9957–81), requires persons that manufacture (defined by statute to include import) or process, or intend to manufacture or process those chemical substances subject to the rule to report to EPA the specific chemical identity, production volume, methods of manufacture and processing, exposure and release information, and existing information concerning environmental and health effects.

III. What action is the agency taking?

EPA is announcing the availability of and requesting public comment on the draft guidance document, entitled: ''Guidance on EPA's Section 8(a) Information Gathering Rule on Nanomaterials in Commerce''. This draft guidance provides answers to questions the Agency has received from manufacturers (includes importers) and processors regarding the rule.

This draft guidance is being made available on the Agency's Web site at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/control-nanoscale-materials-under#guidance,* and is also available in the docket (docket ID number EPA–HQ–OPPT–2010–0572). Please go to *http://www.regulations.gov* to access the docket and follow the online instructions to submit comments.

EPA is accepting comments regarding the guidance, but is not accepting comments regarding the rule itself, which has already been finalized.

IV. What is the agency's authority for taking this action?

The final rule was issued under the authority in section 8(a) of the Toxic Substances Control Act as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (TSCA), 15 U.S.C. 2601 *et seq.,* which provides EPA with authority to require reporting, recordkeeping and testing, and impose restrictions relating to chemical substances and/or mixtures.

V. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 10, 2017.

Wendy Cleland-Hamnett,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–09998 Filed 5–12–17; 4:15 pm]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 51, and 63

[WC Docket No. 17–84; FCC 17–37]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a Notice of Proposed Rulemaking (*NPRM*) seeks comment on a number of actions designed to remove regulatory barriers to infrastructure investment at the federal, state, and local level, speed the transition from copper networks and legacy services to next-generation networks and services, and reform Commission regulations that increase costs and slow broadband deployment. The *NPRM* seeks comment on pole attachment reforms, changes to the copper retirement and other network change notification processes, and changes to the section 214(a) discontinuance application process. The Commission adopted the *NPRM* in conjunction with a Notice of Inquiry and Request for Comment in WC Docket No. 17–84.

DATES: Comments are due on or before June 15, 2017, and reply comments are due on or before July 17, 2017. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 17, 2017.

ADDRESSES: You may submit comments, identified by WC Docket No. 17–84, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. 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 overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., 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 email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicole Ongele, Federal Communications Commission, via email to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Michele Berlove, at (202) 418–1477, *michele.berlove@fcc.gov,* or Michael Ray, at (202) 418–0357, *michael.ray@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an

email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WC Docket No. 17–84, adopted April 20, 2017 and released April 21, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It is available on the Commission's Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/FCC-17-37A1.pdf.*

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 dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998), *http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf.*

- *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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. 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 overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.
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Synopsis

I. Introduction

1. High-speed broadband is an increasingly important gateway to jobs, health care, education, information, and economic development. Access to high-speed broadband can create economic opportunity, enabling entrepreneurs to create businesses, immediately reach customers throughout the world, and revolutionize entire industries. Today, we propose and seek comment on a number of actions designed to accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment.

2. This *NPRM* seeks to better enable broadband providers to build, maintain, and upgrade their networks, which will lead to more affordable and available Internet access and other broadband services for consumers and businesses alike. Today's actions propose to remove regulatory barriers to infrastructure investment at the federal, state, and local level; suggest changes to speed the transition from copper networks and legacy services to next-generation networks and services; and propose to reform Commission regulations that increase costs and slow broadband deployment.

II. Pole Attachment Reforms

3. Pole attachments are a key input for many broadband deployment projects. Reforms which reduce pole attachment costs and speed access to utility poles would remove significant barriers to broadband infrastructure deployment and in turn increase broadband availability and competition in the provision of high-speed services.

4. The Communications Act of 1934, as amended (Act), grants the Commission authority to regulate attachments to utility-owned and -controlled poles, ducts, conduits, and rights-of-way (collectively, poles). Among other things, the Act authorizes the Commission to prescribe rules ensuring ''just and reasonable'' ''rates, terms, and conditions'' for pole attachments and ''nondiscriminatory access'' to poles, rules defining pole attachment rates for attachers that are cable television systems and telecommunications carriers, rules regarding the apportionment of make-ready costs between utilities and attachers, and rules requiring all local exchange carriers (LECs) to ''afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications service . . . .'' Section 224(a)(4) of the Act defines 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. Accordingly, unless specified otherwise, we use the term ''pole attachment'' in this *NPRM* to refer to attachments not only to poles, but to ducts, conduits, and rights-of-way as well. ''Make-ready'' generally refers to the modification of poles or lines or the installation of certain equipment (*e.g.,* guys and anchors) to accommodate additional facilities. The Act also allows states to reverse-preempt the Commission's regulations so long as they meet certain federal standards. To date, twenty states and the District of Columbia have reverse-preempted Commission jurisdiction over the rates, terms, and conditions of pole attachments in their states.

5. We seek to exercise this authority to accelerate the deployment of next-generation infrastructure so that consumers in all regions of the Nation can enjoy the benefits of high-speed Internet access as well as additional competition.

A. Speeding Access to Poles

6. We seek comment on proposals to streamline and accelerate the Commission-established timeline for processing pole attachment requests, which currently envisions up to a five-month process (assuming all contemplated deadlines are met). Several proposals to speed pole access allow telecommunications and cable providers seeking to add equipment to a utility pole (a ''new attacher'') to adjust, on an expedited basis, the preexisting equipment of the utility and other providers already on that pole (''existing attachers''). We emphasize at the outset that we are seeking to develop an approach that balances the legitimate needs and interests of new attachers, existing attachers, utilities, and the public. In particular, we recognize that speeding access to poles could raise meaningful concerns about safety and protection of existing infrastructure. We intend to work toward an approach that facilitates new attachments without creating undue risk of harm. We intend for the proposals below to be a starting point that will stimulate refinements as we work toward potential adoption of a final pole attachment process.

1. Speeding the Current Commission Pole Attachment Timeline

7. We seek comment on potential reforms to the various steps of the Commission's current pole attachment timeline to facilitate timely access to poles. Access to poles, including the preparation of poles for new attachments, must be timely in order to constitute just and reasonable access under section 224 of the Act. The Commission's current four-stage timeline for wireline and wireless requests to access the ''communications space'' on utility poles, adopted in 2011, provides for periods that do not exceed: application review and engineering survey (45 days), cost estimate (14 days), attacher acceptance (14 days), and make-ready (60–75 days). It also allows timeline modifications for wireless attachments above the communications space and for large requests.

8. *Application Review.* We seek comment on whether we should require a utility to review and make a decision on a completed pole attachment application within a timeframe shorter than the current 45 days. Is 15 days a reasonable timeframe for utilities to act on a completed pole attachment application? Is 30 days? We seek comment on, and examples of, current timelines for the consideration of pole attachment applications, especially in states that regulate their own rates, terms, and conditions for pole access. If we adopt a shorter timeline, we also seek comment on situations in which it might be reasonable for the utility's review of a pole attachment application to extend beyond the new shortened timeline.

9. In addition, we seek comment on retaining the existing Commission rule allowing utilities 15 extra days to consider pole attachment applications in the case of large orders (*i.e.,* up to the lesser of 3,000 poles or five percent of the utility's poles in a state). We also seek comment on capping, at a total of 45 days, utility review of those pole attachment applications that are larger than the lesser of 3,000 poles or five percent of a utility's poles in a state. We seek comment on possible alternatives by which we may take into account large pole attachment orders. We seek comment regarding the expected volume of pole attachment requests associated with the 5G rollouts of wireless carriers and whether the extended timelines for larger pole attachment orders might help utilities process the large volume of requests we anticipate will be associated with the 5G buildouts.

10. *Survey, Cost Estimate, and Acceptance.* We seek comment on whether the review period for pole attachment applications should still include time for the utility to survey the poles for which access has been requested. With regard to the estimate and acceptance steps of the current pole access timeline, should we require a timeframe for these steps that is shorter than the current 28 days? Would it be reasonable to combine these steps into a condensed 14-day (or 10-day) period? Could we wrap these two steps into the make-ready timeframe? Would it be reasonable to eliminate these two steps entirely? If so, without the estimate and acceptance steps, then what alternatives should there be for requiring utilities and new attachers to come to an agreement on make-ready costs?

11. *Make-Ready.* We also seek comment on approaches to shorten the make-ready work timeframe. The Commission currently requires that utilities give existing attachers a period not to exceed 60 days after the make-ready notice is sent to complete work on their equipment in the communications space of a pole. In adopting a 60-day maximum period for existing attachers to complete make-ready work, the *2011 Pole Attachment Order* recommended as a ''best practice'' a make-ready period of 30 days or less for small pole attachment requests and 45 days for medium-size requests. Should the Commission adopt as requirements the ''best practices'' timeframes set forth in the *2011 Pole Attachment Order*? What other timeframes would be reasonable, recognizing the safety concerns and property interests of existing attachers and utilities when conducting make-ready work on a pole? We seek comment on any state experience with this phase of the make-ready process—how long is it taking existing attachers to perform make-ready work in states that are not subject to Commission pole attachment jurisdiction? Do existing attachers require the full make-ready periods to move their attachments such that the total timeline for a new attacher exceeds the Commission's existing pole attachment timeline? Are there situations in which it is reasonable for existing attachers to go beyond the current Commission timeframes to complete make-ready work? Further, are there ways that the Commission can eliminate or significantly reduce the need for make-ready work? For example, what can the Commission do to encourage utilities to proactively make room for future attachers by consolidating existing attachments, reserving space on new poles for new attachers, and allowing the use of extension arms to increase pole capacity?

12. In addition, the Commission has adopted longer maximum periods for existing attachers and utilities to complete make-ready work in the case of large pole attachment orders (an additional 45 days) and in the case of wireless attachments above the communications space (a total of up to 90 days for such attachments or up to 135 days in the case of large wireless attachment orders). We seek comment on whether it is reasonable to retain these extended time periods for large pole attachment orders and for wireless attachments above the communications space. We seek comment on reasonable alternatives to these timelines, bearing in mind the safety concerns inherent in make-ready work above the communications space on a pole and the manpower concerns of existing attachers and utilities when having to perform make-ready on large numbers of poles in a condensed time period.

2. Alternative Pole Attachment Processes

13. We seek comment generally on possible alternatives to the Commission's current pole attachment process that might speed access to poles. We also seek comment on potential remedies, penalties, and other ways to incent utilities, existing attachers, and new attachers to work together to speed the pole attachment timeline. If the Commission were to adopt any of the revisions proposed below or other revisions to our process, would section 224 of the Act support such an approach? What other statutory authority could the Commission rely on in adopting such changes? In considering the proposals below for alternatives to the pole attachment timeline, we seek comment on the need to balance the benefits of these alternatives against the safety and property concerns that are paramount to the pole attachment process. For example, we seek comment on the extent to which any of the proposals may violate the Fifth Amendment protections of utilities and existing attachers against the taking of their property without just compensation.

14. *Use of Utility-Approved Contractors to Perform Make-Ready Work.* We seek comment on whether the Commission should adopt rules that would allow new attachers to use utility-approved contractors to perform ''routine'' make-ready work and also to perform ''complex'' make-ready work (*i.e.,* make-ready work that reasonably would be expected to cause a customer

outage) in situations where an existing attacher fails to do so. Under the Commission's current pole attachment timeline, utilities may allow existing attachers up to 60 days to complete make-ready work on their equipment in the communications space and utilities have the right to ask for an additional 15 days to complete the work when the existing attacher fails to do so. Only after that period of up to 75 days has run, and neither the existing attachers nor the utilities have met their deadlines, can new attachers begin to perform make-ready work using utility-approved contractors. The timelines are even longer in cases of larger pole attachment requests and for wireless make-ready work above the communications space on a pole. We seek comment on whether it would be reasonable to expand the use of utility-approved contractors to perform make-ready work, especially earlier in the pole attachment process. Would it be reasonable to eliminate the utility's right to complete make-ready work in favor of a new attacher performing the make-ready work after an existing attacher fails to meet its make-ready deadline?

15. We seek comment on balancing the benefits of allowing new attachers to use utility-approved contractors to perform make-ready work against any drawbacks of allowing contractors that may not be approved by existing attachers to move existing equipment on a pole. We urge commenters, whenever possible, to provide quantifiable data or evidence supporting their position. We note that AT&T, in its federal court challenge of Louisville, Kentucky's pole attachment ordinance, argued that utility-approved contractors ''have on occasion moved AT&T's network facilities, with less-than-satisfactory results,'' while Comcast argued in its federal court challenge to Nashville, Tennessee's pole attachment ordinance that third-party contractors ''are significantly more likely to damage Comcast's equipment or interfere with its services.'' We seek comment on other safety and property concerns that the Commission should account for in considering whether to allow an expanded role in the make-ready process for utility-approved contractors. We also seek comment on liability safe harbors that would protect the property and safety interests of existing attachers, utilities, and their customers when new attachers use utility-approved contractors to perform make-ready work on poles and existing equipment on the poles. For example, to ensure protections for existing attachers and utilities, would it be reasonable to impose on new attachers requirements such as surety bonds, indemnifications for outages and damages, and self-help remedies for utilities and existing attachers to fix problems caused by new attacher contractors? Are there other safeguards that we can adopt to protect existing attachers, utilities, and their customers in the event that the new attacher's contractors err in the performance of make-ready work?

