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
	)	
	)	

FIFTH REPORT AND ORDER, FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING, AND ORDERS ON RECONSIDERATION

Adopted: July 24, 2025 **Released: July 25, 2025**

Comment Date: 30 days after Federal Register publication
Reply Comment Date: 60 days after Federal Register publication

By the Commission: Chairman Carr and Commissioner Trusty issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. The Federal Communications Commission is focused on expanding access to high-speed broadband services. One way the agency is delivering on that goal is by accelerating the buildout of next-generation infrastructure. Today, we continue our infrastructure efforts by promoting fast and efficient deployment of broadband facilities on utility poles. As the Commission previously noted, access to the vital infrastructure of utility poles must be "swift, predictable, safe, and affordable, to ensure that broadband providers can continue to enter new markets and deploy facilities that support high-speed broadband."[1] And as more and more consumers rely on mobile wireless services to access broadband,[2] pole access becomes increasingly essential for the small wireless antennas and wireline backhaul on which these wireless services depend.[3]

2. The Commission has taken significant steps in recent years to expedite the pole attachment process, but there is more work to be done. Today, we take further action to advance the goal of ubiquitous high-speed broadband by revising our pole attachment rules to eliminate barriers to efficient broadband deployment by building on the work begun in the Commission's December 2023 *Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking*.[4] Specifically, we adopt rules (1) ensuring greater collaboration and cooperation between utilities and attachers, (2) establishing a timeline for large pole attachment requests, (3) improving the pole attachment timeline, and (4) speeding up the contractor approval process. We also seek comment in the Further Notice on ways to further facilitate the processing of pole attachment applications and make-ready to enable faster broadband deployment and, in response to a Petition for Declaratory Ruling filed by CTIA,[5] seek comment on whether light poles fall within the purview of section 224(f) of the Communications Act of 1934, as amended (the Act).[6] We then deny in part and grant in part a Petition for Clarification and/or Reconsideration from the Edison Electric Institute of portions of the *Declaratory Ruling*.[7] Finally, we deny a Petition for Reconsideration from the Coalition of Concerned Utilities of a portion of the *Fourth Wireline Infrastructure Order*.[8]

---

[1] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7706, para. 1 (2018) (*Third Wireline Infrastructure Order*).

[2] *Communications Marketplace Report*, GN Docket No. 24-119, 2024 Communications Marketplace Report, FCC 24-136, para. 54 (Dec. 31, 2024) (*2024 Communications Marketplace Report*).

[3] *Id.* at paras. 75-76.

[4] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379 (2023) (*Fourth Wireline Infrastructure Order*, *Declaratory Ruling*, or *Third Further Notice*).

[5] CTIA Petition for Declaratory Ruling, WC Docket No. 17-84, WT Docket No. 17-79 (filed Sep. 6, 2019), https://www.fcc.gov/ecfs/document/10906760521179/1 (CTIA Petition).

[6] 47 U.S.C. § 224(f).

[7] Edison Electric Institute Petition for Clarification and/or Reconsideration, WC Docket No. 17-84 (filed Jan. 16, 2024), https://www.fcc.gov/ecfs/document/1011759245339/2 (EEI Petition).

[8] Petition for Reconsideration of the Coalition of Concerned Utilities, WC Docket No. 17-84 (filed Feb. 12, 2024), https://www.fcc.gov/ecfs/document/1021263321845/1 (CCU Petition).

II. BACKGROUND

3. Section 224(f) of the Act requires that utilities provide cable television systems and telecommunications carriers with nondiscriminatory access to their poles.[9] Section 224(b)(1) of the Act requires the Commission to set the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable.[10] The Commission has rules intended to ensure nondiscriminatory pole access and just and reasonable rates, along with a robust complaint process to ensure that our rules are enforced.[11]

4. *Pole Attachment Process.* Attaching equipment to utility poles is a multi-stage process. In the first stage, the utility reviews the pole attachment application submitted by the communications attacher for completeness.[12] In the second stage, the utility must determine whether to grant the complete application (review on the merits)[13] and undertake a survey of the poles for which access has been requested.[14] In the third stage, the utility must prepare for the attacher an estimate of the cost of preparing the affected poles for the new attachments.[15] In the fourth stage, utilities (or the existing attachers, if they want to move their own existing equipment) perform the work to make the affected poles ready for the new attachments (also known as "make-ready" work) and then the new attachers deploy their equipment on the poles.[16] The make-ready stage is the most time-intensive stage in the pole attachment process.[17]

5. *Existing Timelines.* The Commission's rules set forth deadlines for each stage in the pole attachment process.[18] A utility has up to 10 business days after receiving a new attachment application to

[9] 47 U.S.C. § 224(f)(1). For purposes of this statutory provision, "utility" is defined as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." *Id.* § 224(a)(1). Railroads, cooperatives, and federally- and state-owned entities are expressly excluded from this definition. *Id.* The term "pole attachment" is defined as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." *Id.* § 224(a)(4).

[10] *Id.* § 224(b)(1). Note that section 224(c) of the Act exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves (so-called "reverse preemption"). *Id.* § 224(c). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd 6724 (WCB 2022) (*Reverse-Preemption Certification Public Notice*).

[11] *See* 47 CFR § 1.1401 *et seq.*

[12] *Id.* § 1.1411(c)(1).

[13] *Id.* § 1.1411(c)(2).

[14] *Id.* § 1.1411(c)(3).

[15] *Id.* § 1.1411(d).

[16] *Id.* § 1.1411(e).

[17] Make-ready is defined as "the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole." 47 CFR § 1.1402(o). There are several different kinds of make-ready. Complex make-ready refers to "transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex." *Id.* § 1.1402(p). Simple make-ready is "where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment." *Id.* § 1.1402(q). There also is make-ready above the communications space on a pole, typically involving work either in the electric space or at the pole-top. *See id.* § 1.1412(a).

[18] *See id.* § 1.1411.

determine whether it is complete.[19] Upon receipt of a complete application,[20] the utility has 45 days in which to make a decision on the application and complete any surveys to determine whether and where attachment is feasible and what make-ready is required.[21] The utility then must provide an estimate of all make-ready charges within 14 days of its response granting access or, where the new attacher has performed the survey, within 14 days of receipt of such survey.[22] The new attacher has 14 days or until withdrawal of the estimate by the utility, whichever is longer, to accept the estimate and make payment.[23] Once the utility receives payment of the estimate, it then must notify existing attachers on the pole of the new attachment. The existing attachers then must move their equipment to make room for the new attachment within 30 days of receiving notice from the utility for attachments in the communications space or 90 days for attachments above the communications space.[24] A utility must complete its make-ready work in the same time periods, except it may take up to 15 additional days to complete make-ready above the communications space.[25] These deadlines apply to all pole attachment requests up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state (Regular Orders).[26] For pole attachment requests larger than a Regular Order and up to the lesser of 3,000 poles or 5 percent of a utility's poles in a state, a utility may add 15 days to the survey period and 45 days to the make-ready periods.[27] For pole attachment requests larger than the lesser of 3,000 poles or 5 percent of a utility's poles in a state, our rules currently provide that the utility and the attacher must negotiate in good faith the timing of the pole attachment process.[28] Utilities may deviate from the pole attachment timelines in our rules—for the make-ready phase only—for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the required timeline.[29]

---

[19] 47 CFR § 1.1411(c)(1)(i). If the utility timely notifies the new attacher that its application is not complete, it must specify all reasons for finding it incomplete, and any resubmitted application shall be deemed complete within 5 business days after its resubmission, unless the utility notifies the attacher of how the resubmitted application is insufficient. The new attacher may follow the resubmission procedure as many times as it chooses so long as it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the 5-day deadline shall apply to the utility's review. *Id.* § 1.1411(c)(1)(i)-(ii).

[20] A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles. *Id.* § 1.1411(c)(1).

[21] *Id.* § 1.1411(c).

[22] *Id.* § 1.1411(d).

[23] *Id.* § 1.1411(d)(1), (2).

[24] *Id.* § 1.1411(e). Different portions of the vertical pole serve different functions. The bottom of the pole generally is unusable for most types of attachments. *See Third Wireline Infrastructure Order*, 33 FCC Rcd at 7708, para. 6. Above that, the lower usable space on a pole—the "communications space"—houses low-voltage communications equipment, including fiber, coaxial cable, copper wiring, and small wireless antennas. *Id.* The topmost portion of the pole—the "electric space"—houses high-voltage electrical equipment. *Id.* Work in the electric space generally is considered more dangerous than work in the communications space. *Id.* Historically, communications attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space to attach pole-top small wireless equipment. *Id.*

[25] 47 CFR § 1.1411(f).

[26] *Id.* § 1.1411(g)(1).

[27] *Id.* § 1.1411(g)(2)-(3).

[28] *Id.* § 1.1411(g)(4). Note that a utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another. *Id.* § 1.1411(g)(5).

[29] *Id.* § 1.1411(h)(2). Utilities may deviate from any of the pole attachment timelines in our rules before offering the estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment. *Id.* § (continued….)

6. *Self-Help.* In certain instances, our rules allow the new attacher to avail itself of self-help for surveys and make-ready work when those pole attachment deadlines are not met.[30] For simple surveys and make-ready work, our rules allow new attachers to perform the work themselves using an approved contractor from a utility list; if the utility does not maintain a list of approved contractors, the new attacher can hire its own contractor as long as that contractor meets the qualifications set forth in our rules and the attacher certifies as such to the utility.[31] For surveys and make-ready work that are complex or above the communications space, an existing attacher still can avail itself of self-help, but it must use a utility-approved contractor.[32]

7. *One-Touch-Make-Ready.* In 2018, the Commission adopted a new framework that allows attachers to control the surveys, notices, and make-ready work necessary to attach their equipment to utility poles in certain circumstances.[33] In what is known as one-touch, make-ready (OTMR), for an attachment involving simple make-ready, a new attacher may elect to perform the work to attach its wireline equipment to the communications space of a pole.[34] This framework includes safeguards to promote coordination among parties and ensures that new attachers perform the work safely and reliably. As the Commission stated at the time, using OTMR will save new attachers "considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments."[35]

8. *Recent Commission Action.* In December 2023, the Commission took additional steps to speed-up broadband deployment by making the pole attachment process faster, more transparent, and more cost-effective.[36] Specifically, the Commission adopted rules: (1) establishing the Rapid Broadband Assessment Team (RBAT) to provide coordinated review and assessment of qualifying pole attachment disputes and recommend effective dispute resolution procedures, and (2) requiring utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been "red tagged" by the utility for replacement, and the scheduled replacement date or timeframe.[37] Additionally, the Commission clarified that a "red tagged" pole is one that the utility has identified as needing replacement for any reason other than the pole's lack of capacity and provided additional examples of when, under section 1.1408(b) of our rules, a pole replacement is not "necessitated solely" as a result of a third party's attachment or modification request because the pole already requires replacement at the time of the new request.[38] The Commission also clarified the obligation to share

(Continued from previous page)
1.1411(h)(1). In addition, existing attachers may deviate from the timelines specified in our rules during the performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the timelines. *Id.* § 1.1411(h)(3).

[30] *Id.* § 1.1411(i). Self-help is not available for pole replacements. *Id.* § 1.1411(i)(3).

[31] *Id.* § 1.1412(b)-(c). Utilities may, but are not required to, maintain a list of approved contractors for surveys and simple make-ready work. *Id.* § 1.1412(b).

[32] *Id.* § 1.1412(a). Utilities are required to maintain an up-to-date "reasonably sufficient list" of approved contractors for self-help surveys and make-ready that is complex or above the communications space. *Id.*

[33] *Third Wireline Infrastructure Order*, 33 FCC Rcd at 7712-13, para. 14.

[34] 47 CFR § 1.1411(j). "Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex." *Id.* § 1.1402(p).

[35] *Third Wireline Infrastructure Order*, 33 FCC Rcd at 7714, para. 16.

[36] *See generally Fourth Wireline Infrastructure Order*, 38 FCC Rcd 12379.

[37] *Id.* at 12382-83, para. 7; *see also* 47 CFR §§ 1.1411(c)(4), 1.1415.

easement information and the applicable timelines for the processing of attachment requests for 3,000 or more poles.[39]

9. The Coalition of Concerned Utilities (CCU) sought reconsideration of the Commission's decision in the *Fourth Wireline Infrastructure Order* requiring utilities to provide their recent cyclical pole inspection reports upon request to attachers.[40] The Edison Electric Institute (EEI) sought clarification and/or reconsideration of certain aspects of the *Declaratory Ruling* and asked that the Commission "(1) clearly define the narrow circumstances in which a utility pole owner is required to provide a copy of its easement to an attacher that seeks to access a pole within such easement; and (2) remove or clarify its ruling that a 'pole replacement is *not* 'necessitated solely' by an attachment request' if a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole."[41] Both petitions remain pending.

10. The rise in government funding for broadband deployment[42] has contributed to a significant increase in deployment of extensive new broadband facilities, resulting in a significant increase in the number of applications seeking to attach these facilities to large numbers of utility poles.[43] Both attachers and utilities acknowledge that these increases, along with increases in privately funded projects, have put greater demand on utility resources and the pool of qualified contractors and have

(Continued from previous page)

[38] *Declaratory Ruling*, 38 FCC Rcd at 12402, para. 39; *see also* 47 CFR § 1.1408(b).

[39] *Declaratory Ruling*, 38 FCC Rcd at 12402, para. 39. For the processing of pole attachment requests, the Commission specifically clarified that "when an application is submitted requesting access to more than the lesser of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in section 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do." *Id.* at 12409, para. 50.

[40] CCU Petition at 1.

[41] EEI Petition at 1 (emphasis in original).

[42] *See, e.g.*, Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, §60102, 135 Stat. 429, 1182-1205 (2021) (codified at 47 U.S.C. § 1702) (Infrastructure Act) (directing the National Telecommunications and Information Administration to implement a $42.5 billion Broadband Equity, Access, and Deployment (BEAD) Program); *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686 (2020) (establishing an auction framework to distribute up to $20.4 billion in support for connecting millions more homes and small businesses in rural areas to broadband networks); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 905(c), 134 Stat. 1182 (2020), as amended by the Infrastructure Act § 60201 (providing up to $3 billion in funding for NTIA's Tribal Broadband Connectivity Fund); American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 604, 135 Stat. 4 (2021) (granting $10 billion to the U.S. Treasury Department to allocate via its Capital Projects Fund to eligible governments to carry out critical capital projects that directly enable work, education, and health monitoring, including high-quality and affordable broadband infrastructure and digital connectivity projects); U.S. Dept. of Agriculture, Rural Development, *Telecom Programs*, https://www.rd.usda.gov/programs-services/telecommunications-programs (last visited July 24, 2025) (giving an overview of various loan and grant funding programs for rural broadband infrastructure projects under the U.S. Department of Agriculture's Rural Utilities Service); Infrastructure Act § 60401 (establishing grants for middle mile infrastructure); *id.* § 60502 (providing $14.2 billion to establish the Affordable Connectivity Program).

[43] NCTA–The Internet & Television Association Comments at 1-2 (NCTA) ("Grant milestones do not account for the size of the funded deployments, which typically include many thousands of poles in a state."); ACA Connects – America's Communications Association Comments at 4 (ACA Connects); Crown Castle Fiber LLC Comments at 1 (Crown Castle); INCOMPAS Comments at 5, 7; Utilities Technology Council Comments at 1 (UTC). All undated references to Comments and Replies in this document are to comments and replies filed in response to the *Third Further Notice*. References to all other Comments, Oppositions, and Replies throughout are dated for ease of reference.

resulted in difficulties and delays in accessing poles.[44] As a result, the Commission sought comment in the *Third Further Notice* on: (1) a tentative conclusion that utilities should have an additional 90 days for make-ready work for requests exceeding the lesser of 3,000 poles or 5 percent of the utility's poles in a state; (2) whether the Commission should prohibit utilities from limiting the number of poles included in a pole attachment application and from limiting the number of applications an attacher may submit at a time; (3) a proposal that the Commission add additional time to the existing timelines for larger orders; (4) whether the Commission should create additional make-ready timeline tiers for attachment applications of different sizes; (5) a proposal that a utility notify an attacher within 15 days after receiving a complete application if it cannot conduct the survey within the required 45-day period (so that the attacher can elect self-help for the survey sooner); (6) whether the Commission should make self-help available for the make-ready estimate process; and (7) the impact of contractor availability when attachers seek to use their own contractors for self-help and whether to amend the Commission's rules to make it easier for attachers to use their own contractors for self-help when there are no contractors available from a utility contractor list.[45] Comments on the *Third Further Notice* were due on February 13, 2024, and replies were due on March 13, 2024.

11. *CTIA Petition for Declaratory Ruling.* In 2019, CTIA filed a Petition for Declaratory Ruling in this proceeding.[46] CTIA requested three declarations concerning pole attachments in its Petition: (1) that the term "pole" in section 224 includes light poles; (2) that utilities may not impose "blanket" restrictions on access to portions of any poles they own; and (3) that utilities may not seek bargained-for terms and conditions that are inconsistent with the Commission's pole attachment rules.[47] The latter two issues were addressed in a *Declaratory Ruling* released in July 2020.[48] The question of whether the term "pole" encompasses light poles remains pending.

---

[44] *See* ACA Connects Comments at 5 (acknowledging that "higher-volume applications can place greater demands on the resources of utilities, and that utilities may sometimes find themselves unable to process Large Orders within any prescribed timeframe"); USTelecom—The Broadband Association Comments at 3 (USTelecom) ("No entity—pole owner or attacher—has a limitless workforce capable of simultaneously performing make-ready work across miles and miles of utility poles at the same time. Nor can any entity—pole owner or attacher—escape the realities of workforce shortages, staffing issues, permitting delays, supply chain difficulties, and the need to divert resources to address storms or other emergencies, which can add time to a deployment project."); Letter from Robin F. Bromberg, Counsel to the Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Aug. 19, 2024) (Electric Utilities Aug. 19, 2024 *Ex Parte* Letter) (noting that "the limited supply of approved contractors often cannot keep pace with the demand for space on utility poles"); UTC Comments at 5.

[45] *Third Further Notice*, 38 FCC Rcd at 12410-14, paras. 52-59.

[46] CTIA Petition. The CTIA Petition was also filed in the Wireless Telecommunications Bureau's *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* proceeding. The Wireline Competition and Wireless Telecommunications Bureaus placed the CTIA Petition on public notice and in response received dozens of comments, replies, and *ex parte* presentations from communication providers and utility groups. *See Wireless Telecommunications Bureau and Wireline Telecommunications Bureau Seek Comment On WIA Petition For Rulemaking*, *WIA Petition For Declaratory Ruling And CTIA Petition for Declaratory Ruling*, WT Docket No. 19-250, WC Docket No. 17-84, RM-11849, Public Notice, 34 FCC Rcd 8099 (WCB, WTB 2019). The Bureaus twice extended the comment deadlines. *See Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012 Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, Order Granting Motion for Extension of Time, 34 FCC Rcd 8660 (WCB, WTB 2019); *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012 et al.*, WT Docket No. 19-250 et al., Order Granting Motion for Extension of Time, 34 FCC Rcd 10390 (WCB, WTB 2019).

[47] CTIA Petition at 5-6.

[48] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket (continued….)

III. REPORT AND ORDER

12. In this Report and Order, we adopt new requirements that will aid attachers and utilities in planning for larger broadband deployments and in allocating critical contractor resources to ensure that large broadband deployments are completed in an efficient and timely manner. During this critical time of infrastructure deployment and with both utilities and attachers seeking guidance from the Commission, these requirements represent a multi-pronged, holistic approach that will best balance the difficulties faced by utilities in processing large applications against attachers' need for speedier deployments, as follows: (1) requiring attachers to provide written notice to utilities of forthcoming pole attachment orders that are greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state up to the lesser of 6,000 poles or ten percent of a utility's poles in a state; (2) providing that an attacher that fails to provide timely advance notice of such orders must, upon prompt notice from the utility, still wait the relevant advance notice period before the applicable timeline begins; (3) imposing a meet-and-confer requirement following the requisite advance notice for orders exceeding the lesser of 3,000 poles or five percent of a utility's poles in a state up to the lesser of 6,000 poles or ten percent of a utility's poles in a state; and (4) establishing a new set of timelines for utilities to complete each pole access phase for large orders.

13. We also revise our pole attachment timelines as follows: (1) require utilities to notify attachers within 15 days of receiving a complete application if they know or reasonably should know that they cannot meet the survey deadline, and require utilities to notify attachers within 15 days of payment of the estimate, and existing attachers to notify utilities and new attachers within 15 days of receiving notice from the utility, if they know or reasonably should know that they cannot meet the make-ready deadline; (2) add a self-help remedy for make-ready estimates, provided certain safeguards are met; and (3) prohibit utility-imposed limits on application size and frequency that have the effect of restricting the number of pole attachments attachers may seek in a given timeframe. We also adopt improvements to the contractor approval process. Our current rules require that a utility may not unreasonably withhold its consent to an attacher request to add qualified contractors to the utility's list of contractors approved to do pole work.[49] To ensure promptness in the utility's contractor decision-making, we require utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request. We note, however, that the parties are free to negotiate for a longer approval period.[50]

A. Advance Notice and Meet-and-Confer Requirements

14. Both attachers and utilities cite the need for better coordination in the pole attachment process.[51] And the Commission has always encouraged "a high degree of pre-planning and coordination between attachers and pole owners, to begin as early in the process as possible."[52] To that end, we adopt

(Continued from previous page)
No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936, 7936-37, para. 3 (WCB 2020) (*2020 Declaratory Ruling*).

[49] 47 CFR § 1.1412(a)-(b). As the Commission stated in the *Third Wireline Infrastructure Order*, "to be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability." *Third Wireline Infrastructure Order*, 33 FCC Rcd at 7757, para. 107.

[50] Parties have always been free to reach negotiated agreements with terms that differ from our rules. *See, e.g.*, *2020 Declaratory Ruling*, 35 FCC Rcd at 7944-45, para. 15.

[51] NCTA Reply at 2 ("NCTA members recognize that advance notification of funded broadband deployments could be helpful to utilities for their planning purposes, and do not object to notifying utilities promptly upon being awarded broadband grants that will require the submission of [Large] Orders."); Southern Company et al. Comments at 17 (Electric Utilities) ("In many cases, electric utilities only become aware of large deployments in their service territories when they receive the applications for those deployments."); ACA Connects Comments at 11-12; UTC Comments at 1; Coalition of Concerned Utilities Comments at 10 (CCU); Edison Electric Institute Comments at 9 (EEI).

[52] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC Rcd 5240, 5250, para. 19 (2011) (continued….)

a requirement that attachers provide written advance notice to utilities of Mid-Sized Orders associated with a single network deployment[53] and Large Orders.[54] Mid-Sized Orders are orders exceeding the lesser of 300 poles or 0.5 percent of a utility's poles in a state up to the lesser of 3,000 poles or 5 percent of a utility's poles in the state. Large Orders are orders exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state up to the lesser of 6,000 poles or 10 percent of a utility's poles in a state. We require the written advance notice to be sent as soon as practicable, but not less than 15 days in advance of submitting a Mid-Sized Order or 60 days in advance of submitting a Large Order, and that it shall set forth detailed information that will allow the utility to properly assess the potential resource needs for the order.[55] While we expect the notice to be as detailed as possible, at the very least it must contain (1) the

(Continued from previous page)
(*2011 Report and Order*). We note that the advance notice and meet and confer requirements adopted here are an outgrowth of the large order management issues on which the Commission sought comment in the *Third Further Notice*, particularly: (1) seeking comment on utility concerns related to large-order processing, especially workforce availability and the submission of multiple applications at the same time; (2) asking about steps the Commission could take to facilitate the pole attachment process for larger orders; (3) asking about other ways to assist utilities in processing the expected increase in large applications; and (4) seeking comment on factors identified by USTelecom as reasons to give utilities additional time to process larger orders—permitting delays, workforce shortages, staffing issues, and the coordination required among attachers to make room for a new attachment. *Third Further Notice*, 38 FCC Rcd at 12411-13, paras. 54-56.

[53] For Mid-Sized Orders only, the advance notice requirement is limited to instances where the order threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher. *See* Letter from Christopher L. Shipley, Executive Director of Public Policy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 18, 2025) (INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter).

[54] Several commenters advocate that we extend the advance notice requirement to orders involving government-funded broadband projects, Letter from Jacqueline Clary, Altice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed July 16, 2025) (Altice July 16, 2025 *Ex Parte* Letter) (stating that "Altice understands why some period of advance notice makes sense for 'Large Orders' and perhaps even for other pole attachment orders that are the result of government-funded broadband projects"); Letter from Pamela Arluk, Vice Pres. and Assoc. Gen'l Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-2 (filed July 15, 2025) (NCTA July 15, 2025 *Ex Parte* Letter), while EEI supports advance notice for Large Orders, but limited only to those involving government-funded broadband projects. Letter from Aryeh Fishman, Associate General Counsel, Regulatory Legal Affairs, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4-5 (filed Aug. 29, 2024) (EEI Aug. 29, 2024 *Ex Parte* Letter). We disagree with EEI's proposed limitation, as we find that a prior notice requirement will benefit the processing of both Mid-Sized Orders associated with a single network deployment and Large Orders for all broadband projects, including privately funded projects. Letter from Nirali Patel, Senior Vice President, Regulatory & Legal Affairs and General Counsel, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed Apr. 1, 2025) (USTelecom Apr. 1, 2025 *Ex Parte* Letter) (agreeing that the advance notice requirement should not be limited to grant-funded projects). We note that government-funded orders more than likely are Large Orders or Mid-Sized Orders associated with a single network deployment and thus already will be covered by the advance notice requirement. Additionally, attachers give no proposed definition of a government-funded project, nor any size limitation on such an order, and also put the onus on the utility to determine whether an order is associated with a government-funded project (i.e., allegedly because such grants are in the public domain and easily verifiable). Moreover, many government-funded projects will involve areas where the utilities are cooperatives that are not subject to our rules. *See, e.g.*, Letter from Nirali Patel, Senior Vice Pres., Regulatory & Legal Affairs and Gen'l Counsel, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Mar. 10, 2025) (USTelecom Mar. 10, 2025 *Ex Parte* Letter).

[55] Electric Utilities Comments at 18-20 (advocating that "the Commission should adopt a rule that requires attachers to provide at least 60 days' written notice before submitting High-Volume Applications"); EEI Comments at 9-10 (stating that the Commission should consider adopting an advance notice requirement for applications involving more than 300 poles); INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 2 (proposing "that the advanced notice, if any, for Mid-Sized Orders be 15 days"); Coalition of Concerned Utilities Reply at 8 (CCU); Letter from Brett Kilbourne, Senior Vice President Policy and General Counsel, Utilities Technology Council, to Marlene H.
(continued….)

attacher's contact information; (2) description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) a request to meet and confer with the utility within 30 days of the date of the notice for a Large Order.[56] We do not adopt a meet-and-confer requirement for Mid-Sized Orders.[57] We also clarify, as requested by NCTA, that "minor changes to routes should not necessitate new notice and/or a new meet-and-confer, but that the attacher and utility should jointly work to accommodate these changes."[58]

15. Smaller orders, up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state (Regular Orders) will not be subject to this requirement, as such orders do not implicate as many resources as larger orders. We also do not impose this new requirement on orders that exceed the lesser of 6,000 poles or 10 percent of a utility's poles in a state (Very Large Orders) and instead require the parties to engage in good faith negotiation of the attachment timelines for such orders.[59] We do, however, encourage prior notice for Very Large Orders given their attendant complexities and the benefits of coordination and collaboration between the parties.[60]

16. In adopting a written advance notice requirement for Mid-Sized Orders associated with a single network deployment and Large Orders, we acknowledge the concerns of utilities that "[w]ithout ample advanced notice, there is a risk that attachers may flood pole owners with applications predictably

(Continued from previous page)
Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Aug. 19, 2024) (UTC Aug. 19, 2024 *Ex Parte* Letter) (supporting a 60-day advance notice requirement); USTelecom Apr. 1, 2025 *Ex Parte* Letter at 5.

[56] *See* Dominion/Xcel Reply at 9; Letter from Brett Heather Freedson, Counsel to Dominion Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Aug. 19, 2024) (Dominion Aug. 19, 2024 *Ex Parte* Letter); USTelecom Apr. 1, 2025 *Ex Parte* Letter at 5 ("At a minimum, the advance notice should include the number of poles that will be part of the over-3,000 pole order; a location map with the poles identified and routes shown; a scope of work that includes anticipated construction methods (such as whether the project is intended to be solely aerial or a mix of aerial and underground deployment); the identity of other pole owners that will be impacted by the project; the anticipated application date; the anticipated build timeline; the anticipated construction crews for the project; and whether or not government funding is involved."). There are three categories of information requested by Dominion, UTC, and USTelecom that we do not find should be required for the advance notice, although such information could be helpful to share with the utility, if available at the time of the notice: (1) in the case of a government-funded project, all deployment plans prepared in connection with the attacher's application for funds; (2) a list of all contractors that the attacher seeks to have pre-approved for one-touch and self-help make-ready work; and (3) a list of all permits and authorizations necessary for the proposed deployment and their status. Letter from Brett Kilbourne, Counsel to UTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4 (filed July 18, 2025) (UTC July 18, 2025 *Ex Parte* Letter) (requesting that attachers identify all contractors proposed for potential self-help). The lists of contractors, permits, and authorizations may not be readily discernable until after the Mid-Sized or Large Order is submitted, while the detailed deployment plans for government-funded projects can be shared after the advance notice is sent.

[57] INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 3 (advocating that "the meet and confer be voluntary, not mandatory for Mid-Sized Orders").

[58] *See* NCTA July 15, 2025 *Ex Parte* Letter at 3; *see also* Letter from Aryeh Fishman, Associate Gen'l Counsel, EEI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 17, 2025) (EEI July 17, 2025 *Ex Parte* Letter) ("Minor route changes are expected and should not trigger a new notice or meet-and-confer requirement, provided they are de minimis."); UTC July 18, 2025 *Ex Parte* Letter at 3 (stating that "utilities anticipate that there will be minor changes to the route information, and they could readily address these changes and adjust for them in the course of the meet and confer process without the need to restart the timeline each time such a change is proposed"); INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 4.

[59] Letter from Aryeh Fishman, Assoc. Gen'l Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 14, 2025) (EEI July 14, 2025 *Ex Parte* Letter) ("We further support the Commission's decision to require good-faith negotiation of timelines for Very Large Orders and to reject proposals to impose default Large Order timelines in such cases.").

[60] *Id.* (appreciating the encouragement of prior notice for Very Large Orders).

leading to delays due to scarcity of resources."[61] The record does not reflect opposition to this requirement for Large Orders, and both utilities and attachers generally agree that it will be useful for all parties.[62] However, we disagree with attachers who argue that we should not apply an advance notice requirement for Mid-Sized Orders.[63] Instead, we agree with utilities that a written advance notice requirement will promote broadband deployment and lead to greater efficiency in the processing of not just Large Orders but also Mid-Sized Orders associated with a single network deployment, especially with regard to allocating important contractor resources.[64] As CCU notes, "[a]dvance notice would enable utilities to better prepare by, for example, working to secure as many additional contractor resources as possible to support the negotiated timeframes."[65] However, in recognition that applying the prior notice requirements to Mid-Sized Orders risks slowing the process for completing these orders, which according to commenters are often not scheduled in advance and can regularly exceed 300 poles in a thirty-day period, we shorten the advance notice period for Mid-Sized Orders associated with a single network deployment to 15 days.[66] And in light of attachers' concern that "[t]he 300 poles in a 30-day period threshold, if it included even unrelated 'business as usual' builds, would require notice nearly every month," we limit the advance notice requirement for Mid-Sized Orders to when the threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher.[67]

17. If an attacher submits an application to the utility without giving the required the advance notice, then the utility may promptly notify the attacher that it is treating the application as the requisite advance notice, that the application will commence the advance notice period, and, if it is a Large Order, that the attacher must request the meet-and confer required by our rules. If the attacher fails to request the meet-and-confer described below, then the advance notice period will not begin to run until such request is made. At the end of the advance notice period, the new attacher can submit a new application or notify the utility that it is continuing with its original submission as its application, and the utility may not charge any additional or increased application fee.[68] Failure by the utility to give prompt notice that it is

---

[61] EEI Reply at 8-9 (citing Electric Utilities Comments at 18); CCU Reply at 8 (noting that "it not only is unreasonable to wait until the last minute to make attachment requests and then push for quick turnaround times, it also wastes valuable utility resources to the detriment of everyone").

[62] NCTA July 15, 2025 *Ex Parte* Letter at 2 ("We noted that the record—specifically including utility associations and individual utilities themselves—supports applying these requirements to large orders, and that attachers agreed to advance notice for large orders.").

[63] Altice July 16, 2025 *Ex Parte* Letter at 3; INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 2; NCTA July 15, 2025 *Ex Parte* Letter at 2-3 (arguing that "imposing new advance notification requirements would add unnecessary delay and could interfere with attachers' ability to fulfill" Mid-Sized Orders). We disagree with NCTA's assertion that "[p]rior to the release of the Draft Order, utilities had not requested that advanced notice requirements apply to smaller or mid-size orders." *Id.* at 2 n.4. We note that both EEI and the Electric Utilities advocated for an advance notice for Mid-Sized Orders during the comment period. *See* Electric Utilities Comments at 18-20; EEI Comments at 9-10.

[64] Dominion/Xcel Reply at 8 (noting that "a requirement that attachers provide prior notice of Expanded Orders would dramatically reduce the frequency and duration of delays that are caused by a lack of available contractors to perform work for which the utility pole owner is responsible"); CCU Reply at 8-9; EEI Reply at 9; UTC Aug. 19, 2024 *Ex Parte* Letter at 1-2; Letter from David D. Rines, Counsel to Xcel Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Aug. 23, 2024) (Xcel Energy Aug. 23, 2024 *Ex Parte* Letter).

[65] CCU Reply at 8-9; *see also* Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 2.

[66] NCTA July 15, 2025 *Ex Parte* Letter at 2; INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 3 (arguing that "the advanced notice, if any, for Mid-Sized Orders be 15 days").

[67] INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 2-3.

[68] Altice July 16, 2025 *Ex Parte* Letter at 4 (stating that "rather than forfeiting their right to have their applications processed under the Commission's timelines, attachers should be forced to wait the additional notice period before (continued….)

treating the attacher's application as the advance notice will result in the application proceeding to be processed under the applicable timelines without an advance notice period or meet-and-confer requirement. This approach still will provide utilities with the advance notice they assert is routinely lacking.[69] Although we encourage advance notice from attachers to utilities for larger orders as early in the process as possible, we find that a minimum of 15 days is needed for the utility to begin planning for how to process Mid-Sized Orders associated with a single network deployment, and a minimum of 60 days is needed for Large Orders, which present more complications that the parties will need to iron out in the ensuing meet-and-confer.[70] It also will require responsiveness on the part of utilities, which attachers assert is often not forthcoming.[71] We expect that this requirement will foster a more collaborative approach to the pole attachment process and increase efficiency and planning in processing larger orders, resulting in speedier broadband deployment.

18. We reject utilities' request that if an attacher fails to comply with the advance notice requirement, then it forfeits the right to have its application processed under the Mid-Sized and Large Order timelines and instead will have to negotiate timelines for their application in good faith with the utility.[72] We find that such a penalty is too onerous.[73] The impact of failure to comply with the advance notice requirement is readily ameliorated by utilities' ability to deem the associated application to

(Continued from previous page) ———————————
the Commission's timelines would be triggered").

[69] Electric Utilities Comments at 17; CCU Comments at 24; EEI Comments at 9-10. We note that if disputes arise regarding the sufficiency of the attacher's notice (especially with regard to the adequacy of the required information in the notice), the parties can resort to the RBAT to resolve such conflicts.

[70] Utilities generally agree that 60 days is the minimum amount of time needed for an advance notice of Large Orders. Electric Utilities Comments at 18-20; UTC Aug. 19, 2024 *Ex Parte* Letter at 2; CCU Reply at 8; USTelecom Apr. 1, 2025 *Ex Parte* Letter at 5. However, EEI and Dominion/Xcel both advocate for a 90-day advance notice period. Virginia Electric and Power Company D/B/A Dominion Energy North Carolina and Dominion Energy Virginia, Dominion Energy South Carolina, Inc. and Xcel Energy Services Inc. Comments at n.41 (Dominion/Xcel); Edison Electric Institute Reply at 9; Dominion/Xcel Reply at 9; Letter from Brett Kilbourne, Counsel to UTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Mar. 14, 2024) (UTC Mar. 14, 2024 *Ex Parte* Letter). We find that 60 days' advance notice for Large Orders strikes the right balance between giving the utility enough time to begin planning for the new project and the time at which an attacher's plans become more concrete and less likely to change. *See, e.g.*, USTelecom Apr. 1, 2025 *Ex Parte* Letter at 5-6. We also find that the advance notice for Mid-Sized Orders associated with a single network deployment should be shorter than the notice for Large Orders, as such orders are smaller and presumably easier to process. *See* INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 2 (asserting that 15 days is adequate advance notice for Mid-Sized Orders).

[71] NCTA Comments at 3, 7; ACA Connects Comments at 3-4; INCOMPAS Comments at 7.

[72] *See* EEI July 17, 2025 *Ex Parte* Letter at 2 ("EEI supports the Commission's decision to enforce forfeiture of applicable timelines when an attacher fails to provide written advance notice or to confer with affected utilities. This enforcement mechanism is critical to ensuring compliance and incentivizing attachers to provide complete and timely information. Requiring an attacher that fails to comply with this rule to wait an additional notice period before the Commission's timeline would be triggered does not provide the same incentive for compliance and will not expedite a deployment."); Letter from Robin F. Bromberg, Counsel to Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 11, 2025) (Electric Utilities July 11, 2025 *Ex Parte* Letter) ("The Electric Utilities also strongly support the enforcement mechanism that the Commission included with the 60-day notice and meet and confer requirements (i.e., that the FCC's make-ready timelines will not apply if the notice/meet and confer requirements are not met) and believe this enforcement mechanism is essential to ensuring that these critical planning steps occur."); Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 2; Dominion Aug. 19, 2024 *Ex Parte* Letter at 3.

[73] *See* Altice July 16, 2025 *Ex Parte* Letter at 3 (asserting that "the contemplated consequence for attachers failing to provide the proposed 60 days' advance notice to utilities is overly severe—particularly when viewed in light of the Commission's goals of expediting broadband deployment").

constitute the attacher's advance notice, still requiring the parties to meet and confer (as described below) within the specified period of time after a Large Order is filed, and tolling for the length of the advance notice period the applicable pole attachment timeline, which includes the time the utility has to review the associated application for completeness and begin its review on the merits.[74]

19. To further enhance collaboration between the parties, we require attachers and utilities to meet and confer within 30 days after written advance notice is given to negotiate in good faith the mechanics and timing by which Large Orders will be processed. We encourage the parties to discuss and plan, among other things, the utility's ability to meet deadlines for an order, the availability of contractors (particularly the need for, and availability of, electric space contractors to the extent necessary), a prioritization of the poles to be worked on, the status of local permitting efforts, and estimated timelines for the work.[75] We also require that the parties find a mutually agreeable day and time for the meeting (which can be in-person, virtual, or by phone), and to conduct the meeting, within the 30-day period after the attacher sends written advance notice. Any allegations of bad faith by either party in fulfilling this requirement can be referred to the RBAT for resolution. We agree with utilities that such a pre-planning requirement will "enable utilities and attaching entities to prepare for larger orders or better yet avoid the need to submit larger orders altogether and instead submit applications in stages."[76]

B. Large Orders

20. While we do not change the existing timelines for processing pole attachment applications for Regular Orders and Mid-Sized Orders,[77] we agree with attachers that fixed timelines are necessary for some level of pole attachment applications above 3,000 poles (or 5 percent of a utility's poles in a state).[78] Presently, our rules require attachers and utilities to negotiate in good faith the timelines for such applications, but today we shift away from an uncertain negotiation method and adopt a new level of defined timelines for processing applications exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state, up to the lesser of 6,000 poles or 10 percent of a utility's poles in a state. We define this grouping as Large Orders, and the timelines we adopt are as follows:

---

[74] *See* 47 CFR § 1.1411(c)(1).

[75] UTC Comments at 6 (noting that early planning "may help to effectively manage available resources necessary to complete make-ready, such as contractors, who are already in short supply and there are few signs that the workforce shortage is getting any better"); Dominion/Xcel Reply at 4.

[76] UTC Comments at 6; *see also* EEI Reply at 9 (noting that "[t]hrough early coordination and collaboration with attachers, a pole owner can understand the larger picture of a proposed broadband deployment"). UTC in particular supports the idea that "processing applications incrementally is more efficient and enables utilities to process as many applications as quickly as possible and avoids the situation where if there is a hold-up with one application, then the attachers' entire project is held up" and that a pre-planning requirement will enable the parties "to prioritize the work appropriately so that resources can be allocated and projects can be completed as efficiently as possible with the resources that are available." UTC Comments at 6; UTC Aug. 19, 2024 *Ex Parte* Letter at 1; *see also* Dominion/Xcel Comments at 9-10 (noting the benefits of systemic collaboration between the utilities and attachers, with an option for pre-application work sessions); EEI Reply at 8 ("Collaboration between pole owners and communications attachers is necessary for the success of broadband.").

[77] The pole attachment deadlines for all four phases of the pole attachment process apply to all requests for Regular Orders. 47 CFR § 1.1411(g)(1). Utilities currently get an extra 15 days for the survey process and an extra 45 days for the make-ready process for Mid-Sized Orders. *Id.* § 1.1411(g)(2)-(3). There currently are no required timelines for the processing of orders exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state; rather, the current rules require the parties to negotiate such timelines in good faith. *Id.* § 1.1411(g)(4). Note also that attachers have the right to engage in self-help for surveys and make-ready work if utilities fail to complete those items by the deadlines established in our rules. *Id.* § 1.1411(i).

[78] *See* NCTA Reply at 1; ACA Connects Reply at 5-7; Crown Castle Comments at 3-4; INCOMPAS Reply at 2.

Large Order Timeline	
Pole Access Phase	**Time for Completion**
Application Completeness Review	10 business days after receipt
OTMR Application Review	10 business days for completeness, 45 days on the merits after application is complete
Survey/Review on Merits	90 days after application is complete
Estimate	29 days after survey
Communications Space Make-Ready	120 days after attacher payment
Above Communications Space Make-Ready (Power space)	180 days after attacher payment

For orders that exceed the lesser of 6,000 poles or 10 percent of a utility's poles in a state (Very Large Orders), we leave in place the requirement that utilities and attachers negotiate in good faith the pole attachment timelines for such orders.[79] However, consistent with the Commission's clarification in the *Declaratory Ruling*,[80] the lesser of the first 6,000 poles (or 10 percent of the utility's poles in the state) of that application are subject to the new make-ready timelines that we adopt today for Large Orders, so long as the attacher designates in its application the first 6,000 poles (or 10 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do.[81]

21. We adopt the 6,000 pole cap for the expanded timeline for Large Orders after consideration of comments from parties on both sides of the equation.[82] In particular, we agree with NCTA's judgment that "[i]n NCTA members' experience, the cap should not be less than 6,000 poles or 10% of the utilities' poles in the state to correspond with NCTA members' collective experience to date deploying funded broadband projects."[83] Dominion/Xcel also advocate for a 6,000 pole cap on the next level of applications subject to a timeline, while noting that their ultimate preference is for the Commission to refrain from adopting a timeline for orders over 3,000 poles.[84]

22. We agree with attacher commenters that an additional defined timeline layer is needed to process these Large Orders.[85] As NCTA asserts, having defined timelines only for applications up to

[79] *See* NCTA Comments at 12 (urging the Commission to "extend the good faith negotiation obligation to orders exceeding [Large] Orders").

[80] *See Declaratory Ruling*, 38 FCC Rcd at 12409, para. 50 (stating "we clarify that when an application is submitted requesting access to more than the lesser of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in section 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do").

[81] *See, e.g.*, NCTA Comments at 13 (stating that "for any size order that is subject to good faith negotiation, the utility must process the preceding number of poles subject to the timelines in accordance with such timelines").

[82] *Id.* at 3, 8; Dominion/Xcel Reply at 13; *see also* ACA Connects Reply at 7; EEI Aug. 29, 2024 *Ex Parte* Letter at 3 (noting, however, that such a Large Order timeline must include a pre-application notice and consultation requirement and only apply to broadband projects funded by government programs).

[83] NCTA Comments at 8; *see also* Dominion/Xcel Reply at 13 & n.46; ACA Connects Reply at 7.

[84] Dominion/Xcel Reply at 12-13.

[85] *See* NCTA Reply at 1 (noting that "an additional fixed timeline for applications exceeding 3,000 poles . . . is essential to facilitate the thousands of pole attachments that are necessary to ensure that broadband is deployed to

(continued….)

3,000 poles, and requiring attachers to negotiate the timing of applications exceeding this threshold, fails to provide the required certainty and expediency necessary to meet critical broadband buildout needs and requirements.[86] As the Commission noted when it first adopted timelines to govern the pole attachment process, "in the absence of a timeline, pole attachments may be subject to excessive delays."[87] Since that time, when the Commission established a good-faith negotiation solution for the processing of orders exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state,[88] circumstances have changed, with an established nationwide priority on broadband deployment and the need for communications attachers to move quickly to achieve the needed buildouts.[89]

23. Utilities' opposition to an additional layer of defined timelines for Large Orders centers on the desire for flexibility, especially with regard to the allocation of contractor resources for pole attachment work;[90] as USTelecom notes, no utility can "escape the realities of workforce shortages, staffing issues, permitting delays, supply chain difficulties, and the need to divert resources to address storms or other emergencies, which can add time to a deployment project."[91] While we recognize these

(Continued from previous page)
unserved rural areas in accordance with Congress' and the Commission's fixed construction milestones"); ACA Connects Reply at 7; Crown Castle Comments at 3-4; INCOMPAS Reply at 2.

