Attachment H

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**
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	**)** **)**	**WT Docket No. 17-79**

To: The Commission

PETITION FOR RECONSIDERATION OF THE COALITION OF CONCERNED UTILITIES

Arizona Public Service Company
Berkshire Hathaway Energy
Eversource
Exelon Corporation
FirstEnergy
South Carolina Electric & Gas
The AES Corporation

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SUMMARY

The *Coalition of Concerned Utilities* serves more than 25 million electric customers in 19 states and the District of Columbia and owns, in whole or in part, more than 12 million electric distribution poles. We urge the Commission to reconsider portions of its August 3 Order to better achieve the goals set out in the Order, to prevent one set of attachers from benefiting at the expense of the other, to prevent accidental deaths and injury, to safeguard the public, to protect the integrity of the electric distribution system, to reconcile newly-imposed regulations with other conflicting regulations and the Pole Attachment Act, to add efficiencies to speed deployment, and to eliminate unnecessary roadblocks to future broadband deployment.

Joint Use Rates. Existing joint use agreements give ILECs numerous advantages over their CLEC and cable company competitors. As a result, before ILECs can be presumed "similarly situated" to these competitors and entitled to the same rate, a new agreement must be negotiated with terms and conditions similar to CLEC and cable company attacher agreements. Applying such a presumption to "newly-negotiated" agreements therefore makes sense, but applying it to "newly-renewed" agreements that retain all these ILEC advantages does not. For similar reasons, capping the ILEC rate at the pre-2011 Telecom Rate is not justified, since ILEC advantages far outweigh the monetary difference between the pre-2011 Telecom Rate and the "new" post-2011 Telecom Rate. Finally, to prevent price-gouging and facilitate a productive joint use relationship, the Commission should provide much-needed guidance by specifying that any percentage reduction in the per pole attachment fees ILECs pay to electric utilities should be matched by the same percentage reduction in the per pole amount electric utilities pay ILECs.

Electric Space Self-Help Remedy. For public safety reasons alone, allowing communications companies to hire utility-approved contractors to perform make-ready survey or

construction work in the electric space must be eliminated entirely. Work in the electric space can result in serious injury or electrocution, create hazards to the public, and cause electrical outages. Even a cursory review of detailed OSHA requirements shows communications companies cannot responsibly manage outside contractors performing work on electric distributions systems. Guidelines in the August 3 Order regarding contractor qualifications, notice to utilities, and the ability to post-inspect (without reimbursement) are all insufficient, since ad hoc oversight of potentially hazardous electric space activity cannot ensure this work is performed safely. Self-help in the electric space is so objectionable that many utilities may need to divert resources currently performing non-mandatory electric space make-ready work, such as expanding capacity for communications attachers by replacing poles, just to ensure they have enough time to meet electric space make-ready deadlines and thereby eliminate the risk of losing control over their electric space facilities.

Overlashing. The August 3 Order greatly restricted utility oversight of overlashing activity, after observing that the record did not show significant safety or reliability issues associated with overlashing. The *Coalition* respectfully disagrees, pointing to evidence in the record of: (1) 150 instances of dangerous and destructive accidents over the past two years for just one *Coalition* member caused by low-hanging wires overloaded with overlashing that got snagged by passing vehicles; (2) loading analyses depicting the increased load created by overlashing; (3) explanations that overlashing causes NESC mid-span ground clearance violations, violations of NESC-required separations between communications wires, violations of NESC pole loading standards, and excessive strain on pole guys; and (4) an explanation that overlashing is often installed on existing facilities that are already located out of NESC compliance and dangerously close to energized facilities, potentially electrocuting the

contractors performing the overlashing. Such practices are dangerous, but in addition burden future attachers with additional costs and risks. Accordingly, the Commission should enable pole owners to require engineering studies as part of any advance notice requirement, to require overlashing materials to be identified, to require that a licensed Professional Engineer certify the proposed overlashing, and to recover any costs associated with overlashing review. Finally, the Commission must reconsider its footnote ruling that pole owners may not deny overlashing because of preexisting violations. That ruling fails any test of reasoned decision-making because it fails to recognize that some violations are far more dangerous than others.

Pre-Existing Safety Violations. The pre-existing violation rules must be reconciled with existing Commission rules and the Pole Attachment Act. The August 3 Order requires the premature replacement by utilities of "red-tagged" poles, which is inconsistent with the Pole Attachment Act's provision enabling utilities to deny access for reasons of lack of capacity. In addition, while new section 1.1411(d)(4) prohibits pole owners from charging new attachers to correct preexisting safety violations, existing section 1.1408(b) (f/k/a 1.1416(b) until October 4, 2018) *requires* the cost of modifying a facility to be borne by all parties that obtain access to the facility as a result of the modification. The Commission should clarify that even while section 1.1411(d)(4) prevents the new attacher from being charged to replace a pole with a preexisting violation, the new attacher retains a reimbursement obligation under section 1.1408(b) to cover the new attacher's access to the replaced pole. The pre-existing violation rules should otherwise be improved by: (1) requiring unauthorized attachers to pay to correct violations; (2) requiring any communications attacher which reasonably may have caused the violation to share in the modification costs; and (3) requiring the new attacher to pay for the modification and seek reimbursement from the attachers who caused the violation.

Make-Ready Estimates. The Commission should require new attachers, not the pole owner, to pursue the self-help remedy to gather make-ready estimates from existing communications attachers. In the alternative, pole owners should not be penalized because of recalcitrant existing attachers and should be allowed to impose reasonable penalties. As for pole-by-pole estimates, which require more time and expense to prepare, any attacher requesting such detailed pole-by-pole estimates should bear the extra time and expense to prepare them.

Joint Ride-Outs. Several operational issues can be resolved by slightly modifying this new requirement as follows: (1) since many new attachers do not want joint ride-outs, the joint ride-out provision should be made optional; (2) because utilities may not know which attachers are on any given pole line, attachers should include that information in their attachment requests; and (3) the requirement to provide at least three business days' notice is counterproductive and inefficient and should be reduced to at least 24 hours.

