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

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

COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") submits these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") released on November 29, 2017 in the above-captioned proceeding.[1]

INTRODUCTION AND SUMMARY

Comcast applauds the Commission for its ongoing efforts—both in this proceeding and through various other initiatives—to promote the deployment and expansion of fast, reliable broadband networks throughout the country and to remove barriers to infrastructure investment through forward-looking, pro-competitive policies.

As the Commission looks to advance broadband deployment, it should continue to seek out and eliminate unwarranted impediments to such deployment—including by adopting the proposal in the FNPRM to codify existing precedent allowing broadband providers to expand and add capacity to their existing networks through overlashing without the need to obtain approval from or provide prior notice to utility pole owners.[2] Comcast is among the providers

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[1] *See 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, FCC 17-154 (Nov. 29, 2017) ("*FNPRM*" or "*Order*").

[2] *See FNPRM* ¶ 162.

leading the charge in upgrading its network to provide faster broadband speeds and deploying advanced, gigabit-speed broadband networks throughout the country. And, an important way Comcast expands and adds capacity to its network is by overlashing fiber onto its existing facilities attached to utility poles. Existing Commission and judicial precedent already provide Comcast with a solid legal basis to rebuff efforts by pole owners to impose unreasonable approval and notice requirements on overlashing—but codifying that precedent in the Commission rules would provide even stronger legal support and may well prove effective at deterring pole owners from making such unlawful demands in the first place, and thus could help accelerate the process of implementing network upgrades and expansions.

The Commission has appropriately recognized that "[t]echnological innovation and private investment have revolutionized American communications networks in recent years," and that while "too many communities remain on the wrong side of the digital divide," the best way to deploy new networks and upgrade existing ones is to minimize unwarranted impediments to investment in new broadband facilities and to "reduc[e] the costs to deploy high-speed broadband networks."[3] The Commission took a number of concrete and laudable steps towards these goals in 2017—including the elimination of burdensome common carrier obligations for broadband providers by restoring the longstanding "information service" classification of broadband Internet access service;[4] the scaling back of *ex ante* rate regulation in the increasingly competitive marketplace for business data services;[5] the establishment of the Broadband

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[3] *Id.* ¶¶ 1-3.

[4] *See Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, FCC 17-166, ¶ 20 (Jan. 4, 2018).

[5] *See Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd. 3459 (2017).

Deployment Advisory Committee ("BDAC"), charged with providing recommendations on ways to reduce barriers to broadband deployment;[6] and the adoption of specific measures to accelerate wireline and wireless infrastructure deployment, including the Order issued in this proceeding.[7] Codifying a rule that allows broadband providers to add capacity to their existing networks through overlashing without unnecessary and time-consuming approval and notice requirements will help facilitate Comcast's broadband network deployment.

DISCUSSION

I. COMCAST AND OTHER CABLE BROADBAND PROVIDERS ARE PREPARING TO INVEST IN BROADBAND DEPLOYMENT

The Commission's ongoing effort to identify and eliminate impediments to broadband infrastructure deployment comes at an opportune time, as Comcast and other cable broadband providers are poised to make network investments in the coming months and years to deliver ever-faster broadband services to customers. Comcast is an industry leader in delivering faster broadband speeds to residential and business customers throughout the country—increasing Internet speeds 17 times in the past 17 years[8]—and is now leading the industry in introducing gigabit broadband service. Increasing speeds and making gigabit broadband a reality requires

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[6] *See FCC Announces the Establishment of the Broadband Deployment Advisory Committee and Solicits Nominations for Membership*, Public Notice, 32 FCC Rcd. 1037 (2017).

[7] *See Order* ¶ 2 (explaining that the *Order* "adopt[s] a number of important reforms aimed at removing unnecessary regulatory barriers to the deployment of high-speed [wireline] broadband networks"); *see also Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Report and Order, FCC 17-153, ¶ 1 (Nov. 17, 2017) (adopting reforms aimed at "streamlin[ing] the process of deploying wireless broadband").

[8] *See* Press Release, Comcast Corp., *Comcast to Increase Internet Speeds for Customers in Oregon/SW Washington at No Additional Cost* (Jan. 9, 2018), *available at* https://www.businesswire.com/news/home/20180109005468/en/Comcast-Increase-Internet-Speeds-Customers-OregonSW-Washington.

buildout of additional physical network infrastructure, and the deployment of DOCSIS 3.1, a gigabit-class technology. DOCSIS 3.1 is available across approximately 75 percent of Comcast's footprint,[9] and we recently announced plans to expand DOCSIS 3.1 to several new markets.[10] Additionally, Comcast's customers are using more and more Internet, requiring Comcast to double its network capacity every 18 to 24 months.[11] As customers' demand for and use of these faster broadband connections grows, Comcast is prepared to ensure that its network is state-of-the-art and that it can compete and meet its customers' broadband demands.

