Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF AT&T

AT&T Services, Inc. on behalf of its affiliates ("AT&T") submits these Reply Comments in response to the Further Notice of Proposed Rulemaking released on November 29, 2017 in the above-captioned matter.[1]

I. Prior Notice of Overlashing Promotes Safety and the Integrity and Reliability of Poles.

Commenters generally support the Commission's proposal to promote overlashing of additional wires, cables, and equipment through a notice and attachment process. The electric utilities agree with AT&T's position that notice must occur prior to the overlashing to promote safety and the integrity and reliability of infrastructure supporting the existing attachments.[2]

Ameren Services Company, filing with seven other Midwest and Southeast electric utilities, emphasizes that advance notice allows the pole owner to "evaluate the impact of the proposed overlashing (loading/clearance) [and] determine whether there are existing violations

[1] Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking ¶ 156, FCC 17-154 (rel. November 29, 2017) ("FNPRM").

[2] *See, e.g.*, Comments of Exelon Corp., FirstEnergy, Hawaiian Electric, Puget Sound Energy and The AES Corp. ("Utility Coalition Comments"), WC Docket No. 17-84, at 8-10 (filed Jan. 17, 2018); Comments of Utilities Technology Council, WC Docket No. 17-84, at 3-6 (filed Jan. 17, 2018).

(loading/clearance) that must be corrected prior to overlashing."[3] Xcel Energy Services adds that these impacts must be carefully reviewed and considered because "the relevant engineering considerations may vary on a pole-by-pole basis due to factors such as the strength of the individual pole; the number, placement, and type of attachments and facilities already located on the pole; and other unique or local conditions."[4] And, Edison Electric observes that "[a] utility's long-established authority to '*deny* access to overlashers for reasons of insufficient capacity, safety or reliability as described in the Act' is meaningless if the utility is deprived of an opportunity to evaluate any existing attacher's or third party's proposed attachments *before* the attachments are actually installed on the electric utility's poles."[5]

Nonetheless, some commenters argue that a post-overlash notice process is sufficient, citing their experience with overlashing and the ability of the pole owner to conduct a post-notice inspection.[6] But those commenters, which predictably own few, if any, poles, ignore compelling practical reasons to require advance notice of an overlash. First, the increased safety risk from an overlash that overloads the pole does not wait to manifest until notice of the overlash is provided, but instead presents immediately when the attacher installs the overlash.[7] Second, the pole owner may have access to relevant information about the pole or the supporting facilities that the new

[3] Comments of Ameren Services Co., American Electric Power Service Corp., Duke Energy Corp., Entergy Corp., Oncor Electric Delivery Co. LLC, Southern Co., Tampa Electric Co. and Westar Energy, Inc., WC Docket No. 17-84, at ii (filed Jan. 17, 2018).

[4] Comments of *Xcel Energy Services Inc.*, WC Docket No. 17-84, at 4-5 (filed Jan. 17, 2018).

[5] Comments of Edison Electric Institute, WC Docket No. 17-84, at 15-16 (filed Jan. 17, 2018) ("Edison Electric Comments").

[6] *See, e.g.*, Comments of CenturyLink, Inc., WC Docket No. 17-84, at 3-6 (filed Jan. 17, 2018); Comments of Comcast Corp., WC Docket No. 17-84, at 6-9 (filed Jan. 17, 2018); Comments of Verizon, WC Docket No. 17-84, at 18-20 (filed Jan. 17, 2018).

[7] Edison Electric Comments at 7-8.

attacher lacks, such as on-going or scheduled work on the poles, the presence of unauthorized attachments, or cables that will soon be removed. Third, advance notice avoids the additional costs and inefficiencies of performing after the fact make-ready or remediation when an improperly installed overlash is complete.[8] Lastly, overlashing creates the same safety and reliability concerns as pole-mounted attachments[9] and thus should be subject to the same denial of access when those concerns arise. A simple seven-day advance notice allows pole owners, existing attachers, and potential overlashers to address these concerns before problems arise.

