

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Accelerating Wireline Broadband)	
Deployment by Removing Barriers)	WC Docket No. 17-84
To Infrastructure Investment)	

To: The Commission

**COMMENTS OF THE
UTILITY COALITION ON OVERLASHING**

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SUMMARY OF ARGUMENT

This proceeding has drawn much needed attention to existing communications attachers, whose actions and inactions have hampered the ability of new communications companies to compete. Several existing attachers have asked the Commission to impose overlashing rules that would allow little utility pole owner oversight, thus creating a competitive advantage over new attachers. In addition to being anticompetitive, of greater concern for utility pole owners and the public is that overlashing raises the same capacity, safety, reliability and generally applicable engineering concerns as do new attachments, and that any proposal to allow overlashing without sufficient oversight would compromise the safety and reliability of the electric distribution system to the detriment of utility pole owners, their electric service customers, and the public.

As an initial matter, the Commission should clarify that strand-mounted antennas do not qualify as “overlashing,” as they do not fit the Commission’s definition of overlashing and raise radiofrequency emission and interference issues that must be addressed through the application process using specific provisions in wireless attachment agreements.

The Commission’s earlier overlashing rulings required sufficient time for pole owners to analyze the capacity, safety, reliability and generally applicable engineering impact of overlashing. That cannot be done without adequate advance notice containing adequate information about the proposed overlashing. If this information is not provided in advance, then the overlashing could exceed the loading capacity of the pole, violate applicable safety rules, adversely affect system reliability, and violate generally applicable engineering practices.

Overlashing creates additional wind and ice load on the poles, guy wires and anchors, potentially in violation of National Electrical Safety Code (“NESC”) pole loading standards. Overlashing changes the sag on a line, and can easily cause the line to sag enough to violate

NESC separation standards and NESC clearance requirements over streets and highways.

Overlashing also can be, and too often is, installed on existing facilities that are already unsafely located dangerously close to energized facilities.

In the seventeen years since the *2001 Consolidated Reconsideration Order* when the FCC last analyzed overloading, distribution poles have become considerably more congested. Over these years, as the numbers of attachers and the competitive environment has increased, the burden created by overloading has become greater than anyone anticipated. Huge bundles of overloading have resulted from the continual expansion of capacity by overloading higher capacity fiber on top of obsolete, low capacity fiber, time and again. In the process, existing cables that are no longer used are not removed to help alleviate capacity constraints. The huge, very strong overlash bundles that remain do not break under stress when a tree falls on them, thus helping to bring down poles and contribute to service outages.

To alleviate capacity constraints on the poles and free up space for new attachers, overloading attachers should be required to remove existing unused facilities when they overlash.

There is no reason overloading attachers cannot provide sufficient notice of overloading, and no reason for them not to wait the same period of time for approval of overloading that they wait for approval of new attachments. It appears that the only reason they are in a rush to overlash is to prevent utility pole owners from conducting an adequate safety and engineering analysis of the overloading, thus getting a jump on potential competitors and avoiding necessary make-ready expenses.

Other states, such as Louisiana, California, Ohio and Michigan, recognize that the impact of overloading on the safety and reliability of the pole distribution system must be analyzed in advance of the overloading.

Since utilities already have in place an application process designed to address capacity, safety, reliability and generally applicable engineering concerns, it makes sense for that application process to be followed for overloading as well. This process would ensure proper pole loadings are performed, pole attachment records are up to date, the pole owner is aware of what is being installed, existing safety violations can be corrected so as not to endanger overlash contractors, attachers can be held accountable for what they intend to do, and potential operational impacts on utility operations are addressed before the overlash is installed.

In short, the additional safety and reliability that an application review process provides utility pole owners and the general public greatly outweigh any inconvenience or additional cost that might be experienced by overloading communications attachers.

