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
	)	
	)	

JOINT REPLY COMMENTS OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC AND DOMINION ENERGY

CenterPoint Energy Houston Electric, LLC ("CenterPoint Energy") and Virginia Electric and Power Company d/b/a Dominion Energy Virginia and d/b/a Dominion Energy North Carolina ("Dominion Energy"), through their undersigned counsel, and pursuant to the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding, respectfully submit these reply comments on the practice of overlashing, and on the proposal of the Commission to codify a "notice and attach" process based on its precedent.[1] The parties to these comments are investor-owned electric distribution utilities ("IOUs"), and pole owners in their respective service areas.[2]

In their initial comments, CenterPoint Energy and Dominion Energy advocated a rule that permits overlashing (as the Commission defined that practice in its prior orders),[3] expressly subject to certain rights accorded to utility pole owners by Section 224, and protected by Commission and judicial precedent. These rights include:

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1 *In the Matter of Accelerating Wireline 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").

2 The parties to these comments, CenterPoint Energy and Dominion Energy, also filed comments and reply comments on the initial Notice of Proposed Rulemaking in this proceeding, as members of the POWER Coalition. More complete descriptions of these companies, and their respective interests in this proceeding, are found in the joint comments of the POWER COALITION, dated June 15, 2017.

3 *See* Joint Initial FNPRM Comments of CenterPoint Energy Houston Electric, LLC and Dominion Energy ("Initial Comments") (Jan. 17, 2018) at 9-10 (the definition of "overlashing" adopted in the Commission's prior orders contemplates simply a wire, tied to another wire that is already affixed to the pole.). Importantly, only one FNPRM commenter advocated a broader definition of "overlashing" that would encompass strand mounted equipment, but presented no actual legal precedent.. Initial FNPRM Comments of Crown Castle International Corp. (Jan. 17, 2018) ("Crown Castle Comments") at 3.

- *First*, the right of the pole owner to deny overlashing based on the same capacity, safety, reliability, and engineering considerations for which a pole attachment may be denied;[4]
- *Second*, the right of the pole owner to fully evaluate the capacity, safety, reliability, and engineering impact of overlashing on its poles, and to require make-ready as necessary, at the expense of the host attacher;[5] and
- *Third*, the right of the pole owner to be notified of overlashing;[6]

No FNPRM commenter appears to dispute that such rights are firmly rooted in the current law, and yet a majority of non-pole owners continue to proclaim that a simple notice of overlashing, provided ***after*** the overlashing is complete, would adequately ensure that all capacity, safety, reliability, and engineering impacts associated with the overlashing are addressed.[7] It would not. To the contrary, as CenterPoint Energy and Dominion Energy,[8] and *all* other IOU commenters demonstrated in their initial comments, the fundamental rights of utility pole owners under Section 224 would be rendered meaningless by a regulatory scheme that permits overlashing without reasonable ***prior*** notice to the pole owner, which notice must include all information required by the pole owner to: (i) assess the

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4 *Southern Co. Serv. Inc.*, 313 F.3d 574, 582 (D.C. Cir. 2002); In re *Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Consolidated Partial Order on Reconsideration, FCC 01-170, 16 F.C.C. Rcd. 12103 ¶ 73 (rel. May 25, 2001), *aff'd, Southern Co. Serv. Inc. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002) ("2001 Consolidated Order"); *In the Matter of 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, FCC 98-20 ¶ 68 (rel. Feb. 6, 1998(, *aff'd sub nom National Cable & Telecommunications Assn., Inc. v. Gulf Power Co*., 534 U.S. 327 (2002) ("1998 Telecom Order").

5 *Southern Co. Serv. Inc.*, 313 F.3d at 582; 2001 Consolidated Order ¶ 77.

6 2001 Consolidated Order ¶ 82.

7 *See* Initial FNPRM Comments of CenturyLink (Jan. 17, 2018) ("CenturyLink Comments) at 3-7; Initial FNPRM Comments of the Fiber Broadband Association (Jan. 17, 2018) ("FBA Comments") at 8-9; Initial FNPRM Comments of Verizon (Jan. 17, 2018) ("Verizon Comments") at 19-20; *Ex Parte* Letter to Marlene Dortch, Secretary, Federal Communications Commission from Steve Morris, NCTA re: Wireline Infrastructure, Docket No. 17-84 (Oct. 20, 2017) at 2.

