

**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)	

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

I. INTRODUCTION AND SUMMARY

The Fiber Broadband Association (“FBA” or “Association”)¹ hereby submits reply comments in response to the proposal in the Further Notice of Proposed Rulemaking (“*FNPRM*”) to codify “longstanding precedent” of the Federal Communications Commission (“Commission”) supporting the overlashing of fiber to utility poles to expand broadband networks.² The record is clear that overlashing significantly lowers the cost of deploying fiber and expedites broadband buildouts. The record also shows that fiber overlashing consistent with generally accepted engineering practices does not undermine pole safety, making advance utility reviews and approvals unnecessary. FBA therefore joins other commenters in urging the Commission to codify existing precedent permitting overlashing without a pole attachment application or other utility conditions and establish an “attach-and-notify” overlashing process.

¹ 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/>

² *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, paras. 160-162 (2017) (“*FNPRM*”).

II. THE RECORD IS CLEAR THAT FIBER OVERLASHING SIGNIFICANTLY REDUCES DEPLOYMENT COSTS AND EXPEDITES BUILDOUTS

The benefits of overlashing are clear. In its initial comments, FBA provided data from CTC showing that the average cost of overlashing fiber is approximately 25 to 30 percent the cost of installing a new pole attachment.³ CTC calculated that the benefits fiber overlashing provides are even greater when compared to costly underground deployments.⁴ Sellenriek Construction, an FBA member that overlashes fiber for rural Missouri service providers, reported that overlashing is a key component of almost all of its aerial network expansion work.⁵ The company estimated that fiber overlashing results in approximately \$8,000 in cost savings per mile compared with installing new pole attachments and takes half the time.⁶ By reducing construction work, the company found that fiber overlashing can shorten the overall deployment timeframe for a project by a third or more, freeing up resources for other projects.⁷

Multiple commenters echoed FBA members' experiences with the economic benefits of overlashing. Service providers emphasized that overlashing often represents the most efficient way to increase network capacity by eliminating the make-ready work and equipment costs associated with installing new pole attachments.⁸ As Crown Castle overserved, "in many

³ Comments of the Fiber Broadband Association on the Further Notice of Proposed Rulemaking, WC Docket No. 17-84, at 1-3 (Jan. 17, 2018) ("FBA Comments").

⁴ *Id.* at 3 n.10.

⁵ See Attachment, Declaration of Steve Sellenriek, at para. 3 ("Sellenriek Declaration").

⁶ *Id.* at para. 4. Another FBA member serving urban areas reported that overlashing reduces deployment costs by up to 25 percent compared to placing new pole attachments and can cut aerial attachment time in half. FBA Comments at 3.

⁷ Sellenriek Declaration at para. 4.

⁸ Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84, at 1 (Jan. 17, 2018) ("NCTA Comments"). See Comments of Crown Castle International Corp., WC Docket No. 17-84, at 1-2 (Jan. 17, 2018) (stating that overlashing "presents a unique opportunity to quickly deploy telecommunications services") ("Crown Castle Comments"); Comments of CenturyLink, WC Docket No. 17-84, at 6 (Jan. 17, 2018)

instances, the ability to overlash marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months.”⁹ The ability to increase network capacity quickly is critical as providers ramp up deployment efforts to meet growing consumer demand for high-performance broadband services.¹⁰ Even utility commenters recognized the value overlash provides in speeding broadband deployments.¹¹ FBA therefore agrees with NCTA that overlash “is a critical element of the regulatory foundation on which hundreds of billions of dollars of new investment have been made” and the Commission should protect this investment by codifying overlasher rights.¹²

III. FIBER OVERLASHING DOES NOT UNDERMINE POLE SAFETY, MAKING ADVANCE UTILITY REVIEWS AND APPROVALS UNNECESSARY

Despite the unquestioned benefits of overlash, utilities continue to impose pole attachment application requirements and other burdensome conditions on such deployments.¹³ These conditions significantly increase costs and foster disputes among utilities and service

(noting that overlash provides “a quick and cost effective means to extend fiber to new and existing locations”) (“CenturyLink Comments”).

⁹ Crown Castle Comments at 2.