[86] NCTA Comments at 2, 6-9 ("To ensure that construction milestones are met, the Commission's proposal to establish a new timeline for pole attachment jobs that exceed the current Larger Order threshold ('Grant-Size Orders') is imperative."); *see also* ACA Connects Comments at 4 (stating that "the 'good faith' standard does not, in practice, compel utilities to process Large Orders in a timely manner"); Crown Castle Comments at 3; INCOMPAS Comments at 7-8; INCOMPAS Reply at 5; Connect the Future Comments at 1; Schools, Health & Libraries Broadband Coalition Comments at 10 (SHLB Coalition); *2011 Report and Order*, 26 FCC Rcd at 5257, para. 31 (having longer pole attachment timelines for complicated orders "promote[s] a higher success rate that attachers and their investors can depend on").

[87] *2011 Report and Order*, 26 FCC Rcd at 5250, para. 21; *see also id*. at 5255, para. 24 (noting that "[m]ore than half of the missed deadlines are caused by either the size of the project or errors in the application").

[88] *Id.* at 5270-72, paras. 63-66 (finding "this approach to be a reasonable method that appropriately scales the work required with the existing resources of the utility").

[89] *See* SHLB Coalition Comments at 10 ("We urge the Commission to adopt a presumption that projects above 3,000 poles will be handled in a defined period of time in order to emphasize to pole owners the importance of achieving the goal of solving the digital divide in the next few years."); Connect the Future Comments at 2 ("CTF strongly supports Commission action on its proposal that requires utilities to adhere to defined timelines for make-ready requests exceeding 3,000 poles or five percent of the utility's poles in a state. Delayed action significantly increases the risk of lengthy and costly delays associated with the pole access needed for broadband deployment."); NCTA Reply at 6 (stating that "the Commission's proposal to add a timeline for [Large] Orders is well founded and critically needed. Over the next several years, grant awardees must deploy hundreds of thousands of miles of fiber to currently unserved areas. Unless the Commission requires utilities to process [Large] Orders in some defined time period, the resulting delays could prevent these projects from being built in accordance with grant requirements."); *cf.* Dominion/Xcel Comments at 8 (acknowledging that "the payout of state and federal funds for broadband deployment has increased the number and frequency of expanded pole attachment orders received by pole owners in recent years," while also noting that "the utility resource constraints that shaped the Commission's rules continue to exist"); EEI Aug. 29, 2024 *Ex Parte* Letter at 3 (arguing that there should be a "a timeline for Large Orders that are expected in the BEAD program" and that a timeline for Large Orders "should be limited to those pole attachment applications related to a funded project subject to specific build-out deadlines or milestones imposed by the fund administrator").

[90] *See, e.g.*, Dominion/Xcel Comments at 7-8 ("The Commission's rules must provide sufficient flexibility for parties to manage large-scale broadband projects."); Electric Utilities Comments at 17 ("The Electric Utilities believe that eliminating flexibility from the equation would be a disservice to the Commission's ultimate goal of improving the efficiency of broadband deployment."); CCU Reply at 2; UTC Reply at 3-4; EEI Comments at 9; USTelecom Comments at 3.

[91] USTelecom Comments at 3 ("For these reasons, USTelecom's members have learned that the best way to
(continued….)

realities and the benefits of flexibility, we address utilities' concerns by adopting the advance notice and meet-and-confer requirements that will jump start the pole attachment process for Large Orders earlier than under our current rules, a requirement that utilities have identified as crucial to adopting timelines for Large Orders.[92] With additional planning added to the process on the front end (especially with regard to planning for contractor resources), and given the over-arching need of communications attachers to deploy broadband as quickly as possible, we find that a defined pole attachment timeline for Large Orders will greatly facilitate the pole attachment process.[93] And we agree that in adopting new timelines for Large Orders, "the parties will remain free to negotiate alternative solutions."[94]

24. *Timelines for Large Orders.* We find that the new timelines for Large Orders strike a balance between a utility's need for sufficient time to process such orders and an attacher's need for a quicker pole attachment process in order to meet buildout deadlines. For ease of reference, the pole attachment timelines for all sizes of orders will now be as follows:

Pole Attachment Timelines			
Pole Access Phase	**Regular Orders**	**Mid-Sized Orders**	**Large Orders**
Application Completeness Review	10 business days	10 business days	10 business days
OTMR Application Review	10 business days for completeness, 15 days on the merits after application is complete	10 business days for completeness, 30 days on the merits after application is complete	10 business days for completeness, 45 days on the merits after application is complete
Survey/Review on Merits	45 days after application is complete	60 days after application is complete	90 days after application is complete
Estimate	14 days after survey	14 days after survey	29 days after survey
Communications Space Make-Ready	30 days after attacher payment	75 days after attacher payment	120 days after attacher payment
Above Comms Make-Ready (Electric Space)	90 days after attacher payment	135 days after attacher payment	180 days after attacher payment

(Continued from previous page)
expedite a large order is through advance coordination and negotiation, not strict timelines."); *see also* Electric Utilities Comments at 5 ("The Commission should abandon its tentative conclusion to impose a make-ready timeline on High-Volume Applications because it: (1) does not provide stakeholders with clear guidance regarding how the new make-ready timeline will be applied; (2) does not address the primary challenge to broadband deployment—scarce contractor resources; and (3) exacerbates existing flaws within the Commission's access rules."); EEI Comments at 11 ("There are outside factors beyond the control of the electric company that can impact the time required for make-ready for large orders. Such factors include permitting delays, workforce shortages and staffing issues, and required coordination among all the attachers to the poles (which can present competitive issues among attachers)."); Dominion/Xcel Comments at 3 ("In certain cases, delays in the pole access process are caused by circumstances beyond the control of any stakeholder, such as a lack of available contractors or materials.").

[92] Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 2 (noting that "any new timeline that may be adopted must be directly coupled with and contingent on an attacher's compliance with an advance notice and consultation requirement"); EEI Aug. 29, 2024 *Ex Parte* Letter at 3 ("A new timeline for [Large] Orders should include a pre-application notice and consultation requirement.").

[93] *See* NCTA Reply at 6; Crown Castle Reply at 4; Connect the Future Comments at 1.

[94] NCTA Reply at 7.

25. While we adopt the Commission's proposal in the *Third Further Notice* to add 90 days to the make-ready timelines for Large Orders,[95] we also find it necessary to adopt longer timelines for other stages of the pole attachment process, not just the make-ready phase.[96] As a result, we add incremental days for the application review, survey, and estimate phases of the pole attachment process for Large Orders in recognition of utilities' concerns that as pole attachment orders become larger, they become more complex and thus require even more time to complete.[97] The new timelines we adopt for Large Orders are the same as those proposed by NCTA,[98] but are shorter than the Large Order timelines proposed by USTelecom[99] and Dominion/Xcel Energy,[100] which we find are too lengthy to help attachers

[95] *Third Further Notice*, 38 FCC Rcd at 12410-11, para. 53. The proposed additional 90 days for make-ready were in addition to the make-ready deadlines for Regular Orders (i.e., 30 days for communications space make-ready and 90 days for make-ready above the communications space). 47 CFR § 1.1411(e)(1)-(2); *see also* NCTA Comments at 5 (supporting the addition of 90 days to the make-ready timelines for Large Orders (the 90 days being in addition to the make-ready timeline for Regular Orders)); ACA Connects Reply at 7; INCOMPAS Comments at 8.

[96] *See* NCTA Comments at 10-11 ("Based on NCTA members' experience, an additional timeline also is necessary for a utility's review of an application on the merits, including for surveys of jobs exceeding the existing Larger Order threshold."); Crown Castle Comments at 4 (stating that the Commission should apply a timeline to the survey and make-ready estimate stages for Large Orders); Electric Utilities Comments at 16 ("To be consistent with the Commission's existing rules, this concept would need to be applied not only to the make-ready process, but also to the survey and estimate timeframes."); USTelecom Comments at 7; Dominion/Xcel Comments at 12-13; UTC Mar. 14, 2024 *Ex Parte* Letter at 2; Letter from David D. Rines, Lerman Senter PLLC, Counsel to Dominion Energy and Xcel Energy Services Inc, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Mar. 19, 2025) (Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter).

[97] *See, e.g.*, USTelecom Comments at 6; EEI Comments at 10 ("The challenges related to reviewing applications for large pole attachment orders are even more complex than those for smaller projects due to the number of poles involved and the type of attachments required. Pole owners often need time to carefully process larger requests. More attachments on more poles means that pole owners must perform more surveys, more coordination with attachers, and more make-ready work."); Electric Utilities Comments at 17; UTC Comments at 4-5; Dominion/Xcel Comments at 10; EEI Reply at 10; CCU Reply at 2 ("Routine orders over 3,000 poles per month will quickly overwhelm the internal and external resources of utility pole owners, and there simply are not enough contractors in the industry to support such high volumes of pole attachment work."); Letter from Nirali Patel et al., USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4 (filed Sept. 12, 2024) ("Make-ready work on poles is not like manufacturing identical widgets; it does not get marginally easier as the number of poles in a project increases. Instead, make-ready becomes more difficult, more complicated, and more time-consuming as the number of poles in a project grows."); Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 1 (noting that "there are a number of variables that affect the timing of the steps necessary to enable pole access, and the impact of these variables is significantly amplified in the case of orders involving large numbers of poles"); USTelecom Mar. 10, 2025 *Ex Parte* Letter at 1-2.

[98] *See* NCTA Comments at 3-4, Appx. 1.

[99] USTelecom Apr. 1, 2025 *Ex Parte* Letter at 4. USTelecom proposes incremental timelines for each 300-pole batch over 3,000 poles in an order, which would be added to the timelines for Regular Orders: (1) *Review of Application for Completeness*—for each increment of 300 poles over 3,000 poles, the utility has 10 additional business days to determine whether an application is complete; (2) *Survey/Application review on the merits*—for each increment of 300 poles over 3,000 poles, the utility has 45 additional days to decide whether to grant a complete application and to complete any surveys; (3) *Estimate*—for each increment of 300 poles over 3,000 poles, the utility has 14 additional days to provide an estimate of make-ready charges; (4) *Attacher acceptance*—for each increment of 300 poles over 3,000 poles, the attacher has 14 additional days, or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment; (5) *Make-ready for attachments in the communications space*—for each increment of 300 poles over 3,000 poles, there are 30 additional days to complete make-ready work for attachments in the communications space; and (6) *Make-ready for attachments above the communications space*—for each increment of 300 poles over 3,000 poles, there are 90 additional days to complete make-ready work for attachments above the communications space, and a utility may take an additional 15 days to complete the make-ready. *Id.*

efficiently meet broadband buildout deadlines.[101] For example, the proposed Dominion/Xcel timelines would extend the total make-ready time period to over five months for utilities and existing attachers to complete make-ready work for attachments in the communications space and to over nine months for utilities to complete work for attachments above the communications space.[102] Given that make-ready timelines follow several months already afforded to utilities by the Commission's rules for assessing the completeness of applications, deciding the merits of an application, performing surveys, and providing make-ready estimates, adding an additional 5-7 months for make-ready would extend the pole attachment process to almost a year, thereby unnecessarily delaying the process.[103] While some utility commenters oppose the Commission's proposal for additional make-ready time for Large Orders,[104] we conclude that the 90-day increase in the make-ready deadlines for Large Orders strikes a balance between getting attachers onto poles faster while still making it more likely that a utility will be able to meet our pole attachment timelines.[105] The new timelines we adopt today would mean that Large Orders would be processed more slowly than if an applicant broke the requests up into two smaller applications and submitted them separately a month apart.[106] As a result, attachers will have an incentive to submit smaller orders that allow utilities to better manage their workflows and contractors and thus complete applications in a timely manner.[107]

(Continued from previous page)

[100] *See* Dominion/Xcel Reply at 13. We note that Dominion/Xcel generally are opposed to additional pole attachment timelines for Large Orders, but are proposing timelines in the alternative "if the Commission is compelled to reach this result." *Id.* at 12. Dominion/Xcel also caveat that their proposed timeline should be limited to broadband projects funded by government programs and expressly conditioned on their proposed notice requirement. *Id.* at 13. The Dominion/Xcel timeline for Large Orders would provide: (1) 30 days for application completeness review; (2) 75 days for OTMR application review; (3) survey/application review on the merits 150 days after application is complete; (4) estimate due 30 days after the survey is completed; (5) communications space make-ready within 165 days after attacher payment; and (6) make-ready work above the communication space within 285 days after attacher payment. *Id.*

[101] *See* Letter from Pamela Arluk, Vice Pres. and Assoc. Gen'l Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed May 9, 2025) (NCTA May 9, 2025 *Ex Parte* Letter) ("Under USTelecom's proposal, for an order of 3,000 poles, instead of the current 75 days for make-ready under the Commission's rules, the utility would have 270 days, 3.6 times longer than the current requirements. Such an approach runs counter to the Commission's goal of streamlining and speeding broadband deployment.").

[102] Dominion/Xcel Reply at 13.

[103] NCTA Comments at 7-8; INCOMPAS Reply at 5 ("With the anticipation that billions in broadband funding will be awarded in the next few years with major deployments occurring that will require large builds of 3,000 and more poles, the public interest cannot afford any more delays in trying to bridge the digital divide due to the lengthy and uncertain negotiations new attachers must undertake with utilities.").

[104] *See* Electric Utilities Comments at 8; UTC Comments at 3; CCU Comments at 9; EEI Comments at 8, 11; Dominion/Xcel Comments at 11-12; USTelecom Comments at 7. Utilities argue that if we set extended make-ready timelines for Large Orders that we also need to extend the Large Order timelines for the survey and estimate phases as well. Electric Utilities Comments at 16; Dominion/Xcel Comments at 12-13; UTC Mar. 14, 2024 *Ex Parte* Letter at 2; Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 2.

[105] *See* ACA Connects Comments at 2 (supporting additional 90 days for utility to complete make-ready for Large Orders); NCTA Comments at 8-9 ("In NCTA members' experience, this timeline is both essential and eminently feasible."); INCOMPAS Comments at 6. Under section 1.1411(g)(5) of our rules, "[a] utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another." 47 CFR § 1.1411(g)(5).

[106] NCTA Comments at 9.

[107] *See, e.g.*, UTC Comments at 6 (agreeing with EEI's explanation that processing applications incrementally is more efficient and enables utilities to process as many applications as quickly as possible and avoids the situation where if there is a hold-up with one application, then the attachers' entire project is held up); EEI Comments at 16 (noting that the Commission's existing pole attachment rule "encourages pole owners to execute smaller orders in a

(continued….)

26. To the extent utilities need additional time for make-ready work,[108] we note that the Commission's rules allow for deviations to the make-ready deadlines "for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section."[109] USTelecom requests that we provide additional examples of what constitutes "good and sufficient cause" for deviations to the make-ready timelines,[110] but we decline to do so at this time. Our rules currently provide that a utility may deviate from the make-ready timeline "for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the [specified] time limits."[111] In interpreting this provision, the Commission in 2011 stated that "utilities may toll the timeline to cope with an emergency that requires federal disaster relief, but may not stop the clock for routine or foreseeable events such as repairing damage caused by routine seasonal storms; repositioning existing attachments; bringing poles up to code; alleged lack of resources; or awaiting resolution of regulatory proceedings, such as a state public utilities commission rulemaking, that affect pole attachments. Aside from these examples of very serious occurrences that impede make-ready on the one hand, and routine events that do not justify tolling the timeline on the other hand, a utility must exercise its judgment in invoking a clock stoppage in the context of its general duty to provide timely and nondiscriminatory access."[112] We find that this previous guidance on what constitutes "good and sufficient cause" under our rules affords sufficient flexibility while still providing the certainty and expediency needed to ensure timely broadband buildouts.[113]

(Continued from previous page)
shorter amount of time"); Dominion/Xcel Comments at 8 ("This approach is a proverbial 'win-win' because, on one hand, it permits attachers to identify areas where pole access is a priority, and to enjoy certainty as to when requested poles will be available for attachment; and on the other hand, it enables utility pole owners to process pole access requests more efficiently, in smaller batches, and at a relatively steady cadence."); USTelecom Reply at 8-9; Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 2.

[108] Letter from Nirali Patel et al., USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed Apr. 21, 2025) (USTelecom Apr. 21, 2025 *Ex Parte* Letter) (listing deployment issues that can delay make-ready work).

[109] 47 CFR § 1.1411(h)(2); *see also* ACA Connects Reply at 8 (stating that "the Commission's deviation rule provides utilities with a safety valve to address unforeseen events"); Crown Castle Reply at 5; NCTA Comments at 14-15; USTelecom Apr. 1, 2025 *Ex Parte* Letter at 6; Letter from Aryeh Fishman et al., Associate General Counsel, EEI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed May 12, 2025) (EEI et al. May 12, 2025 *Ex Parte* Letter). While utilities are concerned about the increased complexities associated with increasingly larger orders and the inability to predict what might arise in the course of the work related to these orders, *see, e.g.*, EEI Comments at 18; UTC Reply at 4-5; USTelecom Mar. 10, 2025 *Ex Parte* Letter at 1-2, the advance notice and meet-and-confer requirements will go a long way toward obviating these concerns.

[110] USTelecom Apr. 1, 2025 *Ex Parte* Letter at 6; EEI et al. May 12, 2025 *Ex Parte* Letter at 2-3 (supporting USTelecom's request and stating that "[c]learly defined non-exclusive, real-world examples that justify timeline deviations, should include adverse weather, permitting delays, preexisting safety violations, the need to obtain easements or rights-of-way from a third party, the need for a customer outage to perform make-ready work above the communication space, material or labor shortages, or the need for complex pole-by-pole make-ready estimates").

[111] 47 CFR § 1.1411(h)(2). When so deviating, the utility must "immediately notify, in writing, the new attacher and affected existing attachers," and identify the affected poles and provide a detailed explanation of the reason for the deviation and a new completion date." The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher." *Id.*

[112] *2011 Report and Order*, 26 FCC Rcd at 5272-73, para. 68 (footnotes omitted).

[113] *See supra* para. 23.

27. While our overall approach provides for shorter timelines than utilities might otherwise prefer,[114] the advance notice and meet-and-confer requirements that we adopt today should obviate any attendant concerns and help both sides set more realistic expectations.[115] For example, USTelecom advocates for the status quo regarding the pole attachment timelines for Large Orders, stating that "[n]egotiated timelines let companies anticipate the challenges that will likely arise in a project, discuss potential solutions or workarounds, and tailor a realistic timeline that accounts for them."[116] However, the status quo results in delay because timeline negotiations do not even begin until after a Large Order is filed. Under the approach we adopt today, attachers are required to provide utilities with advance notice, and attachers and utilities then must meet and confer before a Large Order is submitted, thereby capturing the efficiencies identified by USTelecom much earlier in the pole attachment process.

28. The advance notice and meet-and-confer requirements also will help utilities when multiple attachers submit applications in the same timeframe.[117] As Dominion/Xcel identifies the problem, it is hard to manage utility resources "to the extent that sudden upticks in its workload arise from multiple modest-sized orders, submitted simultaneously by multiple attachers."[118] But, as Dominion/Xcel note, "[t]o ensure that adequate resources are available to process applications submitted in connection with massive deployments, DEV [already] requests that attachers provide prior notice of expanded orders as soon as the details of such orders are known—and some attachers honor this request."[119] As we now mandate advance notice and meet-and-confer requirements before the submission of Large Orders, utilities and attachers can work out beforehand any resource problems caused by multiple such orders being submitted by different attachers around the same time.

29. *Negotiated Timelines for Very Large Orders.* We agree with NCTA that the parties should engage in good faith negotiations for the timelines applicable to Very Large Orders, which we have defined as orders exceeding the lesser of 6,000 poles or 10 percent of a utility's poles in a state. While ACA Connects argues for established timelines for Very Large Orders,[120] we find NCTA's position to be a reasonable accommodation between utilities and attachers for dealing with orders of that size. We reject NCTA's request that, if the utility fails to establish a reasonable timeline for Very Large Orders, the timeline for Large Orders will then govern.[121] We find that there may be reasons beyond the utility's control, including the possible failure of attachers to agree to a reasonable timeline, that may prevent the establishment of a timeline for Very Large Orders.

C. Improvements to the Pole Attachment Timeline

30. *Utility and existing attacher notification requirement to enable quicker self-help for surveys and make-ready.* We require utilities to notify new attachers within 15 days of receipt of a

[114] Electric Utilities Comments at 6; CCU Comments at 9; Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 2.

[115] Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 2; EEI Aug. 29, 2024 *Ex Parte* Letter at 3.

[116] USTelecom Reply at 7; *see also* Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 2 (noting that good-faith negotiations for Large Order timelines are "particularly well-suited to expedite broadband deployment because it requires pole owners and attachers to develop mutually acceptable build-out milestones for the most complex projects based on their respective needs, priorities, and resource availability").

[117] *See, e.g.*, Electric Utilities Comments at 13-15 ("Because the Commission's timelines are applied on a per-attacher basis, the actual volume of applications that fit within the timeline is only limited by the number of attachers within a state."); USTelecom Comments at 7; UTC Reply at 5.

[118] Dominion/Xcel Comments at 4.

[119] *Id.* at 4.

[120] Letter from Max Staloff, VP Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Aug. 12, 2024) (ACA Connects Aug. 12, 2024 *Ex Parte* Letter).

[121] NCTA Comments at 12.

complete application if they know or reasonably should know that they cannot meet the survey timelines.[122] We further require utilities to notify new attachers as soon as practicable but no later than 15 days after payment of the estimate if they know or reasonably should know that they cannot meet the make-ready timelines.[123] Similarly, existing attachers shall notify the utility and the new attacher as soon as practicable but no later than 15 days after receiving notice from the utility pursuant to section 1.1411(e) of our rules that the existing attacher knows or reasonably should know that it cannot meet the make-ready deadline. Existing attachers giving such notice also must notify the utility of their inability to meet the make-ready deadline,[124] and we note that existing attachers already receive notice of payment of the estimate when the utility sends them make-ready letters pursuant to section 1.1411(e).[125] Where a utility or existing attacher notifies the new attacher that it is unable to meet the survey or make-ready timelines, the new attacher may then elect self-help for the work that the notifying party cannot do pursuant to sections 1.1411(i)(1) (for surveys) or 1.1411(i)(3) (for make-ready) of our rules upon receipt of the notice rather than having to wait until the relevant timeline period runs.[126] However, if either a utility or an existing attacher does not give advance notice to the new attacher that it will be unable to meet the survey or make-ready deadlines, then the new attacher must wait until the end of the survey or make-ready timelines in our rules before availing itself of any self-help remedies for that party's work. Attachers can submit to the RBAT any allegations that the utility or existing attachers knew or reasonably should have known that the survey or make-ready work could not be completed on time and advance notice was not timely given.

31. In the *Third Further Notice*, the Commission sought comment on NCTA's proposal "that the utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period so that the attacher can elect self-help for the survey sooner."[127] Specifically, the Commission asked whether utilities can "feasibly be required to inform attachers within 15 business days of receiving a completed application that they will be unable to conduct a survey, estimate, or make-ready within the required time period."[128] While utilities argue that it is not feasible for them to determine whether they can meet the survey or the make-ready deadlines so soon after their timetable begins,[129] attachers assert that utilities "generally know immediately upon reviewing an

[122] Letter from Nirali Patel, Sr. VP Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-2 (filed July 17, 2025) (USTelecom July 17, 2025 *Ex Parte* Letter).

[123] We disagree with NCTA that the 15-day make-ready notification deadline should begin on completion of the survey. Letter from Pamela Arluk, Vice Pres. and Assoc. Gen'l Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 17, 2025) (NCTA July 17, 2025 *Ex Parte* Letter). As USTelecom points out, at completion of the survey, "utilities will lack insight into several relevant facts . . . including when the make-ready period will begin (something that depends on when the attacher pays a make-ready estimate) and whether third-party attachers will comply with deadlines for moving their attachments (something that occurs during the make-ready period)." USTelecom July 17, 2025 *Ex Parte* Letter at 2; *see also* Letter from Brett Kilbourne, Sr. Vice Pres. Policy and Gen'l Counsel, UTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 11, 2025) (UTC July 11, 2025 *Ex Parte* Letter) (requesting "the Commission to revise its proposed section 1.1411(f)(4) so that the 15 day notice requirement applies after payment of the estimate is received by the utility, rather than after completion of the survey"); Letter from Aryeh Fishman, Assoc. Gen'l Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 15, 2025) (EEI July 15, 2025 *Ex Parte* Letter).

[124] EEI July 15, 2025 *Ex Parte* Letter at 2.

[125] 47 CFR § 1.1411(e).

[126] 47 CFR § 1.1411(i)(1), (3).

[127] *Third Further Notice*, 38 FCC Rcd at 12412-13, para. 56.

[128] *Id.* at 12413, para. 56.

[129] *See* Electric Utilities Reply at 14 (stating that "with respect to surveys, a pole owner should only be required to provide notice in situations where it is obvious—at the time of receiving a complete application—that the pole (continued….)

application whether they will be able to facilitate the pole access process in a timely manner" and that such advance notice is key to speeding up the pole attachment process because they can then invoke the self-help option sooner.[130]

32. We agree with Altice that the Commission has recognized the importance "for attachers to receive swift access to utility poles so that they can efficiently deploy networks in new markets. To achieve this goal, early communication is essential, particularly with respect to whether utilities will be able to process applications within the Commission's established timeframes."[131] As Crown Castle notes, "[t]his change will be productive for utilities because it will allow them to dispense with surveys that they will not be able to complete, and it benefits attachers by accelerating their access to the pole."[132] By the same token, we take heed of the fact that utilities may not know within 15 days of receipt of a complete application whether they will be able to meet the make-ready deadline. While the advance notice and Large Order meet-and-confer requirements will help utilities and attachers level-set expectations for potential Mid-Sized Orders associated with a single network deployment and Large Orders, certain factors remain outside the utilities' control, including the timing of the new attacher obtaining required local permits and third-party attachers' compliance with the deadlines for moving their attachments to make room for the new attachers' equipment. We thus have tied that notice obligation to a later point in the process where utilities will have greater certainty regarding their ability to meet the make-ready deadline and have qualified the two separate notification requirements based on whether the utility knows or should know that it cannot meet the deadlines. We also extend the 15-day notice requirement to existing attachers who play a key role in the make-ready process. As UTC notes, "existing attachers on the pole may not be able to meet the make-ready timelines, which in turn will also affect the ability of the utility to meet the make-ready timelines."[133]

33. With these changes to the proposed action, the advance notice and Large Order meet-and-confer requirements should help obviate the utilities' concerns that 15 days may be too short to give notice of being unable to meet the survey and make-ready deadlines, as the pre-planning and coordination that now will occur should give utilities earlier insight into the scope of a project and the viability of the

(Continued from previous page)
owner lacks the capacity to perform surveys in a timely manner. Furthermore, the advance notice requirement must account for the fact that pole owners must have a survey in hand before speculating about their capacity to perform power space make-ready in a timely manner."); USTelecom Comments at 10 ("NCTA improperly assumes that pole owners know early in the process that they will not be able to complete survey and make-ready work within the timelines."); Dominion/Xcel Comments at 17; EEI Comments at 4, 18; UTC Comments at 11-12; CCU Comments at 27; USTelecom Apr. 1, 2025 *Ex Parte* Letter at 10.

[130] Altice USA, Inc. Reply at 4-5 (Altice); *see also* NCTA Reply at 9 ("[U]tilities should be required to notify attachers within 15 days of receiving a complete application if the utility will not be able to meet the survey and make-ready timelines (due to labor shortage or otherwise). Utilities make such predictions about their own projects all the time—at the very least a utility must be aware of its ability to meet an applicable timeline once it has presented the make-ready estimates to attachers for payment, because those estimates include labor charges and are based on the precise scope of work the utilities believe to be required for the project."); ACA Connects Reply at 3 ("[T]he Commission should require utilities to notify attacher applicants on a timely basis should it become aware—and once it becomes aware—that it will be unable to complete either surveys or make-ready on time. This is necessary to preserve and make meaningful attachers' rights to invoke self-help efficiently."); Crown Castle Reply at 7-8; INCOMPAS Comments at 11-12; Connect the Future Comments at 3.

[131] Letter from Jacqueline Clary, Altice USA, Inc., to Marelene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Nov. 8, 2024) (Altice Nov. 8, 2024 *Ex Parte* Letter).

[132] Crown Castle Comments at 5.

[133] UTC July 11, 2025 *Ex Parte* Letter at 3; EEI July 15, 2025 *Ex Parte* Letter at 2 ("We also recommend requiring existing attachers to notify both the new attacher and the utility within 15 days of receiving notice if they cannot meet the make-ready deadline. This approach will ensure timely information sharing and enable attachers to consider self-help remedies.").

associated deadlines.[134] We also note that in utilities' experience, the self-help remedy is rarely, if ever, used, but we want to provide attachers with access to the tools they need to deploy broadband quickly and cheaply.[135]

34. We reject Altice's proposal requiring utilities that miss the survey and make-ready timelines to refund attachers for any pre-paid and uncompleted survey and/or make-ready work within 30 days of missing the 15-day notice deadline, with interest dating back to the date the pre-payment was made.[136] Altice's proposed remedy could penalize the utility for missed deadlines that may be beyond the control of the utility, especially when make-ready is dependent on existing attachers moving their equipment. In addition, the parties already have a true-up mechanism, usually in their pole attachment agreements, for the refund of any sums paid for work that ultimately is not done.[137]

35. *Self-help for the estimate phase.* In order to further improve the pole attachment timeline, we adopt a self-help remedy for make-ready estimates where the utility is unable to meet the estimate timelines, provided there are certain safeguards as proposed by utility commenters.[138] Currently in our rules, utilities have 14 days after giving notice of granting the new attacher's complete application or receiving the new attacher's self-help survey to complete an estimate of make-ready costs and present the estimate to the attacher.[139] A utility may withdraw the estimate beginning 14 days after it is presented if the attacher has not yet accepted that estimate, and the new attacher may accept the estimate and make payment any time after receiving it unless it has been withdrawn.[140] However, unlike for surveys and make-ready work, there currently is no self-help remedy for attachers if utilities miss the deadline to present the estimate of make-ready costs. In the *Third Further Notice*, the Commission sought comment on NCTA's proposal to make self-help available for the estimate process.[141] In the ensuing record, both utilities and attachers supported this concept as a way to speed the pole attachment process and ensure broadband projects do not get stuck at the estimate phase.[142]

---

[134] *See* NCTA Reply at 10 (stating that "several utilities request advance notice and coordination from attachers for large deployments, which NCTA members are willing to accommodate").

[135] *See, e.g.*, Electric Utilities July 11, 2025 *Ex Parte* Letter at 2 ("For far too long, attaching entities have refused to exercise their right to self-help and instead blamed electric utilities for project delays. By further empowering attaching entities to exercise self-help, these rules send a clear message that attaching entities are expected to take responsibility for their own deployments by exercising these rights in a timely manner."); Dominion/Xcel Comments at 16 (observing that "no attacher has ever requested or attempted to perform a self-help survey within the footprint of either Dominion Energy or Xcel Energy, and only one attacher (within Xcel Energy's service area) has attempted to perform self-help make-ready work"); EEI Comments at 17; US Telecom Comments at 9.

[136] Altice July 16, 2025 *Ex Parte* Letter at 4.

[137] *See* UTC July 18, 2025 *Ex Parte* Letter at 3 (stating that "the Commission should reject this proposal because it is wholly unsupported by the record, excessively punitive, and would likely increase disputes and delay broadband deployment"); EEI July 17, 2025 *Ex Parte* Letter at 2 (arguing that Altice's "proposal is ambiguous, lacks evidentiary support in the record, and could create unintended financial and operational burdens")

[138] INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 4 ("The critical issue for deployment of broadband is preventing the estimate phase from impeding the start of make-ready work.").

[139] "Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by paragraph (c) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey." 47 CFR § 1.1411(d). Although note that herein we have adopted a 29-day period for the estimate phase for Large Orders.

[140] 47 CFR § 1.1411(d)(1)-(2).

[141] *Third Further Notice*, 38 FCC Rcd at 12412-13, para. 56.

[142] Crown Castle Comments at 7 (noting that "because there is no self-help remedy for the estimate process, attachers are often left waiting with no recourse when the utility then also fails to produce a make ready estimate (continued….)

36. To respond to the concerns articulated by some utility commenters, we adopt certain safeguards for a self-help remedy in the estimate context.[143] Specifically: (1) the attacher must wait until the utility's 14-day estimate deadline (or 29 days in the case of Large Orders) has expired before exercising the self-help remedy; (2) the attacher must provide notice that it is exercising its self-help remedy for an estimate; (3) the self-help estimate is to be performed by an approved contractor in accordance with sections 1.1412(a)-(b) of our rules;[144] (4) this remedy is not available for pole replacements; and (5) utilities have the right to review and approve the estimates at the attacher's expense, but such expenses must be reasonable and based on only the actual costs incurred by the utility in reviewing the estimate.[145] We agree with commenters that new attachers should be able to use utility-approved contractors to perform self-help estimates for make-ready work above the communications space because "[w]ithout having the estimate for electric space make-ready, the estimate for communications space make-ready is of little practical use. Make-ready in both the communications and power spaces is necessary to allow attachment to a pole."[146] For self-help make-ready estimates above the communications space, the new attacher must use a utility-approved contractor pursuant to section 1.1412(a) of our rules, and we note that the utility's ability to refuse acceptance of the attacher's estimate obviates any concern over the accuracy of any potential make-ready estimates for work above the communications space.[147]

37. In addition, we adopt a requirement that utilities make a written decision on a self-help estimate within 14 days of receipt or before it is withdrawn by the attacher, whichever is later,[148] noting that this is the same amount of time that a new attacher has to accept an estimate from the utility before the utility has the option to withdraw the estimate. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in section 1.1411(d)(3) of our rules.[149] If the estimate is not

(Continued from previous page)
within 14 days after the attacher submits the self-help survey"); INCOMPAS Comments at 12-13 ("To encourage timely responses and provide a meaningful remedy to attachers, the Commission should eliminate this bottleneck and permit attachers to continue with the self-help process if a utility does not timely respond with an estimate."); NCTA Reply at 12 ("Given that the estimate process is nearly always performed by utility contractors, removing the utility middleman in cases where an attacher is already engaging in self-help will eliminate an unnecessary layer of complexity and delay."); Dominion/Xcel Comments at 19-20 ("While a self-help remedy for the estimate process is not likely to accelerate access to poles for broadband deployment, Dominion Energy and Xcel Energy would not oppose such a remedy if it is appropriately limited."); Electric Utilities Comments at 30. *But see* USTelecom Apr. 1, 2025 *Ex Parte* Letter at 11 (asserting that self-help for make-ready estimates "will complicate and confuse, rather than help").

[143] CCU Reply at 20 ("Utilities have no incentive to delay providing make-ready estimates, but make[-]ready estimates can sometimes be complex, often involving both internal and external stakeholders. The complexity is compounded to the extent the request is voluminous."); Dominion/Xcel Comments at 20; Electric Utilities Comments at 30.

[144] 47 CFR § 1.1412(a)-(b).

[145] *See* CCU Comments at 27-28; Dominion/Xcel Reply at 18-19; Electric Utilities Comments at 30.

[146] INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 4.

[147] *Id.* at 4 n.6 ("There is no reason these approved contractors, who consistently perform this work for utilities, cannot generate appropriate estimates for attachers (in place of the utility) for power space make-ready.").

[148] USTelecom Apr. 21, 2025 *Ex Parte* Letter at 2 (noting that the utility's review period of an attacher-prepared estimate "should at least equal the time the attacher needs to prepare the self-help estimate and should never be fewer than 14 days for standard pole orders"). We reject the request of INCOMPAS/Crown Castle to shorten the time period for the utility's acceptance of a self-help estimate from 14 days to 7 days, having provided no rationale for why utilities should have a shorter time period than attachers to accept an estimate. INCOMPAS/Crown Castle July 18, 2025 *Ex Parte* Letter at 4.

[149] 47 CFR § 1.1411(d)(3).

accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The attacher then can submit a revised estimate to the utility without restarting the pole attachment timeline. If the self-help process does not result in an accepted estimate, then the attacher can resort to the RBAT to have the utility generate an estimate pursuant to section 1.1411(d) of our rules.[150]

38. *Utility limits on the size or frequency of pole attachment applications.* While we agree with USTelecom that reasonable application processing requirements provide benefits to utilities and attachers,[151] we prohibit utilities from imposing application size limits in combination with application frequency limits that have the practical effect of restricting the number of pole attachments attachers may seek in a given timeframe.[152] In determining the applicable pole attachment timelines for Regular, Mid-Sized, Large, and Very Large Orders, utilities have the ability to "treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another."[153] However, the Commission noted in the *Third Further Notice* the concern raised by NCTA that utilities may "limit[] 'the size of an application or the number of poles included in an application so as to avoid the timelines.'"[154] More specifically, NCTA noted that even though the rules contemplate attachers filing and utilities considering large orders, various utilities have imposed limits on application size and frequency that may prevent attachers from applying for the attachments they need within the timeframes in the Commission's rules.[155]

39. When the Commission first adopted pole attachment timelines in 2011, it addressed utilities' desire for flexibility by creating three size-categories of applications and allowing utilities to "treat multiple in-state requests from a single attacher during a 30-day period as one request."[156] While the subsequent record shows that utilities use application size and frequency limits to effectively manage application workflow,[157] we want to ensure that such limits do not have the effect, whether intended or not, of restricting the number of pole attachments attachers may seek in a given 30-day period.[158] Utilities

[150] *Id.* § 1.1411(d).

[151] USTelecom Comments at 8-9; USTelecom Apr. 1, 2025 *Ex Parte* Letter at 10.

[152] 47 CFR § 1.1411.

[153] *Id.* § 1.1411(g)(5).

[154] *Third Further Notice*, 38 FCC Rcd at 12411, para. 55.

[155] NCTA June 27, 2022 Comments at 28-29.

[156] *2011 Report and Order*, 26 FCC Rcd at 5250, para. 19.

[157] *See* CCU Comments at ii, 15-16 (explaining that "[l]imiting the number of poles in any one application allows the work for the entire project to be analyzed and completed in sections or batches" and "allows the work to be spread across multiple people more easily, and facilitates discussions about particular areas of deployment"); EEI Comments at 3-4, 15-16 (noting that "electric companies will typically impose limitations on the number of poles that can be included within an application, and these smaller applications can then be allocated across multiple contractors depending on their capacity for work. This practice does not hinder broadband deployment; instead, it promotes broadband deployment by enabling electric companies to assign the survey and make-ready work in a much more efficient manner (as opposed to just sending a large application to a single contractor)."); NCTA Comments at 16 ("NCTA members do not oppose reasonable application size limits in and of themselves, and recognize that imposing a reasonable cap on the number of poles per application can be helpful, particularly where utilities refuse to release any poles on an application until the make-ready work is complete, and attachers pay any cost-overruns demanded by the utility." (footnote omitted)); ACA Connects Reply at 9 (noting that such practices are not unreasonable); Dominion/Xcel Comments at 14-15; Electric Utilities Comments at 26-27; UTC Comments at 8-9; USTelecom Apr. 1, 2025 *Ex Parte* Letter at 10.

[158] *See* Altice Reply at 9-10 ("Altice routinely experiences deployment delays when utilities impose arbitrary pole-per application limits and/or refuse to process more than a certain number of applications at one time—even where the Commission's rules require the utility to process all the applications submitted within a shorter period."); NCTA Comments at 16 (stating that application size limits "cannot be combined with limits on the number of applications (continued….)

still are able to accumulate together all orders received from an attacher within a 30-day period in order to determine the correct timeline for processing the combined orders, but those applications must be processed in accordance with our rules.[159] For example, if an attacher has a 3,500 pole project, the utility cannot impose limits on the size and frequency of the attacher's pole attachment application(s) that would prevent the attacher from submitting a 3,500 pole order in a 30-day period. While the utility can limit the size of a pole attachment application and can treat all applications filed by the attacher in a 30-day period as one application, the limits cannot have the effect of preventing the attacher from applying to access 3,500 poles in a 30-day period (although the utility can process the application(s) under the Large Order timeline).[160] We agree with Crown Castle that "attachers should be allowed to file applications that make sense for their deployment plan, particularly for deployments under RDOF, BEAD, or other programs."[161] Indeed, some utilities already adhere to this rule, thus demonstrating that it is reasonable. For example, Dominion Energy and Xcel Energy explain they "follow administrative policies that prescribe a maximum number of poles per application, but also permit an attacher to submit an unlimited number of applications at its discretion."[162]

D. Deadline for Utilities to Respond to Requests to Add Contractors to Utility Lists

40. We amend section 1.1412 of the Commission's rules to establish a firm deadline by which utilities must respond to requests by attachers to add additional qualified contractors to their existing lists. Specifically, we require utilities to respond to such requests within 30 days of receipt by the utility. The response must state whether the proposed contractor meets the requirements in section 1.1412(c) of the Commission's rules and will be added to the utility's approved list of contractors following the completion of the utility's on-boarding process.[163] If a utility fails to respond to an

(Continued from previous page)
that may be submitted in a month, where doing so thwarts the timelines and self-help remedies"); Dominion/Xcel Reply at 15-16 ("If needed to ease this tension, DE/Xcel would not oppose a discrete clarification of the Commission's current rule that a utility pole owner may not restrict the size of any pole attachment 'order' up to the lesser of 3,000 poles (or 5% of a utility's poles within a state), where 'order' is defined as the total number of poles requested for access by any one attacher within a period of 30 consecutive days."); ACA Connects Reply at 9-10; Crown Castle Comments at 4; INCOMPAS Comments at 9-10.

[159] As the Commission clarified in the *Declaratory Ruling*, "when an application is submitted requesting access to the larger of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in section 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do." *Declaratory Ruling*, 38 FCC Rcd at 12409, para. 50.

[160] *See* NCTA Comments at 16 ("Some utilities impose application limits as small as 50 poles per application and three applications per month, despite the fact that under the Commission's rules, a utility must review on the merits a [Mid-Sized] Order – of up to 3,000 poles – within 60 days."); Dominion/Xcel Comments at 14.

[161] Crown Castle Comments at 4; *see also* INCOMPAS Comments at 10 (stating that "the limitations on the number of poles per application and subsequent timing of approvals leads to inefficient construction and in some cases requires the utility to extend construction windows").

[162] Dominion/Xcel Comments at 14-15 (noting that "because the pole owner cannot permit the attacher to construct any of its approved attachments before all make-ready work required for an individual application is complete, smaller sized applications typically move more quickly from the time that the application is approved, to the time that an attacher's construction may commence. Moreover, applications that include fewer poles are less likely to be delayed in the event that one pole requires replacement or more extensive make-ready work than other poles requested for access in the same application."); *see also* EEI Comments at 15-16 (noting that maintaining utility flexibility "allows electric companies to limit an application to 50 poles but allow for the attacher to submit unlimited applications, meaning the pole owner can process as many applications as possible but avoid the situation where a hold-up with one application holds up the attachers' entire project").

[163] We seek comment in the *Further Notice* below on contractor on-boarding processes, the time required to
(continued….)

attacher's request to add a proposed contractor to its approved list within 30 days of receipt, the attacher's request will be deemed approved.

41. In the *Third Further Notice*, the Commission sought comment on whether it should modify the self-help rules to enable attachers to access poles more quickly.[164] The self-help remedy allows attachers to perform surveys and make-ready work using utility-approved contractors.[165] For surveys and make-ready work that is complex or above the communications space, a utility must make available and keep up-to-date a reasonably sufficient list of contractors that it has authorized to perform such work on its poles.[166] A new attacher engaging in self-help for complex or above the communications space make-ready must use a contractor from this list to perform the work.[167] Attachers may, however, request that additional contractors meeting the minimum requirements of the Commission's rules be added to the utility-approved list, and utilities may not unreasonably withhold their consent.[168] For surveys and make-ready work that is simple, utilities may—but are not required to—provide a reasonably sufficient list of contractors they authorize to perform such work. If a utility provides such a list, attachers must use a contractor from that list.[169] Attachers may request that utilities add contractors that meet the minimum qualifications of the Commission's rules to their lists, and utilities may not unreasonably withhold their consent.[170] To be reasonable, a decision to withhold consent "must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability."[171]

42. Some attachers contend that certain utilities may not be promptly responding to attacher requests to add additional qualified contractors.[172] They state that utilities take months to respond to such

(Continued from previous page)
complete such processes, and whether the Commission should adopt a deadline for the completion of that process.

[164] *Third Further Notice*, 38 FCC Rcd at 12412, para. 56.

[165] 47 CFR § 1.1412(a)-(b). Note that in this item, the Commission is extending the self-help remedy to the estimate phase as well.

[166] *Id.* § 1.1412(a).

[167] *Id.*

[168] *Id.*

[169] *Id.* § 1.1412(b).

[170] *Id.* If a utility does not provide a list of approved contractors for self-help surveys and make-ready that is simple, or none of the contractors on the utility-approved list are available within a reasonable time, attachers may retain their own contractors that meet the minimum qualifications of the Commission's rules to perform the work. *Id.* § 1.1412(b)(1)-(2).

[171] *See Third Wireline Infrastructure Order*, 33 FCC Rcd at 7757, para. 107.