16. For make-ready work that would be considered ''routine'' in the communications space of a pole, is it reasonable to allow a new attacher to use a utility-approved contractor to perform such work after notice has been sent to existing attachers? Would it be reasonable to allow new attachers to use utility-approved contractors to perform complex make-ready work as well? Also, because of the special skills required to work on wireless attachments above the communications space on a pole, we seek comment on whether utilities should be required to keep a separate list of contractors authorized to perform this specialized make-ready work. Currently, utilities are required to make available and keep up-to-date a reasonably sufficient list of contractors authorized to perform make-ready work in the communications space on a utility pole. Should utility-approved contractors that work for new attachers be allowed to perform make-ready work on wireless attachments above the communications space on a pole?

17. We also seek comment on the following proposals that address the safety and property concerns of existing attachers and utilities:

- Requiring all impacted attachers (new, existing, and utilities) to agree on a contractor or contractors that the new attacher could use to perform make-ready work; and/or
- requiring that existing attachers (or their contractors) be given the reasonable opportunity to observe the make-ready work being done on their existing equipment by the new attachers' contractors.

We seek comment on the benefits of these and other alternative proposals involving the use of utility-approved contractors to perform make-ready work.

18. *New Attachers Performing Make-Ready Work.* We seek comment on whether we should adopt rules to allow new attachers (using utility-approved contractors) to perform routine make-ready work in lieu of the existing attacher performing such work. Recognizing that existing attachers may oppose such proposals, we seek comment on alternatives that would address their safety and property concerns, while still shortening the make-ready timeline. Allowing the new attacher to perform make-ready work would save time over the current Commission timeline by permitting the new attacher to initiate routine make-ready work after giving brief (or no) notice to existing attachers. We recognize that such a process would exclude existing attachers from the opportunity to perform routine make-ready work and we seek comment on whether such an exclusion is reasonable. We note that in crafting the pole attachment timeline adopted in 2011, the Commission sought to strike a balance between the goals of promoting broadband infrastructure deployment by new attachers and safeguarding the reliability of existing networks. We seek comment on the risks and drawbacks of any proposal that seeks to change that balance by letting new attachers conduct routine make-ready work without allowing existing attachers the opportunity to do so.

19. We also recognize that a number of carriers have raised concerns about allowing new attachers to conduct routine make-ready work on equipment belonging to existing attachers. As AT&T pointed out in its challenge to Louisville's pole attachment ordinance, the movement and rearrangement of communications facilities has public safety implications; we thus seek comment on AT&T's claim that the ''service provider whose pre-existing facilities are at issue plainly is in the best position to determine whether required make-ready work could be service-affecting or threaten the reliability of its network.'' Charter, in a separate challenge to Louisville's ordinance, argues that allowing competitors to perform make-ready work on its equipment could intentionally or unintentionally ''damage or disrupt [Charter]'s ability to serve its customers, creating an inaccurate perception in the market about [Charter]'s service quality and harming its goodwill.'' We seek comment on Charter's claim and whether make-ready procedures that exclude existing attachers could lead to consumer misunderstandings in the event of service disruptions that occur during make-ready work by other attachers. Should new attachers that perform make-ready work be required to indemnify, defend, and hold harmless existing attachers for damages or outages that occur as a result of make-ready work on their equipment?

20. *Post Make-Ready Timeline.* If existing attachers are not part of the make-ready process, then we seek

comment on an appropriate timeline for inspections and/or surveys by the existing attachers after the completion of make-ready work. For example, Nashville, Tennessee's pole attachment ordinance allows for a 30-day timeline for the inspection and resolution of problems detected by existing attachers to the make-ready work done on their equipment. Is 30 days enough time to detect and rectify problems caused by improper make-ready work? Are there reasonable alternative time periods for existing attachers to review make-ready work and fix any detected problems? For example, the Louisville, Kentucky pole attachment ordinance allows for a 14-day inspection period. Further, is it reasonable to allow the existing attacher to elect to fix the defective make-ready work on its own (at the new attacher's expense) or to require the new attacher to fix the problems caused by its work?

21. *One-Touch, Make-Ready.* We seek comment on the potential benefits and drawbacks of a pole attachment regime patterned on a ''one-touch, make-ready'' (OTMR) approach, which includes several of the concepts discussed above as part of a larger pole attachment framework. Both Nashville, Tennessee and Louisville, Kentucky have adopted pole attachment regimes that involve elements of an OTMR policy. The Commission has noted that OTMR policies ''seek to alleviate 'a significant source of costs and delay in building broadband networks' by 'lower[ing] the cost of the make-ready process and speed[ing] it up.' '' Would a new pole attachment timeline patterned on an OTMR approach help spur positive decisions on broadband infrastructure deployment? According to the Fiber to the Home Council, an OTMR approach ''minimizes disruption in the public rights-of-way and protects public safety and aesthetics'' while also speeding broadband deployment. We seek other assessments and analysis of the benefits and drawbacks of an OTMR pole attachment process. Would some blend of an OTMR approach coupled with the current Commission pole attachment timeline and protections help spur timely access to poles?

22. Under the Nashville OTMR ordinance, the pole attachment process works as follows: (1) A new attacher submits an attachment application to the utility and after approval of the application, the new attacher notifies the utility of the need for make-ready work; (2) the new attacher then contracts with a utility-approved contractor to perform all of the necessary make-ready work; (3) the new attacher gives 15 days' prior written notice to existing attachers before initiating make-ready work; (4) within 30 days after the completion of make-ready, the new attacher sends written notice of the make-ready work to existing attachers; (5) upon receipt of such notice, the existing attachers may conduct a field inspection of the make-ready work within 60 days; (6) if an existing attacher finds a problem with the make-ready work, then it may notify the new attacher in writing (within the 60-day inspection window) and elect to either fix the problem itself at the new attacher's expense or instruct the new attacher to fix the issue; and (7) if a new attachment involves ''complex'' make-ready work, then the new attacher must notify each existing attacher of the make-ready work at least 30 days before commencement of the work in order to allow the existing attachers the opportunity to rearrange their equipment to accommodate the new attacher—if such work is not performed by the existing attachers within 30 days, then the new attacher can perform the required make-ready work using utility-approved contractors. We seek detailed comment on the benefits and drawbacks of this approach. Are there steps in the Nashville pole attachment process where utilities, new attachers, and existing attachers could all benefit from streamlined access to poles, especially as compared to the current Commission pole attachment timeline? Rather than adopting a wholesale OTMR approach to the pole attachment process, are there individual OTMR elements that could form the basis of a more preferable timeline than what currently exists in the Commission's rules?

23. The Louisville OTMR ordinance differs from the one in Nashville in that it does not require new attachers to send pre-make-ready notices to existing attachers for routine requests, it shortens the timeline for the post-make-ready field inspection for routine make-ready work from 60 days to 14 days, it requires existing attachers to notify the new attacher of any problems (and the election of how to fix those problems) within 7 days after the field inspection, and it requires new attachers to correct any problems within 30 days of the notice. We seek comment on the alternatives advanced in the Louisville OTMR ordinance and whether the Commission should incorporate any or all of these concepts into a new pole attachment regime. Does the Louisville ordinance better balance the concerns of existing attachers and utilities than the Nashville approach?

24. In addition, CPS Energy, a utility based in San Antonio, Texas, has implemented an OTMR approach for access to its poles. Under the CPS Energy policy, the timeline for the pole attachment process is as follows: (1) 21 days for CPS Energy to review completed pole attachment applications (with a unilateral option for an additional 7 days), survey affected poles, and produce a make-ready cost estimate; (2) 21 days for the new attacher to approve the make-ready cost estimate and provide payment; (3) CPS Energy notice to existing attachers of impending make-ready work; (4) 60 days for CPS Energy to complete any required make-ready work in the electrical space, and 90 days for the new attacher to complete all other routine make-ready work at its expense using contractors approved by CPS Energy (with option to request additional 30 days); (5) new attachers must give 3 days' notice to existing attachers of impending make-ready work and must specify whether the work is complex, such that it ''poses a risk of disconnection or interruption of service to a Critical Communications Facility'' (any complex make-ready work must be completed by the new attacher within 30 days after notice is provided to affected existing attachers); (6) 15 days' notice from new attachers to affected existing attachers after completion of make-ready work; (7) 15 days for existing attachers to inspect make-ready work on their equipment; and (8) 15 days for new attachers to fix any problems after notice from existing attachers. We seek comment on this approach, which varies from the ordinances adopted in Nashville and Louisville, especially in terms of the timing of the various pole attachment stages and the ability of new attachers to perform complex make-ready work themselves. What are the benefits and drawbacks of the process adopted by CPS Energy? Is it significant that this process is a utility-adopted approach as opposed to a government-adopted approach? What can the Commission do to encourage other utilities to adopt pole attachment policies like the one instituted by CPS Energy?

25. *Other Pole Attachment Process Proposals.* Another pole attachment proposal, advanced by members of the Nashville City Council who opposed the OTMR ordinance, is styled ''right-touch, make-ready'' (RTMR), and it would provide a utility 30 days in which to review a pole attachment application, then provide existing attachers 45 days to complete make-ready work. Existing attachers failing to meet the 45-day deadline would be charged $500 per pole per month until required make-ready work is completed. We seek comment on the reasonableness of this

approach. What are the advantages and drawbacks of a RTMR approach as opposed to an OTMR approach? Could elements of both approaches be blended together to form a better alternative to the Commission's current pole attachment timeline? Would the $500 per pole per month charge be enough of an incentive to encourage existing attachers to complete make-ready work by the 45-day deadline? Would it be reasonable to include in a RTMR approach the ability of new attachers (or the utility) to perform make-ready work at the expense of existing attachers who fail to meet the 45-day deadline?

26. As another way to incent accelerated make-ready timelines, could there be a standard ''bonus'' payment or multiplier applied to the make-ready reimbursements sought by existing attachers from new attachers if the overall timelines are met? By basing such incentive payments on the overall timeline being achieved by existing attachers, does this create effective incentives for parties to collaborate and find opportunities for efficiency? For instance, might multiple existing attachers agree to use the same make-ready contractor so they all can reap the reward of the incentive payments? While such incentives could theoretically be arranged through private contracting, would using this as the default system benefit smaller, new attachers who may find complicated negotiations a challenge?

27. Making more information publicly available regarding the rates, location, and availability of poles also could lead to faster pole attachment timelines. We seek comment on the types of pole attachment data resources currently available. Are there ways the Commission could incentivize utilities to establish online databases, maps, or other public information sources regarding pole rates, locations, and availability? To what extent are utilities or other entities already aggregating pole information online, either for internal tracking purposes or externally for potential or existing attachers? What pole-related information other than rates, location, and availability could utilities make publicly available (*e.g.,* number of existing attachers, physical condition, available communications space, the status of make-ready work, status of pole engineering surveys)? Should similar information also be made publicly available for ducts, conduits, and rights-of-way? We recognize that increasing transparency of cost information could lead to more efficient pole attachment negotiations. What steps should the Commission take to facilitate access to information regarding pole attachment rates and costs from pole owners subject to section 224? For instance, should pole owners be required to make pole attachment rates publicly available online? What are the benefits and drawbacks of making pole attachment rate information publicly available? Could the Commission facilitate the creation of a centralized clearinghouse of pole attachment rate information, and if so how?

28. We seek comment on these proposals and any others (or combinations thereof) that could help speed the pole attachment process, yet still address the safety and property concerns of existing attachers and utilities. Might there be ''hybrid'' approaches that incent parties to expeditiously complete the make-ready process when private negotiations fail within a given time period? For instance, if utilities, existing attachers, and new attachers cannot agree on make-ready plans within 15 days, could the following arrangement be used: First, the new attacher would select a ''default'' contractor (approved by the utility); second, the existing attachers would be able to accept the default contractor or do the make-ready work themselves (and be reimbursed by the new attacher) within a specified timeframe with penalties for failure to meet the make-ready deadline? If having a single default contractor do all the work at once will speed deployment, are there ways within this framework to incent existing attachers to allow the new attacher to use the default contractor? For instance, might existing attachers choosing to do make-ready work themselves be limited in the amount they charge for the work? Could such a limit be set as a proportional split among existing attachers that is based on the total make-ready costs that the new attacher would have incurred under an OTMR approach? Would such incentives encourage existing attachers to choose the default contractor in situations where they have little concern about harm to their equipment but still allow them to do the work themselves when they have concerns?

29. We seek discussions of the relative merits and drawbacks of these pole attachment approaches or combinations thereof. For example, would an OTMR approach (or some variant thereof) benefit consumers through increased efficiencies that could lower the costs of deployment? Is there any evidence to show how much less pole attachment costs are if using an OTMR approach as compared with the Commission's current pole attachment timeline? How should we balance the benefits to society from greater speed of deployment and cost savings versus the need to ensure that safety and property concerns are not compromised?

