

**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)	
)	
)	

COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (“UTC”)¹ hereby files the following comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* in the above-referenced proceeding.²

As described below, UTC urges the FCC not to codify a rule that would restrict utilities from requiring third party attaching entities to provide advance notice of overloading. Such a restriction would be contrary to the FCC’s existing rules and to Section 224(f)(2), which allows utilities to deny access for reasons of safety, reliability, capacity and generally accepted engineering practices. Utilities need advance notice of overloading so they can conduct an assessment of the additional loading on the pole and determine if there is an existing code violation on the pole and to ensure that the overlap is consistent with the design specification that the third party proposed in its application.

UTC also urges the Commission to maintain necessary consumer protections during the IP Transition, including rules that provide utilities with notice and a meaningful opportunity to prepare and

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*”).

respond to the replacement of a legacy copper network or the discontinuance of a legacy service by a carrier. Utilities are uniquely affected by the IP Transition; the Commission should ensure that the carrier services utilities use are preserved and/or replaced with substitute services equal to or better than the legacy service in terms of quality and cost. Therefore, UTC is pleased to provide its comments to the specific proposals in the Commission's *FNPRM*.

I. Introduction

UTC is the international trade association for the telecommunications and information technology interests of electric, gas and water utilities and other critical infrastructure industries. UTC's members include large investor-owned utilities who serve millions of customers across multi-state service territories, as well as smaller rural electric cooperative and public power utilities which may serve only a few thousand customers in isolated communities or remote areas. All of our members own, manage and control extensive infrastructure that they use to support the safe, reliable and secure delivery of essential services to the public at large. Some of these members are subject to FCC pole attachment jurisdiction and would be directly affected by the rules that the FCC is proposing in the *FNPRM*, while others may be indirectly affected by pole attachment regulations adopted by states that follow the FCC's rules.

Utilities rely on communications networks to support the safe, effective and reliable delivery of electric, gas and water services to the public at large. These communications networks provide voice and data services for a variety of utility applications, such as remote monitoring and control of critical assets such as substations and power plants, as well as emergency response with personnel in the field in the aftermath of disasters such as hurricanes, ice storms, and tornados that can cause power outages. While utilities primarily rely on private internal wireless and wireline communications networks, they also use commercial communications, including leased line circuits from telephone carriers that may be either replaced or discontinued altogether according to the proposed rules in the *FNPRM*.

II. The Commission Should Not Codify a Rule Restricting Utilities from Requiring Advance Notice of Overlashing.

In the *FNPRM*, the FCC invited comment on whether to codify a rule that overlashing is subject to a notice-and-attach process and that any concerns with overlashing should be satisfied by compliance with generally accepted engineering practices.³ While 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. Specifically, overlashing increases loading, which can be compounded by external factors such as ice and wind. In turn, each pole has potentially different engineering issues which must be considered, such as the strength of the pole, the clearance of the lines on the pole, and also other unique considerations that can only be ascertained by inspecting the pole. Utilities are experienced and qualified to recognize and address these issues in ways that other third parties are not. Moreover, utilities must be able to maintain control over their infrastructure and ensure that all attachments, including overlashing, not only comply with generally accepted engineering practices, but also account for other safety, capacity and engineering issues that may be unique to each pole.

When the Commission established rules for overlashing, it recognized the importance of maintaining safety and reliability.⁴ Although it did not require prior consent from the utility, it did require notice of overlashing.⁵ The Commission also agreed with utilities that “the utility pole owner has a right

³ *FNPRM* at ¶162.

⁴ *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 overlashing 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 overlashing is subject to the same safety, reliability, and engineering constraints that apply to overlashing the host pole attachment.”)

⁵ *Telecom Order* at ¶ 68

to know the character of, and the parties responsible for, attachments on its poles, including third party overlashers.”⁶ Accordingly, the Commission clarified that “it would be reasonable for a pole attachment agreement to require notice of third party overlashing.”⁷

As a practical matter, utilities need *advance* notice of overlashing in order to conduct an engineering study and inspect the poles to assess additional loading and ensure there are no existing violations of the electric utilities’ standards or applicable codes on the pole that must be remedied prior to the proposed overlashing.⁸ On an exception basis, some utilities permit notice after the fact, but it is subject to the condition that utilities may deny access later if the utility finds that the overlashing fails to comply with safety and reliability standards.

