

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF CPS ENERGY

The City of San Antonio, Texas, acting by and through the City Public Service Board (“CPS Energy”) submits these comments in response to the Federal Communications Commission’s *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-captioned proceeding. The *FNPRM* is part of a broad, on-going proceeding in which the Commission seeks to remove perceived barriers to broadband infrastructure deployment by, among other things, revising and streamlining the means by which wireline and wireless carriers obtain access to utility poles under the Commission’s pole attachment regulations.

CPS Energy has been an active participant in this proceeding, filing comments and reply comments in response to the initial *Notice of Proposed Rulemaking and Notice of Inquiry*, and now files these comments, for the limited purpose, of addressing the *FNPRM*’s proposal to codify the Commission’s policies with respect to overloading. As discussed below, while CPS Energy recognizes the value and efficiencies that can be gained by overloading, 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. Any rules adopted with respect to overloading must first and foremost ensure that such installations are made in accordance with all applicable safety and

engineering standards, and subject to evaluation by the utility pole owner. For that reason, overloading must necessarily be preceded by notice of the proposed overlash activity to the pole owner in advance of the actual installation. Further, the Commission needs to clarify that its overloading rules only apply to the installation of wireline overlash facilities, and are not intended to apply to, or authorize, the suspension of mid-span wireless antennas or other non-wireline facilities or equipment onto existing communications cables without the utility pole owner's prior authorization.

I. INTRODUCTION AND INTEREST OF CPS ENERGY

CPS Energy is one of the largest public power utilities in the country providing electric and natural gas services to approximately 804,675 electric customers and 343,754 gas customers as of January 1, 2018. The utility has a long history of service in the San Antonio area spanning one hundred fifty-seven (157) years, initially operating as a private utility under the name of San Antonio Public Service Company, until purchased by the City of San Antonio in 1942. Last year, the City of San Antonio celebrated 75 years of owning the electric and gas utility. In addition to the City of San Antonio, the CPS Energy service area includes thirty-one (31) other municipalities in and around the greater San Antonio metropolitan area, and unincorporated portions of Bexar County and seven (7) adjacent counties.

Since its inception in 1942, CPS Energy has been guided by an independent Board of Trustees vested with the authority to manage all the operational and financial affairs of the combined electric and gas utility systems, subject to the San Antonio City Council's power to set rates, issue municipal utility bonds, and exercise the power of eminent domain.

With regard to electric distribution poles, CPS Energy recently concluded an inventory of poles and attachments, which revealed CPS Energy's ownership of approximately 317,969

distribution poles. Within most, if not all, of CPS Energy's service area, Southwestern Bell Telephone Company d/b/a AT&T Texas ("AT&T") is the largest incumbent telephone company and Charter Communications ("Charter") is the largest incumbent cable company. CPS Energy has executed pole attachment agreements applicable to wireline and wireless attachments with over forty entities, which range from large and small commercial communications providers, to private and public entities, such as commercial parks or university campuses, that operate internal communications networks using CPS Energy poles.

Given the increasing and varied demands for pole use by a large number of disparate communications providers in the San Antonio area, CPS Energy has established Pole Attachment Standards ("Standards") to govern access to and use of CPS Energy poles, applicable to all communications providers for attachment of wireline communications facilities, wireless installations, and banner attachments.¹ These Standards provide for a non-discriminatory, uniform, consistent, and streamlined approach for access to and use of CPS Energy poles, facilitate

¹ CPS Energy recently revised its Pole Attachment Standards by incorporating lessons learned from a series of small cell installations deployed at its pole yard during the second and third quarters of 2017. This is part of CPS Energy's pre-certification process of new small cell installations. Under this process, the wireless industry and CPS Energy learned from each other and installation errors were made in the safety of a controlled environment. Once each small cell installation design met all applicable engineering and code standards, it was certified for field installation with the certainty that all similar installations will be subject to streamlined approval. The Pole Attachment Standards were revised based on initial revisions proposed by CPS Energy and posted on its website, which were subject to written comments from industry stake holders and countless face-to-face and telephone conference calls to address concerns and clarify issues culminating in the adoption of Version 3.0 of the Pole Attachment Standards on January 1, 2018. As with the original development of the Pole Attachment Standards, Version 1.0, all revisions whether proposed by stakeholders or CPS Energy were judged against the guiding principles of safety, network reliability, and customer service. CPS Energy's Pole Attachment Standards, Version 3.0 may be accessed at the utility's public website at <https://www.cpsenergy.com/en/developers-builders/customer-engineering/pole-attachment-services.html>.

the delivery of a variety of today's communication services, and implement processes for future technologies consistently with the safe and reliable operation of CPS Energy facilities. CPS Energy is the only municipally owned utility in the country that has implemented a one-touch program applicable to wireline and wireless attachments through its Standards and contractual agreements.

