

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Accelerating Wireline Broadband	)	WC Docket No. 17-84
Deployment by Removing Barriers to	)	
Infrastructure Investment	)	

To: The Commission

**COMMENTS OF XCEL ENERGY SERVICES INC.**

Xcel Energy Services Inc. (“Xcel Energy Services”), on behalf of its utility operating subsidiaries, hereby submits these Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Further Notice of Proposed Rulemaking* on utility treatment of overlashing.<sup>1</sup>

In the *FNPRM*, the Commission requests comment on adopting a formal rule stating that overlashing is subject to a notice-and-attach process.<sup>2</sup> To the extent the Commission should decide to codify such a rule, the Commission must also make clear that utilities may require advance notice of any overlashing activities, consistent with established Commission and federal court precedent. Xcel Energy’s experience has shown that receiving advance notice of overlashing projects and having the opportunity to review them in advance is essential to ensuring that such projects will not in any way compromise the safety or integrity of existing

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<sup>1</sup> / *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Further Notice of Proposed Rulemaking, FCC 17-154 (rel. November 29, 2017) (“*FNPRM*”).

<sup>2</sup> / *FNPRM* at ¶ 162.

electric distribution and communications infrastructure. Xcel Energy's experience has also shown that advance notice gives a utility the opportunity 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 overloading to be performed in a quicker, safer, and more cost-effective way.

If the Commission wants to encourage overloading, Xcel Energy recommends that it also take this opportunity to address the issue of the removal of decommissioned communications facilities. In addition to raising significant safety and reliability issues, the presence of decommissioned communications plant can significantly affect the cost and timeliness of an overloading project, thus delaying or even precluding competitive entry and the deployment of new communications services.

Finally, the Commission should expressly exclude strand-mounted wireless communications facilities from the scope of any rule that it may adopt on overloading. These strand-mounted wireless facilities have a much greater impact on pole loading and separation distances than "traditional" fiber installations, thus requiring a higher level of scrutiny. More importantly, these strand-mounted wireless facilities raise significant safety concerns regarding radio frequency ("RF") exposure, both for the public in general and for utility and communications workers in particular.

## **I. INTRODUCTION**

Xcel Energy Services Inc., on behalf of its public utility operating company affiliates, Northern States Power Company – Minnesota, Northern States Power Company – Wisconsin, Public Service Company of Colorado, and Southwestern Public Service Company (collectively, "Xcel Energy") provides a comprehensive portfolio of energy-related products and services to approximately 3,546,000 million electricity customers and approximately 2,013,000 natural gas

customers in eight states – Colorado, Michigan, Minnesota, New Mexico, North Dakota, South Dakota, Texas and Wisconsin. Xcel Energy owns approximately 1,500,000 distribution poles that collectively support over 1,000,000 attachments by third-party communications providers.

The primary mission – and public obligation – of Xcel Energy is the safe, reliable, and affordable provision of essential electric and natural gas utility services to the public. Thus, for Xcel Energy, maintaining and protecting the safety, reliability, and integrity of its utility infrastructure is of paramount importance. In its initial *Notice of Proposed Rulemaking* in this docket, the Commission explicitly recognized the crucial safety concerns associated with any revisions to its pole attachment rules and stated its intent to work toward an approach “that balances the legitimate needs and interests of new attachers, existing attachers, utilities, and the public ... without creating undue risk of harm.”<sup>3</sup> Xcel Energy greatly appreciates the Commission’s recognition of these concerns and urges the Commission to maintain this balance in the context of this *FNPRM*.

## **II. THE COMMISSION SHOULD AFFIRM THAT UTILITIES MAY REQUIRE ADVANCE NOTICE OF OVERLASHING**

In the *FNPRM*, the Commission requests comment on adopting a formal rule stating that “overlapping is subject to a notice-and-attach process and that any concerns with overlapping should be satisfied by compliance with generally accepted engineering practices.”<sup>4</sup> To the extent the Commission should decide to codify such a rule, the Commission must also make clear that utilities may require advance notice of any overlapping activities, consistent with established Commission and federal court precedent. Xcel Energy’s experience has shown that receiving

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<sup>3</sup> / *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, 32 FCC Rcd 3266, 3268 ¶ 6 (2017) (“*2017 NPRM*”).

<sup>4</sup> / *FNPRM* at ¶ 162.

advance notice of overloading projects and having the opportunity to review them in advance is essential to ensuring that such projects will not in any way compromise the safety or integrity of existing electric distribution and communications infrastructure.

It has further been Xcel Energy's experience that advance notice gives Xcel Energy the opportunity 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 either prior to or during the overloading process, which minimizes the need for (and costs of) return visits to the pole by the communications company to make necessary corrections. Thus, the provision of advance notice in fact enables overloading to be performed in a quicker, safer, and more cost-effective way.

