BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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

INITIAL COMMENTS IN RESPONSE TO THE FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

Filed by:

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EXECUTIVE SUMMARY

- **The Commission should not impose a deadline for onboarding engineering and construction contractors for power space make-ready.** These are the contractors who perform design and construction work in the power supply space. The safety and reliability concerns implicated by this issue are significant. The onboarding process includes vetting the new contractor, executing a contract, administrative onboarding (i.e., credentialing for access to internal systems), and training. These processes can—and often do—take more than a year to complete. Some aspects of the timing depend on factors outside the utility's control (such as the length of the contract negotiation and the speed at which the contractor returns information to the utility). Any effort to short-cut the onboarding process risks the lives of those performing work on the poles as well as the reliable distribution of power to electric customers.

- **The Commission should adopt the Enhanced OTMR proposal.** Under Enhanced OTMR a new attacher would be required to perform all communications space make-ready (simple and complex) in the same "touch" as it installs its new facilities. Enhanced OTMR would eliminate delays caused by dilatory (and potentially anti-competitive) existing attachers. It would also give the new attacher more control over—and responsibility for—its deployment, which seems to be the overarching theme of the Commission's progressively more prescriptive access rules. The objections to Enhanced OTMR raised by existing attachers are predictable: **everybody** wants fast deployment when they are deploying; **nobody** wants fast deployment once they are deployed. This territorial approach inhibits efficiencies and thwarts the Commission's broadband deployment objectives.

- **The Commission should decline to disrupt the status quo with respect to make-ready payments.** The Commission correctly notes the burdens placed on utilities when attachers fail to pay make-ready estimates in a timely manner. However, this is an issue best addressed in pole license agreements between attachers and pole owners in which the parties can agree that an estimate is withdrawn or an application is cancelled if an estimate is not paid within a particular period of time. Further, utilities must be permitted to continue requiring prepayment for make-ready costs. A payment schedule for make-ready would paralyze an already complicated construction process and lead to significant unrecovered incremental costs. Nothing has changed since 2011 when the Commission rejected a similar proposal. In the same vein, the Commission should decline to implement a cost-ceiling for make-ready construction costs. Make-ready construction costs sometimes exceed the estimated costs for numerous reasons outside utilities' control—such as fluctuating labor and materials costs—and should not be borne by electric utility customers. Moreover, a prohibition on recovering actual costs expended in the make-ready process is a clear violation of Section 224(d)(1), which guarantees a pole owner the recovery of incremental costs associated with pole attachments.

- **The Commission should restrain from attempting to regulate streetlight attachments.** This is a legal and practical minefield. The Commission should take the same approach it took in response to CTIA's 2019 petition for declaratory ruling: avoid it. The legislative history of the Pole Attachments Act as well as subsequent judicial construction make clear that streetlights are not within the scope of "distribution facilities" that Congress intended

for the Commission to regulate. Unlike distribution poles, lighting structures are not part of an aerial network; instead, they are stand-alone assets installed at the specific request of a particular customer. But even if the Commission has jurisdiction to regulate streetlights, it should forbear from regulating. The need for streetlight collocation follows the need for network densification, which is most frequently in downtown or city centers. Converting a decorative streetlight into a miniature cell tower in a downtown or city center requires a level of innovation, cooperation and collaboration—amongst multiple stakeholders—that regulation can only stifle.

- **The Commission should clarify its pre-existing violation rules.** The Commission's pre-existing violation rules, adopted in the 2018 Pole Attachments Order, have created far more cost allocation disputes than they have resolved. Attaching entities, presumably as a matter of posturing rather than intellectual honesty, take the position that, where there is a preexisting violation (1) they are absolved of all make-ready cost responsibility; and (2) they are entitled to immediate access (i.e., the Rule 1.1411 timelines are inapplicable). The Commission can reduce disputes and expedite deployment by addressing these issues in a way that fairly allocates cost in accordance with the Commission's long-standing cost allocation rules, including but not limited to Rule 1.1408(b).

- **The Commission should restore advance notice and good faith negotiation requirements to large deployments.** All stakeholders agree that the primary impediment to broadband deployment is resource availability. As such, implementing strict prescriptive timelines is counterproductive because they discourage attachers from coordinating with utilities regarding the resources necessary to complete their deployments before flooding the utilities' application systems. The Commission should remedy this problem by eliminating the timelines for applications for greater than 3,000 poles during any 30-day period and introducing a requirement that attachers provide meaningful advance notice prior to submitting applications for greater than 300 poles during any 30-day period.

- Prescriptive rules have **not** resulted in more efficient deployment. Instead, they have resulted in more disputes. The Electric Utilities respectfully request that the Commission encourage (or even require) collaboration on solutions to complicated problems that are becoming increasingly **more** complicated. The Electric Utilities look forward to further engagement with the Commission on these important issues.

