

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

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

**COMMENTS OF THE FIBER BROADBAND ASSOCIATION  
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**

**I. INTRODUCTION AND SUMMARY**

The Fiber Broadband Association (“FBA” or “Association”)<sup>1</sup> hereby submits comments in support of the proposal in the Further Notice of Proposed Rulemaking (“*FNPRM*”)<sup>2</sup> to codify “longstanding precedent” of the Federal Communications Commission (“Commission”) supporting the overlashing of fiber to utility poles, which facilitates the expansion of broadband networks.<sup>3</sup> Based on the extensive experience of FBA members, the Commission’s precedent to facilitate overlashing is sound. Overlashing unquestionably lowers the cost of deploying fiber significantly, thereby accelerating broadband network deployments. As discussed further herein, the average cost of overlashing fiber is approximately 30 percent of a new aerial attachment in an

---

<sup>1</sup> The FBA’s mission is to accelerate deployment of all-fiber access networks by demonstrating how fiber-enabled applications and solutions create value for service providers and their customers, promote economic development, and enhance quality of life. The Association’s members represent all areas of the broadband access industry, including telecommunications, computing, networking, system integration, engineering, and content-provider companies, as well as traditional service providers, utilities, and municipalities. As of today, the FBA has more than 250 entities as members. A complete list of FBA members can be found on the organization’s website: <https://www.fiberbroadband.org/>

<sup>2</sup> *Accelerating Wireline Broadband by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17-154 (2017) (“*FNPRM*”).

<sup>3</sup> *Id.* at paras. 160-162.

urban area and approximately 25 percent in a rural area.<sup>4</sup> Moreover, providers and their contractors have incentives to ensure overlashing is performed consistent with utility safety and reliability requirements and, as a result, have an excellent compliance record. Yet, despite the Commission's clear and well-founded precedent, utilities continue to hinder service providers seeking to overlash fiber by requiring applications and imposing other conditions. In light of these barriers and given the substantial public interest benefits derived from overlashing fiber, FBA urges the Commission to adopt its proposal to codify existing law permitting overlashing by an attacher or third party without a pole attachment application or other utility conditions.<sup>5</sup> In addition, to further ensure that future overlashing projects are not delayed by utility actions, the Commission should establish an "attach-and-notify" overlashing process.

## **II. OVERLASHING SIGNIFICANTLY LOWERS THE COST OF AND EXPEDITES NETWORK DEPLOYMENTS**

While fiber construction costs vary depending on many factors, including topography, labor costs, and scale,<sup>6</sup> there is no doubt that these costs are significantly reduced when an attacher can overlash instead of undertaking a new attachment. The Commission has long recognized the benefits of overlashing, which maximizes the usable space on utility poles.<sup>7</sup>

---

<sup>4</sup> "A Model for Understanding the Cost to Connect Schools and Libraries with Fiber Optics," CTC Technology & Energy, at 18-26 (Oct. 2014) ("CTC Report").

<sup>5</sup> *FNPRM* at para. 162. While FBA supports the Commission's proposal to adopt clear overlashing rules, it notes that the Commission could issue a declaratory ruling resolving this issue on its own motion due to the longstanding precedent demonstrating that overlashing does not require prior utility approval. *See* 47 C.F.R. § 1.2(a); Ex Parte Filing of NCTA – The Internet & Television Association, WC Docket Nos. 17-84, 14-130, at 2 (Nov. 8, 2017) (stating the Commission should clarify existing overlashing procedures through a "declaratory statement") ("NCTA Nov. 8, 2017 Ex Parte").

<sup>6</sup> CTC Report at 14.

<sup>7</sup> *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,

CTC, a consultant for many fiber builds and a FBA member, explains that overlashing “is significantly cheaper than placement of new cables, because it does not require placement of new strand, reduces the amount of design, and does not require a new attachment to poles or space on the poles.”<sup>8</sup> As a result, CTC has estimated that, while the average cost for new aerial construction is approximately \$51,000 per mile,<sup>9</sup> the cost for overlashing is less than \$15,000 per mile in a metro area and, due to lower labor costs, only about \$12,000 per mile in a rural area.<sup>10</sup>

CTC is far from alone in attesting to the economic benefits of overlashing. Another FBA member, which deploys fiber in urban areas, reports that overlashing reduces deployment costs by up to 25 percent compared to placing new strand and that overlashing can cut aerial attachment time by almost half by eliminating the need to place both new strand and fiber on a pole. In addition, NCTA noted in a filing in this docket that overlashing represents the “foundation for billions of dollars in facilities deployment” and significantly reduces deployment costs and timelines.<sup>11</sup> This evidence, of course, supports the Commission’s two decade-old

---

Report and Order, 13 FCC Rcd 6777, 6806, para. 60 (1998) (“*1998 Pole Attachment Order*”). See *FNPRM* at para. 160

<sup>8</sup> CTC Report at 18-19.