Indeed, the broader cable industry is on the cusp of a major broadband deployment push—particularly now that the Commission has undertaken the regulatory reforms noted above, including the elimination of the investment-chilling overhang of Title II common carrier

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[9] *See* Mike Cavanagh, Comcast Corp., Transcript of UBS Global Media and Communications Conference Call 4 (Dec. 4, 2017), *available at* https://seekingalpha.com/article/4129613-comcasts-cmcsa-management-presents-ubs-global-media-communications-conference-transcript (noting that, as of the end of 2017, "75% of [Comcast's] footprint [is] enabled for DOCSIS 3.1," and that "DOCSIS 3.1 is . . . a very efficient way to enable [broadband service] across our footprint at 1-gig speeds"); *see also* Jeff Baumgartner, *Comcast Opens Gateway to Its Gigabit Future*, Broad. & Cable, Dec. 11, 2017, *available at* http://www.broadcastingcable.com/comcast-opens-gateway-its-gigabit-future/170550.

[10] *See, e.g.*, Press Release, Comcast Corp., *Comcast Extends Gigabit Internet Service in Homes and Businesses in Sacramento, California and Nine Nearby Cities* (Dec. 19, 2017), *available at* http://california.comcast.com/2017/12/19/comcast-extends-gigabit-internet-service-in-homes-and-businesses-in-sacramento-california-and-nine-nearby-cities/ (announcing that Comcast is "launching a new internet service that will deliver speeds up to 1 Gigabit-per-second (Gbps) to residential and business customers in Sacramento, California and nine surrounding cities").

[11] *See* Tamara Chuang, *Comcast Raising Internet Speeds for Colorado Customers – With a 50 Percent Boost for Some*, DENVER POST, Jan. 9, 2018, *available at* https://www.denverpost.com/2018/01/09/comcast-raising-colorado-internet-speeds/. Comcast has coupled these and other network upgrades with significant advances in customer premises equipment; for instance, in December 2017, Comcast announced that its xFI Advanced Gateway, a device "designed to support Gigabit speeds over Wi-Fi," is now available to consumers "across the country in every market where we offer Xfinity Gigabit Internet." Fraser Stirling, *Meet the World's Most Advanced Wireless Gateway Device*, Dec. 6, 2017, https://corporate.comcast.com/stories/meet-the-worlds-most-advanced-wireless-gateway-device.

regulation for broadband. As NCTA has explained, "[o]ver the coming years, cable operators will consider plans to invest billions of dollars in expanding and upgrading" their networks, and "[t]he largest cable operators all have announced that they expect to upgrade their wireline networks to include more fiber deployment."[12] In addition to extending gigabit cable broadband service to more customers than ever before, these fiber deployments will enable cable providers to help facilitate the 5G revolution, supporting the offload of high-bandwidth wireless traffic from 5G networks in the competitive backhaul marketplace.[13]

An important way cable providers expand and add capacity to their broadband networks is by overlashing—a capability that has long enabled cable providers "to replace deteriorated cables or expand capacity of existing communications facilities by tying communications conductors to existing, supporting strands of cable on poles."[14] The Commission has long recognized that overlashing "is important to implementing the 1996 Act as it facilitates and expedites installing infrastructure essential to providing [communications] services to American communities," and "promotes competition" by reducing the cost of "installing and financing infrastructure facilities."[15] Overlashing is a principal method by which Comcast adds fiber to its

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[12] Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84, WT Docket No. 17-79, at 2 (June 15, 2017) ("NCTA Comments") (collecting cites to materials containing public statements from major cable providers).

[13] *Id.* at 2-3 & n.5.

[14] *Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12103 ¶ 73 (2001) ("*2001 Pole Order*").

[15] *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd. 6777 ¶ 62 (1998) ("*1998 Pole Order*"); *see also 2001 Pole Order* ¶ 73 (explaining that overlashing directly advances the Commission's goals of "accelerat[ing] rapid deployment" of broadband networks and "increas[ing] competition" among providers by "reduc[ing] construction disruption and associated expense").

broadband network, and thus plays a critical role in Comcast's current and future broadband deployment plans.

II. CODIFYING EXISTING OVERLASHING PRECEDENT WILL HELP ACCELERATE BROADBAND DEPLOYMENT

Given the importance of overlashing to the ongoing deployment of advanced cable broadband networks, the FNPRM seeks comment on how to ensure that cable providers can continue engaging in overlashing without facing unwarranted impediments—and in particular asks whether the Commission should codify in its rules longstanding precedent permitting overlashing without approval by or prior notice to utility pole owners.[16] In Comcast's experience, the existence of this well-established precedent has proven a sound basis for rebuffing efforts by pole owners to impose unreasonable approval or notice requirements on overlashing. Nevertheless, codifying this precedent in the Commission rules would provide even stronger legal support and could help accelerate network deployment further by deterring pole owners from even *attempting* to impose approval or notice requirements for overlashing, in contravention of Commission and judicial precedent.

