FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; WT Docket No. 17–79, FCC 18–111]

Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts a new framework for the vast majority of pole attachments governed by federal law by instituting a ''one-touch make-ready'' regime, in which a new attacher may elect to perform all simple work to prepare a pole for new wireline attachments in the communications space. This new framework includes safeguards to promote coordination among parties and ensures that new attachers perform the work safely and reliably. The Commission retains the current multi-party pole attachment process for attachments that are complex or above the communications space of a pole, but makes significant modifications to speed deployment, promote accurate billing, expand the use of self-help for new attachers when attachment deadlines are missed, and reduce the likelihood of coordination failures that lead to unwarranted delays. The Commission also improves its pole attachment rules by codifying and redefining Commission precedent that requires utilities to allow attachers to ''overlash'' existing wires, thus maximizing the usable space on the pole; eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers; and clarifying that the Commission will preempt, on an expedited case-by-case basis, state and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster.

DATES: Effective October 15, 2018, except for Sections III.A–E of the *Third Report and Order,* which will be effective on the later of February 3, 2019 or 30 days after the announcement in the **Federal Register** of OMB approval of information collection requirements modified in this *Third Report and Order.* OMB approval is necessary for the information collection requirements in 47 CFR 1.1411(c)(1) and (3), (d) introductory text, (d)(3), (e)(3), (h)(2) and (3), (i)(1) and (2), (j)(1) through (5), 1.1412(a) and (b), 1.1413(b), and 1.1415(b). The Commission will publish a document in the **Federal Register** announcing the effective date for the rules requiring OMB approval.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, 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 *Third Report and Order* in WC Docket No. 17–84, WT Docket No. 17–79, FCC 18–111, adopted August 2, 2018 and released August 3, 2018. 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 website at *https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf.*

Synopsis

I. Introduction

1. In today's order, we take one large step and several smaller steps to improve and speed the process of preparing poles for new attachments, or ''make ready.'' Make-ready generally refers to the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the pole. Consistent with the recommendations of the Broadband Deployment Advisory Committee (BDAC), we fundamentally shift the framework for the vast majority of attachments governed by federal law by adopting a new pole attachment process that includes ''one-touch make-ready'' (OTMR), in which the new attacher performs all make-ready work. OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive—the new attacher—to prepare the pole quickly by performing all of the work itself, rather than spreading the work across multiple parties. By some estimates, OTMR alone could result in approximately 8.3 million incremental premises passed with fiber and about $12.6 billion in incremental fiber capital expenditures. We exclude from OTMR new attachments that are more complicated or above the ''communications space'' of a pole, where safety and reliability risks can be greater, but we make significant incremental improvements to our rules governing such attachments to speed the existing process, promote accurate billing, and reduce the likelihood of coordination failures that cause unwarranted delay.

2. We also adopt other improvements to our pole attachment rules. To provide certainty to all parties and reduce the costs of deciphering our old decisions, we codify and refine our existing precedent that requires utilities to allow ''overlashing,'' which helps maximize the usable space on the pole. We clarify that new attachers are not responsible for the costs of repairing preexisting violations of safety or other codes or utility construction standards discovered during the pole attachment process. And we eliminate outdated disparities between the pole attachment rates incumbent local exchange carriers (LECs) must pay compared to other similarly-situated telecommunications attachers.

3. Finally, in this *Third Report and Order,* we make clear that we will preempt, on a case-by-case basis, state and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster.

II. Background

4. Section 224 of the Communications Act of 1934, as amended (Act), grants us broad authority to regulate attachments to utility-owned and -controlled poles, ducts, conduits, and rights-of-way. The Act authorizes us to prescribe rules to: Ensure that the rates, terms, and conditions of pole attachments are just and reasonable; require utilities to provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to telecommunications carriers and cable television systems (collectively, attachers); provide procedures for resolving pole attachment complaints; govern pole attachment rates for attachers; and allocate make-ready costs among attachers and utilities. The Act exempts from our jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. Pole attachments in thirty states are currently governed by our rules.

5. Our rules take into account the many purposes of utility poles and how an individual pole is divided into various ''spaces'' for specific uses. Utility poles often accommodate equipment used to provide a variety of services, including electric power, telephone, cable, wireline broadband, and wireless. Accommodating a variety of services on the same pole benefits the public by minimizing unnecessary and costly duplication of plant for all pole

users. Different vertical portions of the pole serve different functions. The bottom of the pole generally is unusable for most types of attachments, although providers of wireless services and facilities sometimes attach equipment associated with distributed antenna systems and other small wireless facilities to the portion of the pole near the ground. Above that, the lower usable space on a pole—the ''communications space''—houses low-voltage communications equipment, including fiber, coaxial cable, and copper wiring. The topmost portion of the pole, the ''electric space,'' houses high-voltage electrical equipment. Work in the electric space generally is considered more dangerous than work in the communications space. Historically, communications equipment attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space, including the electric space, to attach pole-top small wireless facilities.

6. When a new attacher seeks access to a pole, it is necessary to evaluate whether adding the attachment will be safe and whether there is room for it. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, it is necessary to install a larger pole to accommodate a new attachment. Our current rules, adopted in 2011, prescribe a multi-stage process for placing new attachments on utility poles:

- *Application Review and Survey.* The new attacher applies to the utility for pole access. Once the application is complete, the utility has 45 days in which to make a decision on the application and complete any surveys to determine whether and where attachment is feasible and what make-ready is required. The utility may take an additional 15 days for large orders. Our current rules allow new attachers in the communications space to perform surveys when the utility does not meet its deadline.
- *Estimate.* The utility must provide an estimate of all make-ready charges within 14 days of receiving the results of the survey.
- *Attacher Acceptance.* The new attacher has 14 days or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment.
- *Make-Ready.* The existing attachers are required to prepare the pole within 60 days of receiving notice from the utility for attachments in the communications space (105 days in the case of larger orders) or 90 days for attachments above the communications space (135 days in the case of larger orders as defined in 47 CFR 1.1411(g)). A utility may take 15 additional days after the make-ready period ends to complete make-ready itself. Our current rules allow new attachers in the communications space to perform make-ready work themselves using a utility-approved contractor when the utility or existing attachers do not meet their deadlines.

7. A number of commenters allege that pole attachment delays and the high costs of attaching to poles have deterred them from deploying broadband. Commenters in particular point to the make-ready stage of our current timeline as the largest source of high costs and delays in the pole attachment process.

8. As part of its commitment to speeding broadband deployment, the Commission established the BDAC in January 2017 to advise on how best to remove barriers to broadband deployment, such as delays in new pole attachments. Earlier this year, the BDAC recommended that the Commission take a series of actions to promote competitive access to broadband infrastructure, including adopting OTMR for simple attachments in the communications space and making incremental improvements to the Commission's pole attachment process for complex and non-communications space attachments.

9. We are also committed to using all the tools at our disposal to speed the restoration of infrastructure after disasters. Disasters such as the 2017 hurricanes can have debilitating effects on communications networks, and one of our top priorities is assisting in the rebuilding of network infrastructure in the wake of such events. We have also made clear our commitment to ensuring that our own federal regulations do not impede restoration efforts.

III. Third Report and Order

10. Based on the record in this proceeding, we amend our pole attachment rules to facilitate faster, more efficient broadband deployment. Further, we address state and local legal barriers to rebuilding networks after disasters. But, at the outset, we emphasize that parties are welcome to reach bargained solutions that differ from our rules. Our rules provide processes that apply in the absence of a negotiated agreement, but we recognize that they cannot account for every distinct situation and encourage parties to seek superior solutions for themselves through voluntary privately-negotiated solutions. In addition, we recognize that some states will seek to build on the rules that we adopt herein in order to serve the particular needs of their communities. As such, nothing here should be construed as altering the ability of a state to exercise reverse preemption of our pole attachment rules.

A. Speeding Access to Poles

11. Most fundamentally, we amend our rules to allow new attachers (defined as a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility) with simple wireline attachments in the communications space to elect an OTMR-based pole attachment process that places them in control of the work necessary to attach their equipment, and we improve our existing attachment process for other, more complex attachments.

12. No matter the attachment process, we encourage all parties to work cooperatively to meet deadlines, perform work safely, and address any problems expeditiously. Utilities, new attachers, and existing attachers agree that cooperation among the parties works best to make the pole attachment process proceed smoothly and safely.

1. New OTMR-Based Pole Attachment Process

13. We adopt a new pole attachment process that new attachers can elect that places them in control of the surveys, notices, and make-ready work necessary to attach their equipment to utility poles. With OTMR as the centerpiece of this new pole attachment regime, new attachers will save considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments. A better aligning of incentives for quicker and less expensive attachments will serve the public interest through greater broadband deployment and competitive entry.

a. Applicability and Merits of OTMR Regime

14. We adopt the BDAC's recommendation and amend our rules to allow new attachers to elect OTMR for simple make-ready for wireline attachments in the communications space on a pole. We define simple make-ready as the BDAC does, *i.e.,* make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service

outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment. Commenters state that simple make-ready work does not raise the same level of safety concerns as complex make-ready or work above the communications space on a pole. There is substantial support in the record, both from utilities and attachers, for allowing OTMR for simple make-ready; and because this option will apply to the substantial majority of pole attachment projects, it will speed broadband deployment. We also follow the BDAC's recommendation and do not provide an OTMR option for more complex projects in the communications space or for any projects above the communications space at this time.

15. Our new rules define ''complex'' make-ready, as the BDAC does, as transfers and work within the communications space that would be reasonably likely to cause a service outage or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. We consider any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers to be complex. We agree with Verizon that the term ''wireless activities'' does not include a wireless attacher's work on its wireline backhaul facilities, which is not different than wireline work done by other attachers. While the BDAC recommendation did not explicitly address the treatment of pole replacements, we interpret the definition of complex make-ready to include all pole replacements as well. We agree with commenters that pole replacements are usually not simple or routine and are more likely to cause service outages or facilities damage, and thus we conclude that they should fall into the complex category of work.

16. There is substantial support from commenters in the record for not using OTMR for complex make-ready work at this time. We agree that we should exclude these more challenging attachments from OTMR at this time to minimize the likelihood and impact of service disruption. In particular, cutting or splicing of existing wires on a pole has the heightened potential to result in a network outage. We also recognize that wireless attachments involve unique physical and safety complications that existing attachers must consider (*e.g.,* wireless configurations cover multiple areas on a pole, considerably more equipment is involved, RF impacts must be analyzed), thus increasing the challenges of using an accelerated, single-party process at this time.

17. The new OTMR process also will not be available for work above the communications space, including the electric space. Many utility commenters argue that work above the communications space, which mainly involves wireless attachments, frequently impacts electrical facilities and that such work should fall to the utilities to manage and complete. We recognize that work above the communications space may be more dangerous for workers and the public and that impacts of electric outages are especially severe. Therefore, we find at this time that the value of control by existing attachers and utilities over infrastructure above the communications space outweighs the benefits of allowing OTMR for these attachments. We recognize that by not providing an OTMR option above the communications space for the time being, we are not permitting OTMR as an option for small cell pole-top attachments necessary for 5G deployment. We take this approach because there is broad agreement that more complex projects and all projects above the communications space may raise substantial safety and continuity of service concerns. At the same time, we adopt rules aimed at mitigating the safety and reliability concerns about the OTMR process we adopt today, and we are optimistic that once parties have more experience with OTMR, either they will by contract or we will by rule expand the reach of OTMR. In the meantime, we find that the benefits of moving incrementally by providing a right to elect OTMR only in the communications space and only for simple wireline projects outweigh the costs.

18. We agree with commenters that argue that OTMR is substantially more efficient for new attachers, current attachers, utilities, and the public than the current sequential make-ready approach set forth in our rules. Indeed, Corning estimates that OTMR for wireline deployments could result in over eight million additional premises passed with fiber and about $12.6 billion in incremental fiber capital expenditures. Although we do not at this time provide for an OTMR option for pole-top small cell deployment, OTMR will facilitate the rollout of 5G services because mobile services depend on wireline backhaul, and OTMR will expedite the buildout of wireline backhaul capacity.

19. OTMR speeds broadband deployment by better aligning incentives than the current multi-party process. It puts the parties most interested in efficient broadband deployment—new attachers—in a position to control the survey and make-ready processes. The misaligned incentives in the current process often result in delay by current incumbents and utilities and high costs for new attachers as a result of the coordination of sequential make-ready work performed by different parties. As Google Fiber points out, under the current process, if the lowest attacher on the pole (usually the incumbent LEC) moves its wires and equipment to accommodate a new attachment at the end of the existing 60-day make-ready period, then the entire pole attachment process is derailed because multiple existing attachers still have to perform make-ready on their equipment, despite the fact that the make-ready deadline contemplated in our rules has lapsed. Because existing attachers lack an incentive to accommodate new attachers quickly, these delays in sequential attachment are all too common. OTMR eliminates this problem.

20. We also agree with commenters that OTMR will benefit municipalities and their residents by reducing closures and disruptions of streets and sidewalks. Unlike sequential make-ready work, which results in a series of trips to the affected poles by each of the attachers and repeated disruptions to vehicular traffic, OTMR's single trip to each affected pole will reduce the number of such disruptions.

21. We also agree with those commenters that argue that an OTMR-based regime will benefit utilities. The record indicates that many utilities that own poles are not comfortable with their current responsibilities for facilitating attachments in the communications space. By shifting responsibilities from the utility to the new attacher to survey the affected poles, determine the make-ready work to be done, notify affected parties of the required make-ready work, and perform the make-ready work, our new OTMR regime will alleviate utilities of the burden of overseeing the process for most new attachments and of some of the costs of pole ownership.

22. While giving the new attacher control drives the substantial benefits of an OTMR regime, it also raises concerns among some utilities and existing attachers. But we are not convinced by the arguments made by some commenters that OTMR will allow make-ready work to be performed by new attachers that lack adequate

incentives to perform quality work, and therefore will increase the likelihood of harm to equipment integrity and public safety. As other commenters explain, the new attacher and its chosen contractor have an incentive to perform quality work in order to limit risk, keep workers safe, and avoid tort liability for damages caused by substandard work. We also adopt several safeguards herein that incentivize the new attacher and its contractor to perform work correctly.

