BDAC

BROADBAND DEPLOYMENT ADVISORY COMMITTEE

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE WORKING GROUP

MID-YEAR PROGRESS REPORT

JULY 20, 2017 – WASHINGTON, DC

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE
Discussion Outline

- **Introductory Remarks**

- **2017 Charge and Deliverable**

- **Working Group Leadership and Structure**

- **Initial Meetings: Two Expert Panels**

- **Committee Spotlight: Fees and Rates**

- **Committee Spotlight: Methods and Practices**

- **Committee Spotlight: Timing and Process**

- **Committee Spotlight: Other Infrastructure and Transparency**

- **Conclusion / Next Steps / Questions and Comments**

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

2017 Charge and Deliverable

2017 Charge:

I. Develop recommendations on measures to promote speedier and more efficient competitive access to utility poles while ensuring safety and the integrity of existing attachments.

- Review the Commission's timeframe (and timeframes for states not under Commission pole jurisdiction) for gaining access to utility poles, identify delays, and make recommendations to result in faster access.
- Explore pole attachment processes like "one-touch make-ready," and "right-touch make-ready"; provide a recommendation on a consensus approach.
- Discuss make-ready fees and pole attachment rates associated with access to poles; provide recommendations.
- Review the Commission's complaint process, identify delay or inefficiencies, and recommend changes necessary to expedite the process.

II. Examine and develop recommendations on measures to promote competitive access to other broadband infrastructure, e.g., ducts, conduits, rights-of-way.

III. Recommend steps to improve the transparency of information regarding the availability of utility poles, rights-of-way, and other broadband infrastructure.

2017 Deliverable: To present recommendations for a vote at the October/November BDAC meeting, including possible recommendations for further study.

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE
Working Group Leadership and Structure

Working Group Chair: Ken Simon, Crown Castle

Working Group Vice-Chair: Brent Skorup, Mercatus Center at George Mason University

- Allen Bell, Southern Company
- Chris Bondurant, AT&T Mobile
- Rosa Mendoza Davila, Hispanic Technology & Telecommunications Partnership
- Aaron Deacon, KC Digital Drive
- David Don, Comcast
- Daniel Friesen, City of Buhler, Kansas
- Bruce Holdridge, Gila River Telecommunications
- Kirk Jamieson, Mobilitie
- Ross Lieberman, American Cable Association
- Geoffrey Manne, International Center for Law and Economics
- Jim Matheson, National Rural Electric Cooperative Association
- Cindy McCarty, East Kentucky Network d/b/a Appalachian Wireless

- Milo Medin, Google Fiber
- Paul Mitchell, Microsoft
- Lyle Nyffeler, Samsung Electronics America –Networks Division
- Christine O'Connor, Alaska Telephone Association
- Karen Charles Peterson, National Association of Regulatory Utility Commissioners
- Mike Saperstein, Frontier Communications
- Grant Seiffert, Connected Nation
- Lee Seydel, Fiber Utilities Group
- Nicol Turner-Lee, Brookings Institution
- George Wyatt, Jr., Association of Communications Engineers
- Christopher Yoo, University of Pennsylvania

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE
Working Group Leadership and Structure (continued)

Designated Alternates

- Natalie Beasman, Southern Company
- Martha Duggan, National Rural Electric Cooperative Association
- Klay Fennell, Comcast
- Monica Gambino, Crown Castle

- Allen Gibby, International Center for Law and Economics
- Kristian Stout, International Center for Law and Economics
- Megan Stull, Google Fiber
- Joseph Tiernan, National Rural Electric Cooperative Association

Four Committees:

- Fees and Rates Committee
- Methods and Practices Committee
- Timing and Process Committee
- Other Infrastructure and Transparency Committee

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Initial Meetings: Two Expert Panels

The Working Group agreed that consulting a balanced roster of legal experts and practitioners "in the field" would help the Working Group identify fruitful areas of inquiry.

First Meeting: Legal Experts

- Outlined the history and current state of federal law concerning pole attachments

- Described how states "reverse preempt" and regulate attachments

- Described the state of the law surrounding exempted electric co-ops

Second Meeting: Practitioners in the Field

- Heard views from experts who represented or had represented ILECs, CLECs, cable operators, utilities, municipalities, and wireless infrastructure companies

- Informed Working Group members about possible process improvements, indemnification requirements, "right-touch make-ready", real-world deployment timelines, and overlashing

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Fees and Rates

Mission:

- Provide recommendations regarding make-ready fees and pole attachment rates associated with access to poles.

