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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; *Ex Parte* Filing of Xcel Energy Services Inc. and Alliant Energy Corporation**

Dear Ms. Dortch:

Xcel Energy Services Inc. ("Xcel Energy") and Alliant Energy Corporation ("Alliant Energy") have been active participants in the above-captioned proceeding regarding proposed revisions to the Commission's pole attachment rules.[1] On July 12, 2018, the Commission released a Draft Third Report and Order in which it detailed specific rule changes that it plans to consider at its next Open Meeting on August 2, 2018.[2] Xcel Energy and Alliant Energy are concerned that the Draft Order raises a number of issues that require further consideration before the final version of the order is adopted.

In particular, Xcel Energy and Alliant Energy urge the Commission to revisit the following determinations in its Draft Order:

- The 15-day application review period for one-touch make-ready ("OTMR") requests;
- The responsibilities of OTMR attachers to address safety and other construction issues during and after the performance of OTMR work;

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[1] / *See* Joint Comments of Alliant Energy Corp., WEC Energy Group, Inc. and Xcel Energy Services Inc. ("Midwest Electric Utilities") in WC Docket No. 17-84 (filed June 15, 2017); Joint Reply Comments of Midwest Electric Utilities in WC Docket No. 17-84 (filed July 17, 2017); Comments of Xcel Energy Services Inc. in WC Docket No. 17-84 (filed Jan. 17, 2018).

[2] / *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Public Draft, Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03 (July 12, 2018) ("Draft Order").

- The requirement for utilities to provide detailed make-ready cost estimates and final invoices on a per-pole basis, including for all make-ready work to be performed by existing attachers; and

- Restrictions that would compel utilities to allow access to poles that have existing safety issues.

Xcel Energy and Alliant Energy also support the Draft Order's determination to adopt a rule that will allow utilities to ensure that they receive 15 days' advance notice of overlashing projects and urge the Commission to further clarify that this overlashing rule does not apply to strand-mounted wireless equipment and other RF-emitting devices due to the safety, loading, and interference issues that such devices raise.

One-Touch Make Ready Applications

Xcel Energy and Alliant Energy support the adoption of an OTMR policy for simple make-ready work in the communications space. However, establishing separate application review processes and timelines for OTMR and non-OTMR requests will significantly complicate the overall pole attachment process and create confusion, complexity, and administrative burdens that will result in increased costs and potential delays.

The Commission's plan to adopt a separate 15-day application review period for OTMR applications does not provide utilities with sufficient time to review the application and accompanying survey for accuracy and conformance with applicable safety and engineering standards.[3] As described in the record of this proceeding, the majority of applications that utilities receive (as high as 85% in some cases) contain errors that must be corrected by the utility during its review,[4] thus emphasizing the need for utilities to have sufficient time to review and verify applications and surveys prepared by third parties in order to ensure the safety, reliability and integrity of their pole infrastructure.

New attachers and their contractors also have no way of knowing in advance whether the poles they have selected are covered by overlapping attachment applications already on file from other attachers, by pre-existing plans for the addition of electric distribution facilities, or other conditions that may affect the suitability of the pole for attachment. With sufficient time to review the application and survey, the utility can alert the new attacher to such issues and enable the new attacher to make an informed decision on how (or whether) to proceed before committing itself to make-ready and construction costs.

In addition, placing OTMR applications under a separate review process with a significantly curtailed timeline means that existing attachers on the affected poles will not have

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[3] / Draft Order at ¶ 58.

[4] / *See, e.g.*, Comments of Midwest Electric Utilities at 15 – 16 and 23.

an opportunity to review the results of a survey or to communicate any concerns they may have with those results to the utility, which places a substantially greater burden on the utility to ensure a thorough review of the requested poles. Electric utilities are not responsible for performing make-ready work in the communications space and are thus not in a position to know whether the proposed OTMR work on a pole is simple or would in fact require a service outage, splice, or other measure that would make the work complex. However, because electric utilities are the only entities allowed under the Draft Order to question an attacher's "simple/complex" determination, electric utilities must be able to consult with existing attachers as needed in order to ensure that no shortcuts are being taken and that all necessary safety, reliability, and construction requirements are being met.[5]

Separate timeframes for OTMR and non-OTMR applications will also lead to confusion and complexity for attachers and pole owners. Utilities review and process attachment applications on a non-discriminatory, first-in-time basis, regardless of the identity of the attacher or the nature of the attachment. Mandating a substantially shorter timeframe for OTMR reviews could compel utilities to prioritize the processing of OTMR applications over previously filed non-OTMR applications, thus potentially delaying the processing and approval of non-OTMR applications that get bumped back in the queue. In addition, in cases where there are overlapping or multiple requests for attachment to the same poles, this shorter mandatory timeframe could create an unfair advantage for OTMR applicants by enabling them to jump the line over first-in-time non-OTMR applicants. This would encourage gamesmanship by providing new attachers with an incentive to use the OTMR process to get their applications processed and approved ahead of those from other attachers, [6] even if their applications include poles that in fact are not eligible for OTMR.[7]