30. We also recognize that some broadband providers encounter difficulties in accessing poles, ducts, conduits, and rights-of-way owned by entities that are not subject to section 224 of the Communications Act, such as municipalities, electric cooperatives, and railroads. ACA members also submit that there are instances where accessing infrastructure owned by municipalities, electric cooperatives, and railroads is cost prohibitive due to the pole attachment rates charged. We seek comment on actions that the Commission might be able to undertake to speed deployment of next generation networks by facilitating access to infrastructure owned by entities not subject to section 224. How can the Commission encourage or facilitate access to information about pole attachment rates and costs with respect to these entities, and what are the benefits and drawbacks of these potential steps? Would increased transparency regarding pole attachment rates and costs for Commission-regulated pole owners, discussed above, benefit potential attachers to non-Commission-regulated poles by providing data that would be useful in contractual negotiations? If so, would this facilitate broadband deployment?

31. *Access to Conduit.* We seek comment on ways to make the process of gaining access specifically to utility conduit more transparent. We ask whether there are existing online databases or other publicly-available resources to aid telecommunications and cable providers in determining where available conduit exists. Do utilities or municipalities have readily available information on the location and cost of access to conduit? Are there ''best practices'' that utilities or municipalities have established that make it easier for providers to obtain crucial information on conduit access? We seek comment on whether any local or state jurisdictions have policies on making conduit information more transparent and widely available, especially with regard to alerting the public and providers about the timing and location of conduit trenches being dug by utilities.

B. Re-Examining Rates for Make-Ready Work and Pole Attachments

1. Reasonableness of ''Make-Ready'' Costs

32. We seek comment on proposals to reduce make-ready costs and to make

such costs more transparent. In general, make-ready charges must be just and reasonable under section 224(b)(1) of the Act. Currently, however, make-ready fees are not subject to any mandatory rate formula set by the Commission. We seek comment on whether the make-ready costs being charged today are just and reasonable, and whether such costs represent a barrier to broadband infrastructure deployment. Further, we seek comment on ways to encourage utilities, existing attachers, and new attachers to resolve more make-ready pole attachment cost and responsibility issues through private negotiations.

33. *Requiring Utilities to Make Available Schedules of Common Make-Ready Charges.* We seek comment on whether we should require utilities to provide potential new attachers with a schedule of common make-ready charges to create greater transparency for make-ready costs. To what extent does the availability of schedules of common make-ready charges help facilitate broadband infrastructure deployment? INCOMPAS suggests that the Commission should revisit its 2011 decision refraining from requiring utilities to provide schedules of common make-ready charges upon request. According to INCOMPAS, ''make ready charges are not predictable or verifiable in many cases, making it difficult for competitors to plan their builds and accurately predict construction.'' We seek comment on the benefits and any potential burdens associated with requiring utilities to provide schedules of make-ready charges.

34. Further, we seek comment on whether and how schedules of common make-ready charges are made available, used, and implemented by both utilities and potential new attachers today. In the *2011 Pole Attachment Order,* the Commission received evidence from utilities that many already make information about common make-ready charges available on request. Is that practice still prevalent today and, if so, what methods are most frequently used to provide such schedules (*e.g.,* Web sites, paper schedules, telephonically)? We also seek comment on which make-ready jobs and charges are the most common, and thus most easily included in a generalized schedule of charges. In addition, we seek comment on any comparable state requirements that require utilities to publish or make available schedules of common make-ready charges. We also seek comment on whether there are other mechanisms currently in use, such as standardized contract terms, that provide the necessary information and transparency to the make-ready process.

35. *Reducing Make-Ready Charges.* We seek comment on reasonable ways to limit the make-ready fees charged by utilities to new attachers. Would it provide certainty to the make-ready process if the Commission adopted a rule limiting make-ready fees imposed on new attachers to the actual costs incurred to accommodate a new attachment? As part of the pole attachment complaint process, the Commission has held that utilities ''are entitled to recover their costs from attachers for reasonable make-ready work necessitated by requests for attachment. Utilities are not entitled to collect money from attachers for unnecessary, duplicative, or defective make-ready work.'' Would codifying the holding that new attachers are responsible only for the cost of make-ready work made necessary because of their attachments help to ensure that make-ready costs are just and reasonable?

36. We also seek comment on other alternatives for reducing make-ready costs. For example, would it be reasonable to allow utilities to set a standard charge per pole that a new attacher may choose in lieu of a cost-allocated charge? Should the choice belong to the utility or the new attacher? Would a per-pole charge of, for example, $300, $400, or $500 permit utilities to recover their reasonable make-ready costs and provide new attachers with an affordable alternative to negotiating with the utility over the applicable costs to be included in make-ready charges? We seek comment on the viability of such an approach. We also ask whether it would be reasonable to require utilities to reimburse new attachers for make-ready costs for improvements that subsequently benefit the utility (*e.g.,* the modification allows utilities to use additional space on a pole for its own uses or creates a vehicle for the utility to receive additional revenues from subsequent attachers). If so, then how would the new attachers and utilities manage that process? We seek comment on the potential tradeoffs of such an approach, which may help to keep make-ready costs low for new attachers, but also pose new challenges for utilities and new attachers to administer. We note that pursuant to section 1.1416(b) of the Commission's rules, attachers who directly benefit from a new pole or attachment already are required to proportionately share in the costs of that pole or attachment. The proportionate share of the costs attributable to the subsequent attacher is reduced to take into account depreciation to the pole that occurs after the modification. In adopting this requirement, the Commission ''intended to ensure that new entrants, especially small entities with limited resources, bear only their proportionate costs and are not forced to subsidize their later-entering competitors.'' Should we interpret (or modify) this rule to apply to utilities when make-ready improvements subsequently benefit the utility? Conversely, we seek comment on whether requiring utilities to pass a percentage of additional attachment benefits back to parties with existing attachments would result in a disincentive to add new competitors to modified poles.

37. We also seek comment on whether the Commission's complaint process provides a sufficient mechanism by which to ensure that make-ready costs are just and reasonable. Commenters arguing that the Commission's complaint process is not a sufficient limitation on make-ready costs should propose specific alternatives to ensure the reasonableness of make-ready charges and explain why the benefits of such alternatives would outweigh the burdens of a new Commission-imposed mandate for make-ready charges. Are there state regulatory approaches or alternatives governing the reasonableness of make-ready charges that the Commission should consider implementing?

2. Excluding Capital Expenses From Pole Attachment Rates

38. *Capital Expenses Recovered via Make-Ready Fees.* We propose to codify a rule that excludes capital costs that utilities already recover via make-ready fees from pole attachment rates. Almost forty years ago, the Commission found that ''where a utility has been directly reimbursed by a [cable television] operator for non-recurring costs, including plant, such costs must be subtracted from the utility's corresponding pole line capital account to insure that [cable television] operators are not charged twice for the same costs.'' Since that time, the Commission has made clear that ''[m]ake-ready costs are non-recurring costs for which the utility is directly compensated and as such are excluded from expenses used in the rate calculation.'' As such, ''if a utility is required to replace a pole in order to provide space for an attacher [and] the attacher pays the full cost of the replacement pole,'' the capital expenses associated with the installation of those poles should be wholly excluded from pole attachment rates for all attachers. Nonetheless, it appears that not all

attachers benefit from lower rates in these circumstances, in part because our rules do not explicitly require utilities to exclude already-reimbursed capital costs from their pole attachment rates. We seek comment on how utilities recalculate rates when make-ready pays for a new pole, what rate reductions pole attachers have experienced when poles are replaced through the make-ready process, and whether attachers have experienced the inclusion of already-reimbursed capital costs in their pole attachment rates. We similarly seek comment on how utilities treat capital expenses associated with their own make-ready work. When utilities replace poles to accommodate their own needs or to create additional electrical space, do they appropriately treat associated capital expenses as make-ready work that is wholly excluded from pole attachment rates? How do existing attachers know when new attachers or the utility have fully paid the capital expenses as make-ready costs so that those expenses should be wholly excluded from rates going forward?

39. We seek comment on whether amending section 1.1409(c) of our rules to exclude capital expenses already recovered via make-ready fees from ''actual capital costs'' is sufficient to ensure no double recovery occurs by utilities. We seek comment on whether any other changes to the Commission's rules are necessary and reasonable to provide certainty to attachers and utilities about the treatment of pole capital costs that already have been recovered via make-ready.

40. *Capital Costs Not Otherwise Recovered Via Make-Ready Fees.* We seek comment on whether we should exclude capital costs that are not otherwise recoverable through make-ready fees from the upper-bound cable and telecommunications pole attachment rates. In setting those rates, the Commission previously found it appropriate to allow utilities to include in the rates some contribution to capital costs aside from those recovered through make-ready fees. In revisiting this issue, we seek comment on the extent to which the capital costs of a pole, other than those paid through make-ready fees, are caused by attachers other than the utility (especially when there is space already available on the pole). If none or only a small fraction of the capital costs, other than those paid for through make-ready fees, are caused by attachers other than the utility, would this justify the complete exclusion of these capital costs from the pole attachment rate? To what extent would the exclusion of such capital costs further reduce pole attachment rates? To what extent would the exclusion of these particular capital costs from the rate formulas burden the ratepayers of electric utilities? What policy justifies charging pole attachers, whose costs of deployment may determine the scope of their investment in infrastructure, anything more than the incremental costs of attachment to utilities?

41. We note that although the rate formula for operators ''solely'' providing cable service sets an upper bound explicitly tied to ''actual capital costs,'' the rate formula for telecommunications carriers is tied only to ''costs.'' The Commission has previously interpreted the term ''cost'' in the latter formula to exclude at least some capital costs. Should we revisit this interpretation and interpret the term ''cost'' in the telecommunications pole attachment formula to exclude all capital costs? Would doing so avoid the awkward interpretation contained in our present rules that defines the term ''cost'' in two separate different ways at the same time?

42. Similarly, we note that our more general authority over pole attachments only requires that rates be ''just and reasonable.'' We seek comment on the appropriate rate for commingled services, including when a cable operator or a telecommunications carrier offers information services as well as cable or telecommunications services over a single attachment. Should we set that rate for commingled services based on the upper bound of the cable rate formula, the telecommunications rate formula, or some third option? Should we exclude capital costs from the rate formula we use to determine the commingled services rate? The cable rate formula also sets a lower bound of ''the additional costs of providing pole attachments.'' How would that differ from any of the rates discussed heretofore? Should we set the commingled services rate equal to the lower bound of the cable rate formula?

43. We seek comment on what specific amendments we should consider to section 1.1409 of our rules to effectuate any changes.

3. Pole Attachment Rates for Incumbent LECs

44. In the *2011 Pole Attachment Order,* the Commission declined to adopt a pole attachment rate formula for incumbent LECs, opting instead to evaluate incumbent LEC complaints on a case-by-case basis to determine whether the rates, terms, and conditions imposed on incumbent LEC pole attachments are consistent with section 224(b) of the Act. The Commission held that it is ''appropriate to use the rate of the comparable attacher as the just and reasonable rate for purposes of section 224(b)'' when an incumbent LEC enters into a new agreement with a utility and can demonstrate ''that it is obtaining pole attachments on terms and conditions that leave them comparably situated to telecommunications carriers or cable operators.'' Conversely, when the incumbent LEC attacher cannot make such a demonstration, the Commission found that a higher rate based on the Commission's pre-2011 telecommunications rate formula should serve as a ''reference point'' for evaluating whether pole attachment rates charged to incumbent LECs are just and reasonable. In the years since adoption, this formulation has led to repeated disputes between incumbent LECs and utilities over appropriate pole attachment rates.

45. To end this controversy, we propose that the ''just and reasonable rate'' under section 224(b) for incumbent LEC attachers should presumptively be the same rate paid by other telecommunications attachers, *i.e.,* a rate calculated using the most recent telecommunications rate formula. Under this approach, the incumbent LEC would no longer be required to demonstrate it is ''comparably situated'' to a telecommunications provider or a cable operator; instead the incumbent LEC would receive the telecommunications rate unless the utility pole owner can demonstrate with clear and convincing evidence that the benefits to the incumbent LEC far outstrip the benefits accorded to other pole attachers. We seek comment on this proposal. What demonstration should be sufficient to show that an incumbent LEC attacher should not be entitled to the telecommunications rate formula? For instance, should an incumbent LEC have to own a majority of poles in a joint ownership network? Should an incumbent LEC have to have special access to modify a utility's poles without prior notification? How should the relative rates charged to the utility and the incumbent LEC factor into the analysis? If an incumbent LEC has attachments on utility poles pursuant to the terms of a joint use agreement, should the incumbent LEC entitlement to the telecommunications rate be conditioned on making commensurate reductions in the rates charged to the utility for attaching to the incumbent LEC's poles? We also seek comment on the rate that should apply to incumbent LECs in the event the utility owner can demonstrate the telecommunications

rate should not apply. In these instances, should the Commission use the pre-2011 telecommunications rate formula? We also seek comment on an alternative pole attachment rate formula approaches for incumbent LECs. Commenters supporting alternative approaches should provide specific inputs and methodology that could be used in such a formula.

46. Given that the Commission based its decision in the *2011 Pole Attachment Order* to refrain from establishing pole attachment rates for incumbent LECs in part on the high levels of incumbent LEC pole ownership, we seek comment on the relative levels of pole ownership between utilities, incumbent LECs, and other industry participants. If pole ownership levels have changed, what bearing should that have on the rates charge to incumbent LECs?