[172] ACA Connects Aug. 12, 2024 *Ex Parte* Letter at 2 ("[O]ur Members find that pole owners often do not respond promptly, if at all, to their requests to add qualified contractors."); Crown Castle Comments at 6 (stating that Crown Castle has been unable to use qualified contractors that it has identified "because the utility fails or refuses to approve the proposed contractor within a reasonable timeframe"); INCOMPAS Reply at 6 ("Many of the delays faced by INCOMPAS members in deploying telecommunications facilities on utility poles are caused by . . . utilities refusing to approve qualified contractors."); Altice Reply at 7-8 (stating that the Commission's rules require utilities to maintain a reasonably sufficient list of contractors authorized to perform self-help surveys and make-ready and to "not unreasonably withhold consent to place a new qualified contractor on the utility's list" but "utilities often do not comply with this requirement"). *But see* Dominion/Xcel Comments at 20-21 ("To date, Xcel Energy has not received any request to include a contractor on its list of pre-approved contractors maintained pursuant to the Commission's rules, and Dominion Energy has received only one request."); EEI Reply at 21 ("EEI members report that attachers almost never ask to add contractors to the utility-approved list, and EEI is not aware that attachers have filed any complaints before the Commission alleging an electric company failed or refused to approve a qualified contractor within a reasonable time."); Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3 (stating that
(continued….)

requests, if they respond at all.[173] Indeed, NCTA states that it took one of its members 6 to 8 months to qualify just one contractor with a utility.[174] Attachers argue that these delays are not due to a shortage of qualified contractors for utilities to approve.[175] Rather, NCTA asserts that the "utility approval process isn't working,"[176] and Crown Castle notes that it has identified qualified contractors but has been "unable to use them because the utility fails or refuses to approve the proposed contractor within a reasonable timeframe."[177] Accordingly, attachers argue that utilities should be given a firm deadline to respond to attacher requests to add additional contractors to their approved lists to prevent untimely responses from delaying broadband deployments.[178] Specifically, attachers have asked that the Commission require utilities to respond to such requests within either 21 or 30 days of the submission of the request.[179] They further request that if utilities do not respond to the attacher's request by the deadline, that the attacher's request be deemed approved.[180] NCTA argues that, "[a]bsent such a remedy, utilities will continue to lack any incentive to comply, forcing attachers to file complaints just to enforce bright-line rules."[181]

43. The Commission authorized attachers to request that additional qualified contractors be added to utility-approved lists "to prevent the utility list from being a choke-point that prevents deployment."[182] We conclude that failing to respond to an attacher's request to add an additional contractor for months creates such a choke-point and failing to respond at all certainly does. Indeed, we

(Continued from previous page)
"over the five-plus years that the current self-help rules have been in effect, Xcel Energy has received only one request for approval of a contractor to perform work above the communications space (which was granted) and Dominion has not received any such requests").

[173] *See* NCTA Reply at 15 ("[U]tilities can and do take months to respond, or may not respond at all, notwithstanding the general rule that they cannot 'unreasonably withhold' consent to a proposed contractor."); ACA Connects Aug. 12, 2024 *Ex Parte* Letter at 2.

[174] NCTA Comments at 18 ("If a utility is willing to consider an attacher's contractor, the length process (most recently 6 to 8 months for one NCTA member to qualify one contractor) introduces further delay.").

[175] *See* NCTA Reply at 13-14 (stating that "there are available, qualified contractors . . . willing to assist NCTA members in meeting their pole attachment requirements, if pole owners agree" and that they are "willing and able to work on broadband projects today"); Crown Castle Comments at 6 (". . . Crown Castle does not agree with the utilities' assertion that labor constraints are a problem."); Altice Nov. 8, 2024 *Ex Parte* Letter at 3 (stating "the rank of outside contractors able to perform survey and make-ready work is growing—and is anticipated to continue growing over the next several years . . .").

[176] NCTA Comments at 19.

[177] Crown Castle Comments at 6.

[178] Altice Nov. 8, 2024 *Ex Parte* Letter at 3 (stating that without setting a deadline, "it is highly unlikely utilities will . . . approve non-listed contractors in a reasonable time"); ACA Connects Reply at 12 (characterizing its proposed measures to facilitate contractor approval as seeking "a timely objection to any proffered contractor based on the Commission's and the utility's stated criteria" and stating that "action to facilitate the availability of additional qualified contractors at each stage of the pole attachment process when self-help is available . . . would expedite broadband deployment by removing another potential barrier to timely pole access"); INCOMPAS Comments at 14 ("[T]his delay just to approve a contractor may be prohibitive in deploying broadband to underserved areas, and to that end, there should be quick approval timelines if the contractor meets the qualifications.").

[179] *See* Altice Nov. 8, 2024 *Ex Parte* Letter at 3 (requesting a deadline of 30 days of an attacher's submission unless the utility can demonstrate in writing why such contractor should not be approved); ACA Connects Aug. 12, 2024 *Ex Parte* Letter at 2 (requesting a deadline of 21 days of the attacher's submission); NCTA Comments at 19 (requesting a deadline of 30 days); Crown Castle Comments at 6 (requesting a deadline of 21 days); INCOMPAS Reply at 7 (concurring with a 30[]day deadline).

[180] NCTA Comments at 19; Crown Castle Comments at 6; Altice Reply at 8-9.

[181] NCTA Comments at 20.

[182] *Third Wireline Infrastructure Order*, 33 FCC Rcd at 7757, para. 107.

find that the Commission's prior direction that decisions to withhold consent be "prompt" means that utilities may not simply hold requests in abeyance without providing a response at all.[183] To conclude otherwise would defeat the purpose of allowing attachers to request that qualified contractors be added to utility-approved lists.

44. Thus, we amend section 1.1412 of the Commission's rules to require that utilities respond to any request by an attacher to add an additional contractor to a utility-approved list within 30 days of receipt of the request.[184] The response must state whether the proposed contractor has been approved based on the requirements in section 1.1412(c) of the Commission's rules and will be on-boarded by the utility to work on its poles, after which the contractor will be added to the utility's approved list. We find that 30 days is enough time for utilities to evaluate whether a proposed contractor meets the minimum qualification requirements of the Commission's rules based on the information submitted by the attacher and to provide the response described above. To ensure swift compliance with this deadline by utilities, we require that requests to add attachers to utility-approved lists be deemed approved if a utility fails to respond to such requests by the 30-day deadline, and that the utility promptly on-board the contractor as necessary to commence work on the utility's poles.[185] We find that a deemed approved remedy is appropriate to enable attachers to make meaningful use of the self-help remedy to timely complete their deployments when survey, estimate, and make-ready deadlines under our rules have been missed.

45. Some utilities argue that the Commission should not adopt a deadline to approve or deny requests to add additional contractors to their lists because it can take three months to a year or more to on-board contractors to perform surveys and make-ready work.[186] We are not persuaded by this

[183] We, thus, disagree with USTelecom that there is no need for the Commission to establish a deadline to respond to attacher requests to add additional qualifications because the Commission has already stated that such responses must be "prompt." USTelecom Reply at 12 & n.58; USTelecom Apr. 21, 2025 *Ex Parte* Letter at 3.

[184] Because attachers currently have a remedy to retain their own contractors if a utility does not maintain an approved list of contractors for self-help surveys and make-ready that is simple, 47 CFR § 1.1412(b)(1)-(2), the deadline that we adopt today is particularly important for requests to add contractors to utility-approved lists for self-help surveys and make-ready that is complex or above-the communications space. We, thus, decline to limit the deadline to contractors that would perform work that is in the communications space, as some utilities have requested. *See* UTC July 11, 2025 *Ex Parte* at 1-2; Electric Utilities July 11, 2025 *Ex Parte* Letter at 3; EEI July 14, 2025 *Ex Parte* Letter at 3; Letter from Robin F. Bromberg, Counsel for American Electric Power Service Corporation et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-4 (filed July 16, 2025) (Electric Utilities July 16, 2025 *Ex Parte* Letter). We also decline the Electric Utilities' request that we revise sections 1.1412(a) and (b) of our rules to apply to self-help work above and below the communications space, respectively, rather than to self-help work that is complex and above the communications space and self-help work that is simple, respectively. Letter from Robin Bromberg, Counsel for AEP, et al., to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. at 1 (filed July 17, 2025) (Electric Utilities July 17, 2025 *Ex Parte* Letter).

[185] Notwithstanding statements from utilities that contractors working on their poles must execute agreements with utilities, NCTA asserts that "it is the attaching entity, not the utility, that is responsible for contracting with and onboarding the contractor and for the tasks the Electric Utilities identify as most time consuming." Letter from Pamela Arluk, Vice Pres. and Assoc. Gen'l Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Apr. 23, 2025) (NCTA Apr. 23, 2025 *Ex Parte* Letter). We find that the information in the record is insufficient for the Commission to determine the exact steps that must be taken to onboard a contractor to work on a utility's poles, how long those steps should take, and who the parties responsible for completing those steps are or should be. As stated above, we seek comment on these points in the Further Notice below.

[186] *See* Dominion/Xcel Reply at 27 ("[S]uch contractors must be trained on the pole owner's specific standards and policies before work can commence—and this process may take over one full year."); Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3 & n.11 ("The timeframe needed to sufficiently vet, approve, and onboard a contractor for work on electric facilities is generally a minimum of three months, but that can also be affected by factors such as the availability of projects for field observation, training, and orientation, which are necessary parts of the process."); Electric Utilities Comments at 10-12 (stating "it takes AEP between 6 to 13 months to onboard new approved contractors" and "[t]hough it is hard to place a sum certain on the time it takes for Alabama Power to 'onboard' a (continued….)

argument. We agree with NCTA that the process of approving the addition of a contractor that meets the requirements of section 1.1412(c) of the Commission's rules is distinct from the "on-boarding" requirements described by utilities, such as negotiating an agreement with the new contractor, providing employees of the new contractor with access to the utility's internal systems, and training.[187] Section 1.1412(c) requires the proposed contractor to: (1) agree to follow published safety and operational guidelines of the utility, if available, but if not, to follow National Electrical Safety Code guidelines; (2) acknowledge that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility; (3) agree to follow all local, state, and federal laws and regulations including, but not limited to, requirements regarding Qualified and Competent Persons under the Occupational and Safety Health Administration rules; (4) agree to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and (5) demonstrate that it is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.[188] We find it is reasonable to

(Continued from previous page)
new approved contractor, a conservative estimate would fall somewhere between 11 and 17 months"); EEI et al. May 12, 2025 *Ex Parte* Letter at 4 (stating that "utility pole owners are rarely, if ever, requested to approve contractors proposed by attachers for work above the communications space—and consequently, denials of attacher-proposed contractors currently do not occur" and that "[a] new rule that requires utility pole owners to approve third-party contractors for work above the communications space within thirty (30) days will inevitably lead to such denials and related disputes because no electric utility can complete its contractor evaluation and approval process within the requested time frame"); *see also* USTelecom Apr. 21, 2025 *Ex Parte* Letter at 3 (stating that its "members report that it can take up to six months to complete the work needed to add a contractor to the list for complex and above-the-communications-space make-ready work").

[187] NCTA Apr. 23, 2025 *Ex Parte* Letter at 2 ("[B]oth Dominion's and the Electric Utilities' estimated timelines muddy the approval process timeline by adding time for tasks that necessarily occur *after* the contractor is approved."); Electric Utilities July 16, 2025 *Ex Parte* Letter at 2 ("The Electric Utilities support the Draft insofar as it draws a distinction between the 'approval' process for proposed new contractors and the 'onboarding' process for such contractors."). *But see* Letter from Brett Heather Freedson, Counsel to Dominion Energy, Inc. and Xcel Energy Services, Inc., to Marelene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed May 7, 2025) (Dominion/Xcel May 7, 2025 *Ex Parte* Letter) ("NCTA's attempt to divorce a utility's 'approval' of a third-party contractor from all related tasks that typically comprise a utility's contractor evaluation process falls flat . . . whether a contractor is 'onboarded' to perform work for Dominion Energy or is 'approved' for the purposes of self-help make-ready work above the communications space, the same four (4) phases of review must be completed before the contractor will be authorized to access the electric supply space on any of Dominion Energy's poles."); EEI et al. May 12, 2025 *Ex Parte* Letter at 4 (stating that, as identified by Dominion, "final approval of a contractor involves: (1) data review, (2) field evaluation, (3) formal evaluation, and (4) orientation/training" and that "[c]ontractor permission to work on utility assets cannot be presumed until all these iterative steps are completed"); Electric Utilities Comments at 10-12 (setting forth steps taken by American Electric Power Company, Inc. and Alabama Power Company to on-board contractors).

[188] 47 CFR § 1.1412(c)(1)-(5). Dominion/Xcel suggests that the minimum qualification requirements in section 1.1412(c) of the Commission's rules are not sufficient as applied to contractors that perform complex or above the communications space make-ready work. Dominion/Xcel May 7, 2025 *Ex Parte* Letter at 2 ("As NCTA and its members certainly are aware, these requirements were adopted specifically for contractor that perform simple make-ready work and are not intended to replace any individual utility pole owner's qualification requirements for contractors that perform complex make-ready work and make-ready work above the communications space."); *see also* EEI et al. May 12, 2025 *Ex Parte* Letter at 5 ("The minimum contractor qualification requirements contained in the Commission's rules may be suitable for simple tasks but are inadequate for complex or high-risk work, such as those involving supply space make-ready."); UTC July 11, 2025 *Ex Parte* Letter at 2 ("[T]he contractor minimum qualification requirements in section 1.1412(c) – which, in essence, are merely self-certification requirements that do not contemplate any form of evaluation by the utility – only apply to work in the communications space, and do not address the higher qualification requirements for contractors to work in the electric space."); Electric Utilities July 16, 2025 *Ex Parte* Letter at 4. The Commission decided otherwise when it authorized attachers to request that utilities add "any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section" to their lists of contractors authorized to perform self-help surveys and make-ready that is above the

(continued….)

assume that a utility could review information submitted to demonstrate a proposed contractor's agreement to these requirements and issue a decision within 30 days that either approves the contractor contingent on completion of the utility's on-boarding process or denies the contractor based on the sufficiency of that information.[189]

46. Some utilities argue that allowing a "deemed approved" remedy if utilities miss this deadline will necessarily create safety concerns for workers and the public and risk the reliability of electric distribution systems.[190] We disagree. As an initial matter, we do not believe it will be difficult for utilities to avoid a deemed approved result by simply complying with the deadline. The response we require merely requires the utilities to review information submitted by attachers to determine if the proposed contractor has made the representations required by section 1.1412(c) of the Commission's rules. We acknowledge that utilities thereafter may need to take steps to on-board and train the contractors to perform work on their poles, and that the contractor will not be added to the utility's approved list until that process is complete. In recognition of potential safety concerns associated with work in the supply space, that process may differ in certain respects for contractors that will conduct work above the communications space as compared to contractors that will be working in the communications space.[191] But, the first step is to approve or deny the contractor based on the requirements of section

(Continued from previous page)
communications space and complex, and stated that utilities may not unreasonably withhold their consent. 47 CFR § 1.1412(a). In so doing, the Commission did not "mandate specific qualification requirements for third-party cont[r]actors that perform work on or in the vicinity of electric power facilities . . . ." Dominion/Xcel May 7, 2025 *Ex Parte* Letter at 2-3. To the contrary, section 1.1412(c) of the Commission's rules requires contractors to agree to "follow published safety and operational guidelines of a utility, if available" and "to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available." 47 CFR § 1.1412(c)(1), (4). The Commission's rules thus require compliance with any such reasonable, nondiscriminatory requirements as-set by the utility for work that is complex and above the communications space.

[189] *See* NCTA Apr. 23, 2025 *Ex Parte* Letter at 2 ("[T]he process for vetting and approving a contractor comprises only a small portion of the time the Electric Utilities allot to the ***first*** of ***three*** phases they identify as necessary for engaging a contractor. The remaining tasks – including negotiating the terms of the contractor's contract (also included in phase 1) and onboarding the contractor's employees (included in phases 2 and 3) – comprise the bulk of the time allotted to the Electric Utilities' three phases for engaging contractors. Dominion's three month estimate similarly includes time "for vetting, approving *and onboarding*" the contractor. Thus, neither Dominion nor the Electric Utilities adequately explained why it cannot approve (as opposed to onboard) a contractor within NCTA's proposed 30-day window." (emphasis in original)); *see also* Letter from Max Staloff, Vice Pres. Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 17, 2025) (ACA Connects July 17, 2025 *Ex Parte* Letter) ("Setting a firm deadline for action on contractor approval requests is a valuable first step to address this problem because it will ensure that utilities attend promptly to such requests and, at a minimum, do not ignore them indefinitely . . . The next step is to put reasonable limits on utility 'on-boarding' practices . . . .").

[190] *See* CCU Reply at 14-15 ("The safety of electric works, communications workers, and the public is not negotiable, nor should the integrity and reliability of the utility pole distribution system. Such safety and reliability obligations should not be subject to forfeit because an attacher somehow thinks the utility is not acting fast enough."); Dominion/Xcel Reply at 27-28 ("[A] 'deemed approved' remedy that may be used in any case where an electric utility pole owner fails to onboard a proposed contractor within a particular time period is inappropriate, and in essence would enable inadequately trained and qualified workers to access poles that support electric distribution facilities over the objection of the pole owner."); Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3 ("Dominion and Xcel Energy explained that the proposed 30[]day 'deemed approved' requirement for approval of third-party contractors would undermine electric utilities' ability to ensure the safety and reliability of electric utility services and the safety of workers and the public."); USTelecom Apr. 21, 2025 *Ex Parte* Letter at 3 & n.9 ("The Commission should not adopt a 'deemed approved' remedy because complex make-ready and make-ready above the communications space raises significant safety and service outage concerns, making it 'especially important to give the utility control over who performs such work' on its poles." (quoting *Third Wireline Infrastructure Order*, 33 FCC Rcd at 7756-57, para. 106)).

1.1412(c) of the Commission's rules within 30 days of receiving a request from an attacher, and we do not view that as burdensome—particularly given that utilities insist that attachers rarely invoke the self-help remedy or request to add contractors to utility-approved lists.[192]

47. Further, if an attacher does not submit information sufficient to demonstrate that a contractor has made the representations required by section 1.1412(c) of the Commission's rules, utilities may respond to the attacher within 30 days with a denial, provided that it is "set forth in [a] writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability."[193] Finally, as has always been the case, the parties are free to negotiate for a longer review period for contractor approvals if needed.[194]

48. Given that complying with the deadline imposes minimal burden on utilities, the parties' ability to extend the deadline by agreement, and the right utilities have to deny a proposed contractor within the deadline if the information submitted by the attacher is insufficient to determine whether the contractor has made the representations required by section 1.1412(c) of the Commission's rules, we find utilities have ample opportunity to avoid any potential risks of having contractors deemed approved to work on their poles.

(Continued from previous page)

[191] *See, e.g.*, UTC July 18, 2025 *Ex Parte* Letter (noting "the heightened safety and reliability concerns related to contractors performing make-ready work above the communications space on the pole, which requires more training and time for onboarding").

[192] *See* Dominion/Xcel Reply at 16, 20-21 ("Collectively, the companies identify only one instance where an attacher exercised a self-help remedy, and in that instance, a contractor was available to complete the make-ready work solicited by the attacher. Additionally, the companies identify only one request for pre-approval of a contractor (to perform survey work), and no instance in which a contractor proposed or hired by an attacher was rejected or disqualified."); EEI Comments at 17 ("Very few attachers take advantage of self-help options, instead preferring electric companies to do the work."); Electric Utilities Comments at 23 (stating that attachers are not availing themselves of the self-help rules "in part because those remedies are too limited in scope to meaningfully expedite broadband deployment"); USTelecom Reply at 9 ("The record establishes that self-help is rarely used . . . .").

[193] *See Third Wireline Infrastructure Order*, 33 FCC Rcd at 7757, para. 107. As explained above, this is the standard that the Commission adopted in 2018 to assess whether a utility's withholding of consent to add additional contractors to its approved list is reasonable. *Id.* We, therefore, decline Dominion's request to exclude the language "fair application of commercially reasonable" from the rule amendment that merely codifies the existing standard. Letter from Brett Heather Freedson, Counsel to Dominion Energy, to Marelene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Appx. A at 1 (filed July 17, 2025) (Dominion July 17, 2025 *Ex Parte* Letter). Further, we disagree with Dominion's assessment that the rules we adopt today do not "contemplate a utility's independent evaluation of any attacher-proposed contractor on the basis of its own standards, processes, and protocols to ensure safety and reliability." *Id.* at 5; *see also* Letter from Brett Kilbourne, Senior Vice Pres. Policy and Gen'l Counsel, Utilities Technology Council, to Marelene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 16, 2025) (UTC July 16, 2025 *Ex Parte* Letter). Section 1.1412(c)(4) of the Commission's rules requires the contractor to agree "to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available," 47 CFR § 1.1412(c)(4), and our new rules require proposed contractors to successfully complete a utility's on-boarding process (including its evaluation and training requirements) before they are added to the list of contractors approved to work on the utility's poles. The rules we adopt today, therefore, provide ample opportunity for a utility to evaluate a contractor based on its own standards, processes, and protocols to ensure safety and reliability before the contractor is authorized to perform self-help work.

[194] Parties have always been free to reach negotiated agreements with terms that differ from our rules. *See, e.g.*, *2020 Declaratory Ruling*, 35 FCC Rcd at 7944-45, para. 15.

49. While we believe it is important to improve the self-help remedy by expediting action on requests to add additional qualified contractors to utility-approved lists,[195] we recognize that there may be circumstances where a utility may need to disqualify a contractor that was previously approved by a utility or deemed approved due to reasonable safety or reliability concerns,[196] as is the case when an attacher selects its own contractor to perform surveys and simple make-ready if a utility does not provide a list of approved contractors or the contractors on that list are not available within a reasonable time.[197] We understand that having the right to disqualify contractors causing reasonable safety and reliability concerns is particularly important for work that is complex and above the communications space.[198] We, therefore, make clear that utilities may disqualify a contractor that was previously approved by a utility or deemed approved based on reasonable safety or reliability concerns related to a contractor's failure to meet the minimum qualifications described in section 1.1412(c) of the Commission's rules or to meet the utility's uniformly applied and reasonable safety or reliability standards.[199] We view this as consistent with the right afforded to utilities under our rules to have a representative present when self-help work is performed by a contractor and to "monitor a contractor's work and insist that the work meet utility specifications for safety and reliability, including requirements that may exceed NESC standards" on a nondiscriminatory basis.[200] Although attachers and utilities are obligated to try to resolve any disagreements, electric utilities are entitled to make final determinations in disputes over capacity, safety, reliability, and generally applicable engineering purposes, consistent with section 224(f)(2) of the Act.[201]

---

[195] As explained herein, the *Third Further Notice* sought comment on whether the Commission should modify the self-help remedy to enable attachers to access poles more quickly, and the record indicates that setting a deadline that ensures a prompt response to requests to add qualified contractors to utility-approved lists would promote that objective. We, thus, decline the request of some utilities to seek comment on such a deadline in the *Further Notice* rather than adopt one here. *See* Electric Utilities July 11, 2025 *Ex Parte* Letter at 4; EEI July 15, 2025 *Ex Parte* Letter at 4; Electric Utilities July 16, 2025 *Ex Parte* Letter at 4-5.

[196] *See* Crown Castle Comments at 6 (stating that if a utility fails to act on a request to approve the addition of a qualified contractor by a specified deadline "the attaching party should be allowed to use the proposed contractor unless and until the utility rejects the contractor based on Commission criteria"); Altice Reply at 9 (stating that proposals to use additional qualified contractors should "be deemed approved after 30 days unless and until the utility rejects the contractor based on the Commission's existing contractor criteria"); USTelecom July 17, 2025 *Ex Parte* Letter at 2-3; EEI July 15, 2025 *Ex Parte* Letter at 3.

[197] 47 CFR § 1.1412(b)(1).

[198] *Third Wireline Infrastructure Order*, 33 FCC Rcd at 7756-57, para. 106 (requiring utility control of contractors performing work that is complex and above the communications due to the heightened safety and reliability risks associated with such work).

[199] We decline Dominion's request to remove qualifying language from the safety and reliability standards that may be applied to disqualify a contractor. Dominion July 17, 2025 *Ex Parte* Letter, Appx. A at 1; *see also* UTC July 16, 2025 *Ex Parte* Letter, Appx. A at 2; EEI July 15 *Ex Parte* Letter at 6; Electric Utilities July 17, 2025 *Ex Parte* Letter, Attach. at 2. We are concerned that this could lead to discriminatory disqualifications of contractors if the standards applied in disqualification decisions are not uniformly applied and reasonable. We, thus, grant Dominion's request insofar as it seeks removal of a requirement that safety and reliability standards be "public and commercially reasonable," but require that disqualification decisions be based on a contractor's failure to meet the minimum qualifications described in section 1.1412(c) of the Commission's rules or to meet the utility's *uniformly applied and reasonable* safety and reliability thresholds, consistent with section 1.1412(c)(4) of the Commission's rules. 47 CFR § 1.1412(c)(4).

[200] *2011 Report and Order*, 26 FCC Rcd at 5268-69, para. 58; 47 CFR § 1.1411(i)(1)(i), (i)(2)(i).

[201] 47 CFR § 1.1412(d) ("The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes."); 47 U.S.C. § 224(f)(2). By making it clear that utilities may disqualify a contractor that was previously approved by a utility or deemed approved based on reasonable safety or reliability concerns, we fully address the concern raised by Dominion/Xcel that section 224(f)(2) of the Act "necessarily encompasses the right of a utility pole owner to prohibit an attacher's use of third-party contractors that have not

(continued….)

Accordingly, whether a contractor is added to a utility's approved list by the utility or at the request of an attacher, the utility ultimately has the authority to determine whether the contractor remains on the list on a going-forward basis consistent with these standards and the Commission's rules.[202]

50. If a utility disqualifies a contractor that was previously added to its approved list at the request of an attacher or deemed approved pursuant to the requirements we adopt today,[203] we require that it provide written notice to the attacher that it has done so and specify the bases for the disqualification in that notice. An attacher wishing to challenge the reasonableness of the disqualification may avail itself of the Commission's Rapid Broadband Assessment Team process[204] or submit a complaint to the Commission's Enforcement Bureau.[205]

IV. FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

51. We recognize the complexities attendant to the pole attachment process, with each side of the equation facing their own particular difficulties and concerns. Utilities and attachers have both proposed additional actions the Commission might take to ameliorate those concerns and thus make the process more efficient. We seek comment on certain of these proposals to determine whether they might help further the Commission's goal of expediting broadband deployment by reducing barriers to infrastructure investment. To the extent not already flagged below, we seek comment on our legal authority to adopt each of these proposals as well as any other germane policy points or facts. We also seek comment on how the costs, benefits, or burdens of any rules we adopt might impact businesses of various sizes.

(Continued from previous page)
been fully evaluated and approved by the utility to perform the work for which they were retained on the utility's poles." Dominion/Xcel May 7, 2025 *Ex Parte* Letter at 3 n.10; *see also* EEI et al. May 12, 2025 *Ex Parte* Letter at 5. The rule we adopt today requires that utilities respond within 30 days to a request to add additional contractors to utility-approved lists based on whether attachers submit sufficient information to demonstrate the contractor's agreement to the requirements in section 1.1412(c), which incorporates the utility's published safety and operational guidelines and uniformly applied and reasonable safety and reliability thresholds. 47 CFR § 1.1412(c). Regardless of whether a contractor is approved by a utility or "deemed approved" due to a failure to provide a timely response, the contractor will not start work on the utility's poles until the successful completion of the utility's on-boarding process (e.g., any required training). And, after that, the utility retains the right to remove the contractor from its approved lists due to noncompliance with safety and reliability requirements on a nondiscriminatory basis. Utilities, thus, retain ample and ultimate control over contractors working above the communications space on their poles.

[202] We note that our rules require utilities to "keep up-to-date" their lists of contractors authorized to perform self-help surveys and make-ready. 47 CFR § 1.1412(a)-(b).

[203] We disagree with Dominion that the rule we adopt today does not permit utilities to deny a contractor for safety and reliability reasons. Dominion July 17, 2025 *Ex Parte* Letter at 5; *see also* UTC July 18, 2025 *Ex Parte* Letter, Appx. A at 2. As we state above, the utility will have 30 days to deny a request to add the contractor to the utility-approved if the attacher fails to submit sufficient information to determine that the contractor has made the representations required by section 1.1412(c) of the Commission's rules. If the utility does not respond with a denial or an approval by that deadline, then the contractor will be deemed approved, but may nonetheless be disqualified (i.e., have the approval rescinded) based on reasonable safety or reliability concerns related to a contractor's failure to meet the minimum qualifications described in section 1.1412(c) of the Commission's rules or to meet the utility's uniformly applied and reasonable safety or reliability standards. Further, as we have made clear, a proposed contractor will not be added to the utility's list of contractors approved to perform self-help work until it has successfully completed the utility's on-boarding process, which may include additional evaluations and training. *See supra* Section IV.E. Accordingly, none of the requirements we adopt today will allow a contractor to appear on a utility's approved list unless and until the utility has evaluated, trained, and otherwise completed its on-boarding steps for contractors that perform work on its poles.

[204] 47 CFR § 1.1415.

[205] *Id.* §§ 1.720 *et seq*., 1.1401 *et seq*.

A. Deployment within 120 days of the completion of make-ready work

52. We seek comment on requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work.[206] Utilities assert that attachers do not promptly begin deployment after make-ready is complete and, in some instances, fail to deploy at all.[207] We seek comment on the frequency with which attachers fail to deploy in a timely manner or not at all after make-ready is complete and why this occurs.[208] Utilities state that a failure of attachers to deploy in a timely manner (or at all) is inefficient because it both unnecessarily strains utilities that must process applications and denies space to other attachers whose applications were filed after those of the attacher at issue.[209] The Coalition for Concerned Utilities asserts that requiring attachers to deploy in a timely manner will provide an incentive for them to more carefully plan their deployments further in advance with utilities.[210] Would a rule requiring attachers to deploy equipment by no later than 120 days after completion of make-ready work alleviate this problem? Or do commenters agree with USTelecom that imposing a fixed timeline for deployment would instead "increase disputes and eliminate the coordination and flexibility that is essential to deployment"?[211] If we adopt a fixed timeline for deployment, is 120 days reasonable, or

---

[206] *See, e.g.*, Letter from Thomas B. Magee, Attorney for the Coalition of Concerned Utilities, Keller and Heckman LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Aug. 14, 2024) (CCU Aug. 14, 2024 *Ex Parte* Letter) ("Require installation of new attachments within 120 days after make-ready construction is complete."); Electric Utilities Aug. 19, 2024 *Ex Parte* Letter at 2 ("The Electric Utilities support the Commission's adoption of a rule requiring that attaching entities make their attachment within a fixed period (such as 90 or 120 days) following notice from the pole owner to proceed with attachment following the completion of make-ready."); Letter from Brian M. O'Hara, Senior Regulatory Affairs Director, Broadband and Telecommunications, National Rural Electric Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed Sept. 3, 2024) (NRECA Sept. 3, 2024 *Ex Parte* Letter) ("To avoid confusion caused by overlapping make-ready work, communications companies should install their new attachments within 120 days after the completion of make-ready."); EEI Aug. 29, 2024 *Ex Parte* Letter at 5-6 ("[T]he Commission should require installation of new attachments within 75-120 days of the date of completion of all make-ready work necessary for the attachment."); Letter from Aryeh Fishman, Associate General Counsel, Regulatory Legal Affairs, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Sept. 13, 2024) (EEI Sept. 13, 2024 *Ex Parte* Letter); Letter from Aryeh Fishman, Associate General Counsel, Regulatory Legal Affairs, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 10, 2024) (EEI Dec. 10, 2024 *Ex Parte* Letter).

[207] CCU Comments at 24 ("In addition, once make-ready engineering, design and construction work has been completed, even on an expedited basis, new attachers are sometimes ill-prepared to install their attachments in a timely manner."); Dominion/Xcel Comments at 6 ("[N]ew attachers fail to attach in a timely manner after make-ready work is complete, and in some cases, do not attach at all.").

[208] We note that the Electric Utilities provide two concrete examples of attachers delaying deployment. Electric Utilities Comments at 28 ("This is not just a hypothetical concern. In Entergy's Arkansas territory, a broadband company recently put a very large project 'on hold' even though many of the permits had been approved over 120 days before that. And in Oncor's service territory, there is an average lag of 11 months between when the new attacher is released to attach (following the completion of any required power space make-ready) and when Oncor receives notice that the new attacher has completed its construction.").

[209] Dominion/Xcel Comments at 6 ("[T]his practice is inefficient both from the standpoint of the new attacher and of the utility pole owner."); CCU Comments at 24 ("[Not deploying in a timely manner] wastes the time of valuable utility personnel and ties up distribution plant resources for indefinite periods of time."); EEI Aug. 29, 2024 *Ex Parte* Letter at 6 (explaining that these practices are "inefficient overconsumption of scarce approved contractor resources"); Electric Utilities Aug. 19, 2024 *Ex Parte* Letter at 2 (echoing that this would deter an inefficient use of scarce resources).

[210] CCU Comments at 24 ("In addition, to encourage better planning and management by new attachers and to avoid wasting valuable utility resources, the Commission should require new attachers to plan further in advance for any future attachment requests, and to complete the installation of their facilities within 120 days after make-ready construction is complete.").

should attachers be given more or less time?[212] Should attachers be required to begin deployment by the end of any timeframe that we adopt or, as utilities argue, complete deployment by that time?[213]

53. We seek comment on the potential repercussions for an attacher that fails to deploy equipment within 120 days after the completion of make-ready work. Would requiring these attachers to restart the pole attachment process negatively impact broadband deployment such that any benefit would be outweighed by the cost?[214] Should we tie any potential repercussion for attachers to whether a utility completed the prior phases of the pole attachment process in a timely manner? If a utility fully complied with the Commission's timelines, does the utility incur any costs from an attacher's late deployment or failure to deploy? Alternatively, rather than the Commission codifying rules on these issues, should any deployment timeframes and noncompliance fees be dealt with through the Commission's complaint process, the Rapid Broadband Assessment Team, other enforcement mechanisms, or by the parties in their pole attachment agreement?[215] Should there be any Commission rules, policies, or guidance governing the terms of such provisions in a pole attachment agreement?

B. Deadline to Make Payment

54. We seek comment on whether we should require attachers to make payment on an estimate to a utility within a specific period of time after the attacher's acceptance of the estimate. Utilities suggest that attachers should be required "to pay all estimated make-ready costs, in full, within 30 days of the date on which the estimate is accepted by the attacher. If an attacher fails to make any payment within the time frame specified in the rule, the applicable make-ready timeline should be deemed waived."[216] We seek comment on this request. Is such action necessary and, if so, why? Is 30 days reasonable, or should we specify a different time interval?

55. Under the Commission's rules, an attacher currently may accept and pay a valid estimate any time after receipt, unless the utility withdraws the estimate before acceptance.[217] The timelines for

(Continued from previous page)

[211] USTelecom Mar. 10, 2025 *Ex Parte* Letter at 1-2 (arguing for a flexible approach because "the Commission's current pole attachment application and make-ready rules are the most effective and efficient approach to dealing with the many site-specific and often unpredictable circumstances that impact the timing of a deployment project").

[212] Dominion Aug. 19, 2024 *Ex Parte* Letter at 4 ("The Commission should adopt a new rule that requires an attacher to make each attachment within seventy-five (75) days of the date on which all make-ready work necessary for the attachment is complete."); Electric Utilities Aug. 19, 2024 *Ex Parte* Letter at 2 (suggesting a timeframe of 90 to 120 days after the completion of make-ready work); UTC Aug. 19, 2024 *Ex Parte* Letter at 2 ("UTC also supported requiring attachers to install new attachments within 120 days after make-ready construction is complete."); EEI Aug. 29, 2024 *Ex Parte* Letter at 5-6 (suggesting a timeframe of 75-120 days after the completion of all make-ready work); EEI Sept. 13, 2024 *Ex Parte* Letter at 5-6; EEI Dec. 10, 2024 *Ex Parte* Letter at 2.

[213] CCU Comments at 24; CCU Aug. 14, 2024 *Ex Parte* Letter at 3; Electric Utilities Aug. 19, 2024 *Ex Parte* Letter at 2; UTC Aug. 19, 2024 *Ex Parte* Letter at 2.

[214] Electric Utilities Aug. 19, 2024 *Ex Parte* at 2 ("If the attaching entity fails to [timely deploy], the utility should be permitted to cancel the application. This would dissuade attaching entities from inefficient overconsumption of scarce approved contractor resources."); EEI Aug. 29, 2024 *Ex Parte* Letter at 6.

[215] 47 CFR §§ 1.720-1.740, 1.1415.

[216] Dominion Aug. 19, 2024 *Ex Parte* Letter at 4; *see also* Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 4 (agreeing that the Commission should adopt Dominion's proposal); EEI Aug. 29, 2024 *Ex Parte* Letter at 5 (providing additional support for Dominion's proposal); EEI Sept. 13, 2024 *Ex Parte* Letter at 2; Letter from David D. Rines, Lerman Senter PLLC, Counsel to Dominion Energy and Xcel Energy Services Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 9, 2024) (Dominion/Xcel Dec. 9, 2024 *Ex Parte* Letter); Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3.

[217] 47 CFR § 1.1411(d)(1)-(2). Note, however, that a utility must leave the estimate open at least 14 days after presenting it to the attacher.

make-ready, however, do not begin to run until after the attacher makes payment. Therefore, the pole access timeline is effectively paused until the attacher makes payment. Utilities state that this leads to deployment delays that create significant uncertainty and unpredictability that make it difficult for them to determine how to allocate their resources effectively.[218] Utilities further explain that attachers' current payment practices compound this difficulty, as attachers often "make a single, lump-sum payment for the total of all estimated make-ready costs for multiple applications submitted weeks or months apart."[219] This "floods the pole owner's make-ready queue" and requires the utility "to determine which specific make-ready projects the lump-sum payments should be allocated to before work begins."[220] How common is it for attachers to delay payment after accepting an estimate? In those instances, why are attachers delaying payment to utilities? Will imposing a deadline to make payment incentivize broadband deployment and allow utilities to more efficiently allocate their resources?

56. NCTA and Altice ask that we prohibit utilities from requiring full or partial payment upon an attacher's acceptance, and instead implement a payment schedule based on make-ready work progress,[221] something the Commission explicitly declined to do in 2011.[222] They argue that prohibiting prepayment will better incentivize utilities to meet timelines for make-ready work, claiming that utilities frequently fail to do so.[223] Utilities disagree, explaining that they will instead be less incentivized to complete work quickly if they can only recoup costs later and that prepayment is the only way they can be certain that they will recover make-ready costs.[224] Should we prohibit utilities from requiring full or

[218] Dominion/Xcel Comments at 5-6 ("[N]ew attachers fail to accept make-ready estimates and/or to remit full payment of estimated make-ready fees in a timely manner. Within the past six months, DEV found that new attachers required, on average, 61 days to accept make-ready estimates provided upon approval of an application, and 89 additional days to pay all estimated make-ready fees. In other words, new attachers delayed their own deployments by approximately 150 days (or five months) between the time that DEV provided a make-ready estimate, and the start of make-ready work."); Dominion/Xcel Dec. 9, 2024 *Ex Parte* Letter at 3; Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3.

[219] Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 5; Dominion/Xcel Dec. 9, 2024 *Ex Parte* Letter at 3; Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3; *see also* Dominion/Xcel Comments at 6 n.14 ("Dominion Energy and Xcel Energy have reason to believe that certain attachers submit pole attachment applications for multiple tentative routes simultaneously, rather than to select and plan specific routes beforehand. This practice creates abrupt and unnecessary surges in application volume.").

[220] Xcel Energy Aug. 23, 2024 *Ex Parte* Letter at 5; Dominion/Xcel Dec. 9, 2024 *Ex Parte* Letter at 3; Dominion/Xcel Comments at 6 n.14.

[221] NCTA Comments at 22 (urging "the Commission to consider prohibiting utilities from requiring upfront payments or, at least, prohibiting utilities from requiring 100% payment up front" and explaining that there is "urgent and pressing need to address the utilities' misaligned incentives; requiring utilities to wait for full payment until *after* work is complete is one such solution"); Altice Nov. 8, 2024 *Ex Parte* Letter at 2 ("[T]he Commission should prohibit pole owners from requiring attachers to pay for survey and make-ready work in advance of the work being performed or impose a cap on the percentage of pre-payment that the pole owner can require without firm commitments to complete the work within a specified timeframe.").

[222] *2011 Report and Order*, 26 FCC Rcd at 5280, para. 88 ("Although a staggered payment system might motivate pole owners to perform make-ready work more quickly . . . it would also unfairly expose them to a greater risk of non-payment for make-ready work necessary to accommodate attachers." (Footnotes omitted)).

[223] NCTA Comments at 22-23; Altice Nov. 8, 2024 *Ex Parte* Letter at 2.

[224] CCU Reply at 5 ("First, regarding incentives, why would a pole owner be incentivized to do survey work, engineering work, or make-ready construction work any quicker if the cost is out of pocket? Cost-recovery for such work is the assurance that costs will be paid, not the incentive for completing the work. If anything, the opposite is true. When attachers pay upfront for work, it means the utility owes them the work, and the utility now has the incentive to do the work. Conversely, when attachers do not pay upfront, it sends a signal that they may not eventually attach in those locations, which signals to the utility that its work may not get paid for."); EEI Dec. 10, 2024 *Ex Parte* Letter at 2 (explaining that the burden of a system that prohibits full or partial prepayment would (continued….)

partial up-front payment? Alternatively, should we allow utilities to require that attachers pay a portion of make-ready costs up-front and make further payments based upon make-ready work progress? If so, what percentage of the estimate should be paid up-front and as the work progresses? For example, NCTA cites to Utah's approach, which requires attachers to pay 50% up-front, 25% after half the work is done, and then the remaining 25% upon completion, but allows attachers to elect to make full up-front payment.[225] Are there other examples of states limiting prepayment or basing payment on work progress that we should consider? If we were to require a percentage of the make-ready costs to be paid as work progresses, what specific metrics should be used to define that progression? For instance, if the Commission adopted a 50/25/25 payment schedule for make-ready costs, should the determination of when the utility has completed half of the make-ready work be based upon the number of poles for which make-ready is completed by application? If we allow for partial upfront payment, should we require a commitment from utilities to complete the work within a specific timeframe?[226] How should utilities demonstrate this commitment? Would prohibiting utilities from requiring partial or full prepayment violate section 224 of the Act by "precluding utilit[ies from] full recovery of costs that [they] incur[] to provide pole access?"[227] While utilities also observe that the Commission previously declined to adopt any form of payment schedule for make-ready work in the *2011 Report and Order*,[228] NCTA asserts that the subsequent record supports its proposal.[229] Do commenters agree with NCTA? Why or why not? Have circumstances changed since 2011 such that the Commission's concerns at that time either no longer exist or are outweighed by other factors? Alternatively, rather than the Commission codifying rules on these issues, should establishing payment deadlines and schedules similarly be left to the parties in their pole attachment agreement? If that is the better option, should there be any Commission rules, policies, or guidance governing the terms of such provisions in a pole attachment agreement?

(Continued from previous page)
burden utilities and could delay the make-ready process); *see also* Dominion/Xcel Reply at 28-29 ("This claim lacks any foundation, and is solidly disproven by the documented descriptions of the efforts made by utility pole owners to continuously build their base of available contractors to assist with broadband projects. Furthermore, because self-help remedies are seldom used, utility pole owners apparently do, in fact, complete the make-ready."); Dominion/Xcel Dec. 9, 2024 *Ex Parte* Letter at 2-3; USTelecom Apr. 1, 2025 *Ex Parte* Letter at 11.

[225] Utah Admin. Code § R746-345-3(C)(7); NCTA Comments at 22 ("Specifically, in Utah, attachers must pay only 50% of the make-ready estimate in advance of construction.").

[226] Altice Nov. 8, 2024 *Ex Parte* Letter at 2.

[227] EEI Dec. 10, 2024 *Ex Parte* Letter at 2; Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3 ("It is a long-standing and fundamental principle of the Pole Attachment Act and of the Commission's implementing rules and policies that pole owners must be able to fully recover the costs they incur to accommodate new communications attachments.").

[228] Dominion/Xcel Reply at 29 ("The Commission considered NCTA's specific proposal previously, and – on the basis of a complete record – concluded that requiring up-front payment of estimated make-ready and survey costs is not a barrier to broadband deployment, and concluded further that NCTA's proposal would unfairly prejudice the ability of utility pole owners to collect payment for work that is necessary to accommodate pole access."); Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3-4 (asserting the same conditions apply as 2011); Dominion/Xcel Dec. 9, 2024 *Ex Parte* Letter at 3; *see 2011 Report and Order*, 26 FCC Rcd at 5270, para. 88 ("Although a staggered payment system might motivate pole owners to perform make-ready work more quickly, as some commenters point out, it would also unfairly expose them to a greater risk of non-payment for make-ready work necessary to accommodate attachers."); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-245, GN Docket No. 09-51, 25 FCC Rcd 11864, 11896, para. 70 (2010) (proposing to adopt Utah's payment schedule because the Commission sought "to correctly align the incentives to perform make-ready work on schedule").

[229] NCTA Comments at 22-23 ("In the more recent record, being fully developed here, it is clear that utilities increasingly fail to meet prescribed timelines for completing make-ready work . . .").

