

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
EDISON ELECTRIC INSTITUTE**

Edison Electric Institute

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FEDERAL COMMUNICATIONS COMMISSION
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Accelerating Wireline Broadband)	WC Docket No. 17-84
Deployment by Removing Barriers to)	
Infrastructure Investment)	

**COMMENTS OF THE EDISON ELECTRIC INSTITUTE
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Pursuant to sections 1.415 and 1.419 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, the Edison Electric Institute (“EEI”), on behalf of its member companies, hereby submits these Comments in response to the Commission’s Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking (“FNPRM”) adopted in the above-referenced proceeding on November 16, 2017.¹

I. Introduction.

EEI is the trade organization that represents all U.S. investor-owned electric companies and its members provide electricity for 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports over seven million jobs in communities across the United States. As providers of electricity to much of America and as owners of a considerable amount of utility poles across the United States, EEI members have considerable expertise in matters concerning communication provider attachment to utility owned electric poles for broadband deployment and the interlocking regulatory schemes concerning FCC pole attachments to utility poles and federal and state regulation of electric

¹ FNPRM, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (Adopted Nov. 16, 2017).

utility rates and service, and EEI members have a strong interest in ensuring the Commission's proposals for reforming the rules and regulations concerning overlashing of utility electrical lines by telecom attachers properly consider the interests of EEI's member customers.

In the FNPRM, the Commission seeks comments on a proposed "codification" of so-called "longstanding precedent regarding overlashing."² Specifically, the FNPRM proposes 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

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. Therefore, the Commission's goal of decreasing confusion regarding the notice attachers should provide to a pole-owner prior to overlashing is to be commended and the Commission should be clear that meaningful notice to the pole owner must be in advance of overlashing. The Commission should also be wary of misconstruing its "long-held precedent" on overlashing⁴ by codifying a novel attach-then-notice procedure that sacrifices public safety and reliability for the sake of slightly accelerated broadband deployment. The Commission's framing of its "long-held precedent" on overlashing misconstrues the reasonable notice requirements inherent within its precedent and ignores the many state and local regulatory regimes that ensure safety in this area. The Commission's highest priority should be ensuring that attaching entities who wish to overlap comply with *all* safety and engineering practices required of and by the pole owner, whether

² FNPRM, ¶ 162; *see id.* ¶¶ 160-62.

³ FNPRM, ¶ 162.

⁴ *See* FNPRM, ¶¶ 160, 162 n. 509.

federal, state, local, contractual, or generally accepted in the industry. From a practical perspective, this means that meaningful notice to the pole owner must precede overloading; notice cannot come after the fact.

II. Advance Notice of Overloading is Warranted Given the Significant Public Safety and Electrical-Transmission Reliability Concerns Presented by Overloading.

When a communications service provider wishes to utilize an electric utility's pole network to expand its capacity, it normally does so by applying to the utility for approval to attach communications wires and facilities directly to the utility's poles. Given that the proposed attachments affect the engineering of the pole, installation of these attachments can significantly and adversely affect public safety and electrical-transmission reliability. Consequently, by statute and long-standing Commission recognition, an attaching entity's request is subject to denial by the electric utility where, among other reasons, "there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."⁵

The electric utility's statutory right to protect and preserve its pole-network from unsafe or unsound attachment proposals is meaningful only if an attaching entity must provide the electric utility meaningful advance notice of the proposed attachment. Advance notice is critical to the attachment process; it provides time necessary for pole-engineering studies to examine, for example, the effects the proposed attachment will have on the wind, ice, and weight load borne by the pole. Advance notice also provides time necessary to identify and remediate existing safety violations and perform any required make-ready work prior to the installation of the attachment. Thus, advance notice is critical for preserving safety and reliability when deploying broadband via pole-attachments.

⁵ 47 U.S.C. § 224(f)(2).

a. Overlashing Engenders the Same Safety and Reliability Concerns as Pole-Mounted Attachments.