**A. Advance Notice of Overloading is Essential to Ensuring the Safety and Reliability of the Electric Distribution and Communications Infrastructure and Promotes More Efficient and Cost-Effective Deployment of New Communications Services**

Xcel Energy's experience has shown that receiving advance notice of overloading projects and having the opportunity to review these projects in advance is essential to ensuring that the addition of any new overlashed facilities will not in any way compromise the safety or integrity of existing electric distribution and communications infrastructure.

Xcel Energy has substantial experience with overloading throughout its service area and appreciates the value of overloading as a means to maximize the usable space on utility poles and facilitate the deployment of new communications services. At the same time, the addition of new facilities through overloading imposes additional burdens on the pole infrastructure that supports both electric distribution and communications networks throughout the country. In particular, overloading increases the loading on a pole, which must take into account not just the weight of the overlashed facilities, but also the effects of environmental factors such as wind and ice. Because the relevant engineering considerations may vary on a pole-by-pole basis due to

factors such as the strength of the individual pole; the number, placement, and type of attachments and facilities already located on the pole; and other unique or local conditions, the impact of any additional loading resulting from overlashing must be carefully reviewed and considered.

In addition to loading considerations, overlashing can also affect the separation distances between communications facilities both mid-span and on the pole. The National Electric Safety Code (“NESC”) and individual utility construction standards establish minimum separation distances between communications facilities for safety and engineering reasons, and it is essential to ensure that these minimum distances are maintained, particularly when overlashing involves the types of larger-diameter fiber bundles that are commonly being deployed today.

In order to effectively monitor and maintain the safety and integrity of its distribution pole infrastructure, Xcel Energy’s pole attachment agreements require third party attachers to provide Xcel Energy reasonable advance notice of their overlashing projects. As part of this advance notice requirement, Xcel Energy requests that attachers provide basic information about the proposed overlashing project, such as a description of the area where the overlashing is to occur (including route maps) and a description of the overlashing project (including a description of the new facilities to be added by overlashing and a description of the existing facilities on which the overlashing will occur). Xcel Energy also requires attachers to provide a certification that the proposed overlashing will not impair the structural integrity of the poles involved, will not violate or cause any violation or non-compliance with applicable codes and standards, and will not adversely affect other attachments on the pole. A requesting attacher would presumably have already compiled and prepared this information as part of its own project planning.

Upon receipt of a notice of overloading, Xcel Energy will conduct a preliminary review of the overloading project in order to identify and inform the attaching entity of potential issues in advance, such as any make-ready work that may be required on individual poles to address loading, clearance, or other safety or engineering concerns. Among other things, Xcel Energy will review the attacher's planned route to determine whether it would include any poles that, as part of Xcel Energy's ongoing pole maintenance program, have been identified and tagged for replacement in the near future due to deterioration or other conditions that would prevent the addition of any further load on the pole. Such poles may not have been captured or accounted for in the attacher's project planning, and the ability to provide this information to the attacher enables the attacher to make appropriate adjustments to its construction and route plans before its crews are in the field.

As discussed above, advance notice of overloading enables Xcel Energy to effectively monitor and manage the safety, reliability, and integrity of its distribution pole infrastructure. At the same time, advance notice of overloading enables Xcel Energy to inform attachers of potential issues in advance, thus facilitating their planning and helping them to avoid the need for (and costs of) return visits to the pole to make necessary corrections and adjustments,<sup>5</sup> which in turn results in more efficient and cost-effective deployment of new communications services. For these reasons, Xcel Energy's advance notice process for overloading has been widely accepted by the communications companies in its service area.

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<sup>5</sup> / Xcel Energy notes that attachers have an independent obligation to ensure that any overloading they undertake does not create any safety or compliance issues and to correct any and all instances of compliance or safety violations, regardless of whether there has been any advance review by the pole owner.

**B. Commission and Federal Court Precedent Recognizes Utilities' Right to Advance Notice of Overlapping Under Section 224(f) of the Communications Act**

To the extent the Commission is considering codifying its long-standing precedent on overlapping, the Commission must ensure that any such codification is truly consistent with this precedent, which supports the right of a utility to require advance notice of overlapping. As the U.S. Court of Appeals for the District of Columbia Circuit observed, while the Commission's rules do not require overlappers to provide prior notice of overlapping, the rules likewise do not preclude pole owners from requiring prior notice of overlapping as part of their pole attachment agreements.<sup>6</sup> The Court further noted that "a utility can also deny access to overlappers for reasons of insufficient capacity, safety, or reliability" as described in Section 224(f) of the Communications Act (the "Act").<sup>7</sup>

Xcel Energy's experience has been that the only meaningful way for it to preserve its rights under Section 224(f) of the Act to be able to maintain the safety, reliability, and integrity of its distribution pole infrastructure is to require advance notice of overlapping projects. Accordingly, any codification of a rule regarding the provision of notice of overlapping must be clear that utilities may require that such notice be provided in advance of the overlapping.

