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**BEFORE THE  
HOUSE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY  
ON BREAKING DOWN BARRIERS  
TO BROADBAND INFRASTRUCTURE DEPLOYMENT**

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Chairman Walden, Ranking Member Eshoo and Members of the Subcommittee, thank you for inviting the Fiber to the Home Council Americas to testify on breaking down barriers to broadband infrastructure deployment. The Council is a trade association dedicated to one objective: accelerating the deployment of all-fiber networks by any provider – including incumbent telephone and cable providers, private competitive entities, and municipalities – throughout the US, Canada, and Latin America. We also support mobile providers bringing fiber to their towers and businesses and community anchor institutions bringing fiber to their buildings. Over the past 15 years, we have come far in bringing all-fiber networks to homes, businesses, and institutions through the US. For instance, all-fiber networks now pass approximately 30% of the nation’s homes and an even greater percentage of businesses.

In essence, we are in the midst of wiring America with fiber optic cable, which by any objective measure is the most future-proof wireline infrastructure. As just one way to measure fiber’s value, recent studies have shown that having all-fiber networks in a community propels economic growth and increases the value of individual housing units. Real estate agents have told me families now want to know not only about the local schools but about whether the house is connected to fiber.

Yet, we need to recognize that building all-fiber networks is an expensive undertaking, where the capital is invested upfront and the returns come over the long run. In effect, they are

massive construction projects. Construction costs are approximately about 60-80% of total project cost. Therefore, providers, construction companies, and equipment vendors are constantly searching for ways to reduce their costs. For instance, equipment vendors have developed simple plug-in devices to reduce the need to splice fiber cable. Construction companies have developed micro-trenching to speed in-ground installation. The industry can do more, and I am confident that we will continue to innovate.

Local, state, and Federal governments also have a major role to play in helping accelerate all-fiber deployments. They control access to rights of way and other infrastructure that are essential for companies deploying all-fiber networks. They ensure providers can get access to critical private assets on just, reasonable, and non-discriminatory rates, terms and conditions. Many government agencies from the FCC to state regulators to local governments have already stepped up to lower barriers to or provide incentives for deployment. But, so much more needs to be done. Virtually every day I hear from one of my service provider members about such issues as delays in government permitting or government's failure to enact regulations that ensure access to key private facilities. That is why I applaud you for this hearing and urge you to follow through to draft and then enact legislation to address these deployment issues.

While there are many areas where government action is required, in my testimony today, I will focus on just two: access to Federal rights of way and access to poles, ducts, and conduit.

For over a decade the Federal agencies have sought to improve access by telecommunications and broadband providers to right of way and other infrastructure they control. A working group of the agencies was formed in 2002 by the National Telecommunications and Information Administration, and two years later President Bush directed the agencies to implement their recommendations. In 2012, President Obama signed an

Executive Order creating a working group to accelerate broadband deployment, and they issued a report a year later that included “detailing improvements” to Federal permitting processes. And then, just earlier this year, the President created the Broadband Opportunities Council, which focused more expansively on Federal agency efforts to facilitate broadband deployments. These efforts have been fruitful. The Fiber to the Home Council was particularly heartened by the recommendations of the Broadband Opportunity Council to create an accessible inventory of Federal assets that can support broadband deployments and provide a one-stop portal to access information about Federal broadband programs. Yet, substantial problems persist, and in the words of the Broadband Opportunity Council, “more action is needed.”

In preparing for this hearing, I canvassed just a few of my service provider members about their recent experiences getting permits from Federal agencies. Here’s what I heard:

- A service provider in the southeast filed applications for permits in early 2014 to cross Federal property with fiber. None have been approved. All the provider keeps hearing is that the applications are under review.
- A service provider was building a 250 mile fiber route along a Federal highway, and 8 miles of this route ran through land controlled by the US Forest Service. The provider built all of the route, except for the portion controlled by the Forest Service. But, it then had to wait an additional 6 months for the Forest Service to approve its application. Thus, what should have been a 6 month project took over 12 months instead.
- A service provider’s application seeking access to tribal lands was hung up for years as six agencies within the Department of Interior reviewed the application.

It is not just flaws with the permitting process per se that inhibits the process, but also the knowledge about what assets are under Federal control, which agency should be tasked with the initial review, the laborious additional layers of scrutiny should cultural, historic or scientific review be required, and the multiplicity of forms, contracts and fees attached to all of the above. The Broadband Opportunity Council appropriately identified many actions that would assist in overcoming some of these hurdles, but it is clear that legislative authority would further their implementation and provide the Federal government with the ability to become even more efficient in its administration of such assets.