TABLE OF CONTENTS

I. FOREWARD.....	1
II. INTRODUCTION.....	2
A. The Utility Coalition on Overlapping.....	2
III. COMMENTS.....	5
A. Overlapping Does Not Include Strand-Mounted Facilities	5
B. The Commission’s Overlapping Precedent Requires Sufficient Time for Pole Owners to Analyze the Capacity, Safety, Reliability and Generally Applicable Engineering Impact of Overlapping	8
C. There Is No Reason Not to Provide Sufficient Notice of Overlapping	23
D. Other States Recognize the Impact of Overlapping Must Be Analyzed in Advance.....	23
E. Overlapping Should be Subject to the Application Review Process Like Other Attachment Requests	25
F. Existing Attachers Should Remove Unused Facilities When They Overlap	26
IV. CONCLUSION	27

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Exelon Corporation, FirstEnergy, Hawaiian Electric, Puget Sound Energy and The AES Corporation (collectively, the “*Utility Coalition on Overlashing*” or “*Coalition*”), by their attorneys and pursuant to Sections 1.415 of the Rules of the Federal Communications Commission (“FCC” or “Commission”), 47 C.F.R. § 1.415, appreciate this opportunity to submit Comments in response to the Further Notice of Proposed Rulemaking released in this proceeding on November 29, 2017 (“November 29 FNPRM” or “FNPRM”).¹

I. FOREWARD

This proceeding was initiated by the Commission to seek “creative and common sense” pole attachment regulations to improve the process by which communications companies attach their facilities to electric distribution poles. Understanding that communications companies are installing facilities on electric pole distribution systems carrying potentially hazardous electric

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking (rel. November 29, 2017) (“*November 29 FNPRM*” or “*FNPRM*”).

currents, the *Coalition* appreciates the Commission's recognition that ensuring the safe and reliable operation of these electric distribution systems is paramount.

This proceeding has drawn much needed attention to existing communications attachers, whose actions and inactions have hampered the ability of new communications companies to compete. In the course of this proceeding, several of these existing attachers have asked the Commission to impose overlashing rules that would allow little utility oversight, thus creating for them a competitive advantage for their overlashing that does not exist for new entrants that must go through the permitting process associated with their new attachment requests.

Leaving aside the anticompetitive nature of their overlashing proposals, the greater concern for electric utility pole owners and the public is that overlashing existing attachments raises the same capacity, safety, reliability and generally applicable engineering concerns as do new attachments, particularly given the existing crowded conditions on many utility poles.

Making it easier for existing attachers to overlash existing facilities with little oversight would disadvantage new entrants and compromise the safety and reliability of the pole distribution system to the detriment of utility pole owners, their electric service customers, and the public.

II. INTRODUCTION

A. The *Utility Coalition on Overlashing*

The *Utility Coalition on Overlashing* is composed of a diverse group of electric utility companies in terms of size, attacher relationships and operational characteristics. The following is a brief description of the *Coalition* members.

Exelon Corporation - has six electric distribution operating companies, provides electric and natural gas service to approximately 10 million customers and owns, in whole or in part, approximately 3,075,000 electric distribution poles.

- Atlantic City Electric serves approximately 547,000 customers in New Jersey and owns, in whole or in part, approximately 392,000 electric distribution poles.
- Baltimore Gas and Electric provides electric service to more than 1.2 million customers and natural gas to over 650,000 customers in Maryland. BGE owns, in whole or in part, approximately 360,000 electric distribution poles.
- ComEd provides electric service to more than 3.8 million customers in Illinois and owns, in whole or in part, approximately 1.4 million electric distribution poles.
- Delmarva Power provides electric service to over 500,000 customers in Delaware and Maryland and natural gas service to approximately 129,000 customers in northern Delaware. Delmarva Power owns, in whole or in part, approximately 297,000 electric distribution poles.
- PECO provides electric service to more than 1.6 million customers and natural gas service to over 500,000 customers in Pennsylvania. PECO owns, in whole or in part, approximately 415,000 electric distribution poles.
- Pepco provides electric service to more than 842,000 customers in the District of Columbia and Maryland and owns, in whole or in part, approximately 211,000 electric distribution poles.

FirstEnergy - has ten electric distribution operating companies and provides electric service to six million customers. FirstEnergy owns, in whole or in part, approximately 4,100,000 electric distribution poles.