Double Wood. To avoid pervasive and highly-objectionable "double wood" conditions, in which an existing pole remains for extended periods right next to a replacement pole because existing communications attachers will not move their facilities, the Commission should simply enable pole owners to transfer all communications company cables in a manner consistent with the communications space "complex" make-ready self-help remedy in the August 3 Order.

Contractor Specifications. Because utilities do not perform communications space make-ready, utilities should not have to maintain a list of approved contractors to perform "complex" make-ready construction work. The rule allowing communications companies to propose new contractors should be revised to ensure reliable performance and prevent contractor abuses, as follows: (1) since it is far too easy simply to "agree" to follow the NESC, OSHA, applicable regulations and utility rules, a Professional Engineer stamp should accompany all

survey and construction work performed by a contractor hired by a communications company; (2) utilities should be entitled to require a "ramp-up" period to evaluate any new contractor; and (3) any attacher hiring non-union personnel should reimburse the pole owner for union contract costs.

One-Touch Make-Ready. NESC engineering and clearance determinations are required before a contractor can conclude that communications space make-ready work is "simple." To provide maximum flexibility to allow communications companies to hire contractors other than utility-approved contractors, any contactor used by the new attacher should include a Professional Engineer stamp with all survey results, certifying the make-ready work is in fact "simple." In addition, ten days' notice rather than three should be provided to allow utilities to participate in any OTMR surveys. An additional 15 days should be added to OTMR application review periods, and 30 days' notice instead of 15 days' notice should be provided to allow utilities to monitor any OTMR make-ready construction work.

Completed Applications. Considering that any "deemed granted" application that has not been reviewed could potentially harm the system and endanger the public, the application review period should be extended to 15 business days, with additional time added for any *force majeure* and other events beyond the pole owner's control.

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The *Coalition of Concerned Utilities* seeks common sense pole attachment regulations to improve the process by which communications companies attach their facilities to electric distribution poles while at the same time providing safe and efficient delivery of electric services to their consumers. The *Coalition*'s proposed changes to the August 3 Order are consistent with these shared goals and the *Coalition* urges the Commission to reconsider its rules accordingly.

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Arizona Public Service Company, Berkshire Hathaway Energy, Eversource, Exelon Corporation, FirstEnergy, South Carolina Electric & Gas, and The AES Corporation (collectively, "the *Coalition of Concerned Utilities*" or "*Coalition*"), by their attorneys and pursuant to Section 1.429 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §1.429, respectfully petition the Commission for reconsideration of its Order released in this proceeding on August 3, 2018 ("August 3 Order").[1]

Collectively, the *Coalition* serves more than 25 million electric customers in 19 states and the District of Columbia and owns, in whole or in part, more than 12 million electric distribution poles. We urge the Commission to reconsider portions of its August 3 Order to

[1] *Third Report and Order and Declaratory Ruling*, FCC 18-111, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (WC Docket No. 17-84), Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT Docket No. 17-79), August 3, 2018 ("*Third Report and Order*"). The Order portion was published in the Federal Register on September 14, 2018, 83 Fed. Reg. 46812.

better achieve the goals set out in the Order, to prevent one set of attachers from benefiting at the expense of the other, to prevent accidental deaths and injury, to safeguard the public, to protect the integrity of the electric distribution system, to reconcile newly-imposed regulations with other conflicting regulations and the Pole Attachment Act, to add efficiencies to speed deployment, and to eliminate unnecessary roadblocks to future broadband deployment.

I. BACKGROUND ON *COALITION* MEMBERS

The *Coalition of Concerned Utilities* is composed of the following electric utility companies:

Arizona Public Service Company - provides electric service to 1.2 million customers in 11 counties in Arizona. Arizona Public Service owns and maintains approximately 517,500 electric distribution poles.

Berkshire Hathaway Energy – provides electric service to approximately 3.9 million customers in Iowa, Illinois, South Dakota, Nevada, Oregon, Washington, California, Utah, Idaho and Wyoming. Berkshire Hathaway Energy provides service to its customers through three electric utility operating companies.[2] Berkshire Hathaway Energy owns and maintains, in whole or in part, approximately 2,087,000 electric distribution poles.[3]

Eversource - provides electric and natural gas service to approximately 3.6 million customers in New Hampshire, Massachusetts, and Connecticut. Eversource provides service to its customers through four electric utility operating companies.[4] Eversource

[2] Berkshire Hathaway Energy's operating companies are MidAmerican Energy, NVEnergy and PacifiCorp.

[3] MidAmerican Energy owns and maintains approximately 750,000 poles; NVEnergy owns and maintains approximately 217,000 poles; and PacifiCorp owns and maintains approximately 1,120,000 poles.

[4] Eversource's operating companies are Connecticut Light & Power, Public Service of New Hampshire, and NSTAR Electric & Gas.

owns and maintains, in whole or in part, approximately 2,000,0000 electric distribution poles.[5]

Exelon Corporation - provides electric and natural gas service to approximately 10 million customers in Pennsylvania, New Jersey, Delaware, Maryland, Illinois, and the District of Columbia. Exelon provides service through six electric distribution operating companies.[6] Exelon owns and maintains, in whole or in part, approximately 3,075,000 electric distribution poles.[7]

FirstEnergy - provides electric service to six million customers in Ohio, Pennsylvania, West Virginia, Maryland, Virginia and New Jersey. FirstEnergy provides this service to its customers through ten electric utility operating companies.[8] FirstEnergy owns and maintains approximately 4,100,000 electric distribution poles.[9]

South Carolina Electric & Gas - provides electric and natural gas service to over 660,000 customers in South Carolina. SCE&G owns and maintains approximately 417,000 electric distribution poles.

[5] Connecticut Light & Power owns and maintains approximately 800,000 electric distribution poles; Public Service of New Hampshire owns and maintains approximately 600,000 poles; and NSTAR Electric & Gas owns and maintains approximately 600,000 poles.

[6] Exelon's operating companies are Atlantic City Electric, Baltimore Gas and Electric, ComEd, Delmarva Power and Light, PECO, and Pepco.