**C. If the Commission Wants to Encourage Overlapping, the Commission Should Also Address Removal of Decommissioned Facilities**

The *FNPRM* states that the Commission has for decades maintained a policy of encouraging overlapping and reiterates its previous findings that "overlapping 'facilitates and expedites installing infrastructure,' 'promotes competition,' and 'is an important element in promoting ... diversity of services over existing facilities, fostering the availability of

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<sup>6</sup> / *Southern Co. Services, Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002).

<sup>7</sup> / *Id.* (citing 47 U.S.C. § 224(f)).

telecommunications services to communities, and increasing opportunities for competition in the marketplace.””<sup>8</sup> If the Commission is truly serious about encouraging overlashing, one important step that it can take is to address the issue of the removal of decommissioned communications facilities.

Xcel Energy regularly finds a substantial amount of decommissioned communications plant that has been left in place on its poles. This decommissioned plant is apparently no longer used or needed to provide service to the public, and its continued presence results in unnecessary loading on Xcel Energy’s poles, increases the potential for unsafe and/or non-compliant conditions on the distribution infrastructure, and increases the likelihood of the need for make-ready and/or pole replacements in order to accommodate additional overlashing. In other words, in addition to raising significant safety and reliability issues, the presence of decommissioned communications plant can significantly affect the cost and timeliness of an overlashing project, thus delaying or even precluding competitive entry and the deployment of new communications services. The Commission should therefore clearly state, whether by rule or in an order, that communications attachers have an affirmative obligation to remove any decommissioned communications facilities as its customers are switched over to any new facilities that have been added either by attachment or through overlashing.

### **III. STRAND-MOUNTED WIRELESS FACILITIES RAISE UNIQUE SAFETY ISSUES AND SHOULD BE EXCLUDED FROM ANY RULE ON OVERLASHING**

Finally, the Commission should expressly exclude strand-mounted wireless communications facilities from the scope of any rule that it may adopt on overlashing. The Edison Electric Institute (“EEI”) has provided the Commission with pictures and information demonstrating that these new strand-mounted wireless facilities differ significantly in size,

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<sup>8</sup> / *FNPRM* at ¶ 160 (internal citations omitted).



surface area, weight, and weight distribution from the wireline facilities that were being deployed when the Commission last considered overlashing issues.<sup>9</sup> Accordingly, these strand-mounted wireless facilities have a much greater impact on pole loading and separation distances than “traditional” fiber installations, thus requiring a higher level of scrutiny.

More importantly, these strand-mounted wireless facilities raise significant safety concerns regarding radio frequency (“RF”) exposure, both for the public in general and for utility and communications workers in particular. Utilities have an affirmative obligation to ensure the safety of the environment of their distribution poles, including the safety of the RF environment. At the same time, as both a contractual and practical matter, utilities have relatively little ability to control access to the area in and around the communications space on their poles. Because strand-mounted wireless facilities would be installed on lines that are attached in the communications space, utilities must be able to effectively manage the RF exposure risks inherent in any RF-emitting device. For example, utilities must be able to ensure that any strand-mounted wireless facility is installed in such a way that any member of the general public passing underneath the facility or any utility or communications worker working on the pole near the facility is not exposed to anything more than the “General Population” limit for RF exposure under the Commission’s rules and guidelines.<sup>10</sup> Utilities must also be able to ensure that any RF equipment installed on or near its poles – including strand-mounted wireless facilities – include appropriate signage regarding RF exposure limits and approach distances.

For these reasons, strand-mounted wireless facilities require a higher level of scrutiny than would be possible under a “notice-and-attach” process. Strand-mounted wireless facilities

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<sup>9</sup> / See, e.g., *Ex Parte* Presentation of the Edison Electric Institute, WC Docket No. 17-84 (filed Oct. 3, 2017) at 22.

<sup>10</sup> / See 47 C.F.R. § 1.1310; OET Bulletin 65, Edition 97-01, August 1997 (and Supplements).

should therefore be expressly excluded from any rule that the Commission may adopt with respect to overloading. Furthermore, pursuant to the rights that utilities have to ensure the safety, reliability, and integrity of their infrastructure, as expressly recognized in Section 224(f) of the Act, utilities should be allowed to require individual review and permitting of strand-mounted wireless facilities suspended from their distribution poles.

**WHEREFORE, THE PREMISES CONSIDERED,** Xcel Energy Services respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

**XCEL ENERGY SERVICES INC.**

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