***Leverage Federal assets.*** Federal lands, buildings and assets are important conduits for broadband deployment and should be accessible for the promotion of broadband competition and deployment. There should be a complete and interactive database of Federal assets on which broadband infrastructure can be attached or installed. All landholding agencies should be required to provide such data, including if additional cultural, historic or scientific review will be required, and a contact for such applications for access. Policies such as “Dig Once” articulated in HR 3805 (the draft bill), where conduit is installed at the same time as certain highway construction projects would ensure the availability of an essential asset to fiber deployment, considerably reducing time and cost.

***Common Permitting and Streamlined Processes.*** The Federal government should strive for common permitting, application processes and fee schedules for access to Federal assets to reduce the burden on all applicants, governmental, non-profit, and/or private applicants regardless of the technology being deployed. Further agencies should need to maintain records that track the applications received and approval or denial decisions and reasons. And if any broadband provider has already received permission for access to a particular Federal asset,

subsequent providers should not be forced to duplicate extensive historic, cultural or scientific reviews.

It is not that all of the Federal working groups have failed to make progress. As a result of their recommendations, agencies promptly inform a service provider that an application has been received. The problem is that there often is no end to the process. An agency can just say, “It’s under review.” And often, multiple agencies need to review the application, often on a sequential basis, which increases the chances that the process is dragged out even longer.

In addition to the processes outlined above, what would be most beneficial is a deadline – a shot clock – where approval is automatically granted after certain period unless denied or granted beforehand. Second, we need greater transparency into the review process – not just feedback that the application is “under review”, but information as to any deficiencies so that applications can be improved within the deadline time period. Third, permits should be granted for longer durations with an automatic renewal unless authorization is revoked for good cause.

Let me now turn to the significant problems fiber service providers face is seeking to access to poles, ducts, and conduits of utilities and local exchange carriers.

Almost 40 years ago, Congress passed the Pole Attachments statute (Section 224 of the Communications Act) to ensure that cable operators could attach to poles (and ducts and conduit) owned by public utilities and incumbent local telephone companies – but not to poles owned by railroads, cooperatives, or entities owned by the Federal government or state governments. The statute also permitted states to take over responsibilities to administer and enforce the statute, and numerous states have availed themselves of this opportunity. Some states have even enacted legislation expanding beyond the reach and requirements of the Federal law. Congress in 1996 expanded the statute to cover access by providers of telecommunications service, although it

adopted a slightly different formula for setting rates for those entities than applied to cable operators.

There is little doubt that access to poles, ducts, and conduit is a key driver of fiber deployments. As the FCC explained in the *National Broadband Plan*, “[i]nfrastructure such as poles, conduits, rooftops and rights of-way play an important role in the economics of broadband networks. Ensuring service providers can access these resources efficiently and at fair prices can drive upgrades and facilitate competitive entry.” This is just as true today as it was five years ago.

Yet, despite the statute’s lengthy history and despite the importance of access to poles, services problems have continued to experience problems with pole owners and attachments. In 2011, the FCC again sought to address some of these problems. After undertaking a review of its rules and policies concerning access to and rates for pole attachments, the Commission revised its pole attachment fee formulas to bring the rates for telecommunications carriers – which had typically been markedly higher than the cable rates under the Commission’s implementation of the 1996 amendments – more in line with the rates charged cable companies. At the same time, the FCC also made clear that wireless carriers have the right to access to pole tops, gave incumbent local exchange carriers certain rights concerning access to poles, imposed timelines to govern the pole attachment application and make ready processes, and required pole owners to allow applicants for access to use approved contractors, in certain circumstances, to conduct survey work and to perform make ready work in the communications space on poles. The Commission said that the modifications to its rules would help address the fact that “lack of reliable, timely, and affordable access to physical infrastructure—particularly utility poles—is often a significant barrier to deploying wireline and wireless services.”

Yet, even after these actions, the Council's service provider members still find that substantial problems arise in seeking access to poles. Let me discuss more fully both the problems service providers face and remedies Congress should adopt.

First, the FCC's adoption of rules imposing timelines on the pole attachment application process have helped fiber builders from getting bogged down in their deployments as survey work is performed, make ready estimates are developed, and make ready work is performed. Unfortunately, however, the FCC's timelines have not cured all ills. In too many instances, pole owners simply ignore the timelines. In effect, the pole owner "dares" the entity seeking to attach to bring an enforcement action, knowing that it is costly to pursue a complaint and virtually impossible to have it resolved in a timely fashion. The Council proposes that Congress address this problem by not only codifying the regulatory timelines established by the FCC but also by requiring the Commission to develop streamlined procedures for expeditious resolution of any complaints concerning timeline violations. Congress also should also give the Commission clear authority to impose fines at levels that will provide proper motivation for pole owners to adhere to the timelines.