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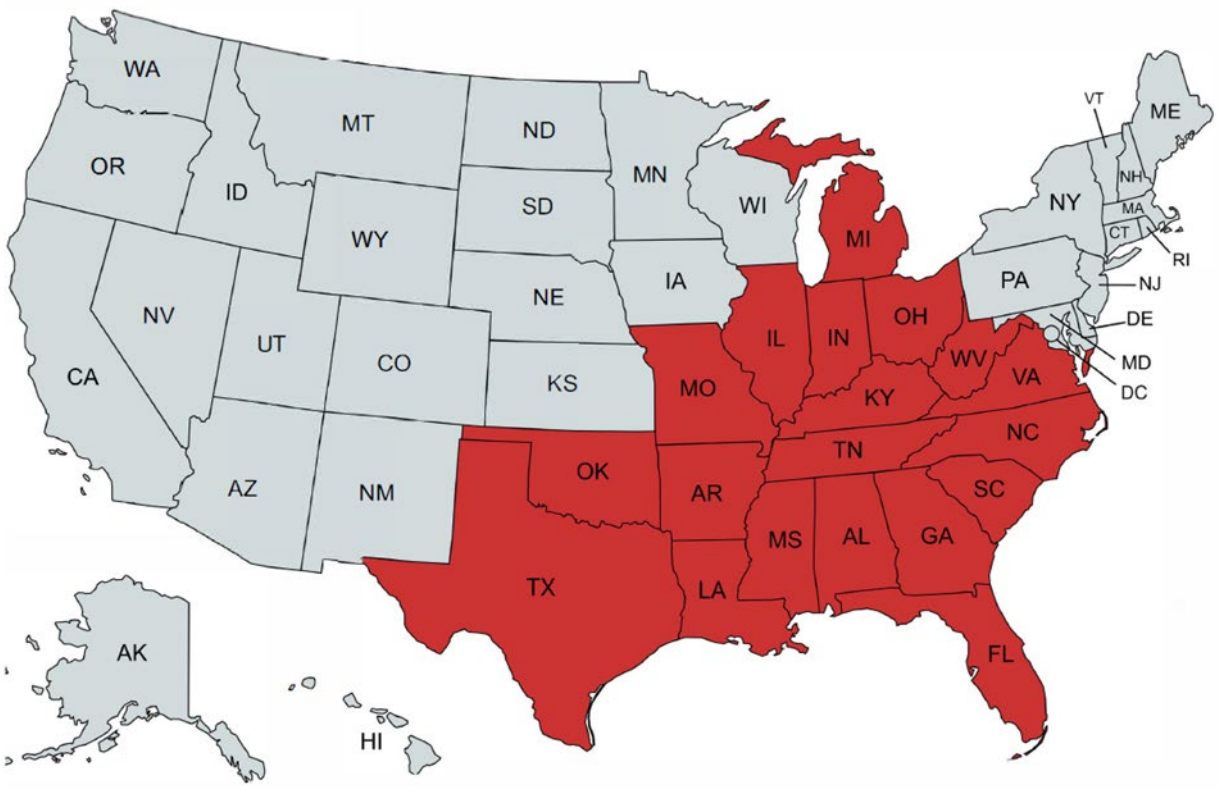
INITIAL COMMENTS OF THE ELECTRIC UTILITIES IN RESPONSE TO THE FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

Southern Company, Oncor Electric Delivery Company LLC, Entergy Corporation, Duke Energy Corporation, American Electric Power Service Corporation and Ameren Services Company (collectively, the "Electric Utilities") respectfully submit the following comments in response to the Fourth Further Notice of Proposed Rulemaking ("Fourth FNPRM") in the above-referenced docket.[1]

INTRODUCTION

The Electric Utilities, either directly or through their operating company subsidiaries and affiliates, provide electric service to customers in nineteen states across the Southeast, Midwest and Texas. These service areas include densely populated major cities, as well as sparsely populated rural areas. The Electric Utilities collectively own and maintain more than 18 million distribution poles, most of which host third-party attachments.

[1] Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, at ¶¶ 51-103 (released July 25, 2025); Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, 90 Fed. Reg. 161 (Aug. 22, 2025).



Twelve of the states served by the Electric Utilities are among the 27 states in which pole attachments are currently regulated by the Commission.[2]

Southern Company is an electric utility holding company. Through three retail operating companies—Alabama Power Company, Georgia Power Company and Mississippi Power Company—Southern Company supplies energy to more than 4.68 million customers with 172,000 miles of power lines and a service territory spanning most of Georgia, Alabama and southeastern

[2] *See States that Have Certified that They Regulate Pole Attachments*, Public Notice, WC Docket No. 10-101 (June 13, 2022). The 12 states referenced above include Illinois, a reverse preempted state with respect to which the Commission currently exercises jurisdiction over telecommunications attachments to electric utility poles. *See In the Matter of Crown Castle Fiber LLC, Complainant v. Commonwealth Edison Company, Defendant*, Order, Docket Nos. 19-169 and 19-170, 34 FCC Rcd 5959, 5960-61 at ¶ 5 (Jul. 15, 2019).

Mississippi. The Southern Company operating companies collectively own more than 3 million electric distribution poles.

Oncor Electric Delivery Company LLC ("Oncor") is an electric utility serving more than 400 cities and 91 counties in Texas—nearly one-third of the state's geographic area and in the country's highest-growth region in electric demand, according to the North American Electric Reliability Council. Oncor's current service area includes the Dallas-Fort Worth metro area, as well as Midland/Odessa, North Austin, Round Rock, Killeen, Waco, Wichita Falls and Tyler. Oncor owns more than 2 million electric distribution poles, delivering power to more than 3.6 million homes and businesses (covering approximately 10 million Texans), and operates more than 139,000 miles of transmission and distribution lines in Texas.

Entergy Corporation ("Entergy") is an electric utility holding company. Through its operating company subsidiaries—Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, Inc., and Entergy Texas, Inc.—Entergy owns more than 2 million electric distribution poles. Entergy's operating companies provide electric service to 2.9 million customers over a 94,000 square mile service area in Arkansas, Louisiana, Mississippi and southeastern Texas.

Duke Energy Corporation ("Duke Energy") is an electric power holding company. Through its operating company subsidiaries—Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC and Duke Energy Ohio, Inc.—Duke Energy owns approximately 6 million electric distribution poles. Duke Energy provides electric service to 7.45 million customers across a 95,000 square mile footprint in Florida, Indiana, Kentucky, North Carolina, Ohio, and South Carolina.

