

**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)
)
)

REPLY COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (“UTC”)¹ hereby files the following reply comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* in the above-referenced proceeding.² The comments on the record support UTC’s position that the Commission should continue to allow utilities to require advance notice prior to overlashing. These comments echo that prior notice is essential to determine loading from overlashing, as well as to inspect the pole to determine if there are any pre-existing code violations that would be exacerbated by the addition of overlashing and/or to inspect the overlashing to determine if it is made consistent with the design specification that the attacher has proposed to the utility. Moreover, the comments on the record also agree with UTC that prior notice of overlashing is consistent not only with the Commission’s pole attachment policies but with state policies as well. The Commission should not be misled by comments that downplay or ignore engineering, safety and capacity concerns associated with overlashing or argue that prior notice of overlashing is contrary to precedent. Finally, UTC opposes comments

¹ UTC was formerly the “Utilities Telecom Council”. See www.utc.org.

² *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling and Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (rel. Nov. 29, 2017)(hereinafter “*FNPRM*”).

stating that the Commission should require strand-mounted wireless attachments as a form of overlashing. These strand-mounted attachments raise unique engineering, safety, capacity and reliability concerns, and they are distinctly different from typical types of overlashing using linear attachments.

Regarding the IP Transition, UTC also reiterates that the Commission should maintain necessary consumer protections, including rules providing utilities with notice and a meaningful opportunity to prepare and respond to the replacement of a legacy copper network or the discontinuance of a legacy service by a carrier. As UTC explained in its initial comments in this and other proceedings, utilities are uniquely affected by the IP Transition. Therefore, the Commission should ensure that the carrier services utilities use are preserved and/or replaced with substitute services that are equal to or better than the legacy service in terms of quality and cost.

I. The Commission Should Affirm That Utilities May Require Prior Notice of Overlashing and May Deny Access for Reasons Set Forth in Section 224(f)(2).

At the outset, UTC and utilities recognize that overlashing is an effective way of promoting the deployment of communications facilities.³ While utilities support overlashing, they all commented that overlashing must not compromise the safety and reliability of electric infrastructure.⁴ Prior notice of overlashing is essential to ensuring that such projects will not in any way compromise the safety or

³ Comments of UTC at 3 (stating that “[w]hile UTC supports the use of overlashing as a means to make more effective use of the space on the pole to support access by third party communications service providers, we are concerned that codifying a per se rule that only provides utilities notice-after-the-fact for all types of overlashing and subject only to general engineering standards is too broad and would threaten to undermine the safety, reliability and security of utility infrastructure.”)

⁴ See e.g. Comments of the Edison Electric Institute in WC Docket No. 17-84 at 2 (filed Jan. 17, 2018)(stating that “EEI and its members generally support ‘the use of overlashing to maximize the useable space on utility poles’ when the overlashing neither compromises the safety or engineering of the pole nor the utility’s core mission of electrical generation and transmission.”) See also Comments of CPS Energy at 1 (filed Jan. 17, 2018)(stating that “while CPS Energy recognizes the value and efficiencies that can be gained by overlashing, the goals of achieving any such efficiencies must not be allowed to impair the safety, security or reliability of the electric system or other existing attachments,” adding that “[f]or that reason, overlashing must necessarily be preceded by notice of the proposed overlash activity to the pole owner in advance of the actual installation.”)

integrity of existing electric distribution and communications infrastructure.⁵

As the Utility Coalition on Overlashing in their comments explained, “[o]verlashing creates additional wind and ice load on the poles, guy wires and anchors, potentially in violation of National Electrical Safety Code (“NESC”) pole loading standards.”⁶ In addition, “[o]verlashing changes the sag on a line, and can easily cause the line to sag enough to violate NESC separation standards and NESC clearance requirements over streets and highways.⁷ Finally, “[o]verlashing also can be, and too often is, installed on existing facilities that are already unsafely located dangerously close to energized facilities.”⁸ As Xcel Energy added, prior notice of overlashing also “provides an opportunity for the utility to work with the overlasher to identify and resolve any potential issues as soon as possible so that they can be addressed efficiently and economically, thus allowing overlashing to be performed in a quicker, safer, and more cost-effective way.”⁹

Utilities are not alone. AT&T also commented in support of advance notice of overlashing; and it explained that “requiring advance notice to the pole owner and any host attaching entity, as proposed in the Further Notice, promotes safety and the integrity and reliability of the wireline network by affording an opportunity to validate that the attacher has considered the impact overlashing will have on the pole and the host cables.”¹⁰ Similarly, NTCA (which includes both pole owners and communications service providers) commented that “[p]rior notice to the pole owner is critical to allow pole owners the opportunity to inspect the poles at issue and determine if they have sufficient capacity to handle

⁵ Comments of Xcel Energy at 1-2.