C. Pole Attachment ''Shot Clock'' For Pole Attachment Complaints

47. *Establishing a 180-Day Shot Clock.* We propose to establish a 180-day ''shot clock'' for Enforcement Bureau resolution of pole access complaints filed under section 1.1409 of our rules. A ''pole access complaint'' is a complaint that alleges a complete denial of access to utility poles. This term does not encompass a complaint alleging that unreasonable rates, terms, or conditions that the utility demands as a condition of attachment (*e.g.,* adherence to certain engineering standards) amounts to a denial of pole access. We seek comment on this proposal. The *2011 Pole Attachment Order* noted that ''a number of commenters expressed concern about the length of time it takes for the Commission to resolve pole attachment complaints,'' but the Commission determined that the record at the time did not warrant the creation of new pole attachment complaint rules. We now seek comment on whether we should revisit that earlier conclusion by creating a shot clock and whether 180 days is a reasonable timeframe for the Enforcement Bureau to resolve pole access complaints. We note that under section 224(c)(3)(B) of the Act, a state that has asserted jurisdiction over the rates, terms, and conditions of pole attachments could lose the ability to resolve a pole attachment complaint if it does not take final action within 180 days after the complaint is filed with the state. Should this statutory time period for state resolution of a pole attachment complaint inform our consideration as to what constitutes a reasonable timeframe for Enforcement Bureau consideration of a pole attachment complaint? We additionally seek alternatives to the 180-day time period. For example, are there shorter state timelines for the resolution of pole attachment complaints? Would 150 days, 120 days, 90 days, or an even shorter timeframe be reasonable for the Enforcement Bureau to resolve a pole access complaint? What would be the benefits and drawbacks for a shorter timeframe for resolution of pole access complaints? Also, we seek comment regarding whether the current length of Enforcement Bureau consideration of pole access complaints has burdened broadband infrastructure deployment. How, if at all, would a shot clock (whether it be 180 days or some different time period) affect new attacher decisions to deploy broadband infrastructure? We seek comment on the ramifications of the Enforcement Bureau exceeding the shot clock and on reasonable consequences for the Enforcement Bureau exceeding the clock.

48. *Starting the Shot Clock at the Time a Complaint Is Filed.* We seek comment on when to start the proposed 180-day shot clock. We propose starting the shot clock at the time the pole access complaint is filed, as is the case for state complaints under section 224(c)(3)(B) of the Act, and we seek comment on this proposal. We also seek comment on alternatives that would start the shot clock later in the process, such as when a reply is filed by the complainant pursuant to section 1.1407(a) of our rules or, if discovery is requested, when discovery is complete. Starting the clock at these later junctures would allow the Enforcement Bureau sufficient time to review the relevant issues involved in a pole access complaint and would not disadvantage the timing of the Enforcement Bureau's review if the pleading cycle or discovery takes longer than expected. Are there instructive alternative starting points adopted by states for the initiation of their pole attachment complaint proceedings? If the shot clock does not start until sometime after a pole access complaint is filed, would it make sense to institute a shot clock that is shorter than 180 days?

49. *Pausing the Shot Clock.* We seek comment on whether the Enforcement Bureau should be able to pause the proposed shot clock for a reasonable time in situations where actions outside the Enforcement Bureau's control are responsible for delaying its review of a pole access complaint. In the transactions context, the reviewing Bureau pauses the shot clock when the parties need additional time to provide key information requested by the Bureau. We propose to allow the Enforcement Bureau the discretion to pause the shot clock in that situation, as well as when the parties decide to pursue informal dispute resolution or request a delay to pursue settlement discussions after a pole access complaint is filed. We ask whether these are valid reasons to pause the shot clock, and we seek comment on objective criteria for the Enforcement Bureau to use in deciding whether such situations are significant enough to warrant a pause in the shot clock. We also seek comment on when the Enforcement Bureau should resume the shot clock. Are there objective criteria that the Enforcement Bureau could use to judge the satisfactory resolution of an outstanding issue such that the shot clock could be resumed? Further, we propose to alert parties to a pause in the shot clock (and to a resumption of the shot clock) via written notice to the parties. We seek comment on this proposal.

50. *Establishment of Pre-Complaint Procedures.* We seek comment on whether we should require the parties to resolve procedural issues and deadlines in a meeting to be held either remotely or in person prior to the filing of the pole access complaint (and prior to the starting of the shot clock). We seek comment on the types of issues that the parties should resolve in a pre-complaint meeting. We note that it has been our standard practice to request that parties participate in pre-complaint meetings in order to resolve procedural issues and deadlines; we find that the complaint process has proceeded much more smoothly as a result. We seek comment on the benefits and drawbacks of requiring a pre-complaint meeting and ask whether there are any state pre-complaint procedures that could inform the rules that we develop.

51. *Use of Shot Clock for Other Pole Attachment Complaints.* We seek comment on whether the Commission should adopt a 180-day shot clock for pole attachment complaints other than those relating to access. We also request comment on whether the length of time to resolve other pole attachment complaints has stymied the deployment of broadband infrastructure. We additionally seek comment on reasonable alternatives to a 180-day shot clock and ask whether there are state shot clocks for other pole attachment complaints that could help inform our review. Should the procedures set forth above for pole access complaints also apply to other pole attachment complaints? What alternatives could we adopt that would further streamline the pole attachment complaint process?

D. Reciprocal Access to Poles Pursuant to Section 251

52. *Background.* Section 251 of the Act provides that ''[e]ach local exchange carrier'' has the duty ''to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 [of this Act].'' Section 224(a) defines a ''utility'' that must provide telecommunications carriers nondiscriminatory pole access at regulated rates to include both incumbent LECs and competitive LECs. However, the definition of ''telecommunications carrier'' used in section 224 ''does not include'' incumbent LECs, thus denying incumbent LECs the benefits of section 224's specific protections for carriers.

53. According to CenturyLink, the disparate treatment of incumbent LECs and competitive LECs in section 224(a) prevents incumbent LECs from gaining access to competitive LEC-controlled infrastructure and in doing so dampens the incentives for all local exchange carriers to build and deploy the infrastructure necessary for advanced services. The Commission initially examined this issue during its implementation of the 1996 Act in the *1996 Local Competition Order,* where it determined that section 251 cannot ''[restore] to an incumbent LEC access rights expressly withheld by section 224.'' The Ninth Circuit Court of Appeals disagreed in dicta, noting that sections 224 and 251 could ''be read in harmony'' to support a right of access for incumbent LECs on other LEC poles. Despite its skepticism of the Commission's analysis in the *1996 Local Competition Order*, the Ninth Circuit held it was obligated to adhere to that analysis because the parties had not directly challenged the *1996 Local Competition Order* via the Hobbs Act. CenturyLink requests the Commission revisit our interpretation. Other commenters in the latest Biennial Review contend that the Commission's interpretation remains valid given incumbent LECs' ''first-mover advantage'' and ''the ability of large incumbent LECs to abuse their market positions to foreclose competition.''

54. *Discussion.* We seek comment on reading the statutes in harmony to create a reciprocal system of infrastructure access rules in which incumbent LECs, pursuant to section 251(b)(4) of the Act, could demand access to competitive LEC poles and vice versa, subject to the rates, terms, and conditions described in section 224. Further, we seek comment on necessary amendments to our rules to effectuate the changed interpretation in the event we decide to do so. We also seek comment on how similar the rules for incumbent LEC access under section 251 must be to those for other carriers under section 224 for the rules to be ''consistent'' with each other.

55. Additionally, we seek comments and data that will help establish how often incumbent LECs request access to competitive LEC infrastructure. How often do incumbent LECs request access to infrastructure controlled by competitive LECs, how frequently are incumbent LECs denied access, and how much of an effect does this have on competition and broadband deployment? Would the frequency of incumbent LEC requests for access to competitive LEC poles change if we decide to change our interpretation, and how would that impact broadband deployment?

III. Expediting the Copper Retirement and Network Change Notification Process

56. Section 251 of the Act imposes specific obligations on incumbent LECs to promote competition so as to allow industry to bring ''increased innovation to American consumers.'' To that end, section 251(c)(5) and the Commission's part 51 implementing rules require incumbent LECs to provide public notice of network changes, including copper retirement, that would affect a competing carrier's performance or ability to provide service. We propose revisions to our Part 51 network change disclosure rules to allow providers greater flexibility in the copper retirement process and to reduce associated regulatory burdens, to facilitate more rapid deployment of next-generation networks. We also seek comment on streamlining and/or eliminating provisions of the more generally applicable network change notification rules.

A. Copper Retirement

57. We seek comment on revisiting our copper retirement and notice of network change requirements to reduce regulatory barriers to the deployment of next-generation networks. First, we seek comment on eliminating some or all of the changes to the copper retirement process adopted by the Commission in the *2015 Technology Transitions Order.* We seek comment on the Commission's authority to impose the copper retirement notice requirements adopted in the *2015 Technology Transitions Order.* Among other things, the new rules doubled the time period during which an incumbent LEC must wait to implement a planned copper retirement after the Commission's release of public notice from 90 days to 180 days, required direct notice to retail customers, states, Tribal entities, and the Secretary of Defense, and expanded the types of information that must be disclosed.

58. *Repeal of Section 51.332 and Return to Prior Short-Term Network Change Notification Rule.* We seek comment on how best to handle incumbent LEC copper retirements going forward to prevent unnecessary delay and capital expenditures on this legacy technology while protecting consumers. First, we seek comment on eliminating section 51.332 entirely and returning to a more streamlined version of the pre-*2015 Technology Transitions Order* requirements for handling copper retirements subject to section 251(c)(5) of the Act. Specifically, prior to the *2015 Technology Transitions Order,* incumbent LEC copper retirement notices of less than six months were regulated under the more flexible Commission rule that applied to short-term network change notices. We seek comment on whether to repeal section 51.332 and whether to reinstate the prior copper retirement notice rules. Have the delays and increased burdens introduced by the revised rules hindered next-generation network investment? Have the changes been effective in protecting competition and consumers? What are their costs and benefits? Would adopting our pre-2015 rule, without modification, provide incumbent LECs with sufficient flexibility to facilitate their transition to next-generation networks? Should we retain our existing rule in substantially similar format?

59. The *2015 Technology Transitions Order* eliminated the process by which competitive LECs can object to and seek to delay an incumbent LEC's planned copper retirement when it increased the ''deemed approved'' timeframe from 90 to 180 days. If we return incumbent LEC copper retirements to the prior network notification process, should we nonetheless retain this change, and, if so, how should we incorporate it into our rules? Is some other notice timeframe more appropriate?

60. The *2015 Technology Transitions Order* also adopted an expanded definition of copper retirement that added (1) the feeder portion of copper loops and subloops, previously excluded, and (2) ''the failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling''—*i.e.,* de facto

retirement. Maintenance of existing copper facilities remains a concern when an incumbent LEC does not go through the copper retirement process. If we return incumbent LEC copper retirements to the prior network notification process, should we nonetheless retain this expanded definition?

61. The *2015 Technology Transitions Order* also broadened the recipients of direct notice from ''each telephone exchange service provider that directly interconnects with the incumbent LEC's network'' to ''each entity within the affected service area that directly interconnects with the incumbent LEC's network.'' It also added a notice requirement to the Secretary of Defense as well as the state public utility commission, Governor of the State, and any Tribal entity with authority over Tribal lands in which the copper retirement is proposed. Have these direct notice changes adopted by the Commission meaningfully promoted facilities investment or preserved competition in the provision of next-generation facilities, and what costs have the changes imposed? Have these direct notice changes meaningfully promoted understanding and awareness of copper retirements and their impacts, and what have been the benefits of these changes? Returning to a version of our pre-2015 copper retirement rules would reduce the number of direct notice recipients from ''each entity'' to ''each telephone exchange service provider,'' and eliminate the other expanded notice requirements from the *2015 Technology Transitions Order.* We seek comments on the effects of such a change.

62. *Full Harmonization with General Network Change Notification Process.* Alternatively, we seek comment on eliminating all differences between copper retirement and other network change notice requirements, rendering copper retirement changes subject to the same long-term or, where applicable, short-term network change notice requirements as all other types of network changes subject to section 251(c)(5). Even under the Commission's rules prior to the *2015 Technology Transitions Order,* there were differences in the treatment of copper retirements and other short-term network change notices. Whereas short-term network change notices become effective ten days after Commission issuance of a public notice, copper retirement notices became effective ninety days thereafter. Moreover, an objection to a copper retirement notice was deemed denied 90 days after the Commission's public notice absent Commission action on the objection, while there is no ''deemed denied'' provision for other short-term network change objections. Is there a basis to continue to have a different set of network change requirements for copper retirement? In this regard, we note that the transition from copper to fiber has been occurring for well more than a decade now. We anticipate that interconnecting carriers are aware that copper retirements are inevitable and that they should be familiar by now with the implications of and processes involved in accommodating such changes. We seek comment on this expectation.