These concerns are not overstated. As the Utility Coalition explains, "[o]verlashing 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."[10] AT&T has experienced a number of incidences where sagging cables from overlashing without proper engineering caused trucks to unknowingly snag cables, felling poles on roads and sidewalks, endangering the public from pole impact and energized electric lines, and creating avoidable service outages. For example, in Akron, Ohio, a truck caught AT&T cables that had been in place for years without incident when poorly engineered overlashing caused those cables to sag over a roadway, breaking three utility poles, one of which is shown in the picture below. Thankfully, no one was injured in this incident.

[8] *See, e.g.*, Comments of City Public Service Board, WC Docket No. 17-84, at 7-8 (filed Jan. 17, 2018) ("CPS Energy Comments").

[9] Edison Electric Comments at 4.

[10] Utility Coalition Comments at 10.

The frequency of these incidences would likely increase with a post-overlash notice process, as more providers seek to deploy facilities and more providers overlash large-diameter fiber bundles.[11] The Commission can reduce this risk without any significant delay or impairment in broadband deployment by codifying that all overlashing requires a seven-day prior notice to the pole owner and, when applicable, to the existing attacher whose facility will be overlashed. This short notice period gives pole owners and existing attachers the opportunity to validate that the overlasher has considered and accounted for the structural integrity of the pole and the condition of existing facilities and will perform all engineering and construction in accordance with generally accepted engineering practices, without significantly delaying broadband deployment.[12] Proposed overlashers still need not file an application or wait for approval and can proceed with the overlashing.

[11] *See, e.g.*, Comments of NTCA–The Rural Broadband Association, WC Docket No. 17-84, at 5 (filed Jan. 17, 2018)("[U]tility owned poles are under and will be under greater stress than ever before and the rush to keep up with consumer demand cannot inadvertently lead to damaged poles/attachments that lead to unnecessary service disruptions.")

[12] *See, e.g.*, CPS Energy Comments at 8 ("[A]dvance notice need not impose a significant delay on overlash activities or materially impede broadband deployments").

II. The Effective Date for Short Term Network Changes Notices Should Be Tied to The Date the ILEC Files the Notice with the Commission.

The Commission should change the rule so that the effective date for a short-term notification is calculated from the date the ILEC files its notice or certification of the change with the Commission. Under the current rules, the ILEC is required to serve short term notices on all interconnecting entities *five business days before* filing the notice with the Commission – thereby giving affected carriers notice of the change *before* the Commission receives notice.[13] In addition, on the same day that AT&T files a short-term notice with the Commission, AT&T also posts a copy of the notice on its AT&T Public Website.[14] This website is publicly accessible. Yet, under the current rules, the time clock for when the short-term notice becomes effective does not start until the Commission issues a public notice. There is no need to wait until the Commission releases its own public notice before starting the clock for calculating the effective date of the network changes. Nor is there any reason for the Commission to expend the resources in issuing its own public notice for short term network changes when AT&T already notifies affected interconnected carriers directly and files a copy of the notice on its public website. INCOMPAS argues that the current process is needed to ensure adequate notification to those impacted by the change and that the objection process functions properly.[15] But as stated earlier, under the existing rules affected carriers receive notice *five business days before* a short-term notice is filed with the Commission. That *pre*-notice provides any affected carrier adequate

[13] 51.333(a)(1). *See also* Comments of ITTA – The Voice of America's Broadband Providers at 6 ("tying the effective date to release of the Commission's public notice is unnecessary because ILECs are required to provide direct notice to interconnecting carriers").

[14] The AT&T Public Website can be found at the following link: https://ebiznet.att.com/networkreg/.

[15] Comments of INCOMPAS at 2.

notice and allows any carrier that might have reason to object more than adequate time to prepare and file an objection – without the need to wait for the Commission to issue any public notice. Moreover, tying the effective date to the date when the ILEC files notice with the Commission would provide a predictable date certain to start the short-term network modification process and allow ILECs to plan their network construction projects faster and more efficiently.[16] Therefore, AT&T proposes that the Commission amend section 51.333 so that the deemed effective date runs from the date the ILEC files notice with the Commission.