¹⁰ See NCTA Comments at 3 (indicating all major cable operators plan significant fiber deployments during the next few years); Comments of the American Cable Association on the Further Notice of Proposed Rulemaking, WC Docket No. 17-84, at 2 (Jan. 17, 2018) (stating overlash is necessary to deliver high-performance broadband services) (“ACA Comments”). CenturyLink also stated that overlash will enable winning service providers in the upcoming Connect America Fund Phase II Auction to meet their broadband performance obligations in a cost-effective manner. CenturyLink Comments at 6.

¹¹ See Comments of Xcel Energy Services Inc., WC Docket No. 17-84, at 4 (appreciating “the value of overlash as a means to maximize the usable space on utility poles and facilitate the deployment of new communications services”) (“Xcel Comments”); Initial Comments of the Electric Utilities on Overlash, WC Docket No. 17-84, at 25 (Jan. 17, 2018) (acknowledging that overlash generally requires less make-ready work than new pole attachments) (“Electric Utilities Comments”).

¹² NCTA Comments at 2.

¹³ FBA Comments at 7. See ACA Comments at 6-8 (summarizing overlash application and fee requirements imposed by utilities); Comments of Comcast Corporation, WC Docket No. 17-84, at 7-8 (Jan. 17, 2018) (discussing utility efforts to impose “unreasonable” overlash requirements) (“Comcast Comments”); Crown Castle Comments at 4 (stating utilities often require overlash projects to undergo the full pole attachment application process).

providers.¹⁴ For example, Sellenriek Construction reported that utilities increasingly demand full pole loading analyses for every pole involved in an overloading project, regardless of the project's size or complexity.¹⁵ Satisfying these conditions can be expensive, with the company estimating that it can cost up to \$400 per pole to provide the information utilities require.¹⁶ These costs often undercut the business case for overloading, resulting in service providers abandoning projects or pursuing underground deployments.¹⁷ Even when service providers successfully challenge burdensome utility conditions, the time and effort spent resolving these disputes draws resources away from other projects and stymies deployment.¹⁸

Utility commenters argued that overloading may undermine pole safety by adding further wind and ice load and exacerbating preexisting safety violations,¹⁹ and should be subject to the same application requirements and conditions imposed on new pole attachments.²⁰ FBA disagrees.²¹ The Commission has repeatedly dismissed similar utility safety claims and found that any safety issues presented by overloading can be addressed through compliance with

¹⁴ See ACA Comments at 7 (stating utility conditions “effectively acted as a tax” on overloading); Crown Castle Comments at 4 (arguing excessive utility overloading standards result in costly, time-consuming disputes).

¹⁵ Sellenriek Declaration at para. 5.

¹⁶ *Id.*

¹⁷ *Id.* at para. 6.

¹⁸ Comments of Verizon on the FNPRM, WC Docket No. 17-84, at 7-8 (Jan. 17, 2018) (“Verizon Comments”).

¹⁹ See Joint Comments of CenterPoint Energy Houston Electric, LLC and Dominion Energy, WC Docket No. 17-84, at 6 (Jan. 17, 2018) (“CenterPoint/Dominion Comments”); Electric Utilities Comments at 18; Comments of the Edison Electric Institute, WC Docket No. 17-84, at 4 (Jan. 17, 2018) (“EEI Comments”); Comments of the Utilities Technology Council, WC Docket No. 17-84, at 3 (Jan. 17, 2018); Xcel Comments at 4.

²⁰ CenterPoint/Dominion Comments at 6; Comments of the Utility Coalition on Overloading, WC Docket No. 17-84, at 25 (Jan. 17, 2018) (“Utility Coalition Comments”); Comments of AT&T, WC Docket No. 17-84, at 15 (Jan. 17, 2018) (“AT&T Comments”); EEI Comments at 5.

²¹ Many of the safety concerns raised by utilities do not involve fiber overloading of wireline facilities and are best addressed in other Commission proceedings. See CenterPoint/Dominion Comments at 10; CenturyLink Comments at 2; Utility Coalition Comments at 8; Comments of CPS Energy, WC Docket No. 17-84, at 2 (Jan. 17, 2018) (“CPS Energy Comments”); EEI Comments at 16; Xcel Comments at 2.