The Commission has never established a policy prohibiting utilities from requiring advance notice of overlashing, yet that is what some parties are asking it to do. They are requesting that the Commission codify a rule stating “an attacher shall not be required to obtain approval from or provide advance notice to a pole owner before overlashing additional wires, cables, or equipment to its own facilities.”⁹ Not only is this contrary to the FCC’s rules and industry practice, it is also contrary to the decision in *Southern Co. v. FCC*.¹⁰ There, the Court stated that “a utility can also deny access to

⁶ *Id.* at ¶82.

⁷ *Id.*

⁸ Letter from Robin Bromberg, Counsel for Union Electric Company d/b/a Ameren Missouri, Oncor Electric Delivery Company LLC to Marlene Dortch, Secretary, FCC in WC Docket No. 17-84 at 2 (filed Nov. 10, 2017)(explaining that overlashing into a violation can pose a danger to the communications worker that is performing such overlashing and risk compounding safety threats to workers and the public posed by such pre-existing violations). *See also Id.* (reporting that in 2016, Oncor received advance notice of overlashing on 5,186 poles, 716 of which had pre-existing violations.)

⁹ *See* Letter from Steve Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Oct. 20, 2017) (italics omitted)(hereinafter “NCTA Ex parte”).

¹⁰ *Southern Co. Services, Inc. v. FCC*, 313 F.3d 574 (D.C. Cir 2002). *But see* NCTA Ex parte at 2, n.5, citing *Southern Co. Services, Inc. v. FCC*, 313 F.3d at 582 (“Overlashers are not required to give prior notice to utilities before overlashing.”). The Court in *Southern Co. v. FCC* misstated itself in this excerpt, and clearly meant to say that overlashers are not required to obtain prior consent from utilities before overlashing.

overlashers for reasons of insufficient capacity, safety or reliability as described in the Act.”¹¹ There is no basis for parties to claim that utilities are prohibited from requiring advance notice of overlashing under the current FCC’s rules, nor should the Commission codify such a rule because it would be contrary to Section 224(f)(2) as well as the Commission’s implementation of that provision.

States regulating pole attachments have also provided for advance notice of overlashing. Arkansas provides for 45 days advance notice for overlashing of 300 poles or less and 60 days advance notice for overlashing of up to 3000 poles.¹² Ohio also has permitted utilities to require advance notice of overlashing.¹³ Washington state requires 15 days advance notice of overlashing.¹⁴ Louisiana requires an attaching entity to provide utilities with “reasonable notice of its intent to overlash facilities” and it requires utilities to issue any denial of such requests in writing within 15 days of the receipt of the notice from the attaching entity.¹⁵ Iowa requires seven days advance notice of overlashing,¹⁶ and Utah has approved a safe harbor pole attachment agreement that requires ten days advance notice for overlashing of fiber cables with 96 or fewer strands and it requires prior approval for any other overlashing.¹⁷ These states underscore the fact that overlashing requires advance notice as a policy and practical matter. For these reasons, UTC urges the Commission not to codify a rule that would prevent utilities from requiring

¹¹ *Id.* at 582. *See also Consolidated Partial Order on Reconsideration* at ¶75 (clarifying that “third party overlashing is subject to the same safety, reliability, and engineering constraints that apply to overlashing the host pole attachment.”)

¹² *See* Arkansas Public Service Commission Pole Attachment Rules, Rule 2.02(f) Available at: http://www.apscservices.info/Rules/pole_attachment_rules.pdf.

¹³ *See In the Matter of the Application of Dayton Power and Light Company to Amend Its Pole Attachment Tariff*, 2106 Ohio PUC LEXIS, ¶¶ 79-83 (September 7, 2016).

¹⁴ *See* Washington Admin. Code § 480-54-030(11).

¹⁵ *See* Louisiana Public Service Commission, General Order, Docket No. R-26968,2 Rule 7(a) and Rule 7(b).

¹⁶ Iowa Admin. Code r.199-25.4(2)(c)(3). *See also In Re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2)*, Docket No. RMU-2012-0002, 2013 Iowa PUC LEXIS 515, *19-20 (Iowa Utilities Bd. Dec. 2, 2013).

¹⁷ *In the Matter of Consolidated Applications of Rocky Mountain Power for Approval of Standard Reciprocal and Non-Reciprocal Pole Attachment Agreements*, Docket No. 10-035-97, Report and Order (Utah PSC, Nov. 21, 2012). Available at: <https://pscdocs.utah.gov/electric/10docs/1003597/2390361003597ro.pdf>.

that attaching entities to provide advance notice of overlashing.