C. Imposing a Cost Ceiling

57. We seek comment on limiting the amount that final make-ready costs can exceed the utility's estimate without requiring the utility to have obtained prior approval from the attacher.[230] Attachers had previously reported instances where the costs in final invoices for make-ready work significantly exceeded those in accepted estimates, often attributing this discrepancy to delays in utilities completing the various pole attachment phases.[231] While the Commission subsequently required detailed make-ready cost estimates and post-make-ready invoices,[232] the record reflects continued attacher frustration with utility delay and unexpectedly high final make-ready costs.[233] Some states that regulate pole attachments themselves have imposed a ceiling, or upper limit, on the range of costs that a utility can incur while completing make-ready work and bill to the attacher.[234] For example, New York requires that "[m]ake-ready estimates shall be binding within a certain range, specified by the parties, and then be trued up to actual costs within the range."[235] And Utah provides that "if [an attacher] accepts the make-ready estimate and make-ready construction time line, the work must be done on schedule and for the estimated make-ready amount, or less, and the [attacher] will be billed for actual charges up to the bid amount."[236]

58. In practice, we believe that imposing any cost ceiling would require a utility to gain an attacher's approval before the utility can incur make-ready costs beyond those contemplated in the estimate. Do commenters believe that a cost ceiling would incentivize utilities to meet the Commission's pole attachment timelines to avoid price increases that could lead to significantly higher costs than had been estimated? Should the cost ceiling differ in any way for an attacher that has exercised the self-help

---

[230] *But see* EEI July 15, 2025 *Ex Parte* Letter at 3 (opposing seeking comment on "make-ready cost ceilings, which could limit cost recovery for legitimate utility work").

[231] *See, e.g.*, Letter from Thomas Cohen and J. Bradford Currier, Counsel for the American Cable Association, Kelley Drye & Warren, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Mar. 26, 2018) (explaining that "numerous attachers experience 'bill shock' when the final invoice far exceeds the estimate"); American Cable Association June 16, 2017 Comments at 50 ("Multiple ACA members reported receiving 'true-up' invoices for make-ready that differed substantially from estimates and that included, at best, minimal detail on the work conducted. There is no reason for there to be such a wide discrepancy between the estimate and final invoice, and permitting it to occur only encourages utilities to provide misleading estimates.").

[232] 47 CFR § 1.1411(d) ("After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment."); *Third Wireline Infrastructure Order*, 33 FCC Rcd at 7758-59, paras. 109-10.

[233] *See* NCTA Comments at 20 ("It is therefore commonplace for attachers to pay tens to hundreds of thousands of dollars to pole owners who have no intention of performing the work, knowing that the timelines will pass and that attachers will have to hire contractors to do the work only after critical months have passed."); Letter from Christopher L. Shipley, Exec. Dir. of Public Policy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed Aug. 20, 2024) ("[P]roviders continue to experience barriers when seeking to attach to utility poles, including significant delays in the application and make-ready process (particularly around large pole orders) and the imposition of unsubstantiated fees for engineering and survey work.").

[234] *See 2011 Report and Order*, 26 FCC Rcd at 5243, para. 7 (explaining that "state experience with regulation of pole attachments provides an invaluable opportunity for the Commission to observe what works and what does not work to achieve policy goals").

[235] Case 03-M-0432—Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, *Order Adopting Policy Statement on Pole Attachments* Appx. A, Policy Statement on Pole Attachments at 12 (New York Comm'n, rel. Aug. 6, 2004) (New York Policy Statement); *see also* Case 03-M-0432—Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, *Order Adopting Policy Statement on Pole Attachments*, at 9 (New York Comm'n, rel. Aug. 6, 2004) ("The Policy Statement is hereby adopted and shall govern the relationship between attachers and utilities, unless they mutually agree otherwise, on a prospective basis.").

[236] Utah Admin. Code § R746-345-3(C)(6).

remedy we adopt today for the estimate phase of the pole attachment process? What cost ceiling would best motivate utilities and attachers to timely deploy broadband? If the cost ceiling is a range, should it be a percentage of a make-ready estimate, or would a dollar amount added on top of all estimates be more appropriate? What percentage or dollar amount do commenters believe is reasonable? Like Utah, should we prohibit utilities from billing attachers for any true-up costs without prior attacher approval rather than specifying a cost ceiling? Have any other reverse-preemption states adopted different cost-ceiling approaches that we should consider? Should a cost ceiling instead be a negotiable term of the make-ready estimate, similar to New York's approach? Do pole attachment agreements already include such cost ceilings? Would such cost ceilings best be left to private agreement?

59. We seek comment on our tentative conclusion that adopting a cost ceiling will prevent some disputes over unexpectedly high final make-ready costs by increasing transparency between attachers and utilities during the make-ready process. Do commenters agree? Does the cost ceiling's impact on disputes depend on its size? To the extent parties are already free to negotiate a cost ceiling, are disputes regarding final invoices amenable to resolution through the Rapid Broadband Assessment Team or the Commission's complaint process?[237] If we prohibit utilities from billing true-up costs without prior attacher approval, should we combine that with a requirement that attachers remit full or partial up-front payment for make-ready work?[238] If we adopt a cost ceiling, do we need to account for any conditions or provide certain guardrails for attachers or utilities? If so, what would such guardrails entail? Is there other Commission action regarding make-ready estimates or final costs that would increase transparency between utilities and attachers, encourage compliance with the Commission's pole attachment timelines, or promote faster broadband deployment? Are there concerns with imposing a cost ceiling at the federal level? For example, reverse-preemption states have authority over their utilities to require them to recoup any excess costs, presumably through regulation of electric rates. Does the Commission's lack of similar authority over utilities in Commission-regulated states counsel against adopting cost ceilings?

D. Availability of OTMR for Complex Work

60. We seek comment on whether to expand the availability of the OTMR process to include complex survey and make-ready work.[239] Under the Commission's current rules, an attacher has the

[237] New York Policy Statement at 12 (providing that "[i]f extraordinary, unforeseen circumstances occur, the [utility] may seek relief through the [New York Public Service] Commission's dispute resolution services"); *see also* 47 CFR §§ 1.720-1.740, 1.1415.

[238] Utah Admin. Code § R746-345-3(C)(7) ("Applicants must pay 50% of the make-ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.").

[239] *See* 47 CFR § 1.1411(j). Electric Utilities proposed that the Commission establish an "enhanced" OTMR rule that would require new attachers to perform all required make-ready within the communications space, whether simple or complex. Electric Utilities Comments at i, 22-26; Electric Utilities Aug. 19, 2024 *Ex Parte* Letter at 4-5; Letter from Robin F. Bromberg, Counsel to the Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4-5 (filed Aug. 23, 2024) (Electric Utilities Aug. 23, 2024 *Ex Parte* Letter); Letter from Robin F. Bromberg, Counsel to the Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 5-6 (filed Aug. 26, 2024) (Electric Utilities Aug. 26, 2024 *Ex Parte* Letter); Dominion Aug. 19, 2024 *Ex Parte* Letter at 8; UTC Mar. 14, 2024 *Ex Parte* Letter at 2-3. Attachers strongly oppose this proposal because they claim it: (1) is counter to the purpose of OTMR; (2) would eliminate their investment in current practices and procedure while requiring further resources to adapt to the proposal; (3) would revert control of the survey process; (4) would prevent performance of make-ready in one touch for simple make-ready; and (5) would force existing attachers to allow competitors to do work that could reasonably cause a service outage or facility damage. *See, e.g.*, NCTA Reply at 3; Altice Reply 11-12; USTelecom Reply at 15-16; Letter from Jacqueline Clary, Altice USA, Inc. to Marelene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Nov. 1, 2024); Altice Nov. 8, 2024 *Ex Parte* Letter at 3-4; USTelecom Apr. 1, 2025 *Ex Parte* Letter at 11.

option to elect the OTMR process for attachments involving simple make-ready, an election the attacher makes in its application.[240] When an attacher avails itself of this option, it achieves certain efficiencies by not having to rely on the utility to complete each phase of the pole attachment process within the prescribed timelines.[241] The record suggests that very few attachers have elected to use OTMR since it was created in 2018.[242] According to utility commenters, one of the impediments is that it is not available for complex work.[243] We seek comment on whether attachers would be more likely to elect OTMR if it were available for complex work. Are there other obstacles to the use of OTMR that would prevent its use even if it were available for complex work? For example, what, if any, role does attacher reticence to touch third-party equipment play in decisions to not make use of OTMR? If we were to make OTMR available for complex work, would we need additional requirements for contractors to safely perform complex work in the communications space, such as any qualification requirements necessary for contractors to do work on wireless equipment in the communications space? Would any additional safeguards be necessary or appropriate for complex OTMR?

E. Deadline for On-Boarding Approved Contractors

61. In Section III.D of today's Report and Order, we improve the self-help remedy by requiring utilities to respond to requests to add additional qualified contractors to a utility's existing approved contractor list within 30 days of receiving the request, while recognizing that utilities may need to take additional steps to on-board the contractors for work on the utility's poles.[244] We understand that utilities must ensure that the individuals working on their poles are properly trained, have access to their internal systems, and do not present a safety or security risk.[245] Some utilities suggest, however, that the process to on-board a newly approved contractor can take three months to a year or more.[246] That is little

[240] 47 CFR § 1.1411(j).

[241] *Cf. Third Wireline Infrastructure Order*, 33 FCC Rcd at 7717, 7718-19, paras. 22, 24 (explaining that "[OTMR] puts the parties most interested in efficient broadband deployment—new attachers—in a position to control the survey and make-ready processes" and that "[b]y shifting responsibilities from the utility to the new attacher to survey the affected poles, determine the make-ready work to be done, notify affected parties of the required make-ready work, and perform the make-ready work, our new OTMR regime will alleviate utilities of the burden of overseeing the process for most new attachments and of some of the costs of pole ownership").

[242] Electric Utilities Comments at 23 (providing internal data on the number of poles for which attachers used OTMR or self-help); Electric Utilities Aug. 19, 2024 *Ex Parte* Letter at 4 ("Between 2019-2023, attachers used OTMR on just 0.7% of the Electric Utilities' poles for which they submitted application"); Dominion/Xcel Comments at 5, 7, 20-21 (asserting that attachers rarely use OTMR or self-help remedies and noting that attachers "have rejected OTMR and self-help as viable options to accelerate deployment in rural areas – even over [Dominion]'s recommendation – where the majority of [Dominion]'s poles need only simple make-ready prior to attachment"); Electric Utilities Aug. 23, 2024 *Ex Parte* Letter at 4; Electric Utilities Aug. 26, 2024 *Ex Parte* Letter at 5.

[243] Electric Utilities Comments at 24 ("Because the current OTMR rule applies only to applications where 'simple make-ready' is required, OTMR is hardly ever useful."); Electric Utilities Aug. 19, 2024 *Ex Parte* Letter at 4 ("OTMR under the current rule is too limited in scope because it can only be used for 'simple' communications space make-ready."); Electric Utilities Aug. 23, 2024 *Ex Parte* Letter at 4; Electric Utilities Aug. 26, 2024 *Ex Parte* Letter at 5.

[244] *See* CCU Reply at 15 ("Even for survey and design work, a rigorous on-boarding process is required to properly evaluate and approve attacher-requested contractors, who must demonstrate they are familiar with the utility's specifications and construction practices.").

[245] *See* Electric Utilities Comments at 12 ("[T]he onboarding process for new approved contractors takes time because it is critical to worker safety, system reliability, and contractor proficiency."); CCU Reply at 15 ("[T]he reason that utilities review and approve contractors is for the safety of the workers and the public, and to protect the integrity and reliability of utility facilities.").

[246] *See* Dominion/Xcel Reply at 27; Dominion/Xcel Mar. 19, 2025 *Ex Parte* Letter at 3 n.11; Electric Utilities (continued….)

help to an attacher that has invoked its right to self-help under our rules because a utility has missed survey or make-ready deadlines,[247] finds that none of the contractors on the utility's approved list are available, and needs to request the addition of qualified contractors to the list in order to get the work done.[248] In such a circumstance, an excessively long on-boarding process could effectively thwart the goals of the self-help remedy.[249] We, therefore, seek comment on how much time it actually takes for a utility to responsibly on-board a new contractor and whether we should modify section 1.1412 of the Commission's rules to set a deadline for utilities to complete the on-boarding process.[250]

62. The Electric Utilities describe the processes used by two utilities to on-board newly approved contractors.[251] At a high level, both processes involve three steps. The first is to negotiate and execute an agreement with the contractor, which the Electric Utilities state can take between three and six months depending on the utility.[252] The second step is to on-board the newly approved contractor into the utility's internal systems, including its pole attachment-related software systems.[253] This step can involve background checks, credential checks, drug-screening, and can take one to four months depending on the utility.[254] The third step is to train the contractor's employees to use the utility's software and to perform work on the utility's poles.[255] The Electric Utilities indicate that the time necessary to complete this step depends on the utility and the role that the contractor will perform. For instance, AEP may only need one to two weeks to train a survey crew to use AEP's survey tools, but training engineering employees may take between two and six months.[256] Alabama Power, on the other hand, only needs one to two weeks to train contractor engineers before on-boarding is technically complete, but that contemplates an additional six to 12 months of on-the-job training.[257]

(Continued from previous page)
Comments at 10-12; *see also* USTelecom Apr. 21, 2025 *Ex Parte* Letter at 3.

[247] 47 CFR § 1.1411(i)(1)-(2).

[248] *Id.* § 1.1412(a)-(b).

[249] *See* INCOMPAS Comments at 14 ("[T]he process is different for each utility, and often involves months of long training of contractors on top of the minimum qualifications and any other qualifications set by the pole owner. This delay just to approve a contractor may be prohibitive in deploying broadband to underserved areas, and to that end, there should be quick approval timelines if the contractor meets the qualifications."). *But see* EEI July 15, 2025 *Ex Parte* Letter at 3 (opposing seeking comment on "deadlines for on-boarding of approved electric space contractors, which could unlawfully restrict electric utilities' right to manage pole access safely and reliably, and to deny pole access for reasons of safety and reliability pursuant to Section 224(f)(2)").

[250] 47 CFR § 1.1412. We, thus, decline EEI's request to remove this subject from this Further Notice. EEI July 15, 2025 *Ex Parte* Letter at 3.

[251] The entities represented in the comments filed by the Electric Utilities include Southern Company, Oncor Electric Delivery Company LLC, Entergy Corporation, Duke Energy Corporation, American Electric Power Service Corporation, and Ameren Services Company. Electric Utilities Comments at 1.

[252] *Id.* at 10-12 (stating that it takes American Electric Power Company (AEP) three to six months to enter an agreement with a contractor and Alabama Power three to four months to vet the contractor, identify a scope of work, and finalize a contract).

[253] *Id.* at 11-12.

[254] *Id.* at 10-12 (stating that the second step takes AEP between one to three months to complete and Alabama Power two to four months to complete).

[255] *Id.* at 11-12.

[256] *Id.* at 11.

[257] *Id.* at 12.

63. Do other commenters agree that these are generally the three steps that need to be completed to on-board a contractor?[258] Are there other on-boarding steps not mentioned above?[259] Are the steps the same for on-boarding contractors that do survey and make-ready work? Do commenters agree that the intervals of time mentioned by the Electric Utilities reflect the amount of time actually needed to complete each step? Could the steps be completed in a shorter amount of time? For instance, when utilities execute an agreement with newly approved contractors, do they typically use form agreements that require little modification from contractor-to-contractor, and thus could be executed in a few weeks versus the suggested one to four months?[260] If it really takes months to negotiate and execute agreements with newly approved contractors, why is that the case? As a threshold matter, is it correct that the utility is the entity responsible for executing an agreement with a contractor and on-boarding the contractor when the contractor is proposed by an attacher to perform self-help work?[261] Can or does an attacher execute an agreement with a proposed contractor to perform work on a utility's poles and on-board that contractor to perform the work without the utility's involvement?[262] Stated differently, is it necessary for a utility to also enter into an agreement with the proposed contractor to ensure it retains the control necessary to ensure that work performed on its poles does not create safety and reliability hazards?[263] If only the attacher enters into an agreement with the proposed contractor, through what

[258] *See* Dominion/Xcel Reply at 21 ("The process to onboard a new contractor for work on electric distribution poles is extensive . . . an electric utility pole owner must vet the contractor, finalize rates, terms, and conditions for the contractor's services, screen the individual employees of the contractor who will perform work on the utility pole owner's facilities, and finally, train the contractor's employees in accordance with the utility pole owner's construction standards, safety protocols, and policies with respect to ethics and compliance."); USTelecom Apr. 21, 2025 *Ex Parte* Letter at 3 ("USTelecom members report that it can take up to six months to complete the work needed to add a contractor to the list for complex and above-the-communications space make-ready work, as they need time to confirm the contractor meets the required qualifications, gather and review the contractor's documents and safety records, negotiate a contract with the contractor, screen and clear the contractor's employees, ensure the contractor has sufficient bonding and insurance, and train the contractor about the pole owner's processes and standards.").

[259] Dominion/Xcel describe a four step "vetting and approval" process: (1) "Data Review" that takes four weeks and looks at seven categories of safety data (including, but not limited to, OSHA 300 logs, fatalities, safety programs, and citations) and four categories of environmental data (including policy, performance, and mitigation plan); (2) "Field Evaluation" that takes three weeks; (3) "Formal Evaluation/All Metrics" that takes two weeks and looks at "[c]ompany data (employees, customers, references)," "Work experience (types, voltages, related experience)," "Crew availability (relevant experience, location)," and equipment; and (4) "Orientation and Training" that takes two weeks. Dominion/Xcel May 7, 2025 *Ex Parte* Letter, Attach. at 1.

[260] *See* NCTA Apr. 23, 2025 *Ex Parte* Letter at 2 ("The utilities undoubtedly have template agreements they require their contractors to execute.").

[261] Dominion/Xcel May 7, 2025 *Ex Parte* Letter at 3 ("Under no circumstances would an electric utility pole owner 'rely' on an attacher to vet a proposed contractor for work above the communications space on its poles. Rather, every contractor that performs work on or in the vicinity of the electric power facilities on a utility's poles, on behalf of *any* party, must be vetted by the utility itself, in accordance with the processes adopted by the utility for evaluation and approval of third-party contractors.").

[262] *See* NCTA Apr. 23, 2025 *Ex Parte* Letter at 2 ("[W]here the self-help remedy is triggered (because utilities have missed timelines) or, in the case of OTMR, where no utility-approved contractor is available within a reasonable time period, it is the attaching entity, not the utility, that is responsible for contracting with and onboarding the contractor and for the tasks the Electric Utilities identify as most time consuming."); *see also* Crown Castle Reply at 3 ("[W]hen some utilities 'approve' a contractor for self-help use, they will require that the contractor become a contractor for the utility itself. Through this process, which can add many months of administrative hoops to bring the contractor into the utility's roster of contractors, the utility essentially gains economic and practical control over the contractor's availability, and in so doing, interferes with the contractor's availability for new attachers.").

[263] *See* NCTA Apr. 23, 2025 *Ex Parte* Letter at 2 ("Not only are attaching entities equally vested in ensuring that their contractors' work conforms to governing safety standards and technical specifications, attaching entities are contractually obligated to ensure that they do so in accordance with the terms of their pole attachment agreements,

(continued….)

specific means could the attacher ensure that the contractor complies with the utility's safety standards and technical specifications, and do they have the experience necessary to do so for work performed above the communications space?[264]

64. We assume that if a contractor is able to make the representations required by section 1.1412(c) (e.g., it knows how to read and follow licensed-engineered pole designs for make-ready),[265] it already has skilled professional staff, and the training that takes place during the on-boarding process is to ensure that the contractor's employees can use utility-specific software systems and execute utility-specific construction standards, protocols, and policies. Is that correct? If so, could that training be completed in a matter of weeks versus months? In the case of larger contractors that work with a number of utilities, would some employees already be familiar with a particular utility's systems and requirements or have a level of familiarity that could expedite the training process? For instance, NCTA points to mutual aid agreements in which utilities send crews to other parts of the country where there are power outages due to natural disasters to help restore power as examples of when contractors are able to work on utility poles without extensive on-boarding processes.[266] While NCTA "recognizes mutual aid agreements exist for emergency circumstances" and does not request "the same process a utility may invoke in an emergency,"[267] do such agreements indicate that it is possible for large contractors with experienced staff to be on-boarded faster than utilities suggest? If not, why not? Are there significant variations between utility software systems, standards, and policies that require months to address, or are the variations minor such that contractors should be able to use them with minimal training? Could any of the steps described by utilities be expedited by having them run on parallel tracks? Are there steps in the on-boarding process that are or could be expedited by the contractors themselves (e.g., any internal vetting required for individual contractor employees)? On average, what is the actual overall time needed to complete all steps to on-board a newly approved contractor?[268]

(Continued from previous page)
which require attachers to indemnify pole owners against any claims related to their contractors' work."); NCTA May 9, 2025 *Ex Parte* Letter at 3 ("[I]t is not necessary for pole owners to enter into separate contracts with the contractors on their list of authorized contractors . . . . The pole owner is protected against any damage or injury resulting from the contractors work on the poles under the attacher's pole agreement with the pole owner."); *But see* Dominion/Xcel May 7, 2025 *Ex Parte* Letter at 4 ("[W]hile contractual liability limitations, indemnification, and an ability to disqualify contractors for cause are necessary protections for all pole owners, they do not prevent accidents that could result in serious injury or loss of life."); EEI et al. May 12, 2025 *Ex Parte* Letter at 5 ("Utilities continue to face litigation and liability exposure from accidents tied to third-party attachments—even when indemnity clauses are in place—and are forced to settle without recovery.").

[264] *See* Dominion/Xcel May 7, 2025 *Ex Parte* Letter at 2 ("NCTA members do not own or operate electric distribution infrastructure, do not provide electricity, and have no need to retain line workers or to train their own employees to work in the immediate vicinity of energized electric power facilities for any purpose related to their operations. Thus, NCTA has no basis to assert that the 'experience' of its members qualifies them, or the association, to opine on the evaluation and approval processes used by utility pole owners to onboard contractors for work on their power delivery systems."). *But see* NCTA May 9, 2025 *Ex Parte* Letter at 3 ("NCTA member's facilities are on the poles as well, and its members would be required to indemnify the utility for any damage its contractors cause on the poles. Accordingly, NCTA's members have the exact same incentives to ensure that work is completed correctly and safety and that no damage occurs to utilities' poles on which communications lines and equipment are placed.").

[265] 47 CFR § 1.1412(c).

[266] NCTA May 9, 2025 *Ex Parte* Letter at 4.

[267] *Id.* (suggesting that mutual aid agreements nonetheless indicate that "parties can rely on existing agreements (whether a mutual aid agreement or a pole agreement) to allocate risk and establish cost allocations and insurance requirements associated with the work performed by one party's contractors on the other party's poles").

[268] *See* NCTA Apr. 23, 2025 *Ex Parte* Letter at 2-3 (stating that in the experience of NCTA's members, the on-boarding tasks identified by utilities "should take no more than 30 days once the contractor is approved").

65. In seeking comment on these topics, our goal is to understand the amount of time actually needed to complete the contractor on-boarding process, based on the steps taken by different utilities, and how that timing impacts an attacher's ability to invoke the self-help remedy and request that utilities add additional qualified contractors to their approved lists to complete the self-help work. Would the Commission improve the viability of the self-help remedy by setting a deadline for utilities to complete the on-boarding process for a contractor that meets the requirements of section 1.1412(c) of the Commission's rules? If so, based upon all of the steps a utility needs to take to address safety, reliability, and security concerns, what should that deadline be?

F. Defining the Term "Pole" for the Purposes of Section 224

66. We seek comment on whether a light pole is a "pole" for purposes of section 224 of the Act. Neither section 224 nor the Commission's implementing rules define the term "pole." In September 2019, CTIA filed a petition seeking a declaratory ruling that a light pole is a "pole" under section 224 and that, consequently, utilities must afford nondiscriminatory access to light poles at rates, terms, and conditions, consistent with section 224 and the Commission's implementing rules.[269] In its Petition, CTIA argued, in short, that: (1) light poles are optimal locations for small cells[270] and are likely to be the only feasible location along rights-of-way where electric lines are buried;[271] (2) utilities are denying access to light poles, or are charging high fees for access, in a manner that impedes deployment;[272] (3) excluding light poles from the definition of "pole" under section 224 would be inconsistent with the Commission's rules and congressional intent;[273] (4) construing section 224 to apply to light poles would be "consistent with the real-world practice of commingling street lights and communications attachments on the same poles;[274] and (5) applying section 224 to light poles would advance the public policy goals of promoting competition and the deployment of infrastructure to support broadband and 5G without harming utilities.[275]

67. Promoting broadband and 5G deployments is one of our top priorities. The Commission is committed to expediting and removing obstacles to such deployments,[276] and to that end, has

---

[269] CTIA Petition at 21-25.

[270] For the purposes of this Further Notice, we assume that the small cells referred to in CTIA's Petition and comments filed in response to the Petition are facilities meeting the definition of Small Wireless Facilities in section 1.6002(l) of the Commission's rules, 47 CFR § 1.6002(l), and we use that defined term going forward.

[271] CTIA Petition at 21 (stating that "electric lines are most commonly placed underground in urban areas, where the demands for mobile data and the small cells to support network densification are the greatest").

[272] *Id.* at 22; *see also* AT&T Oct. 29, 2019 Comments at 22 (stating that some electric utilities assert "that 'light poles' are not governed by Section 224" and that "[a]s a result, these electric utilities are demanding excessive fees (or in-kind contributions) for access to light poles or denying access altogether, impeding deployment of 5G facilities"); Crown Castle Oct. 29, 2019 Comments at 39 (stating that some utilities "provide no access to any poles with streetlights attached. In the majority of instances where standalone streetlights are made available for communications attachments, availability is conditioned upon fees and terms that significantly exceed the regulated rate and may undermine the feasibility of using these poles for telecommunications attachments").

[273] CTIA Petition at 22-25.

[274] *Id.* at 23.

[275] *Id.* at 24.

[276] *See Third Wireline Infrastructure Order*, 33 FCC Rcd at 7711, para. 13; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, 9091, para. 8 (2018) (*Small Cell Order*) ("The FCC will keep pressing ahead to ensure that every community in the country gets a fair shot at the opportunity that next-generation wireless services can enable."); *see also In the Matter of Updating the Commission's Rule for over-the-Air Reception Devices*, 36 FCC Rcd 537, 541, para. 11 (2021) (The Commission expanded the scope of the Over-the-Air-Receptive-Device rule to cover hub-and-relay antennas in order to "help spur the rapid deployment of (continued….)

recognized that light poles are suitable hosts for Small Wireless Facilities.[277] 5G wireless networks rely on dense deployment of smaller antennas across provider networks in locations closer to customers. Requiring nondiscriminatory access to light poles for communications attachments at rates, terms, and conditions that are just and reasonable could thus be a significant positive step toward the Commission's connectivity goals.[278] The question of what constitutes a "pole" for the purposes of section 224 raises complex issues, however, so we take this opportunity to refresh the record on the CTIA Petition and seek targeted comment on whether the Commission should codify a definition of the term "pole," whether any codified definition should include light poles, whether any rule changes would be necessary to implement a definition that includes light poles, and the impact that requiring nondiscriminatory access to light poles at rates, terms, and conditions that are just and reasonable would have on the deployment of broadband and 5G.[279]

1. The Best Reading of the Term "Pole": an Ordinary or Technical, Industry-Specific Meaning?

68. We seek comment on the best reading of the term "pole" in section 224.[280] We start by seeking comment on whether the term "pole" as used in the text of the Pole Attachment Act of 1978 (1978 Act)[281] has an ordinary meaning (e.g., one consistent with a common dictionary definition)[282] or a

(Continued from previous page)
fixed wireless networks needed for 5G and other fixed wireless high-speed Internet services.").

[277] *Small Cell Order*, 33 FCC Rcd at 9112-13, para. 50 (referencing government property in rights-of-way "such as light poles, traffic lights, utility poles, and other similar property" as "suitable for hosting Small Wireless Facilities" in the context of assessing whether certain state and local fees violate sections 253 and 332 of the Communications Act).

[278] *See* ACT | The App Association Oct. 29, 2019 Comments at 10 (stating that construing "pole" to include light poles "will promote the widespread deployment of small cells in cities by providing clarity to state and local authorities, and promoting predictability and certainty in their processes"); Crown Castle International Corp. Oct. 29, 2019 Comments at 38-39 (Crown Castle) ("The network densification needed to ensure the capacity vital to next generation technologies demands that the Commission clarify that access to utility infrastructure granted under Section 224 applies equally to utility light poles as to any other utility poles."); Letter from Mike Beirne, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 16, 2025) (CTIA July 16, 2025 *Ex Parte* Letter) ("[A]cess to light poles is especially important as wireless providers seek to increase capacity in their networks and expand competitive home broadband offerings.").

[279] *See* CTIA July 16, 2025 *Ex Parte* Letter at 1 ("CTIA urges the Commission to adopt its Draft FNPRM in the above-captioned proceeding and seek comment on defining the term 'pole' for purposes of Section 224 of the Communications Act[.]"). *But see* EEI July 15, 2025 *Ex Parte* Letter at 4 (opposing "revisiting whether Section 224 includes light poles" and asserting that "[i]f addressed at all, this issue should be handled in a separate rulemaking with its own notice and comment cycle").

[280] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024); *Pharm. Coal. for Patient Access v. United States*, 126 F.4th 947, 953 (4th Cir. 2025) ("To determine a statute's plain meaning, this court looks not only to the statute's language, but also to the context in which that language appears, and the broader context of the statute as a whole.").

[281] Pole Attachment Act of 1978, Pub. L. No. 95-234, 92 Stat. 33, codified at 47 U.S.C. § 224 (cited herein as 1978 Act).

[282] *See Ohio Telecom Ass'n v. Federal Communications Commission*, 124 F.4th 993, 1001 (6th Cir. 2025) ("Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses its legislative purpose." (internal quotation omitted)); *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227-28 (2014) (stating that undefined statutory words are interpreted based on their ordinary meaning at the time that Congress enacted the statute and looking at dictionaries from the time that the statute was enacted to consider the ordinary meaning of a term); *Wisconsin Cent. Ltd v. United States*, 585 U.S. 274, 277 (2018); *Paresky v. United States*, 995 F.3d 1281, 1285 (11th Cir. 2021) (stating that when "examining the plain and ordinary meaning of a statute, one of the ways to figure out that meaning is by looking at dictionaries in (continued….)

technical, industry-specific meaning (e.g., a utility pole built for providers of electric and local exchange services to attach their distribution facilities).[283] The 1978 Act authorized the Commission to regulate the rates, terms, and conditions of pole attachments to provide that they are just and reasonable,[284] and defined "pole attachment" as "any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility."[285] Congress defined a "utility" that may be subject to section 224 as "any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication."[286] Congress further codified a standard for determining whether a pole attachment rate is just and reasonable, stating, in pertinent part, that a rate is just and reasonable "if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole . . . ."[287] "Usable space" is defined in the statute as "the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment."[288]

69. Do these provisions, and the statute as a whole, show that Congress intended the term "pole" to have an ordinary, common meaning (as understood in 1978) or a technical or industry-specific meaning? Were the only poles used in 1978 for cable television system attachments traditional utility poles used for local distribution of electric and telecommunications services, or were other poles used for cable television system attachments as well? What poles were: (1) owned or controlled by "any person whose rates or charges are regulated by the Federal Government or a State;"[289] and (2) "used, in whole or in part, for wire communication" in 1978? Is "usable space" a term of art and if so, to what industries and/or for what purposes did it apply in 1978? Are other words used in the 1978 Act terms of art? Is there other language in the 1978 Act that the Commission should consider to determine whether Congress intended the term "pole" to have an ordinary, common meaning or a technical, industry-specific meaning when the statute was enacted? In either case, what was that meaning?

70. The Telecommunications Act of 1996 (1996 Act)[290] amended section 224 to, in pertinent part, expand the definition of pole attachments to include attachments by providers of telecommunications service[291] and to add a new requirement that utilities "provide a cable television system or any

(Continued from previous page)
existence around the time of enactment" (internal quotation marks and citation omitted)).

[283] Courts may look beyond the common meaning of statutory language "where a statutory or regulatory term is a technical term of art, defined more appropriately by reference to a particular industry usage than by the usual tools of statutory construction," *In re Pharm. Indus. Average Wholesale Price Litig.*, 582 F.3d 156, 168 (1st Cir. 2009) (quotation marks and citation omitted), in the which case "the term should be construed with reference to the actual context of the regulated industry in question." *Concert Inv., LLC v. Small Bus. Admin.*, 100 F.4th 215, 222 (D.C. Cir. 2024) (quotation marks and citation omitted).

[284] 1978 Act § 224(b)(1).

[285] *Id.* § 224(a)(4).

[286] *Id.* § 224(a)(1). Congress excluded from the definition of utility "any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." *Id.*

[287] *Id.* § 224(d)(1).

[288] *Id.* § 224(d)(2).

[289] "State" was defined in the statute as "any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof." 1978 Act § 224(a)(3).

[290] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq*.

[291] 47 U.S.C. § 224(a)(4) (defining a "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.").

telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[292] Congress codified an exception to this nondiscriminatory access provision, stating that "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."[293] Congress retained its standard for determining whether a pole attachment rate is just and reasonable and the definition of the term "usable space" used in that standard.[294]

71. Some attachers have argued that the reference to "any pole" in the nondiscriminatory access provision enacted via the 1996 Act demonstrates that section 224 applies to any type of pole that is owned or controlled by a utility. Specifically, they have argued that in the absence of a statutory definition, "pole" should be given its ordinary meaning,[295] pointing to dictionary definitions,[296] and that courts construe the term "any" expansively to mean "all."[297] Thus, these attachers have argued that the enactment of the "any pole" language in the 1996 Act language evinces that all types of poles owned or controlled by a utility are subject to the nondiscriminatory access provision in section 224(f)(1).[298] Some have gone further and suggested that while whether a person or entity owns or controls poles that are "used . . . for any wire communications" dictates that person's or entity's status as a "utility" under section 224(a)(1), as long as an entity is a "utility" by virtue of its ownership or control of such poles, it must provide access to all poles it owns or controls, even those that are not used for wire communications.[299]

---

[292] *Id.* § 224(f)(1).

[293] *Id.* § 224(f)(2).

[294] *Id.* § 224(d)(1)-(2).

[295] *See* CTIA Petition at 23 ("In the absence of a statutory definition, terms are to be given their 'ordinary meaning.'"); T-Mobile Oct. 29, 2019 Comments at 23; ExteNet Nov. 20, 2019 Reply at 4; CTIA July 16, 2025 *Ex Parte* Letter at 2 ("The ordinary meaning of a pole includes a pole that hosts lights.").

[296] *See* Verizon Oct. 29, 2019 Comments at 3 ("[T]he ordinary meaning of pole is generic – 'a long slender usually cylindrical object' or a 'long, relatively slender, generally rounded piece of wood or other material' – and inclusive, covering both distribution and light poles." (citations omitted)).

[297] *See* T-Mobile Oct. 29, 2019 Comments at 23 ("[R]ead naturally, 'any' means 'all.'"); Crown Castle Oct. 29, 2019 Comments at 40 ("[T]he term 'any' as used before 'pole, duct, conduit, or right-of-way' is all encompassing."); *see also* Verizon Oct. 29, 2019 Comments at 3-4 ("Congress's decision to use the word 'any' to modify 'pole' in Section 224(f)(1) further supports interpreting 'pole' broadly, since courts consistently read 'any' to emphasize the wide scope of the words it modifies.").

[298] *See* ExteNet Oct. 29, 2019 Comments at 6 (observing "the plain language of Section 224(f)(1), which requires a utility to provide nondiscriminatory access to 'any pole' that the utility owns or controls" and stating "[a] light pole falls within the ambit of "any pole"); Verizon Oct. 29, 2019 Comments at 6 ("Congress expressly extended Section 224's coverage to 'any poles' a utility owns or controls"); Crown Castle Oct. 29, 2019 Comments at 41 ("[U]tility-owned light poles are clearly 'any poles' under the plain language of section 224(f).").

[299] *See* CTIA Petition at 25 ("Section 224's reference to 'any' pole meant that Congress intended to grant the right of access to *all* of a utilities' poles, including those that were not being used for wire communications.") (emphasis in original). *But see* ACA Connects Oct. 29, 2019 Comments at 3 ("Section 224 only uses the generic term 'poles' without qualification or modifier – provided that the pole is 'used, in whole or in part, for any wire communications.'"). We note that in the 1996 Act, Congress modified the language in the definition of "utility" to state "any person who is a local exchange carrier or an electric gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1). It retained an exclusion for "any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." *Id.*

72. We seek comment on this view. In so doing, we take note of the Eleventh Circuit's decision in *Southern Company v. FCC*.[300] After the enactment of the 1996 Act, the Commission adopted rules to implement its requirements, including rules to implement the new nondiscriminatory access provisions in section 224(f).[301] Construing that statutory provision, the Commission found that the "breadth of the language contained in section 224(f)(1) precludes us from making a blanket determination that Congress did not intend to include transmission facilities."[302] In an order on reconsideration in 1999, the Commission "reaffirm[ed its] decision . . . that electric transmission facilities are not exempted from the pole attachment provisions of section 224."[303] The Eleventh Circuit overturned this conclusion insofar as it referred to transmission towers or other transmission plant, stating in *Southern Company* that "Congress intended to limit [section 224's] application to local distribution facilities."[304]

73. Utilities have argued that *Southern Company* limits the Commission's authority under section 224 to the regulation of local distribution poles only, and that the Commission does not have authority to regulate other types of property that may be owned or controlled by a utility and commonly called a pole, but that is not used in local distribution.[305] Attachers have argued that the Eleventh Circuit did not go that far in *Southern Company*. They have argued that the only issue before the Court was whether the Commission could regulate interstate transmission facilities that are already regulated by Federal Energy Regulatory Commission (FERC), not whether the Commission has jurisdiction to regulate other poles that are local in nature, such as light poles.[306] Attachers have suggested that, in fact, *Southern Company* supports their argument that the term "pole" should be given an ordinary meaning because the

---

[300] *Southern Company v. FCC*, 293 F.3d 1338 (11th Cir. 2002) (*Southern Company*).

[301] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, CC Docket Nos. 96-96 and 95-185, First Report and Order, 11 FCC Rcd 15499, 16059-88, paras. 1123-92 (1996) (subsequent history omitted) (*First Local Competition Order*).

[302] *First Local Competition Order*, 11 FCC Rcd at 16084, para. 1184.

[303] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18059, para. 27 (1999) (*Local Competition Reconsideration Order*).

[304] *Southern Company*, 293 F.3d at 1345-1346 ("[T]he Act generally covers all 'poles, ducts, conduits and rights-of-way,' and these local distribution facilities are covered by the Act, regardless of whether they are used in part for transmission wires or other transmission facilities."). In reaching this conclusion, the Court found that poles are regular components of local distribution systems and not interstate transmission systems, which are regulated by the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act (FPA). *Id*. The Court noted that the FPA divests FERC of jurisdiction over facilities used for local distribution and that the primary facility used to carry transmission wires (i.e., towers) is not mentioned in section 224. *Id*. at 1344-45. The Court also looked at section 224's reverse preemption provision and noted that states lack jurisdiction to regulate interstate transmission facilities. *Id*. at 1345.

[305] POWER Coalition Oct. 29, 2019 Opposition at 4 ("[There] is binding judicial precedent that Section 224 applies exclusively to a utility's 'local distribution facilities.' Because an appellate court has ruled that the unambiguous language of the act mandates such a conclusion, the Commission has no discretion to decide otherwise."); CCU Oct. 29, 2019 Comments at 9; Electric Utilities Oct. 29, 2019 Comments at 8 ("[T]he Eleventh Circuit interpreted 'pole' under Section 224 to mean a utility's 'distribution facilities.'"); Utility Associations Oct. 29, 2019 Opposition at 8 (filed Oct. 29, 2019) ("[T]he Eleventh Circuit found that the Commission's jurisdiction only extended to poles that are part of the electric distribution network.").

[306] *See* AT&T Oct. 29, 2019 Comments at 25 ("Light poles are 'poles' (not interstate transmission towers or plant) and do not fall within the jurisdiction of FERC or any other federal agency."); Crown Castle Oct. 29, 2019 Comments at 40-41 ("[T]he focus of the Court's analysis was the local versus interstate nature of the facilities at issue."); Verizon Oct. 29, 2019 Comments at 5; CTIA Nov. 20, 2019 Reply at 29 ("A fair reading of the opinion makes clear that the court referenced the components of a *local* distribution systems solely in order to distinguish them from the components of an *interstate transmission* system, which was the issue before the court." (emphasis in original)).

Court stated in another part of its opinion that: (1) the term "any" is construed expansively to mean "all" unless Congress adds language limiting its breadth; and (2) "the lack of a limitation upon the adjective 'any' means that § 224(f)(1) expands the Act's coverage to all 'poles, ducts, conduits, or rights-of-way owned or controlled by a utility.'"[307] The Court made these statements when concluding that utilities must provide nondiscriminatory access to all of their poles under section 224(f)(1) "regardless of whether the facility is presently being used for telecommunications purposes,"[308] upholding a prior determination by the Commission that "use of any utility pole, duct, conduit, or right-of-way for wire communications triggers access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility, including those not currently used for wire communications."[309]

74. Does *Southern Company* limit the Commission's jurisdiction under section 224 to the regulation of local distribution poles as utilities have suggested, or does it recognize that section 224 applies to any type of pole that is owned or controlled by a utility, as some attachers have suggested? Does the Court's conclusion that the Commission's jurisdiction does not extend to facilities used for interstate transmission necessarily limit the "any pole" language used in section 224(f)(1), i.e., does the decision eliminate a class of poles subject to section 224(f)(1)?[310] Do attachers contend that the "transmission facilities" exempt from section 224(f)(1) pursuant to *Southern Company* are not and do not include poles?[311] Does the Court's conclusion that utilities must provide access to any pole irrespective of whether it is currently being used for wire communications mean that utilities must provide access to all poles of all types, irrespective of whether a particular type ever has been or ever would be used for wire communications?[312] Or, given that *Southern Company* was decided in the specific context of poles

---

[307] *Southern Company,* 293 F.3d at 350; *see* CTIA Petition at 25; Crown Castle Nov. 20 Reply at 10; AT&T Oct. 29, 2019 Comments at 25.

[308] *Southern Company*, 293 F.3d at 1349-50. The Court concluded that the definition of a "utility" in the statute is not limited to entities that use "all" of their facilities for wire communications, and that "the natural inference" from the lack of such limiting language is "that a utility is an entity that owns or controls *some* facilities used for that purpose." *Id*. at 1349 (emphasis in original). The Court coupled that inference with the language of section 224(f)(1) to conclude that utilities must provide nondiscriminatory access to all of their poles if they use some of them for wire communications. *Id.* at 1349-50.

[309] *Local Competition Reconsideration Order*, 14 FCC Rcd at 18059, para. 27; *First Local Competition Order*, 11 FCC Rcd at 16080, para. 1173; *see also Local Competition Reconsideration Order*, 14 FCC Rcd at 18077, para. 79 (rejecting arguments that "the access provisions of section 224(f) should be invoked on a pole-by-pole rather than a system-wide basis").

[310] *See* Electric Utilities Nov. 20, 2019 Reply at 2 ("Though stakeholders might fairly dispute the legal import of the *Southern Company* case, no stakeholder can credibly dispute the central holding of *Southern Company*: that transmission poles fall outside the coverage of Section 224 . . . This, alone, means that Section 224 does not cover **all** poles owned or controlled by a utility . . ." (emphasis in original)); POWER Coalition Nov. 20, 2019 Reply at 3 ("The Eleventh Circuit concluded that Congress's grant of authority to the Commission under Section 224 is constrained by the language of Section 224(a) and Section 224(c), and therefore, does not extend to **all** poles owned or controlled by a utility, as CTIA asserts. To the contrary, the Eleventh Circuit determined that the unambiguous language of Section 224 **limits** the Commission's jurisdiction to 'utilities' local distribution facilities." (emphasis in original)). *But see* AT&T Nov. 20, 2019 Reply at 19-20 ("Section 224(a)(1), which is just a definitions section, 'concerns only *whose* poles are covered' it does not address what poles are covered or what those entities are required to do. Those questions are answered in Section 224(f)(1), which unambiguously requires utilities to 'provide . . . nondiscriminatory access to *any* pole . . . owned or controlled by [them].'" (emphasis in original)).

[311] In *Southern Company*, the Court referenced an argument by the Commission that the distinction between electric transmission facilities and electric distribution facilities is not as clear as utilities argued, and concluded that the fact that a pole may have some transmission facilities attached to it "does not exclude it from the coverage of the Act. These local distribution facilities, festooned as they may be with transmission wires, are plainly within the FCC's jurisdiction under the terms of the Act." 293 F.3d at 1345-46. This appears to recognize that poles may be used in some capacity for interstate transmission, but as stated above, we seek comment on this point.

[312] *See* AT&T Nov. 20, 2019 Reply at 20 ("[T]he Eleventh Circuit has also explicitly rejected the argument that

(continued….)

used for local distribution of electric service, does the decision simply hold that a particular local distribution pole does not need to have communications wires attached for the section 224(f)(1) access obligation to apply if any of the utility's other local distribution poles have communications wires attached?[313] Does the fact that the Court interpreted the scope of the "used, in whole or in part, for any wire communications" language in section 224(a)(1) to interpret the scope of access required under section 224(f)(1) indicate that section 224(a) is a limiting factor on the "any pole" language of the latter provision? Fundamentally, should *Southern Company* be viewed as definitively determining what constitutes a "pole" for the purposes of section 224 as opposed to the reach of the Commission's jurisdiction with respect to particular use cases or circumstances (e.g., use for interstate transmissions, whether wire communications are currently attached)?[314]

75. Does the text of the 1996 Act otherwise establish a clear meaning of the term "pole" or demonstrate congressional intent to limit or expand the meaning of that term? For instance, the exception to the nondiscriminatory access provision in section 224(f)(1) states that "a utility *providing electric service* may deny a cable television system or any telecommunications carrier access to its poles . . . on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[315] Does the specific reference to utilities providing electric service in the statutory text suggest that Congress had a particular type of pole (i.e., a local distribution pole for electricity) in mind when it enacted section 224(f)? Or, does limiting the exception to electric facilities simply "reflect[] Congress' acknowledgment that issues involving capacity, safety, reliability and engineering raise heightened concerns when electricity is involved, because electricity is inherently more dangerous than telecommunications services"?[316] Does other language in the text of section 224 demonstrate that Congress clearly intended a specific meaning for the term "pole"?