<sup>9</sup> *Id.* at 18. CTC estimates that 60 percent of the cost is for make-ready. *Id.* See “Facilitating Broadband Construction,” CTC Technology & Energy, at 2, available at <http://www.bbpmag.com/MuniPortal/EditorsChoice/0114editorschoice.php> (stating that overlashing can significantly reduce make-ready); Ex Parte filing of Tekify Fiber, WC Docket 17-84, at 2 (June 9, 2017) (arguing that overlashing significantly minimizes or eliminates the amount of make-ready work normally required to make room for new facilities).

<sup>10</sup> CTC Report at 19-20. CTC estimates the costs for any underground construction are far greater than for any aerial build. For example, the average cost of an aerial overlashing in an urban area is approximately 17 percent of the cost of an average underground build and less than 7 percent of the cost of an average underground build in a dense metro area. *Id.* at 18-22.

<sup>11</sup> NCTA Nov. 8, 2017 Ex Parte at 2; Ex Parte Filing of NCTA – The Internet & Television Association, WC Docket No. 17-84, at 2 (Oct. 20, 2017). See Comments of the Fiber

conclusion that overlashing “expedites installing infrastructure essential to providing cable and telecommunications services to American communities.”<sup>12</sup> Accordingly, overlashing unquestionably spurs and accelerates broadband investment and deployments.

### **III. PROVIDERS AND THEIR CONTRACTORS OVERLASH CONSISTENT WITH UTILITY SAFETY AND RELIABILITY REQUIREMENTS**

The Commission has consistently refused to agree with utilities that overlashing undermines pole safety and reliability. For instance, the Commission found in 1998 that “[o]verlashing has been practice for many years” without incident and that overlashers can address potential safety concerns by compliance with “generally accepted engineering practices.”<sup>13</sup> Three years later, the Commission again found that overlashing “did not disadvantage the utility’s ability to ensure the integrity of its poles.”<sup>14</sup> Yet, some 20 years later, utilities continue to allege in this proceeding that overlashing will harm pole safety and should not be permitted without their prior review and approval.<sup>15</sup> Once again, the Commission should dismiss the utilities’ arguments.

---

Broadband Association on the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No 17-84, at 8 (June 15, 2017) (discussing inefficiencies associated with duplicative make-ready work).

<sup>12</sup> *1998 Pole Attachment Order*, 13 FCC Rcd at 6807, para. 62. *See Amendment of Commission’s Rules and Policies Governing Pole Attachments, Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket Nos. 97-98, 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141, para. 75 (2001) (stating that overlashing “reduces construction disruption and associated expenses which would otherwise be incurred by . . . installing new poles and separate attachments”) (“*2001 Pole Attachment Order*”). FBA also notes that no utility has submitted information in this proceeding that contravenes the evidence presented here that overlashing significantly lowers deployment costs and expedites builds.

<sup>13</sup> *1998 Pole Attachment Order*, 13 FCC Rcd at 6807-08, para. 64.

<sup>14</sup> *2001 Pole Attachment Order*, 16 FCC Rcd at 12141, para. 74.

<sup>15</sup> *See, e.g.*, Comments of the Coalition of Concerned Utilities, WC Docket No. 17-84, at 15-16 (June 15, 2017); Reply Comments of the Coalition of Concerned Utilities, WC Docket No.

First, overlashers have the incentive to preserve the safety and reliability of poles. As NCTA explained, because overlashers (or parties permitting third-party overlashing) already have attachments on poles, “they have the same interest in maintaining safe and reliable outside plant, networks and support structures as the utilities.”<sup>16</sup> Second, overlashers have demonstrated they, in fact, follow industry standard engineering practices. As the Power and Communication Contractors Association (“PCCA”), which represents 85 percent of the construction companies performing pole attachment work, including FBA members, stated in recent meetings with Commission staff, “[s]afety is paramount in contractor operations, and PCCA contractors perform quality work for all carriers large and small, urban and rural.”<sup>17</sup> These contractors will place new strand instead of overlashing if field engineering identifies a potential safety issue. Third, the impact of overlashing fiber to poles normally is negligible.<sup>18</sup> If the strand and pole loadings are calculated for the maximum weight that the strand can support when initially placed, then the additional weight of overlashed fiber generally has minimal effect due to the

---

17-84, at 29 (July 17, 2017); Reply Comments of the Utilities Technology Council, WC Docket No. 17-84, at 14-16 (July 17, 2017); Ex Parte Notice of Union Electric Company d/b/a Ameren Missouri and Oncor Electric Delivery Company LLC, WC Docket No. 17-84, at 2 (Nov. 10, 2017).