- Jersey Central Power & Light serves approximately 1,117,000 customers in New Jersey and owns, in whole or in part, approximately 317,000 electric distribution poles.
- Metropolitan Edison serves approximately 565,000 customers in Pennsylvania and owns, in whole or in part, approximately 345,000 electric distribution poles.
- Penelec serves approximately 588,000 customers in Pennsylvania and owns, in whole or in part, approximately 527,000 electric distribution poles.

- Penn Power serves approximately 165,000 customers in Pennsylvania and owns, in whole or in part, approximately 111,000 electric distribution poles.
- West Penn Power serves approximately 724,000 customers in Pennsylvania and owns, in whole or in part, approximately 634,000 electric distribution poles.
- Monongahela Power serves approximately 390,000 customers in West Virginia and owns, in whole or in part, approximately 653,000 electric distribution poles.
- Potomac Edison serves approximately 404,000 customers in West Virginia and Maryland and owns, in whole or in part, approximately 336,000 electric distribution poles.
- Toledo Edison serves approximately 310,000 customers in Ohio and owns, in whole or in part, approximately 220,000 electric distribution poles.
- Ohio Edison serves approximately 1,045,000 customers in Ohio and owns, in whole or in part, approximately 572,000 electric distribution poles.
- The Cleveland Electric Illuminating Company serves approximately 750,000 customers in Ohio and owns, in whole or in part, approximately 393,000 electric distribution poles.

Hawaiian Electric - has three electric distribution operating companies and provides electric service to 460,000 customers. Hawaiian Electric owns, in whole or in part, approximately 152,500 electric distribution poles.

- Hawaiian Electric Company provides electricity to approximately 304,000 customers on the island of O’ahu. Hawaiian Electric owns, in whole or in part, approximately 68,000 electric distribution poles.
- Maui Electric Company, Ltd., provides electricity to approximately 71,000 customers on the islands of Maui, Molokai and Lanai. Maui Electric Company owns, in whole or in part, approximately 26,500 electric distribution poles.
- Hawai’i Electric Light provides electricity to approximately 85,000 customers on the island of Hawai’i. Hawaiian Electric Light owns, in whole or in part, approximately 58,000 electric distribution poles.

Puget Sound Energy - provides electric service to approximately 1.1 million customers and natural gas service to approximately 790,000 customers in ten counties in

Washington. Puget Sound Energy owns, in whole or in part, approximately 325,000 electric distribution poles.

The AES Corporation - has two electric distribution operating companies, and provides electric service to approximately one million customers. AES owns, in whole or in part, approximately 465,000 electric distribution poles.

- Dayton Power & Light provides electric service to over 520,000 customers in 24 counties throughout the Miami Valley in Ohio. DPL owns, in whole or in part, approximately 329,000 electric distribution poles.
- Indianapolis Power & Light provides electric service to more than 480,000 customers in Indianapolis and other central Indiana communities. IPL owns, in whole or in part, approximately 136,000 electric distribution poles.

Altogether, the *Utility Coalition on Overlapping* serves approximately 18.5 million electric customers and owns, in whole or in part, approximately 8.15 million electric distribution poles.

III. COMMENTS

The FNPRM requests comments on several issues pertaining to overlapping, including the following: “We seek comment on codifying our longstanding precedent regarding overlapping. Specifically, we seek comment on codifying a rule 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.”²

A. Overlapping Does Not Include Strand-Mounted Facilities

The Commission’s precedent uniformly refers to overlapping as affixing new cable or fiber to existing strand. For example, in the first sentence regarding overlapping in the *1998 Telecom Order* that is cited by the Commission, overlapping is described as the process

² FNPRM, at para. 162.

“whereby a service provider physically ties its wiring to other wiring already secured to the pole.”³ The *1998 Telecom Order* cites the 1995 “Overlapping Public Notice” in which the Commission addressed cable operators “overlapping their own pole attachments with fiber optic cable,” and “adding fiber to their systems by overlapping.”⁴ In affirming the Commission’s overlapping rules, the D.C. Circuit describes overlapping as, “a technique whereby a telecommunications provider attaches a wire to its own (or, for third-party overlapping, to other attachers’) existing wires.”⁵

These rulings make clear that the Commission’s overlapping precedent pertains to “fiber optic cables” or other “wiring” that is tied to existing strand or other wiring on a pole, and the addition fiber and other wiring.