23. In addition, some commenters raise concerns that OTMR may not protect public safety given the real prospects for serious injuries to lineworkers and the public; ensure the reliability and security of the electric grid; and maintain the safety and reliability of existing attachers' facilities in order to prevent service outages. We are committed to ensuring that our approach to pole attachments preserves the safety of workers and the public and protects the integrity of existing electric and communications infrastructure. As an initial matter, we follow the BDAC's recommendation that all complex work and work above the communications space, where reliability and safety risks can be greater, will not be eligible for the new OTMR process. In addition, we take several steps to promote coordination among the parties and ensure that new attachers perform work safely and reliably, thereby significantly mitigating the potential drawbacks of OTMR. First, we require new attachers to use a utility-approved contractor to perform OTMR work, except when the utility does not provide a list of approved contractors, in which case new attachers must use qualified contractors. This requirement addresses existing attachers' apprehension about unfamiliar contractors working on their facilities and also guards against delays that result when utilities fail to maintain approved contractor lists. Second, we require new attachers to provide advance notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when surveys and OTMR work are performed in order to encourage new attachers to perform quality work and to provide the utility and existing attachers an opportunity for oversight to protect safety and prevent equipment damage. Third, we require new attachers to allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work to address existing attachers' and utilities' concerns that the new attacher's contractor may damage equipment or cause an outage without their knowledge and with no opportunity for prompt recourse. However, we decline to adopt NCTA and CWA's request that we find that new attachers should be responsible for any expenses associated with the costs incurred by existing attachers if they decide to double-check the work performed by the new attacher's contractors, including any post-make-ready inspections.

24. Finally, as an additional safeguard to prevent substantial service interruptions or danger to the public or workers, we allow existing attachers and utilities to file a petition with the Commission, to be considered on an expedited, adjudicatory case-by-case basis, requesting the suspension of a new attacher's OTMR privileges due to a pattern or practice of substandard, careless, or bad faith conduct when performing attachment work. Such petition shall be placed on public notice, and the new attacher will have an opportunity to address the allegations of substandard, careless, or bad faith conduct and to explain how it plans to eliminate any such conduct in the future. In those instances where the Commission finds that suspension is warranted, the Commission will suspend the privileges for a length of time appropriate based on the conduct at issue, up to and including permanent suspension.

25. We disagree with NCTA's contention that these safeguards do not adequately protect existing attachers from substandard work performed on their equipment by third-party contractors. At every step in the OTMR process, the safeguards we adopt give existing attachers an opportunity to monitor third-party work and raise any concerns they might have—either to the new attacher or to the utility. Far from being voiceless in their concerns about third-party work, as NCTA contends, existing attachers can take their reservations about new attacher workmanship and contractor qualifications to the utility, which, as the pole owner and an attacher on the pole, has the incentive to act on such concerns.

26. We recognize that we cannot fully align the incentives of new attachers with those of existing attachers and utilities, but we find that the significant benefits of faster, cheaper, more efficient broadband deployment from this new OTMR process outweigh any costs that remain for most pole attachments. We expect the OTMR regime we adopt today to speed broadband deployment without substantial service interruptions or danger to the public or workers. To the extent that it exceeds our expectations, we may consider expanding the availability of our OTMR process where it is safe to do so. Conversely, if new attachers fail to prevent physical harm or outages, we will not hesitate to revisit whether to maintain an OTMR option.

27. We note that even where an attachment qualifies for our new OTMR process, there may be instances where a new attacher prefers to use our existing pole attachment timeline because, for instance, the new attacher prefers a process where existing attachers are responsible for moving their own equipment rather than the new attacher. Therefore, we permit new attachers to elect our existing pole attachment regime (as modified herein) rather than the new OTMR process.

28. *Legal Considerations.* We reject the contentions of certain cable commenters that OTMR deprives an existing attacher of its statutory right to notice and an opportunity to add to or modify its own existing attachment before a pole is modified or altered and thus violates Section 224(h) of the Act. Section 224(h) provides, in relevant part, that ''[w]henever the owner of a pole . . . intends to modify or alter such pole . . . the owner shall provide written notification of such action to any entity that has obtained an attachment . . . so that such entity may have a reasonable opportunity to add to or modify its existing attachment.'' We agree with Verizon that there is no statutory right under Section 224(h) for an existing attacher to add to or modify its existing attachment when a new attacher is performing the make-ready. On its face Section 224(h) only applies to situations where the pole owner modifies or alters the pole, and thus is not implicated under the OTMR approach we adopt today: Under our approach new attachers, not pole owners, perform OTMR work.

29. We also find that OTMR does not constitute a government taking of existing attachers' property that requires just compensation under the Fifth Amendment to the U.S. Constitution, and we reject arguments to the contrary. As an initial matter, OTMR is not a ''permanent physical occupation'' of an existing attacher's property; at most it gives contractors of the new attacher a temporary right to move and rearrange attachments. In such situations, where a regulation falls short of eliminating all economically beneficial use of the property at issue, courts apply the balancing test of *Penn Central Transportation Co.* and evaluate the economic impact of the regulation on the property owner, the extent to which the regulation has interfered with

''distinct investment-backed expectations'' and ''the character of the government action.'' Applying that test here makes clear that OTMR effects no taking. We are limiting the application of OTMR to simple work (*i.e.,* where outages are not expected to occur) on wireline attachments in the communications space performed by qualified contractors, and we have taken steps to ensure that the OTMR process limits adverse effects on existing attachers' networks, which means any economic impact on existing attachers and any interference with investment expectations will be limited. Furthermore, OTMR represents at most an incidental movement of existing attachers' property. To the extent that movement affects existing attachers' or utilities' property, such impact is incidental and not our purpose, which is to promote broadband deployment and further the public interest.

b. Contractor Selection Under the OTMR Process

30. We adopt rules requiring attachers using the OTMR process to use a utility-approved contractor if the utility makes available a list of qualified contractors authorized to perform surveys and simple make-ready work in the communications space. If there is no utility-approved list of contractors, then we adopt rules that require OTMR attachers to use a contractor that meets key safety and reliability criteria, as recommended by the BDAC. The record suggests that inconsistent updating of approved contractor lists by utilities, as well as a lack of uniform contractor qualification and selection standards, leads to delays when new attachers seek to exercise their self-help remedy and perform make-ready work on a pole. At the same time, existing attachers are understandably apprehensive about having unfamiliar contractors work on and potentially damage their facilities. The process we adopt addresses both of these problems by preventing delays in the engagement of contractors and by establishing clear minimum qualifications.

31. *Utility-Approved Contractors.* We strongly encourage utilities to publicly maintain a list of approved contractors qualified to perform surveys and simple make-ready work as part of the OTMR process. However, we do not require utilities to do so. Utilities have a strong interest in protecting their equipment and many have indicated their interest in deciding which contractors can perform work on their poles. At the same time, many utilities have indicated that they do not have the expertise to select contractors qualified to work in the communications space and would prefer to defer to the new attachers' choice of contractors. Therefore, we give the utilities the option of maintaining a list of approved contractors for OTMR work but do not impose a mandate.

32. If the utility maintains a list, new and existing attachers may request that contractors meeting the qualifications set forth below be added to the utility's list and utilities may not unreasonably withhold consent to add a new contractor to the list. We adopt this requirement so that a utility that maintains a list does not have the ability to prevent deployment progress, which would be contrary to our goal in adopting OTMR. To be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.

33. To help ensure public and worker safety and the integrity of all parties' equipment, we conclude that any contractors that perform OTMR must meet certain minimum safety and reliability standards. We require utilities to ensure that contractors on the approved list meet the following minimum requirements, enumerated by the BDAC, for performing OTMR work: (1) Follow published safety and operational guidelines of the utility, if available, but if unavailable, follow the National Electrical Safety Code (NESC) guidelines; (2) read and follow licensed-engineered pole designs for make-ready work, if required by the utility; (3) follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational Safety and Health Administration (OSHA) rules; (4) meet or exceed any uniformly applied and reasonable safety and reliability thresholds set and made available by the utility, *e.g.,* the contractor cannot have a record of significant safety violations or worksite accidents; and (5) be adequately insured or be able to establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers. We adopt NCTA's proposed clarification that the make-ready for which the contractor must be adequately insured or establish an adequate performance bond includes any work it will perform on facilities owned by existing attachers. These requirements collectively will materially reduce safety and reliability risks, as well as delays in the completion of pole attachments, by allowing one qualified contractor to perform all necessary make-ready work instead of having multiple contractors make multiple trips to the pole to perform this work.

34. *New Attacher Selection of Contractors.* Where there is no utility-approved list of qualified contractors or no approved contractors available within a reasonable time period, then, consistent with the BDAC recommendation, new attachers proceeding with OTMR may use qualified contractors of their choosing. To maximize options for new attachers, we allow a new attacher entitled to select a contractor that does not appear on a utility's list to use its own employees to perform pole attachment work, so long as those employees meet all qualifications for contractors set forth herein. Thus, we use the term ''contractor'' as a term of art that encompasses the new attacher's employees. The new attacher must certify to the utility (either in the three-business-day advance notice for surveys or in the 15-day make-ready notice) that the named contractor meets the same five minimum requirements for safety and reliability discussed above.

35. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must clearly communicate the safety or reliability issue, be non-discriminatory, in writing, and publicly available (*e.g.,* on the utility's website). Ideally, such requirements for contractors would also be found in the pole attachment agreement between the utility and the new attacher. This condition will guard against pole damage and resulting outages and safety hazards due to particular local conditions, while ensuring that utilities do not use these additional requirements as a roadblock to deployment. We also grant utilities the flexibility to mandate such additional commercially reasonable requirements for contractors because utilities are best positioned to ensure that any additional state or local legal requirements are complied with and any additional environmental or pole-specific factors are accounted for.

36. Where there is no utility-approved list of contractors, we adopt rules, consistent with the BDAC's recommendation, allowing the utility to veto any contractor chosen by the new attacher. Utilities must base any veto on reasonable safety or reliability concerns related to the contractor's ability to meet one or more of the minimum qualifications described earlier in this

subsection or on the utility's previously posted safety standards. We agree with ACA that we should prevent unwarranted vetoes by requiring the utility to have a ''reasonable'' basis for vetoing the new attacher's contractor. The utility also must make its veto within either the three-business-day notice period for surveys or the 15-day notice period for make-ready. In reaching this determination, we agree with the Coalition of Concerned Utilities that the safety and reliability of the pole is extremely important and, as a result, utilities should be able to disqualify contractors that raise concrete workmanship dangers. To avoid an ongoing dispute between the utility and the new attacher that results in the substantial delay of the pole attachment, any veto by the utility that conforms with the requirements we set forth is determinative and final. When vetoing an attacher's chosen contractor, however, the utility must identify at least one qualified contractor available to do the work.

37. *Existing Attachers.* We decline to grant existing attachers the right to veto or object to the inclusion of a contractor on the utility-approved list or a new attacher's contractor selection. We also decline suggestions that we grant existing attachers the right to disqualify a contractor if the contractor does not meet the minimum qualifications for contractors we establish or if the existing attacher previously terminated the contractor for poor performance or violations of federal, state, or local law. The rules we adopt should alleviate some commenters' concern that depriving existing attachers of a right to input in the contractor selection process could result in serious harm to existing facilities on the pole. First, only simple make-ready work is subject to the OTMR process; existing attachers can perform their own make-ready work in more challenging and dangerous situations. Further, the authority we grant utilities to develop a mandatory list and veto a new attacher's contractor selection for OTMR work should help mitigate the risk to the safety and reliability of the attachments subject to make-ready work by the new attacher's contractor. As several commenters point out, in many markets, contractors approved by the utilities may already be the same as those approved by existing attachers. Additionally, regardless of whether the utility intervenes, contractors must meet the five criteria recommended by the BDAC, which help to ensure safe, reliable, and quality work. Finally, we conclude that we have put in place adequate protections elsewhere in the new OTMR process, in addition to the protections we identify here, to protect the network reliability and safety concerns of existing attachers.

c. OTMR Pole Attachment Timeline

38. One substantial benefit of the OTMR process is that it allows for a substantially shortened timeline for application review and make-ready work. We estimate that new attachers using the new OTMR process will save more than three months from application to completion as compared to the process provided for under our existing rules.

(i) Conducting a Survey

39. Our OTMR regime saves significant time by placing the responsibility on the new attacher (rather than the utility) to conduct a survey of the affected poles to determine the make-ready work to be performed. Under an OTMR regime, the survey will come near the beginning of the process (after the new attacher negotiates with the utility for pole access and chooses a contractor to perform the work required for attachment) to enable the new attacher to determine whether any make-ready is required and, if so, what type of make-ready (simple or complex) is involved. The results of the survey typically will be included in the new attacher's pole attachment application.

40. To help ensure that the new attacher handles third-party equipment with sufficient care and makes an accurate determination of the work to be done to prepare the poles for its new attachments, our new rules require new attachers to permit representatives of the utility and any existing attachers potentially affected by the proposed work to be present for the survey. We also require new attachers to use commercially reasonable efforts to provide the utility and existing attachers at least three business days of advance notice of the date, time, and location of the survey and the name of the contractor performing the survey. Despite claims to the contrary, we agree with the BDAC that advance notice of three business days from the new attacher strikes the right balance between providing sufficient time to accommodate coordination with the utility and existing attachers and the need to keep the pole attachment process moving forward in a timely manner. Also, as the BDAC found in the context of utility surveys, joint surveys help address the potential safety and equipment damage risks raised by existing attachers. Existing attachers can raise any objections about the survey findings either with the new attacher or with the utility, which can make final determinations on survey results for reasons of capacity, safety, reliability, and generally applicable engineering purposes. To prevent coordination problems that may invite delay, we do not require a new attacher to set a date for the survey that is convenient for the utility and existing attachers. In the case of reasonable scheduling conflicts, however, we encourage the parties to work together to find a mutually-agreeable time for the survey. We also encourage all attachers to provide a point of contact publicly (*e.g.,* on their websites) so that new attachers know whom to contact when providing notices required under the OTMR regime.