8 Initial Comments at 5-9.

capacity, safety, reliability, and engineering impacts of the overlashing on the adjacent poles; and (ii) prescribe make-ready, as needed.[9]

In their initial comments, IOU commenters also overwhelmingly demonstrated that utility pole owners, consistent with the current law, have widely adopted prior notice processes that in no way obstruct overlashing, or diminish its purported economic value.[10] Rather, in cases where prior notice of overlashing is provided to the utility pole owner, the more probable result is that the pole owner will coordinate with the overlashing party to ensure that its work request is accommodated, without any adverse effect on adjacent poles or stands. For example, IOU commenters noted that such processes often involve the utility pole owner sharing with the overlashing party information about requested poles or pole lines that is not otherwise readily available, but which is material to the schedule, and to the overall cost of such party's planned deployments.[11] As Xcel Energy and CPS Energy each explained in their initial comments, without the benefit of prior notice processes, an overlashing party would have no actual knowledge of any pole installations or replacements, or repair or maintenance activities scheduled by the pole owner that could result in the need for post-construction corrections and adjustments to overlashed cables.[12] In the broad experience of nearly all IOU commenters, prior notice requirements for overlashing have proven workable for the utility

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9 *See* Initial Joint FNPRM Comments of Ameren Services Company, American Electric Power Service Corporation, Duke Energy Corporation, Entergy Corporation, Oncor Electric Delivery Company LLC, Southern Company, Tampa Electric Company, and Westar Energy, Inc. (Jan. 17, 2018) ("Ameren *et al*. Comments") at 18-22; Initial FNPRM comments of CPS Energy (Jan. 17, 2018) ("CPS Energy Comments") at 6-7; Initial Joint FNPRM Comments of Exelon Corporation, FirstEnergy, Hawaiian Electric, Puget Sound Energy, The AES Corporation (Jan. 17, 2018) ("Exelon *et al*. Comments") at 21; Initial FNPRM Comments of Xcel Energy Services, Inc. (Jan. 17, 2018) ("Xcel Comments") at 4-6; Initial FNPRM Comments of Edison Electric Institute (Jan. 17, 2018) ("EEI Comments" at 4); Initial FNPRM Comments of the Utilities Technology Council (Jan. 17, 2018) ("UTC Comments") at 3-5. *See also* Initial FNPRM Comments of AT&T (Jan 17, 2018) ("AT&T Comments") at 15.

10 *See, e.g*., Xcel Comments at 6.

11 *Id*. *See also* CPS Energy Comments at 8.

12 *Id*.

pole owner, and the overlashing party alike, and in fact enhance – not encumber – the benefits that overlashing may offer to communications companies.

At the present time, CenterPoint Energy requires, ***prior to overlashing***, a form notice that requests only the most basic information about: (i) the overlashing party; (ii) the overlashing cable; (iii) the installed strand; and (iv) the overlashing location.[13] Such information requests hardly are onerous, and if in fact the overlashing party has properly considered the capacity, safety, reliability, and engineering impacts of overlashing,[14] the requested information would be readily available for purposes of completing the required notice form. On average, CenterPoint Energy will process all overlashing notices within less than thirty (30) days, and in nearly all cases, no further action will be required of the overlashing party after a complete notice form is submitted. CenterPoint Energy reserves its rights under current law to deny any overlashing request for reasons related to capacity, safety, reliability, or engineering, or to prescribe make ready;[15] but in practice, CenterPoint Energy accommodates nearly 100% of all overlashing requests, based solely on the information provided in the relevant notice form. However, as the practice of overlashing becomes more frequent, and more widespread, CenterPoint Energy expects that the need for make-ready work to accommodate further overlashing on a pole will become more common as well.[16]

The Commission must not adopt any rule for overlashing that would abruptly prohibit ***prior*** notice processes which have proven over time to be effective.[17] Since 2001, the Commission has

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13 *See* Exhibit A.

14 FBA Comments at 5 ("…overlashers have demonstrated that they, in fact, follow industry standard engineering practices."); Initial FNPRM Comments of the American Cable Association (Jan. 17, 2018) ("ACA Comments") at 8 ("Overlashers are well aware that they need to comply with generally accepted engineering practices to safeguard pole safety and reliability, and they have done so.").

15 Based on information provided in the notice form, CenterPoint Energy may require a pole loading study to assess the need for make-ready work. However, this is presently is not required in all cases.

16 *See infra* n. 18. As load is continuously added to a pole, whether by attachment, or by overlashing, ultimately such load will exceed what the existing pole can bear. It is at this point that make-ready, or a pole replacement, must be undertaken to accommodate further overlashing, or a new attachment.