As the Commission observes in the Draft Order, the BDAC did not view the application review process as an issue that needed to be addressed as part of its OTMR recommendations, nor does the Draft Order cite to any evidence in the record to support the adoption of a separate 15-day timeframe for review of OTMR applications.[8] Indeed, the entire premise of OTMR is to

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[5] / The issues described above will not be mitigated by the requirement that new OTMR attachers permit representatives of the utility and existing attachers to be present for the survey. In practice, three business days' advance notice (using "commercially reasonable efforts") does not provide a meaningful opportunity for any participation in the OTMR survey by utilities or existing attachers.

[6] / *Cf.* Draft Order at ¶ 87 (declining to adopt shorter make-ready timeframes for "routine" requests involving a small number of poles out of concern that this could cause utilities to give undue priority to those requests in order to meet the compressed timeframe, which would "incentivize possible gamesmanship.").

[7] / The risk of such gamesmanship is even greater under the draft rules for determining whether make-ready is simple or complex. In short, the rules provide new attachers with an incentive to identify as much make-ready work as possible as "simple" – electric utilities are the only entities allowed to challenge such a determination, but electric utilities are not in a position to know whether make-ready work in the communications space is simple or complex (*e.g.*, requiring a service outage, splice, etc.), and to the extent they could even do so, 15 days would not be sufficient to make what is effectively a pole-by-pole determination.

[8] / Draft Order at ¶ 58.

improve the speed and efficiency of the make-ready process that begins after the completion of the application review process – a process that is essential to ensuring that new attachments do not compromise the safety, integrity, and reliability of existing communications and electric distribution infrastructure, and which therefore requires sufficient time to complete.

Accordingly, in order to avoid the confusion, complexity, additional costs, administrative burdens, and potential gamesmanship and delays that would arise from adopting a separate, shorter application review timeframe for OTMR applications – thus negating the intended benefits of an OTMR policy – Xcel Energy and Alliant Energy urge the Commission to apply a uniform 45-day timeframe (with appropriate extensions for large orders) for the review and approval of all pole attachment applications. This would provide necessary certainty for all participants in the pole attachment process while allowing the benefits of an OTMR policy to be realized.

One-Touch Make-Ready Process

Although electric utilities will have little or no involvement in the OTMR process after the application has been approved, there are two aspects of the Draft Order's OTMR rules that require further consideration and clarification.

First, the Draft Order provides that an electric utility can question an OTMR attacher's "simple/complex" determination during the application review period, and further provides that a reasonable determination made by the utility during that period will be considered final. However, the Draft Order does not adequately address what procedures should be followed when it is discovered in the field while make-ready is being performed that the work on a particular pole is in fact complex, or if it is found that conditions in the field will prevent the OTMR contractor from performing the make-ready work in a "simple" manner, if at all. Instead, the Draft Order only discusses the steps to be taken when an OTMR contractor causes damage or a service outage to an existing attacher or to the utility, and even then requires nothing more than providing notice to the affected attacher or utility and reimbursing the attacher and/or utility for the costs of repairing the damage or outage.[9]

Second (although perhaps more important), the Draft Order's post-construction OTMR procedures do not give utilities sufficient ability to ensure that the new attacher's work has been performed correctly and in accordance with all applicable safety, reliability, and engineering requirements. According to the Draft Order, the new attacher is required to provide the utility and existing attachers with a single 30-day window to conduct a post-construction inspection of its work, and the only remedy available to utilities and existing attachers is reimbursement for the costs of fixing any damage caused to their equipment.[10] However, even when no damage has

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[9] / *Id*. at ¶ 63. Although the Draft Order states that the new attacher can be required to fix the damage, the new attacher would have 14 days to do so. As a practical matter, no attacher or utility is going to allow damage – or especially an outage – to linger unresolved for 14 days.

[10] / *Id*. at ¶¶ 64 – 65.

been incurred, improperly performed make-ready can still create unsafe conditions or violations on a pole. The Commission should therefore revise its rules to clarify that the new attacher's responsibilities also include the correction of any safety violations or construction deficiencies arising from its work, regardless of whether there was any damage to a utility's or attacher's equipment.[11]

In addition, the Draft Order provides no accommodation for any re-inspection to verify that any necessary corrections and remediation have been completed and performed correctly. The Commission should therefore revise its rules to allow the re-inspection of corrective and remedial work performed by the new attacher and to hold the new attacher responsible for any further work that may be needed to come into compliance with applicable safety, reliablity, and engineering requirements.