American Electric Power Service Corporation ("AEP Service Corp.") is a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"). AEP Service Corp. supplies administrative and technical support services to AEP and its subsidiaries. AEP is one of the largest investor-owned electric utilities in the United States with more than 5 million customers linked to its electricity transmission and distribution grid covering 197,500 square miles. AEP, through its operating company subsidiaries, owns and operates 4.9 million electric distribution poles in eleven states across the Midwest and Southeast: Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia.

Ameren Services Company is a wholly owned subsidiary of Ameren Corporation ("Ameren"). Ameren Services Company provides administrative and technical services to Ameren and its subsidiaries, including its operating company subsidiaries—Ameren Illinois Company d/b/a Ameren Illinois and Union Electric Company d/b/a Ameren Missouri. Ameren Illinois and Ameren Missouri collectively own more than 2.1 million utility poles in Illinois and Missouri. Ameren's operating companies provide electric power service to more than 2.3 million customers throughout a 64,000 square mile service territory in Missouri and Illinois.

COMMENTS

I. THE COMMISSION SHOULD NOT IMPOSE A STRICT DEADLINE FOR THE CONTRACTOR ONBOARDING PROCESS.

The safety and reliability of an electric distribution system is only as good as the people designing and building it. For this reason, the Electric Utilities exercise great caution in the hiring and training of their own employees. This caution carries over to the process for approving and onboarding new contractors for performing work on the distribution system. This is true whether the work is related to core business or whether the work is engineering or make-ready to accommodate third-party attachments. The Commission appears to recognize the importance of "gatekeeping" for contractors as it states, "We understand that utilities must ensure that the individuals working on their poles are properly trained, have access to their internal systems, and do not present a safety or security threat."[3] However, ensuring that such individuals are properly qualified and trained takes time; cutting corners in the name of faster broadband deployment is not a legitimate (or even productive) option. Therefore, the Commission should not curtail the necessary processes for safety and reliability by imposing an onboarding deadline.

The questions raised in this portion of the Fourth FNPRM, and the submissions by attaching entities to which the Fourth FNPRM cites, include several concerning—and potentially dangerous—inaccuracies and false assumptions. The Electric Utilities urge the Commission to ensure that pole owners have sufficient time to perform the processes necessary to ensure that workers performing electric supply space engineering and construction work are adequately qualified and trained. Failure to do so could have dire consequences, including electric outages, injuries, and even deaths. Adoption of an aggressive deadline for new contractor onboarding will

[3] Fourth FNPRM at ¶ 61.

force utilities to simply deny proposed new contractors where the utility cannot safely onboard the contractor within the deadline. This will lead to more disputes at the Commission—not to faster broadband deployment.

To be clear, the Electric Utilities' concerns relate to contractors performing surveys, make-ready engineering, and make-ready construction in the electric supply space on their poles; the availability of contractors for communication space make-ready is not the issue. From the Electric Utilities' perspective, any qualified contractor will suffice for performance of communications space make-ready or installation work, and the Electric Utilities do not seek to control that process. What matters to the Electric Utilities (and where the Electric Utilities see a scarcity of resources driving demand for additional contractors) is: (1) the survey/engineering on a pole with electric facilities; and (2) make-ready work in the power supply space.

A. When It Comes to Approved Contractors, an Ounce of Prevention is Worth a Pound of Cure.

The Commission has invited comments on whether Rule 1.1412 should be revised to establish a deadline for the utilities' contractor on-boarding, due to its concern that "an excessively long on-boarding process could effectively thwart the goals of the self-help remedy."[4] The Commission writes:

> Some utilities suggest, however, that the process to on-board a newly approved contractor can take three months to a year or more. That is little help to an attacher than has invoked its right to self-help under our rules because a utility has missed its survey or make-ready deadlines.[5]

While the Electric Utilities support the goal of ensuring that self-help is available to attachers, there are alternative means of accomplishing that goal. Rather than seeking to rush a process that

[4] Fourth FNPRM at ¶ 61.
[5] *Id.*

is critical to electric reliability, worker safety, and public safety, the timeline for approving and onboarding new contractors can be improved through advance planning by new attachers.

In their comments to the Third FNPRM, the Electric Utilities proposed the requirement of a 60-day advance notice prior to submitting applications for more than 300 poles in any 30-day period. They did so because such planning would allow both utilities and attachers to secure the resources necessary to successfully and timely complete the deployment. The same logic applies here. Rather than attempting to rush electric utilities through the onboarding process, the solution is to identify the need for additional contractors earlier in the process. But this can only occur if attaching entities are coming to electric utilities with their plans well in advance of submitting high-volume applications. The Commission's current rules, unfortunately, neither require nor incentivize this behavior. Instead, the current rules allow an attaching entity to dump applications for 3,000 poles on an electric utility with virtually no advance notice. Even the 60-day notice requirement for application volume between 3,001-6,000 poles does little to enable the approval and onboarding of new contractors. As with many other challenges surrounding large deployments, an ounce of prevention is worth a pound of cure.

B. The Onboarding Process Involves Four Steps: Vetting the New Contractor; Entering into a Contract; Administrative Onboarding; and Training.