[7] Atlantic City Electric owns and maintains approximately 392,000 electric distribution poles; Baltimore Gas and Electric owns, in whole or in part, approximately 360,000 electric distribution poles; ComEd owns and maintains approximately 1.4 million electric distribution poles, Delmarva Power owns and maintains approximately 297,000 electric distribution poles, PECO owns and maintains approximately 415,000 electric distribution poles. Pepco owns and maintains approximately 211,000 electric distribution poles.

[8] FirstEnergy's operating companies are Jersey Central Power and Light, Metropolitan Edison, Ohio Edison, Pennsylvania Electric Company, Pennsylvania Power Company, Cleveland Electric Illuminating Company, Monongahela Power, Potomac Edison, West Penn Power Company, and Toledo Edison.

[9] Jersey Central Power and Light owns and maintains 317,000 poles; Met-Ed owns and maintains 345,000 poles; Penelec owns and maintains 527,000 poles; Penn Power owns and maintains 111,000 poles; West Penn Power owns and maintains 634,000 poles; Mon Power owns and maintains 653,000 poles; Potomac Edison owns and maintains 336,000 poles; Toledo Edison owns and maintains 220,000 poles; Ohio Edison owns and maintains 572,000 poles; and The Illuminating Company owns and maintains 393,000 poles.

The AES Corporation - provides electric service to approximately one million customers in Indiana and Ohio. AES provides this service through two electric distribution operating companies.[10] AES owns and maintains approximately 465,000 electric distribution poles.[11]

II. RECONSIDERATION REQUESTS

A. The Joint Use Attachment Rate Rules Should Be Modified to Level the Playing Field

1. ILECs should not be given an unfair advantage over their cable company and CLEC competitors

The August 3 Order correctly recognizes that joint use agreements provide incumbent local exchange companies ("ILECs") with benefits not enjoyed by third party attachers like cable companies and competitive local exchange companies ("CLECs"), including lower make-ready costs, the right to attach without advance approval, and the use of utility rights-of-way.[12]

The *Coalition* identified these three advantages and others, as follows:

1. ILECs have lower make-ready costs;
2. ILECs can attach without advance approval;
3. ILECs can use utility rights-of-way;
4. ILECs avoid the post inspection costs and delays that their competitors experience;
5. ILEC facilities occupy a better location on the poles;
6. ILECs are guaranteed a specified number of feet on the pole, ensuring they can expand their facilities with greater ease;
7. ILECs often avoid the costs of relocating and rearranging their attachments;
8. ILECs sometimes collect rent for attachments to electric utility poles; and
9. ILECs pay less for pole replacements.[13]

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[10] AES's operating companies are The Dayton Power and Light Company and Indianapolis Power & Light Company.

[11] Dayton Power & Light owns and maintains approximately 329,000 electric distribution poles; Indianapolis Power & Light owns and maintains approximately 136,000 electric distribution poles.

[12] *Third Report and Order* at ¶ 124.

[13] Comments of the *Coalition of Concerned Utilities, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 at 45-49 (Filed Jun. 15, 2017) ("*Coalition Comments")*. These benefits were provided only because ILECs are also pole owners who were initially undertaking the significant responsibilities of installing and maintaining poles and providing the same benefits to

But while recognizing these significant advantages that ILECs have over their cable company and CLEC competitors, the Commission nevertheless established a presumption that ILECs are "similarly situated" to CLEC third party attachers, which enjoy none of these advantages.[14] The new presumption applies to newly-negotiated agreements, which makes sense because it enables the electric utility and ILEC to negotiate new terms and conditions that do not favor the ILEC over its competitors. But the August 3 Order also inexplicably applies the presumption to "newly-renewed" agreements, enabling existing joint use agreement to continue granting these ILEC advantages.[15]

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the electric utilities who are attaching to the ILEC-owned poles. Unfortunately, ILECs have been shirking these responsibilities for years, requiring electric utilities to shoulder the burden of joint use by installing and maintaining poles, while continuing to receive all the preferential benefits of joint use.

[14] *Third Report and Order* at ¶ 126.

[15] *Id*. The Commission justifies establishing a presumption that ILECs are similarly situated to CLECs and should get the same attachment rate by concluding that ILEC bargaining power vis-à-vis utilities has continued to decline. *Id*. This conclusion is based on the upside-down finding that a disparity in pole ownership grants utilities bargaining leverage, and on statements in the record that ILEC attachment rates have increased while the rates ILECs charge for cable and CLEC attachments have decreased. *Id.* The correct conclusion to draw is that ILECs have systematically succeeded in pushing more and more of the burden of pole ownership onto public utilities.

In no way do the ILECs lack bargaining leverage over electric utilities. ILECs, many of which were once Bell Companies, are often far larger than the local public utility. And the view that somehow owning fewer poles means that ILECs lack bargaining leverage is unsupported by meaningful analysis and is contrary to this reality – most ILECs no longer really want to own and maintain poles. They are not losing bargaining power by reducing the number of poles they own. They are using their bargaining power to reduce their future obligations, simply by refusing to comply with their contractual obligations to install and maintain poles, and even by renegotiating down the percentage of poles they are required to own and maintain relative to the public utility. As a result of this leverage, they have successfully reduced the percentage ownership levels they are supposed to maintain, reduced their joint use expenses, but maintained all the advantages of a joint use contract.

As for the attachment rates that ILECs charge to cable companies and CLECs, such rates have nothing to do with ILEC bargaining leverage over electric utilities.

As explained in the *Coalition*'s Comments, any determination that unequal pole ownership may in some circumstances result in bargaining leverage is based on critical assumptions that (i) pole owners have a legal right to remove the other's facilities, (ii) they have a legal right to construct alternate facilities, and (iii) it makes economic sense to do so. But it is often the case that none of those situations exist. Comments of the *Coalition of Concerned Utilities* at 50.

The Commission thus has not fully analyzed whether electric utilities have bargaining leverage and lowering rates for ILEC attachments to utility poles based on the conclusion that utilities do have bargaining leverage is therefore unjustified. Nor does the Commission provide any legal justification for establishing this presumption.

The presumption that ILECs should be entitled to the new Telecom Rate should therefore be removed.