17 *See, e.g.,* Xcel Energy Comments at 6.

deemed it both reasonable, and consistent with Section 224, for utility pole owners to require prior notice of overlashing.[18] The practice of overlashing nonetheless has thrived for nearly twenty (20) years,[19] and as many FNPRM commenters discussed, has become an important means of repairing and improving communications plant.[20] Against this backdrop, it is puzzling that communications companies now favor a rule that would permit only ***post***-overlashing notice processes, and would ban entirely notice processes that have evidenced no adverse impact on companies that overlash.[21] Such a rule would not codify current Commission precedent, but instead would overturn a pivotal legal determination that has framed utility processes since the time that overlashing first became a part of the Commission's pole attachment policies.[22] The opponents of prior notice processes have not demonstrated that such a reversal of the status quo is warranted.

The service providers and industry associations that tout the benefits of overlashing under the current regulatory scheme fail to explain why ***prior*** notice – but not ***post*** notice – would disrupt the practice of overlashing, or would raise costs for overlashers.[23] In fact, of the FNPRM commenters that reject prior notice processes, only the Fiber Broadband Association ("FBA") even attempts to reconcile this position. However, FBA's claims are without merit. First, as FBA asserts that strong policy reasons disfavor prior notice of overlashing to utility pole owners,[24] it

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[18] *Southern Co.*, 313 F.3d at 582; 2001 Consolidated Order at ¶ 82. Importantly, even FNPRM commenters that vehemently oppose prior notice processes do not deny that clear Commission precedent exists with respect to the reasonableness of such processes, *See*, Verizon Comments at 18-19; ACA Comments at 5; FBA Comments 8-9.

[19] For the 2017 calendar year, CenterPoint Energy reports that 34% of all pole access requests are for overlashing, as compared to less than 1% for the 2014 calendar year.

[20] Significantly, because overlashing requires an existing pole attachment, it does not foster broadband deployment at previously unserved locations. In fact, as certain IOU commenters raised in their initial comments, treating overlashing more favorable than a new attachment is anti-competitive with respect to new entrants. Ameren *et al*. Comments at 22.

[21] *See supra* n. 7.

[22] *See supra* note 17. Even Verizon concedes the Commission ***should go further*** than current law to prohibit prior notice requirements for overlashing. Verizon Comments at 19.

[23] *See* CenturyLink Comments at 3-7; FBA Comments at 8-9; Verizon Comments at 19-20; *Ex Parte* Letter to Marlene Dortch, Secretary, Federal Communications Commission from Steve Morris, NCTA re: Wireline Infrastructure, Docket No. 17-84 (Oct. 20, 2017) at 2.

[24] FBA Comments at 9.

also demands that all third party overlashers ***obtain the consent*** of the host attacher prior to overlashing.[25] FBA clearly understands the value of prior notice (or in this case, prior ***approval***) as it relates to protecting the integrity of communications wires, so it should not follow that prior notice of overlashing to utility pole owners is overly burdensome. Moreover, a communications entity attached to the pole would have far more incentive to arbitrarily reject overlashing by its competitor, than would a utility pole owner that evaluates overlashing requests based on the capacity, safety, reliability, and engineering required under Section 224.

Second, FBA's general statement that prior notice processes would subject overlashing to further delays and increased costs is contrary to fact, and is purely speculative.[26] As noted above, the vast majority of FNPRM commenters reported that overlashing has thrived under the existing regulatory scheme, pursuant to which utility pole owners have implemented successful prior notice processes. Moreover, ***post***-overlashing notice processes (as compared to ***prior*** notice processes) would not mitigate the concerns raised by FBA, to the extent that such concerns in fact exist.[27] For example, if a utility pole owner were to impose unlawful charges for its review of overlashing notices, the impact would exactly be the same whether such notices were processed before, or after the overlashing occurs. Based on the record now before it, the Commission should codify a rule that expressly permits reasonable prior notice processes for overlashing.