Existing Commission and judicial precedent is clear in prohibiting utility pole owners from imposing approval or notice requirements on overlashing. As the FNPRM notes, the Commission expressed concern more than two decades ago about "the serious anti-competitive effects of preventing cable operators from adding fiber to their systems by overlashing," and issued a Public Notice "affirm[ing] its commitment to ensure that the growth and development of cable system facilities are not hindered by an unreasonable denial of overlashing by a utility pole

[16] *See FNPRM* ¶ 162.

owner."[17] In its *1998 Pole Order*, the Commission reaffirmed its "policy that encourages overlashing" as an important "facet of a procompetitive market" for broadband service, and emphasized that "any concerns [about overlashing] should be satisfied by compliance with generally accepted engineering practices."[18] Then, in its *2001 Pole Order*, the Commission went on to clarify that overlashers need not "obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment."[19] And while the *2001 Pole Order* asserted that "it would be reasonable" for a pole owner and an attacher to *agree* to a mutually beneficial notice period, it did not authorize pole owners to impose prior notice requirements *unilaterally* on cable providers.[20] When pole owners challenged these rulings in the D.C. Circuit, the court unanimously upheld the Commission's determinations in *Southern Co. Servs. v. FCC*—and explained in particular that "[o]verlashers are not required to give prior notice to utilities before overlashing."[21]

Although these rulings are clear on their face and legally binding, as the FNPRM recognizes, some pole owners still attempt to impose prior approval and notice requirements on overlashing notwithstanding this well-settled precedent.[22] And while Comcast historically has been successful in resisting such demands by citing this precedent, the process of resolving these

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[17] *Id.* ¶ 160 (quoting *1998 Pole Order* ¶ 60, which in turn summarized Public Notice, *Common Carrier Bureau Cautions Owners of Utility Poles*, DA 95-35 (Jan. 11, 1995)).

[18] *1998 Pole Order* ¶¶ 60-63.

[19] *2001 Pole Order* ¶ 75.

[20] *Id.* ¶ 82.

[21] 313 F.3d 574, 582 (D.C. Cir. 2002).

[22] *See FNPRM* ¶ 161 (noting evidence in the record that "not all utilities are complying with these holdings"); *see also, e.g.*, NCTA Comments at 5-6 (describing efforts by some pole owners to require the prior submission of "unnecessary and costly pole-by-pole load analys[e]s for fiber overlashing (tantamount to a permitting requirement) and other common installations that have been safely installed for years without incident").

disputes with pole owners is often time-consuming—and can *itself* lead to significant delays in planned deployments. Accordingly, it may be beneficial for the Commission to codify these determinations as rules in order to prevent these unreasonable demands by utility pole owners. Codifying this precedent would provide yet further confirmation to pole owners that they are prohibited from imposing approval or notice requirements on cable overlashers, and thus could prove effective at deterring pole owners from making these sorts of unlawful demands in the first place. Such an outcome, in turn, would help promote timely broadband deployment by reducing the number of needless disputes with pole owners regarding cable providers' overlashing rights.

Moreover, there is no question that the Commission has authority to codify its longstanding precedent on overlashing. Section 224 of the Communications Act of 1934, as amended, provides that the Commission "shall regulate the rates, terms, and conditions" for any attachments to utility poles,[23] and specifies that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[24] The Commission relied on Section 224 in adopting its prior rulings on overlashing[25]—finding that "overlashing is an important element in promoting the policies of Section[] 224"[26]—and the D.C. Circuit in *Southern Co.* determined that the Commission's overlashing ruling in the *2001 Pole Owner* reflects a reasonable

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[23] 47 U.S.C. § 224(b)(1).

[24] *Id.* § 224(f)(1).

[25] *See, e.g.*, *1998 Pole Order* ¶ 62; *2001 Pole Order* ¶ 81.

[26] *1998 Pole Order* ¶ 62.

implementation of Section 224.[27] Additionally, Section 224(b)(2) makes clear that the Commission may regulate in this area by adopting *codified rules* if it wishes—as that provision specifically authorizes the Commission to "prescribe by rule regulations to carry out the provisions of this section."[28] The Commission thus plainly has authority to codify as rules in the Code of Federal Regulations its existing rulings on overlashing, which the D.C. Circuit has already upheld under Section 224.

[27] *See Southern Co. Servs.*, 313 F.3d at 575, 582 (characterizing the *2001 Pole Order*'s overlashing ruling as "implementing" Section 224 and upholding the Commission's ruling as reasonable).

[28] 47 U.S.C. § 224(b)(2). Indeed, the Supreme Court has long held that, for an agency considering what form its regulatory action should take, "the choice between rulemaking and adjudication lies in the first instance within the [agency's] discretion." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *see also Time Warner Entm't Entertainment Co. v. FCC*, 240 F.3d 1126, 1141 (D.C. Cir. 2001) (explaining that agencies have "very broad discretion whether to proceed by way of adjudication or rulemaking").

CONCLUSION

Comcast supports the Commission's ongoing efforts to identify and address unwarranted barriers to broadband deployment in this and other proceedings. In light of the importance of overlashing to broadband providers' efforts to advance the Commission's deployment goals, the Commission should move forward with its proposal to codify its longstanding precedent authorizing cable providers to engage in overlashing without seeking approval from or providing prior notice to utility pole owners.

Respectfully submitted,

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