Onboarding new contractors can take over a year to achieve. The following chart sets forth the four stages of the new contractor onboarding process, and the average time it takes each of the Electric Utilities to complete that stage:

	Vetting	Entering into Contract	Administrative Onboarding	Training	Total Average
Ameren[6]	2 Months	3-5 Months	2 Months	2 Months	9-11 Months
AEP	2-4 Months	3-6 Months	1-3 Months	2 Weeks (survey crews) to 6 months (engineering and construction crews)	6.5-19 Months
Duke Energy	2-4 Months	3-6 Months	3-6 Months	4 Months	12-20 Months
Entergy	2 Months	3-6 Months	1-2 Months (requesting access and gaining approval to programs)	1-6 Months (field inspection and engineering)	7-16 Months
Oncor	2 Months	3 Months (but can take up to 12 months depending on number and materiality of redlines by contractor)	1-3 Months	Not Applicable[7]	6-17 Months
Southern Company	1-2 Months	3-4 Months	2-4 Months	1-2 Weeks training in Job Estimation Tracking System; 6-12 months in job training	6.25-10.5 Months
Total Average:	2-2.6 Months	4 Months	2.5 Months	2.65 Months	7.8-15.6 Months

[6] Data is from Ameren Missouri only.
[7] Oncor relies on contractors to train their own employees.

1. Vetting the New Contractor.

The first step in the onboarding process is to vet the new contractor. This must occur **before** the utility begins negotiating a contract with that contractor. Otherwise, the utility could end up wasting time and legal fees to negotiate a contract with a contractor that ultimately does not meet the utility's safety or performance standards. The new 30-day "approval" period does not contemplate any of the serious vetting that occurs during the onboarding process. As new Rule 1.1412(e) states:

> (e) Utilities must respond to an attacher's request to add contractors to their lists of contractors authorized to perform self-help surveys, estimates, and make-ready, as provided by paragraphs (a) and (b) of this section, within 30 days of receipt.
>
> **(1)** The response must state whether the contractor meets the requirements of paragraph (c) of this section and will be added to the utility's list of approved contractors for survey, estimate, and make-ready work pursuant to paragraph (a) or (b) of this section following the successful completion of any reasonable steps to begin work established by the utility. **For contractors proposed to perform work above the communications space, such reasonable steps may include any evaluation, approval, orientation, or other requirements that the utility would ordinarily apply to contractors that perform work on its electric power system.**[8]

In essence, the Commission's new 30-day approval rule simply means that if a contractor is willing to state that it meets the Rule 1.1412(c)'s minimum requirements, then the utility must "approve" the contractor in 30 days. However, just because a contractor represents that it meets the Commission's minimum requirements does not mean that the contractor actually meets those

[8] *See also* Fourth FNPRM at ¶ 46 (emphasis added) ("The response we require merely requires the utilities to review information submitted by attachers to determine if the proposed contractor has made the representations required by section 1.1412(c) of the Commission's rules. We acknowledge that utilities thereafter may need to take steps to on-board and train the contractors to perform work on their poles, and that the contractor will not be added to the utility's approved list until that process is complete.").

requirements. An electric utility cannot just take a new contractor's word for it. The electric utility must vet the contractor itself to ensure that the contractor is qualified to work on the utility's poles.

The Electric Utilities' vetting processes are extensive and often take more than 30 days to complete. For example, Duke Energy's vetting process for a new contractor can take 2-4 months depending upon various factors, and involves the following:

- Reviewing safety statistics;
- Evaluating the contractor's Experience Modification Rate or "EMR" (a safety-performance benchmark);
- Reviewing any OSHA citations;
- Reviewing any EPA citations;
- Duke Energy requires compliance with the national regulatory framework of the Mine Safety and Health Administration ("MSHA"), and therefore reviews written explanation of any citations, fines assessed, and final resolution; and,
- Reviewing of technical skills and qualifications including a detailed description of how skills and qualifications were verified;

In addition to the foregoing, Duke Energy's internal Enterprise IT Security group performs a Third-Party Risk Assessment ("TPRA") to ensure the new contractor has adequate security measures to prevent unauthorized sharing or misuse of proprietary information. The TPRA process during the vetting stage takes a minimum of 90 days. AEP follows a process very similar to the one illustrated here.

The inherent danger associated with the work being performed by approved contractors—and the corresponding need for thorough vetting—is highlighted by a recent incident that occurred on Duke Energy's system where a contractor was pulling a stub pole that had been replaced with a new pole to which all preexisting attachments had already been transferred. Pulling the bare pole was considered at the time to be a low-risk activity. However, in the process of pulling the pole, the contractor lost control of the pole, which fell into Duke Energy's energized electric wires, and

caused a life-altering injury to one of the contractor's employees. Incidents like this happen even **with** thorough vetting. Without thorough vetting, such incidents will increase in frequency and severity.

2. Entering into a Contract with the New Approved Contractor.

The second step for onboarding a new approved contractor is the electric utility entering into a contract with the new contractor. The Commission asks: "is it necessary for a utility to also enter into an agreement with the proposed contractor to ensure it retains the control necessary to ensure that work performed on its poles does not create safety and reliability hazards?[9] The short answer is as follows: when an approved contractor will be performing self-help surveys, self-help engineering, or self-help make-ready in the power supply space on the Electric Utilities' poles, **the new contractor must be in direct contractual privity with the pole owner**. Every contractor that works in the power space on the Electric Utilities' distribution poles has a contract with the respective pole owner. That direct contractual privity is necessary to enforce the Electric Utilities' construction standards, other operational requirements (such as, for example, lockout-tag-out procedures for when electric lines must be de-energized for certain make-ready events), and to provide other contractual protections such as indemnity and insurance. The attaching entities would have the Commission believe that indemnity provisions within pole license agreements are sufficient protection against the concerns of electric utilities.[10] Indemnity provisions, though, are

[9] Fourth FNPRM at ¶ 63.