“generally accepted engineering practices.”²² Commenters pointed out that service providers have overlashed fiber for years without compromising pole safety.²³ Although the Commission previously acknowledged that overlashing may increase the wind and ice load on poles, it found that any new load did not increase the amount of pole space actually occupied by the host attachment.²⁴ The Commission therefore found that overlashing “did not disadvantage the utility’s ability to ensure the integrity of its poles.”²⁵ As FBA and other commenters argued, overlashers possess strong incentives to preserve pole safety and avoid violations because they (or parties permitting third-party overlashing) already have attachments on the poles and must indemnify utilities for damages or work inconsistent with their agreements.²⁶

²² *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, 6807-08, para. 64 (1998) (“*1998 Pole Attachment Order*”). Despite NTCA’s claims, service providers, contractors, and utilities generally understand what constitutes “generally acceptable engineering practices” for overlashing. *See* Comments of NTCA – The Rural Broadband Association, WC Docket No. 17-84, at 3-4 (calling for the creation of an industry working group to define overlashing standards) (“NTCA Comments”). For example, Sellenriek Construction reported that utilities normally do not argue with overlashers on what constitutes safe deployment standards, but rather whether a particular overlashing project will undermine pole safety. Sellenriek Declaration at para. 7. Consequently, there is no need to convene a new working group and the creation of such a group will only serve to further delay the resolution of the regulatory treatment of overlashing.

²³ ACA Comments at 8. *See* NCTA Comments at 1 (stating that overlashing “has successfully promoted the efficient deployment of new facilities without sacrificing network safety or reliability”); Crown Castle Comments at 1-2 (arguing overlashing facilitates broadband deployments “in a safe and beneficial manner”); *see also 1998 Pole Attachment Order*, 13 FCC Rcd at 6807-08, para. 64 (recognizing that “[o]verlashing has been in practice for many years” without incident).

²⁴ *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. 74 (2001) (“*2001 Pole Attachment Order*”).

²⁵ *Id.* In addition, the fact that preexisting safety violations may exist on a pole does not mean that overlashers are responsible for their correction. As one utility commenter conceded, the cumulative impact of overlashing often makes it impossible to determine which service provider is responsible for a particular violation. CenterPoint/Dominion Comments at 8 n.22. While service providers may need to pay make-ready charges when necessary to strengthen a pole to support overlashing, the Commission never suggested that overlashers are responsible for ameliorating violations caused by other parties. In fact, the Commission previously found that requiring attachers to pay for the correction of violations caused by others 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).

²⁶ FBA Comments at 5-6; ACA Comments at 8.

Finally, multiple service providers indicated that utility overlashing conditions often go far beyond what are necessary to safeguard poles. For instance, ACA reported that utilities charged its members fees as high as \$1,000, with no indication that such charges were related to make-ready work or the correction of safety violations necessitated by overlashing.²⁷ Other commenters described utilities imposing new overlashing standards without any engineering rationale.²⁸ As an example, Sellenrieck Construction found that the pole load analyses required by many utilities rarely result in the discovery of safety issues.²⁹ Sellenrieck Construction also found that a simple visual inspection of a pole often indicated that such pole load analysis work was unnecessary.³⁰ Thus, these conditions hamper broadband deployment without providing any offsetting benefits. The Commission therefore should again dismiss utility claims that overlashing undermines pole safety, making advance utility reviews and approvals unnecessary.

IV. THE COMMISSION SHOULD PROVIDE REGULATORY CERTAINTY BY CODIFYING LONGSTANDING OVERLASHING PRECEDENT AND ESTABLISHING AN “ATTACH-AND-NOTIFY” PROCESS

The continued efforts by some utilities to impose barriers on overlashing shows the time has come for the Commission to codify longstanding precedent permitting overlashing without an attachment application or other utility conditions. Nearly 17 years ago, the Commission determined that “neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval

²⁷ ACA Comments at 6.

²⁸ See Crown Castle Comments at 4 (“Often these policies or standards changes are represented as safety-related but without any stated basis or rationale.”); Comcast Comments at 2 (discussing unreasonable utility conditions on overlashing).

²⁹ Sellenrieck Declaration at para. 7.

³⁰ *Id.* at para. 5. One utility also admitted that a simple visual inspection by knowledgeable personnel often can exclude poles from pole load analysis requirements. CenterPoint/Dominion Comments at 19.

obtained for the host attachment.”³¹ Since then, the Commission has been quick to strike down conditions requiring a utility’s prior consent for overlashing.³²

Multiple commenters, including one utility, joined FBA in supporting the adoption of clear rules allowing overlashing without advance application requirements or other utility approvals.³³ As NCTA noted, the absence of codification “exacerbates uncertainty” and allows utilities to impose overlashing conditions “to extract fees or for anti-competitive purposes.”³⁴ Comcast further explained that codification of Commission overlashing precedent will help “deter[] pole owners from making such unlawful demands in the first place,” accelerating broadband deployment.³⁵ The Commission therefore should provide regulatory certainty for overlashers (and utility pole owners) by codifying its longstanding precedent permitting overlashing without an attachment application or other utility conditions.³⁶

The Commission also should adopt an “attach-and-notify” process to further ensure that utilities cannot unnecessarily delay overlashing. A number of commenters supported allowing

³¹ *2001 Pole Attachment Order*, 16 FCC Rcd at 12141, para. 75.