Members:

Karen Charles Peterson, National Assn. of Regulatory Utility Commissioners, Committee Chair

Chris Bondurant, AT&T Mobility

Jim Matheson, National Rural Electric Cooperative Association

Mike Saperstein, Frontier Communications

Brent Skorup, Mercatus Center at George Mason University

Christopher Yoo, University of Pennsylvania

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE
Committee Spotlight – Fees and Rates

Proposed Issues of Focus:

I. Make Ready Fees and Rates
- Explore the range of rates and additional fees charged by utility-, carrier-, co-op-, and government-owned poles

II. Hurdles to Reasonable Fees and Rates

III. Wireline vs. Wireless Attachment Rates
- Explore the differences in fees and rates between wireline and wireless attachments
- Explore differences in small cell fees and rates when attaching to utility-, carrier-, co-op-, and government-owned poles

IV. Transparency in Rates
- Examine whether and how pole owners reveal rates in "FCC states" and "reverse pre-empted states"
- Recommend improvements and best practices

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Methods and Practices

Mission:

- Provide recommendations regarding pole attachment processes like "one-touch make-ready" and "right-touch make-ready".

Members:

Lyle Nyffeler, Samsung Electronics America, Committee Chair

Aaron Deacon, KC Digital Drive

David Don, Comcast

Daniel Friesen, Mayor of Buhler, Kansas

Kirk Jamieson, Mobilitie

Milo Medin, Google Fiber

Klay Fennell, Comcast

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Methods and Practices

Proposed Issues of Focus:

I. Contract Qualification

- Determine whether an existing attacher must provide notice to other attachers for standard/common new attachments which have been properly engineered

- Classify who is qualified to perform make-ready and who "qualifies" as a contractor – and for which projects and purposes

- Recommend who should define what "qualified" means

II. Safety/Integrity

- Decide whether the make-ready process should apply to poletop and electric space installations

- Evaluate potential inspection opportunities for existing attachers

- Consider the merits of creating a unified notification process with defined timelines, to include design approval steps for new, complex projects

III. Damages

- Discuss the practicality of an indemnification requirement; and outline the indemnification process

- Determine whether the speed of "one-touch make-ready" outweighs the potential costs of customer outages and damages to existing attachers, and classify variables according to the type of project

- Explore whether and how an existing attacher would be permitted to seek damages for damage caused by new attachments, and whether such would provide adequate economic incentive to properly address the concerns of the existing attacher

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Methods and Practices

Proposed Issues of Focus:

IV. Fairness/Reasonableness

- Decide whether penalties and/or compliance incentives should be invoked for not meeting timelines or "shot clocks"
- Evaluate whether established rates are consistent and fair
- Determine whether an existing attacher could use existing or proposed make-ready processes as a barrier to entry
- Study whether and how process might delay an existing attacher from enhancing its next-generation access network and/or from deploying in new locations (i.e., extension of service)
- Seek current models of success for unified operations, e.g., One-Call ("Dig Safe") and Spectrum Clearing House
- Identify whether an existing make-ready process could be adopted as a nationwide model

V. Automation / Unified Systems and Process / Operating More Efficiently

- To optimize make-ready work, determine whether make-ready should be required to create space on the pole (to the extent possible) for future attachments (similar to installing multiple conduits in underground installations)
- Recommend whether penalties or compliance incentives should be created for not meeting timelines or "shot clocks"
- Assess whether and how a unified standardization committee, automation processes, and a records collection process are warranted; and, if so, who would govern (i.e., developing a clearinghouse, and what incentives should be created to incentivize participation)

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Timing and Process

Mission:

- Review Commission's timeframe (and timeframes for states not under Commission pole jurisdiction) for gaining access to utility poles, identify delays, and make recommendations to result in faster access.

- Review the Commission's complaint process, identify delay or inefficiencies, and recommend changes necessary to expedite the process.