[10] *See* Fourth FNPRM at footnote 263 (quoting NCTA Apr. 23, 2025 *Ex Parte* Letter at 2 ("Not only are attaching entities equally vested in ensuring that their contractors' work conforms to governing safety standards and technical specifications, attaching entities are contractually obligated to ensure that they do so in accordance with the terms of their pole attachment agreements, which require attachers to indemnify pole owners against any claims related to their contractors' work.")); (NCTA May 9, 2025 *Ex Parte* Letter at 3 ("[I]t is not necessary for pole owners to enter into separate contracts with the contractors on their list of authorized contractors . . . . The pole owner is protected against any damage or injury resulting from the contractors work on the poles under the attacher's pole agreement with the pole owner.")).

risk **allocation** provisions; they are not risk **mitigation** provisions. The Electric Utilities are most interested in **preventing** such injuries, outages, or even fatalities from occurring in the first place. To the extent this can be addressed at all through contract, it can only be addressed through direct contractual privity with the contractor.

Attaching entities struggle to vet and manage even their own contractors in the communications space; the struggle would be worse with contractors in the power supply space. For example, a cable company's contractor was recently injured while working in the communications space on a pole owned by Alabama Power. The cable company had submitted applications for a project, but when Alabama Power identified certain poles as requiring replacement, the cable company withdrew those poles from the application (presumably to avoid the time and expense associated with pole replacements). One of those poles had been identified for replacement due to deterioration. Nevertheless, the contractor proceeded to install facilities on this pole (which had been withdrawn from the application by the cable company). The pole fell while the contractor was working on it, resulting in injuries requiring hospitalization. Injury and death are not the only potential consequences of attaching entities failing to follow codes and standards—power outages can also result. For example, a cable company working on Duke Energy's system within the past year strung its messenger strand so tight between Duke Energy's poles that it pulled the poles down and caused a power outage affecting 150 customers and lasting for 171 minutes.

The Commission asks, "Do utilities use form contracts that could be executed in a few weeks versus a few months?... If it really takes months to negotiate and execute agreements with newly approved contractors, why is that the case?"[11] Although the Electric Utilities have template

[11] Fourth FNPRM at ¶ 63.

services agreements that they provide to new contractors for review, many contractors do not agree to the template as written; instead, the new contractor attempts to negotiate different terms. The electric utility must then respond to the contractor's proposed edits. This iterative process requires input from the relevant stakeholders at the utility as well as its legal counsel. The amount of time this process takes depends on the responsiveness of the contractor in turning around changes during the negotiation process, the eagerness of the contractor is to work on the utility's system, and the contractor's commitment to securing its preferred terms and conditions. If the contractor makes no changes to the template, it can be signed quickly; however, if it the contractor proposes extensive changes to the template, it can take six months or more to finalize the agreement.

In addition, for some of the Electric Utilities, it is not only a master services agreement that must be negotiated, but also a scope of work specific to the work to be performed. As stated in the Electric Utilities' Initial Comments with respect to Alabama Power's process:

> If the contractor passes the vetting process, Supply Chain Management works with the contractor to establish a master service agreement. Once a master service agreement is in place, Alabama Power's Joint Use and Contract Services departments will identify the scope of the contractor's work (e.g., survey and make-ready engineering) and then negotiate the rates, terms and conditions for that scope of work with the contractor. After an agreement is reached, Supply Chain Management will finalize the contract. This phase can take, at a minimum, between 3 and 4 months.[12]

3. Administrative Onboarding into Utility's Systems.

The third phase of onboarding involves the administrative steps necessary to integrate the approved contractors into the electric utility's various systems. In their Initial Comments in response to the Third FNPRM, the Electric Utilities provided the following examples from AEP

[12] Electric Utilities Initial Comments at 11-12, on Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, at ¶ ¶ 52-59 (released Dec. 15, 2023) ("Third FNPRM").

and Alabama Power regarding the tasks performed during this stage of the onboarding process and the time required to perform those tasks:

> [The administrative onboarding phase], which takes between 1 and 3 months, involves onboarding the new contractor's employees into AEP's systems. In particular, the employees of the contractor who will be working on AEP's poles are vetted by AEP (i.e., background checks, credential validation, etc.) and assigned AEP email addresses and user IDs, which are required to access AEP software systems.
> ….
> The [administrative onboarding] step of this process [involves] performing background checks and drug-screenings on these employees. If the employees pass this step, they will then be entered into Alabama Power's HR system and issued email addresses, which are necessary to access Alabama Power's software systems. Finally, the employees will be granted access to internal software systems relevant to their scope of work (e.g., Joint Use Management System, Distribution Graphical Information System, Job Estimation Tracking System). [This] phase typically takes between 2 and 4 months.[13]

These steps take time and, for logistical reasons, cannot be performed in mere weeks.

Notably, the utility needs inputs from each of the contractors' employees to move this process forward. Oftentimes the utility finds itself waiting on the approval of each employee to begin conducting the background checks, the verification and validation of credentials, drug screening, and the other necessary steps involved. Moreover, for Alabama Power, background checks and drug screens must be performed by designated external vendors; simply setting up a drug screen at an approved location can be a time-consuming process. Drug screens cannot be accepted from the contractor's employer because the varying drug laws in the states means that an employee who may pass a drug screen in one state may not meet Alabama Power's standards. Further complicating matters, the Joint Use team cannot simply add contractors and grant access to Alabama Power's systems on their own; Alabama Power's Human Resources department ultimately processes the Joint Use team's request and manages much of the final approval process,

[13] Initial Comments of the Electric Utilities at 11, Third FNPRM.

such as reviewing background checks and drug screens. Unsurprisingly, AEP has faced similar challenges. For AEP, background checks and drug screenings can each take up to 3 weeks, depending on the number of contractors being vetted. Likewise, granting accesses and creating email addresses can take up to 2 weeks each.

