

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL  
APPROVING IN PART, DISSENTING IN PART**

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling (August 2, 2018)

In this country we build. We are a nation of doers. Clearing the obstacles in our way is deep in our DNA. I believe this instinct has served us well and over time there has been a lot of evidence this is true before the Federal Communications Commission. You see it in the way as a country we connected all through the public switched telephone network. You see it in the way we led the world in the deployment of 4G wireless services. You see it, too, in the cities and towns that are clamoring for better broadband service, because they know that without it their communities will not have a fair shot in the digital age.

You also see the influence of this spirit in this decision. It is designed to expedite access to utility poles. That may not seem grand at first blush, but clearing the way to access these lowly facilities is a big deal. It means building more broadband in more places, more competitive broadband, and enhanced access to the next generation of wireless services.

For this reason, I support one-touch make-ready pole attachment. By allowing for the modification or replacement of the lines or equipment on a utility pole to accommodate additional facilities, I believe we can speed the way to a future with more digital age infrastructure deployment across the country.

But as with all things, the devil is in the details. We are dealing with a complex and heady mix of federal authority, state preemption, local realities, and the possibility of job losses for workers and service outages for consumers. Getting it right is essential. I believe that in some ways, this decision runs roughshod over the details when clearer and more specific direction is required.

First, in our rush to put out rules, this agency accepts too much ambiguity in the one-touch make-ready regime we adopt today. Ideally these policies would be crystal clear so that there are no disputes about just what deployments qualify for one-touch make-ready procedures. But I am concerned that is not the case here. And I believe this is going to slow down deployment—not speed it up. Indeed, even determining what counts as simple make-ready work is not so simple. That’s because our definitions of simple and complex processes do not provide enough real-world guidance to attachers and utilities, setting the stage for disputes and delays. Worse, we decide not to give any voice in this process to the parties that are well-positioned to make these tricky determinations—the existing attachers. This is hard to justify.

Second, we could do more to protect jobs and safety. By giving short shrift to employees covered by collective bargaining agreements, this decision threatens to invalidate private contracts negotiated between existing attachers and union workers. But going forward, this agency could put those employees out of work. This is not right. Moreover, it is not an outcome we can simply ignore.

Third, we should give more thought to what happens to existing attachers on poles. With only superficial analysis, we conclude that existing contract and tort law will protect their interests. This is not so simple because in many cases there is no privity of contract between these parties. Our one-touch make-ready regime—and the public at large—would be better served by mechanisms that would allow existing attachers to hold a new attacher or contractor accountable for the consequences of performing shoddy work, especially when they lead to consumer outages.

Finally, I fear that for all our desire to expedite deployment all this decision will do is speed the way for litigation. Nowhere is this clearer than in the declaratory ruling. This agency determines that state or local requirements that prevent or have the effect of suspending the processing of siting applications for new communications infrastructure violate Section 253(a) of the Communications Act and are preempted. The legal analysis here is seriously lacking. A basic canon of statutory interpretation requires that this agency give meaning to all relevant portions of the law. Interpretations that support statutory consistency are valued over those that do not. And yet, there is no way to square this declaratory ruling regarding Section 253(a) with Section 253(d). That's because Section 253(d) provides the express mechanism for this agency to preempt state and local requirements on a case-by-case basis after notice and opportunity for public comment. Moreover, our interpretation of Section 253(a) preemption all but reads Section 332(c) out of the law, which provides a specific due process remedy for the failure to act on wireless facilities siting.

So what does that mean in the real world? Take Myrtle Beach, South Carolina, just for example. It's a coastal community. There are laws that limit the ability of private entities to dig up roads during certain times of the year, namely during the height of hurricane season and during peak tourist times. These rules are limited in time and scope. They are informed by local traffic and public safety authorities. They are reasonably related to the police powers of municipalities. And yet, going forward, three unelected officials sitting here today preempt these local policies because they believe Washington knows better.

This is unfortunate. Because I believe we need smart one-touch make-ready policies—and others like it—to expedite the deployment of more broadband and wireless services in more places. We need to find a modern way to balance the needs for national deployment policies with local realities so that across the board government authorities support what we need everywhere—digital age infrastructure. I believe there is a thoughtful way to do this, but the reasoning in today's decision falls short.

While I approve our adoption of one-touch make-ready policies in concept, the deficiencies in our analysis are too significant for me to offer my full support. As a result, I approve in part and dissent in part.