Overlashing is an alternative method for a service provider to expand its capacity that differs from typical pole-attachments in one way: the new communications wire is tied directly to an attacher's own (or, for third-party overlashing, to other attachers') existing wires already secured to the pole.⁶ Attached as **Exhibit 1** are photographs of example overlashes that illustrate how overlashing can expand a single thin, light cable strand into a thick, heavy, multi-stranded mess. Although the attacher attempts to bypass the pole via overlashing, the technique unavoidably adds load and weight to the pole that supports the overlashed wire and therefore impacts the pole's engineering.

Consequently, overlashing must be subject to the same safety, reliability and engineering standards as any other burden on a pole line, such as new pole-mounted attachments. Indeed, just like with new attachments, the Commission has long recognized that when "overlashing does create an additional burden on the pole," the overlashing must "comply with generally accepted engineering practices."⁷ Moreover, just like with new attachments, the Commission and courts recognize the electric utility's statutory right⁸ to deny access to overlashers when "there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."⁹

⁶ *E.g., In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 F.C.C. Rcd. 6777, ¶ 59 (1998) ("Overlashing, whereby a service provider physically ties its wiring to other wiring already secured to the pole, is routinely used to accommodate additional strands of fiber or coaxial cable on existing pole attachments.").

⁷ *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 F.C.C. Rcd. 6777, ¶ 64 (1998).

⁸ 47 U.S.C. § 224(f)(2).

⁹ *S. Co. Servs. v. F.C.C.*, 313 F.3d 574, 582 (D.C. Cir. 2002) ("a utility can also deny access to overlashers for reasons of insufficient capacity, safety or reliability as described in the Act" (citing 47 U.S.C. § 224(f)(2); *In Re Amendment of Commission's Rules & Policies Governing*

b. Advance Notice of Overlashing is Key to Protecting Safety and Reliability.

Considering that overlashing can affect a pole's structural integrity in the same way as a new pole-mounted attachment, it is hardly surprising that advance notice of overlashing is key to ensuring public safety and reliability in the same manner and for the same reasons as with pole-mounted attachments. Without advance notice of overlashing, an electric utility cannot ensure either that the additional load imposed by the overlashing meets the electric utilities' standards for safety, reliability, and engineering, or that there are no existing violation of the utilities' standards or applicable codes on the pole that must be remedied prior to the proposed overlashing. Furthermore, without advance notice, the utility cannot perform any make-ready work that may be necessary to safely accommodate the overlashing. Although a footnote in the FNPRM could be interpreted as implying otherwise,¹⁰ these engineering, safety, and reliability concerns are not merely theoretical and these concerns can be remediated by advance notice.

Adding surface area and weight to a wire strung between poles via overlashing will affect the poles' structural integrity. Therefore, an engineering study may be necessary to ensure the pole can bear the additional load from weight, wind, ice, and other sources.¹¹ The study can identify poles that need replacement or strengthening to bear the increased load *before* overlashing causes the pole's failure, interrupts electrical service, and endangers the public. Indeed, twenty years' of Commission precedent recognizes the validity of safety and reliability

Pole Attachments, 16 F.C.C. Rcd. 12103, 12141 ¶ 74 (2001)); FNPRM, ¶ 160 (noting that *Southern Co.* and the Commission orders it cites "remain in effect today.").

¹⁰ FNPRM, ¶ 162 n.509.

¹¹ See *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 F.C.C. Rcd. 6777, ¶ 64 (1998) (confirming that an electric utility can invoke Section 224 to deny a proposed overlash because overlashing can "create an additional burden the pole").

concerns about overlashing, including that “wind and ice loading conditions” among other engineering and safety standards justify denying overlashing.¹²

Safety and reliability issues associated with overlashing are also real and quantifiable concerns. For example, in 2016, one EEI member, received advance notice of overlashing on 5,186 poles. Pre-overlash inspection found that 716 of those poles “had pre-existing violations for failure to meet NESC requirements for clearance between communications attachments and power facilities.”¹³ The overlashing of facilities already out of compliance endangers the communications worker who is performing such overlashing and risks compounding safety threats to workers and the public posed by such pre-existing violations. Advance notice gives opportunity to inspect and remedy violations before they are exacerbated by overlashing.