Some communications companies have begun to attach wireless antennas to existing wiring on a pole, by “strand-mounting” such antennas. These attachers have likened their strand-mounted wireless antenna attachments to “overlapping” and suggested that their strand-mounted wireless attachments should be treated under Commission rules as if they qualify as overlapping. Photographs of strand-mounted wireless antennas follow:

³ *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, 13 FCC Rcd 6777, at ¶59 (1998) (history omitted) (“*1998 Telecom Order*”).

⁴ *Id.* at ¶60.

⁵ *Southern Co. v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002).



This is a strand-mounted small cell wireless antenna



This is a strand-mounted WiFi antenna

Wireless antennas, of course, differ from fiber optic cable because of their radiofrequency emissions, which create radiofrequency exposure issues and radiofrequency interference issues. Such radiofrequency issues are currently addressed by radiofrequency-specific provisions in wireless pole attachment agreements. Strand-mounted wireless facilities also raise significant issues pertaining to pole loading and line sagging, and of course differ in size, shape and appearance from fiber optic cables.

These antenna installations must be subject to the application process not only because they increase load and affect clearances between attachments at the pole and in the span, but also because their radiofrequency emissions can interfere with existing utility wireless operations and could expose lineman and other workers (and the general public) to levels of radio frequency exposure which exceed federal standards. An application process conducted pursuant to now-common radiofrequency-specific provisions in wireless pole attachment agreements is needed to approve these installations.

Because strand-mounted wireless attachments do not fit the definition of overlashing contained in the *1998 Telecom Order*, the Commission should clarify that strand-mounted wireless antenna installations are not “overlashing” and therefore not subject to the Commission’s overlashing rules.

B. The Commission’s Overlashing Precedent Requires Sufficient Time for Pole Owners to Analyze the Capacity, Safety, Reliability and Generally Applicable Engineering Impact of Overlashing

Although the FNPRM seeks comments on “codifying our longstanding precedent regarding overlashing,”⁶ there seems to be some confusion about what that precedent is.

⁶ FNPRM at ¶162.

The *2001 Consolidated Reconsideration Order* holds that utility pole owners can require notice of overloading: “We agree that the utility pole owner has a right to know the character of, and the parties responsible for, attachments on its poles, including third party overlashers. ... We clarify that it would be reasonable for a pole attachment agreement to require notice of third party overloading.”⁷ The *1998 Telecom Order* indicates that pole owners may reject overloading for the same safety, reliability and generally applicable engineering purposes that apply to new attachments: “We believe utility pole owners' concerns [with overloading] are addressed by Section 224's assurance that ... pole attachments may be denied for reasons of safety, reliability, and generally applicable engineering purposes.”⁸

In affirming the FCC's overloading rules, the D.C. Circuit explained:

However, the FCC rules do not preclude owners from negotiating with pole users to require notice before overloading. [citing *2001 Consolidated Reconsideration Order* at ¶82] (“We clarify that it would be reasonable for a pole attachment agreement to require notice of third party overloading.”). Whether, and to what extent, such a contract provision might be enforceable is a question not presently before us. Therefore, we have no occasion to decide that issue.⁹

The Commission also recognizes that overloading raises capacity issues as well as safety, reliability and engineering issues, by requiring overloading attachers to pay for any make-ready costs associated with overloaded poles or excessive mid-span sagging: “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

⁷ *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, at ¶82 (2001) (“*2001 Consolidated Reconsideration Order*”).

⁸ *1998 Telecom Order* at ¶64.

⁹ *Southern Co. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002).

standards, then the attacher must pay the make-ready charges to increase the height or strength of the pole.”¹⁰

Although the FCC has never specifically addressed what kind of notice provisions a utility pole owner can require for overlashing, adequate advance notice containing adequate information about the overlashing is necessary to enable utilities to analyze the capacity, safety, reliability and generally applicable engineering concerns of the utility pole owner. If this information is not provided in advance, then the overlashing could exceed the loading capacity of the pole, violate applicable safety rules, adversely affect system reliability, and violate generally applicable engineering practices.