Because of the advantages joint use agreements give ILECs over their CLEC competitors, the only way that ILECs and CLECs can be similarly situated is if the ILECs and electric utilities enter into new agreements that eliminate those advantages.

To level the playing field, the *Coalition* respectfully requests the Commission to remove this "comparably situated" presumption from existing joint use agreements that are "renewed," and apply the presumption only to "newly-negotiated" agreements. This will allow ILECs and electric utilities to reach attachment agreements containing terms and conditions that are similar to those in third party CLEC and cable company agreements.

If the ILECs negotiate an agreement similar to CLEC and cable company agreements, there can be no question they are similarly situated and should get the same rate, thus eliminating disputes.[16]

For similar reasons, the ruling in the August 3 Order capping the ILEC rate at the pre-2011 Telecom Rate is not justified.[17] The advantages granted to ILECs under existing joint use agreements far outweigh the monetary difference between the pre-2011 Telecom Rate and the "new" post-2011 Telecom Rate. No evidence has been submitted in this proceeding to justify this cap on ILEC rates, and as a result the establishment of this artificial cap is factually unsupported. Nor is it supported by any legal rationale. Since such a cap would grant ILECs an unfair advantage over their CLEC and cable company competitors, and since the cap is unsupported either factually or legally, the *Coalition* respectfully requests that the cap be removed.

[16] Permitting ILECs to enter into CLEC-type agreements with the CLEC attachment rate will also resolve the issue that existing joint use rates were negotiated as a package of joint use rates, terms and conditions, so that changing the rate requires a new look at all other provisions.

[17] *Third Report and Order* at ¶ 129.

2. The Commission must clarify what ILECs can charge electric utilities to attach to ILEC poles

Although the Commission has examined the rate that electric utilities should charge their ILEC joint use partners, it has provided no meaningful guidance on the rate ILECs can charge to electric utilities.[18] If ILECs are entitled to a lower attachment rate on electric utility poles, they cannot be permitted to charge electric utilities whatever they want to attach to ILEC poles. The *Coalition* therefore propose that if a reduction in ILEC rates is mandated, any percentage reduction in the per pole attachment fees ILECs pay to electric utilities should be matched by the same percentage reduction in the per pole amount electric utilities pay ILECs. This will prevent ILECs from price gouging electric utilities, be consistent with any rate reduction ILECs receive, and help to promote the constructive joint use relationship that all attaching entities rely upon.

B. Self-Help in The Electric Space Should Never Be Allowed

1. Electric utilities cannot lose control over the electric space under any circumstance

The August 3 Order permits communications companies to hire utility-approved contractors to perform make-ready construction work in the electric space on the pole if the electric utility fails to perform this work itself within a certain amount of time.[19] For public safety reasons alone this provision allowing electric space self-help must be eliminated entirely.

[18] The April 2011 Pole Attachment Order stated: "For example, we would be skeptical of a complaint by an incumbent LEC seeking a proportionately lower rate to attach to an electric utility's poles than the rate the incumbent LEC is charging the electric utility to attach to its poles." *In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5337 at ¶ 218 (2011) ("*April 2011 Pole Attachment Order*"). In a footnote it explained: "We believe that a just and reasonable rate in such circumstances would be the same proportionate rate charged the electric utility, given the incumbent LEC's relative usage of the pole (such as the same rate per foot of occupied space)." *Id*. at n. 662. This guidance is unclear and subject to multiple interpretations, and has to date proven unhelpful.

[19] *Third Report and Order* at ¶ 97.

As the *Coalition* has explained, performing make ready work in the electric space is inherently potentially hazardous.[20] Without taking all necessary precautions and without adequate oversight, work in the electric space can result in serious injury or electrocution, create hazards to the public, or cause electrical outages. These concerns should never be taken lightly.

Communications companies have no training or expertise in electric distribution system design and cannot responsibly manage the activities of outside contractors performing work on electric distributions systems. This is clear even from a cursory review of the detailed OSHA requirements associated with those employing electric facility workers.[21] It is thus inappropriate and dangerous to allow a communications attacher, even one hiring qualified contactors and even after giving the utility itself an opportunity to do the work, to control any activity related to the electric distribution system.

Because such a high level of trust and expertise is required for electric space work, and because the nature of electric space work, oftentimes qualified crews are unavailable to perform the work. Journeyman linemen that communications companies might propose in their place should never be hired without specific training on the specific electric utility system. A journeyman lineman from one state with expertise developed with respect to an electric utility in that state may be inadequately trained with respect to the equipment and appropriate procedures necessary to perform work on a different utility's facilities in another state without direct utility oversight. And to the extent a communications company hires otherwise occupied

[20] *See Coalition Comments* at 27. *See also* Reply Comments of the *Coalition of Concerned Utilities, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 at 6 (Filed Jul. 17, 2017) ("*Coalition Reply Comments").*

[21] A cursory review of OSHA standards applicable to contract employers for electric space work shows that communications companies lack the expertise to supervise this work. *See* OSHA standards 1910.269(a)(3)(ii), (a)(4), (b)-(d), (g)-(s) and (w) at https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.269.

contractors to perform communications company work, it will delay more critical work needed for other electric customers.[22]

Guidelines in the August 3 Order regarding contractor qualifications, notice to utilities, and the ability to post-inspect (without reimbursement) are all insufficient.[23] This ad hoc oversight of potentially hazardous electric space activity is simply inadequate to ensure this work is performed safely and is therefore highly objectionable as a policy and public safety matter.[24]

The Commission correctly determined one-touch make-ready is inappropriate in the electric space and the same rationale applies to self-help in the electric space. And even the Broadband Deployment Advisory Committee did not recommend self-help remedy in the electric space.[25]

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[22] In Arizona, for example, the summer months from May-September experience not only extremely high temperatures but also monsoons, which are severe thunderstorms with microbursts of wind that tear down a lot of overhead equipment and poles. Restoring service to customers in 100-plus degree heat must take priority over new communications company attachment work.