Overlashing installed by third parties without prior notice to the electric utility can exacerbate these public and worker safety and reliability concerns, as well as impair the rights of private and public landowners. Pole attachment agreements between utilities and attachers commonly include provisions addressing issues such as (a) the utility’s technical requirements (including, but not limited to, incorporated industry standards such as the NESC) for attachment design and installation; (b) the required qualifications for individuals to work on utility poles in proximity to high-voltage electric distribution wires; and, (c) requirements that an attacher obtain all necessary easement rights from private or public landowners. If there is no Commission-imposed requirement for formal discussion and agreement between such a third-party attacher and the utility before the third-party overlashing is installed, then the utility does not have any adequate opportunity to ensure that the third party is aware of all applicable safety, reliability,

¹² *In the Matter of Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City, Complainant*, 14 F.C.C. Rcd. 11599 ¶¶ 7-8, 11-15, 20, 26 (1999).

¹³ Letter from Robin F. Bromberg, Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket 17-84, at 2 (filed Nov. 10, 2017).

and engineering requirements, technical requirements of contractors, or the property rights of affected landowners.

An electric utility must also occasionally perform various make-ready work before a communications attacher overlashes. For at least nineteen years, Commission precedent has recognized this fact and prohibited the attacher from overlashing until the utility completes the make-ready work.¹⁴ Accordingly, and given that the significant public safety and electrical-reliability concerns presented by overlashing can be largely remediated through meaningful advance notice, the Commission should find advance notice to the electric utility of proposed overlashing is warranted.

c. The Increased Danger Caused by Overlashing Without Advance Notice Unduly Increases an Electric Utility's Risk of Legal Liability.

An “attach-then-notice” approach to overlashing also unduly increases an electric utility’s risk of legal liability. As the Commission is aware, electric utilities have an obligation to maintain electric distribution poles in a safe condition to protect workers and the public at large. An “attach-then-notice” approach, however, reflects an unstated and illogical assumption that any risk or harm engendered by the overlashing “waits” to manifest until such later time as the attacher provides notice to the utility of the overlash. That assumption is nonsensical: risks and harms accrue the moment an overlash is installed because that is the moment the physical characteristics of the wires, the communications facilities, the pole, and the pole’s load change. Therefore, at the very instant that an attacher installs overlashing on an existing attachment without the utility’s prior approval, the attacher has created an increased liability risk for the

¹⁴ *In the Matter of Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City, Complainant*, 14 F.C.C. Rcd. 11599 ¶ 26 (1999).

utility without any adequate compensation.¹⁵ Moreover, at the very instant that a third party attacher (lacking any written agreement with the utility) sends a worker or contractor to install un-noticed overlashing, that work also creates increased liability risk for the utility since there are no contractual indemnification provisions, minimum insurance requirements, or other provisions in effect to delineate the attacher's and the utility's respective rights and obligations in the event of injury to the worker, injury to the public, damage to utility equipment, or damage to equipment already installed by other attachers. Conversely, if the attacher provides the utility advance notice of the proposed overlashing, then these issues can be resolved without either party being subjected to an undue risk of legal liability.

III. State Public Utility Commissions That Have Confronted This Issue Have Uniformly Adopted Advance Notice Requirements.

In the seventeen years between the Commission precedent expounded in the FNPRM¹⁶ and today, several state public utility commissions have considered whether attachers should be required to give advance notice to utilities of overlashing. Each and every one has ratified or adopted some sort of advance notice and approval requirement.¹⁷

¹⁵ Likewise, there may arise situations in which the condition of existing utility poles or wires makes it unsafe for a third-party attacher or its contractor to commence any overlashing until the electric utility has corrected a problematic condition. For example, pursuant to the National Electric Safety Code, the utility is required to maintain, at mid-span, at least thirty inches of vertical clearance between the energized electric conductors (which are attached to the top of the utility poles) and the closest communications cable. Thirty inches is equivalent to only two-and-a-half feet. Under normal utility operations, various factors (such as gradual pole tilt) may result in the vertical clearance falling below that minimum distance. If an existing attacher or new third-party attacher is required to seek utility approval prior to overlashing, then that provides the utility with an opportunity to survey the subject poles, correct any problematic conditions to restore the poles and wires to a compliant condition and thereby reduce the safety risk to the attacher or its contractors.