III. The Outdated CPE Notice Requirements Contained in 68.110(b) and 51.325(a)(3) Should be Eliminated.

As AT&T and others showed in our opening comments, the CPE notice requirements embodied in rules 68.110(b) and 51.325(a)(3) are woefully outdated.[17] Only one set of comments attempts to offer any arguments to the contrary, asserting that "[manufacturers] should be given some lead time so that they can begin offering equipment that will function on new services at the time or soon after the network has changed."[18] These commenters, possibly recognizing that the rules are burdensome, propose a modified rule that would be triggered "based on changes that a carrier reasonably expects will render ***any*** CPE incompatible with the

[16] *See* ITTA Comments at 6 ("Tagging the effective date to the date of filing of the notice, rather than the Commission's release of a public notice, [] provides more planning certainty to ILECs given that the time the Commission takes to issue public notices may vary.") *See also* Comments of ADTRAN, Inc. at 4.

[17] AT&T Comments at 8-14. *See* Comments of ADTRAN, Inc. at 5 ("Significant changes in the marketplace over the last 22 years have obviated the risk of the ILECs dominating the market for CPE. The ILECs no longer have market dominance for local exchange services, with the widespread adoption of VoIP and wireless services. Nor do the ILECs have any affiliation with CPE manufacturers. Thus, the premise for the rule is no longer valid."); ITTA Comments at 8 ("concerns in the existing rules about incompatibility are no longer relevant to today's CPE marketplace."). *Cf* Comments of NTCA-The Rural Broadband Association at 7 which espouse a non-regulatory approach to carriers notifying customers. ("NTCA supports an approach that leaves to the carriers the task of determining at the outset whether such notification is necessary, but without a regulatory mandate that such notice must be provided").

[18] *See* Comments of Consumer Groups and RERCs at 5-6. ("Consumer Groups/RERCs").

carrier's facilities, require modification or alteration ***of such CPE***, or otherwise materially affect ***any*** CPE's use, performance, or manner in which they connect to the network."[19]

The Consumer Groups/RERCs comments fail to present any basis for continued application of the rules. First, advanced notice to manufacturers is not an issue. As detailed in our comments, the standards development process for terminal equipment is now administered by the Administrative Council for Terminal Attachments (ACTA).[20] ACTA is comprised of members from four industry segments: service providers; manufacturers; testing laboratories; and other interested parties.[21] Under this construct, the ACTA administers the review and publication of relevant standards; suppliers must ensure their terminal equipment conforms to FCC rules and the applicable ACTA technical criteria; terminal equipment suppliers must apply to have approved terminal equipment listed in the ACTA database.[22] Manufacturers, as well as service providers, already have a seat at the table when the standards for terminal equipment *are being developed*. Service providers have every incentive to work through ACTA to ensure that CPE remains compatible with the service providers' services. Claims that ongoing notice under either §68.110(b) or §51.325(a)(3) is required so that manufacturers get advanced notice are not justified.[23]

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[19] Consumer Groups and RERCs Comments at 7 (emphasis added).

[20] Comments of AT&T, WC Docket No. 17-84, at 9 (filed Jan. 17, 2018) ("AT&T Comments").

[21] *Id*.

[22] *Id*. at 9-10.

[23] Moreover, the claim by Consumer Groups/RERCs that the CPE notification requirements are needed to ensure the development of assistive technologies like TTY (Consumer Groups/RERCs Comments at 5-6) also is misplaced. Retiring copper and replacing it with fiber facilities does not affect the provision of TTY. *See Ex Parte* Letter from Ola Oyefusi, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (Sept. 5, 2017).

Moreover, the proposed modified trigger would not change the burden in, and in fact suffers from, the same problems/deficiencies as the existing rules. There is no way carriers could ever know with certainty whether specific equipment being used by a specific subscriber would be ACTA compliant.[24] Tying the standard to a carrier's 'reasonable expectation' does not cure the uncertainty and in fact would require carriers to provide notice in every instance by default.[25] Again, there is no basis in the record for ongoing CPE notice requirements. The Commission should eliminate rules 68.110(b) and 51.325(a)(3).