⁶ Comments of the Utility Coalition on Overlashing in WC Docket No. 17-84 at i (filed Jan. 17, 2018). Note that the Utility Coalition on Overlashing includes the following utilities: Exelon Corporation, FirstEnergy, Hawaiian Electric, Puget Sound Energy, and The AES Corporation.

⁷ *Id.*

⁸ *Id.*

⁹ Comments of Xcel Energy Services, Inc. in WC Docket No. 17-84 at 2 (filed Jan. 17, 2018).

¹⁰ Comments of AT&T in WC Docket No. 17-84 at 15 (filed Jan. 17, 2018).

overlashed attachments without compromising public safety or the integrity of poles or existing attachments.”¹¹ In that regard, NTCA observes that the need to provide prior notice is greater now, due to increasing demand for broadband services, which puts utility owned poles “under greater stress than ever before” and cannot be allowed to damage poles and attachments that lead to unnecessary service disruptions.¹²

Utilities and others agree that advance notice can be accomplished without imposing a significant delay on overlying activities or materially impeding broadband deployments.¹³ In that regard, CenterPoint and Dominion recommend that the Commission provide 45 days advance notice in order to provide utilities with a reasonable opportunity for action by the pole owner, based on such notice. Further, CenterPoint and Dominion recommend that the Commission require the overlasher to provide “all information necessary for the pole owner to assess the capacity, safety, reliability, and engineering impacts of overlying on the requested poles, in the reasonable discretion of the pole owner.”¹⁴ Ameren, AEP, Duke, Entergy, Oncor, Southern Company, TECO, and Westar Energy also support 45 days advance notice.¹⁵ AT&T supports 30 days advance notice, subject to additional informational requirements from overlashers.¹⁶ In any event, UTC agrees with comments from utilities that 15 days

¹¹ Comments of NTCA – The Rural Broadband Association at 5 (filed Jan. 17, 2018).

¹² *Id.*

¹³ Comments of CPS Energy at 1 (explaining that under its Pole Attachment Standards, CPS Energy requires that an attaching entity need only provide five (5) days advance notice of a proposed overlash if the overlash combined with the existing attachment does not exceed 3.5 inches in diameter, and need only provide ten (10) days advance notice if the proposed overlash combined with the existing attachment would exceed 3.5 inches in diameter.)

¹⁴ Comments of CenterPoint Energy Houston Electric, LLC and Dominion Energy in WC Docket No. 17-84 at 4 (filed Jan. 17, 2018).

¹⁵ Comments of the Electric Utilities on Overlying in WC Docket No. 17-84 at ii. (filed Jan. 17, 2018)(stating that “[t]he Commission should further clarify that advance notice consistent with Section 1.1403(b) of the Commission’s existing pole attachment rules (i.e. 45 days) is presumptively reasonable.”) Note that the Electric Utilities On Overlying includes the following utilities: Ameren Services Company, American Electric Power Corporation (AEP), Duke Energy Corporation, Entergy Corporation, Oncor Electric Deliver Company LLC, Southern Company, Tampa Electric Company (TECO), and Westar Energy, Inc.

¹⁶ Comments of AT&T (stating that “reasoned and practical codification of the Commission’s overlying policy would allow overlying upon at least 30 days advance notice to the pole owner and host attaching entity and confirmation from the attacher that the overlying complies with generally accepted engineering practices, the

would not provide enough time for utilities to inspect a pole in response to an overloading notification, as some have suggested.¹⁷

As UTC and others explained in their initial comments, advance notice is consistent with Commission precedent as well as state pole attachment policies.¹⁸ Contrary to some comments that claim that there is a long-standing Commission policy not to require prior notice,¹⁹ UTC and utilities explained that utilities may require prior notice of overloading under the Commission's rules and numerous state pole attachment policies. As UTC observed, the Commission has a long-standing policy of recognizing the importance of maintaining safety and reliability throughout the overloading process,²⁰ including requiring notice of overloading.²¹ In that regard, the Commission also agreed with utilities that "the utility pole owner has a right to know the character of, and the parties responsible for, attachments on its poles,

attacher has performed a pole loading analysis and no overloading will occur, and make-ready work is not necessary or will be completed before overloading.")

