Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

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TABLE OF CONTENTS

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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") issued by the Federal Communications Commission ("Commission") in the above-captioned proceeding.[2] The FNPRM seeks comment on actions that the Commission could take to accelerate broadband deployment by removing barriers to investment in infrastructure.

NTCA proposes herein a balanced approach to the treatment of "overlashing" on utility-owned poles. The rural network operators that NTCA represents operate on both sides of this issue: many are pole owners themselves while many also utilize other parties' poles for the provision of broadband and other communications services either in their incumbent areas or in areas where they compete. Thus, any pole attachment overlashing rule that emerges must protect the integrity of poles and existing attachments in a manner that does not impose unnecessary

[1] NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment: Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking,* WC Docket No. 17-84, FCC 17-154 (2017) ("FNPRM").

costs/burdens on any party involved. The proposal set forth below in response to the FNPRM inquiry on the utility treatment of overlashing seeks to achieve that delicate yet important balance.

In terms of the "IP transition" issues raised by the FNPRM, as an overarching principle, NTCA urges the Commission to ensure that transitions to IP networks are not burdened by regulations whose application is not necessary to protect consumers or the public interest. Moreover, network upgrades that increase functionality and usefulness for consumers should not be subject to Section 214 discontinuance notices. Requirements to notify customers of discontinuance when, in fact, the new service will either be equivalent to or better than the prior offering will only sow confusion and misunderstanding. Accordingly, NTCA commends the Commission to adopt a holistic view of the marketplace and technology when considering the applicability of existing regulations to evolving technology.

II. UTILITY TREATMENT OF OVERLASHING

The Commission should take a measured approach with respect to the overlashing proposal contained in the FNRPM.[3] While overlashing can be a safe practice—and one that promotes the rapid installation of broadband infrastructure by many operators, including the rural providers that NTCA represents—more definition is needed to flesh out the proposal contained in the FNPRM. In addition, safeguards are required to ensure that poles are not damaged and consumer services enabled by attachments are not disrupted. Rather than racing to adopt a rule where details will be "filled in later," the Commission should first mobilize an industry-led working group to clarify the definition of "generally accepted engineering practices" and adopt additional safeguards as discussed further below.

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[3] *Id*., paras 160-162.

As an initial matter, NTCA reiterates its long-held support for efforts to streamline access to poles for the purposes of deploying and/or upgrading broadband infrastructure. In initial comments in this docket, NTCA proposed a streamlined process for small broadband providers' access to utility-owned poles. In doing so, NTCA sought a balanced process, once that respects the needs of pole owners and existing attachers to maintain the integrity of facilities already installed but also provides a shortened timeframe for installing new attachments.[4] NTCA submitted that proposal—and is seeking a thoughtful consideration with respect to the issue of overlashing—because the association's members have interests both as pole owners on one side and as providers in need of access to other parties' poles on the other side. As such, NTCA members have a strong interest ensuring that any overlashing rule that emerges from this proceeding is clear, removes unnecessary delays in broadband providers' access to poles via overlashing of attachments, and safeguards the integrity of poles and existing attachments.

As to the overlashing proposal at issue herein, the Commission should not proceed further without a clear and certain definition of "generally accepted engineering practices." Such a clear definition is important, as a lack of safeguards or certainty with respect to what constitutes "acceptable" overlashing could damage poles or other parties' attachments, and this damage could cause service outages (including to facilities that transmit public safety traffic).[5] At the same time, it is important that such safeguards do not impose unnecessary or unreasonable costs or conditions on would-be attachers. While the FNPRM seeks to achieve that balance—

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[4] Comments of NTCA, WC Docket No. 17-84 (fil. Jun. 15, 2017), pp. 4-7.

[5] To be clear, the "overlashing" at issue herein and for which NTCA proposes certain safeguards does not include "drops," which are the connections directly to a customer location from an attacher's facilities on a pole. This limited caveat makes sense when one considers that drops have a minimal impact on the load carried by a pole and thus do not pose anywhere near the same risks as otherwise discussed below.

and advocates for the proposal in particular seek clarity as to the rights of overlashers[6]—the proposal as is misses the mark on both fronts. A reference to the concept of "generally accepted engineering practices"—absent ***any*** definition of that term—only heightens ambiguity and exacerbates uncertainty and allows pole owners to define that term as they see fit in an effort to extract fees or for anti-competitive purposes or simply because they remain concerned that overlashed attachments may be placed on their poles without proper safeguards. Far from providing the clarity with respect to the rights of overlashers as the FNPRM and others seek,[7] a lack of definition may only lead to further disputes between pole owners and would-be "overlashers." A clear definition, on the other hand, can set expectations ahead of time, providing pole owners with adequate assurances that overlashed attachments will not damage their or others' facilities while providing overlashers with clear "goalposts" for which to aim in engineering a project that relies upon overlashing. In the end, a clear definition of the term "generally accepted engineering practices" will benefit all, streamlining would-be overlashers' access to poles ***and*** protecting the integrity of such poles.