41. We recognize that new attachers may need to rely upon utilities for existing attacher contact information to make the notifications, and utilities presumably have access to such information through pole attachment agreements and/or previous make-ready notifications. Therefore, if a new attacher requests contact information for existing attachers from the utility for use in this notification process, the utility must provide any such contact information it possesses. We adopt this requirement so that a new attacher can fulfill its notification obligation when it does not have a direct relationship with existing attachers. We find a utility's failure to keep adequate documentation on existing attachments is insufficient justification for eliminating the advance notice requirement for surveys.

(ii) Notifying the Utility of the Intent To Use OTMR

42. Consistent with the BDAC's recommendation, we require the new attacher to ensure that its contractor determines whether make-ready work identified in the survey is simple or complex, subject to a utility's right to reasonably object to the determination. Because all utilities have strong incentives to promote safety and the structural integrity of their poles, we agree with AT&T and Windstream that all utilities, including incumbent LEC pole owners, should have the ability to object to the simple/complex determination on poles that the utility owns. For purposes of clarity and certainty, we require a new attacher—if it wants to use the OTMR process and is eligible to do so based on the survey—to elect OTMR in its pole attachment application and to identify in its application the simple make-ready work to be performed. Some commenters oppose letting the new attacher's contractor make the simple

versus complex determination. However, we agree with those commenters that argue that the new attacher's contractor has the incentive to make the correct determination in order to (1) avoid liability for damages caused by an incorrect choice; (2) limit risk; and (3) in the case of third-party contractors, preserve relationships with all attachers, as well as with the utility, to obtain future work. As a result, we find it is more likely that approved contractors will be conservative in their determination of whether work is simple or complex. In addition, we agree with Google Fiber that having a contractor chosen from a neutral utility-approved list, where such a list is available, determine whether make-ready is simple or complex means neither the incumbent nor the new attacher has an opportunity to inject anti-competitive bias into the process.''

43. We require a utility that wishes to object to a simple make-ready determination to raise such an objection during the 15-day application review period (or within 30 days in the case of larger orders). We decline suggestions that we extend the objection right to existing attachers because we agree that doing so could provide existing attachers the opportunity to slow a new attacher's deployment by over-designating make-ready work as complex. The existing attacher always may voice its concerns to the new attacher and to the utility, which can veto the determination of a new attacher's contractor and which has an incentive as the pole owner and as an attacher to ensure that work is classified correctly.

44. Also, while the BDAC did not address the timing of an objection to the simple/complex determination in its OTMR recommendation, we find that setting a time limit for the objection will reduce confusion and foster quicker deployment. We find 15 days to be sufficient because the utility will have the right to accompany the new attacher's contractor on the survey when the contractor makes the simple/complex determination, so the utility will have ample opportunity to have the information it needs to determine whether to object before the deadline.

45. If the utility objects to the new contractor's determination that work is simple, then the work is deemed complex—the utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, and provides a good faith explanation of how such evidence and information relate to a determination that the make-ready is not simple. This approach is consistent with other decisions left to a utility during our pole attachment process. We find that making the utility's determination final is appropriate because it avoids protracted disputes that could slow deployment. However, we caution utilities that if they make such a decision in a manner inconsistent with the requirements we set forth, for instance without adequate support or in bad faith, then new attachers can avail themselves of our complaint process to address such behavior.

46. If the new attacher determines that the make-ready involves a mix of simple and complex work (or involves work above the communications space), then we allow the new attacher discretion to determine whether to bifurcate the work. If the new attacher prefers to complete the simple make-ready work under the OTMR process while it waits for complex work/work above the communications space to run its course through the longer existing process, then it may do so. A new attacher electing to bifurcate the work must submit separate applications for the simple and complex work and work above the communications space. If the new attacher prefers that its entire project (both simple and complex work and work above the communications space) follow the existing process, or if the new attacher does not view bifurcation as feasible, then it may employ the existing process for the entire project.

47. In response to a request from Xcel/Alliant, we clarify ''what procedures should be followed when it is discovered in the field while make-ready is being performed that the work on a particular pole is in fact complex, or if it is found that conditions in the field will prevent the OTMR contractor from performing the make-ready work in a 'simple' manner, if at all.'' In such situations, we find that if the new attacher or the utility discovers that work initially classified by the new attacher and approved by the utility as simple actually turns out to be complex, then that specific work must be stopped (although the new attacher may choose to continue OTMR work on other poles to the extent that such work is simple). The determining party must notify the other party of its determination and the affected poles; the attachments at issue will then be governed by the non-OTMR timeline, and the utility should provide notice to existing attachers of make-ready work as soon as reasonably practicable.

(iii) Review of Application for Completeness

48. In the interest of speeding application review, we adopt a rule to specify that under the OTMR regime, a pole attachment application is complete if it provides the utility with the information necessary under the utility's procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to make an informed decision on the application. We also establish a timeline for the utility's review of the application for completeness. We adopt these requirements to address attachers' complaints—made in response to the Commission's request in the *Wireline Infrastructure Notice* for comments on ways to streamline and accelerate the pole attachment timeline—that ''pole owners are not transparent about telling applicants all information that is required to be included on applications at the time of their submission,'' often resulting in delays to the pole attachment process while the pole owner requests additional information over a series of weeks or months.

49. While the current definition of a complete application only requires ''information necessary under [the utility's] procedures,'' our revised definition provides more transparency about what an attacher must include in its application, because the master service agreement or publicly-available requirements must be available to new attachers as they prepare their application.

50. To prevent unnecessary delays in starting the pole attachment process, we adopt rules consistent with the BDAC-recommended timeline for a utility to determine whether a pole attachment application is complete:

- A utility has 10 business days after receipt of a pole attachment application in which to determine whether the application is complete and notify the attacher of that decision.
- If the utility notifies the attacher that the attacher's application is not complete within the 10 business-day review period, then the utility must specify where and how the application is deficient.
- If there is no response by the utility within 10 business days, or if the utility rejects the application as incomplete but fails to specify any deficiencies in the application, then the application is deemed complete.
- If the utility timely notifies the new attacher that the application is incomplete and specifies deficiencies, a resubmitted application need only

supplement the previous application by addressing the issues identified by the utility, and the application shall be deemed complete within five business days after its resubmission, unless the utility specifies which deficiencies were not addressed and how the resubmitted application did not sufficiently address the utility's reasons.

• The new attacher may follow this resubmission procedure as many times as it chooses, so long as in each case it makes a bona fide attempt to correct the issues identified by the utility, and in each case the deadlines set forth herein apply to the utility's review.

51. We find that incorporating a specific timeline into our rules provides all parties with some predictability about the start of the OTMR process and avoids unnecessary delays that arise when utilities do not formally accept an application in a timely manner. We find that the timeline we adopt balances the interests of new attachers in the speedy processing of applications and of utilities in needing sufficient time to review the applications. We require utilities to specify the deficiencies in pole attachment applications within 10 business days of receipt so that the new attachers have the information necessary to address those deficiencies in a timely fashion. We also believe this gives incentives for utilities generally to communicate to prospective applicants concerning what is needed for an application because doing so will aid in the utility's formal review process. We adopt a ''deemed grant'' remedy to prevent delays, and we adopt a shorter timeline for second and further reviews because we expect utilities' review to be cabined to a more limited number of issues that it previously identified. We also encourage utilities that receive complete applications to respond promptly and affirmatively confirm that applications are complete, rather than wait for the 10 business-day review period to lapse. In response to a concern raised by Crown Castle, we clarify that the utility cannot delay its determination of whether an application is complete by seeking to negotiate rates, terms, and conditions in the pole attachment agreement that unreasonably deviate from those assured by the rules. Such bad faith practices intended to delay the start of the pole attachment timeline are prohibited as contrary to our goal of speedy broadband deployment.

(iv) Application Review

52. For OTMR attachments, we shorten the time period within which a utility must decide whether to grant a complete application from 45 days to 15 days for standard requests and from 60 days to 30 days for larger requests as defined under 47 CFR 1.1411(g). While the BDAC did not address this issue, we find that because the new attacher (rather than the utility) will be doing most of the pre-make-ready work under OTMR (*e.g.,* surveys, notices), it is appropriate to adopt a shorter timeline for the utility to review the application. Furthermore, because the utility has the right to specify the information it requires the new attacher to put in the application and has the ability to reject the application (multiple times if necessary) before accepting it for review, we find 15 days should be sufficient for the utility to conduct its review. If the utility needs additional time, then it may work with the new attacher to negotiate a new schedule that timely resolves these issues. We retain in the OTMR context our preexisting requirement that if a utility denies an application, the utility's denial must be specific and include all relevant evidence and information supporting its denial and must explain how such evidence and information relate to a denial of access for reasons of safety, reliability, lack of capacity, or engineering standards.

(v) Make-Ready

53. The new attacher may proceed with OTMR by giving 15 days' prior written notice to the utility and all affected existing attachers. To avoid unnecessary delays, we conclude that the new attacher may provide the required 15-day notice any time after the utility deems its pole attachment application complete. Thus, the 15-day notice period may run concurrently with the utility's evaluation of whether to grant the application. If, however, the new attacher cannot start make-ready work on the date specified in its 15-day notice (*e.g.,* because its application has been denied or it is otherwise not ready to commence make-ready), then the new attacher must provide 15 days' advance notice of its revised make-ready date.

54. Although the BDAC recommendation provides for 25 days prior written notice for OTMR, we find that 15 days strikes a reasonable balance between promoting fast access to utility poles (one of the core goals of OTMR) and providing sufficient time for existing attachers and the utility to work with the new attacher to arrange to be present when OTMR is being performed on their equipment. Furthermore, the 25-day notice period recommended by the BDAC for OTMR is only five days shorter than the 30-day period recommended by the BDAC for existing attachers to complete complex make-ready work, which is not much time savings for an OTMR process that we adopt for simple work that is unlikely to cause safety issues. We also disagree with NCTA's request for a longer notice period for larger projects; because this is merely a notice requirement and does not require action on the part of the existing attacher or utility, there is no need for a longer notice period for larger projects.

55. To keep all affected parties informed about the new attacher's progress, and consistent with the BDAC's recommendation, we require the new attacher to provide representatives of the utility and existing attachers with the following information in the 15-day advance notice: (1) The date and time of the make-ready work; (2) a description of the make-ready work involved; (3) a reasonable opportunity to be present when the make-ready work is being performed; and (4) the name of the contractor chosen by the new attacher to perform the make-ready work. As is the case for survey notifications, if a new attacher requests contact information for existing attachers from the utility for use in this notification process, the utility must provide any such contact information it possesses. Allowing existing attachers and the utility a reasonable opportunity to be present when OTMR work is being done addresses the concerns of existing attachers that third-party contractors may not take proper care when performing simple make-ready work on their equipment. We also adopt the advance notice requirements to allow the utility and existing attachers, if they so choose, to alert their customers that work on their equipment is forthcoming. In addition, providing the name of the new attacher's OTMR contractor allows existing attachers to notify the utility and the utility to object if the contractor is not properly qualified.

56. We emphasize that the 15 days is only a notice period before the new attacher begins make-ready work; it is not an opportunity for existing attachers or the utility to complete make-ready work on their equipment and then bill the new attacher for that work. However, we clarify that we are not precluding existing attachers and the utility from doing non-reimbursable work on their equipment during the 15-day notice period. We find that, contrary to the requests of certain attachers, providing an existing attacher an affirmative right to perform make-ready and bill the new attacher for such work during the notice period would undermine one of the main benefits of

OTMR: Decreasing make-ready costs for new attachers.

57. We also adopt the BDAC recommendation that we require the new attacher to notify an affected entity immediately if the new attacher's contractor damages another company's equipment or causes an outage that is reasonably likely to interrupt the provision of service. We extend this requirement to damage to the utility's equipment as well. Upon receiving notice of damaged equipment or a service outage, the utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or outage or require the new attacher to fix the damage or outage at its expense immediately following notice from the utility or existing attacher. Upon notice from the existing attacher or the utility to fix damages or an outage caused by the new attacher, the new attacher must complete the repair work before it can resume its make-ready work. Where the utility or the existing attacher elects to fix the damage or outage, the new attacher can only continue with make-ready work if it does not interfere with the repair work being conducted by the utility or existing attacher. This requirement for immediate notification and repair of damages or outages caused by a new attacher's contractor addresses the concern of existing attachers and utilities that the new attacher's contractor may damage equipment or cause an outage that would harm consumers or threaten safety without the existing attacher's or utility's knowledge or an opportunity for prompt recourse.

(vi) Post Make-Ready

58. We agree with commenters that suggest that the OTMR process should include time for post-make-ready inspections and the quick repair of any defective make-ready work. To give existing attachers and the utility an opportunity to correct any errors and to further encourage quality work by the new attacher, we adopt the BDAC's recommendation that the new attacher must provide notice to the utility and affected existing attachers within 15 days after the new attacher has completed OTMR work on a particular pole. To minimize paperwork burdens, the new attacher may batch in one post-make-ready notice all poles completed in a particular 15-day span. For example, if a pole attachment project took 30 days to complete, the new attacher could provide one notice to the existing attacher with the first 15 days' worth of work and a second notice on day 30 with the remainder of the work. In its post-make ready notice, the new attacher must provide the utility and existing attachers at least a 90-day period for the inspection of make-ready work performed by the new attacher's contractors. This post-make-ready inspection and remedy requirement gives the utility and existing attachers their own opportunity to ensure that work has been done correctly.

59. To allow new attachers to timely address allegations of needed repair work, we adopt rules requiring that within 14 days after any post-make ready inspection, the utility and the existing attachers notify the new attacher of any damage or any code (*e.g.,* safety, electrical, engineering, construction) violations caused to their equipment by the new attacher's make-ready work and provide adequate documentation of the damage or the violations. The utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or violations, or require the new attacher to fix the damage or violations at its expense within 14 days following notice from the utility or existing attacher. We provide the utility or existing attacher options regarding repair to maximize their flexibility in addressing issues for which they are not at fault. The safeguards we establish in the OTMR process collectively give the new attacher the incentive to ensure its contractor performs work correctly; we therefore expect the invocation of this remediation procedure to be infrequent.