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

In the *FNPRM*, the Commission proposes to streamline the approval 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.¹⁸ 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.¹⁹ This would only apply to services that have been grandfathered at least 180 days, under the FCC's proposal.²⁰ Finally, the Commission invited comment on whether to adopt 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.²¹

Additionally, the Commission also invited comment on a proposal by AT&T to start the clock for short-term network change notifications to run from the date the incumbent local exchange carrier (ILEC) files its notice, instead of starting from the date of the public notice.²² It also invited comment on AT&T's proposal to eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment.²³ Finally, the Commission invited comment on streamlined processing of *force majeure* event short-term network change notifications, and on a proposal by US West and AT&T for forbearance of the Section 214 discontinuance requirements for

¹⁸ *FNPRM* at ¶156.

¹⁹ *Id.* at ¶157.

²⁰ *Id.*

²¹ *Id.* at ¶159.

²² *Id.* at ¶164.

²³ *Id.* at ¶165.

services with no existing customers.²⁴

Likewise, the FCC invited comment on ways that it could further streamline the section 214(a) discontinuance process for legacy voice services. Specifically, it invited comment on a proposal by Verizon that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) That it provides interconnected VoIP service throughout the affected service area; and, (2) That at least one other alternative voice service is available in the affected service area.²⁵ Alternatively, Verizon proposes that the FCC forbear from applying section 214(a) discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services.²⁶ Essentially, the FCC invited comment on whether enforcement of its discontinuance requirements under section 214(a) and part 63 during the IP transition is necessary to ensure that the charges and practices of carriers are not unjustly or unreasonably discriminatory.²⁷ Finally, the Commission invited comment on whether to eliminate outreach programs designed to inform consumers about the IP Transition, and whether to preempt state and local laws that interfere with rebuilding and repairing broadband infrastructure in the aftermath of natural disasters, such as hurricanes Harvey, Irma, and Maria.²⁸

As UTC commented earlier in this proceeding in response to the Commission's *NPRM*,²⁹ the

²⁴ *Id.* at ¶169. Alternatively, the Commission suggests that it could streamline the process for discontinuance of services with no customers, such as reducing the auto-grant period from 31 days to 15 days and reducing the timeframe within which a carrier must not have had any customers or requests for service from 180 days to 30 days. *Id.*

²⁵ *Id.* at ¶171.

²⁶ *Id.* at ¶174.

²⁷ *Id.*

²⁸ *Id.* at ¶¶176, 178.

²⁹ *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*").

Commission should not be reducing or eliminating consumer protection policies that were only recently adopted in 2015 and should be given a chance to work.³⁰ As UTC has also explained in its comments throughout the IP Transition proceedings, utilities are uniquely at risk of being impacted by carrier replacement and/or discontinuance of services, because they rely on carrier networks for remote areas and their infrastructure and service territories are extensive and in some cases, lack reasonable communications alternatives.³¹

With that as backdrop, UTC respectfully disagrees 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.³² That is but one example of where the Commission's various proposed rules would fall short of providing adequate consumer protections, but it is one that illustrates well how utilities would be uniquely at risk by the Commission's proposals. Utilities need reliable communications, particularly communications that would remain resilient during power outages. VoIP is dependent on batteries in the aftermath of a power outage, and its resilience for the long term is insufficient to meet utility needs. In addition to performance, there is a larger issue around availability. That there may be 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. This underscores the inadequacy of this approach from an availability standpoint. Finally, 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. Thus, VoIP may not be able to meet utility requirements for certain applications, even though it is sufficient for other general communications needs.

³⁰ 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).

³¹ See Comments of UTC in PS docket No. 14-174 (filed Feb. 5, 2015). *See also* Comments of UTC in GN Docket No. 13-5 (filed Oct. 26, 2015). *And see* Reply Comments of UTC in GN Docket No. 13-5 (filed Nov. 24, 2015).

³² See *e.g. Id.* at ¶¶171-174

As such, the Commission should refrain from scaling back its 2015 IP Transition rules, or at least should adopt an approach that streamlines the 2015 policies rather than eliminating them wholesale.

As the Commission has recognized, 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. More specifically, utilities are contending with unique challenges brought about by the IP Transition. Not only do they have a large number of circuits that are at risk of discontinuance, but these circuits can stretch for miles across multiple states and run over multiple carrier networks. Therefore, it is challenging for utilities to manage the process as different carriers transition at different times, sometimes over the same circuit. Moreover, utilities have stringent performance requirements for latency and reliability, and they need to be sure that a replacement service from a carrier will be able to meet these performance requirements. 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.

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 important consumer protections for the replacement of copper networks or the discontinuance of service by the carriers.

Respectfully,

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