[23] OSHA standards applicable to electric space work require significant expertise and oversight and simple certifications that a potential contractor will comply is insufficient. *See* OSHA standard 1910.269 at https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.269. The training requirements alone in standard 1910.269(a)(2), particularly the additional training requirements of standard 1910.269(a)(2)(v) (which includes electric switching activity), cannot simply be dismissed with notification of compliance.

Five days' notice of self-help construction work does not provide the utility adequate time to coordinate internal resources and utility customers for electric space work that could result in outages. The ability to post inspect will not prevent potential injuries or unintended and damaging electric service outages, and 90 days for post-construction inspections appears to be too short for some utilities. Disallowing reimbursement for post inspections is at odds with Commission rules permitting recovery for such make-ready and inspection costs, is unfair considering the Commission is relying on utilities to police self-help work, and raises unconstitutional takings issues.

[24] It is also questionable whether the Commission has authority to dictate who can move electric facilities. The Pole Attachment Act grants jurisdiction over attachments of communications companies to electric utility poles, not over how electric utility facilities should be managed. In addition, this self-help remedy in the electric space appears to be inconsistent with state law requirements contained in state high voltage electric safety statutes, and with state-imposed safety and reliability standards.

[25] *See* Report of the Competitive Access to Broadband Infrastructure Working Group, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 at 6 (Filed Jul. 3, 2017) at 42-50.

Indeed, this self-help remedy in the electric space is so objectionable because many utilities may need to divert resources currently performing non-mandatory electric space make-ready work, such as expanding capacity by replacing poles, just to ensure they have enough time to meet electric space make-ready deadlines and thereby eliminate the risk of losing control over their electric space.

Permitting self-help for electric space survey work is similarly objectionable. Poorly performed surveys affect the safety and efficient operation of the electric distribution system. At the very least, in order to certify the accuracy of survey data, a licensed Professional Engineer should be required to sign off on the survey data. In addition, ten business days' notice of any self-help survey should be required instead of three. And finally, consistent with existing rules permitting reimbursement of survey costs and other out-of-pocket expenses, utilities should be entitled to recover their costs associated with such self-help surveys.[26]

C. Reasonable Modifications to the August 3 Order Are Greatly Needed to Better Monitor Overlashing and Prevent Injury

The August 3 Order states that "the record does not demonstrate that significant safety or reliability issues have arisen from the application of the current policy" of not requiring advance approval of overlashing.[27] This observed lack of significant safety or reliability issues presumably led the Commission to reject advance approval of overlashing,[28] to reject requiring engineering studies to be part of any advance notice requirement,[29] to reject specifications of the

[26] Instead of mandating self-help in the electric space, a better alternative is to allow the utility and attachers to negotiate for such self-help, as the Utah Public Service Commission allows. UTAH ADMIN. CODE R. 746-345-3 C (Aug. 1, 2018). Finally, electric utilities should have no liability for damage to property, injury or death that may result from exercising the self-help remedy.

[27] *Third Report and Order* at ¶ 117.

[28] *See Id.*

[29] *See Id.* at ¶ 119.

materials to be overlashed as part of any advance notice requirement,[30] to require pole owners to bear the cost of any engineering studies,[31] to prohibit any pole owner fees for review of the overlashing,[32] to prohibit pole owners from denying overlashing because there are preexisting violations on the pole,[33] and to ignore requests that overlashers remove unused facilities before overlashing.[34]

The *Coalition* respectfully contends this conclusion that overlashing has not caused significant safety and reliability issues is mistaken. The Utility Coalition on Overlashing, in which five *Coalition* members participated,[35] documented 150 instances of dangerous and destructive accidents over the past two years for just one *Coalition* member caused by low-hanging wires overloaded with overlashing that got snagged by vehicles on the road.[36] The Utility Coalition on Overlashing provided loading analyses depicting the increased load created by overlashing, and they explained that overlashing causes NESC mid-span ground clearance violations, violations of NESC-required separations between communications wires, violations of NESC pole loading standards, and excessive strain on pole guys.[37] They also explained that overlashing is often installed on existing facilities that are already located out of NESC

[30] *Id*. at n.444.

[31] *Id*. at n.444.

[32] *Id*. at ⁋ 116.

[33] *Id*. at n.429

[34] *See Coalition Comments* at 15. *See also* Comments of the Utility Coalition on Overlashing, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 at 26-27 (Filed Jan. 17, 2018) ("*Utility Coalition on Overlashing Comments*").

[35] *Coalition* members Arizona Public Service Company Exelon Corporation, FirstEnergy, and The AES Corporation were part of the Utility Coalition on Overlashing.

[36] Reply Comments of the Utility Coalition on Overlashing, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 at Ex. B (Filed Feb. 16, 2018) ("*Utility Coalition on Overlashing Reply Comments*").

[37] *Utility Coalition on Overlashing Comments* at 10-11.

compliance and dangerously close to energized facilities, potentially electrocuting the contractors performing the overlashing.[38]

It is unsafe and unfair for existing attachers to engage in dangerous and otherwise poor overlashing practices. Moreover, such practices have the additional unwanted effect of burdening future attachers with additional costs and risks. Every pole has a breaking point, and overloaded communications conductors over a roadway risk killing innocent parties.

If the Commission will not require advance approval of overlashing, the *Coalition* respectfully requests that the Commission allow pole owners to require engineering studies as part of any advance notice requirement, to require that the materials to be overlashed be identified as part of any advance notice requirement, and to require that a licensed Professional Engineer certify that the proposed overlashing complies with the NESC.

In addition, the *Coalition* requests reimbursement for any costs they incur to review, engineer or inspect the overlashing. These costs would not be incurred but-for the overlashing and as such are no different that any other make-ready and inspection expense for which the Commission already permits recovery.[39]

The Commission must reconsider and either eliminate or modify its footnote ruling that pole owners may not deny overlashing because there are preexisting violations on the pole.[40] That ruling fails any test of reasoned decision-making because it fails to recognize that some violations are far more dangerous than others. A cable or telecommunications attacher hiring someone to overlash their strand located less than the required clearances from energized

[38] *Utility Coalition on Overlashing Reply Comments* at 7-8.