76. If commenters argue that Congress' intent regarding the meaning of the term "pole" as used in section 224 is not clear from the text, what extrinsic sources should the Commission consider to determine the best reading of the statutory language?[317] Does the statute's legislative history clearly indicate the scope of poles that Congress intended to be regulated under the statute? The Senate Report for the 1978 Act indicates that Congress was concerned about electric utilities and telephone companies using their monopoly ownership or control of existing utility poles to extract exorbitant fees from cable system operators for access to the existing poles they needed to distribute their facilities.[318] It states that the poles to which cable television systems need to attach their facilities "are usually owned by telephone

(Continued from previous page)
Section 224(a)(1)'s reference to poles that are 'used, in whole or in part, for wire communications' limits the scope of a utility's duties under Section 224(f)(1).").

[313] *See* Utility Associations Nov. 20, 2019 Reply at 3 ("[T]he references made by certain commenters to *Southern Company*'s discussion of Section 224(f), when considered in the full context of the court's decision, mean only that the 'poles' **within the scope of Section 224(a)** need not be used for wired communications in each individual case to be subject to the access requirements of Section 224(f)." (emphasis in original)).

[314] *See* Crown Castle Nov. 20, 2019 Reply at 10 ("No inquiry was made regarding the inclusion of utility owned streetlight poles in the Section 224 definition of poles."); AT&T Nov. 20, 2019 Reply at 21 ("The Eleventh Circuit was not asked and did not find that Section 224 does not apply to light poles or other types of poles . . . ."); CTIA Nov. 20, 2019 Reply at 29 (stating that the Eleventh Circuit's holding was limited to reversing the Commission's prior statement that electric transmission facilities are not exempted from Section 224 and to "create a carve-out solely for transmission poles; it did not carve out light poles or any other facility").

[315] 47 U.S.C. § 224(f)(2) (emphasis added).

[316] *First Local Competition Order*, 11 FCC Rcd at 16081, para. 1177.

[317] *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) ("Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms.").

[318] *See* S. Rep. No. 95-580 at 13 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 109 (hereinafter S. Rep. No. 95-580).

and electric utilities,"[319] and refers to poles used for the provision of telephone and electric service when discussing a formula to be used by the Commission to determine whether pole attachment rates are just and reasonable.[320]

77. Do commenters interpret the Senate Report for the 1978 Act as contemplating a particular type of pole that would be subject to the Commission's jurisdiction under section 224? We would expect the legislative history of the 1978 Act to discuss existing poles owned and controlled by providers of electric and telecommunication services as obvious examples of structures to which cable system operators needed to attach their facilities, but discussing certain types of poles may not necessarily evidence congressional intent to exclude others.[321] Are there other statements from the legislative history of the 1978 Act or the 1996 Act that indicate Congress's intent? We note that, in 1996, the Commission held that the "intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility."[322] Was that conclusion correct? Are there other extrinsic sources the Commission should consider if we determine that the term "pole" is ambiguous and seek to adopt a definition based on the best reading of the statutory language?

2. Whether the Best Reading of the Term "Pole" Specifically Includes Light Poles

78. If the Commission were to give the term "pole" in section 224 its ordinary, common meaning, such as "a long slender usually cylindrical object (such as a length of wood),"[323] objects falling within that definition would arguably still need to satisfy explicit requirements in the text of section 224 to be subject to regulation under that statute.[324] In this section, we seek comment on whether light poles meet those requirements, and whether they would qualify as local distribution poles if the Commission were to conclude that its jurisdiction is limited to regulating such poles.

79. *Scope of Light Poles.* We begin this inquiry by seeking comment on the types of light poles that attachers seek to have regulated by section 224 and their characteristics, so that the Commission may evaluate how the requirements of section 224 would apply to them.[325] We assume that

---

[319] *Id.* at 12.

[320] *See id.* at 19-21. For instance, the legislative history discusses make-ready costs as "those necessary to rearrange existing telephone and power lines to maintain clearances between different pole lines required by individual utility construction and safety standards and National Electrical Safety Codes and to reinforce poles when necessary to increase load capacity." *Id.* at 19. The Report also explains how "usable space" factors into its formula, and states that "on a typical utility pole 35 feet in length there are 11 feet of usable space (that space above the minimum grade level clearance used to attach cable, telephone, and electric wires and associated equipment)." *Id.* at 20. The Report also states that the jurisdictional reach of the Commission under section 224 "extends only to those entities which participate in the provision of communications space on utility poles." *Id.* at 15.

[321] CTIA Nov. 20, 2019 Reply at 31 ("[T]he fact that a Senate report does not mention 'lighting' does not convey an intent to exclude light poles—indeed, the same report also includes no mention of 'distribution.'"); *compare* Electric Utilities Oct. 29, 2019 Comments at 6 (stating that "neither the Committee Report nor the Act itself contains a single reference to any form of lighting asset (*e.g.,* streetlights, lampposts, light standards, light poles, lighting brackets, etc.)").

[322] *First Local Competition Order*, 11 FCC Rcd at 16085, para. 1185.

[323] Merriam-Webster, *Pole*, https://www.merriam-webster.com/dictionary/pole (last visited July 24, 2025).

[324] *See* 47 U.S.C. § 224(a).

[325] Utility Associations Oct. 29, 2019 Opposition at 3-4 (stating that "CTIA's Petition fails to identify what 'light poles' its members seek to access or to consider the substantial variations in how utility-owned light poles are constructed and used. For example, a 'light pole' could be a 100-foot metal or concrete structure on the side of an interstate highway or in shopping mall parking lot. Or it could be a decorative fiberglass structure in a residential (continued….)

attachers are not concerned about poles that are already subject to section 224 because they are local distribution poles that also have lamp attachments.[326] Is that assumption correct? What are the light pole structures that attachers seek access to under section 224? Are they limited to street lighting? Do they include area lighting poles located away from streets (e.g., along walking paths, in parking lots)? Do they include light poles on both private or public property, e.g., in or out of the public rights-of-way?[327] Would they include flag poles owned or controlled by utilities and that have a lamp attachment? Do the light poles that attachers seek to have regulated have particular dimensions or features? Are they constructed using a particular type of material? Do they already meet certain loading and power requirements for communications attachments? Are they all regulated by federal, state, or local government agencies or do they include light poles that are unregulated?[328] At a basic level, what are the common attributes of light poles that attachers seek to have regulated under section 224 and why do commenters believe these attributes should cause those light poles to be regulated? Would the Commission need to define what constitutes a light pole if it were to determine that light poles are subject to regulation under section 224, and if so, what should that definition be? How many light poles would be brought within the Commission's jurisdiction if we determine that they are poles within the meaning of section 224? What else does the Commission need to know to understand the type and scope of light poles that attachers seek to have regulated under section 224?

80. *Owned or Controlled by a Utility*. Section 224 only applies to poles that are owned or controlled by a utility.[329] What utilities own or control light poles? Are most light poles owned or controlled by electric utilities versus other types of utilities? The record on the CTIA Petition indicates that many light poles are installed pursuant to private agreements with third parties, including localities, that confer rights and obligations on the third parties with respect to the poles.[330] Under those agreements, what entity owns the light pole and what entity controls it? Are there arrangements where the light pole may be owned by the utility but a third party controls it? Is the reverse true, where a third

(Continued from previous page)
subdivision, or on a golf course"); POWER Coalition Oct. 29, 2019 Comments at 9-10 ("CTIA takes a one-size-fits-all approach and incorrectly presumes that all utility-owned light poles are standardized, if not identical, in terms of construction, maintenance, and use. This is simply not the case.").

[326] *See* Electric Utilities Oct. 29, 2019 Comments at 5 n.3 ("[T]he Electric Utilities do **not** contend that distribution poles with streetlights are outside the Commission's jurisdiction. The support structures at issue, here, are those that exist exclusively or primarily for the purpose of street and/or outdoor area lighting." (emphasis in original)); POWER Coalition Nov. 20, 2019 Reply at 2 n.5 ("Although the Petition does not attempt to define 'light poles,' for purposes of POWER Coalition Comments, and these reply comments, 'light poles' are understood to be poles that do not support any component of a utility owner's electric distribution system.").

[327] *See* Electric Utilities Oct. 29, 2019 Comments at 11 (stating that "Alabama Power Company . . . owns approximately 152,000 structures used primarily to support street and outdoor area lights, approximately 113,000 of which are located on private property").

[328] *See id.* at 12 ("[U]nlike distribution poles, many lighting support structures are not part of any regulated base.").

[329] 47 U.S.C. § 224(a)(1) (defining the term "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles . . . used, in whole or in part, for wire communications"); *id.* § 224(a)(4) (defining a "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole . . . owned or controlled by a utility").

[330] *See* National Assoc. Telecomm. Officers and Advisors (NATOA) Oct. 29, 2019 Comments at 14 ("[M]unicipalities often have contractual rights related to street lights, including the right to purchase or require removal of any poles, and obligations like maintenance costs and indemnification, that do not apply to standard utility poles."); Utility Association Oct. 29, 2019 Comments at 4 (stating that all dedicated light poles owned by electric utility companies "are custom-built pursuant to private contracts between the utility pole owner and its customer, at the customer's direction and expense"); Xcel Energy Oct. 29, 2019 Comments at 6 ("Xcel Energy installs and maintains street light poles at the request of the customer (e.g., a municipality or homeowners' association) pursuant to the terms of a privately-negotiated agreement between the parties.").

party owns the light pole but a utility controls it? Are there co-ownership and/or co-controller arrangements? Who are the third parties that may have an ownership or control interest in a light pole (e.g., private residential communities, private retailers or venue owners)?[331] How frequently is the third-party owner or controller of the light pole a state or municipality,[332] and what are the implications of that given that section 224(a) excludes states and "any political subdivision, agency, or instrumentality" of a state from the definition of "utility" subject to regulation under section 224?[333] How frequently is the third-party owner or controller another entity excluded from the definition of "utility" under section 224(a)(1)? What specific rights are conferred on third parties with respect to the location, design, construction, modification, and removal of light poles?[334] Do the third-party agreements contain any express provisions prohibiting utilities from providing access to light poles for communications attachments, either at all or without the third party's consent? [335]

81. What percentage of light poles that attachers seek to have regulated under section 224 are installed pursuant to third-party agreements? The record on CTIA's Petition indicates that attachers are currently obtaining at least some access to light poles under private agreements.[336] How has that process worked, and could it serve as a model for enabling access if it were mandated under section 224(f)(1)? Who are the parties to light pole access agreements when a third party has some degree of ownership or control of the light pole? Just the attacher and the utility, or does the third party also execute the agreement?[337] If the third party is a party to the agreement, how would that impact the Commission's

---

[331] *See* National League of Cities et al. Oct. 29, 2019 Comments at 7 n.26 ("[I]n some cases, pursuant to a development plan, a light pole is owned or controlled by a home owners' association."); POWER Coalition Oct. 29, 2019 Comments at 8 ("[I]n some states, such as Virginia, light poles are provided for newly constructed residential communities pursuant to private contracts.").

[332] *See* National League of Cities et al. Oct. 29, 2019 Comments at 7 ("Localities commonly control the design of light poles installed by utilities, and pay utilities not only for the service provided, but the cost of the poles and fixtures in a locality's selected design. The poles are not placed on the basis of utilities' preferences, but in a manner that ensures lighting is properly placed and that the lighting design fits in with the community. Installation, maintenance, and ongoing costs are paid by localities, and local rights to assume control of the poles are protected in many cases by contract or tariff. The electric utility may have limited authority to control use of the poles.").

[333] 47 U.S.C. § 224(a)(1) (excluding "any person owned by . . . any State" from the definition of "utility"), (a)(3) (defining "State" to include "any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof").

[334] Utility Associations Oct. 29, 2019 Comments at 4 n.16 ("[T]hese private contracts also require a utility pole owner to *remove* a light pole at the request of the party that commissioned it. In other words, a utility pole owner can make no assurances with respect to the continuing availability of a dedicated light pole.") (emphasis in original); Xcel Energy Oct. 29, 2019 Comments at 6 ("The customer – not Xcel Energy – determines the specific type of street light or street light pole to be installed at an particular location, and the customer must consent to the modification or replacement of any street light installed pursuant to the street light agreement.").

[335] Utility Associations Oct. 29, 2019 Comments at 4 ("[A] utility pole owner has no discretion to modify or replace a dedicated light pole to accommodate communications equipment and has no authority to grant access to the pole without the consent of the party that commissioned it."); Xcel Energy Oct. 29, 2019 Comments at 6 ("The decision of whether to allow the colocation of wireless equipment on a street light pole is . . . not within the sole discretion of Xcel Energy, even when Xcel Energy owns the street light pole in question.").

[336] Letter from Lisa Koop, Senior Attorney, Alliant Energy to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed Nov. 20, 2019) (Alliant Energy Nov. 20, 2019 *Ex Parte* Letter) ("[O]ver the last five years, Alliant Energy has developed solutions with wireless and small cell providers who have requested access to street lights, wanted to use the unusable space on those poles, and developed negotiated agreements that have benefitted both parties."); POWER Coalition Oct. 29, 2019 Comments at 12 ("[E]lectric utilities do, in many cases, provide access to light poles where capacity exists, and such access would not be unsafe, or compromise the integrity of the pole."); Xcel Energy Oct. 29, 2019 Comments at 8-11 (describing Xcel Energy's "Small Cell Dual Use Street Light Pole" program).

jurisdiction to adjudicate matters under the access agreement, i.e., could the Commission require the third party to comply with any ordered relief?

82. We observe that in the context of private easements, the Commission has found that the extent of a utility's ownership or control is a question of state law,[338] and that "consistent with the purposes of Section 224, utility ownership or control of rights-of-way and other covered facilities exists only if the utility could voluntarily provide access to a third party and would be entitled to compensation for doing so."[339] Do commenters agree that the extent of a utility's ownership or control of poles is also determined under state law, and what are the implications of that for light poles that are installed pursuant to private agreements with third parties? If the Commission were to determine that at least some light poles are subject to section 224, would it have to create an exception for cases in which utilities cannot provide access in exchange for a fee voluntarily and/or unilaterally under state law?

83. *Used, in Whole or in Part, for Wire Communications.* Are light poles used, in whole or in part, for any wire communications?[340] If so, for what specific forms of wire communication? We note that the Commission has found that "[a]lthough internal communications are used solely to promote the efficient distribution of electricity, the definition of 'wire communication' is broad and clearly encompasses an electric utility's internal communications."[341] Do utilities use internal wire communications for their light poles? If so, in what manner? If light poles are not used in whole or in part for wire communications, does that necessarily mean that light poles must be excluded from regulation under section 224? As stated above, in *Southern Company*, the Eleventh Circuit agreed with the Commission that it is not necessary for *all* of a utility's poles to be used for wire communications for the nondiscriminatory access provision in section 224(f)(1) to apply.[342] Does that mean that if a particular

(Continued from previous page)

[337] *See* Electric Utilities Oct. 29, 2019 Comments at 11 ("Any collocation of communications facilities on lighting support structures is a three-party transaction at minimum: the structure owner, the collocating entity, and the lighting customer.").

[338] *First Local Competition Order*, 11 FCC Rcd at 16082, para. 1179.

[339] *Promotion of Competitive Networks in Local Telecommunications Markets et al.*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983, 23023, para. 87 (2000) (*2000 Competitive Networks Order*); *see also UCA, L.L.C. v. Lansdowne Cmty. Dev.*, 215 F. Supp. 2d 742, 751-52 n.29 (E.D. Va. 2002) (Section 224 "mandates access to all telecommunications easements owned or controlled by a utility even though the utility uses only one of those easements for wire communications. But the breadth of the access requirement in this respect does not support Adelphia's contention that the Pole Act requires a utility to grant cable television providers access to a right-of-way when the utility has any degree of ownership or control of the right-of-way. Adelphia's proposed construction would require a utility to grant access to rights it does not possess, a result Congress neither contemplated nor directed in the Pole Act.").

[340] 47 U.S.C. § 224(a)(1); CCU Oct. 29, 2019 Comments at 10 ("Not only are streetlight-only poles not part of utility distribution systems, they are also not used for wire communications."); Utility Associations Oct. 29, 2019 Comments at 9 ("[L]ight poles are not part of an electric utility's local electric distribution system and do not carry or support any communications or electric distribution lines, and thus they are not facilities that are 'used, in whole or in part, for any wire communications.'").

[341] *First Local Competition Order*, 11 FCC Rcd at 16080, para. 1174; *see also Local Competition Reconsideration Order*, 14 FCC Rcd 18049, para. 80 ("We continue to reject the contention that, because an electric utility's internal communications do not pose a competitive threat to third-party cable operators or telecommunications carriers, such internal communications are not 'wire communications' and do not trigger access obligations. Although internal communications may be used solely to promote the efficient distribution of electricity, the definition of "wire communication" is broad and clearly encompasses an electric utility's internal communications.").

[342] *Southern Company*, 293 F. 3d at 1349-50 (finding that the language of sections 224(a)(1) and (f)(1) "mandates that utilities make all of their 'poles, ducts, conduits, or rights-of-way' available to third-party attachers (unless one of the exceptions listed in § 224(f)(2) applies), regardless of whether the facility is presently being used for

(continued….)

utility owns or controls both light poles and local distribution poles, and uses any of them for wire communications, that is enough to bring all of them under section 224?[343]

84. *Local Distribution Poles.* Crown Castle has suggested that light poles are local distribution poles within the meaning of the Eleventh Circuit's decision in *Southern Company*.[344] Specifically, it observes that "Street Lighting and Signal Systems" are facilities listed under "Distribution Plant" in FERC Form 1, the comprehensive financial and operating report utilities submit annually for electric rate regulation, market oversight analysis, and financial audits, and a primary source of data in the Commission's pole attachment rate formulas.[345] "Poles, Towers, and Fixtures" are listed separately under "Distribution Plant," however.[346] Does that suggest that light poles are local distribution *plant*, but something different than local distribution *poles* under FERC's Uniform System of Accounts? Or, are those merely semantics? Is FERC's Uniform System of Accounts dispositive with respect to what constitutes a local distribution pole?[347] What factors determine what constitutes a local distribution pole? In *Southern Company*, the Eleventh Circuit considered a state public service commission's description of an electric utility's distribution system as being "comprised of substations, underground cables, poles, overhead conductors, transformers, service drops, and meters that supply power to the customers."[348] Are light poles part of an equivalent local distribution system to provide lighting? If so, is that lighting a similar public utility service, what are the components of the distribution system, and who are the customers?[349]

(Continued from previous page)
telecommunications purposes.") (quoting 47 U.S.C. § 224(f)(1)).

[343] CTIA Nov. 20, 2019 Reply at 30 ("[I]f the utility engages in wire communication, then all of its poles are subject to Section 224.").

[344] *See* Crown Castle Oct. 29, 2019 Comments at 41 ("Under the Court's analysis in *Southern Company*, streetlight poles are local distribution facilities subject to the mandatory access obligations of Section 224(f) . . . ."); Crown Castle Nov. 20, 2019 Reply at 11-12.

[345] *See* Crown Castle Oct. 29, 2019 Comments at 41; Crown Castle Nov. 20, 2019 Reply at 11; FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees and Others, *available at* https://www.ferc.gov/general-information-0/electric-industry-forms (last visited July 24, 2025) (FERC Form 1). As discussed below, FERC Form 1 provides key data inputs for the Commission's pole attachment rate formulas. *See infra* Section IV.F.3.

[346] FERC's rules for its Uniform System of Accounts state that Account 364, used for "Poles, Towers, and Fixtures," "shall include the cost installed of poles, towers, and appurtenant fixtures used for supporting overhead distribution conductors and service wires." 18 CFR pt. 101, Electric Plant Accounts, 364 Poles, towers and fixtures. Account 373, used for "Street Lighting and Signal Systems," "shall include the cost installed of equipment used wholly for public street and highway lighting or traffic, fire alarm, police, and other signal systems." 18 CFR pt. 101, Electric Plant Accounts, 373 Street lighting and signal systems.

[347] *See* CCU Nov. 20, 2019 Reply at 3 ("[S]imply because the Uniform System of Accounts places streetlight-only poles in the broad category of 'distribution facilities' does not make them part of the electric distribution system covered by the Act.'"); Electric Utilities Nov. 20, 2019 Reply at 5 (asserting that there is some precedent suggesting that the organization of FERC accounting is not dispositive with respect to the classification of street light assets).

[348] *Southern Company*, 293 F.3d at 1343-44 (citation omitted).

[349] *See* Electric Utilities Oct. 29, 2019 Comments at 11 ("The Electric Utilities do not construct 'networks' of lighting support structures for the generic purpose of meeting any kind of service requirements within their designated service areas. Instead, the Electric Utilities construct street and outdoor area lights only where and when a specific customer makes a specific request. Lighting support structures thus lack the public purpose characteristic of local distribution poles."); POWER Coalition Oct. 29, 2019 Comments at 6 ("Utility-owned light poles simply are not local distribution facilities. They do not 'supply power to the customers' and they are not in any way a component of the facilities that are involved in supplying power to customers. Instead, they are distinct, special purpose facilities custom-provided to light an area."). *But see* CTIA Nov. 20, 2019 Reply at 28 ("Light poles serve an obvious public purpose when they illuminate a busy street or a private, secluded property and thereby enhance
(continued….)

85. *Prior Commission Statements.* Some utilities have suggested that the Commission has already determined that light poles are distinct from utility poles for the purposes of section 224, citing a proceeding in which the Commission addressed exclusions from routine historic preservation review under the National Historic Preservation Act (NHPA).[350] In the *2014 Infrastructure Order*, the Commission considered the impact wireless deployments have on the environment and historic properties, and expanded the scope of existing structures excluded from routine historic preservation review to include "collocations on existing utility structures, including utility poles and electric transmission towers, to the extent they are not already excluded in the Collocation Agreement," subject to certain criteria and limitations.[351] The Commission defined "utility structures" for the purpose of the exclusion as "utility poles or electric transmission towers in active use by a 'utility' as defined in Section 224 of the Communications Act, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting."[352] The Commission explained that "[u]tility structures," as it was defining them for purposes of the NHPA exclusion, "are, by their nature, designed to hold a variety of electrical, communications, or other equipment, and they already hold such equipment. Their inherent characteristic thus incorporates the support of attachments, and their uses have continued to evolve with changes in technology since they were first used in the mid-19th century for distribution of telegraph services."[353]

86. Does the Commission's decision to define "utility structures" for the specific purpose of exclusions from routine historic reviews under the NHPA determine the scope of poles that may be regulated under section 224? What inference, if any, should we draw from the fact that the *2014 Infrastructure Order* expressly defined "utility" by reference to the definition of that term in section 224 of the Act,[354] but did not similarly expressly define "pole," "utility pole" or "utility structure" by reference to language in section 224? Was the Commission focused on drawing distinctions relevant to the regulatory context at issue—exclusion from historic preservation review under NHPA— that could be entirely unrelated to the interpretation of a "pole" under section 224 of the Act?[355] We note that the Commission's definition of "utility structures" includes "electric transmission towers," which are outside of the Commission's jurisdiction under section 224 pursuant to the Eleventh Circuit's holding in *Southern Company*. We also note that since the *2014 Infrastructure Order,* the Commission has stated that "light poles, traffic lights, utility poles, and other similar property" are suitable hosts for Small Wireless Facilities.[356] Nevertheless, we seek comment on whether the Commission's statements in the NHPA

(Continued from previous page)
public safety.").

[350] *See* Electric Utilities Oct. 29, 2019 Comments at 10; CCU Nov. 20, 2019 Reply at 4-5; *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies et al*., WT Docket Nos. 13- 238 and 13-32, WC Docket No. 11-59, Report and Order, 29 FCC Rcd 12865 (2014) (*2014 Infrastructure Order*).

[351] *2014 Infrastructure* Order, 29 FCC Rcd at 12906-07, paras. 88, 90.

[352] *Id.* at 12907, para. 91.

[353] *Id.*

[354] *Id.*

[355] *See, e.g.*, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies et al*., WT Docket Nos. 13- 238 and 13-32, WC Docket No. 11-59, Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14261, para. 61 & n.122 (2013) (seeking comment on how to define a "utility pole" for purposes of exclusions from historic preservation review, including whether to leave structures "such as street lamps" outside that definition because structures like street lamps "may be more likely to have historic value"); *see also 2014 Infrastructure Order*, 29 FCC Rcd at 12907, para. 91 (omitting from the definition of "utility structure" excluded from NHPA review "light poles, lamp posts, and other structures whose primary purpose is to provide public lighting").

[356] *Small Cell Order*, 33 FCC Rcd at 9112-13, para. 50. We recognize, as utilities suggest, that the Commission made this statement in the context of access to government-owned property in state and local rights-of-way under sections 253 and 332 of the 1996 Act. *See* CCU Light Pole Reply at 3-4. Nevertheless, the statutory basis for
(continued….)

proceeding and other relevant proceedings are consistent or inconsistent with including light poles within a definition of poles regulated by section 224.

3. Applying the Commission's Rules to Light Poles and Other Implementation Matters

87. *Rule Application and Amendments*. We seek comment on whether the Commission's existing pole attachment rules can be applied to light poles if we conclude that they should be regulated under section 224 and whether there are any specific rules that would need to be amended to do so. If commenters contend that some of the Commission's rules cannot be applied to light poles, we ask that commenters identify the specific rules at issue, the reasons the rule cannot be applied as currently written, and any proposed amendments that would enable the rule to be applied to light poles.

88. In particular, we seek comment on how the rate formulas that the Commission has adopted to determine whether a pole attachment rate is just and reasonable would apply to light poles. For instance, when an attacher submits a complaint to the Commission that a particular rate is unjust or unreasonable, it is required to submit data and information supporting the complaint, including all information necessary to apply the rate formulas, and those "[d]ata should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies . . . ."[357] Two components of the Commission's recurring rate formulas[358] for attachments to poles by telecommunications carriers are the Net Cost of a Bare Pole[359] and the Carrying Charge Rate,[360] the product of which represents the annual expense incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments.[361] Data used to calculate values for these two components include pole investment, the

(Continued from previous page)
regulating access does not alter the Commission's general conclusion that the equipment is functionally suitable for wireless attachments.

[357] 47 CFR § 1.1404(e).

[358] Capital costs that the utility recovers up-front via non-recurring make-ready fees are excluded from the recurring pole attachment rates determined by these formulas. *See id.* § 1.1409(c).

[359] Net Cost of a Bare Pole = (Net Pole Investment/Total Number of Poles) x .95 (for ILEC-owned poles) or x .85 (for Electric Utility-Owned Poles). *See Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of The Telecommunications Act of 1996*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12176, Appx. E-2 (2001) (*Pole Attachment Rates, Terms, and Conditions Reconsideration Order*).

[360] Carrying Charge Rate = Administrative + Maintenance + Depreciation + Taxes + Return Elements, where:

> Administrative Element = Total General and Administrative Expense/Net Plant Investment;
> Maintenance Element = Pole Maintenance Expense/Net Pole Investment;
> Depreciation Element = (Gross Pole Investment/Net Pole Investment) x Depreciation Rate for Gross Pole Investment;
> Taxes Element = Tax Expense/Net Plant Investment;
> Return Element = State Authorized Rate of Return (or FCC Authorized Rate of Return if there is no State Authorized Rate of Return); and
> Net Investment = Gross Investment - Accumulated Depreciation - Accumulated Deferred Income Taxes with respect to a particular type of plant.

Pole Attachment Rates, Terms, and Conditions Reconsideration Order, 16 FCC Rcd at 12176, Appx. E-2.

[361] The maximum just and reasonable rate for attachments to poles by any telecommunications carrier or cable operator providing telecommunications services is the higher of the rates determined by using the formulas specified under sections 1.1406(d)(2)(i) and 1.1406 (d)(2)(ii) of the Commission's rules. 47 CFR § 1.1406(d)(2)(i)-(ii). Typically, the section 1.1406(d)(2)(i) formula yields the higher of these two rates. The two formulas, re-written for ease of understanding, are:

(continued….)

number of utility-owned poles, total plant investment, pole maintenance expense, pole depreciation rate, accumulated depreciation, accumulated deferred income taxes, total general and administrative expense, tax expense, and the rate of return. An appurtenance factor (.85 for electric utility-owned poles) is used to remove estimates of crossarm and other non-pole investment from the pole investment account.[362]

89. Are all the cost and other data necessary to run the Commission's existing rate formulas available for light poles in FERC Form 1 or other reports filed with state or federal regulatory agencies? Utilities point out that FERC's Uniform System of Accounts establishes separate investment accounts for "Poles, Towers, and Fixtures" (Account 364) and "Street Lighting and Signal Systems" (Accounts 371 and 373).[363] Do the latter accounts contain equivalent data, such that the Commission could use these data to calculate rates for light pole attachments? Would the investment data reflected in these accounts have to be adjusted to remove investments other than investment that is strictly for light poles (e.g., lamp investment) or to remove signal system investments? Would the expense data reflected in these accounts have to be adjusted to remove expenses other than expenses that are incurred strictly to maintain light poles (e.g., labor expenses incurred to replace or clean lamps) or to remove signal system expenses? As for depreciation expense, is the deprecation rate needed to calculate the depreciation element reflected in the Carrying Charge Rate routinely stated on FERC Form 1 for light poles in particular? Do the Commission's rules mandate use of data from specific FERC accounts (e.g., Account 364) in its rate formulas, to the exclusion of data from accounts related to light poles (e.g., Account 373) or other accounts? Some utilities have argued that some light poles are not regulated, suggesting that there is no accounting data submitted for those poles to regulatory bodies that could be used in the Commission's rate formula[364] Is that accurate? If that is the case, what information could the Commission use in its pole attachment rate formulas to determine whether an attachment rate is just and reasonable? What other data issues may preclude use of the Commission's pole attachment rate formula to determine a rate for attachment to light poles?

90. A third component of the Commission's pole attachment rate formula is the Space Factor, which apportions the annual expense the utility incurs to provide space on a pole among all of the attachers including the utility. It requires estimates of the space occupied by an attachment, pole height, usable space, unusable space, and the average number of attachers on a pole.[365] The Commission's rules

(Continued from previous page)

Section 1.1406(d)(2)(i) Telecom Rate = Space Factor x Net Cost of a Bare Pole x Carrying Charge Rate x Cost Allocator, where:

Space Factor = (Space Occupied + (2/3 x Unusable Space/No. of Attachers))/Pole Height

Cost Allocator =

.66 where there are 5 attachers;
.56 where there are 4 attachers;
.44 where there are 3 attachers;
.31 where there are 2 attachers; and
an interpolated percentage where the number of attachers is not a whole number.

Section 1.1406(d)(2)(ii) Telecom Rate = Space Factor x Net Cost of a Bare Pole x Maintenance and Administrative Carrying Charge Rate.

[362] The specific FERC Form 1 accounts used in the Commission's pole attachment rate formulas are set forth in the *Pole Attachment Rates, Terms, and Conditions Reconsideration Order*, 16 FCC Rcd at 12176, Appx. E-2.

[363] *See* Electric Utilities Oct. 29, 2019 Comments at 12; CCU Oct. 29, 2019 Comments at 10-11; POWER Coalition Oct. 29, 2019 Comments at 10-11; Xcel Energy Oct. 29, 2019 Comments at 5 n.6.

[364] *See* Electric Utilities Oct. 29, 2019 Comments at 12.

[365] 47 CFR § 1.1406(d)(2). The fourth and final component of the Commission's Telecom Rate formula in section 1.1406(d)(2)(i) of the Commission's rules, the cost allocator, reduces the rate that would otherwise be calculated as the number of attachers decreases. *Id.* § 1.1406(d)(2)(i). It operates to equate the rate obtained for attachments by (continued….)

contain rebuttable presumptions that "the space occupied by an attachment is presumed to be one foot. The amount of usable space is presumed to be 13.5 feet. The amount of unusable space is presumed to be 24 feet. The pole height is presumed to be 37.5 feet."[366] We are not convinced that these presumptions could reasonably be applied to light poles.[367] A 37.5-foot local distribution pole, for example, would have a buried depth of approximately six feet, reducing its otherwise usable space by an equal number of feet.[368] In contrast, some light poles are bolted into a concrete footing at or above ground level,[369] so otherwise usable space on these poles is not lost underground. Moreover, local distribution poles historically were built to accommodate attachments by incumbent local exchange carriers and electric utilities, and more recently cable operators, and thus the Commission's rebuttable presumptions were designed to reflect the specific pole height and usable space requirements of these particular attachers, rather than light poles.[370] If these presumptions do not apply, would the Commission need to adopt new presumptions specific to light poles, or would attachers and utilities seek to rebut the existing presumptions each time a rate complaint is filed? Do commenters believe that the Commission's existing pole attachment rate formulas and FERC Form 1 or data filed with other regulatory bodies are sufficient to determine whether attachments to light poles are just and reasonable, or would the Commission need to revise its rate formulas or specify use of a different set of FERC Form 1 or other reported investment and expense accounts to make that determination?[371] The Commission's rate formulas (other than the specific FERC Form 1 accounts and rebuttable presumptions) reflect the specific requirements of the section 224.[372] What discretion does the Commission have to revise these rate formulas to better apply to attachments to light poles?

(Continued from previous page)
telecommunications carriers using the Commission's formula under section 1.1406(d)(2)(i) to the rate for attachments to poles by cable operators providing cable services using the Commission's formula for such attachments under section 1.1406(d)(1) of the Commission's rules, 47 CFR § 1.1406(d)(1), given use of the Commission's rebuttable assumptions in both formulas.

[366] *Id.*§ 1.1410.

[367] POWER Coalition Oct. 29, 2019 Comments at 11 ("[L]ight poles come in all different shapes, sizes, and materials. The unique and varying dimensions and characteristics of light poles would render meaningless each of the Commission's rebuttable presumptions, and complicate the current rate methodology.'").

[368] *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Report and Order, 15 FCC Rcd 6453, 6465, 6468-6469, paras. 16, 22-23 (2000) (*Fee Order*); *Pole Attachment Rates, Terms, and Conditions Reconsideration Order*, 16 FCC Rcd at 12129-31, paras. 47-52.

[369] *See, e.g.*, LED Light Expert, *Light Poles: Direct Burial vs. Surface Mount Review*, https://www.ledlightexpert.com/Light-Poles-Direct-Burial-vs-Surface-Mount-Review-_b_148.html?srsltid=AfmBOor3gLyCc5CLZB2aYinZfVtqlfYQ2uwusLvYFZTNzGDxmAndsio7 (last visited July 24, 2025); Lyte Poles, *Anchor-Based vs. Embedded: What's the Difference?*, https://lytepoles.com/blog/anchor-based-vs-embedded-whats-the-difference/ (last visited July 24, 2025); LightMart, *Light Pole Buying Guide*, https://www.lightmart.com/blog/light-pole-buying-guide/?srsltid=AfmBOor4v4zFX19-9TQpmD5ZzLwk2C3C1y2tsDGIV-wJn7jEQOuMXNiP (last visited July 24, 2025).

[370] *See, e.g.*, *Fee Order*, 15 FCC Rcd at 6464-72, para. 16-30; *Pole Attachment Rates, Terms, and Conditions Reconsideration Order*, 16 FCC Rcd at 12128-46, paras. 46-85; *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07- 245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5334-5335, para. 66 nn. 651-52, 654 (2011), *aff'd sub. nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

[371] *See* AT&T Nov. 20, 2019 Reply at 23 ("[U]tilities can apply the existing rates to light pole attachments. Pole attachment rates have always been based on averages – they are not priced differently on a pole-by-pole basis – and the existing rates, even to the extent they do not specifically incorporate light pole costs, can be reasonably applied to light pole attachments.").

[372] 47 U.S.C. § 224(d) ("[A] rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole
(continued….)

91. Are there any other rules that the Commission would need to amend to regulate light poles under section 224? Would we need to examine whether our rules establishing deadlines for pole attachment surveys, estimates, and make-ready are appropriate as-applied to light poles?[373] Are there provisions of the Commission's pole attachment rules that have no relevance to light poles or that would unduly hamper attachments to light poles?

92. *Light Pole Replacements*. As stated above, the record developed in response to the CTIA Petition indicates that attachers are obtaining at least some access to light poles through private agreements with utilities.[374] The record also indicates, however, that many light poles need to be replaced to accommodate telecommunications attachments.[375] Section 224(f)(2) authorizes utilities to deny access to poles on a nondiscriminatory basis "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[376] In *Southern Company*, the Eleventh Circuit ruled that, pursuant to section 224(f)(2), utilities are not required to expand capacity on their poles to accommodate new attachments,[377] rejecting the Commission's prior determination that section 224(f)(1) may require utilities to replace poles to provide nondiscriminatory access to them.[378] Utilities have suggested that if the Commission were to determine that light poles are "poles" within the meaning of section 224, and that utilities must provide nondiscriminatory access to light poles under section 224(f)(1), utilities will no longer be incentivized to work with attachers to replace light poles to accommodate their attachments and will simply deny access under section 224(f)(2).[379] Are attachers

(Continued from previous page)
attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.").

[373] *See, e.g.*, CCU Oct. 29, 2019 Comments at 20 (stating that the Commission's existing make-ready timelines would not work for attachments to light poles).

[374] Utility Associations Oct. 29, 2019 Comments at 11 ("[A] number of utilities actively are marketing and providing access to appropriate light poles for small cells by wireless communications service providers."); Crown Castle Oct. 29, 2019 Comments at 39 (acknowledging that "some utilities make their light poles available for wireline and wireless attachments"); POWER Coalition Nov. 20, 2019 Reply at 3 ("A number of utility companies already voluntarily provide access to 'light poles' that they own or control, and do so on reasonable terms and conditions.").

[375] CCU Oct. 29, 2019 Comments at 12 (stating that because "[s]treetlight-only poles are designed and engineered for the use they were installed to accommodate, which is to support a lighting fixture that illuminates a certain area" and "is not designed for the additional load associated with a wireless antenna and its associated equipment, accommodating the attachment of such facilities would require replacement of the pole and potentially the pole's foundation to support the wireless facilities."); Electric Utilities Oct. 29, 2019 Comments at 12 ("[T]he vast majority of lighting support structures will require complete replacement in order to accommodate small cell and other wireless antenna installations because those structures are not of sufficient strength to accommodate wireless antenna equipment."); Xcel Energy Oct. 29, 2019 Comments at 6 ("[T]he vast majority of street light poles in Xcel Energy's service area do not have the structural capacity or capability to support wireless communications facilities. This means that in order to accommodate wireless colocation, the entire street light pole must be replaced with a new street light pole with expanded capacity.").

[376] 47 U.S.C. § 224(f)(2).

[377] *Southern Company*, 293 F.3d at 1347 ("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'") (quoting 47 CFR § 224(f)), 1352 ("[T]he FCC lacks the authority to order utilities to expand the capacity of their infrastructure to accommodate third-party attachers in situations where it is agreed that existing capacity is insufficient.").

[378] *Local Competition Reconsideration Order*, 14 FCC Rcd 18049, para. 52-53 (stating that "a utility that denies access to, for example, a 40 foot pole due to lack of capacity should be able to demonstrate why there is no capacity and enumerate the specific reasons for declining to replace the pole with a 45 foot pole . . ."); *Southern Company*, 293 F.3d at 1347 ("The FCC's attempt to mandate capacity expansion is outside of the purview of its authority under the plain language of the statute.").

[379] CCU Oct. 29, 2019 Comments at 17 ("Since accommodating wireless attachments on streetlight-only poles (continued….)

concerned that including light poles within the definition of "pole" for the purposes of section 224 would actually result in fewer attachments to light poles than are currently completed pursuant to private agreements, due to refusals by utilities to replace poles to create capacity for their attachments?[380] How many light poles need to be replaced to accommodate communications attachments? Why are the pole replacements necessary?[381] Are there particular types of light poles that need to be replaced and others that do not? What are the categories of costs of replacing a light pole to be able to host communications attachments (e.g., construction, materials)? Are those costs significantly different than those incurred when replacing a local distribution pole? Do utilities contend that a fair allocation of the costs would not be possible under the Commission's rules if light poles were regulated under section 224? Is there something the Commission can do to keep any need to replace light poles to accommodate communications attachments from being an impediment to nondiscriminatory access under section 224(f)(1)?

93. *Reverse Preemption*. Twenty-three states and the District of Columbia have certified that they regulate pole attachments and have complied with associated requirements to reverse preempt the Commission's jurisdiction under section 224(c) of the 1996 Act.[382] We seek comment on how defining the term "pole" to include light poles would impact the regulation of pole attachments by those states. Would any definition codified by the Commission apply to states that have reverse preempted the Commission's jurisdiction? Do the pole attachment rules and regulations adopted by such states encompass attachments to light poles?[383]

94. What if the reverse preemption states assert that they do not regulate attachments to light poles and that they decline to do so? Could jurisdiction over such attachments revert back to the

(Continued from previous page)
almost always requires a pole replacement, utilities likely will decide not to replace such poles at all rather than become subjected to burdensome regulations with little compensation"); POWER Coalition Oct. 29, 2019 Comments at 12 ("The FCC's intervention in these efforts, and its regulation in a functioning market would serve first to upset successful negotiated arrangements. After that, it would serve to dis-incentivize electric utilities from accommodating wireless attachments by working to include them on existing light poles."); Electric Utilities Oct. 29, 2019 Comments at 13-14 ("To put it more bluntly, if the Commission regulates lighting support structure collocation anywhere near the way it currently regulates distribution pole attachments, the collocation [depicted in an example of Duke Energy converting a decorative streetlight into a miniature cell tower] will become extinct.").

[380] *See* POWER Coalition Oct. 29, 2019 Comments at 13 (suggesting that the Commission's intervention "would harm wireless attachers by encouraging increased barriers to deployment"). *But see* CTIA Nov. 20, 2019 Reply at 32 ("[R]equiring access will not halt light pole attachments, since for those who are already providing access, it will merely validate them, and for those who are not, it will require them.").

[381] For instance, CCU has asserted that street lights must be replaced "because they were not designed or installed to provide access for fiber, to mount equipment, to conceal equipment, to disconnect power, or to provide necessary National Electrical Safety Code [] clearances, all of which wireless attachments require," and that "most streetlight-only poles do not have separate raceways in which to run communications fiber separate from electrical power, as required by NESC." CCU Oct. 29, 2019 Comments at 13; *see also* Xcel Energy Oct. 29, 2019 Comments at 7 ("The replacement of a street light pole with a pole that is robust enough to accommodate wireless colocation also requires the installation of a new foundation capable of supporting the greater weight on the site, as well as providing the necessary protection from 'knock-down' or other damage.").

[382] 47 U.S.C. § 224(c)(1)-(3) (stating "[n]othing in this section shall be construed to apply to, or give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State" and setting forth requirements for states to reverse-preempt the Commission's jurisdiction over pole attachments); *Reverse-Preemption Certification Public Notice*, 37 FCC Rcd 6724.

[383] *See* 47 U.S.C. § 224(c)(1) (requiring states reverse preempting the Commission's jurisdiction to certify that they regulate the rates, terms, and conditions of pole attachments); 47 U.S.C. § 224(c)(3)(A) (stating that a state "shall not be considered to regulate the rates, terms, and conditions for pole attachments . . . unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments").

Commission? If so, what would the process for implementing that be? Should the Commission require all states that have reverse preempted the Commission's jurisdiction to date to refile the certifications required under section 224(c) to specify the pole attachment matters over which they assert jurisdiction, including with respect to light poles? Should the Commission amend its rules implementing section 224(c) to require states seeking to reverse preempt the Commission's jurisdiction in the future to specify such details? What impact would bifurcating a state's pole attachment jurisdiction have on pole attachment regulation in the states and at the federal level, generally and/or specifically with respect to attachments to light poles? Could a state that has reverse preempted the Commission's jurisdiction over pole attachments determine that light poles are not "poles" under section 224 and should not be regulated within its borders, irrespective of any determination by the Commission?

95. *Safety and Reliability*. Utilities and other commenters have contended that mandating access to light poles implicates safety and reliability concerns that are not at issue with standard local distribution poles.[384] Attachers have pointed out that section 224(f)(2) authorizes utilities providing electric service to deny attachments "for reasons of safety, reliability and generally applicable engineering purposes,"[385] and have argued that such concerns should not serve as an impediment to a threshold determination that nondiscriminatory access to light poles must be provided pursuant to section 224(f)(1).[386] What are the specific light pole attachment issues that utilities claim present safety and reliability concerns and why are they more significant than in the context of an electric utility's local distribution pole? Is it equipment associated with Small Wireless Facilities? If the issue is the need to run additional power to the pole for the Small Wireless Facilities,[387] are the safety concerns mitigated if the utility that owns or controls the pole is the electric utility that will either be handling that work or has expertise in that work? We ask about the types of utilities that own or control light poles above. Are there utilities that own or control light poles that do not provide electric service and would not be able to deny access under section 224(f)(2)?

96. *Types of Attachments.* Section 224(a)(4) defines a pole attachment, in pertinent part, as "any attachment by a cable television system or provider of telecommunications service to a pole . . . owned or controlled by a utility."[388] If the Commission were to codify a definition of the term "pole" that includes light poles, would that mean that utilities would have a legal obligation to provide nondiscriminatory access to the light poles that they own and control for any cable or telecommunications service attachments, and not just for Small Wireless Facilities? Would wireline attachers seek access to

[384] *See* Utility Associations Oct. 29, 2019 Comments at 8 (stating that "dedicated light poles are . . . not the equivalent of electric distribution poles in terms of size, strength, or capacity" and "the reality is that pole access would in many, if not all cases, be denied under 47 U.S.C. § 224(f)(2), for reasons of safety, engineering, and insufficient capacity"); *see also* NATOA Oct. 29, 2019 Comments at 14 ("[T]he issues related to placing wireless facilities and providing electricity to these sites are complex and create safety hazards for workers and the public that are different from attachments to standard utility poles.").