¹⁷ See e.g. *Ex Parte* Letter to Marlene H. Dortch, Esq., Secretary, Federal Communications Commission, from Thomas Cohen, Counsel to the American Cable Association, re: *Ex Parte* Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, (Sept. 14, 2017) at 3. See also Comments of NTCA at 5.

¹⁸ Comments of UTC at 5-6 (describing numerous states that require advance notice of overloading).

¹⁹ See e.g. Comments of Comcast at 2 (filed Jan. 17, 2018)(stating that "[a]s the Commission looks to advance broadband deployment, it should continue to seek out and eliminate unwarranted impediments to such deployment—including by adopting the proposal in the FNPRM to codify existing precedent allowing broadband providers to expand and add capacity to their existing networks through overloading without the need to obtain approval from or provide prior notice to utility pole owners.") See also Comments of the Fiber Broadband Association at 8 (filed Jan. 17, 2018)(stating that "The Commission has never required overloaders to provide advance notice to utilities. Indeed, precedent shows that '[o]verloaders are not required to give prior notice to utilities before overloading.'") And see Comments of CenturyLink at 6 (filed Jan. 17, 2018)(stating that "CenturyLink therefore supports the Commission's proposal to codify its long-standing requirement that utilities allow wire-to-wire overloading without prior approval of the pole owner, subject to post-overload notice and inspection processes.")

²⁰ *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, CS Docket No. 97-151, 13 FCC Rcd 6777 at ¶64 (1998) (stating that overloading may be denied for reasons of safety, reliability and generally applicable engineering purposes.")(hereinafter "*Telecom Order*"). See also *Amendment of the Commission's Rules and Policies on Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103 at ¶75 (2001) ("We clarify that third party overloading is subject to the same safety, reliability, and engineering constraints that apply to overloading the host pole attachment.")

²¹ *Telecom Order* at ¶ 68

including third party overlashers,” and it has clarified that “it would be reasonable for a pole attachment agreement to require notice of third party overlashing.”²² As such, prior notice is consistent with Commission precedent, as well as state pole attachment policies.

As UTC and others also explained, prohibiting prior notice of overlashing would contradict Section 224(f)(2), which allows utilities to deny access to pole attachments for reasons of safety, reliability, capacity and generally applicable engineering practices.²³ In this regard, several comments asked that the Commission clarify that access to overlashing may be denied based on reasons delineated in Section 224(f)(2).²⁴ As UTC explained in its initial comments, this clarification would be consistent with the decision in *Southern Co. v. FCC*, which held that “a utility can also deny access to overlashers for reasons of insufficient capacity, safety or reliability as described in the Act.”²⁵ Therefore, UTC supports comments on the record that urge the Commission to clarify that utilities may deny overlashing for reasons of insufficient capacity, safety, or reliability, consistent with Section 224(f)(2) of the Communications Act.

II. The Commission Should Not Include Strand-Mounted Attachments as Overlashing

UTC opposes comments on the record that suggest that strand-mounted attachments should be included as a form of overlashing.²⁶ As numerous comments on the record explain, strand-mounted

²² *Id.*

²³ Comments of UTC at 5. *See also* Comments of the Electric Utilities on Overlashing at 5 (underscoring that “utilities can require advance notice of overlashing and deny overlashing proposals based on the reasons set forth in 47 U.S.C. § 224(f)(2).”)

²⁴ Comments of CenterPoint and Dominion at 4-5 (stating that “the pole owner must be permitted to deny overlashing requests based on the same capacity, safety, reliability, and engineering considerations for which it would be permitted to deny an attachment under 47 U.S.C. §224(f)(2).”) *See also* Comments of the Electric Utilities on Overlashing at 26 (suggesting an amendment to section 1.1403 to permit prior notice of overlashing and to permit a utility to deny overlashing where there is insufficient capacity, or for reasons of safety, reliability and generally applicable engineering purposes.”)

²⁵ *Id.* at 582. *See also Consolidated Partial Order on Reconsideration* at ¶75 (clarifying that advance notice is presumptively reasonable and that “third party overlashing is subject to the same safety, reliability, and engineering constraints that apply to overlashing the host pole attachment.”)