In developing its Standards, CPS Energy has sought to balance the competing needs and interests of multiple and varied communications providers to access and utilize CPS Energy's distribution infrastructure, while at the same time recognizing that the core purpose and function of this infrastructure is for CPS Energy's safe and reliable distribution and delivery of electric services to CPS Energy customers. Hence, the use of CPS Energy's poles or other facilities must at all times ensure the continued operational integrity, safety, and reliability of CPS Energy's facilities, electric services, personnel, and the general public. It is through this lens that CPS Energy offers these comments.

II. THE FCC OVERLASH RULES SHOULD PROVIDE FOR PRIOR NOTICE AND SHOULD ONLY APPLY TO WIRELINE FACILITIES

A. Public Power Utilities, Such as CPS Energy, Not Subject to Section 224

As a public power utility, CPS Energy is not subject to the Commission's Section 224 pole attachment regulations. That is so because 47 U.S.C. Section 224 imposes federal pole attachment requirements only upon entities that meet the definition of "utility" in Section 224(a)(1), and the term "utility" is defined to exclude local governments, cooperatives, and railroads:

The term "utility" means any person whose rates or charges are regulated by the Federal Government or State and who owns or controls poles, ducts, conduits or rights of way used, in whole or in part, for any wire communications. *Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the federal government or any State.* 47 U.S.C. § 224(a)(1) (emphasis added).

Section 224(a)(3), in turn, defines "State" as "any State, territory, or possession of the United States, the District of Columbia, or *any political subdivision, agency, or instrumentality thereof.*" (Emphasis added.)

Despite this statutory exemption, CPS Energy has a significant interest in any Commission proposals to change its regulations or policies governing rates, terms or conditions of access to utility poles, ducts or conduits, because attaching entities often seek to invoke the Commission's rules as de facto benchmarks of reasonableness. Moreover, Section 54.204(c) of the Texas Utilities Code specifically incorporates by reference the Commission's Section 224(e) telecommunications pole attachment rate formula and establishes that rate as the highest rate that municipal utilities in Texas can charge certificated telecommunications providers seeking to make communications attachments under the statute.² In addition, in 2017 the Texas Legislature passed and the Governor signed into law SB 1004, which created Chapter 284 of the Texas Local Government Code. Pursuant to Section 284.201(a), a municipally owned utility must give access to its poles to any "Network Provider" for the purpose of installing a "Network Node" (small cell installation), pursuant to a pole attachment agreement and the utility pole owner's construction standards. Moreover, Section 284.201(b) requires municipally owned utilities to establish the annual pole attachment rate applicable to Network Nodes based on Section 54.204 of the Texas Utilities Code and apply the pole attachment rate "on a per-foot basis." Thus, any changes to the Commission's rules related to pole attachment rates may have a direct impact on CPS Energy.

B. Prior Notice Must be Provided for Proposed Overlash

In the *FNPRM* the Commission has proposed to codify its existing policies concerning overlashing, by adopting a rule that allows for overlashing pursuant to a "notice and attach"

² While CPS Energy contends that the Texas legislature intended that subsequent revisions to the pole attachment rate formulas by the FCC be would not be applicable to Texas municipal utilities, this issue is nevertheless the subject of on-going litigation. *See generally, CPS Energy v. Public Utility Comm'n of Tex.*, 2017 Tex. App. LEXIS 1622 (Tex. App. – Austin 2017, motion for reh'g pending).

process. As noted in the *FNPRM*, the Commission has had a long standing policy of encouraging attaching entities to utilize overlashing of additional fiber cables on to existing authorized wireline attachments, as an efficient and inexpensive means of accommodating upgrades and expansions of capacity.³ Under the Commission's established policies, an attaching entity may overlash its existing attachments without obtaining additional approval from the pole owner, and such overlashed facilities are not subject to a separate attachment fee.⁴

At the same time, as noted in the *FNPRM*, the Commission has always held that such overlashing must necessarily be installed in such a manner as to comply with "generally accepted engineering practices."⁵ Such engineering practices would necessarily include compliance with applicable pole loading and clearance requirements as captured in CPS Energy's Standards. Further, the Commission's overlash policies have always incorporated the principle of "cost causer pays," under which an attaching entity is required to pay any of the make-ready costs associated with accommodating its attachments.

For example, if the addition of overlashed wires to an existing attachment causes an excessive weight to be added to the pole requiring additional support or causes the cable sag to increase to a point below safety standards, then the attacher must pay the make-ready charges to increase the height or strength of the pole.⁶

CPS Energy is generally supportive of a notice and attach process for overlash, provided that the "notice" takes place in advance of the installation of the overlash, and that such advance

³ *FNPRM*, at ¶ 160.