[385] 47 U.S.C. § 224(f)(2).

[386] *See* AT&T Nov. 20, 2019 Reply at 22 ("To the extent there are valid reasons for not permitting access to a particular light pole, Section 224(f)(2) and its implementing rules permit the utility to deny access on those grounds.").

[387] CCU Oct. 29, 2019 Comments at 14 (stating that "[s]treet lights are powered by streetlight-only electric circuits that have minimal electric capacity and limited capabilities for metering . . . [i]n order to provide sufficient power to operate new antenna or other equipment, utilities often need to run a larger secondary conductor to the pole."); Xcel Energy Oct. 29, 2019 Comments at 7 ("Dedicated street light poles are generally fed by underground electric lines, and the existing feeder to the street light pole is generally rated to carry only the level of power necessary for the street light. Colocating a small cell or other wireless equipment on a street light pole therefore also requires the installation of a new power run to the nearest available transformer, which – depending on the specific site – could potentially require excavation or even the installation of another transformer.").

[388] 47 U.S.C. § 224(a)(4).

light poles for attachments? Would utilities uniformly deny such access under section 224(f)(2), or is there a way for wireline attachments to be accommodated on light poles? Does the Commission have the authority to condition any definition of the term "pole" that it adopts so that access is limited to Small Wireless Facilities if the pole in question is a light pole?

97. *State and Local Regulation*. Localities have argued that requiring utilities to provide nondiscriminatory access to light poles at rates, terms, and conditions that are just and reasonable pursuant to section 224 would interfere with local requirements applicable to light poles, agreements that they have entered for the installation of light poles, and the management of their rights of way.[389] We seek comment on the specific local requirements, agreements, and right-of-way management concerns that would be impacted by regulating light poles under section 224 and why those concerns are unique to light poles.[390] Stated differently, how and why would regulating utility owned or controlled light poles under section 224 impinge on local requirements, agreements, and rights-of-way management in a way that is different than the current regulation of local distribution poles under section 224?[391] Is it because localities may contract with utilities for the installation of light poles and have ownership or control rights under those agreements?[392] If so, could any concerns that localities have about access to utility owned or controlled light poles be addressed in an access agreement? The record indicates that attachers are currently obtaining some access to light poles under private agreements.[393] How are the concerns of

[389] *See* City of Frederick Oct. 29, 2019 Comments (stating that "[l]ight poles owned by utilities and placed in municipal right-of-way are subject to municipal regulations governing the use of the right-of-way as well as agreements between the municipality and the utility[,]" "mandatory access to light poles on terms and conditions dictated by the federal government unravels carefully crafted work done at the local level with the agreement of both utilities and municipalities[,]" and that "[w]e see this as further erosion of local authority to govern an area in which local governments and utilities have operated on a mutually beneficial basis for many years"); *accord* Chevy Chase Village Oct. 29, 2019 Comments at 2; *see also* National League of Cities et al. Oct. 29, 2019 Comments at 7-8 ("[T]o simply open up light poles owned by utilities for attachment under Section 224 . . . directly implicates local rights including contractual rights, the financial interests of the locality, and its interest in designing and providing street lighting. In many instances, a locality may stop service to a particular pole at any time, and have that pole removed, pursuant to the provisions of street lighting tariffs applicable to electric utilities.").

[390] *See* POWER Coalition Oct. 29, 2019 Comments at 8 ("[I]n certain states, electric utilities provide light poles to customers pursuant to state commission-approved tariffs. Florida is such a state . . . use of the light pole, access to it, and any modification of it are governed by the [Florida Public Service Commission]-approved agreements between [Florida Power & Light Company] or Gulf Power and their customers. Those agreements do not contemplate attachment of wireless antennas to light poles. The FCC could not mandate access to such light poles, nor regulate the rates, terms, and conditions of access, without intervening in a state-sanctioned contract between an electric utility and its customer.'").

[391] *See* CTIA Nov. 20, 2019 Reply at 33 ("All CTIA seeks is a determination that Section 224 encompasses utilities' light poles. It asks for changes neither to the rules that were established to protect the interests of pole owners and other attachers, including localities, nor to the rules or standards governing safety-relating obligations.").

[392] We note that government owned property in public rights-of-way, "such as light poles," are subject to sections 253 and 332(c)(7) of the Communications Act. 47 U.S.C. §§ 253, 332(c)(7); *Small Cell Order*, 33 FCC Rcd at 9113, para. 50 (concluding that right-of-way access fees, and fees for use of government property in rights-of-way "such as light poles" violate sections 253 and 332(c)(7) of the Communications Act "unless these conditions are met: (1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations"). Pursuant to those statutes, state and local governments may not impose legal requirements that unlawfully prohibit or have the effect of prohibiting the provision of telecommunications or personal wireless services. 47 U.S.C. § 253(a) ("No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."); *Id.* § 332(c)(7)(B)(i)(II) ("The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.").

localities currently being addressed when such agreements are reached, and why could the concerns not be similarly addressed in the future if nondiscriminatory access were mandated under section 224(f)(1)?

4. Additional Legal and Policy Considerations

98. *Current Efforts to Obtain Access to Light Poles for Deployments*. In general, Small Wireless Facilities have a range of 1,000 to 1,500 feet. As a result, 5G networks rely on a dense distribution of antennas making point-to-point-to-point connections. Attachers have claimed that utilities commonly deny access to light poles or charge high fees for attachments in a manner that is impeding deployments.[394] Promoting deployment of infrastructure that supports broadband and 5G is a priority for the Commission,[395] so we seek specific data about these denials of access and the impact they are having on competition and connectivity. Specifically, we seek comment on the need to mandate nondiscriminatory access to light poles to expedite and expand the deployment of 5G technology and enable the densification necessary to meet capacity, coverage, and performance needs.[396] How frequently are attachers being denied access to poles altogether? Has that resulted in certain deployments being derailed entirely? Have attachers been required to develop alternate plans to complete build outs due to denials of access? How have denials of access to light poles affected the ability of attachers to compete in certain areas? Is there evidence that denials have resulted in coverage gaps, dropped calls, data overloads, or otherwise resulted in poor service? What is the impact of light pole access denials on the cost and pace of deployment projects? What are the common reasons that utilities give for denying a request to attach to a light pole? Where a utility denies access to a light pole in a right of way, what alternative means of establishing adequate network coverage are available to service providers and what are the cost and deployment timeline differences when service providers pursue these alternatives to light pole attachments?

99. We ask that attachers provide specific examples of these impacts, including identifying the types of light poles involved, the utilities that own them, the geographic areas where access to lights poles is being denied or delayed, and other details that will help the Commission assess the consequences of the denials and delays.[397] For example, AT&T has reported that "three electric utilities operating in Texas refuse to allow AT&T access to light poles."[398] AT&T has explained that it received assistance from one Texas city that required the utility to remove its light poles so that AT&T could install its own similar pole at its own expense, but even then, there were delays resulting in increased deployment costs.[399] Verizon has stated that it has "encountered a utility in Massachusetts that refuses access to any of its metal light poles and a utility in Wisconsin that does not allow attachments to any of its light poles."[400] Who are the specific utilities that denied access in these examples and what were their stated

(Continued from previous page)
[393] *See supra* notes 343, 381.

[394] *See* CTIA Petition at 22; AT&T Oct. 29, 2019 Comments at 22; T-Mobile Oct. 29, 2019 Comments at 22-23; Verizon Oct. 29, 2019 Comments at 4-5.

[395] *See* T-Mobile Oct. 29, 2019 Comments at 23 ("By declaring that the term 'pole' in Section 224 includes light poles, the Commission will advance Section 224's pro-competition goals and the Commission's efforts to promote the deployment of wireless infrastructure to support broadband and 5G.").

[396] *See* ExteNet Oct. 29, 2019 Comments at 6 ("Reading 'pole' as including light poles will . . . ensure that the Commission's implementation of Section 224 remains current with industry developments and the state of technology in wireless broadband. This is especially so with respect to wireless broadband deployments that rely on millimeter wave ('mmWave') spectrum which, due to the spectrum's limited propagation characteristics, require ubiquitous small cells placed relatively close together.").

[397] We remind commenters that they may request confidential treatment of information submitted to the Commission consistent with section 0.459 of the Commission's rules. 47 CFR § 0.459.

[398] AT&T Oct. 29, 2019 Comments at 22.

[399] *Id.* at 22 n.70.

grounds upon which they denied access? What other concrete examples are there of attachers being denied access, and how long does it take attachers to receive responses to their requests?

100. We also seek comment on how frequently utilities approve access to light poles and the terms under which those approvals are granted. In particular, we seek specific data on the fees that utilities charge for access to light poles and how those fees compare to attachments on other facilities, such as local distribution poles.[401] How are the fees calculated? Are they based on costs, and if so, which costs? How are the fees charged (e.g., annually, biannually) and what is the term of the agreements under which they are charged? Are the fees significantly higher than those charged for attachments to standard local distribution poles? If so, what impact does that have on the attacher's ability to compete and finance future deployments? What else should the Commission consider when weighing the impact that regulating light poles under section 224 will have on expediting broadband and 5G deployments?

101. *Additional Costs and Benefits*. We seek comment on the costs and benefits of defining the term "pole" for the purposes of section 224 generally and specifically to include light poles. Would it result in additional administrative, operational, or capital costs for attachers, utilities, and states that have reverse preempted the Commission's jurisdiction over pole attachments? Are there other burdens stakeholders would need to assume to comply with a definition of "pole" that includes light poles? How do these costs, benefits, or burdens impact businesses of various sizes? What would the benefits of codifying such a definition be? Is there a way to quantify the extent to which deployments of broadband and 5G would be expedited if the Commission were to require nondiscriminatory access to light poles? Do attachers have data on the additional consumers that would be served and service offerings that may be made newly available in certain areas of the country? Would there be national security and other public safety benefits? We ask that commenters address, as specifically as possible, the full range of costs and benefits of determining that light poles are "poles" for the purposes of section 224.

102. *Legal Authority*. We tentatively conclude that the Commission has authority to codify a definition of the term "pole" and to determine whether the term includes light poles. The Commission has previously codified definitions for statutory terms in section 224, including "conduit" and "duct,"[402] consistent with Congress's directive in section 224 that the Commission "prescribe by rule regulations to carry out the provisions of this section."[403] The Commission has also adopted rules to implement Congress's explicit delegation of authority to "regulate the rates, terms, and conditions for pole attachments," as well as to develop procedures necessary for resolving complaints arising under the Commission's substantive regulations, and to fashion appropriate remedies.[404] It has also adopted rules to implement the nondiscriminatory access provisions mandated by Congress in section 224(f).[405] We believe that codifying a definition of the term "pole" generally and to include light poles would be a proper exercise of the same jurisdiction underpinning the adoption of those rules and seek comment on that view.

(Continued from previous page)

[400] Verizon Oct. 29, 2019 Comments at 5.

[401] *See id.* ("[A] midwestern utility requires an annual fee of $500 per light-pole attachment, while utilities in California have sought $1,500 or even as much as $6,000 per light-pole attachment.").

[402] 47 CFR § 1.1402(i), (k).

[403] 47 U.S.C. § 224(b)(2).

[404] *Id.* § 224(b)(1); *see also* 47 CFR §§ 1.1404-1.1414, 1.1416. The Commission has also established the Rapid Broadband Assessment Team to prioritize and expedite the resolution of pole attachment disputes that are alleged to impede or delay broadband deployments. *Id.* § 1.1415.

[405] *Id.* § 1.1403.

G. Miscellaneous Issues

103. We seek comment more generally on any other causes for delay or other issues that commenters believe will help facilitate deployments. And we also seek comment on the extent to which application fees and related costs that utilities impose upon prospective attachers before an application is even accepted for filing may impact deployments by smaller providers.[406] To what extent do the fees that utilities charge to file applications and the utilities' various pre-filing engineering requirements inhibit broadband deployment? Are there specific examples where these costs have prevented or delayed deployment? What, if any, actions might the Commission take to address utility-imposed fees or engineering requirements before the make-ready stage that inhibit broadband deployment?

V. ORDER ON RECONSIDERATION (EEI)

104. In this Order, we deny in part and grant in part EEI's Petition for Clarification and/or Reconsideration of the Commission's December 2023 *Wireline Infrastructure Declaratory Ruling*. EEI seeks clarification and/or reconsideration of certain actions taken by the Commission in that *Declaratory Ruling*, specifically (1) removal or clarification of the decision that a pole replacement is not "necessitated solely" by an attachment request if "a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole,"[407] and (2) clarification to "clearly define the narrow circumstances in which a utility pole owner is required to provide a copy of its easement to an attacher that seeks to access a pole within such easement."[408] The Commission invited oppositions and replies to EEI's Petition by February 23, 2024,[409] and it received five filings in support of the Petition[410] and seven oppositions.[411]

105. For the reasons set forth below, we deny in part and grant in part EEI's Petition, specifically (1) denying EEI's request that we remove or clarify the determination that a pole replacement is not "necessitated solely" by an attachment request if a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole (the internal construction standards determination) and the associated example of the internal construction standards determination; (2) granting clarification of the internal construction standards determination (and its associated example) to make clear that while utilities retain autonomy to refuse an attacher's request to replace an existing pole due to lack of capacity, a pole replacement is not "necessitated solely" by a new attachment request when it is necessitated (in part) by the utility's decision to adopt a new construction standard for the pole, even when the pole lacks capacity because of the new standard; and (3) denying reconsideration of the

---

[406] *See* ACA Connects July 17, 2025 *Ex Parte* Letter at 2 (stating that "one frequently overlooked issue in the pole attachment process is the imposition of application fees and related costs—such as pole inspection charges—by utilities before an application is even formally accepted for filing"); Letter from Paul Beaudry, Vice Pres., Regulatory and Corporate Affairs, Cogeco Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed July 16, 2025).

[407] EEI Petition at 1; *Declaratory Ruling*, 38 FCC Rcd at 12406, para. 46 and n.172.

[408] EEI Petition at 1; *Declaratory Ruling*, 38 FCC Rcd at 12409, para. 49.

[409] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Public Notice, 89 FR 5439 (Jan. 29, 2024); *see also Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Public Notice, 89 FR 9105 (Feb. 9, 2024) (correcting the deadline for submitting replies to opposition from Feb. 8, 2024 to Feb. 23, 2024).

[410] *See* Letter from Matt Shellenberger, Engineer Staff, American Electric Power Serv. Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed Feb. 23, 2024) (AEP Feb. 23, 2024 *Ex Parte* Letter); CCU Feb. 13, 2024 Comments; UTC Feb. 14, 2024 Comments; Xcel Energy Feb. 13, 2024 Comments; Xcel Energy Feb. 23, 2024 Reply; EEI Feb. 23, 2024 Reply.

[411] ACA Connects Feb. 13, 2024 Opposition; Altice Feb. 13, 2024 Opposition; Crown Castle Feb. 13, 2024 Opposition; INCOMPAS Feb. 14, 2024 Opposition; NCTA Feb. 13, 2024 Opposition; Schools, Health & Libraries Broadband (SHLB) Coalition Feb. 14, 2024 Opposition; WIA Feb. 13, 2024 Opposition.

circumstances when a utility is required to provide a copy of its easement to an attacher, but granting clarification that the utility only has to provide a copy of the easement to the attacher when the utility relies on its interpretation of the easement to deny the attacher access to that easement.

A. The "Necessitated Solely" Clarification was Properly Included in the *Declaratory Ruling*

106. The Commission has, both in the *Declaratory Ruling* and elsewhere, provided examples of when a pole replacement is and is not "necessitated solely" by a new attachment request for purposes of section 1.1408(b) of our rules, which governs the allocation and causation of costs for a new attachment.[412] Under section 1.1408(b), a party with a preexisting attachment to a pole is not required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement "is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party."[413] EEI argues that the Commission should "remove its clarification that make-ready pole replacements that have been grandfathered under utility standards are not 'necessitated solely' by the new attachment," asserting that this clarification: (1) was "not the product of reasoned decision-making;" (2) does not promote broadband development; and (3) is confusing and inappropriate.[414] We deny EEI's reconsideration request because EEI's arguments were considered and rejected by the Commission in the underlying proceeding, and EEI's Petition does not raise any points warranting reconsideration.[415] We also deny EEI's alternative request for the Commission to clarify that a utility's replacement of a grandfathered pole to create capacity for a new attachment is "necessitated solely" by the attacher.[416] That said, we take this opportunity to clarify further the contours and basis of the Commission's internal construction standards determination, especially the role of capacity (or the lack thereof) on that determination.

107. Because of ongoing disputes regarding an attacher's responsibility for causing a pole replacement when a pole already requires replacement at the time a request is made for a new or modified attachment, the Commission found it appropriate to provide "additional examples of situations where, under section 1.1408(b) of the Commission's rules, a pole replacement is not 'necessitated solely' by a new attachment or modification request."[417] In each of the examples provided in the *Declaratory Ruling*, other precipitating factors contribute to the need for a pole replacement aside from the new attachment request.[418] By offering these examples, the Commission aimed to clarify instances where the cause of a pole replacement should not be solely attributed to the new attacher.

---

[412] *Declaratory Ruling*, 38 FCC Rcd at 12406, para. 46*; 2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8; 47 CFR § 1.1408(b).

[413] 47 CFR § 1.1408(b).

[414] EEI Petition at 14-21.

[415] *See Declaratory Ruling*, 38 FCC Rcd at 12405-08, paras. 45-48.

[416] EEI Petition at 15. According to EEI, a "grandfathered" pole is one "that is deemed 'compliant' under applicable laws and codes, and by definition does not require replacement." *Id.*

[417] *See Declaratory Ruling*, 38 FCC Rcd at 12405-06, paras. 45-46 ("To help utilities and attachers better understand when, under our cost-causation principles, a pole replacement is not 'necessitated solely' by an attachment request, we provide the following additional examples: at the time an attachment request is made, (1) a pole replacement is required pursuant to applicable law; (2) the current pole fails applicable engineering standards, such as those contained in the NESC; (3) a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole; (4) the pole is required to be replaced due to road expansion or moves, property development, in connection with storm hardening, or similar government-imposed requirements; or (5) the current pole already is on the utility's internal replacement schedule, regardless of when the replacement is scheduled to take place." (footnotes omitted)).

[418] *See id.* at 12406-07, para. 46.

108. In its Petition, EEI takes issue with one of the Commission's examples. Specifically, the Commission noted Crown Castle's argument that "a pole replacement is not 'necessitated solely' by a new attacher . . . where a pole replacement is required due to a utility changing its construction standard after the pole is constructed."[419] This example was consistent with some commenter proposals and current practices of some commenters in the record.[420] In deciding that a pole replacement is not "necessitated solely" by an attachment request if "a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole," the Commission added the following "grandfathered pole" example: "if a utility has 'grandfathered' a pole from compliance with its updated construction standards, a pole replacement to bring that pole into compliance with those updated standards would not be 'necessitated solely' by an attacher's request to attach to that pole."[421]

109. EEI asks that we completely strike from the *Declaratory Ruling* both the internal construction standards determination and its associated example.[422] Alternatively, EEI requests that we revise the *Declaratory Ruling* to clarify that a pole replacement is not "necessitated solely" by an attachment request when, at the time the attachment request is made, "[a] pole replacement is required as the result of a utility's previous or contemporaneous change to its internal construction standards, such that the utility would be required to replace the pole even if no new attachment were made."[423] EEI also alternatively asks that we revise the grandfathered pole example in the *Declaratory Ruling* to state: "For clarity, if a utility has 'grandfathered' a pole from compliance with its updated construction standards in accordance with applicable laws or codes, such pole is not deemed to require replacement for purposes of this *Declaratory Ruling*, and a pole replacement performed to create capacity for a new attachment that incidentally brings such pole into compliance with those updated standards would not be 'necessitated solely' by an attacher's request to attach to that pole."[424]

110. We deny EEI's requests. Specifically, we find that the reconsideration and clarifications sought by EEI go beyond[425] our simple premise in including the internal constructions standard determination; namely, a pole replacement is not "necessitated solely" by a new attacher where a pole replacement is required due to a utility changing its construction standard after the pole is constructed.[426]

---

[419] *Id.* at 12406 n.172; Letter from D. Van Fleet Bloys, Managing Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 5, 2023) (Crown Castle Dec. 5, 2023 *Ex Parte* Letter).

[420] *See id.* at 12406-07, para. 46 & nn.170-74; INCOMPAS June 27, 2022 Comments at 9-11 (providing an example of the frustrations of an attacher being required to pay the full cost of pole replacement to bring a grandfathered pole into compliance).

[421] *Id.* at 12406, para. 46 & n.172.

[422] EEI Petition at 14.

[423] *Id.* at 15, Appx. A (emphasis deleted).

[424] *Id.*

[425] EEI and utilities such as CCU argue that "simply because a new construction standard must apply to a pole whenever in the future it might be replaced does not mean that the pole needs to be replaced at the time the attacher requests access to the pole." CCU Feb. 13, 2024 Opposition at 12-13; EEI Petition at 16. This argument, and the argument that a grandfathered pole remains compliant with "the electric utility's construction standards and does not require replacement until such time as there is a material modification to that pole," miss the point. EEI Petition at 16-17. It is the utility's change in its internal construction standards that has now made the pole unable to accommodate the new attachment and it is that condition that led us to clarify in the *Declaratory Ruling* that the new attachment request does not solely necessitate a pole replacement. This simple premise does not, as the Electric Utilities allege, "undermine an electric utility's long-standing right (and responsibility) to adopt and implement non-discriminatory standards that exceed the NESC, where appropriate and necessary." Electric Utilities July 16, 2025 *Ex Parte* Letter at 6.

[426] *See* ACA Connects Feb. 13, 2024 Opposition at 4 (noting that the internal construction standards determination "represents the Commission's interpretation of how the cost-causation language of Section 1.1408(b) applies in a (continued….)

When a utility makes a unilateral decision to change its internal construction standards such that the existing pole must now be replaced the next time it is touched, it is not the case that replacing that pole is "necessitated solely" by a new attachment request that comes along.[427] We agree instead with NCTA's characterization that "[b]eing what EEI calls 'grandfathered' is not the same thing as compliant with current standards. As EEI's arguments make clear, the issue is one of the utility's choice of timing. The poles are not compliant with the latest construction standard, but the utility chooses when and why to replace the pole."[428] As a result, we found it necessary to clarify in the *Declaratory Ruling* that, when a utility's change in construction standards contributes to the need to replace a pole, the new attachment request does not solely necessitate the pole replacement.

111. However, we grant clarification insofar as we provide here an important caveat to the internal construction standards determination and associated example. We note that an important element of the internal construction standards determination is the capacity, or the lack thereof, on the existing pole. We clarify that, for purposes of the internal construction standards determination, when a utility is determining capacity on a pole to see whether a pole replacement is necessary, the relevant utility construction standards to consider are limited to the current standard and the standard immediately preceding that current standard.[429] That is, assuming a pole lacks capacity for a requested new attachment under the utility's new construction standard, but capacity would exist under its immediately preceding construction standard, the resulting pole replacement would not be "necessitated solely" by a new attachment request.[430] By contrast, if the pole lacks capacity under both the new and immediately

(Continued from previous page)
particular context—namely when 'a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole.' The ruling affirms that, in this situation, the pole replacement is not 'necessitated solely' by an incoming attacher."); Crown Castle Feb. 13, 2024 Opposition at 1 (noting that "the Commission's clarification merely restates conclusions the Commission has previously expressed. When a utility requires an attacher to replace a pole to bring it into compliance with the utility's own new construction standards, that replacement is not necessitated solely by the attachment request."); NCTA Feb. 13, 2024 Opposition at 3.

[427] *See* ACA Connects Feb. 13, 2024 Opposition at 6 ("The question is whether the replacement of a grandfathered pole is 'necessitated solely' by the prospective attacher's request to access the pole. The answer is 'No.' By EEI's own admission, while grandfathered poles require replacement to accord with revisions to internal construction standards, pole owners choose to allow the majority of their poles to remain out of compliance with these revised standards indefinitely to conserve 'cost and labor' resources."); NCTA Feb. 13, 2024 Opposition at 3 ("Because the pole is already out of compliance with the current standard, pole replacement is necessary because of two factors: (1) the utility's choice to bring the pole into compliance with current construction standards at the time a new attachment is added; and (2) the new attachment."); Altice Feb. 13, 2024 Opposition at 9-10 (arguing that "applying a newer standard to justify a pole replacement at the time of an attachment is the pole owner's choice . . . [and] therefore makes sense for the pole owner to share in the cost of any pole replacement that is forced upon an attacher related to the new attachment—as is consistent with the Commission's interpretation of the 'necessitated solely by' standard"); Crown Castle Feb. 13, 2024 Opposition at 1-2.

[428] NCTA Feb. 13, 2024 Opposition at 4 (noting that "the correct explanation is the Commission's ruling requires pole owners to share in the cost of replacing poles when the reason for the pole replacement is the utility's choice to bring the pole into compliance with new construction standards when an attachment is made"); *see also* Crown Castle Feb. 13, 2024 Opposition at 1-2 ("The 'grandfathered' label has no impact on the Commission's correct analysis. The Commission has correctly recognized that in this circumstance, the pole replacement is one the utility has made a unilateral decision to delay."). Because of the importance attached to the utility's sole purview on the timing of replacing a pole that is noncompliant with its construction standards, we disagree with the characterization of the Electric Utilities that "the fact that 'the utility chooses when and why to replace the pole,' does not justify the grandfathered pole ruling." Electric Utilities July 16, 2025 *Ex Parte* Letter at 6.

[429] We thus reject EEI's argument that the internal construction standards determination requires the utility to figure out "which of the many previous iterations of an electric utility's construction standards would be applicable" when a pole is replaced following a new attachment request. EEI Petition at 19.

preceding construction standards, then application of section 1.1408(b) means that the new attachment request is the cause of the pole replacement, i.e., it is "necessitated solely" by the new attachment.[431] The clarification we offer today can be administered easily and also limits unreasonable actions to delay pole replacements in order to force new entrants to bear the entire cost of a pole replacement. To the extent this was not clear from the *Declaratory Ruling*, we hereby clarify accordingly.[432]

112. With this clarification, we find that EEI's requests are unfounded.[433] EEI bases its requests on the incomplete premise that "[i]f an attacher requests access to a pole, and the pole must be changed out to accommodate the new attachment under the electric utility's *current* construction standards, the new attachment is *the cause* of the make-ready pole replacement. In this instance, the pole would not be replaced 'but for' the attachment request, and the need to construct a new pole line in accordance with an updated construction standard would not exist had the pole not been replaced to create capacity for the new attachment."[434] According to EEI, the internal construction standards determination and associated grandfathered pole example "can be interpreted as requiring pole owners to share in the cost of every make-ready pole replacement involving a 'grandfathered' pole."[435] This is mistaken because, as stated above, when a utility is maintaining poles at an immediately preceding standard, that standard is determinative of capacity for purposes of a new attachment request and determining whether a resulting pole replacement is "necessitated solely" by the new request. If that request would render the pole over capacity at the immediately preceding standard, then the utility could deny access under section 224(f)(2) of the Act and any resulting pole replacement would be "necessitated solely" by the new request. But if the new attachment would only cause the pole to exceed the new standard but not the immediately preceding standard, then any pole replacement is not necessitated solely by a new attachment request, but rather is necessitated in part by the adoption of a new standard.[436]

(Continued from previous page)

[430] *See* NCTA Feb. 13, 2024 Opposition at 4 (noting that "the Commission's ruling requires pole owners to share in the cost of replacing poles when the reason for the pole replacement is the utility's choice to bring the pole into compliance with new construction standards when an attachment is made"); INCOMPAS Feb. 14, 2024 Opposition at 10 (noting "that does not change the fact that it would not be necessary to replace a pole with available communications space *but for* the utility's previous or contemporaneous update to its internal construction standards—which is an entirely unilateral choice by the utility" (emphasis in original)); Crown Castle Feb. 13, 2024 Opposition at 2 ("A pole owner should not be permitted to change its standards and then demand that a new attacher pay the full cost to replace a pole to comply with the utility's updated standards when the pole replacement is due either in whole or in part to the new standard. To hold otherwise would allow utilities a loophole out of their access obligations under Section 224(f) by empowering them to unilaterally define the standards that require a pole replacement.").

[431] *See* Xcel Energy Feb. 23, 2024 Reply at 4.

[432] INCOMPAS Feb. 13, 2024 Opposition at 10 ("A utility may not immediately schedule grandfathered poles for replacement (particularly those that have additional communications capacity), but the Commission should not allow utilities to evade their responsibility for replacing these poles as necessary by granting EEI's petition.").

[433] *See id.* at 10-11 ("If communications space is available on a pole for a new attachment, and utilities dictate that a pole replacement is necessary, then with limited exceptions, the two entities will be required to apportion the costs as dictated by the Commission's ruling.").

[434] EEI Petition at 17.

[435] *Id.* at 5.

[436] *See* NCTA Feb. 13, 2024 Opposition at 4 (noting that "the Commission's ruling requires pole owners to share in the cost of replacing poles when the reason for the pole replacement is the utility's choice to bring the pole into compliance with new construction standards when an attachment is made"); INCOMPAS Feb. 14, 2024 Opposition at 10 (noting "that does not change the fact that it would not be necessary to replace a pole with available communications space *but for* the utility's previous or contemporaneous update to its internal construction standards—which is an entirely unilateral choice by the utility" (emphasis in original)); Crown Castle Feb. 13, 2024 Opposition at 2 ("A pole owner should not be permitted to change its standards and then demand that a new attacher

(continued….)

113. We reject EEI's claim that the Commission's decisions "run afoul of longstanding 'cost causation' principles."[437] As attachers point out in the record, in the internal construction standards scenario, it is the utility's decision to leave the original pole in place until the new attacher comes along that necessitates the pole replacement, at least in part.[438] In fact, it is EEI's contention that may run contrary to our cost causation principles by positing that "[i]f a grandfathered pole lacks capacity to host an additional attachment under an electric utility's *current* construction standards, the new attachment is *the cause* of a make-ready pole replacement. At the very most, the electric utility in this scenario would be an *incidental beneficiary* of the make-ready pole replacement, and the Commission has long held that incidental beneficiaries are not required to share in the cost of pole replacements."[439] The utility is not merely an incidental beneficiary if the new attachment could have been accommodated on the pole under the utility's construction standards before they were changed, but now cannot because of the utility's unilateral decision to change its internal construction standards. Instead, the utility's decision to leave the existing pole in place until the new attacher comes along necessitates the pole replacement, at least in part.[440] And the utility is far from an incidental beneficiary if it would be able to get its pole replaced at the new attacher's sole expense when the existing pole could have accommodated the new attachment under the immediately preceding pole construction standard.[441]

114. Relatedly, we reject EEI's claim that in advancing the internal construction standards determination, the Commission failed to consider the "enormous" economic burden placed on utilities as a result of the *Declaratory Ruling* and failed "to balance the respective interests, costs, burdens, and liabilities of pole owners and attachers, or to assess whether reasonable limitations are needed to minimize any adverse impact on utility pole owners."[442] Instead, we recognize that this determination

(Continued from previous page)
pay the full cost to replace a pole to comply with the utility's updated standards when the pole replacement is due either in whole or in part to the new standard. To hold otherwise would allow utilities a loophole out of their access obligations under Section 224(f) by empowering them to unilaterally define the standards that require a pole replacement.").

[437] EEI Petition at 14.

[438] Crown Castle Feb. 13, 2024 Opposition at 3 ("The Commission's determination that a pole replacement is not 'necessitated solely' by a new attachment request when 'a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole' is consistent with the existing list of circumstances when a pole replacement is not necessitated solely by a new attachment request."); INCOMPAS Feb. 13, 2024 Opposition at 9 ("A typical fact pattern for new attachers is to be alerted, at the time that a make-ready request is filed, that a pole requires replacement—regardless of the availability of communications space—and that they will be responsible for the full cost of the replacement in order to bring the pole into compliance with an updated construction standard. These situations are 'ambiguous' only in that potential attachers are not made aware in advance of utilities' changes to their internal construction standards and reorganization of their pole replacement schedule because there are no requirements to disclose this information."); NCTA Feb. 13, 2024 Opposition at 3; Altice Feb. 13, 2024 Opposition at 9 ("Fundamentally, applying a newer standard to justify a pole replacement at the time of an attachment is the pole owner's choice."); SHLB Feb. 13, 2024 Opposition at 2 (stating that EEI's argument "seems incompatible with the traditional meaning of 'grandfathered,' which is to exempt something from a new rule or policy by allowing it to remain operating under the previous rule or policy. A 'grandfathered' pole is by definition not in compliance with current rules. Thus, as the Commission correctly concluded, the pole replacement is not necessitated solely by the new attachment.").

[439] EEI Petition at 17-19 ("In this instance, the pole would not be replaced 'but for' the attachment request, and the need to construct a new pole line in accordance with an updated construction standard would not exist had the pole not been replaced to create capacity for the new attachment. In practice, a grandfathered pole is no different from any other pole that can/would remain in service indefinitely 'but for' the need to create capacity for a new attachment.").

[440] Altice Feb. 13, 2024 Opposition at 9 ("Fundamentally, applying a newer standard to justify a pole replacement at the time of an attachment is the pole owner's choice."); SHLB Feb. 13, 2024 Opposition at 2.

[441] *See* ACA Connects Feb. 13, 2024 Opposition at 9-10.

requires utilities to bear some of the burden, but we must also consider the burden on attachers. The internal construction standard determination spreads the burden across all of the parties who are causing the pole replacement.[443]

115. Further, contrary to EEI's contention in its Petition,[444] there was substantial record support for the clarification at issue.[445] For example, several commenters have consistently advocated for the Commission to adopt a "more transparent, just, and reasonable process that ensures a fair allocation of replacement costs between pole owners and new attachers seeking to use the poles."[446] With regard specifically to the application of the "necessitated solely" language in the Commission's rules, Charter sought to have the Commission extend the clarification in the *2021 Pole Replacement Declaratory Ruling* to find that "when a pole is scheduled for replacement or facing imminent replacement," the pole replacement is not "necessitated solely" by an attachment request.[447] As ACA Connects states, "almost 18 months before the Commission issued the [internal construction standards determination], Crown Castle filed comments . . . demonstrating that pole owners were using internal construction standards to avoid cost-causation principles and requiring prospective attachers to pay the entire cost of pole

(Continued from previous page)
[442] EEI Petition at 1, 16.

[443] SHLB Feb. 13, 2024 Opposition at 3 (asserting that EEI's argument is unfounded "because, as EEI acknowledges, the Commission has not yet determined how much of the pole replacement cost should be allocated to the pole owner and attacher. All the Commission has decided is that the attacher should not bear the entire cost, but it has not (yet) determined whether the owner of the 'grandfathered' pole is responsible for 1%, 99% or something in between. When the Commission determines or recommends the proper amount of cost to be allocated to the parties, then perhaps EEI could have an argument that the burden is 'enormous', but until then EEI's point is inapt.").

[444] *See* EEI Petition at 1, 5 (claiming the Commission's decision on the internal construction standards determination is "premised on the unsupported ex parte claims and factually flawed assumptions of one lone commenter, to which no party had an opportunity to respond").

[445] *See, e.g.*, ACA Connects Feb. 13, 2024 Opposition at 2, 4 (asserting that "EEI's suggestion that the Grandfathered Poles Ruling was inadequately supported by 'relevant data' overlooks the record and misapplies the legal standard"); NCTA Feb. 13, 2024 Opposition at 6 (stating that "contrary to EEI's claims, there was support in the record sufficient for the Commission to address whether bringing a pole into compliance with a utility's latest construction standards is necessitated solely by the new attacher"); INCOMPAS Feb. 14, 2024 Opposition at 5 (stating that the Commission's example "was thoroughly contemplated in accordance with the record, including a filing by INCOMPAS, and a natural progression of the Commission's efforts to identify examples 'to help the parties apply [the agency's] 'necessitated solely' cost-causation principles'"); Altice Feb. 13, 2024 Opposition at 5-6; Crown Castle Feb. 13, 2024 Opposition at 1.

[446] INCOMPAS June 27, 2022 Comments at 6, 14; *see also* Charter June 28, 2022 Comments at 34; ACA Connects June 27, 2022 Comments at 4, 12-13; Altice June 27, 2022 Comments at 1-2; Crown Castle June 27, 2022 Comments at 2; ExteNet June 27, 2022 Comments at 4; NCTA June 27, 2022 Comments at 8-9; Tech Freedom June 27, 2022 Comments at 13; WIA June 27, 2022 Comments at 6-7; ICLE Aug. 26, 2022 Reply at 7; T-Mobile Aug. 26, 2022 Reply at 5-6.

[447] Charter June 28, 2022 Comments at 34; *see also* ACA Connects June 27, 2022 Comments at 4, 12-13; Altice June 27, 2022 Comments at 1-2; Crown Castle June 27, 2022 Comments at 2 (urging the Commission to "clarify that certain practices employed by pole owners are unreasonable and improper" and noting that "some pole owners continue to misuse the pole attachment process by delaying pole replacements until there is a new attachment request and then demanding that the new attacher pay the whole cost of replacement"); INCOMPAS June 27, 2022 Comments at 14; NCTA June 27, 2022 Comments at 8-9; Tech Freedom June 27, 2022 Comments at 13; ExteNet June 27, 2022 Comments at 4; WIA June 27, 2022 Comments at 6-7; ICLE Aug. 26, 2022 Reply at 7 (stating that "[t]he complexity surrounding how to allocate pole-replacement costs is compounded in the case of a pole that already requires replacement (*e.g.,* because the pole does not comply with current safety and utility construction standards, has been "red-tagged" as a candidate for replacement, or is at the end of its useful life)); T-Mobile Aug. 26, 2022 Reply at 5-6.

replacements."[448] After full consideration of the record, the Commission decided to include the internal construction standards determination in the non-exclusive list of examples of when a pole replacement is not "necessitated solely" by an attachment request—an example put forward in the record by Crown Castle as far back as August 2022.[449]

116. We also find unpersuasive EEI's argument in the Petition that the internal construction standards determination and the grandfathered pole example will result in less broadband deployment because they would cause "uncertainty and financial risk" for utilities.[450] We concur with INCOMPAS that in fact "the clarity provided in the *Declaratory Ruling"* will advance broadband deployment by competitive providers "as these companies will now be able to devote more resources to extending builds and reaching new customers rather than paying to replace aging utility poles."[451] As Crown Castle notes, the "Commission's decision regarding replacement of poles to bring them into compliance with a utility's updated construction standards (including so-called 'grandfathered' poles) will promote broadband deployment by reducing costs and eliminating the opportunity and incentive for pole owners to manipulate the process to the detriment of attachers."[452]

117. Finally, we reject EEI's argument in the Petition that the Commission's application of the "necessitated solely" language in section 1.1408(b) to allocate make-ready pole replacement costs is "confusing and inappropriate."[453] EEI claims that the "'cost causation language of the fourth sentence of 1.1408(b)' speaks only of the costs for rearranging or replacing *existing attachments*."[454] However, as the Commission explained in the *Declaratory Ruling*, it agreed with the Bureau's analysis in the *2021 Pole Replacement Declaratory Ruling* that when the cost-allocation and cost-causation provisions in section 1.1408(b) are read together, they "stand for the proposition that parties benefiting from a modification share proportionately in the costs of that modification, unless such modification is necessitated solely as a result of an additional or modified attachment of another party, in which case that party bears the cost of

[448] ACA Connects Feb. 13, 2024 Opposition at 5 (citing Crown Castle Aug. 26, 2022 Reply at 20); *see* Altice Feb. 13, 2024 Opposition at 2 (noting that "the Commission's determination that poles qualifying under the *Currently Failing Pole Example* are not 'necessitated solely by' an attacher was based on extensive evidence in the record and is extremely important to ensure that utilities do not continue to unfairly shift the cost of upgrading their aging pole plant onto attachers").

[449] Crown Castle Aug. 26, 2022 Reply at 20 ("But the Electric Utilities fail to recognize that the practice they describe—waiting for a request to attach or modify an attachment so that they can foist the cost of replacement onto an attacher—is precisely the problem the Commission is seeking to address. The reality is that the 'grandfathered' poles the Electric Utilities describe do not 'conform with the most recent version of the [NESC]' and, under the Electric Utilities' own standards, should be replaced. The fact that the NESC may not require attachments that complied with prior versions of the NESC to be cured does not dictate the Commission's cost-causation rules. Indeed, this is an example of the type of loophole that pole owners use too often based on narrow readings of the Commission's rules." (footnote omitted)); Crown Castle Dec. 5, 2023 *Ex Parte* Letter at 2.

[450] *See* EEI Petition at 1, 14, 20; Xcel Energy Feb. 13, 2024 Comments at 3; Electric Utilities July 11, 2025 *Ex Parte* Letter at 4.

[451] INCOMPAS Feb. 14, 2024 Opposition at 5, 10-11 (noting that the clarification "will reduce confusion in the market over the responsibility for pole replacement leading to greater broadband deployment. If communications space is available on a pole for a new attachment, and utilities dictate that a pole replacement is necessary, then with limited exceptions, the two entities will be required to apportion the costs as dictated by the Commission's ruling."); *see also* ACA Connects Feb. 13, 2024 Opposition at 2, 8-9 (noting that granting either of EEI's requests "would undermine the Commission's goal to 'eliminate or expedite the resolution of pole replacement disputes by establishing clear standards for when and how utilities and attachers must share in the costs of a pole replacement that is precipitated by a new attachment request'").

[452] Crown Castle Feb. 13, 2024 Opposition at 4.

[453] EEI Petition at 21.

[454] *Id.* at 23 (emphasis in original).

the modification."[455] The Commission further clarified that "it would be contrary to the Commission's rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement . . . at the time a request for a new or modified attachment is made."[456]

118. Because the clarification in the *Declaratory Ruling* was both based on an extensive record and consistent with prior Commission decisions regarding pole attachments, we reject EEI's request that we reconsider, or clarify in the manner requested by EEI, the portion of the *Declaratory Ruling* regarding the internal construction standards determination and the grandfathered pole example. We do, however, clarify that portion of the *Declaratory Ruling* as described above.

B. Easement Ruling

119. We reject EEI's request to reconsider our clarification in the *Declaratory Ruling* that, consistent with their obligations under section 224(f) of the Act, "utilities must provide potential attachers with a copy of a utility's easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement."[457] EEI asks that the Commission "clearly define the narrow circumstances in which a utility pole owner is required to provide a copy of its easement to an attacher that seeks to access a pole within such easement."[458] We deny EEI's reconsideration request because the parameters of the easement sharing ruling are plainly set forth in the *Declaratory Ruling*.[459] We do, however, clarify that the utility only has to provide a copy of the easement to the attacher to the extent that the utility relies on an interpretation of the easement to deny the attacher access to that easement.

120. Section 224(f)(1) of the Act requires a utility to provide "a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[460] In the 1996 *Local Competition Order*, the Commission found that "the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit such access."[461] Based on the language in section 224(f)(1)

---

[455] *Declaratory Ruling*, 38 FCC Rcd at 12407, para. 47 (citing *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 779-80, para. 7; *see also* Altice Feb. 13, 2024 Opposition at 2-4 (noting that "even if [EEI's] challenge had been timely filed, EEI offers no compelling reason for the Commission to deviate from its conclusion that an attacher's share of pole replacement costs should be limited to the costs 'necessitated solely by' its attachment"); Crown Castle Feb. 13, 2024 Opposition at 3 (arguing that "the Commission should once again reject EEI's request to upend the Commission's pole attachment rules by reading out the 'necessitated solely' language. The Commission has already determined that the necessitated solely language is integral to the pole replacement cost allocation scheme and merely reiterated that determination in the instant Declaratory Ruling. It would be inappropriate for the Commission to overturn years of precedent and reverse course, especially in the absence of any new argument or evidence, in this proceeding.").

[456] *Declaratory Ruling*, 38 FCC Rcd at 12407, para. 47; *see also* Altice Feb. 13, 2024 Opposition at 2-4 (noting that "as previously explained by commenters, nothing in the text of Section 1.1408 or Section 224 supports EEI's argument, nor does Section 224 limit the Commission's discretion to assign certain pole replacement costs to the utility in appropriate circumstances, including where the pole requires replacement under the utility's current standards" (footnote omitted)).

[457] *Declaratory Ruling*, 38 FCC Rcd at 12408-09, para. 49.

[458] EEI Petition at 1.

[459] *Declaratory Ruling*, 38 FCC Rcd at 12409, para. 49.

[460] 47 U.S.C. § 224(f)(1); 47 CFR § 1.1403(a).

[461] *Local Competition Order*, 11 FCC Rcd at 16082, para. 1179 ("The scope of a utility's ownership or control of an easement or right-of-way is a matter of state law. We cannot structure general access requirements where resolution of conflicting claims as to a utility's control or ownership depends upon variables that cannot now be ascertained."). We note that the *1996 Local Competition Order* reflects the Commission's contemporaneous interpretation of section 224(f)(1), which was part of the Telecommunications Act of 1996. *See Loper Bright Enterprises v.*

(continued….)

and the Commission's interpretation of that language as set out in the *Local Competition Order*, the Commission concluded in the *Declaratory Ruling* that "in order to enable attachers to effectuate their right of access under section 224(f) of the Act, utilities must provide potential attachers with a copy of a utility's easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement. In making this clarification, we find that the section 224(f) right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher; it does not require the utility to alter the underlying easement or act in contravention of state law."[462] Such a requirement is consistent with the best reading of section 224(f)(1) because without information on the actual easement, neither attachers nor the Commission can verify whether the utility's denial of access is justified, and the best source for easement information is the utility that holds the easement.[463] After all, the utility's easement shows the extent of the utility's ownership or control of the right-of-way under the relevant state law. Providing this information—which necessarily shows whether the attacher has a statutory right of access—gives the attacher the ability to make use of the pole and thus fits within the ordinary meaning of "access."[464]

121. EEI asserts that as written, the *Declaratory Ruling* implies that the utility, not the attacher, is responsible in the first instance for any determination that must be made about the scope of the utility easement, and that this goes against decades of precedent and standard practice.[465] In support of its Petition, EEI argues that: (1) "easement information is not relevant to pole attachment requests or to broadband deployment"; (2) the clarification "is premised on the baseless assertions of a single commenter to which no party had an opportunity to respond"; (3) the clarification "fails to balance the costs, burdens, risks, and potential benefits that will flow from a new disclosure requirement"; and (4) the clarification "fails to consider reasonable limitations on a pole owner's obligation to share easement information."[466] We believe our clarification herein obviates the latter two concerns. For the reasons set forth below, however, we reject EEI's first two objections.