63. *Modification of section 51.332.* A second alternative to eliminating section 51.332 entirely would be to retain but amend section 51.332 to streamline the process, provide greater flexibility, and reduce burdensome requirements for incumbent LEC copper retirements. We seek comment on how we should change the rule to afford flexibility and maximize incentives to deploy next-generation facilities. We seek comment on whether we should adopt these changes, and whether additional or different changes should also be adopted:

- Requiring an incumbent LEC to serve its notice only to telephone exchange service providers that directly interconnect with the incumbent LEC's network, as was the case under the predecessor rules, rather than ''each entity within the affected service area that directly interconnects with the incumbent LEC's network.''
- Reducing the waiting period to 90 days from 180 days after the Commission releases its public notice before the incumbent LEC may implement the planned copper retirement.
- Providing greater flexibility regarding the time in which an incumbent LEC must file the requisite certification.
- Reducing the waiting period to 30 days where the copper facilities being retired are no longer being used to serve any customers in the affected service area.

Should we adopt different timing thresholds than those specified above, and if so, what thresholds and why would different thresholds be better? Should we reduce the waiting period to one month and remove the notification requirements in emergency situations? Should we modify the existing requirements for the content of the notice, and if so, how? Have competitive LECs availed themselves of the good faith communication requirement, and if so, has that requirement caused any difficulties? If we eliminate the good faith communication requirement, should we include an objection period, and what form should it take? Alternatively, should we retain the good faith communication requirement and not include an objection period?

64. If we modify section 51.332, we seek comment on eliminating the requirement that incumbent LECs provide direct notice of planned copper retirements to retail customers, both residential and non-residential. Specifically, we seek comment on eliminating sections 51.332(b)(3), (c)(2), (d)(6)–(8), and (e)(3)–(4). What would be the likely impact of eliminating such notice to consumers, including consumers who have disabilities and senior citizens? How do the benefits of notification compare with the costs in terms of slower transitions to next-generation networks? Are there alternative ways in which the Commission can streamline these retail customer notice rules to make the process more flexible and less burdensome on carriers retiring their copper, while still ensuring consumers are protected? Finally, how, if at all, should we modify the requirements for providing notice under current section 51.332(b)(4) to the states, Tribal entities, and the Secretary of Defense?

65. *Additional Considerations.* We seek comment on additional methods by which we can provide further flexibility in the copper retirement process in conjunction with or separate from the proposals described above while still affording interconnecting entities and other impacted parties the notice they need. For instance, should the Commission consider an even shorter waiting period in certain circumstances, and if so, in what circumstances and how much shorter? How, if at all, should that affect the timing for filing the required certification? Are there any other measures we could take to make the copper retirement process less burdensome on carriers? Are there any other measures we could take to make the copper retirement process more helpful for consumers and other impacted parties? Are any technical changes to our rules necessary to accommodate reforming the copper retirement process? For example, should we revise section 51.329(c)(1) to eliminate the titles specific to copper retirement notices, if there would no longer be a defined term?

B. Network Change Notifications Generally

66. Next, we seek comment on methods to reduce the burden of our network change notification processes generally. The Commission's network

change notification process is the process by which incumbent LECs provide ''reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' Aside from the copper retirement notice expansions adopted by the *2015 Technology Transitions Order,* we last revisited our general section 251(c)(5) rules in 2004. Do changes to the telecommunications marketplace since that time warrant changes to these rules, more generally, and if so, what changes? We seek comment on two specific changes below and invite commenters to identify other possible reforms to our network change notification processes.

67. *Section 51.325(c).* We specifically propose eliminating section 51.325(c) of our rules, which prohibits incumbent LECs from disclosing any information about planned network changes to affiliated or unaffiliated entities prior to providing public notice. We seek comment on this proposal. This prohibition appears to unnecessarily constrain the free flow of useful information that such entities may find particularly helpful in planning their own business operations. We seek comment on this view. Alternatively, we could revise section 51.325(c) of our rules to permit disclosures to affiliated and unaffiliated entities, but only to the extent that the information disclosed is what the incumbent LEC would include in its required public notice under section 51.327. A third possibility would be to revise section 51.325(c) to allow such disclosure, but only to the extent the carrier makes such information available to all entities that would be entitled to direct notice of the network change in question. We seek comment on these proposals and any other alternative approaches. If we permit disclosure to affiliated or unaffiliated entities prior to public notice, should we specify any particular timeframe within which public notice must follow?

68. What are the potential advantages and disadvantages of eliminating or revising section 51.325(c)? When this rule was first adopted, the goal was to prevent ''preferential disclosure to selected entities.'' Are these concerns still warranted? We anticipate that providing incumbent LECs greater flexibility to disclose information and discuss contemplated changes before cementing definitive plans would benefit these carriers, interconnecting carriers, and any other interested entities to which disclosure may be useful by providing all such entities greater time to consider or respond to possible network changes. We seek comment on this expectation. To the extent that concerns about some entities receiving advanced notice remain warranted, do any of the specific revisions proposed above obviate such concerns, and if not, what approach can we adopt to address such concerns while still introducing additional flexibility?

69. *Objection Procedures.* Should we revise or eliminate the procedures set forth in section 51.333(c) of the Commission's rules by which a telecommunications service provider or information service provider that directly interconnects with the incumbent LEC's network may object to the timing of short-term network changes? What costs, if any, has the uncertainty introduced by this procedure imposed? What public interest benefits are associated with this requirement? Have competitive LECs made use of this procedure? Should we adopt a ''deemed denied'' timeframe with respect to objections on which the Commission has not acted within some specified timeframe? Should we revise the objection procedure in any other way?

C. Section 68.110(b)

70. We seek comment on eliminating or modifying section 68.110(b) of our rules, which requires that ''[i]f . . . changes [to a wireline telecommunications provider's communications facilities, equipment, operations or procedures] can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service.'' We seek comment on the benefits and costs of the current rule and whether the benefits outweigh the costs. How is such notice under that rule provided today, and specifically, how would a carrier be able to know whether ''any'' terminal equipment would be affected? Do customers still rely on or benefit from the notice required by section 68.110(b)? To what extent do individuals with disabilities still rely on TTYs or other specialized devices or services in an analog environment? To what extent have individuals with disabilities adopted alternative means of communications, whether using telecommunications relay services, texting, videophones, or other online communications? To what extent have such individuals relied on terminal-equipment-incompatibility notices in the past, and are alternative means available that would be more effective at targeting affected individuals with disabilities? We seek comment on the benefits and costs of the current rule and whether the benefits outweigh the costs. Alternatively, should the rule be retained but certain types of changes categorically exempted? The Commission's current copper retirement rules require incumbent LECs to certify compliance with section 68.110(b). If we eliminate section 68.110(b), we propose eliminating this certification requirement, and we seek comment on this proposal.

IV. Streamlining the Section 214(a) Discontinuance Process

71. Among other things, section 214(a) requires carriers to obtain authorization from the Commission before discontinuing, reducing, or impairing service to a community or part of a community. Note that for convenience, in certain circumstances this *NPRM* uses ''discontinue'' (or ''discontinued'' or ''discontinuance,'' etc.) as shorthand that encompasses the statutory terms ''discontinue, reduce, or impair'' unless the context indicates otherwise. With respect to section 214(a)'s discontinuance provision, generally, and the Commission's implementing rules specifically, carriers have asserted ''that exit approval requirements are among the very most intrusive forms of regulation.'' In this section, we seek comment on targeted measures to shorten timeframes and eliminate unnecessary process encumbrances that force carriers to maintain legacy services they seek to discontinue.

72. We believe that modifying our discontinuance processing for legacy systems to reduce burdens and protect customers will facilitate carriers' ability to retire legacy network infrastructure and will accelerate the transition to next generation IP-based networks. We seek comment on this view.

A. Applications That ''Grandfather'' Existing Customers

73. *Streamlining the Public Comment Period.* We propose to streamline the section 214(a) discontinuance process for applications that seek authorization to ''grandfather'' low-speed legacy services for existing customers. ''Grandfathering'' a service in section

214 parlance means that a carrier requests permission to stop accepting new customers for the service while maintaining service to existing customers. We specifically propose to reduce the public comment period to a uniform 10 days for all applications seeking to grandfather legacy low-speed services regardless of whether the provider filing the application is a dominant or non-dominant carrier. We seek comment on this proposal.

74. As a threshold matter, we seek comment on whether expediting the review and authorization of applications to grandfather low-speed services offers benefits to discontinuing carriers generally. Will grandfathering a particular service create greater regulatory parity for telecommunications carriers compared to other segments of the industry? What sort of costs does such a requirement impose on carriers and customers relative to the benefits it imparts? We believe that section 214 provides us ample authority to implement the streamlining measures we propose. We seek comment on this belief.

75. More specifically, we seek comment on the streamlined 10-day comment period we have proposed. Will this comment period allow adequate time for interested parties to review and consider discontinuance applications from carriers and to file comments on these applications, if necessary? Is there a different time period we should consider, *e.g.,* some temporal interval that is either shorter or longer than the 10-day comment period we have proposed? Should we reduce the time period for reviewing and granting applications to grandfather higher-speed services as well, and if so, how? While we have proposed to subject applications from both dominant and non-dominant carriers to a uniform 10-day comment period, we seek comment on whether there is reason to maintain disparate comment periods for dominant versus non-dominant carriers in this context?

76. *Streamlining the Auto-Grant Period.* We propose that all applications seeking to grandfather low-speed legacy services be automatically granted on the 25th day after public notice unless the Commission notifies the applicant that such a grant will not be automatically effective. Under our current rules, an application by a domestic, dominant carrier will be automatically granted on the 60th day after its filing unless the Commission notifies the applicant that the grant will not be automatically effective, whereas an application by a domestic, non-dominant carrier will be automatically granted on the 31st day after its filing unless the Commission notifies the applicant that the grant will not be automatically effective. We seek comment on this proposal. Like our proposed uniform 10-day comment period for all applications to grandfather low-speed legacy services, we see no reason to maintain disparate auto-grant periods for such applications. Will this streamlined auto-grant period for carriers allow adequate time for the Commission and other parties to review their applications? Will the shorter auto-grant period incent providers to more rapidly resolve end-user concerns, if any?

77. Is there a different auto-grant period we should consider when reviewing applications to grandfather low-speed services, periods that are either shorter or longer than the 25-day interval we have proposed? Is there reason to maintain disparate auto-grant periods for dominant versus non-dominant carriers rather than subject both types of carriers to a uniform auto-grant period as we have proposed to do? Alternatively, what role should an objection from a potential customer or other interested party take in the application for grandfathering? Should such an objection result in an application being taken off of streamlined treatment?

78. In addition to potentially reducing the auto-grant period for applications seeking to grandfather low-speed services, we seek comment on whether to adopt an even more abbreviated auto-grant period for grandfathered discontinuance applications that receive no comments during the specified comment period. In conjunction with our efforts to expedite the automatic granting of these applications, we seek comment on whether we should establish a ''shot-clock'' applicable to the time period within which the Commission receives applications to grandfather low-speed legacy services and when the Commission releases the Public Notice seeking comment on such applications. Have carriers filing section 214 discontinuance applications experienced seemingly unreasonable delay between the time the Commission receives their applications and when they are placed on Public Notice?

79. *Eligibility of Grandfathered Services for Streamlined Processing.* We seek comment on the scope of services to which streamlined processing would apply. We propose, at a minimum, to apply any streamlined discontinuance process to grandfathered low-speed TDM services at lower-than-DS1 speeds (below 1.544 Mbps), as these are services that are rapidly being replaced with more advanced or higher-speed IP-based services. We seek comment on whether this is an appropriate speed threshold, or whether higher-speed grandfathered services—*e.g.,* any legacy copper-based or other TDM services below 10 Mbps or 25 Mbps or even higher—should also qualify for this more streamlined processing. Should we limit our streamlined comment and auto-grant periods to a narrower set of circumstances than we propose? Should we adopt a separate sets of auto-grant periods for lower and higher speed services? Are there other service characteristics we should consider besides speed in deciding which applications may qualify for streamlined comment and auto-grant periods?

80. *Additional Steps.* Beyond condensing the comment and auto-grant periods, we seek comment on any additional steps we might take to further streamline the review and approval process for applications to grandfather low-speed services. We specifically seek comment on whether there are certain circumstances under which applications to grandfather low-speed legacy services could be granted once the application is accepted for filing without any period of public comment or under which we should dispense with requiring applications entirely. Does the Commission have authority under section 214(b) to permit grants without any period of public comment or to determine that an application is not necessary? Would limited forbearance from the requirements of section 214 be necessary to dispense with requiring an application or to grant certain applications without any period of public comment, and if so, are the criteria for forbearance met in this instance? Would pursuing either of these options harm existing or potential customers, and if so, do those harms outweigh the benefits of streamlining?

81. If the Commission grants certain applications to grandfather low-speed services without a period of public comment, what criteria should applications satisfy in order to qualify for such a grant? For example, there may be cases in which the carrier has not sold the service to any new customer for a particular period of time and only a limited number of existing customers continue to take the service, and we seek comment on whether there is a particular period of time and/or number of customers that warrants automatic grant without a comment period. Should such grants be contingent on a baseline showing, attestation, or affirmative statement in a carrier's application that there are reasonable alternatives to the service that is to be grandfathered? If so, what type of

certification or showing should be required?