Overlashing creates additional wind and ice load on the poles, guy wires and anchors, and must be evaluated by pole owners prior to attachment, just as pole owners do when they expand the capacity of their own facilities. The National Electrical Safety Code (“NESC”) contains standards to evaluate the pole loading of attached facilities, requiring these facilities to be evaluated using worst case conditions, including expected wind and ice loads. Of course, the larger the bundle of overlashed cable, the greater the wind and ice load that is associated with that cable. From the chart below, you can see how existing poles that currently meet NESC loading can be overloaded by overlashing.

¹⁰ 2001 Consolidated Reconsideration Order, 16 FCC Rcd 12103, at ¶77 (2001).

212060	Existing				Proposed			
Component	Heavy Load Case		Extreme Wind Load Case		Heavy Load Case		Extreme Wind Load Case	
	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction
Pole	98.73	277 °	35.69	273 °	101.02	276 °	35.7	273 °

299236	Existing				Proposed			
Component	Heavy Load Case		Extreme Wind Load Case		Heavy Load Case		Extreme Wind Load Case	
	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction
Pole	99.42	329 °	30.92	359 °	102.3	329 °	30.93	359 °

318720	Existing				Proposed			
Component	Heavy Load Case		Extreme Wind Load Case		Heavy Load Case		Extreme Wind Load Case	
	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction
Pole	97.42	272 °	17.99	181 °	103.21	272 °	17.99	181 °

318721	Existing				Proposed			
Component	Heavy Load Case		Extreme Wind Load Case		Heavy Load Case		Extreme Wind Load Case	
	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction	SF or Max%	Wind Direction
Pole	99.79	270 °	18.18	252 °	103.57	270 °	18.18	252 °

Overlashing not only adds load to the line, it changes the sag on the line. Overlashing cables can easily cause the line to sag enough to violate NESC separation standards and NESC clearance requirements over streets and highways. Lines that sag too low over roads can easily be, and too often are, snagged by trucks as they pass underneath. The risk of this occurring increases dramatically when the wind or ice load associated with these overlashed bundles weighs down the cable during inclement weather.

Another enormous concern is that overlashing can be, and too often is, installed on existing facilities that are already located dangerously close to energized facilities. The NESC requires that a certain amount of space (typically 40") separate energized conductors on the pole from communications attachments. The NESC calls this 40" separation the "Communications Worker Safety Zone". Obviously, any communications contractor that overlashes existing strand located too close to energized facilities is in danger of becoming electrocuted. The only way to effectively prevent such endangerment is for the utility pole owner to be notified sufficiently in advance to allow a field check to determine whether such conditions exist, and to allow the utility pole owner to have those conditions corrected prior to installation.

Examples of overlashing that was installed too close to energized conductors are depicted in the pictures on the following pages:





These communications attachments are too close to power at midspan, where a 30" separation is required.

In the seventeen years since the *2001 Consolidated Reconsideration Order* when the FCC last analyzed overloading, the pole attachment environment has changed considerably. The number of communications company and municipality attachers to electric utility poles has increased, and the volume of their attachment requests has increased. As both the speed of upgrade projects and pressure to control costs increase, alternatives involving cutting corners and minimizing make-ready work become increasingly attractive.

Over these years, as the numbers of attachers and the competitive environment has increased, the burden created by overloading has become greater than anyone anticipated. Communications attachers have continued to expand capacity by bundling one overloading on top of another. Early on, 48-fiber strand fiber optic cables were sufficient to overload earlier, outdated coaxial cable or copper wires. Then 96-fiber cables were required, then 144-fiber cables, and now 288-fiber cables are being overloaded. All the while, existing coaxial and fiber optic cables, which may no longer be needed or used, are kept in place in very thick overloaded bundles. Rather than remove these unused cables, overloading communications attachers simply retire them in place, creating unnecessary additional load on the poles. Not only that, the riser conduit required to house these cables when they relocate from aerial to underground have in many cases greatly reduced the available climbing space on the pole.

It is also apparent that overloading is often not regularly maintained, allowing the overloading to break and unravel. This causes additional weight to poles through lags in the cable span.