122. We do not agree with EEI's characterization that the *Declaratory Ruling* "implies that the utility, and not the attacher, is responsible in the first instance for any determination that must be made

(Continued from previous page)
Raimondo, 603 U.S. 369, 394 (2024) ("[I]nterpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." (internal citation omitted)).

[462] *Declaratory Ruling*, 38 FCC Rcd at 12409, para. 49.

[463] *See* INCOMPAS Feb. 13, 2024 Opposition at 14 ("Utilities already have an obligation under the Commission's rules to allow access to easements and rights-of-way. The Commission's *Declaratory Ruling* simply insists that utilities produce evidence that under state law a potential attacher does not have a right to use an easement or right-of-way or must obtain their own. The Commission justifiably is unwilling to allow utilities to use 'because we said so' as justification for not keeping with their obligations to potential attachers under section 224(f)."); Crown Castle Feb. 13, 2024 Opposition at 13 (noting that in some cases "the utility is likely the only party that could have knowledge of the terms of the easement"); UTC Feb. 13, 2024 Comments at 2-3 (arguing that "disclosure of easements should only be required when the pole owner denies an active request (*i.e.,* an application) for access to a specific pole based on its interpretation of the scope of an applicable easement.").

[464] The dictionary definition of "access" is "freedom or ability to obtain or make use of something." *See* Merriam-Webster, *access*, https://www.merriam-webster.com/dictionary/access (last visited July 24, 2025).

[465] EEI Petition at 2-4. Despite EEI's claim that the Commission's easement-sharing requirement goes against "decades-old-precedent" (EEI Petition at 3), EEI cites to no such precedent. In rejecting this argument, we note that the Commission has not ruled on any easement-related parameters since 1996. *Local Competition Order*, 11 FCC Rcd at 16082, para. 1179.

[466] *See* EEI Petition at 7-10.

about the scope the utility easement."[467] Rather, we plainly clarified in the *Declaratory Ruling* that "the section 224(f) right of access requires the sharing of information regarding the easement *in cases where the utility claims the easement cannot accommodate an attacher*."[468] Where the utility claims the easement cannot accommodate an attacher, that claim is presumably based on some analysis of the easement by the utility. It is in this limited setting that the utility is required to share easement information.[469] In such a case, an attacher must be able to evaluate the easement to determine its scope, and the best source for the easement is the utility that holds it.[470]

123. With regard to EEI's other arguments against the easement ruling, they largely can be boiled down to an issue of balancing burdens against benefits, with EEI asserting that the Commission failed to consider and implement such a balance.[471] We disagree. The burden of the sharing requirement is limited to "cases where the utility claims the easement cannot accommodate an attacher."[472] As for the

[467] *Id.* at 4. We do not disagree with EEI's assertion that "where an attacher seeks to use a utility easement to access a pole that the utility approved for attachment under Section 224(f), the attacher (and not the utility) must determine whether the applicable easement for the pole location is sufficiently broad to allow or encompass a third-party communications facility." *Id.* at 3.

[468] *Declaratory Ruling*, 38 FCC Rcd at 12409, para. 49 (emphasis added).

[469] *Id.* at 12408-09, para. 49; *see also* EEI Feb. 23, 2024 Reply at 9 ("The oppositions support clarifying that a utility pole owner is required to provide easement documents *only if* it denies an active request (*i.e.*, an application) for access to a specific pole based on its interpretation of the scope of an applicable easement." (emphasis in original)); UTC Feb. 14, 2024 Comments at 2-3 (stating that "disclosure of easements should only be required when the pole owner denies an active request (*i.e.*, an application) for access to a specific pole based on its interpretation of the scope of an applicable easement"); Xcel Energy Feb. 13, 2024 Comments at 4; INCOMPAS Feb. 14, 2024 Opposition at 14.

[470] *Declaratory Ruling*, 38 FCC Rcd at 12408-09, para. 49; *see also* NCTA Feb. 13, 2024 Opposition at 11 (stating that "the Commission was abundantly clear that the purpose of utilities providing copies of its easements is to allow the 'attacher . . . to evaluate these easements and determine their scope' and 'to enable attachers to effectuate their right of access under section 224(f) of the Act.' The Commission further clarified that requiring utilities to provide copies of its easements to attachers 'does not require the utility to alter the underlying easement or act in contravention of state law.' Nothing in the Commission's ruling requires utilities to 'warrant that the easement is both valid and applicable' or to 'assume such a risk for itself and its customers to facilitate a third-party attachment,' as EEI posits." (footnotes omitted)); *see also* Crown Castle Feb. 13, 2024 Opposition at 12 ("Crown Castle has experienced utilities that demand attachers obtain their own easements while refusing to provide a copy of the utility's easement, thereby delaying its ability to deploy broadband."); Xcel Energy Feb. 23, 2024 Reply at 8-9 ("The primary concern raised by attachers is that pole owners should document the basis for denial of access to a specific pole where such denial is based on a specific easement."); NCTA Feb. 13, 2024 Opposition at 10 ("Forcing attachers to obtain copies of easements through either public resources or title searches when the utility already has such easements available unequivocally adds unnecessary expense and delay to the broadband deployment process."); INCOMPAS Feb. 14, 2024 Opposition at 14.

[471] *See* EEI Petition at 1, 7-10 (asserting with respect to the easement clarification that (1) "EEI members are not aware of any active dispute that involves a pole owner's denial of access to a utility easement"; (2) "utility pole owners do not maintain copies of easements or track easement information the ordinary course of business"; and (3) "a requirement that a utility pole owner provide copies of written easements imposes undue costs, burdens and risks on the utility and its ratepayer customers").

[472] *Declaratory Ruling*, 38 FCC Rcd at 12409, para. 49. In rejecting EEI's argument that the easement clarification "fails to consider reasonable limitations on a pole owner's obligation to share easement information" (EEI Petition at 12-13), we note that just the opposite is true—the "disclosure of easements should *only* be required when the pole owner denies an active request (*i.e.*, an application) for access to a specific pole based on its interpretation of the scope of an applicable easement." UTC Feb. 14, 2024 Comments at 2-3 (emphasis added); INCOMPAS Feb. 14, 2024 Opposition at 14 ("The Commission justifiably is unwilling to allow utilities to use 'because we said so' as justification for not keeping with their obligations to potential attachers under section 224(f)."); Crown Castle Feb. 13, 2024 Opposition at 13 ("The utilities themselves must rely on these easements for their own purposes, for example when making their own attachments or performing make-ready or repair work on their poles. The

(continued….)

benefits and relevance of the easement sharing requirement, we agree with commenters who assert that the potential for disputes is amplified by the asymmetrical information between parties, thus slowing down the process of pole attachments and, consequently, delaying broadband deployment.[473] By requiring utilities to provide relevant easement information, we are helping to level the playing field between utilities and attachers while also reducing the potential delays in broadband deployment.[474] Thus, limiting the sharing of easement information to situations where the utility denies easement access is a reasonable limitation on a utility's obligation to share easement information without exacerbating the problem of asymmetrical information.

124. Specifically with regard to utility burdens, we disagree with EEI's argument that we should reverse or clarify our declaration because utilities do not maintain copies of easements in the ordinary course of business but instead rely on public records, and not all utility easements emanate from written easement instruments.[475] EEI's argument of an undue burden on utilities in producing records in this case misses the point.[476] Our requirement that utilities produce easement information is conditioned on their claiming that the easement cannot accommodate the attacher, and the best source of information verifying the utility's claim is the utility that holds the easement.[477] In accordance with section 224(f) of the Act,[478] we already determined that granting an attacher a "right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher."[479] Thus, we are not requiring the utility to alter any business practices. Rather, we only are requiring it to provide easement information when it denies access to the easement, especially since it is the best source of information for the evidence of the denial.[480] We further clarify, however, that the

(Continued from previous page)
Commission correctly determined that utilities should not be permitted to conceal what they know about their easements to the detriment of attachers.").

[473] ACA Connects Feb. 13, 2024 Opposition at 11; Crown Castle Feb. 13, 2024 Opposition at 2-3; NCTA Feb. 13, 2024 Opposition at 10; Letter from Michael N. Watson, VP and Deputy General Counsel, ExteNet, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Feb. 27, 2024) (ExteNet Feb. 27, 2024 *Ex Parte* Letter). *But see* Xcel Energy Reply at 6 ("Contrary to the claims of Crown Castle and ACA, there is no asymmetry between pole owners and attachers regarding access to easement information.").

[474] This is contrary to EEI's claim that easement information is not relevant to pole attachment requests or to broadband deployment. EEI Petition at 6; *see also* NCTA Feb. 13, 2024 Opposition at 10 ("Contrary to EEI's assertions, access to easement information is extremely relevant in the context of pole attachment requests, and the lack of easement information can adversely impact the speed and cost of broadband deployment." (footnote omitted)); INCOMPAS Feb. 14, 2024 Opposition at 13 ("With the Easement Ruling, the Commission has recognized another low-cost efficiency that will allow providers to extend their networks further into areas that desperately need competitive telecommunications services, including competitive high-speed broadband.").

[475] EEI Petition at 8-9; Xcel Energy Feb. 13, 2024 Comments at 3-4; CCU Feb. 13, 2024 Comments at 9-10.

[476] INCOMPAS Feb. 14, 2024 Opposition at 13 (noting that "the limitations the Commission has placed on the production of an easement—that it is only necessary in situations in which the utility intends to refuse to let the attacher share that easement or require the attacher to obtain its own easement—also invalidates EEI's arguments that the Commission's clarification in this instance will be overly burdensome and administratively onerous").

[477] *See, e.g.*, NCTA Feb. 13, 2024 Opposition at 11; Crown Castle Feb. 13, 2024 Opposition at 2-3; INCOMPAS Feb. 14, 2024 Opposition at 13.

[478] 47 U.S.C. § 224(f).

[479] *Declaratory Ruling*, 38 FCC Rcd at 12409, para. 49.

[480] INCOMPAS Feb. 14, 2024 Opposition at 13-14 (stating that "it stretches credulity to insist that utilities do not have access to easement information for poles that are located on private property and that might otherwise pose access concerns for potential attachers"); UTC Feb. 13, 2024 Comments at 2-3.

utility must provide this information if it denies access based on its interpretation of the easement.[481]

125. Because utilities' obligation to provide easement information is limited to instances in which the utility denies access to its easement based on its interpretation of the easement, we decline to adopt EEI's request to limit this obligation to instances where the attacher is unable to locate easement information after conducting a public search.[482] The Commission has already considered this limitation and determined that easement information should be in the utility's possession if it has affirmatively denied access to an attacher.[483] As NCTA notes in its opposition, "[f]orcing attachers to obtain copies of easements through either public resources or title searches when the utility already has such easements available unequivocally adds unnecessary expense and delay to the broadband deployment process."[484]

126. We also disagree with EEI that the easement sharing requirement is deficient because it was adopted based entirely on new, untested assertions made in an *ex parte* submitted by Crown Castle after the start of the Sunshine Period.[485] As INCOMPAS points out, the Commission's inclusion of the easement clarification cites to comments submitted by ExteNet.[486] In addition, as NCTA notes, "the Declaratory Ruling was based on an interpretation of section 224(f) of the Act. . . . [and] the Commission can issue a Declaratory Ruling on its own motion interpreting a statute."[487]

VI. ORDER ON RECONSIDERATION (CCU)

127. In this Order, we deny CCU's Petition for Reconsideration of our December 2023 *Fourth Wireline Infrastructure Order*. In that *Order*, the Commission adopted new regulations requiring utilities to provide copies of their cyclical pole inspection reports to prospective attachers upon request.[488] The key purpose of this requirement is to increase transparency and provide attachers with more information that might assist them in planning broadband deployment projects.[489] At the same time, the Commission

---

[481] *See* EEI Petition at 13 (noting that "the Commission should clarify that a utility pole owner is required to provide easement documents only if the pole owner denies an active request (i.e., an application) for access to a specific pole based on its interpretation of the scope of an applicable easement"); *cf.* INCOMPAS Feb. 14, 2024 Opposition at 14 ("The Commission justifiably is unwilling to allow utilities to use 'because we said so' as justification for not keeping with their obligations to potential attachers under section 224(f)."); Crown Castle Feb. 13, 2024 Opposition at 13 ("The utilities themselves must rely on these easements for their own purposes, for example when making their own attachments or performing make-ready or repair work on their poles. The Commission correctly determined that utilities should not be permitted to conceal what they know about their easements to the detriment of attachers."); Xcel Energy Feb. 13, 2024 Comments at 4.

[482] EEI Petition at 13.

[483] *2011 Report and Order*, 11 FCC Rcd at 16082, para. 1179 (stating that an attacher's right of access to utility poles is limited by the scope of the utility's easement under state law).

[484] NCTA Feb. 13, 2024 Opposition at 10; *see also* Crown Castle Feb. 13, 2024 Opposition at 12.

[485] EEI Petition at 7-8; UTC Feb. 14, 2024 Comments at 2; Xcel Energy Feb. 13, 2024 Comments at 2; CCU Feb. 13, 2024 Comments at 8.

[486] INCOMPAS Feb. 14, 2024 Opposition at 11-13 ("ExteNet specifically offers easements as an example of information that, if available for inspection, would assist in its broadband deployment efforts. The inability of ExteNet to consistently secure easement information despite the Commission's clear rules granting access to easements and rights-of-way, seemingly aligns with Crown Castle's stated concerns in its ex parte letter that utilities 'refuse to provide a copy of the utility's easement evincing the utility's right to have poles or other facilities on private property.' Taken together with Crown Castle's assertion that utilities also 'demand that attachers obtain their own easements to access existing utility poles,' it is clear from the record that a pattern has been established that would require the Commission to clarify section 224(f) of the Act.").

[487] NCTA Feb. 13, 2024 Opposition at 12.

[488] *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12390-93, paras. 23-26 and Appx. A, § 1.411(c)(4).

[489] *Id.* at 12391, 12393-94, paras. 23, 27-28.

sought to avoid imposing undue burdens on utilities by limiting the requirement to providing information they already possess and produce in the normal course of business.[490]

128. CCU seeks reconsideration of this new requirement. CCU contends that the Commission adopted the requirement without appropriate notice and that the requirement is unduly burdensome, will create disputes, and could impede broadband deployment, all while providing no new benefit to prospective attachers.[491] Four parties filed oppositions to the Petition.[492] Much of the Petition relies on "arguments that have been fully considered and rejected by the Commission within the same proceeding," and to that extent, we dismiss the Petition on procedural grounds and also deny on substantive grounds.[493] To the extent some of CCU's Petition raises new arguments, we fully consider and reject them herein. Thus, we deny CCU's Petition for the reasons discussed below.

A. Adequate Notice of the Rule

129. As a procedural matter, CCU argues that the Commission did not provide adequate notice that it might adopt a rule requiring utilities to provide attachers with copies of pole inspection reports.[494] Specifically, CCU contends that the paragraph of the *Second Further Notice* seeking comment on whether the Commission should require utilities to provide more information to attachers[495] "contains no indication that utilities might be required to provide pole inspection reports to communications attachers."[496] CCU also asserts that the first the public learned of the potential requirement to provide copies of pole inspection reports was in the Commission's November 22, 2023 Draft Order,[497] which was released two weeks before the start of the sunshine period, after which further comment was prohibited.[498] CCU argues that two weeks was not sufficient to alert utilities to the prospective ruling and allow them to provide meaningful responses.[499]

130. Groups representing attachers disagree. They state that the law does not require a notice of proposed rulemaking to have proposed the precise rule that the Commission ultimately adopts, but rather only that the final rule be a "logical outgrowth of its notice."[500] They contend that the final rule on pole inspection reports was a logical outgrowth of a proposal in the *Second Further Notice* because the Commission specifically asked about the types of information utilities should be required to provide

---

[490] *Id.* at 12390-91, para. 23.

[491] CCU Petition at 8-22; *see also generally* Electric Utilities Mar. 25, 2024 Reply.

[492] Altice Mar. 15, 2024 Opposition; Crown Castle Mar. 15, 2024 Opposition; INCOMPAS Mar. 15, 2024 Opposition; NCTA Mar. 15, 2024 Opposition.

[493] *See* 47 CFR § 1. 429(i), (l)(3).

[494] CCU Petition at 8-10; *see also* Electric Utilities Mar. 25, 2024 Reply at 1-2.

[495] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 4144 (2022) (*Second Further Notice*).

[496] CCU Petition at 9-10 (citing *Second Further Notice*, 37 FCC Rcd 4164-66, paras. 33, 35).

[497] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Draft Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, FCC-CIRC2302-4 (rel. Nov. 22, 2023) (Draft Order).

[498] CCU Petition at 10.

[499] *Id.* at 10.

[500] Altice Mar. 15, 2024 Opposition at 7-8 (citing *Covad Commc'ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006)); NCTA Mar. 15, 2024 Opposition at 5.

regarding the status of their poles,[501] and both attachers and utilities addressed pole inspection reports as one such source of information in their comments, replies, and *ex parte* filings.[502]

131. We reject CCU's argument that the Commission adopted the transparency requirement without proper notice. As noted above, the relevant legal question is whether the final adopted rule was a "logical outgrowth" of the issues on which the Commission sought comment in the *Second Further Notice*.[503] "A final rule qualifies as a logical outgrowth 'if interested parties "should have anticipated" that a change was possible . . . .'"[504] That test is met here.

132. The *Second Further Notice* sought comment on "additional measures that the Commission could adopt that would enable attachers and utilities to avoid pole replacement disputes and/or resolve them quickly when they occur."[505] As an example, the Commission noted one party's proposal to require utilities to provide attachers with "information on the condition of, and replacement plans for, their poles."[506] The Commission also asked for comment on "what mechanism" utilities could use "to provide such information to attachers[.]"[507] As noted above and described in more detail in the *Fourth Report and Order*, attachers made a variety of proposals for information-sharing requirements.[508] Utilities responded by largely opposing such requirements.[509] Most relevant here, in both comments and replies on this issue, commenters on both sides noted that many utilities create cyclical reports containing a range of information on their poles, including information about their condition and replacement plans.[510] Attachers argued the information in such reports would be useful in planning projects and reducing the number of pole replacements they would have to pay for,[511] while utilities generally argued the information would be outdated and was unnecessary in light of the same or similar information they already provide to prospective attachers.[512] This debate continued in *ex partes* from both sides after the Commission released the Draft Order, with several parties supporting, opposing, and/or seeking modifications to the proposed rule.[513]

---

[501] *Second Further Notice*, 37 FCC Rcd 4165, para. 35.

[502] Altice Mar. 15, 2024 Opposition at 7-8; Crown Castle Mar. 15, 2024 Opposition at 2-4; INCOMPAS Mar. 15, 2024 Opposition at 3-4; NCTA Mar. 15, 2024 Opposition at 5.

[503] *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1079-80 (D.C. Cir. 2009) (*CSX Transportation*).

[504] *Id.* at 1079-80 (citations omitted).

[505] *Second Further Notice*, 37 FCC Rcd 4165, para. 35.

[506] *Id.*; *see also id*. at 4145, para. 3 ("We also seek comment on whether the Commission should require utilities to share information with potential attachers concerning the condition and replacement status of their poles and other measures that may avoid or expedite the resolution of disputes between the parties.").

[507] *Id.* at 4165, para. 35.

[508] *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12396-402, paras. 30-38 (discussing attachers' information-sharing proposals and utilities' responses).

[509] *See id.* at 12396-402, paras. 30-38.

[510] Crown Castle June 27, 2022 Comments at 25 and Exh. B, Bingle Decl., paras. 16-32; Electric Utilities June 28, 2022 Comments at 56-58; Dominion/Xcel Aug. 26, 2022 Reply at 39-41; USTelecom Aug. 26, 2022 Reply at 19-20.

[511] ACA Connects Aug. 26, 2022 Reply at 33-34.

[512] Electric Utilities June 27, 2022 Comments at 56-58; CCU Aug. 26, 2022 Reply at 13; Dominion/Xcel Aug. 26, 2022 Reply at 39-41 and n.154; Electric Utilities Aug. 26, 2022 Reply at 25-28; USTelecom Aug. 26, 2022 Reply at 19-20.

[513] Letter from Jacqueline Clary, Altice USA, Inc., to Marlene, H, Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 and Attach. A at 1-2 (filed Dec. 6, 2023) (Altice Dec. 6, 2023 *Ex Parte* Letter With Attachment); Letter from Thomas Magee, Keller & Heckman, Counsel for Coalition of Concerned Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 5, 2023) (CCU Dec. 5, 2023 *Ex Parte* Letter); Letter from D. Van (continued….)

133. This record demonstrates the final rule was a logical outgrowth of the *Second Further Notice*. The Commission sought comments and proposals on requiring utilities to provide more pole-related information to attachers and mechanisms for doing so. It received a range of proposals and extensive comments, which included discussion on both sides regarding pole inspection reports. Parties, including CCU, therefore should have anticipated that a requirement to provide pole inspection reports was possible.[514] Accordingly, there was no lack of adequate notice.

B. Substantive Challenges to the Rule

134. Turning to the substance, CCU raises several policy arguments that, it contends, demonstrate that the rule on pole inspection reports is unwise and unnecessary.[515] CCU contends that the information contained in utilities' cyclical pole inspection reports is either irrelevant to the attachment process or is already available through the attachment process,[516] and that requiring utilities to provide such reports could lead to disputes and confusion between utilities and attachers that do not understand utilities' asset management programs and prioritization and regulatory requirements.[517] CCU also argues that such disputes will ultimately delay broadband deployment by slowing down the processing of pole attachment requests and harming the collaborative relationship between utilities and attachers.[518] It further says the obligation created by the rule would impose significant burdens on utilities, which will have to create electronic notification systems to keep track of requests and pass along the cost to

(Continued from previous page)
Fleet Bloys, Managing Counsel, Crown Castle, to Marlene, H Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 and Attach. A at 2-5 (filed Dec. 6, 2023) (Crown Castle Dec. 6, 2023 *Ex Parte* Letter); Letter from Brett Heather Freedson, Counsel to Dominion Energy and Xcel Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-4 (filed Dec. 6, 2023) (Dominion/Xcel Dec. 6, 2023 *Ex Parte* Letter); Letter from Brett Heather Freedson, Counsel to Dominion Energy and Xcel Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 7, 2023) (Dominion/Xcel Dec. 7, 2023 *Ex Parte* Letter); Letter from Aryeh Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 1, 2023) (EEI Dec. 1, 2023 *Ex Parte* Letter); Letter from Robin F. Bromberg, Counsel for Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-3 (filed Dec. 4, 2023) (Electric Utilities Dec. 4, 2023 *Ex Parte* Letter); Letter from Geoffrey G. Why, Counsel for ExteNet, and Michael Saperstein, Counsel for Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (ExteNet/WIA Dec. 7, 2023 *Ex Parte* Letter); Letter from Christopher L. Shipley, Executive Director of Public Policy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (INCOMPAS Dec. 7, 2023 *Ex Parte* Letter); Letter from Pamela Arluk, Vice Pres. and Assoc. Gen'l Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed Dec. 5, 2023) (NCTA Dec. 5, 2023 *Ex Parte* Letter); Letter from Pamela Arluk, Vice Pres. and Assoc. Gen'l Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. A at 1-4 (filed Dec. 7, 2023) (NCTA Dec. 7, 2023 *Ex Parte* Letter); Letter from John Windhausen, Jr., Exec. Dir., Schools, Health & Libraries Broadband (SHLB) Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (SHLB Dec. 7, 2023 *Ex Parte* Letter); Letter from Nirali Patel, Senior Vice President, Policy & Advocacy, US Telecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 6-7 (filed Dec. 6, 2023) (USTelecom Dec. 6, 2023 *Ex Parte* Letter).

[514] *CSX Transportation*, 584 F.3d at 1079-80 (citations omitted).

[515] CCU Petition at 11-22.

[516] *Id.* at 13-15; CCU Mar. 25, 2024 Reply at 2-4; *see also* Electric Utilities Mar. 25, 2024 Reply at 4 (asserting that "attachers are demonstrably wrong in asserting that [the transparency rule] will somehow enable better route design" because they cannot obtain copies of the pole inspection reports until after they have submitted their applications and "[t]heir routes should already be 'planned'" by that time).

[517] CCU Petition at 11-12; CCU Mar. 25, 2024 Reply at 6-9.

[518] CCU Petition at 12-13; CCU Mar. 25, 2024 Reply at 5-6.

attachers.[519] CCU also contends that the rule raises security concerns because it risks improper disclosure of sensitive network information.[520]

135. Attachers respond that the information in cyclical pole inspection reports will indeed be beneficial, such as in helping them ensure the utility is complying with Commission rules and helping them negotiate with utilities when the reports reveal an issue with an attachers' planned route.[521] They note, as others did in their prior comments and replies, that pole inspection reports can sometimes be outdated, but nevertheless can contain more information than attachers might otherwise receive from utilities, and that this additional transparency can help reduce or resolve disputes and allow for better planning of a project before the make-ready process begins.[522]

136. As a threshold matter, CCU and others already raised, and the Commission already considered, CCU's arguments regarding the value or need for the information in pole inspection reports, the potential for disputes or confusion, the possible impact on broadband deployment, and the burden of the new requirement on utilities.[523] For example, as Altice notes, CCU's Petition incorporates entire passages from its Reply submitted in response to the *Second Further Notice*, altering only a few words.[524] CCU's Petition also reiterates the same arguments already presented by it and other utilities in comments and replies submitted in response to the *Second Further Notice* and in *ex parte* submissions after the Draft Order was released.[525]

---

[519] CCU Petition at 16; CCU Mar. 25, 2024 Reply at 5.

[520] CCU Petition at 12-13.

[521] Altice Mar. 15, 2024 Opposition at 9-12; Crown Castle Mar. 15, 2024 Opposition at 6-7; INCOMPAS Mar. 15, 2024 Opposition at 9; NCTA Mar. 15, 2024 Opposition at 7-8. *But see* Electric Utilities Mar. 25, 2024 Reply at 5 (asserting that "Crown Castle previously acknowledged that access to cyclical pole inspection reports will not benefit broadband deployment").

[522] Altice Mar. 15, 2024 Opposition at 11; Crown Castle Mar. 15, 2024 Opposition at 7; INCOMPAS Mar. 15, 2024 Opposition at 9; NCTA Mar. 15, 2024 Opposition at 8; Crown Castle June 27, 2022 Comments at 29-30; NCTA June 27, 2022 Comments at 24; ACA Connects Aug. 26, 2022 Reply at 33-34.

[523] *See Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12395, para. 28 n.86 (citing utility arguments that there are better ways for attachers to obtain the most up-to-date information on poles, that the information in pole inspection reports would not be useful to attachers, and that utilities already provide attachers with much of the information in such reports); *id*. at 12391-92, para. 24 n.71 (addressing utility arguments that requiring utilities to provide copies of pole inspection reports "will create confusion and invite disputes"); *id.* at 12393-94, 12396, para. 27 n.80 and para. 29 n.91 (citing attachers' arguments that access to information like that in pole inspection reports will promote and speed broadband deployment); CCU Aug. 26, 2022 Reply at 11-12 (arguing that attachers "do not have the expertise" to interpret utilities' pole inspection reports); *id*. at 12 (requiring utilities to provide pole inspection reports "would complicate the [broadband] deployment process"); *id*. at 12-13 (requiring utilities to provide pole inspection reports would "raise security concerns"); Dominion/Xcel Aug. 26, 2022 Reply at 34-35 (requiring utilities to provide pole inspection reports will create disputes and slow broadband deployment and impose a large burden on utilities); EEI Aug. 29, 2022 Reply at 36 (requiring utilities to provide pole inspection reports would impose a large burden on utilities); Electric Utilities Aug. 26, 2022 Reply at 26, 28, 57 (requiring utilities to provide pole inspection reports would not benefit attachers, would raise security concerns, and would impose a large burden on utilities).

[524] Altice Mar. 15, 2024 Opposition at 5. For example, the arguments at pages 13-15 of the CCU Petition are a nearly verbatim repeat of the arguments at pages 12-14 of CCU's Reply to the *Second Further Notice*. *See* CCU Aug. 26, 2022 Reply at 12-14.

[525] Altice Mar. 15, 2024 Opposition at 5-6; Crown Castle Mar. 15, 2024 Opposition at 3-4; INCOMPAS Mar. 15, 2024 Opposition at 4-7; *see also* CCU June 28, 2022 Comments at 42-43 (requiring utilities to share additional pole-related information with attachers would not help attachers); CCU Aug. 26, 2022 Reply at 11-14 (requiring utilities to share more pole-related information with attachers would not help because the information is irrelevant, would hinder broadband deployment, and would increase disputes between utilities and attachers).

137. Furthermore, the Commission in the *Fourth Wireline Infrastructure Order* already fully considered the arguments raised in the Petition. The Commission explained that while it is aware that cyclical pole inspection reports may sometimes have outdated information and that there will be some burden on utilities to provide attachers with such reports, attachers still view the reports as valuable.[526] The Commission therefore strove to strike a balance by limiting the new requirement to information that already exists and that utilities already collect in the normal course of business.[527] The Commission also considered the potential burden on utilities and the effect of new collection and disclosure obligations when it rejected several more extensive information-sharing proposals by attachers.[528] Moreover, as noted in the *Fourth Report and Order*, the Commission still strongly urges utilities and attachers to collaborate and cooperate in disclosing and reviewing pole-related information and finding the most efficient ways to address pole attachments and pole replacements.[529] CCU's argument on security concerns likewise was already raised and considered in the *Fourth Wireline Infrastructure Order*.[530] As the Commission noted, such risks can be addressed through redactions or non-disclosure agreements.[531]

138. CCU also argues that the deadlines associated with the requirement to provide cyclical inspection reports are problematic.[532] The rule requires utilities to provide attachers with cyclical pole inspection reports for the poles covered by an application within 10 business days of a written request.[533] CCU states that utilities' ability to meet that deadline will vary depending on the volume of such a request and the availability of team members who process such applications.[534]

139. CCU's argument does not warrant changing or removing the timing requirements. At this time, the argument is speculative, and the Commission's rule already seeks to limit the burden on utilities by limiting its reach only to pre-existing pole inspection reports.[535] We also decline to reconsider the requirements because the 10-business-day deadline was stated in the Draft Order, and CCU submitted an *ex parte* filing related to the pole inspection reports requirement after public release of the Draft Order.[536] Thus, CCU should have raised its concerns about the response deadline then.[537]

---

[526] *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12390-96, paras. 23-29 (noting, among other things, that "[s]everal attaching entities indicated pole inspection information would be helpful in planning deployments" (citations omitted)).

[527] *Id.* at 12393-95, paras. 27-28 (noting that we are "requiring utilities to provide such information as they already collect in the normal course of inspections" and that we "decline at this time to impose broader duties on utilities to collect and provide more expansive pole-related information").

[528] *Id.* at 12396-402, paras. 30-38.

[529] *Id.* at 12395-96, para. 29.

[530] *See* Dominion/Xcel Aug. 26, 2022 Reply at 35; Electric Utilities Aug. 26, 2022 Reply at 28.

[531] *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12391, 12393, para. 23 n.70, para. 26 n.79.

[532] CCU Petition at 15-17.

[533] *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12392-93, para. 25.

[534] CCU Petition at 15.

[535] To the extent utilities find it impossible to comply with the deadline requirement, they may seek relief through appropriate channels.

[536] CCU Dec. 5, 2023 *Ex Parte* Letter at 2-3; EEI Dec. 1, 2023 *Ex Parte* Letter at 2-3.

[537] *See* 47 CFR § 1.429(1)(2) (providing that a "petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only [if] . . . (2) The facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity").

140. CCU further asserts that the rule does not afford utilities sufficient time to inform a new attacher that it is restarting the clock for application review after an attacher's revision of its application.[538] If an attacher revises a request after reviewing pole inspection reports, the new rule requires the utility to inform the attacher that it is restarting the clock on the application, and to do so within the lesser of five business days or the number of days remaining in the 45-day application approval period (or 60 days for larger orders).[539] CCU contends that the addition of another time constraint on utility personnel will merely allow communications attachers to game the system to their advantage, such as by making vast changes in an application at a time that leaves the utility unable to timely notify the attacher that the application clock has restarted, and thus no time to review the changes.[540]

141. Once again, CCU's argument is not enough to warrant changing or removing the timing requirements. The rule appropriately balances competing interests by permitting attachers to amend their applications and permitting utilities to extend the application review period if attachers choose to do so. We expect that the utilities' discretion to extend the review period will provide a strong incentive for attachers not to seek to game the system, as last-minute amendments may be more likely to lead the utility to restart the 45-day clock due to lack of sufficient review time, and thus delay the processing of the attachment request. Moreover, as CCU concedes, it already requested that the 45-day timeline restart automatically when an attacher revises an application, but the Commission rejected that proposal, finding that the procedures it was adopting "are sufficiently tailored to account for the needs of utilities to review amended applications while not needlessly slowing deployment."[541] While CCU disagrees with that decision, it has failed to explain why a utility pole owner, when it chooses to restart the clock, is not able to inform the attacher within the required period. Moreover, the new advance notice and meet-and-confer requirements we adopt today for Large Orders, and the new advance notice requirement we adopt for Mid-Sized Orders associated with a single network deployment,[542] should help reduce these situations from occurring in the first instance.

142. Finally, CCU asserts that the rule on cyclical pole inspection reports would reduce utilities' incentive to replace poles to accommodate attachers and could lead to some utilities simply denying access, which would be counter to the Commission's goals in the proceeding.[543] In the *Fourth Report and Order*, however, the Commission took pains to adopt a rule that balanced the interests of utilities and attachers and limited the burden on utilities by requiring them to provide pole inspection reports that already exist and that the utilities already prepare in the normal course of business.[544] The Commission also rejected a number of transparency proposals that would have been materially more burdensome and costly for utilities,[545] and strongly encouraged utilities and attachers to collaborate and cooperate on ways to make the processing of pole attachment applications more efficient for all involved.[546] CCU's arguments do not cause us to challenge the Commission's conclusion that the new

[538] CCU Petition at 16-17.

[539] *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12392-93, para. 25.

[540] CCU Petition at 16. Electric Utilities go further and assert that "there is little interest in the 'amendment' component of the [transparency rule] and/or that there are no cognizable uses for it" because the record is silent on this component of the rule. Electric Utilities Mar. 25, 2024 Reply at 6.

[541] CCU Petition at 17; CCU Dec. 5, 2023 *Ex Parte* Letter; *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12393, para. 25 n.77.

[542] *See supra* Section III.A.

[543] CCU Petition at 18-22.

[544] *Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12390-96, paras. 23-29.

[545] *Id.* at 12396-402, paras. 30-38.

[546] *Id.* at 12395, para. 29.

transparency rule strikes the appropriate balance, and we therefore decline to reconsider the rule on that basis.[547]

VII. PROCEDURAL MATTERS

143. *Paperwork Reduction Act*. This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Specifically, the rules adopted in 47 CFR §§ 1.1403(b), 1.1411(c)-(k), and 1.1412(a)-(b), (e) may require new or modified information collections. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the formation collection burdens on small entities.[548]

144. This document may also contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on any information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

145. *Ex Parte Presentations*. The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

146. *Comment Filing Procedures*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the

[547] CCU previously argued that imposing more duties and deadlines on utilities would undermine their incentive to perform voluntary pole replacements. CCU Second FNRPM Reply at 15-23. The Commission took account of such arguments when limiting the obligation here to pole inspection reports that already exist and that utilities already create in the normal course of business and in rejecting more extensive information-sharing proposals. *See Id.* at 12390-402, paras. 23-38. CCU's Petition adds nothing new.

[548] *See infra* Appx. C at paras. 66-67.

dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

147. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[549] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[550] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Fourth Report and Order on small entities. The FRFA is set forth in Appendix B.

148. The Commission also has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities in the Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix C. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

149. *Congressional Review Act.* [The Commission will submit this draft Fifth Report and Order and Orders on Reconsideration to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is "major" or "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2).] The Commission will send a copy of this Fifth Report and Order and Orders on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

150. *Providing Accountability Through Transparency Act*. Consistent with the Providing

[549] 5 U.S.C. §§ 601 *et seq*., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

[550] 5 U.S.C. § 605(b).

Accountability Through Transparency Act, Public Law 118-9, a summary of the Further Notice of Proposed Rulemaking will be available on https://www.fcc.gov/proposed-rulemakings.

151. *Contact Person.* For further information about this proceeding, please contact Michele Berlove, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-1477, or michele.berlove@fcc.gov, or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-0357 or michael.ray@fcc.gov.

VIII. ORDERING CLAUSES

152. Accordingly, IT IS ORDERED that pursuant to sections 1-4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 201, 202, 224, and 303(r), the Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration hereby IS ADOPTED and Part 1 of the Commission's Rules, 47 CFR Part 1, IS AMENDED as set forth in Appendix A.[551]

153. IT IS FURTHER ORDERED that the Fifth Report and Order shall become effective 30 days after publication in the Federal Register, except that the amendments to sections 1.1403(b), 1.1411(c)-(k), and 1.1412(a)-(b), (e) which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for sections 1.1403(b), 1.1411(c)-(k), and 1.1412(a)-(b), (e) by subsequent Public Notice.

154. IT IS FURTHER ORDERED THAT, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Clarification and/or Reconsideration filed by the Edison Electric Institute IS DENIED IN PART AND GRANTED IN PART.

155. IT IS FURTHER ORDERED THAT, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration of the Coalition of Concerned Utilities IS DENIED.

156. IT IS FURTHER ORDERED that the Orders on Reconsideration ARE EFFECTIVE upon publication in the Federal Register.

157. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Fifth Report and Order and Orders on Reconsideration will commence on the date that a summary of this Fifth Report and Order and Orders on Reconsideration is published in the Federal Register.

158. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Fifth Report and Order, including the Final Regulatory Flexibility Analysis, Fourth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, and Orders on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

159. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Fifth Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

[551] Pursuant to Executive Order 14215, 90 Fed. Reg. 10447 (Feb. 20, 2025), this regulatory action has been determined to be not significant under Executive Order 12866, 58 Fed. Reg. 68708 (Dec. 28, 1993).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

The Federal Communications Commission amends part 1 of Title 47 of the Code of Federal Regulations as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.1403 paragraphs (b) by revising and (c)(3) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(b) * * * If access is not granted within the time periods specified in §§ 1.1411(d)(1) through (2) and (h), the utility must confirm the denial in writing by the applicable deadline. * * *

(c) * * * * *

(3) Any modification of facilities by the utility other than make-ready noticed pursuant to §1.1411(f), routine maintenance, or modification in response to emergencies.

* * * * *

3. Revise § 1.1411 to read as follows:

§ 1.1411 Timeline for access to utility poles.

(a) *Definitions.*

* * * * *

(4) The term "Mid-Sized Order" means pole attachment orders greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state and up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state.

(5) The term "Large Order" means pole attachment orders greater than the lesser of 3,000 poles or 5 percent of the utility's poles in a state up to the lesser of 6,000 poles or 10 percent of the utility's poles in a state.

* * * * *

(c) *Advance notice for Mid-Sized and Large Orders; meet and confer for Large Orders.*

(1) New attachers shall give written advance notice to utilities as soon as practicable, but in no event less than 15 days before submitting a Mid-Sized Order and 60 days before submitting a Large Order. For Mid-Sized Orders only, the advance notice requirement is limited to instances where the order threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher. The notice shall set forth detailed information that will allow the utility to properly assess the potential resource needs for the order, including but not limited to: (1) the new attacher's contact information: (2) a description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) for a Large Order a request to meet and confer with the utility within 30 days of the date of the notice.

(2) If an application is filed without the required written advance notice, including the required minimum information, then the utility may, upon prompt notice to the new attacher, treat such application as the 15-day advance notice for Mid-Sized Orders associated with a single network deployment or the 60-day advance notice for Large Orders. Such notice from the utility to the attacher shall state that the

application will commence the advance notice period and that the applicable timelines do not begin to run until after expiration of the relevant advance notice period. If it is a Large Order, the notice shall also state that the attacher must request the meet-and confer required by our rules. At the end of the advance notice period, the new attacher can submit a new application or notify the utility that it is continuing with its original submission as its application, and the utility may not impose any additional or increased fees. Failure by the utility to give prompt notice that it is treating the attacher's application as the advance notice will result in the application proceeding to be processed under the applicable timelines without an advance notice period or meet-and-confer requirement. If the attacher fails to request the meet-and-confer described in paragraph (c)(3) of this section, then the advance notice period will not begin to run until such request is made.

(3) New attachers and utilities shall meet and confer within 30 days after an advance notice is given to negotiate in good faith the mechanics and the timing of processing Large Orders. The parties shall find a mutually agreeable day and time for a meeting (which can be in person, virtual, or by phone) within the 30-day period after the advance notice is given.

(d) *Application review and survey.* * * *

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with §1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of Mid-Sized Orders or within 90 days in the case of Large Orders as described in paragraph (h) of this section). * * *

(3) *Survey.*

(i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of Mid-Size Orders or within 90 days in the case of Large Orders as described in paragraph (h) of this section). A utility shall notify a new attacher within 15 days of receipt of a complete application if the utility knows or reasonably should know that it cannot meet the survey deadline. A new attacher can elect self-help for the survey work pursuant to § 1.1411(j)(1) any time after it receives the utility's notice.

* * * * *

(iii) Where a new attacher has conducted a survey pursuant to paragraph (k)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (k)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (d)(3)(i) of this section. A utility relying on a survey conducted pursuant to paragraph (k)(3) of this section to satisfy all of its obligations under paragraph (d)(3)(i) of this section shall have 15 days to make such a notification to affected attachers rather than the applicable survey period.

(4) *Information from cyclical pole inspection reports.* * * *

* * * * *

(iv) * * *

(A) A utility that receives such an amended attachment application may, at its option, restart the 45-day period (or 60-day period for Mid-Sized Orders or 90-day period for Large Orders) for responding to the application and conducting the survey.

(B) A utility electing to restart the 45-day period (or 60-day period for Mid-Sized Orders or 90-day period for Large Orders) shall notify the attacher of its intent to do so within five (5) business days of receipt of the amended application or by the 45th day (or 60th or 90th day, if applicable) after the original application is considered complete, whichever is earlier.

(e) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all

necessary make-ready within 14 days of completing the survey required by paragraph (d)(3) of this section (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section), or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section). * * *

* * * * *

(f) *Make-ready*. Upon receipt of payment specified in paragraph (e)(2) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(1) * * *

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of Mid-Sized Orders or up to 120 days in the case of Large Orders as described in paragraph (h) of this section).

* * * * *

(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph (f)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (f)(1)(i) in this section.

* * * * *

(2) * * *

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of Mid-Sized Orders or 180 days in the case of Large Orders, as described in paragraph (h) of this section).

* * * * *

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (f)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (f)(2)(i) of this section.

* * * * *

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (f)(1)(ii) of this section for communications space attachments or paragraph (f)(2)(ii) of this section for attachments above the communications space.

(4) Utilities shall notify a new attacher as soon as practicable but no later than 15 days after receipt of payment specified in paragraph (e)(2) of this section if the utility knows or reasonably should know that it cannot meet the make-ready deadline. Existing attachers shall notify the utility and a new attacher as soon as practicable but no later than 15 days after receiving notice from the utility pursuant to the requirements of paragraph (e) of this section that the existing attacher knows or reasonably should know that it cannot meet the make-ready deadline. Pursuant to paragraph (j)(3) of this section, a new attacher can elect self-help for the make-ready work that the notifying party cannot do any time after it receives the notice.

(g) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (f)(1)(ii) of this section or its make-ready above the communications space

by the same dates for existing attachers in paragraph (f)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(h) * * *

(1) A utility shall apply the timeline described in paragraphs (d) through (g) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

(2) A utility may add 15 days to the survey period described in paragraph (d) of this section and 45 days to the make-ready periods described in paragraph (f) of this section, for orders greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state and up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state (Mid-Sized Orders).

(3) A utility may add 45 days to the survey period described in paragraph (d) of this section, 15 days to the estimate period described in paragraph (e) of this section, and 90 days to the make-ready periods described in paragraph (f) of this section to orders greater than the lesser of 3,000 poles or 5 percent of the utility's poles in a state up to the lesser of 6,000 poles or 10 percent of the utility's poles in a state (Large Orders).

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 6,000 poles or 10 percent of the utility's poles in a state.

(5) * * * However, a utility shall not impose application size limits in combination with application frequency limits that have the effect of restricting the number of pole attachments new attachers may seek in a given timeframe.

(i) *Deviation from the time limits specified in this section.* * * *

(3) * * * An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (f)(1) of this section is sent by the utility (or up to 105 days in the case of Mid-Sized Orders or up to 150 days in the case of Large Orders). * * *

(j) *Self-help remedy.*

(1) *Surveys*. If a utility fails to complete a survey as specified in paragraph (d)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in §1.1412, hire a contractor to complete a survey.