82. *Government Users.* Finally, we seek comment on how we should take into account the needs of federal, state, local, and Tribal government users of legacy services in deciding whether and how best to streamline the process for reviewing section 214 applications that seek to grandfather low-speed services. The National Telecommunications and Information Administration (NTIA) has stated that federal government agencies face particular challenges as customers of telecommunications services and are different from many other customers given the budget and procurement challenges they face and ''the mission-critical activities they perform for the public benefit.'' In its Petition, NTIA asserts that government agencies must make budgetary and technical plans far in advance to convert or adapt their networks, systems, and services to new infrastructure. We agree with NTIA that transitions from the provision of old communications services to new ''must not disrupt or hamper the performance of mission-critical activities, of which safety of life, emergency response, and national security are the most prominent examples.'' Further, Assignment of National Security and Emergency Preparedness Communications Functions, Exec. Order 13,618, 3 CFR 273 (July 6, 2012), states the following as policy of the United States: ''The Federal Government must have the ability to communicate at all times and under all circumstances to carry out its most critical and time sensitive missions. Survivable, resilient, enduring, and effective communications, both domestic and international, are essential to enable the executive branch to communicate within itself and with: the legislative and judicial branches; State, local, territorial, and tribal governments; private sector entities; and the public, allies, and other nations. Such communications must be possible under all circumstances to ensure national security, effectively manage emergencies, and improve national resilience. The views of all levels of government, the private and nonprofit sectors, and the public must inform the development of national security and emergency preparedness (NS/EP) communications policies, programs, and capabilities.'' To the extent these proposed rules accelerate retirement of systems for national security emergency preparedness (NS/EP) communication, we seek comment on the impact to these capabilities. In particular, we seek comment on what will be the impact to NS/EP priority services such as the Government Emergency Telecommunications Service (GETS) and the Telecommunications Service Priority (TSP) system? How will accelerating copper retirement impact these policy goals? Should section 214 applications demonstrate how priority services will continue to be provisioned to government users? How will the transition from the provision of old services to new ones affect other national security interests? How should we take into account the needs of potential government and Tribal customers when considering whether and how to streamline the comment and/or auto-grant periods for applications to grandfather legacy services? Should applications affecting government end users be eligible for any streamlined process we adopt? If we adopt special requirements in relation to applications that may affect government or Tribal users, how can we identify such applications, given that grandfathering affects only non-customers of the service at issue?

83. NTIA suggests that the Commission must ensure that carriers provide information to federal agencies, including the direction and pace of any network changes, so that agencies are able to plan and fund the service, equipment, and systems upgrades needed to maintain critical operations without interruption. NTIA asks that the Commission require carriers to state in their section 214 discontinuance applications: (1) whether and to what extent they have discussed the proposed network or service change with affected federal customers; and (2) what actions they have taken or what plans, if any, they have made to ensure the continuity of mission-critical agency communications networks, systems, and services.

84. We seek comment on this proposal both in general and in the context of our section 214 proposals herein. How would such requirements benefit federal customers, and would such requirements benefit others in the communications ecosystem? How could we measure compliance with any such requirements? Would such requirements prove unduly burdensome on carriers relative to any potential benefit for government users? We seek comment on whether the service agreements or contracts into which carriers enter with government entities could sufficiently include provisions that address the types of concerns NTIA raises generally. With respect to grandfathering, would prong (1) of NTIA's proposed certification have any relevance since it is addressed to present customers, and how could carriers undertake the consultation described in prong (2)? Are there specific concerns applicable to Tribal, state, or local government customers? If so, would the NTIA proposal address them? If not, what additional or alternative steps would?

B. Applications To Discontinue Previously Grandfathered Legacy Data Services

85. We propose to streamline the discontinuance process for any application seeking authorization to discontinue legacy data services that have previously been grandfathered for a period of no less than 180 days. We propose to adopt a streamlined uniform comment period of 10 days and an auto-grant period of 31 days for both dominant and non-dominant carriers. We seek comment on these proposals and on other potential alternatives. We believe that section 214 provides us ample authority to streamline the process for reviewing and granting applications to discontinue legacy data services that have previously been grandfathered for a period of at least 180 days. Do commenters agree with this conclusion? Why or why not?

86. Should this proposed streamlined process be restricted to only previously grandfathered legacy data services below a certain speed? Should dominant and non-dominant carriers continue to be subject to different comment and auto-grant timeframes for discontinuing legacy data services that have previously been grandfathered, as is currently the case? If so, what should these timeframes be? We encourage commenters to advance specific alternative proposals they believe would better address the Commission's objective to accelerate the deployment of next-generation networks by eliminating unnecessary delays in the discontinuance process. To that end, are there other steps we could take, beyond condensing the comment and auto-grant periods, which would help streamline the review and authorization of applications to discontinue legacy data services that have previously been grandfathered? Please explain.

87. We propose to require carriers seeking this streamlined discontinuance processing for legacy data services to make a showing that they received Commission authority to grandfather such services at least 180 days previously. Is the 180-day grandfathering requirement too restrictive? Should we consider a shorter grandfathering timeframe? Should we require any additional showings to qualify for this streamlined treatment? For example, should we

require a statement identifying one or more alternative comparable data services available from the discontinuing provider or a third party provider at the same or higher speeds as the service being discontinued? If so, how should we define ''comparable'' service? Should we require that any such ''comparable'' service be available throughout the entire affected service area?

88. We also propose to require only a statement from the discontinuing carrier demonstrating that it received Commission authority to grandfather the services at issue at least 180 days previously. Is a statement sufficient, or should some other showing be required? If commenters believe we should require more than a statement, what type of showing should a carrier be obligated to make? If we adopt a requirement that carriers must demonstrate the availability of one or more alternative comparable data services from the discontinuing provider or a third party, would a statement identifying such alternative services be sufficient to satisfy this requirement? For carriers seeking to rely on a third-party service, what type of showing would be necessary to demonstrate the existence of alternative data services? Would such a statement suffice for this purpose?

89. Finally, we seek comment on whether special consideration should be given to applications seeking to discontinue previously grandfathered legacy data services to federal, state, local, and Tribal government users for the same reasons we address this question in considering streamlining grandfathered and legacy voice service discontinuance applications. Should providers be required to make some additional showing beyond what we have proposed when seeking to discontinue previously grandfathered legacy data services to government users? If so, with what additional conditions should they be required to comply and why?

C. Clarifying Treatment Under Section 214(a) of Carrier-Customers' End Users

90. We seek comment on reversing the Commission's 2015 ''clarification'' of section 214(a) that substantially expanded the scope of end users that a carrier must consider in determining whether it is required to obtain section 214 discontinuance authority. In the *2015 Technology Transitions Order,* the Commission ''provided guidance and clarification'' that section 214(a) of the Act applies not only to a carrier's own retail customers, but also to the retail end-user customers of that carrier's wholesale carrier-customers. We seek comment on our proposal to reverse the 2015 interpretation and, going forward, interpret section 214(a) to require a carrier to take into account only its own retail end users when evaluating whether the carrier will ''discontinue, reduce, or impair service to a community, or part of a community.''

91. We seek comment on the practical effect of the 2015 interpretation. What benefits flow to the retail end-user customers of the carrier's wholesale carrier customers as a result of that interpretation? Does it make sense to take away those benefits? Does it make sense to maintain a regulatory obligation that requires a carrier, most often an incumbent LEC, to obtain information about third parties, *i.e.,* its carrier-customer's retail end users, with whom it generally has no relationship, before it can execute its own business plans to discontinue its service? What can the upstream carrier be expected to know about who the end-user customers of its carrier-customers are and how the discontinuance will affect them? Does the current application of the requirement impose undue compliance costs and burdens on a discontinuing carrier that harm the public by delaying the transition to newer, more technologically advanced services? Or, are those costs reasonable in light of the potential harm to end-user customers? Have there been other effects on the market for legacy services and on the transition to IP services that we should consider?

92. We also seek comment on how carrier-customers' discontinuance obligations should inform our interpretation. What weight should we give to the fact that a carrier-customer is itself obligated to file a discontinuance application under section 214(a) of the Act and section 63.71 of the Commission's rules if it discontinues, reduces, or impairs service as a result of the loss of a wholesale input from an upstream carrier? Can we find that the objectives of section 214(a) are met because the carrier-customer itself is subject to section 214(a)'s requirement to obtain Commission approval if a change in the inputs relied on by the carrier-customer results in a discontinuance, reduction, or impairment of services to the carrier-customer's retail end users? Or, are there situations in which end-user customers would be inadequately protected by such an interpretation? Do the contractual and business relationships between upstream carriers and their carrier-customers provide additional safeguards to retail end users?

93. We also seek comment on the relationship between sections 214(a) and 251(c)(5) of the Act. When section 214(a) was enacted during World War II, ''one of Congress's main concerns was that [domestic telegraph] mergers might result in a loss or impairment of service during this war time period.'' By contrast, 53 years later, Congress revised the Act ''to promote competition and reduce regulation . . . and encourage the rapid deployment of new telecommunications technologies.'' Congress enacted section 251(c)(5) of the Act to require incumbent LECs to ''provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' The Commission's regulations implementing section 251(c)(5), require, among other things, that an incumbent LEC ''must provide public notice regarding any network change that [w]ill affect a competing service provider's performance or ability to provide service.'' In enacting section 251(c)(5), did Congress signal its intent that incumbent LECs need only provide notice, not obtain approval, when making changes to wholesale inputs relied upon by competing carriers? At the time of the 1996 Act, the Commission interpreted its section 214(a) discontinuance authority not to apply to wholesale customers. Did that interpretation have any bearing on Congress's intent when enacting section 251(c)(5)? How should we reconcile the Congressional mandates in sections 214(a) and 251(c)(5) of the Act to best eliminate regulatory barriers to the deployment of next-generation networks and services, avoid unnecessary capital expenditure on legacy services, and protect consumers and the public interest? Alternatively, was the Commission's statutory interpretation in the *2015 Technology Transitions Order* correct? Are there other interpretations of the interaction between these two provisions that would be more consistent with Congressional intent? If so, what are they?

94. Finally, we seek comment on whether the Commission correctly interpreted the precedent upon which it relied to support its expansive 2015 clarification. Prior to the *2015 Technology Transitions Order,* it appears that the Commission had held that discontinuances to wholesale purchasers were not cognizable under section 214(a). The *2015 Technology Transitions Order* acknowledges that

distinction, stating in a footnote that ''[t]he Commission will . . . continue to distinguish discontinuance of service that will affect service to retail customers from discontinuances that affect only the carrier-customer itself.'' Relying on BellSouth Telephone, however, the Commission adopted the view that upstream carriers have responsibility for carrier-customers' end-user customers under section 214(a). Did the Commission correctly interpret BellSouth Telephone, particularly in light of the facts of that case? Did the Commission incorrectly read BellSouth Telephone to protect the business models of certain downstream retail carriers, regardless of the availability of the same or comparable alternatives in the community? All of the other cases cited in the *2015 Technology Transitions Order* found that section 214(a) did not apply. Accordingly, did the Commission properly interpret and rely on those cases? Considering that all but one of the cases predated the adoption of the 1996 Act and its specific protections for wholesale customers, including section 251(c)(5), what continuing probative value do the cases have? Indeed, the only Commission precedent cited in the *2015 Technology Transitions Order* that postdated the 1996 Act did not explicitly consider the applicability of section 251(c)(5). Did the Commission grant to carrier-customers in 2015 rights beyond Congress's intent in the 1996 Act in an attempt to protect carrier-customers' end users, even though those end users have the benefit of the section 214(a) discontinuance process from their own provider? What is the proper interplay between sections 251 and 214 in this context?

D. Other Part 63 Proposals

95. *Further Streamlining of 214(a) Discontinuances.* In addition to the proposals discussed above, we seek comment on methods to streamline section 214(a) applications more generally. Specifically, we seek comment on whether it would be appropriate for the Commission to conclude that section 214(a) discontinuances will not adversely affect the present or future public convenience and necessity, provided that fiber, IP-based, or wireless services are available to the affected community. What type of showing would be required on the part of discontinuing carriers to demonstrate the existence of alternative services? What types of fiber, IP-based, or wireless services would constitute acceptable alternatives, and under what circumstances? Would a demonstration regarding the availability of third-party services satisfy this kind of test, or would only services offered by the discontinuing carrier suffice?

96. We also seek comment on the best approach for granting streamlined treatment to these types of discontinuances. In circumstances where a discontinuing carrier's service overlaps with an alternative fiber, IP-based, or wireless service, should we require a section 214 discontinuance application? If not, should we either grant limited blanket discontinuance authority or forbear on a limited basis from section 214? If we require an application, would a grant of the section 214 application upon acceptance for filing be appropriate or would allowing for public notice and comment be necessary to satisfy the requirements of section 214(a)? If we maintain a comment period, should we reduce the comment and automatic grant timeframe? As another alternative, should we instead require carriers to file only a notice of discontinuance accompanied by proof that fiber, IP-based, or wireless alternatives are available to the affected community, in lieu of a full application for approval? If so, what proof would suffice, and how should the Commission review that filing?