Members:

Ross Lieberman, American Cable Association, Committee Chair

Allen Bell, Southern Company

Cindy McCarty, East Kentucky Network d/b/a Appalachian Wireless

Christine O'Connor, Alaska Telephone Association

Nicol Turner-Lee, Brookings Institution

George Wyatt, Jr., Association of Communications Engineers

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Timing and Process

Proposed Issues of Focus:

I. Review FCC's Pole Attachment Timeline (and Other Timeline Proposals)
   - FCC's Existing Definitions of Regular and Large Builds
   - Other Timeline Proposals
     - Based on Small Number of Attachments
     - Based on Short Line Extensions
     - Based on "Simple" vs. "Complex" vs. "Very Complex" Attachments
     - Based on Wirelines vs. Wireless
     - Based on Small New Attachments

II. Analyze General Timing and Process Issues Occurring During Course of Negotiating Master Agreement
   - Common Deployments (e.g. Overlashing, Line Drops)
   - Penalties for Unauthorized Attachments
   - Other Rights and Responsibilities

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE
Committee Spotlight – Timing and Process

Proposed Issues of Focus:

III. Streamline Application Process
- Define a "Complete Application" / Address Pre-Application Requirements

    [That Prevent Starting the Application Timeline]

- Excessive Application Requirements
- Right to Joint Surveys
- Historical Landmarks and Building Issues

IV. Make-Ready – Review Timing and Process Issues
- Reluctance of Existing Attachers to Move Within Make-Ready Timeline
- Reluctance of Utilities to Move Existing Attachments After Make-Ready Timeline Expires

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE
Committee Spotlight – Timing and Process

Proposed Issues of Focus:

V. Enforcement Issues
- Establishment of Shot Clock for Decisions
- Pre-Complaint Discovery Rights
- Transparency of Rate Data During Complaint Process
- FCC Penalties for Non-Compliance with its Rules
- Compensatory Damage

VI. Pole Access – Review Timing and Process Issues
- Issues Unique to FCC-Certified States
- Issues Unique to Unregulated Entities (e.g., Municipalities, Cooperatives, Federal Government, Railroads)

VII. Duct and Conduit – Review Timing and Process Issues

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Other Infrastructure and Transparency

Mission:
- Examine and develop recommendations on measures to promote competitive access to other broadband infrastructure, e.g., ducts, conduits, rights-of-way.
- Recommend steps to improve the transparency of information regarding the availability of utility poles, rights-of-way and other broadband infrastructure.

Members:

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Bruce Holdridge, Gila River Telecom

Geoff Manne, International Center for Law and Economics

Rosa Mendoza Davila, Hispanic Technology and Telecom Partnership

Paul Mitchell, Microsoft

Grant Seiffert, Connected Nation

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Other Infrastructure and Transparency

Proposed Issues of Focus:

I. Encourage Re-use and Commercialization of Funded Infrastructure Components

> Review, clarify, and revise, as necessary, program rules focused on accelerating the pace of, and lowering the cost of, broadband deployment to community anchor institutions (e.g., schools, libraries, etc.) to ensure that the resulting infrastructure use is maximized.

II. Develop Recommendations to Improve Efficiency in Use of Common Infrastructure Elements

> Explore the means by which broadband infrastructure deployment is either hampered or encouraged through the creation of various efficiencies, to include creating a set of recommendations to provide incentives to municipalities and states that offset costs of construction, decrease permitting time, decrease permitting cost, and create a clear set of guidelines for managing and reserving space on poles for new facility installation.

III. Develop Guidelines that Preempt Over-Regulation by Local Entities

> Simplify the tiered regulations amongst municipal/metro/state/federal hierarchy using incentives and/or preemptive regulations to create a more efficient and transparent process, thereby reducing complexity and streamlining government's role as well as those of the constructors and providers.

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Committee Spotlight – Other Infrastructure and Transparency

Proposed Issues of Focus:

IV. Develop an Infrastructure Database that Maps All Available Elements

Establish a database as an accurate source of information regarding available infrastructure elements, which in part would resolve many issues if any federally funded or approved infrastructure was entered, and one linked to a GIS mapping system to facilitate use by the public for planning purposes and by the Commission to control spending on multiple projects in the same geolocation.

V. Request a Set of Incentive Guidelines from the Commission

Convene a forum to discuss potential options for incentives, such as grants, tax relief, schedule relief via reduced permitting, public/private partnership such as BTOP, and any other methods, that can be utilized to create a positive development environment for both the new competitor and the existing infrastructure owner, to include individuals with experience in program development that could define methods and representatives from the Commission that could provide guidance regarding current best practices and policy.

COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE

Conclusion

Next Steps in Fulfilling 2017 Deliverable:

- Committees will continue to meet and present recommendations to Working Group

- Working Group will consider recommendations of Committees and develop list of recommendations to BDAC

- Present recommendations to full BDAC at Fall 2017 meeting

Questions / Comments