³² *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).

³³ *See* ACA Comments at 10 ([T]he Commission should codify existing law permitting overlashing without application requirements, prior utility approvals, or unrelated or otherwise unwarranted charges.”); NCTA Comments at 1 (supporting “the Commission’s affirmation and codification of its longstanding precedent . . . permitting overlashing without prior approval of the pole owner”); Comcast Comments at 1 (asking the Commission “to codify existing precedent allowing . . . overlashing without the need to obtain approval from . . . utility pole owners”); Verizon Comments at 18 (“[N]o additional pole owner approval is needed for an existing attacher to overlash its own pole attachment or for a third party to overlash an existing attacher’s pole attachment”); *see also* CPS Energy Comments at 6 (“Under the Commission’s established policies, an attaching entity may overlash its existing attachments without obtaining additional approval from the pole owner.”).

³⁴ NTCA Comments at 4.

³⁵ Comcast Comments at 2.

³⁶ *See* NCTA Comments at 3 (“The Commission’s decision to affirm its longstanding precedent on overlashing provides greater certainty to cable operators that continue to face resistance from utilities.”).

overlapping without the need to provide prior notice to the utility pole owner.³⁷ For example, CenturyLink allows overlapping to its poles, provided it receives notice within 10 days of project completion.³⁸ After receiving notice, CenturyLink conducts a pole inspection and works with the overlayer to address any identified safety issues.³⁹ CenturyLink found that this “attach-and-notify” process sufficiently protected its poles while eliminating the need to provide advance notice, and FBA supports the adoption a similar “cure” period to take corrective actions following overlapping.⁴⁰ FBA also agrees with Verizon that an advance notice requirement “would be cumbersome and inefficient,” impeding broadband deployment.⁴¹ Requiring advance notice would open up the overlapping process to further delays, as utility pole owners lack the staff necessary to respond to overlapping requests in a timely manner and may seek to recoup the costs associated with reviewing requests from service providers.⁴²

The Commission has never required overlayers to provide advance notice to utilities. As Verizon observed, the Commission previously indicated that “it would be reasonable” for a utility and an overlayer to mutually agree to a notice period, but “it did not authorize pole owners to impose prior notice requirements unilaterally.”⁴³ Indeed, in upholding the

³⁷ See Comcast Comments at 1 (supporting overlapping “without the need to . . . provide prior notice to utility pole owners”); Verizon Comments at 19 (“The Commission should refrain from adopting an advance notice requirement to overlapping.”).

³⁸ CenturyLink Comments at 2.

³⁹ *Id.* at 5-6.

⁴⁰ See NTCA Comments at 5-6 (stating the Commission should adopt a “cure” period requiring overlayers to remedy safety issues identified by utility pole owners at the overlayers’ expense).

⁴¹ Verizon Comments at 19.

⁴² FBA Comments at 9.

⁴³ Verizon Comments at 7 (citing *2001 Pole Attachment Order*, 16 FCC Rcd at 12145, para. 82). A number of utilities pointed to state regulations or public utility commission decisions regarding advance notice requirements as evidence that advance notice is necessary. Electric Utilities Comments at 12; Utility Coalition Comments at 23; EEI Comments at 8. FBA notes that many of these state actions only found that prior notice for overlapping was “reasonable,” not that it was required. In addition, longstanding precedent demonstrates that overlapping

Commission’s overloading policy, the D.C. Circuit concluded that “[o]verloaders are *not* required to give prior notice to utilities before overloading.”⁴⁴ The court found that an expedited overloading process without advance notice struck the proper balance between “the utilities’ statutory rights and financial concerns . . . [and] the efficiency gains that overloading brings to the industry.”⁴⁵

Utility commenters acknowledged that “the Commission has not adopted a formal rule requiring advance notice of overloading.”⁴⁶ Nevertheless, some utilities sought to upset the careful balance struck by the Commission’s overloading policy by imposing advance notice requirements.⁴⁷ Although couched in terms of notice, these proposals are based on the same unsupported utility safety claims used to justify advance application requirements and other burdensome conditions prohibited under Commission precedent. As a result, the Commission should adopt an “attach-and-notify” overloading process, which will spur broadband deployment while protecting pole safety.

without advance notice properly balances the benefits overloading provides with utility safety concerns. *See S. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002) (affirming *2001 Pole Attachment Order*).

