

**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)	

REPLY COMMENTS OF CPS ENERGY

The City of San Antonio, Texas, acting by and through the City Public Service Board (“CPS Energy”) submits these reply 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 every stage of this proceeding, and now files these reply comments, for the limited purpose of further addressing the *FNPRM*’s proposal to codify the Commission’s policies with respect to overlashing. Specifically, CPS Energy files these reply comments to respond to the comments of a handful of parties who are seeking to have the Commission remove the ability of pole owners to require that overlashing be subject to advance notice, and to address the comments of those that seek to improperly expand the scope of overlashing to encompass the installation of mid-span wireless facilities. As discussed below, while CPS Energy recognizes the value and efficiencies that can be gained by overlashing, 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 be subject to evaluation by the utility pole owner. For that reason, overloading must necessarily be preceded by notice of the proposed overload activity to the pole owner in advance of the actual installation. Further, contrary to the suggestion of some parties, the Commission needs to clarify that its overloading rules only apply to the installation of wireline overload 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.

As CPS Energy has previously explained, despite the fact that as municipally-owned utility CPS Energy is not subject to the Commission's Section 224 pole attachment regulations,¹ 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. This is because 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. Similarly, new Chapter 284 of the Texas Local Government Code, which became effective September 1, 2017, requires municipally owned utilities to give access to their poles to small cell providers pursuant to a rate that is also based on

¹ 47 U.S.C. Section 224(a)(1).

the Commission's telecommunications pole attachment rate formula, but applied on per-foot-of-use basis.² In addition, communications providers routinely point to the Commission's pole attachment regulations as the *de facto* benchmark of what they consider to be reasonable. Thus, any changes to the Commission's rules related to pole attachment rates or practices may have a direct impact on CPS Energy.

I. OVERLASH RULES MUST PROVIDE FOR PRIOR NOTICE

CPS Energy shares the Commission's desire to accelerate the pace of broadband deployment and availability throughout the country, including new and emerging wireless capabilities. Indeed, CPS Energy has been at the forefront of facilitating the deployment of broadband services throughout its service territory through the adoption of innovative pole attachment standards that address, bulk deployment, wireless attachments and a streamlined one-touch make-ready (OTMR) procedure, that the Commission itself has pointed to as a possible national model.³ The desire of the Commission and communications companies to deploy broadband rapidly and cheaply, however, should not be allowed to compromise the safety or reliability of electric system operations or impede the operations of other pole users in the name of expediency.

In developing its pole attachment 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

² Tex. Local Gov't Code Ann. §§ 284.001 *et. seq.* (West Supp. 2017).

³ *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking Notice of Inquiry, and Request for Comment*, WT Docket 17-84, at ¶ 24.

services to CPS Energy customers. The Commission’s pole attachment rules and policies, including any rules that it adopts with respect to overlashing, should adhere to this same guiding principle and not take any actions that could jeopardize or impair safety or service.

Fortunately, overlashing can be readily accommodated in a manner that allows carriers to efficiently and cost effectively upgrade and expand capacity of existing wireline attachments, while at the same time mitigating any potential harm to the electric system or other attaching entities, through the adoption of a “notice-and-attach” process as proposed by the Commission.⁴ Under this process, carriers would be able to overlash their existing wireline attachments without the need to file for a separate pole attachment permit attachment or pay a separate attachment fee, but would be required to provide advance notice to the pole owner of the proposed overlash activity.

Several carriers and their trade associations, however, suggest that there is no need for advance notice and that the Commission should merely require after-the-fact notification of the overlash.⁵ For example, the Fiber Broadband Association argues that the Commission should flip its proposal and “sanction an ‘attach-and notify’ process, where service providers inform utilities of overlashing after work is completed.”⁶ CPS Energy disagrees. To be effective, notice of the overlashing activity must necessarily be given to the pole owner **in advance** of the actual installation activities to ensure that the utility has sufficient time to determine the operational impact of the proposed overlash.

⁴ *FNPRM*, at ¶ 162.

⁵ See comments of the American Cable Association, CenturyLink, Comcast, Crown Castle, the Fiber Broadband Association, and the NCTA.

⁶ Fiber Broadband Association, at p. 8.

An “attach-and-notify” process ignores the fact that overlash must be made in accordance with “generally accepted engineering practices,”⁷ and that any such engineering practices would necessarily include compliance with applicable pole loading and clearance requirements of the pole owner. Further, as CPS Energy noted in its opening comments, the Commission’s overlash policies have always required an attaching entity to pay the make-ready costs associated with accommodating its overlash.

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.⁸

While acknowledging that make-ready may be required to accommodate overlash, some commenters, such as CenturyLink, suggest an “attach-and-notify” process, under which the attaching entity provides the pole owner after-the-fact notice of the overlash installation, together with a pole loading analysis. CenturyLink argues that the pole owner can then inspect the overlashed facilities and determine if make-ready is necessary and require the attaching entity to pay the costs “to correct deficiencies or overloading identified in these inspections.”

While an after-the-fact inspection approach may be acceptable to a telephone company, such as CenturyLink, given the inherent public safety dangers posed by electric facilities, it is simply not an acceptable risk to electric utilities. An attaching entity should not be allowed to undertake work on a utility pole without the prior review or knowledge of the electric utility. Advance notice of the proposed overlash is necessary for an electric utility to verify through engineering design and loading calculations whether make-ready is required. Moreover,

⁷ *FNPRM*, at ¶ 160, citing the *2001 Pole Attachment Order*.

⁸ *2001 Pole Attachment Order*, at ¶ 77.