⁴ *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, *Consolidated Partial Order on Reconsideration*, 16 FCC Rcd 12103, 12141, ¶ 75 (2001) (*2001 Pole Attachment Order*).

⁵ *FNPRM*, at ¶ 160, citing the *2001 Pole Attachment Order*.

⁶ *2001 Pole Attachment Order*, at ¶ 77.

notice provides the pole owner with sufficient time to undertake an engineering analysis and loading review in order to assess the impact of the proposed overlash, as well as the need for any make-ready to safely accommodate the overlash. This process has been implemented throughout the CPS Energy service area without causing any negative consequences to network deployments or upgrades.

While it would seem axiomatic that in order to be effective for engineering design and make-ready analysis purposes, notice must necessarily take place in advance of the actual installation, the *FNPRM* cites comments from the NCTA – the Internet and Television Association and the American Cable Association suggesting that the Commission should clarify that “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.*”⁷

It simply makes no sense from a safety, reliability, efficiency, or financial perspective to perform the engineering review and make-ready analysis after the facilities have already been overlashed. First, as the pole owner, the utility has the primary responsibility for ensuring the safety of its system and all existing facilities on its poles. Indeed, under Section 224 it is the electric utility that has the ability and obligation to deny an attachment if there is “insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.”⁸ Thus, it falls to the utility in the first instance, and not the attaching entity, to make the determination as to whether the proposed overlash will be compliant with applicable standards or necessitate make-ready work.

⁷ *FNPRM*, at ¶ 161 (*emphasis added*).

⁸ 47 U.S.C. § 224(f)(2).

Second, the pole owner must be included in the engineering analysis or be allowed to review any such analysis before an overlash is undertaken, since the pole owner will likely have access to relevant information about the pole that the attaching entity may not possess, including on-going or scheduled work on the poles. For example, unscheduled overlash activities could hamper the installation or maintenance of electric facilities, or other on-going wireline or wireless facility installations, and could complicate the ability to implement and coordinate one-touch make-ready processes.

Third, advance notice of overlash will avoid the need to incur additional costs of performing after the fact make-ready once overlash has already been installed.

Fourth, advance notice need not impose a significant delay on overlash activities or materially impede broadband deployments. For example, 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. Moreover, CPS Energy allows an attaching entity to immediately install overlash without prior notice to CPS Energy in order to temporarily restore a loss or disruption in service. As a practical matter, most broadband deployments are known sufficiently in advance to the carrier so that provision of five to ten days advance notice should not impose a material delay on the carrier's deployments.

In any event, given the operational and safety considerations, a delay of five to ten days is certainly not unreasonable.

C. The FCC Should Clarify that Overlash Applies to the Installation of Wireline Facilities and Not Mid-Span Wireless Antennas

The Commission should clarify that its rules and policies with respect to overlashing are only intended to apply to the installation of wireline facilities and do not extend to the installation of mid-span wireless antennas. While the Commission has long supported the ability of carriers to overlash additional fiber cables onto existing communications lines without having to treat such overlashed fibers as new attachments subject to separate permitting and attachment fees, the installation of mid-span wireless facilities raises fundamentally different operational issues and considerations that the Commission has not addressed.

In adopting a policy of approving fiber overlash in the late 1990s and early 2000s, the Commission was able to rely on the fact that overlashing had become a routine practice over the past decade.⁹ Notably, the FCC's entire discussion and decision-making process surrounding overlashing at that time was with respect to new wireline facilities being overlashed to existing cable strands. For example, in its *Telecom Order* the FCC described overlashing as follows:

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*.¹⁰

Thus, there is no evidence to suggest that the Commission's permissive policies regarding overlashing that were adopted nearly twenty years ago were intended to encompass, or even contemplated, the installation of wireless radio facilities. To put it simply, hanging a radio antenna mid-span does not meet the Commission's historical definition, understanding or experience with

⁹ *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, *Report and Order* ("Telecom Order"), released February 6, 1998.

¹⁰ *Id.*, at ¶ 52 (*emphasis added*).

overlapping, and should therefore not be included within the Commission's proposed codification of its existing policies governing overlapping.

Moreover, the mid-span installation of wireless facilities is a significant departure from traditional overlap of additional fiber cables and raises a host of potential engineering, operational and safety considerations that the Commission has simply never addressed.

First, wireless facilities present a completely different surface area than overlapped cables that could dramatically impact loading considerations.

Second, the fact that the weight of mid-span wireless facilities are located at one point on the cable rather than being evenly distributed along the cable strand necessitates that they be located within a specified distance from the pole. Otherwise, this could significantly contribute to mid-span sag, overlapping, or tangling of wires, etc.