[39] Moreover, disallowing recovery of these easily verifiable expenses raises constitutional takings issues. *See* U.S. CONST. amend. V. As the *Coalition* has demonstrated, such costs are not recovered through the annual pole attachment rental rate. *Coalition Comments* at 38.

[40] *Third Report and Order* at n.429.

conductors in violation of the NESC's Communications Worker Safety Zone would be endangering that person's life. In addition, permitting companies whose wires already violate NESC road clearances to increase the sag with overlashing is similarly irresponsible and dangerous. This ruling also violates the Pole Attachment Act's provision allowing utilities to deny access for safety reasons.[41]

Finally, the *Coalition* repeats its request that the Commission require existing attachers to remove unused facilities prior to overlashing them.[42] This unnecessary congestion on existing poles creates additional time and expense for new attachers seeking access to these congested facilities.

D. The Pre-Existing Violation Rules Must Be Reconciled with Existing Commission Rules and Should Otherwise Be Improved

1. In accordance with the Pole Attachment Act, utilities cannot be required to expand capacity by replacing poles prematurely

The Pole Attachment Act allows utilities to deny access for lack of capacity:

> Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.[43]

Accordingly, electric utilities need not expand capacity to accommodate attaching entities.[44] The Commission agrees. As explained in the April 2011 Pole Attachment Order:

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[41] 47 U.S.C. §224(f)(2) (2010).

[42] *Coalition Comments* at 15-16.

[43] 47 U.S.C. §224(f)(2) (2010).

[44] This determination has been upheld by the 11th Circuit. In *Southern Company v. FCC*, utility petitioners objected to the Commission's 1999 decision that "utilities must expand pole capacity to accommodate requests for attachment in situations where it is agreed that there is insufficient capacity on a given pole to permit third-party pole attachments." *Southern Co. v. FCC*, 292 F.3d 1338, 1347 (11th Cir. 2002), quoting *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499

"[A]s the court noted in *Southern Company*, mandating the construction of new capacity is beyond the Commission's authority."[45]

The August 3 Order states that "utilities may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation."[46] A footnote explains this "includes situations where a pole has been red-tagged, and new attachers are prevented from accessing a pole until it is replaced."[47]

This ruling is inconsistent with the Pole Attachment Act's provision enabling utilities to deny access for reasons of lack of capacity. A pole that has been "red-tagged" for later replacement is a pole that NESC Rule 214A(5) (relating to "Corrections")[48] does not require to be replaced right away. As such, a rule requiring red-tagged poles to be replaced immediately is a rule requiring utilities to expand capacity, which the Pole Attachment Act prohibits. Consistent with the Pole Attachment Act, the *Coalition* respectfully requests the Commission to reconsider and reject this ruling requiring premature pole replacement.

(1996), *aff'd*, Order on Reconsideration, 14 FCC Rcd 18049 (1999). The 11th Circuit held that the plain language of Section 224(f)(2) explicitly prevents the Commission from mandating pole replacements: "When it is agreed that capacity is insufficient, there is no obligation to provide third parties with access to that particular 'pole, duct, conduit, or right-of-way.'" *Southern Co. v. FCC.*, 292 F.3d 1338, 1347 (11th Cir. 2002). The court further noted that "the FCC's attempt to mandate capacity expansion is outside of its purview under the plain language of the statute." *Id.*

[45] *April 2011 Pole Attachment Order* at ¶ 95.

[46] *Third Report and Order* at ⁋ 122.

[47] *Id.* at n.455.

[48] "Corrections:

a. Lines and equipment with recorded conditions or defects that would reasonably be expected to endanger human life or property shall be promptly corrected, disconnected, or isolated.

b. Other conditions or defects shall be designated for correction."

Institute of Electrical and Electronics Engineers, Inc., Nat'l Electric Safety Code, 214A5 (2017 Edition).

2. Rule 1.1408(b) (formerly 1.1416(b)) requires that new attachers benefitting from pole replacements by installing a new attachment must share in the cost of the pole replacement

The *August 3 Order* promulgated new section 1.1411(d)(4) of the rules to govern liability for correcting preexisting violations:

> (4) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards and guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.[49]

Section 1.1408(b) (f/k/a 1.1416(b) until October 4, 2018) states, in relevant part:

> (b) The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. … If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

Section 1.1408(b) was promulgated because "the entity initiating and paying for the modification might pay the entire cost of expanding a facility's capacity only to see a new competitor take advantage of the additional capacity without sharing in the cost."[50] To prevent this occurrence, the rule allows "the modifying party or parties to recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification."[51] The rule was promulgated by the *Local Competition Order* with correction of safety violations in mind.[52]

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[49] *Third Report and Order* at App. A, p. 91. Section 1.1411(d)(4) was promulgated because "utilities have sometimes held new attachers responsible for the costs of correcting preexisting violations." *Id*. at ¶121.

[50] *Local Competition Order*, 11 FCC Rcd 15499, at ¶1214 (1996).

[51] *Id*.

[52] *Local Competition Order*, 11 FCC Rcd 15499, at ¶1212 states: "A utility or other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed

Read together, these provisions prohibit utilities from charging a new attacher (Attacher 2) to correct preexisting violations, but, simultaneously state that any existing attacher (Attacher 1) or pole owner that pays for a modification must be able to recover a proportionate share from Attacher 2.[53]

The *Coalition* requests that the Commission reconcile these provisions as described, and clarify that even while 1.1411(d)(4) prevents the new attacher from being charged by the utility for the costs to replace a pole with a preexisting violation, the new attacher retains a reimbursement obligation to existing attachers or the pole owner under section 1.1408(b) to cover the new attacher's access to the replaced pole.[54] This clarification works in harmony with the next three proposals that the Commission should revisit and adopt.

3. Unauthorized attachers should be presumed to have caused the violation and pay to correct it

In their Comments, the *Coalition* requested a ruling that unauthorized attachers be responsible for the costs associated with make-ready, including the correction of violations.[55] The August 3 Order did not address this helpful proposal and the *Coalition* therefore

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to be sharing in the modification and will be responsible for its share of the modification cost. This will discourage parties from postponing necessary repairs in an effort to avoid the associated costs." *See also id.* at ¶1201.