²⁶ *See* Comments of Crown Castle at 1-3 (filed Jan. 17, 2018)(urging the Commission to clarify that existing overlashing precedent extends to strand-mounted small cell antennas and further codify such precedent.)

attachments are distinctly different from typical forms of overlashing.²⁷ They impose greater loading and entail additional equipment (in addition to the antenna) that must also be attached to the poles or on existing cables. Moreover, strand-mounted wireless attachments also raise unique safety issues associated with radiofrequency safety exposure by personnel. Finally, these strand-mounted attachments come in various configurations, and are unique and distinct from typical types of overlashing in that respect, as well.²⁸ Finally, as a practical matter, these strand-mount wireless systems require considerable advance work and pole make-ready to be functional, so carriers should not be aggrieved by being required to follow the pole attachment process for the strand-mounted equipment they seek to attach to their wires.²⁹ For all of these reasons, UTC opposes including strand-mounted wireless attachments as a form of overlashing, and supports the overwhelming number of comments that explain why these attachments should be treated differently due to loading, clearance and RF safety issues, as well as other unique and complex issues that they raise in terms of their various configurations and potential electrocution of linemen.³⁰

²⁷ See Comments of CenterPoint Energy Houston and Dominion Energy at 9-11 (stating that “The wireless and ‘advanced communications’ equipment that certain commenters propose to incorporate within the Commission’s current overlashing policies present novel safety, reliability, and engineering concerns that do not exist with respect to the simple practice of tying cables. For example, whereas overlashing distributes new load equally, a single device affixed to a cable strand concentrates added weight in a manner that acutely impacts the engineering of the existing line.”); Comments of CPS Energy at 2, 9-12 (listing seven different reasons why strand-mounted wireless attachments are distinct from typical overlashing, including loading, clearance, bonding requirements (to protect workers from electrocution) and RF safety, among other reasons); Comments of the Edison Electric Institute at 10; and Comments of the Utility Coalition on Overlashing at i., 5-8.

²⁸ See Comments of CenturyLink at 8 (describing how “most [strand-mounted attachments] involve three or more devices festooned to the wires between poles when fiber-optic lines are overlashed to existing coaxial wires. In one possible configuration, one device receives the electric supply; the second box contains a router; a third includes antennas; and the fourth is a radio that emits RF signals. These devices vary in size and weight, but can be expected to add at least 50 pounds to the line, in addition to any overlashed fiber serving the equipment.”)

²⁹ *Id.*

³⁰ See e.g. Comments of the Utility Coalition on Overlashing (stating that “[a] reasoned and practical codification of the Commission’s overlashing policy would allow overlashing upon at least 30 days advance notice to the pole owner and host attaching entity and confirmation from the attacher that the overlashing complies with generally accepted engineering practices, the attacher has performed a pole loading analysis and no overloading will occur, and make-ready work is not necessary or will be completed before overlashing.”)

III. The Commission Should Not Further Withdraw Important Consumer Protections from the Rules for the IP Transition.

In these reply comments, UTC reiterates its concerns expressed in its initial comments with the Commission's various proposals to streamline or otherwise reduce important consumer protections during the IP Transition. As UTC explained in its comments in this and other proceedings regarding the IP Transition, utilities are uniquely affected as carriers transition from legacy networks and service to IP-based networks and services. Utilities have distinct requirements for communications reliability, security, and resiliency, and carrier replacement services may not meet those requirements. Alternatively, utilities may lack reasonable alternatives when a carrier decides to discontinue services, particularly in remote areas where utilities have critical assets that require reliable communications. Finally, utilities have extensive service territories and a single circuit may stretch for miles and may be served by multiple carriers and so transitioning these circuits may be a highly complex.

With that as backdrop, UTC reiterates its opposition to further streamlining the process for applications seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area.³¹ UTC also continues to oppose adopting a 10-day comment period and a 31-day auto-grant period for discontinuance of services that have been grandfathered by the Commission for at least 180 days prior to the filing of the discontinuance application.³² UTC opposes comments that suggest that the FCC go further and that the auto-grant periods for replacement and discontinuance of services should not be limited to grandfathering data services or limited to data services with download/upload speeds of less than 25/3 Mbps.³³ Similarly,

³¹ *FNPRM* at ¶156. More specifically, the Commission proposes a uniform reduced public comment period of 10 days and an auto-grant period of 25 days for all carriers submitting such applications.

³² *Id.* at ¶159.