Second, while the FCC already requires make ready charges, which can constitute a significant portion of a new build, to be cost based, there are concerns raised by some carriers that make ready charges are wildly variable and do not reflect costs in any meaningful way. Service providers seeking to deploy fiber using existing poles would be well served by amendments to the statute making clear that fair and reasonable cost-based charges apply to make ready work and that the charges and make ready work requirements must be applied on a nondiscriminatory basis. Many times new attachers seeking to deploy new fiber help pole owners uncover, by the pole inspections associated with the applications, violations by previous

attachers. Further, both a service provider member and a construction company member have told the Council that utilities often require them to fix all violations before they can obtain access – regardless of which attacher caused the violation. It is important that new attachers not share the burden of correcting violations of existing attachers and only pay cost-based charges for make ready work, once all violations have been corrected, for any additional work still needed to make room for their attachments.

Third, in addition to adopting timelines in 2011 framing the application and make ready process, the Commission required pole owners to make available lists of contractors to perform survey work and make ready work when the pole owners fail or refuse to do so within the timelines. The objectives motivating these requirements were correct, but the effectiveness of these requirements is far from satisfactory. Even when such lists are provided – and in practice they often are not – attachers are stymied because pole owners will not accept the survey results or will preclude any make ready to be performed on the poles except under their direct control. Often times, the reasons given by electric utilities, for example, is that the contractor survey or make ready work will impinge upon the electric space. In many cases, contractors are hesitant to cross swords with the utilities because of the potential adverse impact to their business. The use of certified contractors must be effectively supported through legislation that enables would-be attachers to have their right to use such contractors rapidly enforced when the pole owner fails to act according to the timelines. Such a mechanism, backed by the ability to obtain a rapid resolution of a complaint before the Commission and appropriate forfeiture authority, would create the proper incentives for pole owners, where they wish to control the process, to undertake the work themselves, but in an expeditious fashion. The pole owners have every right to expect the work to be done properly, naturally, so the statute should make clear that any contractor may



do the work, provided it uses workers that are properly certified to undertake it. Finally, Congress should direct the Commission to review current attachment requirements, e.g. spacing and use of various parts of poles, and have the authority to limit unreasonable requirements, including by accounting for the fact that fiber attachments do not carry electric current. The Council also suggests that Congress consider the implementation of “one touch” rules, where a single contractor can perform the make ready work for more than one attacher at a time. In an era where the objective is to encourage ever more broadband deployment, the presence of multiple providers should not mean that there is a race to see who gets permission to access the pole first, while others wait.

Fourth, all providers of poles, conduit, ducts, and rights-of-way -- including the Federal government, cooperatives, and municipal entities (e.g. municipal-owned electric provider) – should be brought under the Federal statute to facilitate deployment and have a legal backstop where negotiations to obtain reasonable access rights fail. Whatever the reasons for excluding these entities may have been, it is undisputed that their actions can act as a drag on fiber deployment. Therefore, Congress should amend the statute to eliminate the exemption. Ensuring access to poles owned by the Federal government, cooperatives, and municipal entities will help ensure that consumers in areas these entities serve have the same competitive and reasonably priced broadband services that reach end users in areas served by investor owned utilities. Municipal utilities serve many cities of varying sizes, both large and small. Electric co-ops serve over forty million Americans, according to the National Rural Electric Cooperative Association, mostly in rural and semi-rural areas where fiber deployment has been lacking. Bringing the poles of these entities within the scope of the statute is important for making cost-effective fiber deployment ubiquitous.

Fifth, despite efforts by the FCC to bring telecommunication rates closer to parity with cable rates, the reality is that attachers that offer telecommunications services may still be charged 70% or more than the cable rates. Although the FCC is examining a petition for reconsideration filed by the National Cable and Telecommunications Association and others to eliminate that persistent disparity, one of the potential hurdles to Commission action in this area is the statute itself. The statute expressly contemplates two different formulas, one for cable providers and the other for telecommunications carriers. While the FCC possesses the legal authority to interpret those statutory provisions to eliminate much of the disparity, as the United States Court of Appeals found in reviewing the FCC's 2011 decision, the Congress should remove all doubt by amending the statute to provide a single formula patterned off the cable formula. The Federal courts have recognized that the existing cable formula produces rates that are fully compensatory to pole owners. Use of a single formula will eliminate many disputes over what charges apply to which attachers and any uncertainty over the proper interpretation of the two rate methodologies in the statute today, methodologies which were adopted long before the convergence of cable and telecommunications that we see happening today was anticipated.

Finally, there is such a variety of service providers who are deploying fiber and have need to attach to poles that the traditional categories of "cable company" and "telecommunications carrier" are not sufficiently inclusive to ensure all enterprises laying fiber and competing in today's communications marketplace have similar pole attachment rights. Therefore, the Council encourages Congress to develop legislation that eliminates the artificial categories based on traditional and increasingly archaic definitions that may act as a deterrent to the build out of fiber plant.

In closing, the Council commends the Subcommittee for hearing concerns about barriers that stand in the way of fiber network deployment. We urge you to move forward to address these problems, and we stand ready to work with you as you move forward.