60. We disagree with Verizon's argument that we should refrain from establishing a timeframe for the utility and existing attachers to inspect completed make-ready work because deadlines for raising claims about property damage are ''typically governed by state contract or property law.'' We find it appropriate to establish a post-inspection timeline at the federal level so that parties can identify any defective make-ready work that has the potential to cause harm or injury to persons or equipment and remedy it as soon as possible. We also find that the deadlines we establish for the post-make-ready timeline give the existing attachers and the utility time that is sufficient but not unnecessarily long to inspect the work and give the new attacher reasonable time to fix any equipment damage and to rectify any potentially unsafe conditions.

d. Indemnification

61. We conclude that new attachers should be responsible and liable for any damage or non-compliance resulting from work completed by the new attacher during OTMR. The OTMR rules we adopt provide a process for existing attachers to timely identify damage to their equipment that occurs during the OTMR process and to arrange for its repair. To the extent that process proves insufficient, injured parties may seek judicial relief based on State law claims.

62. We find, consistent with the BDAC's recommendation, that federally-imposed indemnification is not necessary. The record indicates that the existing legal regime, including contract and tort law, provides sufficient protection for existing attachers without broad federal regulatory intrusion. The repair process we adopt in our OTMR rules adds an additional layer of protection. With these other remedies already available, we disagree with NCTA that a Commission-mandated indemnification requirement is the ''only practical mechanism by which an existing attacher can hold a new attacher or its contractor accountable for the consequences of performing shoddy work'' in situations where there is no privity of contract between the parties or a statutory requirement to hold harmless existing attachers. Rather, we find that adding a federal layer of indemnification would not be efficient or assist in speeding broadband deployment. Further, we agree with Google Fiber that indemnification obligations are typically not one-size-fits-all provisions, such that it would be difficult to craft a regulatory solution that is workable in all situations.

2. Targeted Changes to the Commission's Existing Pole Attachment Process

63. To speed broadband deployment for new attachments that are not eligible for our OTMR process and for new attachers that prefer not to use the OTMR process, we make targeted changes to the rules governing the existing pole attachment timeline. Our targeted changes include:

- Revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether an application is complete;
- Requiring utilities to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher;
- Establishing a 30-day deadline for completion of all make-ready work in the communications space;
- Eliminating the 15-day utility make-ready period for communications space attachments;

• Streamlining the utility's notice requirements;

• Enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines;

• Revising the contractor selection process for a new attacher's self-help work; and

• Requiring utilities to provide detailed estimates and final invoices to new attachers regarding make-ready costs.

64. We agree with numerous commenters that with respect to the Commission's current pole attachment timeline, we should refrain from adopting wholesale changes at this time. As a result, while we make changes aimed at speeding broadband deployment where the record indicates such changes would be workable and beneficial, we leave unchanged the pole attachment deadlines for the existing application review/survey, estimate, and acceptance stages.

a. Creating a More Efficient Pole Attachment Timeline

(i) Review of Application for Completeness

65. For the reasons discussed above, we adopt rules reflecting the same improvements to our definition of a complete pole attachment application and the same completeness review process as we do for the OTMR timeline, subject to one change to adjust for the fact that the utility conducts the survey under the non-OTMR process. We adopt the BDAC's recommendation and revise our existing pole attachment rules to define an application as complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to begin to survey the affected poles. While the current definition of a complete application only requires information necessary under the utility's procedures, this revised definition requires more transparency on behalf of the utility as the master service agreement and public requirements will be available to new attachers as they prepare their applications. In addition, to prevent unnecessary delays in starting the pole attachment process, we adopt the same BDAC-recommended timeline as in our OTMR process for a utility to determine whether a pole attachment application is complete. We agree with ACA that providing a specific timeline for determining completeness offers all parties predictability about the start of the OTMR process and avoids unnecessary delays. We also follow the BDAC OTMR recommendation that ties deadlines to receipt of the application by the utility, because the utility cannot begin to review the application until it has been received.

(ii) Review of Whether To Grant Complete Application and Survey

66. We decline to shorten the 45-day period in our existing rules during which the utility must review a complete pole attachment application and survey the affected poles for non-OTMR projects. In so doing, we reject proposals by some attachers that we shorten the application review and survey stage because we agree with utility commenters that the existing 45-day timeframe accounts for demands on existing workforce, safety concerns, volume of pole attachment applications, and timing constraints. We also decline to adopt ACA's proposal that a pole attachment application be deemed granted if the utility fails to act on an application within the 45-day timeframe. Failure by the utility to act on an application within the prescribed time period is a violation of our rules and, accordingly, use of our recently-adopted expedited pole access complaint procedure is available as a remedy. We also clarify that nothing in our rules precludes a utility from using a new attacher to conduct a survey of the affected poles, at the utility's expense, consistent with the requirements in 47 CFR 1.1411(i)(1).

67. To make the survey and application review process more efficient and transparent, however, we adopt a change recommended by the BDAC and several commenters to require utilities to facilitate survey participation by new and existing attachers. Specifically, in performing a field inspection as part of any pre-construction survey, we modify our rules to require a utility to permit the new attacher and any existing attachers potentially affected by the new attachment to be present for any pole surveys. We require the utility to use commercially reasonable efforts to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher, such notice to include the date, time, and location of the survey, and the name of the contractor performing the survey. To prevent coordination problems that may invite delay, we do not require a utility to set a date for the survey that is convenient for the affected attachers. However, in the case of reasonable scheduling conflicts, we encourage the parties to work together to find a mutually-agreeable time for the survey. We find that advance notice of three business days strikes the right balance between providing sufficient time to accommodate coordination with the attachers and the need to keep the pole attachment process moving forward in a timely manner. To provide utilities some measure of flexibility in complying with this requirement while still encouraging joint surveys to occur, we hold utilities to a ''commercially reasonably efforts standard'' to make the notifications.

68. In addition, to prevent unnecessary and wasteful duplication of surveys, we adopt a change to our rules that allows utilities to meet the survey requirement of our existing timeline by electing to use surveys previously prepared on the poles in question by new attachers. In the OTMR context, new attachers will perform the necessary surveys to determine whether make-ready work is simple or complex prior to the submission of an application. To the extent such work is complex, it will be governed by our existing pole attachment timeline where the utility performs the survey and must give advance notice of the survey to affected attachers. However, we will allow the utility to elect to use the new attacher's previously performed survey (performed as part of the OTMR pole attachment process) to fulfill its survey requirements, rather than require the utility to perform a potentially duplicative survey. The utility still must notify affected attachers of its intent to use the new attacher's survey and provide a copy of the new attacher's survey in its notice. If the utility is relying solely on the new attacher's survey to fulfill the survey requirements, we agree with Crown Castle that it is appropriate to shorten the survey period from 45 days to 15 days to speed deployment.

(iii) Make-Ready Stage

69. To speed broadband deployment, we amend our rules to reduce the deadlines for both simple and complex make-ready from 60 to 30 days (and from 105 to 75 days for large requests in the communications space). To account for the unique circumstances involved with attachments above the communications space, we maintain the current make-ready deadline of 90 days (and 135 days for large requests) for these attachments. We also adopt modified notice requirements to apportion more of the responsibility for promoting make-ready timeline

compliance from utilities to new attachers, because new attachers have the greater incentive to drive adherence to the make-ready deadline.

70. *Make-ready deadlines.* Based on the current record and the BDAC's recommendation, we adopt a change to our rules that shortens the make-ready deadline for new pole attachments in the communications space to promote broadband deployment without imposing undue risk to safety or reliability. We agree with Crown Castle that adoption of a shorter make-ready period in the communications space will promote the efficient completion of make-ready by encouraging utilities and existing attachers to prioritize attachment work. We also agree with Google Fiber that a 30-day period for communications space make-ready (and 75 days for larger requests) will ensure that existing attachers have the opportunity to control make-ready that is expected to affect their services, while reducing delays and increasing efficiency for new attachers. The make-ready timelines we adopt for work in the communication space should be sufficient for both simple and complex work.

71. While the BDAC recommended that we impose a 30-day deadline for complex make-ready work in the communications space, it did not make a recommendation on the deadline for simple make-ready work that is not subject to OTMR. We find that there is value to maintaining consistency of deadlines in the communications space; thus, we adopt the 30-day deadline for all communications space make-ready work.

72. To account for the safety concerns of working above the communications space, we maintain our current make-ready deadlines of 90 days (and 135 days for large requests). In establishing the existing deadlines for make-ready above the communications space, which are 30 days longer than the existing deadlines for make-ready work in the communications space, the Commission pointed to the safety risks associated with working on attachments in, near, or above the electric space and the recognized lack of real-world experience at the time with pole-top attachments. We recognize that both utilities and attachers have more experience with these types of attachments than when the Commission adopted these deadlines in 2011, but the same safety risks identified by the Commission in 2011 are still relevant today, and therefore we continue to allow for more time to complete make-ready above the communications space because such attachments involve work near electrical wires that require more careful work and more experienced contractors. However, we recognize the important role that attachments above the communications space can have in facilitating faster and more efficient wireless deployment (particularly the small cell deployments necessary for advanced 5G networks), and therefore, as described below, we make the self-help remedy applicable to these attachments for the first time, which we anticipate will speed deployment by providing a strong incentive for utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when deadlines are not met.

73. For all attachments, we retain as a safeguard our existing rule allowing utilities to deviate from the make-ready timelines for good and sufficient cause when it is infeasible for the utility to complete make-ready work within the prescribed time frame. This safeguard will mitigate the effects of our decrease in the make-ready time periods by carving out edge cases where timely completion is truly infeasible and the utility wishes to retain control of the make-ready process. It aids us in balancing the interests of utilities to control make-ready in non-OTMR circumstances and the needs of new attachers to obtain timely completion of OTMR or the ability to employ self-help. We agree with ACA that a utility that so deviates may do so for a period no longer than necessary to complete make-ready on the affected poles and must immediately notify, in writing, the new attacher and affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date. A new attacher may challenge the utility's determination for deviating from the make-ready timeline if the utility's rationale is not justified by good and sufficient cause.

74. Recognizing that our new timeline will put pressure on existing attachers, particularly with respect to poles that have multiple attachers that must conduct complex make-ready work within a shorter timeframe, we adopt a new safeguard for existing attachers. Specifically, we adopt the BDAC recommendation that an existing attacher may deviate from the 30-day deadline for complex make-ready in the communications space (or the 75-day deadline in the case of larger orders) for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready by the deadline. An existing attacher that so deviates must immediately notify, in writing, the new attacher and other affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date, which cannot extend beyond 60 days from the date of the utility make-ready notice to existing attachers (or 105 days in the case of larger orders). The existing attacher shall deviate from the complex make-ready time limits for a period no longer than necessary to complete make-ready on the affected poles. If the complex make-ready work is not complete within 60 days from the date that the existing attacher sends the notice to the new attacher, then the new attacher can complete the work using a utility-approved contractor. If no utility-approved contractor is available, then the new attacher must follow the procedures outlined *infra* for choosing an appropriate contractor. We require existing attachers to act in good faith in obtaining an extension, and we caution that obtaining an extension as a routine matter or for the purpose of delaying the new attachment is inconsistent with acting in good faith. If a new attacher believes the existing attacher is not using the extension period in good faith, it may file a complaint with the Commission.

75. We further accelerate communications space attachments by eliminating the optional 15-day extension period for the utility to complete the make-ready work. Many commenters and the BDAC support elimination of the extra 15 days at the end of the make-ready stage because few, if any, utilities actually invoke the extension. However, with respect to work above the communications space, we retain the optional 15-day extension period for utility make-ready. Because we are extending a new attacher's self-help remedy to attachments above the communications space, more utilities may need to use the additional 15 days to perform such make-ready work themselves. Further, retaining this extra period promotes safety and reliability of the electric grid by granting the utility extra time to undertake the work itself. To the extent utilities do not intend to avail themselves of the additional 15 days before a new attacher resorts to self-help above the communications space, we strongly encourage utilities to communicate that intent as soon as possible to new attachers so that the new attacher can promptly begin make-ready work.

76. *Notice and New Attacher Role.* We adopt the BDAC recommendation that when a utility provides the required make-ready notice to existing attachers, then it must provide the new attacher

with a copy of the notice, plus the contact information of existing attachers to which the notices were sent, and thereafter the new attacher (rather than the utility) must take responsibility for encouraging and coordinating with existing attachers to ensure completion of make-ready work on a timely basis. We adopt this additional notice requirement to empower the new attacher to promote the timely completion of make-ready. At the same time, we expect existing attachers to respond in a timely manner to requests from the new attacher for information, including estimated completion dates and work status updates, and to cooperate with the new attacher and other existing attachers to complete make-ready prior to the date set in the notice.

b. Enhancing the Self-Help Remedy

77. In the interest of speeding broadband deployment, we modify our rules to provide a self- help remedy to new attachers for work above the communications space, including the installation of wireless 5G small cells, when the utility or existing attachers have failed to complete make-ready work within the required time frames. We recognize that despite widespread agreement that make-ready work often extends past Commission-prescribed timelines, and new attachers' frustration with delays caused by missed deadlines for make-ready work, the record shows that, at present, new attachers rarely invoke the existing self-help remedy in the communications space. In the interest of ensuring that new attachers are able to exercise the self-help remedy, we take this opportunity to reiterate its availability and modify our rules to provide a process for new attachers to communicate their intent to engage in self-help to the utility and existing attachers. These steps, together with the changes we make to the process for new attachers to hire contractors to conduct self-help work, should encourage the use of self-help where necessary and strengthen the incentive for utilities and existing attachers to complete work on time.