* * * * *

(2) *Estimates.* If the utility fails to present an estimate to the new attacher by the date specified in paragraph (e) of this section, then a new attacher may prepare the estimate in accordance with the requirements applicable to utility-prepared estimates set forth in paragraph (e) of this section. If a new attacher exercises its self-help option to prepare an estimate for utility review, the new attacher shall (1) wait until the utility's 14-day deadline (or 29 days in the case of Large Orders) has expired before exercising the self-help remedy; (2) provide notice to the utility that it is exercising its self-help remedy for an estimate; (3) use an approved contractor to prepare the estimate in accordance with § 1.1412(a)-(b); and (4) allow utilities the ability to review and approve the self-help estimate at the attacher's expense, but expenses must be reasonable and based only on the actual costs incurred by the utility in reviewing the estimate. The new attacher cannot use self-help for estimates of pole replacements. The utility must provide the new attacher with a written decision on the self-help estimate within 14 days of receiving the estimate from the new attacher or before it is withdrawn by the attacher, whichever is later. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in § 1.1411(e)(3). If the estimate is not accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The attacher then has the ability to submit a revised estimate to the utility without starting the pole attachment timeline from the beginning.

(3) *Make-ready.* If make-ready is not complete by the date specified in paragraph (f) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in §1.1412, hire a contractor to complete the make-ready.

* * * * *

(4) *Pole replacements.* * * *

(k) *One-touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (d) through (g) and (j) of this section.

* * * * *

(2) *Application review on the merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of Mid-Sized Orders or within 45 days in the case of Large Orders as described in paragraph (h) of this section).

* * * * *

(ii) Within the 15-day application review period (or within 30 days in the case of Mid-Sized Orders or within 45 days in the case of Large Orders as described in paragraph (h) of this section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. * * *

* * * * *

(4) *Make-ready.* * * *

* * * * *

(iii) * * * The affected make-ready shall then be governed by paragraphs (e) through (j) of this section and the utility shall provide the notice required by paragraph (f) of this section as soon as reasonably practicable.

* * * * *

4. Amend § 1.1412 by revising the introductory text of paragraphs (b)(1) and (b)(2) and add paragraph (e) to read as follows:

§ 1.1412 Contractors for survey, estimates, and make-ready.

* * * * *

(b) *Contractors for simple work.* A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys, estimates, and simple make-ready. * * *

(1) If the utility does not provide a list of approved contractors for surveys, estimates, or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (c) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (c) of this section when providing notices required by §1.1411(j)(1)(ii), (j)(2)(i), (k)(3)(i), and (k)(4).

(2) The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in §1.1411(j)(1)(ii), (j)(2)(i), (k)(3)(i), and (k)(4) and in its objection must identify at least one available qualified contractor.

* * * * *

(e) Utilities must respond to an attacher's request to add contractors to their lists of contractors authorized to perform self-help surveys, estimates, and make-ready, as provided by paragraphs (a) and (b) of this section, within 30 days of receipt.

(1) The response must state whether the contractor meets the requirements of paragraph (c) of this section and will be added to the utility's list of approved contractors for survey, estimate, and make-ready work pursuant to paragraph (a) or (b) of this section following the successful completion of any reasonable steps to begin work established by the utility. For contractors proposed to perform work above the communications space, such reasonable steps may include any evaluation, approval, orientation, or other requirements that the utility would ordinarily apply to contractors that perform work on its electric power system. If the contractor has been denied, the response must describe the bases for rejection, be nondiscriminatory, and based on a fair application of commercially reasonable requirements for contractors related to issues of safety or reliability.

(2) If a utility fails to provide the response required by paragraph (e)(1) of this section within 30 days of receipt of an attacher's request, the contractor proposed by the attacher will be deemed approved to perform self-help surveys, estimates, and make-ready work on the utility's poles consistent with paragraphs (a) or (b) of this section, and must be added to the utility's approved list of contractors following the successful completion of any reasonable steps to begin work established by the utility.

(3) A utility may disqualify a contractor that has been approved pursuant to paragraph (e)(1) or deemed approved pursuant to paragraph (e)(2) based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's uniformly applied and reasonable safety or reliability standards. Written notice must be provided to the attacher stating the specific safety and reliability bases for the disqualification.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Third Further Notice of Proposed Rulemaking* (*Third Further Notice*) released in December of 2023.[2] The Commission sought written public comment on the proposals in the *Third Further Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA and it (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Fifth Report and Order

2. In the *Fifth Report and Order*, the Commission adopts rules and policy changes that will make the pole attachment process faster and cheaper, particularly when poles have to be replaced during broadband buildouts. In the last five years, the Commission took significant steps in setting standards for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles,[4] with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments.[5] In the *Fifth Report and Order*, we adopt rules (1) requiring attachers to provide written notice to utilities of forthcoming pole attachment orders of a certain size; (2) providing that if an attacher submits an application for a Mid-Sized Order associated with a single network deployment or Large Order without the requisite advance notice, the utility can treat the application as the advance notice, and the timelines are tolled for the relevant advance notice period; (3) imposing a meet-and-confer requirement following the requisite advance notice for Large Orders; (4) establishing a new set of timelines for utilities to complete each pole access phase for large orders; (5) requiring utilities to notify attachers within 15 days of receiving a complete application whether they can meet the survey and notify attachers within 15 days of payment of a make-ready estimate that they will not be able to meet the and make-ready deadline; (6) adding a self-help remedy for make-ready estimates, provided certain safeguards are met; (7) declaring that application size and frequency limits that extend pole attachment timelines beyond the limits set forth in section

---

[1] 5 U.S.C. §§ 601 *et seq*., as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379, 12448-72, Appx. D (2023) (*Third Further Notice*).

[3] 5 U.S.C. § 604.

[4] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, 38 FCC Rcd 12379 (2023) (*Fourth Wireline Infrastructure Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*Third Wireline Infrastructure Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936 (WCB 2020) (*2020 Declaratory Ruling*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd 776 (WCB 2021) (*2021 Pole Replacement Declaratory Ruling*).

[5] Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. 47 U.S.C. § 224(c). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. *Reverse-Preemption Certification Public Notice*, 37 FCC Rcd 6724.

1.411 violate our rules; and (8) requiring utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request or the contractor will be "deemed approved."[6]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Third Further Notice* IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA,[7] the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[8] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "mall governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[11] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* . Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[13] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of

[6] *See Fifth Report and Order*, Section III.

[7] Small Business Jobs Act of 2010, Pub. L. No. 111-240, 124 Stat. 2504 (2010).

[8] 5 U.S.C. § 604(a)(3).

[9] *See id.* § 604(a)(4).

[10] *See id.* § 601(6).

[11] *See id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[12] *See* 15 U.S.C. § 632.

[13] 5 U.S.C. § 601(3)-(6).

Advocacy, in general a small business is an independent business having fewer than 500 employees.[14] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses.[15]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[16] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[17] Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[18]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[19] U.S. Census Bureau data from the 2022 Census of Governments[20] indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[21] Of this number, there were 36,845 general purpose governments (county,[22] municipal, and town or township[23]) with populations of

[14] *See* SBA, Office of Advocacy, *Frequently Asked Questions About Small Business* 1 (July 23, 2024), https://advocacy.sba.gov/wp-content/uploads/2024/12/Frequently-Asked-Questions-About-Small-Business_2024-508.pdf.

[15] *Id*.

[16] 5 U.S.C. § 601(4).

[17] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[18] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to $50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

[19] 5 U.S.C. § 601(5).

[20] 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/economic-census/year/2022/about.html.

[21] *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

[22] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

less than 50,000 and 11,879 special purpose governments (independent school districts[24]) with enrollment populations of less than 50,000.[25] Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of "small governmental jurisdictions."[26]

1. Internet Access Service Providers

9. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[27] Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[28] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[29] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[30] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[31] Of this number, 2,964 firms operated with fewer than 250 employees.[32]

10. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.[33] The Commission does not collect data on the number of

(Continued from previous page)

[23] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

[24] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

[25] While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[26] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

[27] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[28] *See* 47 CFR § 1.7001(a)(1).

[29] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[30] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[31] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[32] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[33] *See* Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be

(continued….)

employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,[34] we believe that the majority of wireline Internet access service providers can be considered small entities.

11. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.[35] The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small.[36] For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[37] Of those firms, 1,039 had revenue of less than $25 million.[38] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

12. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[39] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[40] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[41] Wired Telecommunications Carriers

(Continued from previous page)
accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

[34] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[36] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[37] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[38] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[39] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[40] *Id.*

[41] *Id.*

are also referred to as wireline carriers or fixed local service providers.[42]

13. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[43] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[44] Of this number, 2,964 firms operated with fewer than 250 employees.[45] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[46] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[47] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[48] is the closest industry with an SBA small business size standard.[49] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[50] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[51] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[52] Of this number, 2,964 firms operated with fewer than

---

[42] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[43] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[44] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[45] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[46] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[47] *Id.*

[48] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[49] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[50] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[51] *Id.*

[52] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

250 employees.[53] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[54] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[55] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Incumbent Local Exchange Carriers* (*Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[56] is the closest industry with an SBA small business size standard.[57] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[58] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[59] Of this number, 2,964 firms operated with fewer than 250 employees.[60] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[61] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[62] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

16. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[63] Wired Telecommunications Carriers[64] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having

---

[53] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[54] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[55] *Id.*

[56] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[57] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[58] *Id.*

[59] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[60] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[61] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[62] *Id.*

[63] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[64] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

1,500 or fewer employees as small.[65] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[66] Of this number, 2,964 firms operated with fewer than 250 employees.[67] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers.[68] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[69] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[70] is the closest industry with a SBA small business size standard.[71] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[72] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[73] Of this number, 2,964 firms operated with fewer than 250 employees.[74] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.[75] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities

18. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers.[76] The SBA small

---

[65] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[66] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[67] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[68] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[69] *Id.*

[70] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[71] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[72] *Id.*

[73] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[74] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[75] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[76] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

business size standard classifies a business as small if it has 1,500 or fewer employees.[77] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[78] Of this number, 2,964 firms operated with fewer than 250 employees.[79] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services.[80] Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.[81] Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

19. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.[82] The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[83] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[84] Of this number, 2,964 firms operated with fewer than 250 employees.[85] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services.[86] Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.[87] Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

20. The broadband Internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services.[88] Thus, to the extent the

---

[77] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[78] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[79] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[80] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[81] *Id.*

[82] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[83] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[84] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[85] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[86] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[87] *Id.*

[88] This includes, among others, the approximately 800 members of WISPA, including those entities who provide fixed wireless broadband service using unlicensed spectrum. *See* WISPA, *About WISPA,* https://www.wispa.org/About-Us/Mission-and-Goals (last visited June 27, 2019). We also consider the impact to (continued….)

wireless services listed below are used by wireless firms for broadband Internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

21. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[89] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.[90] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[91] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[92] Of that number, 2,837 firms employed fewer than 250 employees.[93] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[94] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[95] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[96] Wireless Telecommunications Carriers (*except* Satellite)[97] is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[98] U.S. Census Bureau data for 2017 show that there were 2,893 firms that

(Continued from previous page)
these entities today for the purposes of this FRFA, by including them under the "Wireless Providers – Fixed and Mobile" category.

[89] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[90] *Id.*

[91] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[92] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[93] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[94] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[95] *Id.*

[96] *See* 47 CFR §§ 27.1 – 27.1607.

[97] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[98] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

operated in this industry for the entire year.[99] Of this number, 2,837 firms employed fewer than 250 employees.[100] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[101]

24. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

25. *1670–1675 MHz Services*. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.[102] Wireless Telecommunications Carriers (except Satellite)[103] is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[104] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[105] Of this number, 2,837 firms employed fewer than 250 employees.[106] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

---

[99] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[100] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[101] *See* 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

[102] *See* 47 CFR § 27.902.

[103] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[104] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[105] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[106] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

26. According to Commission data as of November 2021, there were three active licenses in this service.[107] The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670-1675 MHz service band, a "small business" is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[108] The 1670-1675 MHz service band auction's winning bidder did not claim small business status.[109]

27. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

28. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[110] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[111] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[112] Of this number, 2,837 firms employed fewer than 250 employees.[113] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[114] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[115] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

---

[107] Based on a FCC Universal Licensing System search on November 8, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[108] *See* 47 CFR § 27.906(a).

[109] *See 1670–1675 MHz Band Auction Closes; Winning Bidder Announced*; *FCC Form 600s Due May 12,2003,* Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

[110] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[111] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[112] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[113] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[114] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[115] *Id.*

29. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[116] The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).[117] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[118] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[119] Of this number, 2,837 firms employed fewer than 250 employees.[120] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

30. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.[121] The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[122] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[123]

31. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

32. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless

---

[116] *See* 47 CFR § 24.200.

[117] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[118] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[119] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[120] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[121] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[122] *See* 47 CFR § 24.720(b).

[123] *See* Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, https://www.fcc.gov/auctions.

Telecommunications Carriers (except Satellite)[124] is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[125] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[126] Of this number, 2,837 firms employed fewer than 250 employees.[127] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers.[128] Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.[129] Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.[130]

33. Based on Commission data as of December 2021, there were 3,924 active SMR licenses.[131] However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

34. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[132] Wireless Telecommunications Carriers (*except* Satellite)[133] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[134]

---

[124] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[125] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[126] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[127] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[128] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[129] *Id.*

[130] We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

[131] Based on a FCC Universal Licensing System search on December 15, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match radio services within this group", Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[132] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44, https://www.fcc.gov/auction/49, and https://www.fcc.gov/auction/60.

[133] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[134] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[135] Of this number, 2,837 firms employed fewer than 250 employees.[136] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

35. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[137] The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[138] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[139] twenty-six winning bidders claiming a small business classification won 214 licenses,[140] and three winning bidders claiming a small business classification won all five auctioned licenses.[141]

36. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

37. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-

---

[135] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[136] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[137] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[138] *See* 47 CFR § 27.702(a)(1)-(3).

[139] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[140] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[141] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

763 MHz and 788-793 MHz bands.[142] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[143] Wireless Telecommunications Carriers (*except* Satellite)[144] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[145] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[146] Of that number, 2,837 firms employed fewer than 250 employees.[147] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

38. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[148] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[149] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[150]

39. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect

---

[142] *See* 47 CFR § 27.4.

[143] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[144] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[145] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[146] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[147] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[148] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[149] *See* 47 CFR § 27.502(a).

[150] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

40. *Air-Ground Radiotelephone Service*. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.[151] A licensee may provide any type of air-ground service (i.e., voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.[152]

41. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[153] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[154] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[155] Of this number, 2,837 firms employed fewer than 250 employees.[156] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

42. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.[157] The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[158] In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.[159]

---

[151] 47 CFR § 22.99.

[152] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/65/factsheet.

[153] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[154] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[155] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[156] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[157] Based on a FCC Universal Licensing System search on December 20, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[158] *See* 47 CFR § 22.223(b).

[159] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf.

43. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

44. *3650–3700 MHz band*. Wireless broadband service licensing in the 3650-3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).[160] Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.[161] Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)[162] industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.[163] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[164] Of this number, 2,837 firms employed fewer than 250 employees.[165] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

45. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small Internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band.[166] However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

46. *Fixed Microwave Services.* Fixed microwave services include common carrier,[167] private-operational fixed,[168] and broadcast auxiliary radio services.[169] They also include the Upper

[160] *See* 47 CFR §§ 90.1305, 90.1307.

[161] *See id.* § 90.1309.

[162] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[163] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[164] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[165] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[166] Based on a FCC Universal Licensing System search on November 19, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[167] *See* 47 CFR Part 101, Subparts C and I.

[168] *See id*. Subparts C and H.

[169] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between

(continued….)

Microwave Flexible Use Service (UMFUS),[170] Millimeter Wave Service (70/80/90 GHz),[171] Local Multipoint Distribution Service (LMDS),[172] the Digital Electronic Message Service (DEMS),[173] 24 GHz Service,[174] Multiple Address Systems (MAS),[175] and Multichannel Video Distribution and Data Service (MVDDS),[176] where in some bands licensees can choose between common carrier and non-common carrier status.[177] Wireless Telecommunications Carriers (*except* Satellite)[178] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[179] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[180] Of this number, 2,837 firms employed fewer than 250 employees.[181] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

47. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[182]

48. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small

(Continued from previous page)
two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[170] *See* 47 CFR Part 30.

[171] *See* 47 CFR Part 101, Subpart Q.

[172] *See id*. Subpart L.

[173] *See id*. Subpart G.

[174] See id.

[175] *See id.* Subpart O.

[176] *See id*. Subpart P.

[177] *See* 47 CFR §§ 101.533, 101.1017.

[178] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[179] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[180] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[181] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[182] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

business size standard.

49. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"[183] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[184] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[185]

50. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[186] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[187] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[188] Of this number, 2,837 firms employed fewer than 250 employees.[189] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

51. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses.[190] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding

[183] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

[184] See 47 CFR § 27.4; see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[185] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[186] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[187] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[188] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[189] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[190] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[191] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[192] One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[193]

52. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[194] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

4. Satellite Service Providers

53. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[195] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $44 million or less in annual receipts as small.[196] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[197] Of this number, 242 firms had revenue of less than

[191] *See* 47 CFR § 27.1218(a).

[192] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.

[193] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[194] *See* 47 CFR § 27.1219(a).

[195] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[196] *See* 13 CFR § 121.201, NAICS Code 517410.

[197] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

$25 million.[198] Consequently, using the SBA's small business size standard most satellite telecommunications service providers can be considered small entities. The Commission notes however, that the SBA's revenue small business size standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition. Additionally, the Commission neither requests nor collects annual revenue information from satellite telecommunications providers, and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

54. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[199] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[200] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[201] The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small.[202] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[203] Of those firms, 1,039 had revenue of less than $25 million.[204] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

5. Cable Service Providers

55. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

56. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[205] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce

---

[198] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[199] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[200] *Id.*

[201] *Id.*

[202] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[203] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[204] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[205] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

programming in their own facilities or acquire programming from external sources.[206] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[207] The SBA small business size standard for this industry classifies firms with annual receipts less than $47 million as small.[208] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[209] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[210] Based on this data, the Commission estimates that a majority of firms in this industry are small.

57. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[211] Based on industry data, there are about 420 cable companies in the U.S.[212] Of these, only seven have more than 400,000 subscribers.[213] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[214] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[215] Of these, about 639 have more than 15,000 subscribers.[216] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

58. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[217] For purposes of the Telecom Act Standard, the Commission determined that a cable

---

[206] *Id.*

[207] *Id.*

[208] *See* 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

[209] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[210] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[211] 47 CFR § 76.901(d).

[212] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[213] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[214] 47 CFR § 76.901(c).

[215] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[216] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[217] 47 U.S.C. § 543(m)(2).

system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.[218] Based on industry data, only six cable system operators have more than 498,000 subscribers.[219] Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[220] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

59. *Electric Power Generators*, *Transmitters*, *and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power.[221] Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."[222] This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.[223]

60. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees.[224] U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year.[225] Of this number, 1,552 firms had less than 250 employees.[226] Based on this data and the

---

[218] *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice. *See* 47 CFR § 76.901(e)(1).

[219] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q (*last visited Sept. 27, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[220] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[221] *See* U.S. Census Bureau, *2017 NAICS Definition, "Sector 22- Utilities, 2211 Electric Power Generation, Transmission and Distribution,"* https://www.census.gov/naics/?input=2211&year=2017&details=2211.

[222] *See id.*

[223] *Id*https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=2211&search=2017+NAICS+Search&search=2017.

[224] *See* 13 CFR § 121.201, NAICS Codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122.

[225] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 2211, https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[226] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

associated SBA size standards, the majority of firms in this industry can be considered small entities.

B. Description of Economic Impact and Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

61. The RFA directs agencies to provide a description of the projected reporting, recordkeeping and other compliance requirements for the rules adopted herein, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.[227]

62. In the *Fifth Report and Order*, we adopt new, advance notice and pre-planning requirements in the pole attachment process for Orders of a certain size to facilitate greater coordination between attachers and utilities.[228] Parties seeking to use the pole attachment timelines for a Mid-Sized Order associated with a single network deployment or Large Order must send written advance notice of the forthcoming Order to utilities as soon as practicable, but not less than 15 days in advance of submitting a Mid-Sized Order associated with a single network deployment and not less than 60 days in advance of submitting a Large Order. The notice should contain, at a minimum, (1) the attacher's contact information; (2) a detailed description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) a request to meet with the utility within 30 days of the date of the notice for Large Orders. If an attachers submits an application with providing the required written advance notice (including the required minimum information), the utility can treat the application as the advance notice, and the applicable timelines will tolled during the relevant advance notice period. Attachers and utilities must also meet and confer within 30 days after written advance notice of Large Orders is given.

63. We also create new, fixed pole attachment phase timelines for Large Orders, specifying the time for completion of each pole access phase.[229] These new timelines add incremental days to all stages of the pole attachment process to recognize the concern that, as pole attachment orders become larger, they become more complex and thus require more time to complete. Additionally, we improve our existing pole attachment timelines by (1) requiring utilities to notify attachers within 15 days of receiving a complete application when they know or should have reason to know that they can meet the survey and notify attachers within 15 days of payment of a make-ready an estimate when they know or have reason to know that they will be unable to meet the make-ready deadline, (2) adding a self-help remedy for make-ready estimates, provided certain safeguards are met; and (3) declaring that application size and frequency limits that extend pole attachment timelines beyond the limits set forth in section 1.411 violate our rules.[230] Finally, we require utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request or the contractor will be deemed approved.[231] These new requirements are expected to be minimally burdensome, as they merely require parties to (1) provide advanced information and collaboration that both utilities and attachers claim is lacking and will be useful, (2) continue collaborative efforts begun under the new advanced notice and pre-planning requirements, and (3) will ensure that parties can readily access and work on poles without concomitant burden on utilities and attachers.

64. The Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions, or to quantify the cost of compliance for small entities with the *Fifth Report and Order*. While some small entities may have some

---

[227] 5 U.S.C. § 604(a)(5).

[228] *See Fifth Report and Order*, Section III.A.

[229] *See Fifth Report and Order*, Section III.B.

[230] *See Fifth Report and Order*, Section III.C.

[231] *See Fifth Report and Order*, Section III.D.

unique burdens, the Commission anticipates the requirements for pole attachment disputes and data collection by utility companies will result in greater cost savings because the more collaborative approach adopted in these rules will increase efficiency and result in faster broadband deployment.

C. Discussion of Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. The RFA requires an agency to provide "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[232]

66. The Commission took steps to minimize significant economic impact on small entities and considered alternatives to new rules and processes adopted in the *Fifth Report and Order* that may impact small entities. By imposing a written advance notice requirement for Mid-Size and Large Orders and a meet-and-confer requirement for Large Orders, we address utilities' concern that attachers are often not providing sufficient notice and attachers' concern utilities are often nonresponsive, practices that harm utilities and attachers and ultimately delay buildout. However, we do not impose the same new written advance notice requirement for smaller orders because they do not have the same impact as larger orders, nor for Very Large Orders because the parties are still required to engage in good faith negotiation of the attachment timelines. And while we adopt a new timeline for Large Orders, it is longer than the timelines for Regular and Mid-Sized Orders to incentivize attachers to submit smaller orders, which will allow utilities to better manage their workflows and contractors and thus timely complete applications. The Commission also considered and adopted a proposal regarding the pole caps for the expanded timeline for Large Orders based on commenters' experience deploying broadband projects. Moreover, at utilities' request, we adopt certain safeguards for an attacher-produced estimate to ensure that utilities can manage their poles. We also clarified that a utility must approve or deny a contractor based on the sufficiency of the information provided under our newly adopted 30 day timeframe, the utility can take additional time to on-board and train the contractors and remain in compliance with the Commission's rules.

67. In considering alternatives to the rules, we declined to adopt certain proposals that are burdensome, unnecessary, or would impose significant costs on utilities or attachers with little or no benefit to broadband deployment. For example, we decline proposed new timelines for Large Orders that are too lengthy to help attachers efficiently meet broadband buildout deadlines. We also declined to establish timelines for Very Large Orders nor require a utility itself to establish "reasonable" timelines for Very Large Orders, as there may be reasons beyond the utility's control that will prevent it from establishing such timelines.

D. Report to Congress

68. The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[233] In addition, the Commission will send a copy of the *Fifth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA and will publish a copy of the *Fifth Report and Order*, and this FRFA (or summaries thereof) in the Federal Register.[234]

[232] 5 U.S.C. § 604(a)(6).

[233] *Id.* § 801(a)(1)(A).

[234] *Id.* § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the *Fourth Further Notice of Proposed Rulemaking* (*Further Notice*) assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The *Further Notice* seeks comment on proposals from utilities and attachers that might further facilitate the pole attachment process and, thus, broadband deployment. The *Further Notice* specifically seeks comment on: (1) requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work; (2) whether the Commission should require attachers to make payment on an estimate to a utility within a specific period of time after acceptance; (3) limiting the amount that final make-ready costs can exceed the utility's estimate without receiving prior approval from the attacher; (4) whether to expand the availability of the one-touch, make-ready (OTMR) process to include complex survey and make-ready work; (5) establishing a deadline to on-board approved contractors; and (6) whether the Commission should define the term "pole" for purposes of section 224 of the Communications Act of 1934, as amended, and whether the term should be construed to include light poles.[4] The *Further Notice* also seeks comment on other policy considerations, including additional costs and benefits that may impact small and other business.[5]

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1-4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 201, 202, 224, and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business

---

[1] 5 U.S.C. §§ 601 *et seq*., as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[2] *Id*. § 603(a).

[3] *Id.*

[4] *See Fourth Further Notice*, Section IV.

[5] *Id*.

[6] 5 U.S.C. § 603(b)(3).

[7] *Id.* § 601(6).

[8] *Id*. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public

(continued….)

concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[10] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[11] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[12]

6. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[13] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[14] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[15]

7. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[16] U.S. Census Bureau data from the 2017 Census of Governments[17] indicate there were 90,075 local governmental jurisdictions consisting of general

(Continued from previous page)
comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] 15 U.S.C. § 632.

[10] *See* 5 U.S.C. § 601(3)-(6).

[11] *See* SBA, Office of Advocacy, "What's New With Small Business?," https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf (Mar. 2023).

[12] *Id.*

[13] *See* 5 U.S.C. § 601(4).

[14] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[15] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[16] *See* 5 U.S.C. § 601(5).

[17] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7"; *see also* Census of Governments, https://www.census.gov/programs-

(continued….)

purpose governments and special purpose governments in the United States.[18] Of this number, there were 36,931 general purpose governments (county,[19] municipal, and town or township[20]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[21] with enrollment populations of less than 50,000.[22] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[23]

1. Internet Access Service Providers

8. *Wired Broadband Internet Access Service Providers (Wired ISPs).*[24] Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[25] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[26] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[27] U.S. Census Bureau data for 2017 show that

(Continued from previous page)
surveys/cog/about.html.

[18] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[19] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[20] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[21] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[22] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[23] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

[24] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[25] *See* 47 CFR § 1.7001(a)(1).

[26] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[27] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

there were 3,054 firms that operated in this industry for the entire year.[28] Of this number, 2,964 firms operated with fewer than 250 employees.[29]

9. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.[30] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,[31] we believe that the majority of wireline Internet access service providers can be considered small entities.

10. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.[32] The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small.[33] For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[34] Of those firms, 1,039 had revenue of less than $25 million.[35] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as

---

[28] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[29] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[30] *See* Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

[31] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[32] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[33] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[34] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[35] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[36] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that [they] operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[37] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[38] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[39]

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[40] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[41] Of this number, 2,964 firms operated with fewer than 250 employees.[42] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[43] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[44] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[45] is the closest industry with an SBA small business size standard.[46] Wired

---

[36] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[37] *Id.*

[38] *Id.*

[39] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[40] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[41] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[42] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[43] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[44] *Id.*

[45] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[46] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[47] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[48] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[49] Of this number, 2,964 firms operated with fewer than 250 employees.[50] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[51] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[52] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[53] is the closest industry with an SBA small business size standard.[54] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[55] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[56] Of this number, 2,964 firms operated with fewer than 250 employees.[57] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[58] Of these providers, the Commission estimates that 916 providers have

[47] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[48] *Id.*

[49] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[50] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[51] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[52] *Id.*

[53] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[54] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[55] *Id.*

[56] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[57] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[58] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

1,500 or fewer employees.[59] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

15. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[60] Wired Telecommunications Carriers[61] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[62] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[63] Of this number, 2,964 firms operated with fewer than 250 employees.[64] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers.[65] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[66] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[67] is the closest industry with a SBA small business size standard.[68] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[69] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[70] Of this number, 2,964 firms operated with fewer than 250 employees.[71]

---

[59] *Id.*

[60] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[61] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[62] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[63] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[64] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[65] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[66] *Id.*

[67] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[68] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[69] *Id.*

[70] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311,

(continued….)

Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.[72] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

17. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.[73] The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[74] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[75] Of this number, 2,964 firms operated with fewer than 250 employees.[76] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services.[77] Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.[78] Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

18. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers[79] is the closest industry with a SBA small business size standard.[80] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[81] U.S. Census

(Continued from previous page) ———————————
https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[71] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[72] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[73] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[74] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[75] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[76] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[77] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[78] *Id.*

[79] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[80] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[81] *Id.*

Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[82] Of this number, 2,964 firms operated with fewer than 250 employees.[83] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.[84] Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.[85] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

19. The broadband Internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services.[86] Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

20. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[87] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.[88] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[89] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[90] Of that number, 2,837 firms employed fewer than 250

---

[82] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[83] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[84] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[85] *Id.*

[86] This includes, among others, the approximately 800 members of WISPA, including those entities who provide fixed wireless broadband service using unlicensed spectrum. *See* WISPA, *About WISPA,* https://www.wispa.org/About-Us/Mission-and-Goals (last visited June 27, 2019). We also consider the impact to these entities today for the purposes of this FRFA, by including them under the "Wireless Providers – Fixed and Mobile" category.

[87] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[88] *Id.*

[89] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[90] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

employees.[91] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[92] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[93] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[94] Wireless Telecommunications Carriers (*except* Satellite)[95] is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[96] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[97] Of this number, 2,837 firms employed fewer than 250 employees.[98] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

22. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[99]

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect

---

[91] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[92] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[93] *Id.*

[94] *See* 47 CFR §§ 27.1 – 27.1607.

[95] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[96] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[97] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[98] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[99] *See* 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *1670–1675 MHz Services*. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.[100] Wireless Telecommunications Carriers (except Satellite)[101] is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[102] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[103] Of this number, 2,837 firms employed fewer than 250 employees.[104] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

25. According to Commission data as of November 2021, there were three active licenses in this service.[105] The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670-1675 MHz service band, a "small business" is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[106] The 1670-1675 MHz service band auction's winning bidder did not claim small business status.[107]

26. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

---

[100] *See* 47 CFR § 27.902.

[101] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[102] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[103] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[104] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[105] Based on a FCC Universal Licensing System search on November 8, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[106] *See* 47 CFR § 27.906(a).

[107] *See 1670–1675 MHz Band Auction Closes; Winning Bidder Announced*; *FCC Form 600s Due May 12,2003,* Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

27. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[108] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[109] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[110] Of this number, 2,837 firms employed fewer than 250 employees.[111] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[112] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[113] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

28. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[114] The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).[115] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[116] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[117] Of this number, 2,837 firms employed fewer than 250 employees.[118] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

29. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.[119] The Commission's small business size standards with respect

---

[108] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[109] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[110] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[111] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[112] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[113] *Id.*

[114] *See* 47 CFR § 24.200.

[115] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[116] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[117] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[118] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[119] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match

(continued….)

to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[120] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[121]

30. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

31. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite)[122] is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[123] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[124] Of this number, 2,837 firms employed fewer than 250 employees.[125] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers.[126] Of this number, the Commission estimates that all 95

(Continued from previous page)
only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[120] *See* 47 CFR § 24.720(b).

[121] *See* Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, https://www.fcc.gov/auctions.

[122] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[123] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[124] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[125] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[126] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

providers have 1,500 or fewer employees.[127] Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.[128]

32. Based on Commission data as of December 2021, there were 3,924 active SMR licenses.[129] However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

33. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[130] Wireless Telecommunications Carriers (*except* Satellite)[131] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[132] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[133] Of this number, 2,837 firms employed fewer than 250 employees.[134] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

34. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[135] The Commission's small business size standards with respect to

---

[127] *Id.*

[128] We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

[129] Based on a FCC Universal Licensing System search on December 15, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match radio services within this group", Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[130] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44, https://www.fcc.gov/auction/49, and https://www.fcc.gov/auction/60.

[131] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[132] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[133] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[134] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[135] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[136] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[137] twenty-six winning bidders claiming a small business classification won 214 licenses,[138] and three winning bidders claiming a small business classification won all five auctioned licenses.[139]

35. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

36. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.[140] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[141] Wireless Telecommunications Carriers (*except* Satellite)[142] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[143] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this

[136] *See* 47 CFR § 27.702(a)(1)-(3).

[137] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[138] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[139] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

[140] *See* 47 CFR § 27.4.

[141] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[142] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[143] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry for the entire year.[144] Of that number, 2,837 firms employed fewer than 250 employees.[145] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

37. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[146] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[147] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[148]

38. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

39. *Air-Ground Radiotelephone Service*. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.[149] A licensee may provide any type of air-ground service (i.e., voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.[150]

---

[144] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[145] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[146] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[147] *See* 47 CFR § 27.502(a).

[148] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

[149] 47 CFR § 22.99.

[150] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/65/factsheet.

40. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[151] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[152] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[153] Of this number, 2,837 firms employed fewer than 250 employees.[154] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

41. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.[155] The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[156] In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.[157]

42. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

43. *3650–3700 MHz band*. Wireless broadband service licensing in the 3650-3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).[158] Licensees are permitted to provide

---

[151] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[152] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[153] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[154] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[155] Based on a FCC Universal Licensing System search on December 20, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[156] *See* 47 CFR § 22.223(b).

[157] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf.

[158] *See* 47 CFR §§ 90.1305, 90.1307.

services on a non-common carrier and/or on a common carrier basis.[159] Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)[160] industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.[161] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[162] Of this number, 2,837 firms employed fewer than 250 employees.[163] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

44. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small Internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band.[164] However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

45. *Fixed Microwave Services.* Fixed microwave services include common carrier,[165] private-operational fixed,[166] and broadcast auxiliary radio services.[167] They also include the Upper Microwave Flexible Use Service (UMFUS),[168] Millimeter Wave Service (70/80/90 GHz),[169] Local Multipoint Distribution Service (LMDS),[170] the Digital Electronic Message Service (DEMS),[171] 24 GHz Service,[172] Multiple Address Systems (MAS),[173] and Multichannel Video Distribution and Data Service

---

[159] *See id.* § 90.1309.

[160] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[161] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[162] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[163] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[164] Based on a FCC Universal Licensing System search on November 19, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[165] *See* 47 CFR Part 101, Subparts C and I.

[166] *See id*. Subparts C and H.

[167] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[168] *See* 47 CFR Part 30.

[169] *See* 47 CFR Part 101, Subpart Q.

[170] *See id*. Subpart L.

[171] *See id*. Subpart G.

(MVDDS),[174] where in some bands licensees can choose between common carrier and non-common carrier status.[175] Wireless Telecommunications Carriers (*except* Satellite)[176] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[177] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[178] Of this number, 2,837 firms employed fewer than 250 employees.[179] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

46. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[180]

47. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

48. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"[181] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the

(Continued from previous page)

[172] See id.

[173] *See id.* Subpart O.

[174] *See id*. Subpart P.

[175] *See* 47 CFR §§ 101.533, 101.1017.

[176] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[177] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[178] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[179] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[180] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[181] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

Instructional Television Fixed Service (ITFS)).[182] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[183]

49. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[184] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[185] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[186] Of this number, 2,837 firms employed fewer than 250 employees.[187] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

50. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses.[188] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[189] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[190]

---

[182] See 47 CFR § 27.4; see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[183] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[184] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[185] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[186] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[187] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[188] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[189] *See* 47 CFR § 27.1218(a).

One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[191]

51. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[192] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

4. Satellite Service Providers

52. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[193] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $44 million or less in annual receipts as small.[194] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[195] Of this number, 242 firms had revenue of less than $25 million.[196] Consequently, using the SBA's small business size standard most satellite telecommunications service providers can be considered small entities. The Commission notes however, that the SBA's revenue small business size standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition. Additionally, the Commission neither requests nor collects annual revenue

(Continued from previous page)

[190] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.

[191] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[192] *See* 47 CFR § 27.1219(a).

[193] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[194] *See* 13 CFR § 121.201, NAICS Code 517410.

[195] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[196] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

information from satellite telecommunications providers, and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

53. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[197] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[198] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[199] The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small.[200] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[201] Of those firms, 1,039 had revenue of less than $25 million.[202] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

5. Cable Service Providers

54. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

55. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[203] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[204] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[205] The SBA small business size standard for this industry classifies firms with annual receipts less than $47 million as small.[206] Based on U.S. Census Bureau data for 2017, 378 firms

---

[197] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[198] *Id.*

[199] *Id.*

[200] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[201] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[202] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[203] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[204] *Id.*

[205] *Id.*

operated in this industry during that year.[207] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[208] Based on this data, the Commission estimates that a majority of firms in this industry are small.

56. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[209] Based on industry data, there are about 420 cable companies in the U.S.[210] Of these, only seven have more than 400,000 subscribers.[211] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[212] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[213] Of these, about 639 have more than 15,000 subscribers.[214] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

57. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[215] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.[216] Based on industry data, only six cable system operators have

(Continued from previous page)

[206] *See* 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

[207] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[208] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[209] 47 CFR § 76.901(d).

[210] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[211] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[212] 47 CFR § 76.901(c).

[213] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[214] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[215] 47 U.S.C. § 543(m)(2).

[216] *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source (continued….)

more than 498,000 subscribers.[217] Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[218] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

58. *Electric Power Generators, Transmitters, and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power.[219] Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."[220] This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.[221]

59. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees.[222] U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year.[223] Of this number, 1,552 firms had less than 250 employees.[224] Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

(Continued from previous page)
publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice. *See* 47 CFR § 76.901(e)(1).

[217] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q (*last visited Sept. 27, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[218] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[219] *See* U.S. Census Bureau, *2017 NAICS Definition, "Sector 22- Utilities, 2211 Electric Power Generation, Transmission and Distribution,"* https://www.census.gov/naics/?input=2211&year=2017&details=2211.

[220] *See id.*

[221] *Id*.

[222] *See* 13 CFR § 121.201, NAICS Codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122.

[223] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 2211, https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[224] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

D. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

60. The RFA directs agencies to describe the economic impact of proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record. [225]

61. In the *Further Notice*, we seek comment on ways to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment. Some of the matters on which we seek comment may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities. Specifically, we seek comment on requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work and the potential repercussions against attachers that fail to do so.[226] We also seek comment on whether we should require attachers to make payment on an estimate to a utility within a specific period of time after acceptance and, in particular, utilities' suggestion that attachers should be required to pay all estimated make-ready costs, in full, within 30 days of the date on which the estimate is accepted by the attacher.[227] If an attacher fails to make any payment within the time frame specified in the rule, the applicable make-ready timeline should be deemed waived. We also ask, more generally, how imposing a timeframe in which an attacher must make payment after acceptance of an estimate can incentivize faster broadband deployment. We also seek comment on limiting the amount that final make-ready costs can exceed the utility's estimate without receiving prior approval from the attacher, providing some reverse pre-emption states as examples.[228] Additionally, we ask whether to expand the availability of the OTMR process to include complex survey and make-ready work, rather than continue to limit the process to simple survey and make-ready work.[229] We also ask whether setting a deadline for utilities to complete the on-boarding process for a contractor would improve the viability of the self-help remedy in the Commission's rules.[230] Finally, as neither section 224 nor the Commission's implementing rules define the term "pole" and in response to CTIA's petition for a declaratory ruling on the matter, we seek comment on whether the Commission should define the term "pole" for purposes of section 224 of the Act and whether the term should be construed to include light poles.[231] This information will help to inform whether potential rule changes are necessary.

62. At this time, the Commission cannot quantify the cost of compliance for small entities with the approaches discussed in the *Further Notice*, or whether any compliance requirements will require small entities to hire professionals beyond those necessary to comply with the current rules. The Commission requests information on the costs, benefits, and any cost savings related to the proposed rule changes that may be associated with operational needs such as the availability of qualified contractors and other workforce constraints that may impact the speed and cost of deployment for utilities and attachers.

---

[225] 5 U.S.C. § 603(b)(4).

[226] *See Fourth Further Notice*, Section IV.A.

[227] *See Fourth Further Notice*, Section IV.B.

[228] *See Fourth Further Notice*, Section IV.C.

[229] *See Fourth Further Notice*, Section IV.D.

[230] *See Fourth Further Notice*, Section IV.E.

[231] *See Fourth Further Notice*, Section IV.F.

E. Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities

63. The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities.[232] The discussion is required to include alternatives such as: "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[233]

64. The *Further Notice* seeks comment on whether the Commission should revise its rules to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment, including requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work and the potential repercussions against an attacher that fail to do so. While we ask whether we should impose a fee on those attachers, we alternatively seek comment on whether deployment timeframes and noncompliance fees would be better dealt with in the parties' pole attachment agreements instead of our rules. We also seek comment on whether we should require attachers to make payment on an estimate to a utility within a specific period of time after acceptance and, in particular, utilities' suggestion that we should require attachers make payment within 30 days after acceptance. We alternatively ask whether we should adopt attachers' suggestion that we prohibit utilities from requiring payment upon an attacher's acceptance and instead implement a payment schedule based on make-ready work progress. Additionally, while we seek comment on limiting the amount that final make-ready costs can exceed the utility's estimate without receiving prior approval from the attacher, we ask in the alternative whether such cost-ceilings are better left to private agreement. We further seek comment on whether to expand the availability of the OTMR process to include complex survey and make-ready work, and the obstacles to attachers using OTMR if it were available for complex work. Also, while we seek comment on whether to impose a deadline for utilities to on-board approved contractors, we emphasize that our goals are to understand the overall amount of time actually needed to complete the on-boarding process based on utility procedure and the associated implications for the self-help remedy. Finally, while seeking comment on whether a light pole is a "pole" for purposes of section 224 of the Act, we consider several alternatives, such as various interpretations of the term "pole" based on its meaning in federal legislation and associated legislative history. The Commission also seeks comment on, and will consider, the relative costs and benefits of any such revisions to its rules. Information submitted in response to these requests for comment will enable the Commission to evaluate the impact that revising its pole attachment rules would have on smaller entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

65. None.

[232] 5 U.S.C. § 603(c).

[233] 5 U.S.C. § 603(c)(1)-(4).

STATEMENT OF
CHAIRMAN BRENDAN CARR

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, WC Docket No. 17-84 (July 24, 2025).

A couple of weeks ago in Sioux Falls, I had the chance to spend time with Jordan and his construction crew. As he put on his harness and climbing spikes, I put on a hard hat and a reflective vest that was not exactly tailored to a bureaucrat's physique. Jordan took the hard way to the top of an old, wooden utility pole, climbing his way the 50 or so feet up off the ground. The crew trusted me to operate the bucket truck, and I met Jordan up in the communications space of the pole. From that point, Jordan showed me how he and his crew were replacing 30 year-old plant and attaching new, high-speed lines to the poles. It's this kind of hard work, done every day by folks like Jordan, that makes the buildout of modern high-speed Internet possible.

Unfortunately, for too long, this work has been made even harder by a regulatory regime that does not make it easy to build new high-speed infrastructure. In particular, a lack of standard rules and timelines for processing requests to attach to a large number of poles have slowed the rollout of new connections and led to costly disputes between broadband builders and utility pole owners. This is unacceptable.

We want to unleash massive new builds across the country, and making it easier to get large deployments cleared is key to doing so. Today's action is designed to do just that by encouraging greater collaboration between communications companies and pole-owning utilities on those larger broadband deployments. It also establishes more concrete timelines for large batch requests. Additionally, we're seeking comment on whether the FCC can help accelerate mobile wireless builds by finding that light poles are covered by Section 224 of the Communications Act. In other words, we're removing barriers to deployment, encouraging investment, and helping achieve high-speed broadband availability, so that it's easier for crews like Jordan's to connect their communities.

For their work on this item, I'd like to thank Malena Barzilai, Michele Berlove, AJ Burton, Joseph Calascione, Ty Covey, Liz Drogula, Rick Mallen, Emily Caditz, and Mike Ray.

STATEMENT OF
COMMISSIONER OLIVIA TRUSTY

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, WC Docket No. 17-84 (July 24, 2025).

Universal connectivity and broadband affordability depend on timely and efficient network deployment. The Communications Act provides a number of tools to help meet that challenge, including by giving providers the ability to leverage existing physical infrastructure like utility poles in support of broadband build-out.

The Commission has done good work to date to enable providers to rely on pole access when deploying wired and wireless networks, but this item shows that there still is more that can be one. For one, this item builds upon past rules by adopting new measures to enable providers to benefit from improved, predictable timelines when seeking access to larger volumes of poles and implementing other policies to further expedite pole access.

Importantly, today's item also rightly prioritizes cooperation between utilities and attachers for the efficient processing of pole attachment requests. It clarifies and confirms existing information sharing obligations tailored to require utilities to provide information already in their possession in circumstances where it can be particularly helpful in avoiding or resolving disputes. And this item goes further to promote coordination through information sharing and meetings between attachers and utilities regarding batches of pole attachment requests. Against the backdrop of Commission rules and guidance, information sharing and pre-planning meetings will help minimize disputes and delays.

The item also seeks comment on additional steps proposed by attachers or utilities designed to make the pole attachment process more efficient. Making the best use of those tools to encourage broadband deployment is essential not only given the transformational impact of high-speed internet access, but also to ensure the effective use of federal resources directed toward broadband networks.

I thank the Wireline Competition Bureau staff for their important work on this item, and I look forward to working with the Chairman, the Commission, and industry stakeholders on these and others ways to expand access to affordable broadband services for all Americans.