Make-Ready Estimates and Final Invoices

The Draft Order's requirement that utilities provide detailed make-ready cost estimates and final invoices on a pole-by-pole basis for all make-ready work on the pole – regardless of who performs it[12] – is both impractical and infeasible and will increase make-ready costs while potentially causing even greater confusion, uncertainty and delay for new attachers.

The level of detail, itemization, and granularity that would be required under the new rule exceeds what electric utilities provide to their own customers and even to their respective state regulatory commissions. Xcel Energy owns approximately 1,500,000 individual distribution poles across a multi-state service area. Alliant Energy has over 1,000,000 individual distribution poles across the states of Iowa and Wisconsin. Generating the detailed documentation required under the new rule on a per-pole basis for each of the over 1,000,000 poles owned by each of these two companies is neither practical nor feasible. In order to achieve that level of detail, utilities would be required to expend substantial resources (which would result in increased costs attributable to attachers for the preparation of make-ready estimates) and would need more than the 14 days provided under the current rules to prepare and provide estimates. Moreover, a number of the costs associated with make-ready are fixed costs that are dependent on the project itself rather than on the specific number of poles, which means that new attachers would not receive any benefit from a costly and time-consuming per-pole breakdown. A more appropriate and viable approach to improving the transparency of make-ready costs would be for utilities to make available upon request the cost information upon which their estimates and invoices are

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[11] / Even where there may not be an issue of safety, the failure to perform make-ready or installation in accordance with the approved design often results in inefficient use of the available space on the pole, which in turn drives up the cost of deployment for any future communications attacher due to the need for corrections or make-ready that would not have otherwise been needed. In addition to increased costs, improper or unauthorized construction and installation can also unnecessarily delay future work by attachers and pole owners. *See* Joint Comments of Midwest Electric Utilities in WC Docket No. 17-84 (filed June 15, 2017) at 27.

[12] / *Id*. at ¶¶ 103 – 105.

based, and to allow this information to be provided within a reasonable period of time and in accordance with the utility's standard accounting and billing procedures.

The requirement for electric utilities to provide cost estimates and final invoices for all make-ready work – regardless of which party is responsible for performing it – is both arbitrary and unrealistic. The Commission cannot mandate that utilities provide information that they do not have and cannot reasonably obtain. The most effective and appropriate way to ensure that new attachers receive accurate and timely estimates and final invoices for their make-ready costs is to require such estimates and invoices to be provided directly by the party responsible for performing the applicable make-ready work – *i.e.*, the electric utility for make-ready work in the power supply space and on electric utility facilities, and existing attachers (and ILEC pole owners, as applicable) for make-ready work in the communications space. The Draft Order already requires new attachers to coordinate make-ready work directly with existing attachers, and the provision of cost estimates and final invoices by the existing attachers would be a natural and logical element of this process.

Electric utilities do not perform make-ready in the communications space and are not responsible for doing so. Make-ready work in the communications space is the responsibility of the existing communications attachers, and utilities have no knowledge of or access to what the make-ready costs for these attachers might be. Existing attachers do not share such cost information with the utilities, nor is there any requirement for them to do so. Furthermore, these make-ready costs vary widely among attachers (and even for a single attacher) depending on variables such as location, specific materials, the use of contractors, and so forth. Any good-faith estimate of communications space make-ready costs that an electric utility might be able to make based on the best information available would likely be so inaccurate as to be useless.

The requirement for utilities to provide detailed final invoices for all make-ready work raises additional issues about how the Commission expects invoicing and cost reimbursement in general to be managed. Just as electric utilities have no knowledge of or access to information about communications attachers' estimated make-ready costs, electric utilities have even less knowledge of what these attachers' actual costs are for any given project. Under long-standing and widely-accepted and understood practice, the billing and payment of applicable costs for make-ready in the communications space has been a matter for new attachers and existing attachers to handle between themselves, with no involvement by the electric utility. The only way for an electric utility to know the existing attacher's actual make-ready costs would be for the attacher to provide that information to the utility; however, there is no requirement under the new rule for the attacher to make this information available.

By placing sole responsibility for the invoicing of all make-ready work on the utility, the Commission is effectively requiring utilities to become clearinghouses responsible for handling all invoices and all payments between all of the parties on a pole. This would add another layer of administrative cost to the pole attachment process and would even further extend the time by which new attachers would receive their final invoices, since utilities will be compelled to wait until they receive the necessary cost information and/or invoices from all of the existing attachers

and contractors involved in the project (and, as noted above, the new rule does not even require them to provide this information to the utility in the first place). Accordingly, the Commission should revise its new rules to clearly specify that make-ready cost estimates and final invoices are to be provided to the new attacher by the party responsible for performing the applicable make-ready work.