78. *Self-Help Above the Communications Space.* In the *2011 Pole Attachment Order,* the Commission declined to apply a self-help remedy for survey and make-ready work for pole attachments ''located in, near, or above the electric space.'' After further consideration and in light of the national importance of a speedy rollout of 5G services, we amend our rules to allow new attachers to invoke the self-help remedy for work above the communications space, including the installation of wireless 5G small cells, when utilities and existing attachers have not met make-ready work deadlines. Accenture estimates that wireless providers will invest $275 billion dollars over the next decade to deploy 5G, which is expected to create three million new jobs across the country and boost the U.S. gross domestic product by half a trillion dollars. As CTIA explains, the network infrastructure needed to support 5G cannot wait, and it is incumbent on the Commission to quickly eliminate barriers to, and encourage investment in, 5G deployment. Although we do not allow wireless attachers to perform their own work in the first instance for safety and equipment integrity reasons, we nonetheless give them the ability to use self-help to complete make-ready when utilities miss their deadline.

79. Until now, the only remedy for missed deadlines for work above the communications space has been filing a complaint with the Commission's Enforcement Bureau. We agree with commenters that argue that complaints are an important but insufficient tool for encouraging compliance with our deadlines and speeding broadband deployment. We expect the availability of self-help above the communications space will strongly encourage utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when they do not. As described by Crown Castle, the extension of the self-help remedy to attachments above the communications space closes a significant gap in the Commission's rules that leaves Crown Castle without a meaningful remedy when the electric utility fails to perform make-ready work in a timely fashion.

80. We recognize the valid concerns of utilities regarding the importance of safety and equipment integrity, particularly in the electric space, and we take several steps to address these important issues. As an initial matter, in response to concerns expressed by utilities, we maintain the 90-day period (135 for larger requests) for the utility to complete make-ready. In the event that new attachers must resort to self-help above the communications space, the new attacher must use a qualified contractor, that is pre-approved by the utility, to do the work. While some utilities argue that contractors working for third parties will not adhere to the utility's procedures for ensuring the integrity of electric distribution facilities, the utility will have full control over the contractor pre-approval process and therefore will be able to require that contractors who wish to be placed on the utility-approved list adhere to utility protocols for working in the electric space, even when the contractor is retained by a third-party communications attacher. In addition, we reiterate that utilities will have the opportunity to identify and address any safety and equipment concerns when they receive advance self-help notice and post-completion notice from the new attacher. Our rules also contain additional pre-existing protections for utilities that empower them to promote safety and reliability. Finally, utilities may prevent self-help from being invoked by completing make-ready on time. Because electric utilities always will have the opportunity to complete make-ready work before self-help is triggered, have control over which contractors will be allowed to perform self-help, and will have the opportunity to be present when the self-help make-ready work is performed, we disagree with FirstEnergy that our new rules risk loss of control for every expansion of capacity to accommodate new attachments.

81. *Pole Replacements.* We agree with parties that argue that the self-help remedy should not be available when pole replacements are required as part of make-ready. The record shows that pole replacements can be complicated to execute and are more likely to cause service outages or facilities damage. Given the particularly disruptive nature of this type of work, we make clear that pole replacements are not eligible for self-help.

82. *Self-Help Notices.* Similar to the pre- and post-work notice requirements we adopt in the new OTMR process, and consistent with the BDAC's recommendation, we require new attachers to give affected utilities and existing attachers (1) no less than three business days advance notice for self-help surveys and five days' advance notice of when self-help make-ready work will be performed and a reasonable opportunity to be present, and (2) notice no later than 15 days after make-ready is complete on a particular pole so that they have an opportunity to inspect the make-ready work. Just as in the OTMR context, the new attacher's post-make-ready notice must provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready work done on a particular pole. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage to their equipment or any code (*e.g.,* safety, electrical, engineering, construction) violations caused by make-ready conducted by the new

attacher. If the utility or existing attachers discover damage or any code violations caused by make-ready conducted by the new attacher on equipment belonging to the utility or an existing attacher, then the utility or existing attacher shall inform the new attacher and provide adequate documentation of the damage or code violations. The utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations, or (B) require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

83. Just as in the OTMR context, the advance notice must include the date and time of the work, the nature of the work, and the name of the contractor being used by the new attacher. Similar to our finding with regard to the OTMR process, we find that the utility and existing attachers should be responsible for any expenses associated with double-checking the self-help work performed by the new attacher's contractors, including any post-make-ready inspections. As in the OTMR context, we also require the new attacher to provide immediate notice to the affected utility and existing attachers if the new attacher's contractor damages equipment or causes an outage that is reasonably likely to interrupt the provision of service. Upon receiving notice of damaged equipment or a service outage, the utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher. Upon notice from the existing attacher or the utility to fix damages caused by a contractor, the new attacher must complete the repair work before it can resume its make-ready work. Where the utility or the existing attacher elects to fix the damage, the new attacher can only continue with make-ready work if it does not interfere with the repair work being conducted by the utility or existing attacher. We find that these self-help notices will promote safe, reliable work and provide the opportunity for corrections where needed, as well as allow utilities and existing attachers to alert their customers of the work. In this context, we also find that the notices will help to address complaints that utilities are not receiving consistent notices from attachers regarding critical steps in the pole attachment process.

84. At the request of numerous commenters, we also take this opportunity to reiterate that under our existing rules, the make-ready clock runs simultaneously and not sequentially for all existing attachers, and the utility must immediately notify at the same time all entities with existing attachments that are affected by the proposed make-ready work. We recognize that coordinating work among existing attachers may be difficult, particularly for poles with many attachments, and existing attachers that are not the first to move may in some circumstances receive limited or even no time for work during the make-ready stage. Despite these challenges, we expect utilities, new attachers, and existing attachers to work cooperatively to ensure that pole attachment deadlines are met. If others do not meet their deadlines, new attachers then may invoke the self-help remedy.

c. Contractor Selection for Self-Help

85. We adopt different approaches to new attacher contractor selection for simple and non-simple self-help make-ready. Given that simple self-help and OTMR are substantially similar, we adopt the same approach to contractor selection for simple self-help in the communications space as for OTMR, and we do so for the same reasons set forth above. Thus, consistent with the OTMR regime:

- A new attacher electing self-help for simple work in the communications space must select a contractor from a utility-maintained list of qualified contractors, where such a list is available. The contractor must meet the same safety and reliability criteria as contractors authorized to perform OTMR work. New and existing attachers may request that qualified contractors be added to the utility's list and the utility may not unreasonably withhold its consent for such additions.
- Where no utility-maintained list is available, or no utility-approved contractor is available within a reasonable time period, the new attacher must select a contractor that meets the same safety and reliability criteria as contractors authorized to perform OTMR work and any additional non-discriminatory, written, and publicly-available criteria relating to safety and reliability that the utility specifies. The utility may veto the new attacher's contractor selection so long as it offers another available, qualified contractor.

86. For complex work and work above the communications space, we take a different approach and require new attachers to select a contractor from the utility's list. We also require utilities to make available and keep an up-to-date a reasonably sufficient list of contractors it authorizes to perform complex and non-communications space self-help surveys and make-ready work. We thus maintain our existing contractor selection requirements as to complex self-help in the communications space and extend those requirements to self-help above the communications space.

87. We treat the utility list as mandatory for complex and above the communications space work for several reasons. These types of make-ready involve greater risks than simple make-ready, and we agree with numerous commenters that utility selection of eligible contractors promotes safe and reliable work in more challenging circumstances. Although the current selection process sometimes entails delays where utilities fail to provide a list of approved contractors, we find that as to complex work and work above the communications space—which poses heightened safety and reliability risks—the benefits of the current approach outweigh its costs. We recognize that self-help above the communications space is novel and poses particularly heightened safety and reliability risks. We therefore find it especially important to give the utility control over who performs such work. In reaching this conclusion, we decline to adopt the BDAC's recommendation that utilities need no longer provide, and requesting attachers need not use, utility-approved contractors to complete complex make-ready work in the communications space under the self-help remedy.

88. Although we treat the utility list as mandatory for complex and above the communications space make-ready, we adopt a protective measure to prevent the utility list from being a choke-point that prevents deployment. The record indicates that some new attachers have been unable to exercise their self-help remedy because a list of utility-approved contractors was not available. To alleviate this problem for complex and above the communications space work, we set forth in our rules—as we do in the context of OTMR and simple-self-help—that new and existing attachers may request that qualified contractors be added to the utility's list and that the utility may not unreasonably withhold its consent for such additions. As in the context of OTMR and simple self-help, to be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and

based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.

d. Detailed Make-Ready Costs

89. To facilitate the planning of more aggressive deployments, we adopt additional requirements to improve the transparency and usefulness of the make-ready cost estimates currently required under our rules. We require estimates of all make-ready charges to be detailed and include documentation that is sufficient to determine the basis for all charges, as well as similarly detailed post-make-ready invoices.

90. The record reflects frustration over the lack of transparency of current estimates of make-ready work charges. ACA, Lumos, Crown Castle, and other commenters express support for a requirement that utilities provide detailed, itemized estimates and final invoices of all necessary make-ready costs. They, along with other commenters, argue that, in many cases, utilities currently do not provide detailed estimates or detailed final invoices. They claim that where utilities do not detail the basis of potential or actual charges, new attachers may reasonably fear that utilities can potentially include costs that are unnecessary, inappropriately inflated, or that attaching entities could easily avoid. Numerous commenters describe experiencing ''bill shock,'' where a utility's make-ready invoices far exceed the utility's initial estimates, and add that the lack of transparency of make-ready costs inhibits their ability to plan network expansions. Given the frustration reflected in the record, we find that requiring detailed make-ready cost estimates and post-make-ready invoices will improve transparency in the make-ready process and better enable providers to plan broadband buildouts.

91. We further clarify that our current rules require the utility to provide estimates for all make-ready work to be completed, regardless of what party completes the work. Although some utilities claim they are poorly positioned to provide estimates for make-ready work other than their own, we continue to find that utilities are best positioned to compile and submit these make-ready estimates to new attachers due to their pre-existing and ongoing relationships with the existing attachers on their poles. We recognize that in many circumstances the utility will not be able to prepare on its own an estimate for other existing attachers' make-ready work; therefore, we clarify that utilities may comply with this requirement by compiling estimates from third-parties for submission to the new attacher. We further clarify that where the utility compiles third-party estimates, it is responsible only for compilation and transmission—it is not responsible for the accuracy or content of the estimates. We do not require utilities to compile and submit final invoices of make-ready work performed by third-party existing attachers. To the extent that the utility is an existing attacher, it is still responsible, where applicable, for providing a final invoice. We anticipate that existing attachers will have sufficient incentives to ensure that their final invoice reaches the new attacher so that they receive compensation for performed work.

92. We require the utility to detail all make-ready cost estimates and final invoices on a per-pole basis when requested by the new attacher. While we recognize that requiring utilities to provide costs on a per-pole basis may be more burdensome than providing a less granular estimate, we find that a pole-by-pole estimate may be necessary to enable new attachers to understand the costs of deployment and to make informed decisions about altering their deployment plans if make-ready costs on specific poles could prove to be cost-prohibitive. Requiring per-pole estimates and invoices upon request will also enable new attachers to better determine whether invoices are accurate, saving new attachers the unnecessary time and cost they currently devote to such a task. The record shows that certain fixed costs are not necessarily charged on a per-pole basis (*e.g.,* traffic control, lock-out/tag-out, truck rolls), and therefore the rules we adopt today allow for such fixed costs to be submitted on a per-job basis, rather than a pole-by-pole basis, even where a pole-by-pole estimate or invoice is requested.

93. As part of the detailed estimate, the utility must disclose to the new attacher its projected material, labor, and other related costs that form the basis of its estimate, including specifications of what costs, if any, the utility is passing through to the new attacher from the utility's use of a third-party contractor. The utility must also provide documentation that is sufficient to determine the basis of all charges in the final invoice, including any material, labor and other related costs. While we understand that this requirement places a burden on utilities, we agree with ACA that this requirement will allow new attachers to understand the basis for each individual make-ready charge and prevent disputes over ''unreasonable or simply unnecessary make-ready charges in aggregate cost estimates.'' However, if a utility completes make-ready and the final cost of the work does not differ from the estimate, it is not required to provide the new attacher with a final invoice.

3. Treatment of Overlashing

94. We codify our longstanding policy that utilities may not require an attacher to obtain its approval for overlashing. Consistent with Commission precedent, the utility also may not require pre-approval for third party overlashing of an existing attachment, when such overlashing is conducted with the permission of an existing attacher. In addition, we adopt a rule that allows utilities to establish reasonable advance notice requirements. As the Commission has previously found, the ability to overlash often marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months when delivery of service is dependent on a new attachment. In codifying the existing overlashing precedent while adopting a pre-notification option, we seek to promote faster, less expensive broadband deployment while addressing important safety concerns relating to overlashing. We find that our codification will hasten deployment by resolving disagreements over whether utilities may impose procedural requirements on overlashing by existing attachers.

95. While we make clear that pre-approval for overlashing is not permissible, we adopt a rule that utilities may, but are not required to, establish reasonable pre-notification requirements including a requirement that attachers provide 15 days (or fewer) advance notice of overlashing work. Commenters express the concern that poles may not always be able to reliably support additional weight due to age and environmental factors, such as ice and wind, and as a result, overlashing even one additional cable on a pole may cause an overloading. Such pole overloading could hamper the installation or maintenance of electric facilities, or other on-going wireline or wireless facility installations. We find these concerns to be valid and supported by the record. Thus, we agree with commenters that allowing utilities to require advance notice will promote safety and reliability and allow the utility to protect its interests without imposing unnecessary burdens on attachers. If after receiving this advance notice, a utility determines, through its own engineering analysis, that there is insufficient capacity on the pole for a

noticed overlash, the noticed overlash would be inconsistent with generally applicable engineering practices, or the noticed overlash would compromise the pole's safety or reliability, the utility must provide specific documentation demonstrating that the overlash creates a capacity, safety, reliability, or engineering issue within the 15 day advance notice period and the overlasher must address any identified issues—either by modifying its proposal or by explaining why, in the overlasher's view, a modification is unnecessary—before continuing with the overlash. Consistent with our approach to OTMR and self-help, we adopt ACA's position that a utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash, as such fees will increase the costs of deployment. To the extent a utility can document that an overlash would require modifications to the pole or replacement of the pole, the overlasher will be held responsible for the costs associated with ensuring that the pole can safely accommodate the overlash. A utility may not deny access to overlash due to a pre-existing violation on the pole. However, a party that chooses to overlash on a pole with a safety violation and causes damage to the pole or other equipment will be held responsible for any necessary repairs.