To ensure that any safeguards adopted as proposed above are in keeping with both "generally accepted engineering practices" yet are not overly burdensome for would-be overlashers, the Commission should utilize the expertise of an industry working group. Such a group can review existing industry practices, consult with (or be composed of) engineers, and propose a definition of "generally accepted engineering practices" that strikes the correct balance and acceptable to parties on both sides.

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[6] *See* Letter from Steve Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (fil. Oct. 20, 2017); Comments of the American Cable Association, WC Docket No. 17-84 (fil. Jun. 15, 2017), pp. 30-31.

[7] FNPRM, para. 162 (asking whether codification of the rule as proposed would "make clear the rights of overlashers.").

Additional issues exist with respect to the FNRM proposal even once such definitional issues raised above are resolved by an industry-led working group. Prior notice to the pole owner is critical to allow pole owners the opportunity to inspect the poles at issue and determine if they have sufficient capacity to handle overlashed attachments without compromising public safety or the integrity of poles or existing attachments. To be sure, NTCA members have reported their ability to overlash attachments on other parties' poles without any notice to the owner. To the extent individual pole owners are comfortable with such a process and parties negotiate or reach an understanding to that effect, that need not and should not be disturbed here. Yet the Commission should grant pole owners *the option* of invoking a minimum prior inspection period to exercise at their discretion. The Commission's previous determination that such prior notice is not necessary was made, as the FNPRM acknowledges, nearly two decades ago,[8] and prior to the current environment in which keeping up with consumers' demand for broadband and related services requires an expansion of the necessary communications service facilities at a pace and scope not seen before. In other words, utility owned poles are under and will be under greater stress than ever before and the rush to keep up with consumer demand cannot inadvertently lead to damaged poles/attachments that lead to unnecessary service disruptions. Yet safeguards need not be overly burdensome either, and a brief inspection period (perhaps 15 days, except for "drops" as explained in footnote 5, *infra*) for pole owners to exercise at their discretion achieves the correct balance needed here.

Finally, the Commission should also adopt a "cure" provision that requires overlashers to remedy within 15 business days—at their expense—any issues identified by pole owners that

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[8] *Id.*, para. 160, citing Implementation of Section 703(e) of the Telecommunications Act of 1996 Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, Report and Order, 13 FCC Rcd 6777, para. 60 (1998) (history omitted) (describing Common Carrier Bureau Cautions Owners of Utility Poles, Public Notice, DA 95-35 (Jan. 11, 1995)).

pose a threat to the integrity of poles or existing attachments. It should also be made clear that any liability for damage to other parties' attachments that results from overlashed attachments that fail to meet the "generally accepted engineering practices" standard falls on the overlashing party. Including these safeguards in any overlashing provisions adopted by the Commission will, much like resolution of the definitional issues noted above, ensure that overlashing remains a safe practice and will set expectations and incentives between the parties ahead of time in a manner that reduces any potential disputes and streamlines the actual overlashing process for all involved.

III. NETWORK CHANGES AFFECTING INTEROPERABILITY OF CUSTOMER PREMISES EQUIPMENT

The Commission seeks comment on an AT&T proposal to eliminate the requirement that ILECs provide notice of network changes that affect the interoperability of customer premises equipment.[9] AT&T explains that this requirement is no longer necessary because ILECs do not currently occupy (as was the case historically) a "significant presence" in the Customer Premises Equipment market.[10] NTCA submits that the focus of the discontinuance requirements must be the consumer experience with the service. Accordingly, whether a service is grounded in TDM, IP, or another platform is essentially immaterial to the user so long as the customer can originate, complete, and receive voice calls—and certainly so if the service will be offered under the same terms and conditions. At the same time, sound customer service practices would support

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[9] FNPRM, para. 165 (internal citation omitted). *See* 47 C.F.R. § 51.325(a)(3).