³³ Comments of AT&T at 2-3 (urging instead that “[t]he streamlined process should apply to any data service so long as the applying carrier certifies that it provides alternative data services with at least equivalent quality and speeds.”)

UTC also opposes comments that support further streamlining the process for discontinuance of legacy voice services.³⁴

Consistent with UTC's comments and those of other utilities previously in this proceeding in response to the Commission's *NPRM*,³⁵ the Commission should not be reducing or eliminating consumer protection policies that were only recently adopted in 2015 and therefore should be given a chance to work.³⁶ More specifically, UTC continues to disagree that carriers should be permitted to discontinue services if they show that they provide VoIP throughout the affected area and that there is at least one other alternative voice service in the affected area.³⁷

In that regard, UTC further opposes the suggestion by some comments that the Commission should go further and allow carriers to discontinue services if *either* VoIP is available *or* there is at least one other alternative voice service available in the affected area. As UTC explained in its initial comments, VoIP may not meet utility requirements for communications reliability and resiliency,

³⁴ Comments of AT&T at 5-7 (urging the Commission to go one step further than the Verizon petition and allow carriers to discontinue services as long as *either* (1) that it provides interconnected VoIP service throughout the affected service area; *or* (2) that at least one other alternative voice service, e.g. wireless voice or interconnected VoIP, is available in the affected service area.)

³⁵ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry and Request for Comment, WC Docket No. 17-84 (rel. April 21, 2017). *See also* Federal Communications Commission, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 82 Fed. Reg. 22453 (May 16, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-05-16/pdf/2017-09689.pdf>. (hereinafter "*NPRM*").

³⁶ *See* Comments of UTC in WC Docket No. 17-84 (filed June 15, 2017) and Reply Comments of UTC in WC Docket No. 17-84 (filed Jul. 17, 2017). *See also* Comments of the Edison Electric Institute in WC Docket No. 17-84 at 47 (filed Jul. 17, 2017)(explaining that for utilities the IP Transition is not as simple as it might be for residential customers, and reporting that it was estimated that the IP transition can result in additional costs of \$60-\$85 million for some companies which must be recovered by electric utilities in state rate cases.) *And see* Joint Reply Comments of Alliant Energy Corporation and Xcel Energy Services, Inc on Sections II.B and II.C of the Notice of Proposed Rulemaking in WC Docket No. 17-84 (filed Jul. 17, 2017)(stating that "[u]tilities need sufficient notice and time to prepare to transition to alternative communications, and Alliant Energy and Xcel Energy Services therefore join with Southern Company, the Utilities Technology Council ("UTC"), the Edison Electric Institute ("EEI") and the National Electric Rural Cooperative Association ("NRECA") in urging the Commission to retain those rules and requirements that enable utilities to ensure the continuing operational safety, reliability, and security of the delivery of essential electric and gas utility services to the public.") *See generally*, Comments of the National Rural Electric Cooperative Association (filed Jan. 17, 2018)(urging the FCC to retain the core elements of the adequate replacement test, and not to forbear from the Section 214(a) service discontinuance procedures for the technology transition.)

³⁷ *See e.g. Id.* at ¶¶171-174

particularly communications that must remain resilient during power outages.³⁸ Moreover, UTC explained that the availability of an alternative voice service in one part of a utility service territory is not likely to help a utility communicate into another part of the same service territory, particularly in a remote area. Finally, as UTC explained in its initial comments, utilities have extremely low latency requirements and VoIP is subject to jitter and other interruptions of data which could play havoc on certain utility mission critical applications, such as protective relaying or distributed automation that are latency intolerant.

In conclusion, the IP Transition is a real problem for consumers – particularly in rural areas, where carriers are discontinuing services or allowing their networks to degrade to the point that reliability is affected. For utilities, the IP Transition is causing unique challenges, due to the large number of circuits that are at risk of discontinuance, as well as the distance that these circuits may extend. Given the complexity of the IP Transition as well as the sheer number of circuits and services involved, UTC urges the Commission not to remove restrictions on the replacement of copper networks or the Section 214(a) process for the discontinuance of legacy services during the IP Transition.

³⁸ See Comments of UTC at 8.

CONCLUSION

UTC respectfully requests that the Commission not codify a rule that would restrict utilities from requiring advance notice of overloading. In addition, UTC respectfully requests that the Commission manage the IP Transition carefully and not further remove restrictions on the replacement of copper networks or the discontinuance of service by the carriers.

Respectfully,

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