¹⁶ FNPRM, at ¶ 160.

¹⁷ Letter from Robin F. Bromberg, Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket 17-84, at 4-6 (filed Nov. 10, 2017).

- In 2016, the Arkansas Public Service Commission adopted new pole attachment rules requiring written applications for both pole-mounted attachments and overlashes, and providing the utility with up to 45 days (or 60 days for larger requests) to “approve, deny, or conditionally approve” the application.¹⁸
- In 2016, the Public Utilities Commission of Ohio approved an electric utility’s pole attachment tariff over objections from the state cable television association which required “advanced permission” for overlashing, specifically found the advanced notice provision “reasonable,” and held that “overlashing an existing facility increases the load on the pole and that it is necessary to determine whether a pole can safely accommodate the additional load *before* the facility is overlashd.”¹⁹
- In 2015, the Washington Utilities and Transportation Commission adopted a regulation requiring that attachers provide 15 days’ advance notice of overlashing.²⁰
- In 2014, the Louisiana Public Service Commission issued a General order requiring advance notice of overlashing and providing the pole owner up to 15 days to deny the request.²¹
- In 2013, the Iowa Utilities Board adopted a requirement that attachers provide notice to pole owners “at least seven days prior to installation of the

¹⁸ AK Public Service Commission Pole Attachment Rules, Rule 2.02(a), (b), & (f), *available at* http://www.apscservices.info/Rules/pole_attachment_rules.pdf.

¹⁹ *In re the Application of Dayton Power and Light Co.to Amend Its Pole Attachment Tariff*, 2106 Ohio PUC LEXIS, ¶¶ 19-83 (Sept. 7, 2016) (emphasis added).

²⁰ Wash. Admin. Code § 480-54-030(11).

²¹ Louisiana Public Service Commission, General Order, Docket No. R-26968, Rule 7(a) & 7(b), *available at* <http://lpscstar.louisiana.gov/star/ViewFile.aspx?Id=2f4c383f-9b76-4b9f-bcd2-f7a5109def9c>.

overlapping”²² because “in some instances the size of the overlapping may raise safety concerns” and a recognition that “prior notice and an opportunity for the pole owner to determine if the overlapping raises safety concerns is consistent with the position taken by the FCC.”²³

- In 2012, the Utah Public Service Commission approved a safe harbor pole attachment agreement which requires 10 days advance notice and pole-owner approval of all but the most limited of overlapping.²⁴

The Commission should find the state experience with this issue persuasive. After all, the Commission has already “recognize[d] and built on the work of our state partners” in developing the National Broadband Plan from which this Broadband Deployment proceeding derives.²⁵ Not only does “state experience with regulation of pole attachments provide[] an invaluable opportunity for the Commission to observe what works and what does not work to achieve policy goals,” but also the Commission explicitly found state experience to be “*particularly instructive* as the Commission attempts to balance the needs of communications companies to deploy vital network facilities with the needs of utility pole owners, including the need to protect safety of life and the reliability of their critically important networks.”²⁶ Moreover, when deliberating this issue, the Commission should remain cognizant of the fact that

²² Iowa Admin. Code r.199-25.4(2)(c)(3).

²³ *In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 AIC 15.5(2)*, Docket No. RMU-2012-0002, 2013 IOWA PUC LEXIS 515, *19-20 (Iowa Util. Bd. Dec. 2, 2013).

²⁴ *In re: 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>.

²⁵ *In the Matter of Implementation of Section 224 of the Act A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5243 ¶ 7 (2011).