4. Training.

The fourth and final phase of the onboarding process is training the contractor on how to work within the electric utility's internal systems and work on the electric utility's distribution network. This phase generally takes between two weeks and six months, depending upon the experience of the contractor and the type of work to be performed by the contractor. For example, training a contractor to survey utility poles (including identifying different types of attachments and measuring and recording the height of those attachments at the pole and in the span) takes less time than training an engineer on how to design make-ready jobs (which involves analyzing all existing and proposed attachments on the pole using proprietary software).

The training process—particularly with respect to power space make-ready construction contractors—is essential to the safety and reliability of the distribution network. Power space make-ready often involves the replacement of poles with energized lines, and the rearrangement or transfer of energized circuits. This is incredibly dangerous work—and work that could impact the 24/7 service upon which electric customers rely. Mitigating these risks requires that the contractor has a detailed understanding of the electric utility's safety protocols such as lockout/tagout protocols. AEP starts with approximately a dozen self-led prerequisite trainings that a contractor must complete before he or she can advance to two required instructor-led courses. The prerequisite trainings can take 2-3 days. The two instructor-led courses take 6 days in total.

In their Initial Comments on the Third FNPRM, the Electric Utilities provided the following examples regarding the training phase of the process from AEP and Alabama Power:

> The [final onboarding] phase involves training the contractor's employees on how to properly perform work on AEP's poles. The length of this phase varies depending on the role involved. For example, training survey crews to use AEP's survey tools typically takes 1 to 2 weeks. The contractor's engineering employees, though, are required to undergo more demanding training. That is, contract engineers are trained to use AEP's Distribution Design Studio (i.e., AEP's engineering and pole loading analysis software) and Distribution Work Management System (i.e., AEP's software for generating estimates for power space make-ready). Depending on the quality and expertise of the engineer, this process can take between 2 and 6 months. But even after completing this training process, it generally takes another 3 months of trial and error on the job for these contract engineers to become truly proficient.
> ….
> [For Alabama Power, the] final phase involves training the contractor employees. Alabama Power relies heavily upon the contractor to train the employees in their key functions. For example, Alabama Power trains contractor engineers in the Job Estimation Tracking System (i.e., Alabama Power's software for creating power space make-ready estimates), which usually lasts between 1 and 2 weeks. Although Alabama Power's formal "training" phase is relatively streamlined, Alabama Power relies heavily upon "on the job" training. That is, Alabama Power continues to train contract employees for approximately 6 to 12 months after the "onboarding" process is complete.[14]

In the Fourth FNRPM, the Commission also asks:

> We assume that if a contractor is able to make the representations required by section 1.1412(c) (e.g., it knows how to read and follow licensed-engineered pole designs for make-ready), it already has skilled professional staff, and the training that takes place during the on-boarding process is to ensure that the contractor's employees can use utility-specific software systems and execute utility specific construction standards, protocols, and policies. Is that correct? If so, could that training be completed in a matter of weeks versus months?[15]

[14] Initial Comments of the Electric Utilities at 11, Third FNPRM.
[15] Fourth FNPRM at ¶ 64.

The answer is "no." Just because a contractor makes the representations in Rule 1.1412(c) does not mean that it is actually qualified and trained to work on electric distribution facilities. While a contractor might **believe** that he or she understands and can follow the NESC or the utility's constructions standards, prior experience may reveal this is not the case. For example, as set forth in the Electric Utilities' Initial Comments on the Third FNPRM:

> …Alabama Power recently allowed an attacher to use its own contractor to complete surveys for a large deployment (i.e., 335 applications spanning 15,476 poles). The result was a disaster. Despite providing the attacher's contractor with a 20-page manual on how to collect the relevant field data, the quality of the contractor's work was systemically flawed. Field data submissions for the attacher's deployment were returned to Alabama Power for corrections 880 times. On average, this means that each field data submission was returned to the contractor for correction more than 2.5 times. Ultimately, Alabama Power's approved survey and engineering contractor had to get involved and spent, on average, six (6) hours "coaching" the attacher's contractor for every application submitted by the attacher. This resulted in significant delays to the attacher's deployment, increased costs for the attacher, and an overconsumption of Alabama Power's approved contractor resources.[16]

The Fourth FNPRM, relying upon representations of NCTA, also asks whether mutual aid agreements are some sort of "example" of expedited onboarding. As set forth above, the mutual aid contracts are executed in advance of storms, thus shortening the necessary onboarding processes for the mutual aid contractor to work on the utility's system. There is a lesson here: onboard new contractors "before the storm"—which, in this case, is large broadband deployments. For example, Oncor attends Mutual Assistance conferences and intentionally networks with a variety of construction and logistics contractors throughout the year with the proactive goal of executing mutual aid contracts before they are actually needed. Further, AEP acquires crews through Regional Mutual Assistance Groups which perform work daily on the property of the member utilities. These crews are therefore already both vetted and onboarded when they become

[16] Initial Comments of the Electric Utilities at 31-32, Third FNPRM.

needed. AEP's mutual assistance crews that were not acquired through the Regional Mutual Assistance Group are still vetted through the procurement process.

Moreover, contractors performing storm restoration are limited in their scope, work only on de-energized lines, and for most of the Electric Utilities, work under a different level of oversight and support than regular work. During mutual aid storm restoration efforts, contractor crews, all of whom are previously qualified and trained to work in the electric space on distribution poles, work under the direction of employees of the electric utility pole owner. For instance, AEP mutual assistance crews typically work with direct oversight from a utility employee with field and operational experience, but are not permitted to switch and/or operate the system. By way of contrast, approved contractors must be proficient with the electric utility's standards, safety protocols and internal software systems such that they can complete surveys, engineering and power space make-ready on energized lines correctly, safely and in a semi-autonomous manner.