<sup>16</sup> Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84, WT Docket No. 17-79, at 6 (June 15, 2017) (“NCTA NPRM Comments”). *See* Comments of the American Cable Association on the Notices of Proposed Rulemaking, WC Docket No. 17-84, WT Docket No. 17-79, at 9 (June 15, 2017) (stating overlashers and utilities “have a shared interest in the safety and reliability of outside plant”) (“ACA NPRM Comments”).

<sup>17</sup> Ex Parte Filing from Eben M. Wyman, Principal, E. Wyman Associates, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (Nov. 30, 2017).

<sup>18</sup> ACA NPRM Comments at 30 (stating that overlashing generally does not overload poles). Ex Parte Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, at 3 (Sep. 14, 2017) (noting overlashing presents minimal opportunities to harm pole safety and reliability) (“ACA Sep. 14, 2017 Ex Parte”).

margin remaining on most strand. Finally, as a rule, overlashers indemnify utilities for any work that is not consistent with their agreement or that results in damages.<sup>19</sup> The Commission thus should not give weight to concerns raised by utilities that overlashing harms the safety and reliability of their poles.<sup>20</sup>

#### **IV. THE COMMISSION SHOULD CODIFY EXISTING LAW TO ELIMINATE UTILITY BARRIERS ON OVERLASHING AND ESTABLISH AN “ATTACH-AND-NOTIFY” PROCESS**

For over 20 years, the Commission has taken action to prevent utilities from imposing barriers on overlashing.<sup>21</sup> The Commission expressed particular concern with utilities delaying access to poles through burdensome application requirements or forcing overlashers to meet unreasonable conditions.<sup>22</sup> The Commission noted reports that many service providers routinely overlashed to existing facilities without specific prior notification to utility pole owners, which helped facilitate rapid deployments.<sup>23</sup> Following this example, the Commission determined in 2001 “that neither the host attaching entity nor the third party overlasher must obtain additional

---

<sup>19</sup> Reply Comments of the American Cable Association on the Notices of Proposed Rulemaking, WC Docket No. 17-84, WT Docket 17-19, at 9 (July 17, 2017) (“ACA NPRM Reply Comments”); NCTA NPRM Comments at 6.

<sup>20</sup> *FNPRM* at para. 162 n. 509 (stating that none of the utility commenters “offers a reason for us to disturb our long-held precedent” supporting overlashing).

<sup>21</sup> *Common Carrier Bureau Cautions Owners of Utility Poles*, Public Notice, DA 95-35, at 2 (CCB 1995) (finding utility pole owners may be unreasonably preventing overlashing by delaying or denying approvals for overlashing requests) (“*1995 Pole Attachment Public Notice*”); *1998 Pole Attachment Order*, 13 FCC Rcd at 6806, para. 60 (stating that utility pole owners placed “improper constraints” on overlashing). See NCTA NPRM Comments at 5 (noting the Commission has “wisely intervened against utility companies in the past to ensure that cable operators could overlash to existing strand without a permit or other interference from the pole owner”).

<sup>22</sup> *1995 Pole Attachment Public Notice* at 1-2; *1998 Pole Attachment Order*, 13 FCC Rcd at 6806, para. 60.

<sup>23</sup> *1998 Pole Attachment Order*, 13 FCC Rcd at 6808, para. 66

approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.”<sup>24</sup> The D.C. Circuit affirmed the Commission’s decision regarding overlashing notice, stating that “[o]verlashers are not required to give prior notice to utilities before overlashing.”<sup>25</sup>

Yet, even though the law is clear, FBA’s service provider members often must deal with utilities shirking their regulatory responsibilities.<sup>26</sup> For example, some utilities require pole attachment applications for all overlashing projects, regardless of size or complexity.<sup>27</sup> Other utilities allow overlashing without an application, but only up to a limited number of poles, preventing large deployments and efficiencies of scale.<sup>28</sup> FBA members and other service providers also reported that some utilities require detailed pole load studies for every pole affected by an overlashing.<sup>29</sup> Taken as a whole, overlashing barriers are “tantamount to a

---

<sup>24</sup> *2001 Pole Attachment Order*, 16 FCC Rcd at 12141, para. 75. *See The Cable Television Ass’n of Ga. v. Ga. Power Co.*, File No. PA 01-002, Order, 18 FCC Rcd 1633, 16340-41, para. 13 (EB 2003) (granting complaint from a cable operator challenging a contractual provision requiring a utility’s prior written consent for overlashing and allowing the utility to take up to 30 days to grant or deny an overlashing request).

<sup>25</sup> *S. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002). The court noted that utilities could negotiate with overlashers to provide such notice by agreement. *Id.* *See 2001 Pole Attachment Order*, 16 FCC Rcd at 12145, para. 82 (stating that it would be reasonable for a pole attachment agreement to require notice of overlashing).