²⁶ *In the Matter of Implementation of Section 224 of the Act A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5243 ¶ 7 (2011).

electric utilities *are* bound by their state public utility commissions, in addition to the Commission.

IV. Advance Notice of Overlapping is Consistent With Commission Precedent.

Despite the substantial benefits and practical necessity of advance notice and the unanimous state public utility commission decisions requiring advance notice, EEI and its members acknowledge that the Commission has not adopted a formal rule requiring advance notice of overlapping. Nonetheless, both Commission precedent and the courts have long contemplated that utilities and attaching entities might include an advance notice requirement in their contracts. Indeed, the very precedent the Commission cites in the FNPRM supports the use of advanced notice of overlapping.

In its 1998 Order addressing overlapping, cited at FNPRM para. 160 n. 502, the Commission affirmed that Section 224(f) applies to overlaps just as it applies to pole attachments, including providing a utility a right to deny access.²⁷ The utility right to deny access necessarily blesses the inclusion of advance notice requirements—the only method for electric utilities to meaningfully exercise their Section 224(f) rights. Dispelling any doubt that advance notice provisions are allowable under Commission precedent, the Commission’s 2001 Reconsideration Order on overlapping (cited at FNPRM para. 160 n.505) addresses third-party overlapping and explicitly “clarif[ies] that it would be reasonable for a pole attachment agreement to require notice of third party overlapping.”²⁸ The United States Court of Appeals for the District of Columbia Circuit, in an opinion the Commission notes “remain[s] in effect

²⁷ *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 F.C.C. Rcd. 6777, ¶¶ 64, 68 (1998).

²⁸ *In Re Amendment of Commission's Rules & Policies Governing Pole Attachments*, 16 F.C.C. Rcd. 12103, 12141 ¶ 82 (2001).

today,”²⁹ holds that “the FCC rules do not preclude owners from negotiating with pole users to require notice before overloading.”³⁰ Finally, the Commission’s 2003 Order examining a specific pole-attachment contract did not find unreasonable the parties’ prior contracts placement of a limit on the attacher’s overloading without or upon only one day advance notice—if the “overloading would [not] create a bundle exceeding six inches in diameter.”³¹

The Commission should also take notice that despite no formal rule requiring them to do so, most attachers already agree to contractual provisions in their pole-attachment contracts which require advance notice of overloading and utility approval. Pursuant to these agreements, the attacher who wishes to overload submits an application, pole load studies are performed, and the utility and attacher determine what, if any, make-ready work or pole structural improvements may be needed prior to installing the proposed overloads. These types of advance notice provisions and procedures have been explicitly upheld by the Commission and justified the Commission’s prohibition of non-compliant overloading attempts.³² Moreover, this same Commission precedent explicitly recognizes that “wind and ice loading conditions” among other engineering and safety standards justify denying overloading³³ and thereby dispels the absurd notion advanced by some communications attachers³⁴ that Commission precedent somehow exempts overloading from engineering review and approval or the advance notice that enables meaningful review. Accordingly, contractual provisions requiring advance notice of overloading are consistent with Commission precedent.

²⁹ FNPRM, ¶ 160.

³⁰ *S. Co. Servs. v. F.C.C.*, 313 F.3d 574, 582 (D.C. Cir. 2002).

³¹ *Cable Television Ass’n of Georgia*, 18 F.C.C. Rcd. 16333, 16340 ¶ 13 (2003).

³² *E.g., In the Matter of Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City, Complainant*, 14 F.C.C. Rcd. 11599 ¶¶ 7-8, 11-15, 20, 26 (1999).

³³ *Id.*

³⁴ *See* FNPRM, at ¶ 161 & nn. 507 & 508.

V. Allowing Overlapping Without Prior Utility Approval Would Result in Undesirable Consequences for Utilities, Other Attachers, Workers, and the Public.

As discussed above, Commission precedent supports the conclusion that it is reasonable for an electric utility to require an attacher to provide advance notice of any overlapping. A more detailed examination of three practicalities of any attacher-utility relationship also supports that conclusion. In addition to the negative effects on public and worker safety and reliability described above, the allowance of overlapping without advance notice would promote inefficiencies harmful to both attachers and utilities.