⁴⁴ *S. Co. Servs., Inc.*, 313 F.3d at 582 (emphasis added).

⁴⁵ *Id.*

⁴⁶ EEI Comments at 11.

⁴⁷ CenterPoint/Dominion Comments at 6; Electric Utilities Comments at 1; Utility Coalition Comments at 10; CPS Energy Comments at 2; EEI Comments at 3; AT&T Comments at 15.

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

Respectfully Submitted,

FIBER BROADBAND ASSOCIATION



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February 16, 2018

ATTACHMENT

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
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Accelerating Wireline Broadband Deployment)	WC Docket No. 17-84
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DECLARATION OF STEVE SELLENRIEK

1. My name is Steve Sellenriek. I am the President of Sellenriek Construction Incorporated, which provides buried construction, aerial construction (including overlashing), splicing, and network design services for cable and telecommunications service providers in rural Missouri. In 2017, Sellenriek Construction placed 600 miles of aerial cable with fiber and buried more than 900 miles of fiber. Because of our network construction experience and reputation, we have strong relationships with the service providers and utilities throughout our territory.

2. I submit this Declaration in support of the Reply Comments filed in the above-referenced proceeding by the Fiber Broadband Association, of which Sellenriek Construction is a member.

3. Fiber overlashing is a key component of almost every aerial network expansion that Sellenriek Construction has worked on over the past few years. Service providers regularly contract with Sellenriek Construction to overlash fiber to existing facilities to expand network capacity and especially to provide high-performance broadband service to rural customers quickly. Service providers rely on overlashing to maximize the space available on utility poles and consider future overlashing needs when installing new attachments, leaving space for later expansions.

4. Fiber overlashing can significantly reduce deployment costs and accelerate the timeframes for project competition. Sellenriek Construction estimates that fiber overlashing

saves approximately \$8,000 per mile compared to installing a new pole attachment. In addition, fiber overlash often takes half the time required to install a new pole attachment. By reducing the construction period, fiber overlash can shorten the overall timeframe for project completion by a third or more, allowing Sellenriek Construction to dedicate resources to additional deployments.

5. Sellenriek Construction has increasingly encountered utilities imposing costly and time-consuming conditions on the overlash process. In particular, utilities are increasingly demanding that overlashers provide full pole loading analyses for every pole involved in an overlash project. The utilities require such analyses regardless of a project's size or complexity. Even when a simple visual inspection of a pole shows that such engineering work is unnecessary, utilities still demand pole load information before allowing overlash. Sellenriek Construction estimates that it can cost up to \$400 per pole to provide the information requested by the utilities.

6. It is Sellenriek Construction's experience that some utilities take advantage of the overlash process to avoid having to pay for their own pole safety analyses, transferring the costs of such studies to overlashers. In addition, burdensome pre-overlash requirements can drive up the costs of deployments so high that competing service providers are forced to abandon projects or pursue more complex underground builds.

7. The pole load analyses required by utilities rarely result in the identification of a safety issue requiring make-ready work to strengthen or replace a pole. In the rare instances where the analyses do reveal an issue, Sellenriek Construction works with the service provider and utility to complete any necessary make-ready work. It is Sellenriek Construction's experience that service providers, contractors, and utilities generally agree on the proper engineering standards

for overlashing and that disputes normally arise when the costs of the conditions imposed by utilities exceed the savings achieved by fiber overlashing.

8. In recent years, the growth in utility conditions and approval requirements offsets many of the benefits fiber overlashing provides in terms of time and money. As a result, Sellenriek Construction supports the Commission's efforts to expedite broadband deployments by facilitating overlashing and eliminating unnecessary utility barriers.

I declare under penalty of penalty of perjury that the forgoing is true and correct to the best of my information and belief.

Executed on February 16, 2018

A handwritten signature in black ink, appearing to read 'SSA', is written over a horizontal line.

Steve Sellenriek
President
Sellenriek Construction Incorporated