Not surprisingly, the same FNPRM commenters that urge the Commission to prohibit all forms of prior notice for overlashing also make no mention of whether, or how a utility pole owner may recover its costs in the event that make-ready work is required to accommodate an overlashing

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25 FBA Comments at 8 n. 33.
26 FBA Comments at 9.
27 *Id*. FBA provided no evidence that utility pole owners charge fees in connection with their review of overlashing notices.

proposal. In fact, only one non pole owner even addressed this aspect of the current law,[28] and that commenter stated frankly that overlashing must not be delayed by a demand for payment of make-ready charges.[29] The Commission considered and rejected this position in its 2011 Pole Attachment Order, and concluded unambiguously that pole owners may require full payment of all make-ready charges before any such work commences. In particular, the Commission reasoned:[30]

> The record contains little evidence that up-front payment is a barrier to telecommunications, cable or broadband deployment, but… attaching entities frequently lose contracts for new business, change routes or ownership, go out of business, or experience other difficulties that cause make-ready costs to remain unpaid even after work has been completed. In any of these cases a utility might be unable to recover its costs... ."
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> "Moreover, up-front payment is both consistent with the way that utilities charge other customers for construction work, and either encouraged or required by a number of state tariffs."

As CenterPoint Energy and Dominion Energy explained in their initial comments, "make-ready" work, by definition, must precede overlashing;[31] and furthermore, the Commission has made clear that full payment of make-ready charges may be demanded up front. The Commission should not adopt a new set of make-ready rules for overlashing that permit payment after the fact.

CONCLUSION

WHEREFORE, CenterPoint Energy and Dominion Energy respectively request that the Commission consider these comments, and take actions, or adopt rules and policies consistent with the foregoing. The rule proposed by Ameren Services Company, American Electric Power Service

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[28] Comments of Crown Castle at 4. Other FNPRM commenters simply deny, without any relevant evidence, that the practice of overlashing burdens poles. *See* ACA Comments at 8; FBA Comments at 5.

[29] Comments of Crown Castle at 4.

[30] *In the Matter of Implementation of Section 224 of the Act* (WC Docket No. 07-245); *A National Broadband Plan for Our Future* (GN Docket No. 09-51), Report and Order and Order on Reconsideration (FCC 11-50), 26 FCC Rcd. 5240 (rel. Apr. 7, 2011).

[31] Initial Comments at 7-8.

Corporation, Duke Energy Corporation, Entergy Corporation, Oncor Electric Delivery Company LLC, Southern Company, Tampa Electric Company, and Westar Energy, Inc. accurately reflects the current law, and strikes an appropriate balance among the rights of pole owners, the business interests of communications service providers, and the policy objectives of the Commission.[32] For these reasons, CenterPoint Energy and Dominion Energy ardently support the immediate adoption of that rule, as set forth below:

PROPOSED 47 C.F.R. § 1.1402(O):

The term overlashing means the tying, draping, twisting, lashing, wrapping or otherwise affixing of fiber optic cable, coaxial cable or other wires over or around existing messenger strand or other cables or wires already attached to a pole.

PROPOSED 47 C.F.R. § 1.1403(F):

A utility may require advance notice of overlashing. An advance notice requirement consistent with § 1.1403(b) shall be presumptively reasonable. Within such time period, a utility may deny overlashing where there is insufficient capacity, or for reasons of safety, reliability and generally applicable engineering purposes. If the overlashing is not denied, a utility shall provide a telecommunications carrier or cable operator an estimate of charges to perform any make-ready work necessary to accommodate the overlashing, as provided in § 1.1420(d).

Respectfully submitted,

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[32] Ameren *et al.* Comments at 27.

EXHIBIT A

CenterPoint Energy

Pole Attachments Overlashing Notification Form

Attacher's Notification: (completed by Attacher)		**Overlash Cable Specification**	**Installed Cable Weight:**	
Owner of the Overlashed Cable:			**Diameter of Cable:**	
Overlashing Company:				
Notification Submission Date:		**Installed Strand Specification**	**Installed Strand Weight:**	
Proposed Completion Date:			**Diameter of Strand:**	
Address:			**Lambert :**	
Construction Contact:			**Tel Number:**	

Proposed Pole	Span Distances between Poles (in feet)	NESC Clearance Available?		Number of Existing Attachers	Number of Existing Overlashed Cables	Attacher's Notes
		At Pole (Y/N)	At Mid-Span (Y/N)			

Information regarding overlashed telecommunication attachments is essential to CenterPoint' s continuing efforts to monitor the conditions of its poles and to prevent overloading. For this reason, CenterPoint' s Pole Attachment Guidelines require that Owners of overlashed cable report proposed overlashing installations within 30 days of the installation. This issue is so critical that the Guidelines instruct that overlashed attachments not reported to CenterPoint within 30 days of installation will be treated by CenterPoint as unauthorized attachments.