IV. The Commission Should Continue to Streamline the §214 Discontinuance Processes.

As AT&T stressed in its comments, it is time for the Commission to align its regulatory regime for discontinuing services with current market conditions.[26] The Commission's recent Voice Telephone Services report confirms that in 2016, there were more VoIP subscriptions than legacy voice subscriptions, and wireless voice subscriptions outnumbered legacy voice by almost 6 to 1.[27] The fact that so many consumers and businesses have adopted services based on next generation technologies demonstrates that the market is working and is providing "adequate" substitutes for legacy services, which the majority of the market prefers.

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[24] *Id.* at 10. *See also* Comments of ADTRAN, Inc. at 5 ("the ILEC does not know what CPE its customers are using.").

[25] Moreover, the proposed modified rule is even more burdensome in requiring not only customer notice but also some new forms of public notice. *See* Consumer Groups and RERCs Comments at 7 (proposing that the modified rule require both public notice, adequate written notice to customers, and, when possible, notice provided in American Sign Language).

[26] AT&T Comments at 2-8.

[27] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, Voice Telephone Services: Status as of December 31, 2016 at p. 2 (rel. Feb. 7, 2018) ("In December 2016, there were 58 million end-user switched access lines in service, 63 million interconnected VoIP subscriptions, and 341 million mobile subscriptions in the United States").

The Commission should reject comments that encourage the Commission to change the overly burdensome "Adequate Replacement Test" from voluntary to mandatory when a carrier seeks to discontinue legacy voice service.[28] As AT&T has previously demonstrated, there are serious flaws with this test — namely, that it (1) improperly inserts the Commission into the role of micromanager for next-generation services, and (2) requires carriers to submit (and the Commission to review) burdensome and voluminous § 214 applications, which adds cost and delay to the process.[29] Then-Commissioner Pai recognized the onerous nature of this test and noted that the "framework [is] sure to scare away most, if not all, volunteers and thus unlikely to have much practical impact."[30]

Given the evidence that consumers and businesses are abandoning legacy services in droves, the Commission should ensure that its processes *facilitate*, rather than encumber, these marketplace choices by allowing carriers to fast track applications to discontinue services that are no longer widely used. As Commissioner O'Reilly pointed out, such processes "would ***not*** entail things like three more prongs, network testing, cybersecurity certifications, promises to support fax machines for another nine years, or a "totality of the circumstances" review"[31] (which are all incorporated in the Adequate Replacement Test).

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[28] Comments of Public Knowledge and Center for Rural Strategies, WC Docket No. 17-84, at 4-6 (filed Jan. 17, 2018); Comments of National Rural Electric Cooperative Association, WC Docket No. 17-84, at 3-4 (filed Jan. 17, 2018), Comments of the Utilities Technology Council, WC Docket No. 17-84, at 6-9 (filed Jan. 17, 2018).

[29] *See* AT&T Reply Comments GN Docket No. 13-5 at 29-33 (filed March 9, 2015).

[30] *Declaratory Ruling, Second Report and Order, and Order on Reconsideration*, GN Docket No. 13-5, FCC 16-90 at 118 (rel. July 15, 2016) (Statement of Commissioner Ajit Pai).

[31] *Declaratory Ruling, Second Report and Order, and Order on Reconsideration*, GN Docket No. 13-5, FCC 16-90 at 119 (rel. July 15, 2016) (Statement of Commissioner Michael O'Rielly, Approving in Part and Dissenting in Part) (emphasis added).

Instead, these obstacles should be replaced by the streamlined proposals discussed in AT&T's comments, which include granting forbearance for the discontinuance of services with no customers, adopting streamlined comment and auto-grant periods to discontinue data services, and streamlined comment and auto-grant periods to discontinue legacy voice services if the carrier can make one of the following certifications: (1) it provides interconnected VoIP service throughout the affected service area; ***or*** (2) at least one other alternative voice service is available in the affected service area.

Respectfully submitted,

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