C. When It Comes to Onboarding, There are No Short-Cuts—Only Trade-Offs.

The Commission asks:

> Could any of the steps described by utilities be expedited by having them run on parallel tracks? Are there steps in the on-boarding process that are or could be expedited by the contractors themselves (e.g., any internal vetting required for individual contractor employees)?[17]

With very few exceptions, it is not possible to run the steps of the onboarding process in parallel. As explained above, the electric utility must vet the contractor before it enters into a contract with that contractor—to do otherwise would be to potentially waste many hours of negotiation and legal fees if it turns out the contractor is not qualified. Further, administrative onboarding and training cannot occur until after the contract is negotiated—if the contract negotiation fails, such

[17] Fourth FNPRM at 64.

onboarding and training would have been for naught. Additionally, much of the information contractors need to work on the Electric Utilities' systems is confidential and cannot be provided until the parties enter into a contract.

Moreover, it is not possible to train contractors until the administrative onboarding process has occurred. For example, employees must be assigned credentials, including software IDs, and drug and background-screened before they can begin training. There are no solutions to the relatively long onboarding process other than advance planning (which the Commission's current rules are not designed to facilitate)—there are only tradeoffs. And the tradeoffs for unqualified, undertrained, or inexperienced contractors can be serious (i.e., contractor injuries or deaths) or counterproductive (inferior contractor work consistently being returned by internal QA/QC protocols).

II. THE COMMISSION SHOULD ACCELERATE BROADBAND DEPLOYMENT BY ADOPTING THE ENHANCED OTMR PROPOSAL.

The Fourth FNPRM requests comment on two interconnected issues related to expediting the construction phase of broadband deployments: (1) a proposed rule requiring attachers to deploy within 120 days after make-ready work has been completed; and (2) making the OTMR option available for complex work within the communications space. The Electric Utilities appreciate the Commission's recognition of the problems created by both existing and new attachers failing to complete necessary construction work in a timely manner. Both issues could be completely resolved—and the broadband deployment process greatly expedited—by the Commission's adoption of the Enhanced OTMR proposal. Under Enhanced OTMR, new attachers would be **required**—not merely permitted—to perform all communications space make-ready necessary (simple and complex) for their deployment. As such, all communications space make-ready, as well as installation of the new attachments, could be carried out in a single truck roll. This would

rid the deployment process of delays caused by existing attachers failing to perform make-ready within the time prescribed by the Commission as well as delays caused by new attachers failing to complete their deployments after make-ready has been performed. This is low hanging fruit.

A. Enhanced OTMR Brings Much-Needed Efficiency to the Deployment Process.

As the Electric Utilities explained in their Initial Comments in response to the Third FNPRM, attachers rarely—if ever—make use of the Commission's existing OTMR and self-help processes.[18] The chart below illustrates this fact using data from 2019 through mid-2025:

	Total Application Volume (# of poles)	**One-Touch Make-Ready (# of poles)**	**Self-Help Surveys (# of poles)**	**Self-Help Make-Ready (# of poles)**
Ameren Missouri	33,924	80	0	0
AEP	1,201,917	0	50,247	0
Duke Energy	682,445	355	0	0
Entergy	395,460	0	0	0
Oncor	232,943	28,203	0	0
Alabama Power	182,009	~1,000	~ 50,000	0
TOTAL	2,728,698	29,638	100,247	0

A major reason why the existing OTMR process is underutilized is that it is only available for "simple make-ready."[19] "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."[20] "Complex make-ready," on the other hand, means:

> [T]ransfers 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

[18] Initial Comments of the Electric Utilities at 22-23, Third FNPRM.
[19] 47 C.F.R. § 1.1411(j).
[20] 47 C.F.R. §1.1402(q).

> 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.[21]

Because the current OTMR rule applies exclusively to applications where only "simple make-ready" is required, OTMR is hardly ever useful. Therefore, it is essential that the Commission not only expand OTMR to include **all** work within the communications space (simple and complex), but also to **require** that the new attacher perform all such work (through a qualified contractor) so that it becomes an effective tool that will speed deployments and improve overall process efficiency.

While the Commission has proposed making OTMR **available** for complex work,[22] the Electric Utilities do not think this approach is aggressive enough to make a meaningful impact on the deployment process. This is because attachers have been reticent to use their existing OTMR and self-help remedies. Accordingly, in order for the expansion of OTMR to meaningfully improve the deployment process, the rules must **require** new attachers to perform **all** communications space make-ready themselves, regardless of whether that work is "simple" or "complex." At a high level, the steps of Enhanced OTMR (on poles with electric facilities) are as follows:

1. Survey: Either the utility may perform the survey, or the utility may waive its right to do so, in which case the attacher will use a utility-approved contractor to perform the survey.

2. Estimate: Either the utility or a utility-approved contractor will generate the supply-space make-ready estimate.

3. Power Space Make-Ready: Either the utility or a utility-approved contractor will perform power space make-ready.

4. Communications Space Make-Ready: All communications space make-ready (regardless of whether it was previously characterized as simple or complex) will be performed by the new attacher or its qualified contractor (including transfer of

[21] 47 C.F.R. § 1.1402(p).
[22] Fourth FNPRM at ¶ 60.

all communications attachments in the case of a pole replacement) in a single "touch."

5. Installation: Attacher or its contractor installs the new attachment in the same "touch" as the communications space make-ready.