First, allowing attachers to overlap without prior notice would result in prejudice to other attachers, whether incumbent or new. For example, if Company A (which already has a master pole attachment agreement with the utility) submits an application to install new or replacement attachments on particular poles, the utility will typically analyze that application to ensure that the proposed attachments and the resulting pole conditions are all in compliance with applicable safety and engineering requirements. That analysis will also typically include a site visit to examine the subject pole, together with an engineering analysis of what the pole conditions will be after all previously-installed attachments and *known* proposed attachments are taken in account. But if in the meantime Company B proceeds to install overlapped attachments (affecting one or more of the same poles) without prior notice to the utility, then those un-noticed attachments would have the practical effects of (a) rendering obsolete the engineering analyses performed by the utility and/or Company A, (b) requiring the utility and/or Company A to incur additional time and cost to review Company A's application in light of Company B's un-noticed attachments, and (c) delaying Company A's own efforts to obtain approval for its proposed

attachments.³⁵ In the event that a particular pole had capacity for just “one more attachment” and cannot handle both Company A’s proposed attachment and Company B’s un-noticed overlashing without additional make-ready work (such as the installation of guide wires or other modifications to the pole), it is unclear which Company should receive priority under Commission precedent, or which Company should be charged for any make-ready work needed to support both sets of new attachments.

Second, allowing attachers to overlash without prior notice to the utility would often result in a waste of the attacher’s own funds. For example, utilities regularly plan pole upgrades and replacements that may affect existing attachments. If a particular attacher provides a utility with an application or other prior notice of overlashing affecting particular poles, the utility will generally be able to timely advise the attacher that certain planned utility activities (such as pole relocation, pole replacement, or pole removal) may make it more cost-effective for the attacher to utilize a different route or alter the timeframe of its proposed overlashing. But if the attacher does not contact the utility prior to installing its overlashing, the attacher is at risk of installing cables that later need to be adjusted or removed to accommodate utility activities.^{36, 37}

³⁵ Company B’s un-noticed overlashing attachments could also have a practical effect of causing the utility to fail to meet its Commission-mandated timeline as to Company A. For example, if Company A’s application to the utility is subject to a 45-day timeline for utility review, but the utility is not informed of Company B’s overlashing until Day 40 of that timeline, the utility may not be reasonably able to re-perform its engineering analysis until after that 45-day period has elapsed. Even worse, in a situation where the utility is not informed of Company B’s overlashing attachments until after the utility has already approved Company A’s application, the utility would be placed in the untenable position of having to either (a) “un-approve” Company A’s application to allow for time to analyze the effects of Company B’s overlashing, or (b) allow Company A to proceed to install its attachments notwithstanding the after-the-fact discovery that the engineering analysis of Company A’s application was incomplete due to the lack of analysis of Company B’s overlashing.

³⁶ Such a situation can also arise where the utility has determined that its operational needs make it necessary to “reserve” some pole-loading capacity for planned utility equipment. If the attacher

Ultimately, it is more cost-effective for the attacher (as well as the utility) to provide advance notice to the utility.

Third, an “attach-then-notice” approach makes a utility entirely dependent on an attacher’s internal systems and personnel. If an attacher installed overlashed attachments but (due to a failure of internal procedures) fails to notify the utility of that installation, the utility has zero opportunity to follow up with the attacher regarding such attachments. In contrast, if the attacher is required to first provide notice to the utility regarding the proposed attachments, then the utility will then be able to make inquiry of the attacher if, for example, significant time passes without any further information from the attacher regarding the proposed overlashing.