96. We find that an approach to overlashing that allows for pre-notification without requiring pre-approval is superior to more extreme solutions advocated by some commenters. We are unpersuaded, for example, by arguments that utility pre-approval for overlashing is necessary to ensure safety. Pre-approval is not currently required, and the record does not demonstrate that significant safety or reliability issues have arisen from the application of the current policy. Rather, the record reflects that an advance notice requirement has been sufficient to address safety and reliability concerns, as it provides utilities with the opportunity to conduct any engineering studies or inspections either prior to the overlash being completed or after completion. For instance, after an Edison Electric Institute member received advance notice of overlashing on 5,186 poles, its inspection found that 716 of those poles '' 'had preexisting violations for failure to meet NESC requirements for clearance between communications attachments and power facilities.' '' Similarly, in 2016, Oncor Electric Delivery in Texas received advance notice of overlashing and discovered 13.8% of the poles had existing clearance violations between existing attachments and power facilities. Further requiring that attachers receive prior approval for overlashing would unnecessarily increase costs for attachers and delay deployment.

97. We also take this opportunity to clarify several points related to overlashing. First, if the utility elects to establish an advance notice requirement, the utility must provide advanced written notice to attachers or include the requirement in its pole attachment agreements. We find that providing this guidance will give clarity to all parties as to when the utility must receive advance notice, thereby reducing the likelihood of disputes. Utilities may require pre-notification of up to 15 days, the same notice period that we adopt for OTMR attachments. We also emphasize that utilities may not use advanced notice requirements to impose quasi-application or quasi-pre-approval requirements, such as requiring engineering studies. Finally, just as new attachers electing OTMR are responsible for any corrective measures needed because of their work, in the event that damage to the pole or other existing attachment or safety or engineering standard violations result from overlashing, the overlasher will be responsible for any necessary repairs arising from such overlashing. Poorly performed overlashing can create safety and reliability risks, and the Commission has consistently found that overlashers must ensure that they are complying with reasonable safety, reliability, and engineering practices. To the extent that the pole owner wishes to perform an engineering analysis of its own either within the 15-day advance notice period or after completion of the overlash, the pole owner bears the cost of such an analysis.

98. We agree with ACA that we should adopt a post-overlashing notification procedure comparable to the post-make ready notification procedure we adopt for OTMR. Therefore, we require that an overlashing party shall notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage or any code (*e.g.,* safety, electrical, engineering, construction) violations to its equipment caused by the overlash. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations or require the overlashing party to fix the damage or code violations at its expense within 14 days following notice from the utility.

B. New Attachers Are Not Responsible for Preexisting Violations

99. Consistent with the BDAC's recommendation, we clarify that new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment. This includes situations where a pole has been ''red tagged''—that is, found to be non-complaint with safety standards and placed on a replacement schedule—so new attachers are not responsible for the cost of pole replacement. Although utilities have sometimes held new attachers responsible for the costs of correcting preexisting violations, this practice is inconsistent with our long-standing principle that a new attacher is responsible only for actual costs incurred to accommodate its attachment. The new attachment may precipitate correction of the preexisting violation, but it is the violation itself that causes the costs, not the new attacher. Holding the new attacher liable for preexisting violations unfairly penalizes the new attacher for problems it did not cause, thereby deterring deployment, and provides incentives for attachers to complete make-ready work irresponsibly and count on later attachers to fix the problem. This is true whether the make-ready work that corrects these preexisting violations is simple or complex. Also, if the new attacher chooses to repair a pre-existing violation it may seek reimbursement from the party responsible for the violation, including, if applicable, the utility.

100. We also clarify that utilities may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation, as Lightower alleges sometimes occurs. Simply denying new attachers access prevents broadband deployment and does nothing to correct the safety issue. We also clarify that a utility cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation.

C. Addressing Outdated Rate Disparities

101. In the interest of promoting infrastructure deployment, the Commission adopted a policy in 2011 that similarly situated attachers should pay similar pole attachment rates for comparable access. Incumbent LECs allege, however, that electric utilities continue to charge pole attachment rates significantly higher than the rates charged to similarly situated telecommunications attachers, and that these higher rates inhibit broadband deployment. To address this problem, we revise our rules to establish a presumption that, for newly-negotiated and newly-renewed pole attachment agreements between incumbent LECs and utilities, an incumbent LEC will receive comparable pole attachment rates, terms, and conditions as a similarly-situated telecommunications carrier or a cable television system (telecommunications attachers). The utility can rebut the presumption with clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers.

102. As the Commission has recognized, historically, incumbent LECs owned approximately the same number of poles as electric utilities and were able to ensure just and reasonable rates, terms, and conditions for their attachments by negotiating long-term joint use agreements with utilities. These joint use agreements may provide benefits to the incumbent LECs that are not typically found in pole attachment agreements between utilities and other telecommunications attachers, such as lower make-ready costs, the right to attach without advance utility approval, and use of the rights-of-way obtained by the utility, among other benefits. By 2011, however, incumbent LECs owned fewer poles than utilities, and the Commission found that incumbent LECs may not be in equivalent bargaining position with electric utilities in pole attachment negotiations in some cases. In 2011, the Commission determined that it had the authority to ensure that incumbent LECs' attachments to other utilities' poles are pursuant to rates, terms and conditions that are just and reasonable, and placed the burden on incumbent LECs to rebut the presumption that they are not similarly situated to an existing telecommunications attacher in order to obtain access on rates, terms, and conditions that are comparable to the existing telecommunications attacher.

103. The record clearly demonstrates that incumbent LEC pole ownership continues to decline. Incumbent LECs argue that a reversal of the current presumption is warranted because incumbent LECs' bargaining power vis-à-vis utilities has eroded since 2011 as their percentage of pole ownership relative to utilities has dropped, thus resulting in increased attachment rates relative to their fellow telecommunications attachers. To bolster this claim, USTelecom provides the results of a recent member survey showing that its incumbent LEC members ''pay an average of $26.12 [per year] to [investor-owned utilities] today in Commission-regulated states (an *increase* from $26.00 in 2008), compared to cable and CLEC provider payments to ILECs, which average $3.00 and $3.75 [per year], respectively (a *decrease* from $3.26 and $4.45, respectively, in 2008).''

104. We are convinced by the record evidence showing that, since 2008, incumbent LEC pole ownership has declined and incumbent LEC pole attachment rates have increased (while pole attachment rates for cable and telecommunications attachers have decreased). We therefore conclude that incumbent LEC bargaining power vis-à-vis utilities has continued to decline. Therefore, based on these changed circumstances, we agree with incumbent LEC commenters' arguments that, for new and newly-renewed pole attachment agreements between utilities and incumbent LECs, we should presume that incumbent LECs are similarly situated to other telecommunications attachers and entitled to pole attachment rates, terms, and conditions that are comparable to the telecommunications attachers. We conclude that, for determining a comparable pole attachment rate for new and newly-renewed pole attachment agreements, the presumption is that the incumbent LEC should be charged no higher than the pole attachment rate for telecommunications attachers calculated in accordance with § 1.1406(e)(2) of the Commission's rules. We find that applying the presumption in these circumstances will promote broadband deployment and serve the public interest; we agree with USTelecom that greater rate parity between incumbent LECs and their telecommunications competitors can energize and further accelerate broadband deployment. However, we recognize there may be some cases in which incumbent LECs may continue to possess greater bargaining power than other attachers, for example in geographic areas where the incumbent LEC continues to own a large number of poles. Therefore, we establish a presumption that may be rebutted, rather than a more rigid rule.

105. We extend this rebuttable presumption to newly-negotiated and newly-renewed joint use agreements. A new or newly-renewed pole attachment agreement is one entered into, renewed, or in evergreen status after the effective date of this *Third Report and Order,* and renewal includes agreements that are automatically renewed, extended, or placed in evergreen status. Consistent with the Commission's conclusion in 2011, the pre-2011 pole attachment rate for telecommunications carriers will continue to serve as a reference point in complaint proceedings regarding agreements that materially advantage an incumbent LEC and which were entered into after the *2011 Pole Attachment Order* and before the effective date of the *Third Report and Order* we release today. This includes circumstances where an agreement has been terminated and the parties continue to operate under an ''evergreen'' clause.

106. We conclude that, by applying the presumption to new and newly-renewed agreements, we will give incumbent LECs parity with similarly-situated telecommunications attachers and encourage infrastructure deployment by addressing incumbent LECs' bargaining power disadvantage. We recognize that this divergence from past practice will impact privately-negotiated agreements and so the presumption will only apply, as it relates to existing contracts, upon renewal of those agreements. Until that time, for existing agreements, the *2011 Pole Attachment Order*'s guidance regarding review of incumbent LEC pole attachment complaints will continue to apply. We disagree with utilities that argue that we should not apply the presumption to any existing agreements because existing joint use agreements were negotiated at a time of more equal bargaining power between the parties, and because incumbent LECs receive unique benefits under joint use agreements. To the extent incumbent LECs receive net benefits distinct from those given to other telecommunications attachers, a utility may rebut the presumption.

107. Utilities can rebut the presumption we adopt today in a complaint proceeding by demonstrating that the incumbent LEC receives net benefits that materially advantage the incumbent LEC over other telecommunications attachers. Such material benefits may include paying

significantly lower make-ready costs; no advance approval to make attachments; no post-attachment inspection costs; rights-of-way often obtained by electric company; guaranteed space on the pole; preferential location on pole; no relocation and rearrangement costs; and numerous additional rights such as approving and denying pole access, collecting attachment rents and input on where new poles are placed. If the utility can demonstrate that the incumbent LEC receives significant material benefits beyond basic pole attachment or other rights given to another telecommunications attacher, then we leave it to the parties to negotiate the appropriate rate or tradeoffs to account for such additional benefits.

108. If the presumption we adopt today is rebutted, the pre-*2011 Pole Attachment Order* telecommunications carrier rate is the maximum rate that the utility and incumbent LEC may negotiate. This conclusion builds on and clarifies the Commission's determination in the *2011 Pole Attachment Order* that the pre-2011 telecommunications carrier rate should serve ''as a reference point in complaint proceedings'' where a joint use agreement was found to give net advantages to an incumbent LEC as compared to other attachers. The Commission ''[found] it prudent to identify a specific rate to be used as a reference point in these circumstances because it [would] enable better informed pole attachment negotiations . . . [and] reduce the number of disputes'' regarding pole attachment rates. We reaffirm the conclusion that reference to this rate is appropriate where incumbent LECs receive net material advantages in a pole attachment agreement. And because we agree with commenters that establishment of an upper bound will provide further certainty within the pole attachment marketplace, and help to further limit pole attachment litigation, we make this rate a hard cap. In so doing, we remove the potential for uncertainty caused by considering the rate merely as a ''reference point.''

D. Legal Authority

109. We conclude that we have ample authority under Section 224 to take the actions above to adopt a new pole attachment process, amend our current pole attachment process, clarify responsibility for pre-existing violations, and address outdated rate disparities. Section 224 authorizes us to prescribe rules ensuring that the rates, terms, and conditions of pole attachments are just and reasonable. We find that the actions we take today to speed broadband deployment further these statutory goals. While we rely solely on Section 224 for legal authority, our prioritization of broadband deployment throughout today's *Third Report and Order* finds support in Section 706(a) of the Telecommunications Act of 1996, which exhorts us to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans'' by ''remov[ing] barriers to infrastructure investment.'' While Section 706(a) does not provide a grant of regulatory authority, we look to it as guidance from Congress on how to implement our statutorily-assigned duties.

E. Effective Date of the Commission's Modified Pole Attachment Rules

110. Several parties have requested that the Commission provide a transition period in which to implement its revised rules governing pole attachments. As AT&T notes, this *Third Report and Order* would modify ''the Commission's existing timelines for application review, make-ready, and self-help and adopt new timelines for pre-application surveys, OTMR, and post OTMR and self-help inspection and repair.'' The record indicates that in some cases, these changes will require carriers and industry members to modify the automated electronic systems they use to track and coordinate pole attachment workflow and activities. Therefore, we find it appropriate to provide a transitional period. To avoid confusion and facilitate efficient compliance preparation, we also wish to make the transitional period uniform for all pole attachment-related rules. Thus, the pole attachment-related portions of this *Third Report and Order* (*i.e.,* Sections III.A–E) and the rule amendments adopted therein shall become effective on the latter of (1) six months after the release of this item or (2) 30 days after the Commission publishes a notice in the **Federal Register** announcing approval by the Office of Management and Budget of the rules adopted herein containing modified information collection requirements. We believe that this period will be sufficient, but no more than necessary, to allow affected industry members to modify their systems to account for the rule amendments adopted in this *Third Report and Order.* The remainder of this *Third Report and Order* will be effective 30 days after publication in the **Federal Register**.

F. Rebuilding and Repairing Broadband Infrastructure After Disasters

111. We will not allow state and local laws to stand in the way of post-disaster restoration of essential communciations networks. In the *Further Notice of Proposed Rulemaking* in this proceeding, we sought comment on whether there are targeted circumstances related to disasters in which the Commission should use its preemption authority. We find that Sections 253 and 332(c)(7) of the Act provide authority to preempt state or local laws that prohibit or have the effect of prohibiting the rebuilding or restoration of facilities used to provide telecommunications services, and we commit to the exercise of that authority on a case-by-case basis where needed. Sections 253 and 332(c)(7) both provide for preemption of state and local laws that ''prohibit or have the effect of prohibiting'' the deployment of telecommunications services, and we conclude that these provisions provide authority to preempt state or local legal action that effectively prohibit the deployment of telecommunications services in the wake of a disaster. We also find that our authority to interpret or act pursuant to Sections 253 and 332 is not limited to natural disasters, and also extends to *force majeure* events generally, including man-made disasters. As the Commission has previously recognized, certain federal regulations may impede restoration efforts, and we are working to address those too—where it is within our authority, we are committed to addressing all legal requirements that stand in the way of prompt restoration of communications infrastructure.