<sup>26</sup> *See* NCTA NPRM Comments at 5 (summarizing utility efforts “to again place unnecessary constraints on [network] upgrades, including overlashing”).

<sup>27</sup> ACA NPRM Comments at 10. *See* NCTA NPRM Comments at 6 (stating utilities often required new pole attachment agreement addenda before allowing overlashing).

<sup>28</sup> ACA Sep. 14, 2017 Ex Parte at 3. Even when utilities did not require an application prior to overlashing, they often demanded that overlashers apply for permits and pay fees after completing projects. *Id.*

<sup>29</sup> *See* NCTA NPRM Comments at 6; Comments of Charter Communications, Inc., WC Docket No. 17-84, WT Docket No. 17-79, at 36 n.91 (June 15, 2017) (“Charter NPRM Comments”); ACA NPRM Reply Comments at 19.

permitting requirement,” diverting resources that should go to deployments to completing attachment applications, conducting pole load studies, and satisfying other unnecessary conditions imposed by utilities.<sup>30</sup>

Without clear rules promoting overlashing, utilities are much more likely to ignore Commission precedent and impede deployments.<sup>31</sup> The Commission therefore should intervene and codify existing law permitting overlashing without an attachment application or other utility conditions. In addition, to further ensure utilities cannot delay deployments, the Commission should adopt an “attach-and-notify” overlashing process. The Commission asks whether overlashing should be subject to a “notice-and-attach” process, where service providers would be permitted to overlash to existing facilities after providing notice to the utility pole owner.<sup>32</sup> As discussed below, FBA submits that instead the Commission should sanction an “attach-and-notify” process, where service providers inform utilities of overlashing after work is completed.<sup>33</sup>

The Commission has never required overlashers to provide advance notice to utilities. Indeed, precedent shows that “[o]verlashers are not required to give prior notice to utilities before overlashing.”<sup>34</sup> Although a utility has the right “to know the character of, and the parties

---

<sup>30</sup> NCTA NPRM Comments at 5-6. *See* Charter NPRM Comments at 36 n.91 (noting Commission rules do not require a permit for overlashing).

<sup>31</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266, 3327 (Statement of Chairman Ajit Pai) (stating that “[w]ithout rules that keep costs low and encourage deployment,” new broadband service providers “won’t get off the ground—and consumers will never benefit from the competition they’re trying to bring to the broadband marketplace”).

<sup>32</sup> *FNPRM* at para. 162.

<sup>33</sup> A third-party overlasher would still need the consent of the host attacher before overlashing.

<sup>34</sup> *S. Co. Servs., Inc.*, 313 F.3d at 582.



responsible for, attachments on its poles,” nothing indicates that such notice must be provided before overlashing is completed.<sup>35</sup> There also are strong policy reasons against a pre-overlashing notice requirement. FBA members report that requiring advance notice will open up the overlashing process to further delays and increased costs. Members note that reviewing attachment requests often is not a high utility priority, and most utilities lack the staff necessary to respond to overlashing requests in a timely manner. Members also express concern that utilities would seek to recoup costs associated with reviewing overlashing requests from service providers. In addition, FBA members question the efficacy of a notice requirement and the consequences for utilities that fail to respond by the applicable deadline. On one hand, if the overlasher can proceed regardless of whether the utility responds, then the prior notification requirement adds little to the process. On the other hand, if the overlasher must wait for the utility to respond, then overlashing will remain vulnerable to dilatory tactics by utilities.<sup>36</sup> Adopting an “attach-and-notify” process would limit the opportunities for utilities to delay overlashing while still allowing them to conduct a post-overlashing audit to identify any issues resulting from the work.

## **V. CONCLUSION**

For all of the above-stated reasons, FBA respectfully requests that the Commission accelerate broadband deployment by codifying existing law permitting overlashing without an

---

<sup>35</sup> *2001 Pole Attachment Order*, 16 FCC Rcd at 12144, para. 82.

<sup>36</sup> Utilities also may use the notice process to try and force service providers to pay for the correction of preexisting pole overloading or other safety violations caused by other attachers. FBA notes that the Commission previously found that requiring attachers to pay for the correction of violations caused by other attachers is unreasonable. *See Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co.*, File Nos. PA 99-001, PA 99-002, Consolidated Order, 14 FCC Rcd 11599, 11606-07, para. 19 (1999).

attachment application or utility conditions and establishing an “attach-and-notify” overloading process.

Respectfully Submitted,

FIBER BROADBAND ASSOCIATION

A handwritten signature in cursive script, appearing to read "Heather Burnett Gold".

---

Heather Burnett Gold  
President & CEO  
Fiber Broadband Association  
6841 Elm Street #843  
McLean, VA 22101  
Telephone: (202) 365-5530

January 17, 2018