[10] FNPRM, para. 165 (internal citation omitted). The Commission notes a relationship between sections 51.325(a)(3) and 68.110(b) of its Rules, which both require customer notice. The former, however, applies only to ILECs, while the latter applies to all carriers. Moreover, the latter section 68.100(b) places upon the carrier the expectation to predict which changes "can be reasonably expected to render any customers terminal equipment incompatible with the communications facilities" of the provider, or which may necessitate "modification or alteration." *See* 47 C.F.R. § 68.110(b).

carriers' interest in ensuring that they alert customers of potential implications (and, carriers could use that opportunity to then follow through to identify alternative services). For example, a carrier moving toward an IP platform could well advantage itself to promote a remote access, broadband-enabled security solution where a TDM-based system might not be fully compatible with an IP network. By contrast, providers should not be assigned the task of speculating correctly the type of devices and their usage by subscribers. This can be significant considering the broad field of end-user device manufacturers and the applications they support. Toward that end, NTCA supports an approach that leaves to the carriers the task of determining at the outset whether such notification is necessary, but without a regulatory mandate that such notice must be provided.

That said, NTCA members recognize the value in ensuring that subscribers are aware when evolving technology may affect the operability of current devices. As community-based operators, NTCA members are sensitive to and respond to these issues in the normal and ordinary course of business, and in a way that is consistent with the close and local contact they enjoy with their subscriber base. This, coupled with natural incentives to maintain consumer satisfaction, ensures that locally operated providers like NTCA members will keep their customers apprised as changing technology may modify the use of various systems or devices.

IV. STREAMLINING OF SECTION 214(a) DISCONTINUANCE PROCESS FOR LEGACY VOICE SERVICES

The Commission seeks comment on streamlining the Section 214(a) discontinuance process for legacy voice services. Specifically, the Commission seeks comment on a Verizon proposal to streamline the application process where a carrier certifies that it (a) provides interconnected Voice over Internet Protocol ("VoIP") service throughout the affected service area, and (b) that at least one other alternative voice service is available in the affected service

area.[11] Verizon proposes that its recommendation would require carriers to maintain so-called "legacy" services only in instances in which no other voice service is available. NTCA supports the Verizon proposal. NTCA agrees that the qualifications proposed by Verizon would generally address the overarching question, as articulated by Verizon, of whether the discontinuance of legacy services would "cut consumers off from the nation's telephone network." This primary question can be viewed as the linchpin upon which several of the Commission's current inquires rely, namely, whether the discontinuance process in fact notifies and alerts customers to an actual decrease or elimination of service.

As has been articulated previously by NTCA, the question of whether a discontinuance obligation is triggered should be approached from the perspective of the consumer, rather than technological specification. Under this rubric, the triggering event would be the cessation of voice service, rather than the implementation of an alternative technical basis upon which voice service is offered. Accordingly, no discontinuance should be required when customers would receive the same tariffed rates, terms, and conditions following the implementation of new technology. And, where customers can access from the respective carrier VoIP, as well as voice service from a second provider in the service area, only a streamlined process should apply. Upgrades that simply exchange one technology for another, while leaving the underlying service substantively intact, should not be burdened by detailed (and, for consumers, potentially confusing) discontinuance obligations. Such obligations would introduce administrative burdens and costs into network upgrade projects, consuming valuable staff time and company funds that should be directed to the purpose which ultimately delivers the most advanced service to the customer.

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[11] FNPRM, para. 171.

V. ELIMINATING OUTREACH REQUIREMENTS IN THE 2016 TECHNOLOGY TRANSITIONS ORDER

The Commission seeks comment on ITTA's proposal to eliminate outreach requirements that were adopted in the 2016 *Technology Transitions Order.*[12] These rules apply when a carrier transitions from a wireline TDM-based voice service to a voice service that relies upon a different technology, such as IP or wireless. The obligations include the dissemination of educational materials to consumers; creation of a "telephone hotline;" and, staff training to answer consumer questions about the transition.[13] NTCA submits that these obligations, while well intentioned, are unnecessary supplements to the steps carriers would ordinarily take in accordance with marketplace demands.