Overloading also contributes to service outages. Because of their increased size and strength, they are less able to break under stress when a tree falls on them and more able to bring the pole down when they do not break.

Unfortunately, much of this overloading has occurred without notification and without the ability of utility pole owners to properly evaluate its growing impact. In the absence of an effective review process by the pole owner, necessary make-ready work cannot be identified, the engineering impact of the additional overloading cannot be determined, and this poor lack of engineering work continues unabated, manifesting itself in poor construction quality and compromised safety.

The impact of these gross bundles of cables that have been created at an alarming rate are depicted in the following photographs.



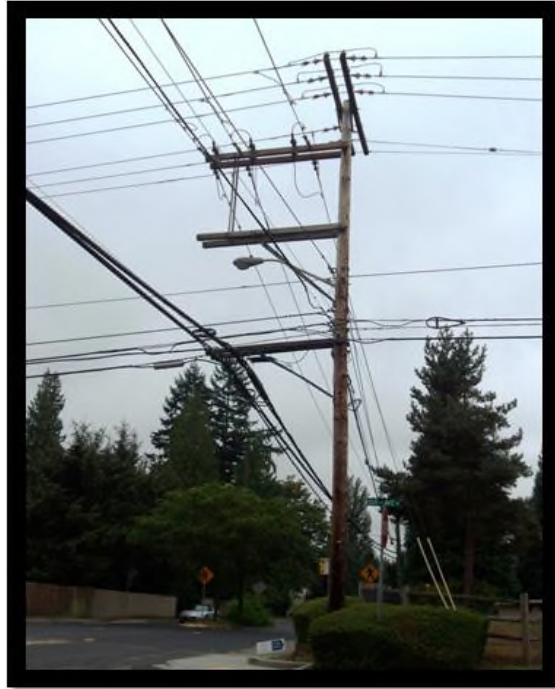
Notice the number and size of overlash bundles



Note the amount of overlashing, size of overlash bundles, and extent of riser cable conduit.



Notice the number and size of the overlash bundles



Note the extent of overloading, size of overlash bundles, and installation of overloading on a stand-off bracket.



Note the size and number of overlash bundles, and size and number of riser conduits, and complexity of construction



Note the size and number of overlash bundles, and complexity of construction



Note the unraveled overlash and makeshift reconnection



Note the overlashing has unraveled and separated from the messenger strand



Note the extent of the overlashing and sloppy installation



Note the size of the overlashed bundles, the size of the riser cable conduit and the curvature of the pole due to the overlashing



Note the size and number overlashed bundles, the dangling overlashed cables, the riser cable conduits and the tilting of the pole caused by the weight of overlashing



Note the size and number of overlash bundles and the telecom load coils (circled) that also add load to the pole

Pole owners need time to assess adequately the impacts of any overlashing on the safety and reliability of the utility electric system. Each and every pole affected by overlashing must be evaluated by the pole owner to inspect for potentially hazardous preexisting safety violations and to ensure that the supporting poles are capable of supporting the additional load. Pole owner inspections and calculations (such as pole loading calculations) determine if the utility electric system will remain safe and reliable. Adequate advance notice of overlashing with adequate information is the only way that utility personnel can determine if the electric system will remain safe and reliable following the overlashing. And when determining what kind of notice is adequate, it is important to recognize that requests for overlashing are often for heavily-loaded poles located in dense, urban and rapidly growing neighborhoods. Performing an engineering assessment of these facilities should not be rushed.

The following photographs depict common examples of heavily loaded poles with attachments and overlashing on which it would be difficult to assess the additional loading associated with overlashing in a short period of time:



C. There Is No Reason Not to Provide Sufficient Notice of Overlashing

Communications companies understand well in advance the areas in which they need to expand capacity through the use of overlashing, just like they know well in advance which areas they want to serve for the first time through the use of new attachment installations. They have no reason to withhold this information about overlashing from utility pole owners any more than they have reason to withhold information about new attachment installations. And there is no reason for them not to wait the same period of time for the approval of overlashing that they wait for the approval of new attachments. It appears instead that the only reason they are in a rush to overlash is to prevent utility pole owners from conducting an adequate safety and engineering analysis of the overlashing, thus getting a jump on potential competitors and lowering the risk of having to pay make-ready expenses. Attacher requests to conduct overlashing without adequate oversight and approval therefore lack a legitimate basis.