112. We prefer to exercise our authority to address the application of Section 253 to preempt state and local requirements that inhibit network restoration on an expedited adjudicatory case-by-case basis, in which we can take into account the particularized circumstances of the state or local law in question and the impact of the disaster, and other relevant factors, rather than through adoption of a rule.

113. As the City of New York suggests, state and local officials may be well positioned to respond to disasters and implement disaster response protocol and we will be cognizant not to exercise our preemption authority in a manner that could disrupt these efforts. In the wake of Hurricanes Harvey, Irma, and Maria, the Commission worked closely with state and local partners to support restoration of communications networks in affected areas, and going forward, we reiterate

the need for ongoing coordination and cooperation between the Commission and state and local governments to rebuild damaged telecommunications infrastructure as quickly as possible. As the Public Safety and Homeland Security Bureau is responsible for coordinating the Commission's disaster response and recovery activities and is most closely in contact with state, local, and Federal public safety, disaster relief and restoration agencies in such instances, it should work with the Wireline Competition Bureau and Wireless Telecommunications Bureau to report, and provide assistance to, the Commission in its adjudication of such matters.

IV. Final Regulatory Flexibility Analysis

114. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the April 2017 Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (*Wireline Infrastructure Notice*) and into the November 2017 Report and Order and Declaratory Ruling, and Further Notice of Proposed Rulemaking (*Wireline Infrastructure Order*) in this wireline infrastructure proceeding. The Commission sought written public comment on the proposals in the *Wireline Infrastructure Notice* and in the *Wireline Infrastructure Order,* including comment on the IRFAs. The Commission received no comments on the IRFAs. Because the Commission amends its rules in this *Third Report and Order,* the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

115. In the *Wireline Infrastructure Notice,* the Commission continued its efforts to close the digital divide by removing barriers to broadband infrastructure investment. To this end, the Commission proposed numerous regulatory reforms to existing rules and procedures regarding pole attachments.

116. On November 16, 2017, the Commission adopted the *Wireline Infrastructure Order,* which enacted reforms to pole attachment rules that: (1) Bar utility pole owners from charging for certain capital costs that already have been recovered from make-ready fees; (2) set a 180-day shot clock for resolution of pole access complaints; and (3) grant incumbent local exchange carriers (LECs) reciprocal access to infrastructure controlled by other LECs. In the *Further Notice of Proposed Rulemaking,* the Commission sought comment on (1) the treatment of overlashing by utilities; and (2) what actions the Commission can take to facilitate the rebuilding and repairing of broadband infrastructure after natural disasters.

117. Concurrently, the BDAC, a federal advisory committee chartered in 2017, formed five active working groups, as well as an ad hoc committee on rates and fees, to address the issues raised in the *Wireline Infrastructure Notice.* During five public meetings, the BDAC adopted recommendations related to competitive access to broadband infrastructure. These recommendations informed the Commission's policy decisions on pole attachment reform.

118. Pursuant to the objectives set forth in the *Wireline Infrastructure Notice,* this *Third Report and Order and Declaratory Ruling* (*Order*) adopts changes to Commission rules regarding pole attachments. The *Order* adopts changes to the current pole attachment rules that: (1) Allow new attachers to perform all work, not reasonably likely to cause a service outage or facility damage, to prepare poles for new wireline attachments (make-ready work) in the communications space of a pole; (2) adopt a substantially shortened timeline for such application review and make-ready work (OTMR pole attachment timeline); (3) require new attachers to use a utility-approved contractor if a utility makes available a list of qualified contractors authorized to perform simple make-ready work in the communications space; (4) create a more efficient pole attachment timeline for complex and work above the communications space (and for new attachers that chose the non-OTMR timeline for simple work); (5) enhance the new attacher's existing self-help remedy for surveys and make-ready work by extending it to all attachments (both wireless and wireline) above the communications space of a pole; (6) require new attachers to use utility-approved contractors when utilities and existing attachers miss their deadlines and the new attacher elects self-help to complete surveys and make-ready work that is complex or that involves work above the communications space on a pole; (7) require utilities to provide new attachers with detailed, itemized estimates and final invoices for all required make-ready work; (8) codify the Commission's existing precedent that prohibits a pre-approval requirement for overlashing, and adopt a rule that allows utilities to establish reasonable advance notice requirements of up to 15 days for overlashing and holds overlashers responsible for ensuring that their practices and equipment do not cause safety or engineering issues; (9) establish a rebuttable presumption that, for newly-negotiated and newly-renewed pole attachment agreements between LECs and utilities, incumbent LECs will receive comparable pole attachment rates, terms, and conditions as similarly-situated telecommunications carriers or cable television system providing telecommunications services; and (10) establish that new attachers are not responsible for costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent that such poles or third-party equipment were out of compliance prior to the new attachment. The modifications to our pole attachment rules will facilitate deployment to and reduce barriers to access infrastructure by reducing costs and delays typically associated with the pole attachment process. Ultimately, these pole attachment reforms will contribute to increased broadband deployment, decreased costs for consumers, and increased service speeds.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs

119. The Commission did not receive comments addressing the rules and policies proposed in the IRFAs in either the *Wireline Infrastructure Notice* or the *Wireline Infrastructure Order.*

C. Response to Comments by the Chief Counsel for Advocacy of the SBA

120. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

121. 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 final rules adopted pursuant to the *Order.* 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.

122. The changes to our pole attachment rules affect obligations on utilities that own poles and telecommunications carriers and cable television systems that seek to attach equipment to utility poles.

123. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.

124. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

125. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

126. *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 show 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.

127. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 14 of this FRFA. 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.

128. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 14 of this FRFA. 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.

129. *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 for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 14 of this FRFA. 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.

130. *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 14 of this FRFA. 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 the adopted rules.

131. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses 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 14 of this FRFA. 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.

132. *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.

133. *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.

134. *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 clarify 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.

135. *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.

136. *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.

137. *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.

138. *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.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

139. *OTMR Alternative Pole Attachment Process.* The *Order* adopts an OTMR pole attachment alternative to the Commission's existing pole attachment timeline. New attachers may perform all simple make-ready work required to accommodate new wireline attachments in the communications space on a pole. First, any OTMR work will be performed by a utility-approved contractor, although a new attacher can use its own qualified contractor to perform OTMR work when the utility does not provide a list of approved contractors. Second, new attachers must provide advanced notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when OTMR surveys and make-ready work are performed. Third, new attachers must allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work.

140. The *Order* sets forth that the OTMR process begins upon utility receipt of a complete application by a new attacher to attach to its facilities. A complete application is defined as one that provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to begin to survey the affected poles. The *Order* further establishes that a utility has ten business days after receipt of a pole attachment application to determine if the application is complete and notify the attacher of that decision. If the utility notifies the attacher that its application is not complete within the ten business-day review period, then the utility must specify where and how the application is deficient. If the utility provides no response within ten business days, or if the utility rejects the application as incomplete but fails to specify any deficiencies in the application, then the application is deemed complete. If the utility timely notifies the attacher that its application is incomplete and specifies the deficiencies, then a resubmitted application need only supplement the previous application by addressing the issues identified by the utility, and the application will be deemed complete within five business days after its resubmission, unless the utility specifies which deficiencies were not addressed. A new attacher may follow the resubmission procedure as many times as it chooses, so long as in each case it makes a bona fide attempt to correct the issues identified by the utility. A utility must respond to new attachers within 15 days of receiving complete pole attachment application, or within 30 days for larger requests.

141. The *Order* provides that under the OTMR process, it is the responsibility of the new attacher to conduct a survey of the affected poles to determine the make-ready work to be performed. In performing a field inspection as part of any pre-construction survey, the new attacher must permit representatives of the utility and any existing attachers potentially affected by the proposed make-ready work to be present for the survey, using commercially reasonable efforts to provide advance notice of the date, time, and location of the survey of not less than three (3) business days.

142. The *Order* requires that the new attacher ensures that its contractor determines whether the make-ready work identified in the survey is simple or complex, subject to an electric utility's right to reasonably object to the determination. The new attacher—if it wants to use the OTMR process and is eligible to do so based on the survey—must elect OTMR in its pole attachment application and identify in its application the simple make-ready work to be performed. The *Order* requires a utility that wishes to object to a simple make-ready determination to raise such an objection during the 15-day application review period (or within 30 days in the case of larger orders). Any such objection by the utility is final and determinative, so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, provides a good faith explanation of how such evidence and information relate to a determination that the make-ready is not simple. In this case, the work is deemed complex and must follow the existing pole attachment timeline that is modified in this *Order.* If the make-ready work involves a mix of simple and complex work, then the new attacher may elect to bifurcate the work and must submit separate applications for simple and complex work.

143. The *Order* provides that the new attacher can elect to proceed with the necessary simple make-ready work by giving 15 days prior written notice to the utility and all affected existing attachers. The new attacher may provide the required 15-day notice any time after the utility deems its pole attachment application complete. If the new attacher cannot start make-ready work on the date specified in its 15-day notice, then the new attacher must provide 15 days advance notice of its revised make-ready date. The new attacher's notice must provide representatives of the utility and existing attachers: (1) The date and time of the make-ready work, (2) a description of the make-ready work involved, (3) a reasonable opportunity to be present when the make-ready work is being performed, and (4) the name of the contractor chosen by the new attacher to perform the make-ready work. Further, the new attacher must notify the existing attacher immediately if the new attacher's contractor damages another company's or the utility's equipment or causes an outage that is reasonably likely to interrupt the provision of service.

144. Finally, the *Order* requires the new attacher to provide notice to the utility and affected existing attachers within 15 days after OTMR make-ready work is completed on a particular pole. In its post-make-ready notice, the new attacher must provide the utility and existing attachers at least a 90-day period for the inspection of make-ready work performed by the new attacher's contractors. The *Order* requires the utility and the existing attachers to

notify the new attacher of any damage or any code violations caused to their equipment by the new attacher's make-ready work and provide adequate documentation of the damage or violations within 14 days after any post-make ready inspection. The utility or existing attacher can either complete any necessary remedial work and bill the new attacher for reasonable costs to fix the damage or violations, or require the new attacher to fix the damage at its expense within 14 days following notice from the utility or existing attacher.

145. The *Order* also establishes that new attachers must use a utility-approved contractor to perform OTMR if a utility makes available a list of qualified contractors authorized to perform simple make-ready work in the communications space of its poles. New and existing attachers may request that contractors meeting the minimum qualification requirements be added to the utility's list and utilities may not unreasonably withhold consent to add a new contractor to the list. To be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability. If the use of an approved contractor is not required by the utility or no approved contractor is available within a reasonable time period, then the *Order* allows new attachers to use qualified contractors of their choosing to perform simple make-ready work in the communications space of poles. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must clearly communicate the safety or reliability issue, be non-discriminatory, in writing, and publicly available. New attachers must provide the name of their chosen contractor in the three-business-day advance notice for surveys or the 15-day notices sent to utilities and existing attachers in advance of commencing OTMR work. The utility may veto any contractor chosen by the new attacher as long as the veto is based on reasonable safety or reliability concerns related to the contractor's ability to meet one or more of the minimum qualifications or the utility's previously posted safety standards, and the utility identifies at least one qualified contractor available to do the work. When vetoing an attacher's chosen contractor, the utility must identify at least one qualified contractor available to do the work. The utility must exercise its veto within either the three-business-day notice period for surveys or the 15-day notice period for make-ready. The objection by the utility is determinative and final.

146. The utility or new attacher must certify to the utility, within either the three-business-day notice period for surveys or the 15-day notice period for make-ready, that any contractors perform OTMR meet the following minimum requirements: (1) Follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor agrees to follow NESC guidelines; (2) read and follow licensed-engineered pole designs for make-ready work, if required by the utility; (3) follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules; (4) meet or exceed any uniformly applied and reasonable safety record thresholds set by the utility, if made available, *i.e.,* the contractor does not have an unsafe record of significant safety violations or worksite accidents; and (5) be adequately insured or be able to establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must be non-discriminatory, in writing, and publicly-available (*i.e.,* on the utility's website).

147. *Existing Pole Attachment Process Reforms.* The *Order* makes targeted changes to the Commission's existing pole attachment timeline for attachments that are not eligible for the OTMR process and attachers that prefer the existing process. These reforms include revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether application is complete; requiring utilities to provide at least three business days' advance notice of any surveys to the new attacher; establishing a 30-day deadline for all make-ready work in the communications space; streamlining the utility's notice requirements; eliminating the 15-day utility make-ready period for communications space attachments; streamlining the utility's notice requirements; requiring utilities to provide detailed estimates and final invoices to new attachers regarding make-ready costs; enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines; and revising the contractor selection process for a new attacher's self-help work.

148. The *Order* retains the existing requirement that the pole attachment timeline begins upon utility receipt of a complete application to attach facilities to its poles, but revises the definition of a complete application to an application that provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission, to begin to survey the affected poles. The *Order* then adopts the same timeline as set out in the OTMR-process for a utility to determine whether a pole attachment application is complete.

149. The *Order* also requires a utility to permit the new attacher and any existing attachers potentially affected by the new attachment to be present for any pole surveys. The utility must use commercially reasonable efforts to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher, including the date, time, location of the survey, and the name of the contractor performing the survey. The *Order* provides that the utility may meet the survey requirement of our existing timeline by electing to use surveys previously prepared on the poles in question by new attachers.