97. *Section 63.71(g) Applications to Discontinue Service With No Customers.* We specifically propose to maintain but modify the provision adopted in the *2016 Technology Transitions Order* for streamlined treatment of section 214 discontinuance applications for all services that have not had customers for a period of six months prior to submission of the application. Under this rule, which was based on a proposal submitted to the Commission by AT&T, carriers may certify to the Commission that the service to be discontinued is ''a service for which the requesting carrier has had no customers or reasonable requests for service during the 180-day period immediately preceding submission of the application,'' and the application will be granted automatically on the 31st day after filing, unless the Commission has notified the applicant that the grant will not be automatically effective. We note that at least one carrier representative has recently endorsed this provision of the rules adopted in the *2016 Technology Transitions Order* as an effective tool for reducing barriers to next generation infrastructure deployment. We propose to shorten the timeframe during which a carrier must demonstrate that it has had no customers for a given service, from 180 days to 60 days, and seek comment on this modification. Because this proposed rule applies only to services without customers, consumer harm from further streamlining these kinds of discontinuance applications appears unlikely. We seek comment on retaining and modifying section 63.71(g) as proposed, and on any other additions or amendments to the rule, such as shortening the time in which the application is automatically granted, that may further our goal of removing regulatory barriers to broadband investment. Would a different timeframe during which a carrier must demonstrate that it has had no customers be more appropriate to balance the interests of discontinuing carriers and potential consumers of these services?

98. *Section 63.71(i) Auto-grants for Competitive LECs Upon Copper Retirement.* We seek comment on revising section 63.71(i), which was adopted in the *2016 Technology Transitions Order* to provide for automatic discontinuance authority, subject to certain conditions, for competitive LECs that must discontinue service on a date certain due to an incumbent LEC's effective copper retirement. Specifically, to the extent we eliminate section 51.332, we seek comment on revising section 63.71(i) to include as a condition that the relevant network change notice provides no more than six months' notice. We also seek comment on how, if at all, we should modify section 63.71(i) to further harmonize it with any revisions we adopt herein to the incumbent LEC copper retirement process under Part 51 of our rules. We seek to ensure our rules take into account situations, where, through no fault of its own, a competitive LEC is unable to comply with our section 214(a) discontinuance requirements as a result of an incumbent LEC's transition to a next-generation network. To the extent we reduce the waiting period for implementing planned copper retirements, would this eliminate the need for or necessitate any changes to section 63.71(i)?

99. *2016 Technology Transitions Order Revisions to Sections 63.71(a)–(b).* We seek comment on whether we should retain, modify, or eliminate the changes made by the *2016 Technology Transitions Order* to section 63.71(a) and the introduction of new section 63.71(b). The *2016 Technology Transitions Order* modified section 63.71(a) by requiring carriers to provide notice of discontinuance applications to any federally-recognized Tribal Nations with authority over the Tribal lands in which the discontinuance, reduction, or impairment of service is proposed. It

also modified section 63.71(a) to clearly permit carriers to provide email notice to customers of discontinuance applications, and it established requirements in section 63.71(b) that carriers must meet when using email to satisfy the written notice requirements.

V. Initial Regulatory Flexibility Analysis

100. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 133 of this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

101. The *NPRM* proposes new steps designed to accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment. Access to high speed broadband creates economic opportunity, enabling entrepreneurs to create businesses, immediately reach customers throughout the world and revolutionize entire industries. This proceeding aims to better enable broadband providers to build, maintain, and upgrade their networks, which will spur job growth and ultimately lead to more affordable and accessible Internet access and other broadband services for all Americans. Today's action proposes to remove regulatory barriers to infrastructure at the state and local level, proposes changes to speed the transition from copper networks and legacy services to next-generation networks and services dependent on fiber, and proposes to reform Commission regulations that are raising costs and slowing broadband deployment rather than facilitating it. Thus, the Commission seeks comment on a variety of issues in the following areas.

102. First, the *NPRM* proposes and seeks comment on changes to the Commission's pole attachment rules that would: (1) Adopt a streamlined timeframe for gaining access to utility poles; (2) reduce charges paid by attachers to utilities for work done to make a pole ready for new attachments; (3) codify the elimination of certain capital costs from the formulas used to confirm the reasonableness of rates charged by utilities for pole attachments by telecommunications and cable providers; (4) establish a 180-day shot clock for Commission consideration of pole attachment complaints; (5) adopt a formula for computing the maximum pole attachment rate that may be imposed on an incumbent LEC, and (6) adopt rules that would interpret the interconnection rules for telecommunications carriers in section 251 of the Act and the pole attachment rules of section 224 in a manner that allows for competitive LECs to demand access to incumbent LEC poles and vice versa.

103. Second, the *NPRM* seeks comment on changing the Commission's Part 51 copper retirement rules to expedite the copper retirement process and reduce associated regulatory burdens to facilitate more rapid deployment of next-generation networks, as well a proposal and other potential changes to streamline and/or eliminate provisions of the more generally applicable network change notification rules. It also seeks comment on eliminating section 68.110(b) of the Commission's rules.

104. Third, the *NPRM* seeks comment on proposals to streamline the section 214(a) discontinuance process by reducing the comment and automatic-grant timeframes for two specific categories of discontinuance applications: ''Grandfathered'' low-speed legacy services for existing customers, and legacy data services that have been grandfathered for a period of no less than 180 days. Fourth, the *NPRM* seeks comment on reversing the Commission's 2015 ''carrier-customer's retail end user'' interpretation of the scope of section 214(a) discontinuance authority.

105. Fifth, the *NPRM* seeks comment on other section 63.71 changes to further streamline the section 214 (a) discontinuance process for carriers.

B. Legal Basis

106. The proposed action is authorized under sections 1, 2, 4(i), 214, 224, 251, and 253 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 152, 154(i), 214, 224, 251, 253.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

107. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the *NPRM* seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. 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.

108. The majority of our proposals and the changes on which we seek comment in the *NPRM* will affect obligations on incumbent LECs and, in some cases, competitive LECs. Certain pole attachment proposals also would affect obligations on utilities that own poles, telecommunications carriers and cable television systems that seek to attach equipment to utility poles, and other LECs that own poles. The definitions of utility and telecommunications carrier for purposes of our pole attachment rules are found in 47 U.S.C. 224(a)(1) and (a)(5), respectively. Our actions, over time, may affect small entities that are not easily categorized at present. Other entities, however, that choose to object to network change notifications for copper retirement under the changes on which we seek comment and section 214 discontinuance applications may be economically impacted by the proposals in this *NPRM.*

109. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the new and revised rules adopted today. According to the most currently available SBA data, there are 28.8 million small businesses in the U.S., which represent 99.9% of all businesses in the United States. Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621, 215 small organizations. Finally, the term ''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.'' Census Bureau data for 2012 indicate that there were 89,476

governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,718 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

110. *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. 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. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

111. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 12 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

112. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 13 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

113. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 12 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

114. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 13 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

115. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard 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. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 13 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

116. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision

of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

117. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards 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. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

118. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, 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 are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, 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.

119. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: ''This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. 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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million. Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

120. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. 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.'' This category includes electric power distribution, hydroelectric power generation, fossil fuel power generation, nuclear electric power generation, solar power generation, and wind power generation. The SBA has developed a small business size standard for firms in this category based on the number of employees working in a given business. According to Census Bureau data for 2012, there were 1,742 firms in this category that operated for the entire year.

121. *Natural Gas Distribution.* This economic census category comprises: ''(1) establishments primarily engaged in operating gas distribution systems (*e.g.,* mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.'' The SBA has developed a small business size standard for this industry, which is all such firms having 1,000 or fewer employees. According to Census Bureau data for 2012, there were 422 firms in this category that operated for the entire year. Of this total, 399 firms had employment of fewer than 1,000 employees, 23 firms had employment of 1,000 employees or more, and 37 firms were not operational. Thus, the majority of firms in this category can be considered small.

122. *Water Supply and Irrigation Systems.* This economic census category ''comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses.'' The SBA has developed a small business size standard for this industry, which is all such firms having $27.5 million or less in annual receipts. According to Census Bureau data for 2012, there were 3,261 firms in this category that operated for the entire year. Of this total, 3,035 firms had annual sales of less than $25 million. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

123. The *NPRM* proposes and/or seeks comment on a number of rule changes that will affect reporting, recordkeeping, and other compliance requirements. We expect the rule revisions proposed or suggested for potential change in the *NPRM* to reduce reporting, recordkeeping, and other compliance requirements. The rule revisions taken as a whole should have a beneficial reporting, recordkeeping, or compliance impact on small entities because all carriers will be subject to fewer such burdens. Each of these changes is described below.

124. The *NPRM* proposes the following changes to the current pole

attachment timeline: (1) Requiring utilities to make a decision on completed pole attachment applications within a timeframe shorter than the current 45 days of receipt; (2) requiring utilities to provide an estimate of make-ready costs to new attachers within a timeframe that is shorter than the current 14 days; and (3) establishing a time period for existing attachers to complete make-ready work to their attachments in the communications space of a pole that is shorter than the current 60 days. The *NPRM* also proposes to limit a new attacher's liability for make-ready costs to those costs actually caused by the new attachment, to require utilities to proportionately share in the cost of a new attachment for which they receive a direct benefit, and to require utilities that perform make-ready work to make available to new attachers a schedule of common make-ready charges. With regard to pole attachment rates, the *NPRM* proposes to codify the elimination from the telecommunications and cable rate formulas those capital costs that already have been paid to the utility via make-ready charges, to establish a rebuttable presumption that incumbent LECs are similarly situated to other attachers on a pole, and to establish a rebuttable pole attachment formula for computing the maximum pole attachment rate to be charged to incumbent LECs. Further, the *NPRM* proposes a 180-day shot clock for Commission resolution of pole access complaints, which would include a mandatory pre-complaint meeting between the parties in order to resolve procedural issues and deadlines. Finally, the *NPRM* proposes to allow incumbent LECs to request nondiscriminatory pole access from other LECs that own or control utility poles. Should the Commission adopt any of these proposals, such actions could result in increased, reduced, or otherwise altered reporting, recordkeeping, or other compliance requirements for utilities and attaching entities. The *NPRM* also seeks comment on eliminating some or all of the changes to the copper retirement process adopted by the Commission in the *2015 Technology Transitions Order,* including the rules that doubled the time period during which an incumbent LEC must wait to implement the planned copper retirement after the Commission's publication of public notice from 90 days to 180 days, required direct notice to retail customers, and expanded the types of information that must be disclosed. The *NPRM* also proposes eliminating the rule preventing incumbent LECs from disclosing information about planned network changes with certain entities until public notice has been given of those planned changes, and also seeks comment on eliminating section 68.110(b), which requires that a carrier notify its customers when changes to its facilities, equipment, operations, or procedures might render customers' terminal equipment incompatible with those facilities, equipment, operations, or procedures. In addition, the *NPRM* proposes targeted measures and/or seeks comment on potential rule changes to shorten timeframes and eliminate unnecessary regulatory process encumbrances that carriers face to maintain legacy services they seek to discontinue.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

125. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (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 or reporting requirements under the rule for 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 small entities.

126. The Commission proposes to adopt specific changes to its pole attachment timeline that would provide a predictable, timely process for parties to obtain pole attachments, while maintaining the interests of utilities and existing attachers in preserving safety, reliability, and sound engineering. In consideration of the new timeline, the Commission seeks comments on alternatives that might help smaller utilities and attachers: (1) Whether it would be reasonable to cap at 45 days a utility's review of a large number of pole attachment applications; (2) whether it is reasonable to combine the survey, estimate, and acceptance stages of the current Commission pole attachment timeline into one step with a condensed timeframe; and (3) whether 30 days is long enough for existing attachers to complete routine make-ready work. The Commission also seeks alternatives to its current make-ready process in the areas of: (1) The expanded use of utility-approved contractors to perform make-ready work; (2) allowing existing attachers to observe the make-ready work being performed by new attachers and their contractors; (3) requiring utilities and attachers to agree on the specific contractors to perform make-ready work on their equipment; (4) allowing new attachers to perform routine make-ready work on all pole equipment without involving existing attachers; and (5) establishing pole attachment processes modeled after ''one-touch, make-ready'', ''right-touch, make-ready'', and other approaches. The Commission also seeks alternatives to its current complaint process as the best way to keep make-ready costs just and reasonable, asks whether a bonus payment or multiplier could be used to incent existing attachers to meet their make-ready timelines, asks about ways to incent private negotiations between new and existing attachers to govern the make-ready process (*e.g.,* allowing a new attacher to select a default contractor to perform make-ready, penalizing existing attachers that fail to meet make-ready deadlines), asks whether utilities should be required to make information available online regarding the cost, location, and availability of poles and conduits, asks whether a flat per-pole make-ready fee would be preferable to the current method of allocating make-ready costs, asks whether utilities should be required to reimburse attachers for the costs of new attachments that subsequently benefit utilities (which might benefit new entrants, especially small entities with limited resources), asks whether the Commission should eliminate all capital costs from its pole attachment rate formulas, asks about the appropriate pole attachment rate for attachers providing commingled cable and telecommunications services, and asks whether we should adopt a shot clock for all pole attachment complaints (not just those related to pole access).

