety and service continuity considerations warrant the provision to existing attachers of a reasonable opportunity to arrange for the modification of their existing pole attachments, and that make-ready charges be permitted to include an allocation of capital costs but that pole owners be prohibited from recovering more than 100 percent of the capital costs of their poles from their customer rates, pole attachment rates and make-ready charges.

Respectfully submitted,
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