150. The *Order* amends the existing make-ready timeline by (1) reducing the deadlines for both simple and complex make-ready work from 60 to 30 days (and from 105 to 75 for large requests in the communications space); and (2) eliminating the optional 15-day extension for the utility to complete communications space make-ready work. The *Order* maintains the current make-ready deadline of 90 days (and 135 days for large requests) for make-ready above the communications space. However, for all attachments, the *Order* retains as a safeguard our existing rule allowing utilities to deviate from the make-ready timelines for good and sufficient cause when it is infeasible for the utility to complete make-ready work within the prescribed timeframe. Further, an existing attacher may deviate from the 30-day deadline for complex make-ready in the communications space (or the 75-day deadline in the case of larger orders) for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready by the deadline. An existing

attacher that so deviates must immediately notify, in writing, the new attacher and other affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date, which cannot extend beyond 60 days from the date of the utility make-ready notice to existing attachers (or 105 days in the case of larger orders). The existing attacher cannot deviate from the complex make-ready time limits for a period longer than necessary to complete make-ready on the affected poles. If complex make-ready is not complete within 60 days from the date that the existing attacher sends notice to the new attacher, the new attacher can complete the work using a utility-approved contractor. Existing attachers must act in good faith in obtaining an extension. The *Order* also provides that when a utility provides the required make-ready notice to existing attachers, then it must provide the new attacher with a copy of the notice, plus the contact information of existing attachers to which the notices were sent, and thereafter the new attacher (rather than the utility) must take responsibility for encouraging and coordinating with existing attachers to ensure completion of make-ready work on a timely basis.

151. Expanding upon the Commission's existing make-ready cost estimate requirement for utilities, the *Order* requires a utility to detail all make-ready cost estimates and final invoices on a per-pole basis where requested by the new attacher. Fixed costs that are not necessarily charged on a per-pole basis may be submitted on a per-job basis, rather than a pole-by-pole basis, even where a pole-by-pole estimate or invoice is requested. As part of the detailed estimate, the utility is required to disclose to the new attacher its projected material, labor, and other related costs that form the basis of its estimate, including specifying what, if any costs, the utility is passing through to the new attacher from the utility's use of a third-party contractor. The utility must also provide documentation that is sufficient to determine the basis of all charges in the final invoice, including any material, labor and other related costs. If a utility completes make-ready and the final cost of the work does not differ from the estimate, it is not required to provide the new attacher with the invoice.

152. To increase broadband deployment, the *Order* modifies our existing pole attachment rules by extending a new attacher's self-help remedy for surveys and make-ready work to all attachments above the communications space, including the installation of wireless 5G small cells, when the utility or existing attachers have not met make-ready work deadlines. To address the safety concerns of utilities with regard to self-help work, the *Order* requires that new attachers, when invoking the self-help remedy, (1) use a utility-approved contractor to do the make-ready work; (2) provide no less than three business days advance notice for self-help surveys and five business days advance notice of when self-help make-ready work will be performed and a reasonable opportunity to be present; (3) provide notice to the utility and existing attachers no later than 15 days after make-ready is complete on a particular pole so that they have an opportunity to inspect the make-ready work. The advance notice must include the date and time of the work, nature of the work, and the name of the contractor being used by the new attacher. The new attacher is required to provide immediate notice to the affected utility and existing attachers if the new attacher's contractor damages equipment or causes an outage that is reasonably likely to interrupt the provision of service.

153. The *Order* adopts a contractor selection process for self-help that requires a new attacher electing self-help for simple work in the communications space to select a contractor from a utility-maintained list of qualified contractors that meet the same safety and reliability criteria as contractors authorized to perform OTMR work, where such a list is available. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualification requirements and the utility may not unreasonably withhold consent. If no list is available or no approved contractor is available within a reasonable time period, the new attacher must select a contractor that meets the same safety and reliability criteria as contractors authorized to perform OTMR work and any additional non-discriminatory, written, and publicly-available criteria relating to safety and reliability that the utility specifies. The utility may veto the new attacher's contractor selection so long as such veto is prompt, set forth in writing that describes the reasonable basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety and reliability. Additionally, the utility must offer another available, qualified contractor. For complex work and work above the communications space, the *Order* requires (1) the utility to make available and keep up-to-date reasonably sufficient list of contractors it authorizes to perform complex and non-communications space self-help surveys and make-ready work; and (2) the new attacher to choose a contractor from the utility's list. New and existing attachers may request that qualified contractors be added to the utility's list and that the utility may not unreasonably withhold its consent for such additions. A utility's decision to withhold consent must be prompt, set forth in writing that describes the reasonable basis for the rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety.

154. *Additional Pole Attachment Reforms.* The *Order* codifies the Commission's existing precedent that prohibits a pre-approval requirement for overlashing. In addition, the *Order* adopts a rule on overlashing that allows utilities to establish a reasonable 15-day advance notice requirement, and holds overlashers responsible for ensuring that their practices and equipment do not cause safety or engineering issues. If after receiving advance notice, a utility determines that an overlash create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the 15 day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. The *Order* also provides that a utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash. The *Order* also includes a post-overlashing review process where an overlashing party is required to notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice must provide the affected utility 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage to its equipment caused by the overlash. It the utility discovers damage caused by the overlash on equipment belonging to the utility, then the utility must inform the overlashing party and provide adequate documentation of the damage. The *Order* sets forth that the utility may either (A) complete any necessary remedial work and bill the overlashing party for the reasonable

costs related to fixing the damage, or (B) require the overlashing party to fix the damage at its expense within 14 days following notice from the utility.

155. The *Order* provides that a utility may not prevent an attacher from overlashing because another attacher has not fixed a preexisting violation or require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher. The *Order* sets forth that new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment. Further, utilities may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation. They also cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation. The *Order* also establishes a presumption that, for newly-negotiated and newly renewed pole attachment agreements between incumbent LECs and utilities, an incumbent LEC will receive comparable pole attachment rates, terms, and conditions as a similarly-situated telecommunications carrier or telecommunications attacher, unless the utility can rebut the presumption with clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement with the utility, that materially advantage the incumbent LEC over other telecommunications attachers. If the presumption is rebutted, the pre-*2011 Pole Attachment Order* telecommunications carrier rate is the maximum rate that the utility and incumbent LEC may negotiate.

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

156. In this *Order,* the Commission modifies its pole attachment rules to improve the efficiency and transparency of the pole attachment process, as well as to increase access to infrastructure for certain types of broadband providers. Overall, we believe the actions in this document will reduce burdens on the affected carriers, including any small entities.

157. The *Order* also finds that adopting the OTMR process will reduce delays and costs for new attachers, enhance competition, improve public safety and reliability of networks, and accelerate broadband buildout. As detailed in the *Order,* the Commission rejects alternative proposals, such as ''right-touch, make-ready'' and NCTA's ''ASAP'' proposal—which merely modify the current framework. These approaches diffuse responsibility among parties that lack the new attacher's incentive to ensure that the work is done quickly, cost effectively, and properly. Further, these proposals fail to address the existing problems created by sequential make-ready, such as numerous separate climbs and construction stoppages in the public-rights-of-way.

158. As described in the *Order,* applying targeted changes to the existing pole attachment process, such as a more efficient pole attachment timeline, detailed and itemized estimates and final invoices on a per-pole basis, and an enhanced self-help remedy, will increase broadband deployment by reducing the number of unreasonable delays, and encouraging transparency and collaboration between all interested parties at an early stage in the pole attachment process. The *Order* also concluded that codifying the Commission's existing precedent prohibiting a pre-approval requirement for overlashing, and adopting a rule allowing utilities to require advance notice of overlashing will eliminate the industry uncertainty that currently exists regarding overlashing, a practice that is essential to broadband deployment. In addition, by eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers, the *Order* sought to increase incumbent LEC access to infrastructure by addressing the bargaining disparity between utilities and incumbent LECs.

G. Report to Congress

159. The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Procedural Matters

160. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this *Third Report and Order.* The FRFA is contained in Section IV above.

161. *Paperwork Reduction Act.* The *Third Report and Order* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, 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 the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

162. In this document, we have assessed the effects of reforming our pole attachment regulations and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

163. *Congressional Review Act.* The Commission will send a copy of the *Third Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

164. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 201, 224, 253, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 224, 253, 303(r), and 332, and Section 5(e) of the Administrative Procedure Act, 5 U.S.C. 554(e), this *Third Report and Order and Declaratory Ruling is adopted*.

165. *It is further ordered* that Part 1 of the Commission's rules *is amended* as set forth below.

166. *It is further ordered* that this *Third Report and Order shall be* effective 30 days after publication in the **Federal Register**, except for Sections III.A–E of this *Third Report and Order,* which will be effective on the latter of six months after release of this *Third Report and Order* or 30 days after the announcement in the **Federal Register** of Office of Management and Budget (OMB) approval of information collection requirements modified in this *Third Report and Order.* OMB approval is necessary for the information collection requirements in 47 CFR 1.1411(c)(1) and (3), (d) introductory text and (d)(3), (e)(3), (h)(2) and (3), (i)(1) and (2), (j)(1) through (5), 1.1412(a) and (b), 1.1413(b), and 1.1415(b).

167. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Pole attachment complaint procedures, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Amend § 1.1402 by adding paragraphs (o) through (r) to read as follows:

§ 1.1402 Definitions.

* * * * *

(o) The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(p) The term *complex make-ready* means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

(q) The term *simple make-ready* means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(r) The term *communications space* means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

■ 3. Amend § 1.1403 by revising paragraphs (c) introductory text and (c)(3) to read as follows:

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

* * * * *

(c) A utility shall provide a cable television system or telecommunications carrier no less than 60 days written notice prior to:

* * * * *

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

* * * * *

■ 4. Amend § 1.1411 by:
■ a. Revising paragraphs (a), (c), and (d) introductory text and (d)(2);
■ b. Adding paragraphs (d)(3) and (4);
■ c. Revising paragraphs (e)(1) and (2);
■ d. Adding paragraph (e)(3);
■ e. Revising paragraphs (f), (g)(1), (g)(4) and (5), (h), and (i); and
■ f. Adding paragraph (j).

The revisions and additions read as follows:

§ 1.1411 Timeline for access to utility poles.

(a) *Definitions.*

(1) The term ''attachment'' means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.

(2) The term ''new attacher'' means a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

(3) The term ''existing attacher'' means any entity with equipment on a utility pole.

* * * * *

(c) *Application review and survey*—(1) *Application completeness.* A utility shall review a new attacher's attachment application for completeness before reviewing the application on its merits. A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.

(i) A utility shall determine within 10 business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

(ii) Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with § 1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(3) *Survey.* (i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section).

(ii) A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey.

(iii) Where a new attacher has conducted a survey pursuant to

paragraph (j)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (j)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (c)(3)(i) of this section. A utility relying on a survey conducted pursuant to paragraph (j)(3) of this section to satisfy all of its obligations under paragraph (c)(3)(i) of this section shall have 15 days to make such a notification to affected attachers rather than a 45 day survey period.

(d) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by paragraph (c) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

* * * * *

(2) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(3) Final invoice: After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

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

(e) * * *

(1) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

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

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

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

(v) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(2) For attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility may assert its right to 15 additional days to complete make-ready.

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) of this section.

(vi) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

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

(f) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (e)(1)(ii) of this section or its make-ready above the communications space by the same dates for existing attachers in paragraph (e)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(g) * * *

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

* * * * *

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(h) *Deviation from the time limits specified in this section.* (1) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

(2) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.

(3) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (e)(1) of this section is sent by the utility (or up to 105 days in the case of larger orders described in paragraph (g) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

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

(i) A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

(ii) A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

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

(i) A new attacher shall permit the affected utility and existing attachers to be present for any make-ready. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(iii) A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

(3) *Pole replacements.* Self-help shall not be available for pole replacements.

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

(1) *Attachment application.* (i) A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

(ii) The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

(A) A utility has 10 business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

(B) If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

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

(i) If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, 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.

(ii) Within the 15-day application review period (or within 30 days in the case of larger orders as described in paragraph (g) of this section), a utility

may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(3) *Surveys.* The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in § 1.1412(b).

(i) The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(ii) [Reserved].

(4) *Make-ready.* If the new attacher's attachment application is approved and if it has provided 15 days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in § 1.1412(b).

(i) The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(iii) In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by paragraphs (d) through (i) of this section and the utility shall provide the notice required by paragraph (e) of this section as soon as reasonably practicable.

(5) *Post-make-ready timeline.* A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

■ 5. Amend § 1.1412 by revising paragraphs (a), (b), and (c) to read as follows:

§ 1.1412 Contractors for surveys and make-ready.

(a) *Contractors for self-help complex and above the communications space make-ready.* A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section and the utility may not unreasonably withhold its consent.

(b) *Contractors for simple work.* A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section and the utility may not unreasonably withhold its consent.

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

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

(c) *Contractor minimum qualification requirements.* Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to paragraph (b)(1) of this section, meet the following minimum requirements:

(1) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(2) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

(3) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and

Safety Health Administration (OSHA) rules;

(4) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

(5) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

* * * * *

■ 6. Revise § 1.1413 to read as follows:

§ 1.1413 Complaints by incumbent local exchange carriers.

(a) A complaint 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 it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a local exchange carrier or that a utility's 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.

(b) In complaint proceedings challenging utility pole attachment rates, terms, and conditions for pole attachment contracts entered into or renewed after the effective date of this section, there is a 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 providing telecommunications services for purposes of obtaining comparable rates, terms, or conditions. In such complaint proceedings challenging pole attachment rates, there is a presumption 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 § 1.1406(e)(2). A utility can rebut either or both of the two presumptions in this paragraph (b) with clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems providing telecommunications services on the same poles.

■ 7. Add § 1.1415 to read as follows:

§ 1.1415 Overlashing.

(a) *Prior approval.* A utility shall not require prior approval for:

(1) An existing attacher that overlashes its existing wires on a pole; or

(2) For third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.

(b) *Preexisting violations.* A utility may not prevent an attacher from overlashing because another existing attacher has not fixed a preexisting violation. A utility may not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher.

(c) *Advance notice.* A utility may require no more than 15 days' advance notice of planned overlashing. If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the 15 day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. A utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash.

(d) *Overlashers' responsibility.* A party that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party is responsible at its expense for any necessary repairs.

(e) *Post-overlashing review.* An overlashing party shall notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations or require the overlashing party to fix the damage or code violations at its expense within 14 days following notice from the utility.

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