Existing Safety Issues and Violations

The Draft Order includes language intended to clarify that new attachers should not be responsible for the costs of correcting pre-existing violations of applicable safety and construction standards.[13] Xcel Energy and Alliant Energy agree that such costs should be the responsibility of the party responsible for the violation.

Xcel Energy and Alliant Energy are very concerned, however, that the subsequent paragraph in the Draft Order appears to impose restrictions that would compel utilities to allow access to poles that have existing safety issues, which could put the safety of workers and of the public at risk. Specifically, paragraph 113 of the Draft Order states that "utilities may not deny new attachers access to the pole based on safety concerns arising from a pre-existing violation."[14] While Xcel Energy and Alliant Energy agree that it may be appropriate to approve an application for access to a pole where there is a pre-existing violation, the Commission should clarify that utilities have the right to stop all work on that pole and prohibit physical access to that pole until the pre-existing safety issue is resolved and the pole is brought into compliance.

Overlashing

Xcel Energy and Alliant Energy support the Draft Order's determination to adopt a rule that will allow utilities to ensure that they receive 15 days' advance notice of overlashing projects, which will promote safety and reliability and allow the utility to protect its interests without imposing unnecessary burdens on attachers.[15] The Commission should clarify, however, that overlashers are responsible not just for any necessary repairs of damage arising from their overlashing, but also for any corrections needed to bring their overlashing into compliance with applicable safety, reliability, and engineering requirements.[16]

Xcel Energy and Alliant Energy also urge the Commission to clarify that the overlashing rule does not apply to strand-mounted wireless equipment and other RF-emitting devices due to the safety, loading, and interference issues that such devices raise.[17] Xcel Energy

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[13] / *Id*. at ¶ 112.

[14] / *Id*. at ¶ 113.

[15] / *Id*. at ¶ 108.

[16] / *Id*. at ¶ 111 (noting that "the Commission has consistently found that overlashers must ensure that they are complying with reasonable safety, reliability, and engineering practices.").

[17] / *See* Comments of Xcel Energy Services Inc. in WC Docket No. 17-84 (filed Jan. 17, 2018) at 8 – 10.

and Alliant Energy agree with CenturyLink that although this exclusion is implicit in the Draft Order's codification of the Commission's longstanding policy on overlashing, an express clarification of this exclusion will avoid potential confusion or disputes.[18]

Advance Notice of Surveys

Xcel Energy and Alliant Energy appreciate the intent of the requirement in the Draft Order to permit new attachers and any existing attachers potentially affected by the new attachment to be present for any pole surveys. However, it is highly doubtful whether the requirement to provide three business days' advance notice to these attachers would be either effective or practical.[19] As an initial matter, one of the purposes of a pole survey is to determine and verify which attachers are actually on the pole. During field surveys, utilities frequently find attachments on their poles that do not correlate to their records, often as a result of modifications, relocations, overlashing, or changes in ownership for which no notification to the utility was given, as well as attachments that have been made without the utility's knowledge or authorization. In other words, a survey would often be needed to determine to whom any notifications should be sent in the first place – otherwise, there is no way to be certain that all potentially affected existing attachers are notified. Expecting a utility to conduct a survey to determine who should be notified of a survey does not make sense.

In addition, the pace of work required to ensure that all incoming pole attachment applications are reviewed and processed in a timely manner and in accordance with the Commission's timeframes means that utilities' surveyors must make every effort to survey as many poles as possible each day and must begin a survey for a new project once the current survey is complete, regardless of the time of day. This means that survey schedules are often unpredictable, and the utility itself may not be certain when a survey will begin until it actually does. Any staggering or slowdown of the survey process in order to ensure that other parties receive a certain amount of advance notice would result in cascading delays that will increase the costs and time needed to conduct and complete the survey and application review process, thus unnecessarily extending (rather than shortening) the pole attachment process. It is also highly unlikely that, in practice, a new or existing attacher would actually send a representative to be present at a survey upon three business days' notice, yet adopting a longer notice period would add additional and unnecessary cost and delay to the pole attachment process.

Therefore, while Xcel Energy and Alliant Energy agree that new and existing attachers should be permitted to have a representative present at any pole survey, the specific advance notice requirement in the Draft Order would be ineffective and would increase the costs and time of the pole attachment process while providing no practical benefit to attachers.

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[18] / Letter from Nicholas G. Alexander, Associate General Counsel, CenturyLink, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed July 23, 2018).

[19] / Draft Order at ¶ 76.

In accordance with Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,

/s/ David D. Rines

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