127. The *NPRM* also seeks comment on the need to revise the requirements of our network change disclosure rules applicable to copper retirements to reduce barriers to investment in next-generation technologies and promote broadband deployment. To that end, the *NPRM* seeks comment on eliminating section 51.332 in its entirety and returning to a more streamlined version of the pre-*2015 Technology Transitions Order* requirements for handling copper retirements subject to section 251(c)(5) of the Act. Specifically, the *NPRM* seeks comment on reinstating the less burdensome requirements under section 51.333(c) of the Commission's rules applicable to copper retirements prior to adoption of the *2015 Technology*

Transitions Order. In the alternative, the *NPRM* seeks comment on eliminating all differences between copper retirement and other network change notice requirements, rendering copper retirement changes subject to the same long-term or, where applicable, short-term network change notice requirements as all other types of network changes subject to section 251(c)(5). As a third alternative, the *NPRM* seeks comment on retaining but amending section 51.332 to streamline the process. Specifically, the *NPRM* seeks comment on revising section 51.332 to: (1) Require an incumbent LECs to serve its notice only to telephone exchange service providers that directly interconnect with the incumbent LEC's network, rather than ''each entity within the affected service area that directly interconnects with the incumbent LEC's network''; (2) reduce the waiting period to 90 days from 180 days after the Commission releases its public notice before the incumbent LEC may implement the planned copper retirement; (3) provide greater flexibility regarding the time in which an incumbent LEC must file the requisite certification; and (4) reduce the waiting period to 30 days where the copper facilities being retired are no longer being used to serve any customers in the affected service area; and to potentially reinstate the objection procedures applicable under the rules in place prior to the *2015 Technology Transitions Order* if section 51.332 is eliminated. The *NPRM* also proposes to eliminate the prohibition on incumbent LECs disclosing information about planned network changes prior to giving public notice of those planned changes. And the *NPRM* seeks comment on eliminating or modifying section 68.110(b), which requires that a carrier notify its customers when changes to its facilities, equipment, operations, or procedures might render customers' terminal equipment incompatible with those facilities, equipment, operations, or procedures.

128. The *NPRM* seeks comment on proposals to streamline the section 214(a) discontinuance process for applications that seek authorization to ''grandfather'' low-speed legacy services, such as TDM services at lower-than-DS1 speeds (below 1.544 Mbps), for existing customers. Specifically, the proposals seek to reduce the public comment period to 10 days for applications from both dominant and non-dominant carriers seeking to grandfather legacy low-speed services. The proposals also seek to revise the Commission's discontinuance rules to provide for automatic grant of applications by both dominant and non-dominant carriers to grandfather low-speed legacy services on the 25th day after the Commission has released a public notice seeking comment on an application, unless the Commission notifies the applicant that such a grant will not be automatically effective.

129. The *NPRM* seeks comment on proposals to streamline the discontinuance process for any application seeking authorization to discontinue legacy data services that have been grandfathered for a period of no less than 180 days prior to the filing of the application. The proposals seek to adopt a uniform public comment period of 10 days for all applications seeking to discontinue legacy data services that have previously been grandfathered, regardless of whether the carrier filing the application is a dominant or non-dominant carrier. Additionally, the proposals seek to provide for automatic grant of these applications on the 31st day after filing, unless the Commission notifies the applicant that such a grant will not be automatically effective.

130. The *NPRM* seeks comment on revising the discontinuance rule pertaining to discontinuance applications filed in response to a copper retirement notice to reflect any subsequent changes to the copper retirement rules and any other streamlining measures that could be taken.

131. The *NPRM* seeks comment on reversing the Commission's 2015 ''clarification'' of section 214(a) that substantially expanded the scope of end users that a carrier must consider in determining whether it is required to obtain section 214 discontinuance authority, and, going forward, interpret section 214(a) to require a carrier to take into account only its own end users when evaluating whether the carrier will ''discontinue, reduce, or impair service to a community, or part of a community.''

132. The Commission believes that its proposals and potential rule changes upon which the *NPRM* seeks comment will benefit all carriers, regardless of size. The proposals and potential rule changes would further the goal of reducing regulatory burdens, thus facilitating investment in next-generation networks and promoting broadband deployment. We anticipate that a more modernized regulatory scheme will encourage carriers to invest in and deploy even more advanced technologies as they evolve.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

133. None.

VI. Procedural Matters

A. Ex Parte Rules

134. The proceeding related to this *NPRM* 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.

B. Initial Regulatory Flexibility Analysis

135. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this *NPRM.* The text of

the IRFA is set forth above. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

136. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

VII. Ordering Clauses

137. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201, 202, 214, 224, 251, 253 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 214, 224, 251, 253, 303(r), this *NPRM* is adopted.

138. It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM* to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 51

Interconnection.

47 CFR Part 63

Extension of lines, new lines, and discontinuance, reduction, outage and impairment of service by common carriers; and Grants of recognized private operating agency status.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 51, and 63 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.,* 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 301, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Amend § 1.1403 by revising paragraphs (a) and (b) 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.

(a) A utility shall 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. A utility that is a local exchange carrier shall provide any incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding either of the foregoing obligations, a utility may deny a cable television system or any telecommunications carrier, and a utility that is a local exchange carrier may deny an incumbent local exchange carrier, access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

(b) Requests for access to a utility's poles, ducts, conduits, or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 15 days of the request for access, the utility must confirm the denial in writing by the 15th day (or within the timelines set forth in section 1.1420(g)). The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

* * * * *

■ 3. Amend § 1.1404 by revising paragraph (k) to read as follows:

§ 1.1404 Complaint.

* * * * *

(k) The complaint shall include:

(1) A certification that the complainant has, in good faith, engaged or attempted to engage in executive-level discussions with the respondent to resolve the pole attachment dispute. Executive-level discussions are discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the company they represent regarding the subject matter of the discussions. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter to the respondent outlining the allegations that form the basis of the complaint it anticipated filing with the Commission, inviting a response within a reasonable period of time, and offering to hold executive-level discussions regarding the dispute; and

(2) A certification that the complainant and respondent have, in good faith, engaged in discussions to resolve procedural issues and deadlines associated with the pole attachment complaint process. Such certification shall include a statement that the complainant has contacted the Commission to disclose the results of the pre-complaint discussions with respondent.

(3) A refusal by a respondent to engage in the discussions contemplated in this paragraph shall constitute an unreasonable practice under section 224 of the Act.

* * * * *

■ 4. Amend § 1.1409 by revising paragraph (c) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this paragraph, 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 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. The Commission shall exclude from actual capital costs those reimbursements received by the utility from cable operators and telecommunications carriers for non-recurring costs as set forth in sections 1.1404(g)(1)(xiii) and 1.1404(h)(1)(ix).

* * * * *

■ 5. Amend § 1.1416 by revising the section heading and paragraphs (b) and (c), and adding paragraph (d) to read as follows:

§ 1.1416 Imputation of rates; make-ready costs.

* * * * *

(b) The cable television system operator or telecommunications carrier requesting attachment shall be responsible only for the actual costs of make-ready made necessary solely as a result of its new attachments.

(c) The costs of modifying a facility shall be borne by all attachers and utilities that obtain access to the facility as a result of the modification and by all attachers and utilities that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. An attacher or a utility with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification as provided in subpart J of this part, it adds to or modifies its attachment. Notwithstanding the foregoing, an attacher or utility with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be 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. If an attacher or utility makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

(d) If a utility performs make-ready, the utility shall make available to the cable television system operator or telecommunications carrier requesting attachment a schedule of its common make-ready charges that the new attacher may be charged.

■ 6. Amend § 1.1420 by revising paragraphs (c) and (d), paragraph (e)(1)(ii), and paragraphs (g)(3) and (4) to read as follows:

§ 1.1420 Timeline for access to poles, ducts, conduits, and rights of way.

* * * * *

(c) *Survey.* A utility shall respond as described in § 1.1403(b) to a cable television system operator or telecommunications carrier within 15 days of receipt of a complete application to attach facilities to its utility poles (or within the timelines set forth in paragraph (g) of this section). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles.

(d) *Estimate.* Where a request for access is not denied, a utility shall present to a cable television system operator or telecommunications carrier an estimate of charges to perform all necessary make-ready work within 7 days of providing the response required by § 1.1420(c), or in the case where a prospective attacher's contractor has performed a survey, within 7 days of receipt by the utility of such survey.

(1) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 7 days after the estimate is presented.

(2) A cable television system operator or telecommunications carrier may accept a valid estimate and make payment anytime after receipt of an estimate but before the estimate is withdrawn.

(e) * * *

(1) * * *

(ii) Set a date for completion of make-ready that is no later than 30 days after notification is sent (or 75 days in the case of larger orders as described in paragraph (g) of this section).

* * * * *

(g) * * *

(3) A utility may add 30 days to the survey period described in paragraph (c) of this section to pole attachment orders larger than the lesser of (i) 3000 poles or (ii) 5 percent of the utility's poles in a state.

(4) A utility may add 45 days to the make-ready periods described in paragraph (e) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

* * * * *

■ 7. Amend § 1.1422 by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 1.1422 Contractors for survey and make-ready.

(a) A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready in the communications space on its utility poles. A utility shall separately identify on that list the contractors it authorizes to perform make-ready above the communications space on its utility poles.

* * * * *

(c) A cable television system operator or telecommunications carrier that hires a contractor for survey or make-ready work shall provide a utility and existing attachers with a reasonable opportunity for their representatives to accompany and consult with the authorized contractor and the cable television system operator or telecommunications carrier requesting attachment.

* * * * *

■ 8. Revise § 1.1424 to read as follows:

§ 1.1424 Complaints by incumbent local exchange carriers.

Complaints by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that a rate, term, or condition for a pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part, as relevant. In complaint proceedings, there will be a rebuttable presumption that an incumbent local exchange carrier (or an association of incumbent local exchange carriers) is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system for purposes of obtaining comparable rates, terms or conditions. In pole attachment rate complaint proceedings, it is presumed that incumbent local exchange carriers (or an association of incumbent local exchange carriers) may be charged no higher than the rate determined in accordance with section 1.1409(e)(2), unless a utility can rebut the presumption by demonstrating that this maximum rate presumption should not apply.

■ 9. Add § 1.1425 to subpart J to read as follows:

§ 1.1425 Review Period for Pole Access Complaints.

(a) Except in extraordinary circumstances, final action on a complaint where a cable television system operator or telecommunications carrier claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility should be expected no later than 180 days from the date the complaint is filed with the Commission.

(b) The Commission shall have the discretion to pause the 180-day review period in situations where actions outside the Commission's control are responsible for unreasonably delaying Commission review of an access complaint.

PART 51—INTERCONNECTION

■ 10. The authority for part 51 continues to read as follows:

Authority: 47 U.S.C. 151–55, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302.

§ 51.325 [Amended]

■ 11. Amend § 51.325 by removing paragraph (c) and redesignating paragraphs (d) and (e) as (c) and (d).

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 12. The authority for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 13. Amend § 63.60 by redesignating paragraphs (d) through (h) as (e) through (i), and adding new paragraph (d) to read as follows:

§ 63.60 Definitions.

* * * * *

(d) *Grandfather* means to maintain the provision of a service to existing customers while ceasing to offer that service to new customers.

* * * * *

■ 14. Amend § 63.71 by adding paragraph (a)(5)(iii) and (a)(8), revising paragraph (c), removing paragraph (d), redesignating paragraphs (e) and (f) as (d) and (e), adding new paragraph (f), and revising paragraph (g) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

(a) * * *

(5) * * *

(iii) Notwithstanding paragraphs (a)(5)(i) and (ii) of this section, if any carrier, dominant or non-dominant, seeks to either grandfather legacy service operating at speeds lower than 1.544 Mbps; or discontinue, reduce, or impair legacy data service that has been grandfathered for a period of no less than 180 days consistent with the criteria established in paragraph (a)(8) of this section, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

* * * * *

(8) For applications to discontinue, reduce, or impair a legacy data service that has been grandfathered for a period of no less than 180 days, in order to be eligible for automatic grant under paragraph (f) of this section, an applicant must include in its application a statement confirming that they received Commission authority to grandfather the service at issue at least 180 days prior to filing the current application.

* * * * *

(c) The carrier shall file with this Commission, on or after the date on which notice has been given to all affected customers, an application which shall contain the following:

(1) Caption—''Section 63.71 Application'';

(2) Information listed in § 63.71(a) (1) through (4) above;

(3) Information listed in § 63.71(a) (6) through (8) above, if applicable;

(4) Brief description of the dates and methods of notice to all affected customers;

(5) Whether the carrier is considered dominant or non-dominant with respect to the service to be discontinued, reduced or impaired; and

(6) Any other information the Commission may require.

* * * * *

(f) Notwithstanding paragraph (e) of this section, an application filed by any carrier seeking to grandfather legacy service operating at speeds lower than 1.544 Mbps for existing customers shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

(g) An application seeking to:

(1) Discontinue, reduce, or impair a service for which the requesting carrier has had no customers or reasonable requests for service during the 60-day period immediately preceding the filing of the application; or

(2) Discontinue, reduce, or impair a legacy data service that has been grandfathered for no less than the 180-day period immediately preceding the filing of the application, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the applicant that the grant will not be automatically effective.

* * * * *

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