D. Other States Recognize the Impact of Overlashing Must Be Analyzed in Advance

The Louisiana Public Service Commission requires advance approval of overlashing.¹¹ Consistent with the importance of this practice, the Louisiana rules devote an entire section to overlashing, with provisions covering application, pre-construction inspections, denials of overlashing requests, cost reimbursement, and rental charges. Subsection (a) explains the application process as follows:

- a. Any Attacher wishing to overlash facilities must provide a Pole Owner with reasonable notice of its intent to overlash facilities by filing a written request with the Pole Owner identifying what existing and proposed facilities are to be attached and/or overlash, all entities served by the overlash, all design

¹¹ See Louisiana Public Service Commission, Docket No. R-26968 (General Order approved August 6, 2014), slip op. at 13, pole attachment rule 7 (Overlashing).

information to perform pole loading analysis, where such facilities will be attached and/or overlashed, and when such facilities will be attached and/or overlashed. In the event of an emergency where a line must be replaced or repaired to restore service to customers and advanced notice is not feasible, the Attacher shall provide notice of overlashing as soon as reasonably practical.¹²

The California Public Utilities Commission (“CPUC”) similarly ruled that overlashing must follow the same application and permitting requirements that new attachments must follow.¹³ So concerned is the CPUC with overlashing that its \$500 penalty for unauthorized attachments also applies to unauthorized overlashing.¹⁴

The Public Utilities Commission of Ohio¹⁵ and Michigan Public Service Commission¹⁶ similarly recognize that it is appropriate to perform an engineering analysis, including a pole loading analysis, before a communications fiber is overlashed onto an existing attachment.

¹² *Id.* at pole attachment rule 7(a).

¹³ In CPUC’s 1998 pole attachment rulemaking proceeding, Southern California Edison argued that new installations and modifications (including overlashing) must have prior utility approval. California Public Utilities Commission, Decision 98-10-058 (Oct. 22, 1998), 82 CPUC 2n 510, 1998 WL 1109255 (Cal.P.U.C.), slip copy at *37 (“CPUC Decision 98-10-058”). The CPUC agreed, ruling that “Telecommunications carriers must obtain express written authorization from the incumbent utility and must comply with applicable notification and safety rules before attempting to make a new attachment or modifying existing attachments.” CPUC Decision 98-10-058, slip op. at *39. The CPUC stated:

We generally agree that the incumbent utility, particularly electric utilities, should be permitted to impose restrictions and conditions which are necessary to ensure the safety and engineering reliability of its facilities. In the interest of public health and safety, the utility must be able to exercise necessary control over access to its facilities to avoid creating conditions which could risk accident or injury to workers or the public. The utility must also be permitted to impose necessary restrictions to protect the engineering reliability and integrity of its facilities.

CPUC Decision 98-10-058, slip op. at *39.

¹⁴ The \$500 penalty applies to “any carrier ... which has performed an unauthorized modification” or other unauthorized attachment. CPUC Decision 98-10-058, slip op. at *39.

¹⁵ Ohio Public Utilities Commission, *In the Matter of the Application of Windstream Ohio, Inc. to Add Language & Rates for Access to Poles, Conduit, & Rights-of-Way by Pub. Utilities to the Access Tariff. in the Matter of the Application of Windstream W. Reserve, Inc. to Add Language & Rates for Access to Poles, Conduit, & Rights-of-Way by Pub. Utilities to the Access Tariff.*, 15-950-TP-ATA, 2016 WL 2991068, at *3 ¶¶ 19-20 (May 18, 2016 Decision):

Further, the Commission recognizes that overlashing can affect the loading of a pole and that a 15-day notice requirement to allow for overlashing may not provide adequate time to evaluate whether a pole can accommodate the additional load. As, such, Windstream does not have to amend its tariffs to further address overlashing. Therefore, any terms and conditions associated