In sum, the realities of pole engineering and the attacher-utility relationship, as well as current Commission precedent, should disabuse the Commission of the notion advanced by certain attaching entities that an “attach-then-notice” approach to overlashing attachments either reflects “long-standing commission precedent” or promotes the public good. To the extent that prior Commission precedent may have created an “overlashing exception” to utilities’ standard procedures for reviewing pole-attachment applications for safety, reliability, and capacity issues, there are no longer sufficient grounds to maintain that exception. A utility’s long-established authority to “*deny* access to overlashers for reasons of insufficient capacity, safety or reliability

is not required to make inquiry of the utility before installing overlashing, then the attacher will not be informed that pole-loading capacity may not be available to the attacher.

³⁷ A utility and an existing attacher may also have arrangements regarding certain modifications to be made to existing attachments. For example, a utility and Company A (an existing attacher) may have agreed that “the next time” Company A does any work on a particular pole, Company A should relocate its attachments to a different position on that pole. If Company B installs overlashing on Company A’s attachment without prior notice to the utility, then the situation is made more complicated because, among other things, it is necessary for two different companies’ attachments to be relocated on the pole.

as described in the Act”³⁸ is meaningless if the utility is deprived of an opportunity to evaluate any existing attacher’s or third party’s proposed attachments *before* the attachments are actually installed on the electric utility’s poles. Instead, the Commission should find that it is reasonable for a utility to require both existing and new attachers to obtain prior utility approval for any overlashing of existing pole-to-pole attachments.

VI. Strand Mounted Communications Facilities Attachments Are Not Overlashing.

EEI’s member utilities have observed an increasing and worrisome trend in not-noticed attacher overlashing: the expansion of the overlashing technique by attachers to affix communications facilities directly to cable strands instead of properly securing the facility to the pole, thereby bypassing the notice and application procedure required of pole-mounted attachments. Attached as **Exhibit 2** are photographs of example communications facilities strand-mounted by overlashes. These pictures illustrate the significant effect such strand-mounted facilities have on a wire’s surface area, weight distribution, and weight, thereby affecting the pole’s load and structural integrity. The proliferation of such unauthorized communications facilities amplifies the engineering, public safety, and reliability impacts of overlashing and should not be tacitly encouraged through the codification of a novel rule that overlashing is not subject to advance notice to the utility. Commission precedent on overlashing is clear and leaves no room for interpretation—overlashing is only the attachment of wire strands, and does not include the attachment of communications facilities.³⁹

³⁸ *S. Co. Servs. v. F.C.C.*, 313 F.3d 574, 582 (D.C. Cir. 2002) (emphasis added); 47 U.S.C. § 224(f)(2).

³⁹ *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 F.C.C. Rcd. 6777, ¶ 60 (1998) (“In addressing overlashing in the cable operator context, the Commission issued a public notice in January 1995 (the “*Overlashing Public Notice*”) 196 cautioning owners of utility poles against restricting cable operators from overlashing their own pole attachments with *fiber optic cable*.” (emphasis added)); *id.* at ¶ 59 (“Overlashing, whereby a service provider physically ties its *wiring* to other wiring already secured to the pole ... may be

WHEREFORE, EEI respectfully requests that the Commission consider these comments and ensure that any future Commission action ordered as a result of this proceeding is consistent with them.

Respectfully submitted,

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overlashed with **wiring** ..." (emphasis added)); *In Re Amendment of Commission's Rules & Policies Governing Pole Attachments*, 16 F.C.C. Rcd. 12103, 12140 ¶ 73 (2001) ("Cable companies have, through overlashing, been able for decades to replace deteriorated cables or expand the capacity of existing communications facilities, by tying communication conductors to existing, supportive strands of cable on poles."); *Cable Television Ass'n of Georgia*, 18 F.C.C. Rcd. 16333, 16340 ¶ 13 (2003) ("Overlashing involves an attacher tying communication conductors to existing, supportive strands of cable on poles, which enables attachers to replace deteriorated cables or expand the capacity of existing facilities[.]"); *S. Co. Servs. v. F.C.C.*, 313 F.3d 574, 578 (D.C. Cir. 2002) ("overlashing, a technique whereby a telecommunications provider **attaches a wire** to its own (or, for third-party overlashing, to other attachers') existing wires." (emphasis added)).