[53] To calculate the new attacher's proportionate share, the *Local Competition Order* uses this example:

> Where multiple parties join in the modification, each party's proportionate share of the total cost shall be based on the ratio of the amount of new space occupied by that party to the total amount of new space occupied by all of the parties joining in the modification. For example, a CAP's access request might require the installation of a new pole that is five feet taller than the old pole, even though the CAP needs only two feet of space. At the same time, a cable operator may claim one foot of the newly-created capacity. If these were the only parties participating in the modification, the CAP would pay two-thirds of the modification costs and the cable operator one-third.

Local Competition Order at ¶1211.

[54] Confirming how these two provisions work together, the *Local Competition Order*'s cost reimbursement system was promulgated with a full understanding that the pole replacement costs might be incurred to correct preexisting violations encountered by a new attacher. *Id.* at ¶1201.

[55] *Coalition Comments* at 19.

respectfully requests the Commission to reconsider this proposal to resolve uncertainties to the benefits of all legitimate attachers.

4. If it cannot be determined who caused the violation, then the costs should be shared by any communications company entity which reasonably might have caused the violation

The *Coalition* also requested a ruling not addressed in the August 3 Order that if it cannot be determined who caused the violation, the costs should be shared by any communications company entity which reasonably might have caused the violation.[56] The *Coalition* respectfully requests reconsideration of this proposal to resolve uncertainties.

5. The new attacher should pay to correct the violation and seek reimbursement from existing violators

Finally, The *Coalition* requested a ruling that was not addressed in the August 3 Order that the new attacher should pay to correct the violation and seek reimbursement from existing attachers.[57] The *Coalition* also requests the Commission to reconsider this proposal.

E. The Make-Ready Estimate Rules Should Be More Efficient to Better Speed Deployment

1. New attachers should gather make-ready estimates, not utility pole owners

The August 3 Order requires pole owners to collect make-ready estimates from other existing attachers and then provide the new attachers with those detailed pole-by-pole estimates.[58] New attachers, however, are far better positioned and motivated to obtain these estimates, consistent with existing practice. The *Coalition* therefore requests that the Commission place this responsibility and self-help remedy on the existing attacher to provide

[56] *Id*.

[57] *Id*. at 19-20.

[58] *Third Report and Order* at ¶ 111.

the information requested and the new attacher be responsible for gathering such information, not the pole owner. In the alternative, should the Commission retain this rule, then a rule should be implemented stating that: 1) pole owners will not be penalized if an existing attacher fails to supply an estimate following the pole owner's request; and 2) pole owners will be allowed to impose reasonable non-compliance penalties on any existing attacher who fails to supply an estimate timely upon request.

2. Attachers which request pole-by-pole estimates should bear the extra time and expense to prepare them

The August 3 Order permits attachers to request pole-by-pole make-ready estimates and final bills.[59] As explained by the *Coalition*, many utilities might need to purchase new or modified accounting systems to perform such pole-by-pole cost analyses.[60] Currently, existing systems meet the requirements established by state regulators by providing sufficient details to serve electric customers at a reasonable cost to be borne by electric ratepayers. To the extent that communications attachers seek pole-by-pole cost breakdowns that exceed current requirements, the Commission on reconsideration should clarify that these communications attachers must pay the additional accounting system and personnel cost necessary to generate these breakdowns, and specify that utilities will not be penalized for the additional time required to prepare those estimates.[61]

[59] *Id*. at ¶ 112.

[60] *See Coalition Reply Comments* at 19.

[61] As with other costs discussed herein, the cost of a new accounting system to track such costs is not recoverable through the annual rental rate. *Coalition Comments* at 38.

F. The Joint Ride Out Process Must Comport with Operating Realities

The August 3 Order requires utilities to make "commercially reasonable" efforts to provide at least three business days' notice to the new attacher and to all existing attachers of scheduled field surveys so that any or all of them can join the utility on the survey.[62]

There are several operational issues with this requirement that can be resolved by slightly modifying this provision. First, many new attachers do not want joint ride-outs and so the *Coalition* respectfully requests that this joint ride-out provision be made optional.

Second, utilities may not know which attachers are on any given pole line to which a new company seeks to attach until after the survey itself is conducted. The *Coalition* therefore requests that the Commission require new attachers to obtain that information as part of their due diligence before submitting their attachment requests.

Third, a requirement to provide at least three business days' notice is counterproductive and inefficient. For many utilities, the personnel qualified to do a ride out schedule their work as flexibly as possible by, for example, bunching together work in specific areas they seek to cover. Requiring schedules to be fixed in advance and rearranged to accommodate a single new attacher would make the entire process less efficient for both new and existing attachers. The *Coalition* therefore respectfully requests the notice period be shortened to no more than at least 24 hours.

G. One-Touch Make-Ready Principles Should Be Employed to Eliminate Double Wood

When an existing pole is replaced, all of the attachments on the old pole must be transferred to the new pole so that the old pole right beside it can be removed. If all of the

[62] *Third Report and Order* at ¶ 82.

attachers do not show up in a timely manner to transfer their facilities, the electric utility pole owner ends up installing the new pole, transferring its electric facilities to the new pole, and leaving the existing pole in place beside it to continue supporting the communications facilities that have yet to be transferred. This creates a "double wood" condition that is an eyesore, is potentially unsafe, creates numerous customer complaints, is disfavored by many local municipalities and states, and makes it more difficult for new attachers to attach. The Coalition explained this pervasive "double wood" problem in its Comments.[63]

To avoid double wood conditions, it would be helpful for a single entity to have full rights to transfer all communications company cables. The *Coalition* therefore proposes that the pole owner provide notice to communications companies of the need to transfer, and then be entitled to hire a utility-approved contractor at the communications attachers' expense to move all communications facilities that have not been timely transferred.

This simple solution is consistent with the communications space "complex" make-ready self-help remedy in the August 3 Order, and would eliminate a double wood problem that has unnecessarily burdened the industry.