E. Overlashing Should be Subject to the Application Review Process Like Other Attachment Requests

In order to safely manage and protect the precious limited space on poles for the benefit of all, the *Utility Coalition on Overlashing* proposes that overlashing be subject to the same application review process as new pole attachment requests. As explained above, overlashing raises the same ice loading, wind loading and mid-span sag issues that other attachment requests raise. Pre-existing safety violations may exist on poles subject to overlashing to the same extent as with new attachment requests. Unauthorized overlashing has already severely burdened many poles. In many cases, existing cable lines subject to new overlashing requests already are sagging below NESC standards putting the general public at risk. In all cases, pole owners need to identify and correct safety violations that may already exist on the pole, and an analysis must be made to avoid (or correct) loading and mid-span sag issues. Without notification, oversight, construction drawings and pole loading calculations, illegal and non-notified attachments cannot

with overlashing not addressed in its tariffs should be established through negotiated agreements subject to the review of the Commission pursuant to Ohio Adm.Code 4901:1-3-06.

¹⁶ Michigan Public Service Commission, *In the Matter of the Complaint and Petition for Hearing of the Michigan Cable Telecommunications Association and Mediaone of Michigan, Inc., against Consumers Energy Company*, U-13148, 2003 WL 22511993 at Exhibit A, Settlement Agreement at Section I(C) and I(E) (Nov. 4, 2003 Decision):

- Section I(C): “Overlashing existing pole attachments requires Consumers Energy Company evaluation of conductor clearances, wind and weight load factors to assess the need for make-ready changes to the pole structure, including pole change-out, to meet safety code requirements prior to overlashing. An attaching party must provide sufficient prior notice to Consumers Energy of the character of, and the parties responsible for overlashing of existing attachments. An attaching party is allowed to overlash an existing attachment on a Consumers pole without obtaining a new permit or paying a permit fee, provided that (1) the existing attachment is in compliance with the NESC and will remain so, and (2) the existing attachment was either previously permitted or is shown on a map prepared in connection with one of Consumers Energy Company's pole attachment audits. Make-ready work evaluation and costs will still apply, as appropriate.”
- Section I(E): “If any proposed maintenance, repair, replacement, or re-lashing of an existing attachment on a Consumers pole will result in a final attachment where the loading characteristics will not be substantially the same as or better than the loading characteristics of the pre-existing attachment, then the attaching party will provide advance notice to Consumers to enable Consumers to promptly evaluate whether any make-ready work will be necessary in order for the proposed new work to meet safety code requirements. If any make-ready work is required in order for the proposed new work to meet safety code requirements, then that make-ready work must be completed prior to commencement of the new work. All charges associated with safety evaluations and make-ready work must be reasonable, cost-based and allocated fairly among all responsible parties.”

be accounted for, nor new overloading assessed. Sufficient time must be available to inspect the facilities and to complete this work.

Apart from gaining a competitive advantage over new attachers, there is no reason for existing attachers cannot provide adequate notice of overloading with enough information sufficient to allow utility pole owners to perform the field inspection and engineering that overloading requires.

Since utilities already have in place application processes designed to address these concerns, it makes sense for those application processes to be followed for overloading as well. This process would ensure proper pole loadings are performed, pole attachment records are up to date, the pole owner is aware of what is being installed, existing safety violations can be corrected so as not to endanger overload contractors, attachers can be held accountable for what they intend to do, and potential operational impacts on utility operations can be addressed before the overload is installed.

In short, additional safety and reliability that an application review process provides utility pole owners and the general public greatly outweigh any inconvenience or additional cost that may be experienced by overloading communications attachers.

F. Existing Attachers Should Remove Unused Facilities When They Overload

Given the increasing congestion on existing distribution pole plant and the additional time and expense incurred by new attachers seeking access to these congested facilities, existing attachers should remove facilities that they no longer use from the poles. Overloading is one example of where unused equipment is unnecessarily left on the pole. The bundles of unused cables resulting from overloading has dramatically increased the wind and ice load on poles, often filling up the load capacity on a pole line so that there is no longer any capacity available

when a new attacher comes along. Rather than simply retire their unused cables by leaving them in place, overlashing attachers should be required to remove this unused cable when they overlash.

IV. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the *Utility Coalition on Overlashing* urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

UTILITY COALITION ON OVERLASHING

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