Third, wireless facilities may occupy a substantially larger volume than overlapped cable that could impact assumed (and required) clearance separations between other pole attachments. This means that, contrary to the assumption with wireline overlap facilities, mid-span wireless facilities may impact and encroach upon the location/connection points on the pole of third-party pole attachments in the communications space, and could appropriately be assessed a separate or higher pole attachment fee for the additional space on the pole.

Fourth, because the wireless installations are radio facilities, there are legitimate questions and considerations related to radio frequency radiation exposure to utility and communications workers that are working in and around the facilities. Typically, wireless facilities attached on a utility pole are required to comply with a series of safety and operational protocols as part of their attachment agreement.

Fifth, there is a need to ensure that such wireless devices do not cause interference to the existing or planned wireless deployments of the pole owner, the city and other attaching entities.

Sixth, the installation of mid-span wireless facilities will likely hamper or at least complicate the ability to implement one-touch make-ready processes, potentially impeding broadband deployment efforts. This is because the parties and the contractors performing one-touch make-ready need to understand and be knowledgeable about the universe of existing attachments at the time that they plan for and undertake the one-touch activities. The parties will also need to know whether such wireless facilities can be safely moved without impairing communications, which may in turn impact the qualification requirements of contractors, and will, at the very least, impact considerations of liability.

Seventh, the installation of mid-span wireless antennas require proper bonding in order to prevent potential electrocution. The engineering standards and protocols for bonding the mid-span antenna to a lightning rod buried next to the closest pole supporting the mid-span antenna must be established by the utility pole owner. As a matter of network reliability and employee and public safety, the utility cannot afford to rely on the owner of the mid-span wireless facility to dictate the bonding requirements, or worse, fail to bond the mid-span antenna to a lightning rod.

Eighth, under Texas law mid-span wireless facilities (defined as “Micro Network Nodes” under Chapter 284 of the Texas Local Government Code) are subject to a pole attachment rate calculated based on Section 54.204 (requiring the use of the FCC telecom pole attachment formula) which must be applied “on a per-foot basis,” a practice CPS Energy has adopted in its Standards, whereas under Commission precedent an overlash is not subject to the payment of any pole attachment rent. Should the owner of a Micro Network Node, which is a type of Network Node under Chapter 284, claim that it is not subject to the payment of pole attachment rent based on an

argument that a Micro Network Node is an overlash, it would open CPS Energy to claims of potential discrimination in violation of Section 284.201(a) of the Texas Local Government Code. Pursuant to this section, another network provider could take the position that CPS Energy is engaged in discriminatory treatment by not collecting pole attachment rent from network providers of Micro Network Nodes, which is nothing more than the antenna component of a small cell installation (Network Node) with the radio equipment found inside a ground pad-mounted cabinet. Further, should a network provider take the position, supported by Commission regulations that do not apply to CPS Energy, that the network provider need not provide advance notice to CPS Energy of a Micro Network Node “overlash” installation, such network provider would assert that it is not subject to CPS Energy’s pole attachment permitting process, creating yet another basis for potential claims of discrimination against CPS Energy by other network providers whose Network Nodes are subject to the permitting process.

Taken together, all of these considerations strongly indicate that the mid-span wireless installations are a different type of animal than traditional fiber overlash, requiring a far greater degree of design review and coordination between the attaching entity and the pole owner, and that neither the pole owners, the carriers or the Commission have sufficient information or experience with such installations to include them within the streamlined notice and install process that the Commission is proposing to codify for overlashed fiber. Accordingly, the Commission should make clear that its overlash rules do not apply to mid-span wireless facilities.

III. CONCLUSION

Based on the foregoing, CPS Energy urges the Commission to require that any rule it adopts with respect to overlash require prior notice be given to the pole owner before the attaching entity may overlash existing facilities. Further, in considering the adoption of an

overlapping rule, the Commission must recognize that mid-span wireless issues raise a host of distinct and novel operational considerations that cannot adequately be addressed in a streamlined attach and notice process otherwise applicable to wireline attachments, and that therefore the Commission should make clear that any such overlap rules are only applicable to the installation of wireline facilities.

Respectfully submitted,

CPS ENERGY

By: *Sean A. Stokes*
Sean A. Stokes
Baller Stokes & Lide, PC
2014 P. Street, NW
Washington, D.C. 20036
(202) 833-0166

Counsel to CPS Energy

Gabriel Garcia
Director and Senior Counsel

Carolyn Shellman
Chief Legal & Administrative Officer

P.O. Box 1771
Mail Drop 110905
San Antonio, Texas 78296-1771
Telephone: (210) 353-2033
Facsimile: (210) 353-6340
Email: ggarcia1@cpsenergy.com

January 17, 2018