CenturyLink's argument notwithstanding, advance notice of overlash will avoid the attaching entity's need to incur additional costs, both in terms of time and money, of having make-ready performed once overlash has already been installed.

A number of commenters agree with CPS Energy that notice of proposed overlash must be given in advance of installation.⁹ As several commenters note, the Commission has long held that under Section 224 of the Communications Act, as amended, "pole owners may reject overlashing for the same capacity, safety, reliability and generally applicable engineering purposes that apply to new attachments."¹⁰ The Electric Utilities on Overlashing, correctly observe that the only way a utility can exercise its Section 224(f)(2) rights with respect to overlashing is (a) if the utility knows about the overlashing in advance, and (b) has a reasonable opportunity to engineer the new load.

Further, as AT&T notes, requiring advance notice to the pole owner and any host attaching entity, as proposed in the *FNPRM*, "promotes safety and the integrity and reliability of the wireline network by affording an opportunity to validate that the attacher has considered the impact overlashing will have on the pole and the host cables."¹¹

While some carriers argue that overlashing does not appreciably add to the loading of the pole, or create sufficient engineering issues, to warrant the delay of providing prior advance notice

⁹ See for example, the comments of AT&T, the Edison Electric Institute, Electric Utilities on Overlashing, NTCA – the Rural Broadband Association, Utility Coalition on Overlashing, UTC, Xcel Energy.

¹⁰ See Comments of Utility Coalition on Overlashing, at p. 9, citing the Commission's 1998 *Report and Order, 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 (1998).

¹¹ AT&T Comments, at p. 15.

to the pole owner, these arguments are misplaced. 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.”¹² 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.

Second, as CPS Energy noted in its initial comments, 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, the pictures submitted by the Edison Electric Institute (EEI) and the Utility Coalition on Overlapping graphically illustrate everyday examples of improper overlapping that create safety and operational issues.

Fourth, the protestations of attaching entities notwithstanding, advance notice of proposed overlash need not impose a significant delay on overlash activities or materially impede broadband deployments. As CPS Energy noted in its comments, under its Pole Attachment Standards, CPS Energy requires that an attaching entity need only provide five (5) days advance notice of a

¹² 47 U.S.C. § 224(f)(2).

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.¹³ 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. Carriers have not provided any compelling evidence demonstrating that the provision of five to ten days advance notice would impose a material delay on the carrier's deployments. This is particularly true given the fact that carriers typically know well in advance of any planned overlash activities involving a substantial portion of their network.

It should also be noted, that nearly every state or public utilities commission that has looked at the issue, has adopted a requirement that the attaching entity provide the pole owner with advance notice of proposed overlash. This includes, Arkansas, California, Iowa, Louisiana, Ohio, Utah and Washington.

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

While the Commisison's *FNPRM* only proposed to codify existing practices with respect to overlashing fiber on to existing cable strands, a few commenters, such as Crown Castle have improperly suggested that the Commission's overlashing rules should be extended to apply to the installation of strand-mounted wireless facilities.

¹³ CPS Energy is able to reasonably reduce advance notice to such short time periods, in part, because under its pole attachment agreements, attaching entities are required to perform their own engineering design work, which is then reviewed by CPS Energy for compliance with its Pole Attachment Standards.

CPS Energy opposes this proposal, and joins with a number of other commenters in urging the Commission to 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. EEI has provided the Commission with pictures and information demonstrating that strand-mounted wireless facilities differ significantly in size, surface area, weight, and weight distribution from the wireline facilities that were being deployed when the Commission last considered overlashing issues. Accordingly, these strand-mounted wireless facilities have a much greater potential impact on pole loading and separation distances than “traditional” fiber installations, thus requiring a higher level of scrutiny.

More importantly, as Xcel Energy argues, these strand-mounted wireless facilities raise significant safety concerns regarding radio frequency (“RF”) exposure, both for the public in general and for utility and communications workers in particular. As Xcel notes, utilities have an affirmative obligation to ensure the safety of the environment of their distribution poles, including the safety of the RF environment to both utility workers and the public generally, and this obligation necessitates that the pole owner review the installation of wireless facilities on their poles and on cables attached to their poles. Echoing these concerns, CenturyLink notes that strand-mounted wireless equipment present safety, engineering, and aesthetic concerns not typically associated with wire-to-wire overlashing. Centurylink points out that typically, RF-emitting equipment is placed at the top or near the top of a pole, a significant distance from the telecommunications space on the pole, generally preventing unsafe RF exposure to telecommunications workers in that vicinity. In contrast, if RF equipment is overlashed to a cable or telecommunications attacher’s facilities, that equipment may be located as close as one foot to other communications lines. At such close range, RF equipment may expose pole workers (and possibly the public walking or standing under such devices) to unsafe levels of RF radiation unless appropriate precautions are taken.

There is near uniform agreement among pole owners that the differences in the size, shape, nature and location of RF-mounted facilities all underscore the need for a higher level of scrutiny than a “notice-and-attach” installation process, and therefore such facilities should be expressly excluded from any rule that the Commission may adopt with respect to overlashing. Furthermore, pursuant to the rights (and obligations) that utilities have to ensure the safety, reliability, and integrity of their infrastructure, utilities should be allowed to require individual review and permitting of strand-mounted wireless facilities suspended from their distribution poles.

III. CONCLUSION

Based on the foregoing, CPS Energy renews its recommendation that the Commission require that any rule it adopts with respect to overlashing require prior notice be given to the pole owner before the attaching entity may overlash existing facilities. Further, the Commission must make clear that any such overlash rules are only applicable to the installation of wireline facilities, and that they do not apply to the installation of mid-span wireless facilities.

Respectfully submitted,

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