In a competitive marketplace, particularly where voice services may be obtained through a cable, wireless, or VoIP offering, it is in the full interest of providers to ensure that their customers have a sufficient understanding of their service offerings. This understanding includes consideration of any differences between the eliminated and the new services. Further, community-operated carriers such as NTCA members have a unique understanding of their customer base and are therefore best positioned to develop effective strategies to communicate developments to their subscribers.

By comparison, the outreach requirements are overly prescriptive. By way of example, requiring carriers to maintain a telephone hotline for 12 hours each day, including between the

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[12] FNPRM, para. 176, *citing Technology Transitions; USTelecom Petition for Declaratory Ruling that Incumbent Location Exchange Carriers are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers: Declaratory Ruling, Second Report and Order, and Order on Reconsideration*, Docket Nos. 13-5, 13-3, FCC 16-90 (2016) *("Technology Transitions Order").*

[13] *See Technology Transitions Order*, para. 181.

hours of 9:00 a.m. - 5:00 p.m.,[14] presupposes a carrier's ability to maintain staffed services in the early morning or late evening. Although this may not be an insurmountable hurdle to large firms whose operations cross time zones or which utilize distantly-placed call centers for customer service, NTCA members generally maintain regular business hours at local locations, staffed by local residents. The duration of overtime staffing leads only to increased payroll expenses, all for the unknown value of providing service information that could be as easily obtained during regular business hours. It is not clear that the rule is based upon any data that may tend to demonstrate that consumers are more likely to call in the early morning or late evening than they are during the day. Moreover, the requirement to ensure "appropriate training of staff to field and answer consumer questions about the transition"[15] similarly seems grounded in a presumption that absent a specific requirement, carriers would stand down from answering consumer inquiries. To the contrary, actors in a competitive marketplace understand that the foundation of success is customer service, and that the cornerstone of that is a meaningful interaction with the customer. As is the case generally, it is in the marketplace interest of providers to serve their customers.

To the extent, however, that the Commission perceives that marketplace incentives are insufficient, NTCA urges the Commission to implement an exemption from these requirements for small providers. The costs of producing specialized materials, staffing dedicated telephone lines at extended hours, developing staff training and implementing other measures as currently required by the Commission are not appropriate to the needs of small providers that are often based in the same communities as the subscribers they serve. Accordingly, NTCA submits that a

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[14] *Id.*, para. 184.

[15] *Id.*, para. 181.

small provider exemption will spare small providers the costs of compliance while not impairing any consumer interests that may be associated with the regulations.

VI. FORBEARANCE FROM SECTION 214(a) DISCONTINUANCE REQUIREMENTS FOR SERVICES WITH NO EXISTING CUSTOMERS

The Commission seeks comment on forbearance from Section 214(a) discontinuance requirements when carriers seek to discontinue, reduce, or impair services with no existing customers.[16] The Commission asks whether forbearance on its motion would meet the criteria for forbearance, specifically, whether continued enforcement of the obligation is necessary to protect consumers; whether suspension of the obligation is in the public interest; and whether on-going applicability of the rule is necessary to ensure that the "charges, practices, classifications, or regulations . . . are just and reasonable and are not unjustly or unreasonably discriminatory." NTCA submits that forbearance from the discontinuance requirements in instances in which there are no existing customers is a statutorily compliant action. In the first instance, it is difficult to discern the consumer protection that is enjoyed when, in fact, there are no consumers. In the second instance, it is illogical to suppose that the requirement is necessary to ensure that charges, practices, and other terms are just and reasonable when, in fact, there are no subscribers who pay charges or who are subject to "practices" or other terms. Accordingly, elimination of the requirement to seek authorization to discontinue a service to which no one subscribes is fully within the public interest, as it will enable carriers to direct resources more efficiently to the development and deployment of high-speed broadband networks and operations. In contrast, maintenance of the obligation would result in a regulatorily meaningless exercise that would simply generate administrative costs for both the carrier and the Commission, full of sound,

[16] FNPRM, para. 168.

perhaps, yet signifying nothing of practical benefit. NTCA supports the CenturyLink and AT&T proposal to forbear from Section 214(a) obligations for services with no existing customers.

VII. CONCLUSION

For all of the reasons set forth above, any pole attachment overlashing rule that emerges from this proceeding must protect the integrity of poles and existing attachments in a manner that does not impose unnecessary costs/burdens on any party involved. In addition, NTCA urges the Commission to ensure that transitions to IP networks are not burdened by regulations whose application is not necessary to protect consumers or the public interest.

Respectfully submitted,

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