H. The Rules Allowing Communications Companies to Hire Contractors Should Be Improved

1. Utilities should not be required to maintain lists of qualified contractors to perform make-ready construction work in the communications space

The August 3 Order requires utilities to maintain a list of contractors to perform self-help surveys and to perform self-help make-ready construction work in the communications

[63] *Coalition Comments* at 12-14.

space for "complex" make-ready, and gives utilities the option of maintaining a separate list of contractors to perform surveys and "simple" make-ready.[64]

The *Coalition* believes that communications companies should hire their own contractors to perform make-ready construction work in the communications space, and therefore propose eliminating the requirement that utilities maintain a list of approved contractors to perform "complex" make-ready construction work. Consistent with the August 3 Order, utility pole owners should be entitled to disqualify any communications company contractor based on reasonable safety or reliability concerns.[65]

2. The rules permitting communications companies to propose new contractors should be modified to ensure reliable performance

The August 3 Order permits communications companies to propose new contractors that meet the five minimum requirements specified in Section 1.1412(c).[66] The communications company is required to certify that any proposed contractor meets these minimum requirements.[67] This new rule is reasonable in theory, but should be revised in the following respects to ensure the integrity of the distribution system and to prevent gaming of the process by unscrupulous or unqualified contractors.

First, as explained above, under no circumstances should communications companies be entitled to hire contractors to perform work in the electric space. This includes electric space work not only on electric utility-owned poles but also on ILEC-owned poles. Utilities should therefore be able to veto any contractor for any reason performing electric space work on any electric utility or ILEC-owned poles.

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[64] *Third Report and Order* at App. A, p. 96. 47 C.F.R. §1.1412(a) and (b).

[65] *Id*. 47 C.F.R. § 1.1412(b)(ii).

[66] *Id.* 47 C.F.R. § 1.412(c)(1) - (5).

[67] *Id*. 47 C.F.R. § 1.1412(b)(i).

Second, the certification by a communications company that a proposed contractor meets the five criteria is meaningless, as it allows a contractor simply to "agree" to follow the NESC, OSHA, applicable regulations and utility rules with no assurance that it knows what it is doing, and to "acknowledge" that it knows how to follow make-ready pole designs with no proof that it actually does. Any entity can "agree" to do something even if it is not qualified to do it. And an entity "acknowledging" that it can follow designs does not mean they can actually follow them.

Instead, utility pole owners need assurances that any unknown contractor working on its system actually does follow the NESC, OSHA, applicable regulations and utility rules, and actually does know how to follow make-ready pole designs. In all instances, the ability to comply with these requirements requires the contractor to have on staff licensed Professional Engineers who understand these requirements. As such, to legitimize any work performed by contractors which claim to know and follow the rules, a Professional Engineer stamp should accompany all survey and construction work performed by a contractor hired by a communications company.

Third, utilities should be entitled to require a "ramp-up" period to evaluate any new contractor to ensure the contractor performs the way the contractor asserts it will perform.

Fourth, any attacher hiring non-union personnel should reimburse the pole owner for union contract costs incurred by the utility pole owner because union workers were not used.

I. The One-Touch Make-Ready Rule Should Be Tweaked for Safety Reasons

The August 3 Order's one-touch make-ready ("OTMR") ruling applies only to "simple" make-ready in the communications space. It is anticipated that attachers will hire a contractor to do the survey work in advance of the application to determine if its proposed attachments

require only "simple" make-ready work.[68] Under the rule, utilities have only 15 days, not the usual 45 days, to decide whether to approve any one-touch make-ready application for normal size "simple" make-ready.[69]

1. A Professional Engineer should certify the make-ready work is in fact "simple"

In order for an attacher's contractor to decide that proposed attachments entail only "simple" communications space work, the contractor must determine: (i) there are not any pole loading issues requiring a pole replacement; (ii) there are not any issues regarding clearance from electric facilities; (iii) none of the poles needs to be replaced for any reason; and (iv) no electric space make-ready work is required. Communications contractors are not qualified to make these determinations, many of which are not apparent upon mere observation.

In addition, if an attacher submits a list of 250 poles it claims are "simple," 15 days is too short a time for the utility to check all 250 poles to be sure none needs to be replaced or needs electric space make-ready work.

Addressing these concerns, it is helpful that the August 3 Order allows electric utilities to maintain a list of utility-approved contractors to perform this "simple" survey work. But in addition, in order to provide maximum flexibility in contractor selection, the Commission should specify that if a utility does not maintain a list of utility-approved contractors to perform this "simple" survey work, any contactor used by the new attacher must include a Professional Engineer stamp with all survey results, verifying that the proposed attachments require only "simple" make-ready. This will provide utilities a degree of comfort that survey results from communications contractors can be relied upon.

[68] *Third Report and Order* at ¶ 36.

[69] *Id.* at ¶ 56.

In addition, other tweaks to the OTMR rule will promote a more efficient and reliable process. Ten days' notice rather than three days' notice should be provided to allow utilities to participate in any OTMR surveys. An additional 15 days should be added to OTMR application review periods. And 30 days' notice instead of 15 days' notice should be provided to allow utilities to monitor any OTMR make-ready construction work.

J. More Time Is Needed to Review Whether Applications Are Complete

The August 3 Order provides only 10 business days to review attachment applications for completeness, after which an application is deemed complete if the utility fails to respond.[70] Without modification, this rule is grossly unfair to utility pole owners and risks harming both the public and the electric distribution system.

In many cases, reviewing an application for completeness is more than just checking to make sure boxes are filled in. For example, incorrect pole numbers oftentimes are identified that are completely different than the address of the pole, requiring a considerable amount of time simply to ensure the addresses are correct for all the poles in the application. In addition, utilities can have chaotic schedules that result from extraordinary events or circumstances beyond their control, such as an unusually large number of new applications, acts of God and other *force majeure* events.

Considering that any "deemed granted" application that has not been reviewed could potentially harm the system and endanger the public, the *Coalition* respectfully requests this application review period be extended to 15 business days with additional time added for any *force majeure* and other events beyond the pole owner's control.

[70] *Id.* at ⁋ 62.

III. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the *Coalition of Concerned Utilities* urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

COALITION OF CONCERNED UTILITIES

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