The changes to Rules 1.1402 and 1.1411 that the Electric Utilities proposed to implement Enhanced OTMR are attached hereto as Appendix A.[23]

This proposal does not represent a significant departure from the Commission's current framework. The existing OTMR rule already permits new attachers to perform "simple" make-ready with no "waiting period."[24] And the existing self-help provision permits new attachers to perform "complex" make-ready within the communication space upon the expiration of forty-five days.[25] Moreover, existing attachers should have nothing to fear from Enhanced OTMR because: (1) new attachers are already permitted to perform "complex" make-ready when exercising their self-help remedy; and (2) Enhanced OTMR protects the interests of existing attachers by requiring that all make-ready be performed by a contractor that meets the criteria set forth in Rule 1.1412(c). Enhanced OTMR is not so much a departure from the Commission's existing framework for communications space make-ready as it is a fusion of the existing OTMR process with the existing self-help remedy.

Enhanced OTMR also removes the potentially confusing process of distinguishing between "simple" and "complex" work within the communications space and relieves the new attacher from having to distinguish between applications that it can or cannot submit as OTMR

[23] These changes were also summarized in the Electric Utilities' Initial Comments at page 25 in response to The Third Further Notice of Proposed Rulemaking, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (released Dec. 15, 2023).
[24] 47 C.F.R. § 1.1411(j).
[25] 47 C.F.R. § 1.1411(i).

applications. As the rule presently stands, if a new attacher submits an OTMR application and it is subsequently discovered that even one pole within the application requires complex make-ready work, the new attacher is required to halt all work and proceed under the standard timeframes. This process often deprives new attachers of the efficiencies promised by OTMR and may be the reason that the Companies have received very few OTMR applications since the option was made available in 2019.[26]

Most importantly, Enhanced OTMR eliminates the delays caused by both existing and new attachers failing to timely complete construction work. First, Enhanced OTMR does away with the forty-five (45) day "waiting period" present in the current version of the rules. As the rules are currently constructed, when an attacher submits an application for poles that require make-ready work in the communications space to accommodate the new attachment, a utility must send notice to the existing attachers of the make-ready work required. The new attacher must then wait forty-five (45) days for existing attachers to perform communications space make-ready before proceeding with their deployment. These attachers have absolutely no incentive to perform make-ready in timely fashion and rarely do. This concern is not merely hypothetical. For Georgia Power, existing attachers take an average of 187 days to complete make-ready in the communications space. Likewise, Duke Energy consistently receives complaints from new attachers that they are not able to attach because existing attachers have failed to rearrange their facilities. By avoiding this step entirely, Enhanced OTMR would introduce much-needed efficiency into the deployment process.

[26] By way of example, approximately 9% of pole attachments submitted to Oncor in 2024 and 17% submitted so far in 2025 were OTMR applications, but many of these applications were found to include complex work which required that the applications be cancelled and resubmitted.

Second, Enhanced OTMR removes the delay that often occurs between completion of make-ready work necessary to accommodate a new attachment and the new attacher's construction of its attachments. As the Commission correctly notes in the Fourth FNPRM, new attachers frequently delay deploying their facilities and sometimes even fail to deploy at all after make-ready has been completed. For example, attachers significantly delay attaching to poles in connection with 35-40% of applications submitted to Georgia Power. Enhanced OTMR would remedy this problem because the new attacher would deploy its facilities in the same "touch" as it performs the make-ready work needed to accommodate those facilities. Therefore, by eliminating delays caused by both existing and new attachers, Enhanced OTMR kills two birds with one stone and removes the need for an additional rule requiring deployment within a specified period of time.[27]

The criticism of Enhanced OTMR is unfounded—and in some aspects, nonsensical. As the Commission notes in the Fourth FNPRM:

> Attachers strongly oppose this proposal because they claim it: (1) is counter to the purpose of OTMR; (2) would eliminate their investment in current practices and procedures while requiring further resources to adapt to the proposal; (3) would revert control of the survey process; (4) would prevent performance of make-ready in one touch for simple make-ready; and (5) would force existing attachers to allow competitors to do work that could reasonably cause a service outage or facility damage.[28]

How could Enhanced OTMR be "counter to the purpose of OTMR" when the "purpose" of OTMR is to expedite deployments? And how could Enhanced OTMR possibly conflict with attachers' "investment in current practices and procedures" when it is evident that attachers have made no investment at all? Further, the idea that enabling complex make-ready through Enhanced OTMR

[27] *See* ¶ 52 of Fourth FNPRM (Commission seeking comment on requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work).
[28] Fourth FNPRM, ¶ 60 n. 239.

"prevents" the performance of simple make-ready strains logic. Enabling complex make-ready does not affect the availability of simple make-ready. It is not a matter of only one or the other. Finally, the concern over a competitor doing work that could reasonably cause a service outage or facility damage is foregone considering that the Commission's existing rules already allow this.[29] The uncomfortable reality for attachers is that Enhanced OTMR would eliminate their current excuses for avoiding taking ownership of their deployments by removing the utility "barriers" that attachers so often lament.

B. Regardless of Whether the Commission Chooses to Adopt Enhanced OTMR, Timing of Deployment is Best Addressed in the Parties' Pole License Agreements.

The Electric Utilities appreciate that the Commission has recognized the burdens created by attachers' failure to timely deploy after make-ready is completed. Attaching entities consistently push utilities to adhere strictly to the Commission's regulatory timelines. However, once the make-ready associated with a particular application is completed, attachers seem to lose a sense of urgency in their projects. In fact, attachers consistently delay attaching to poles after make-ready has been completed and, in some cases, never attach at all.[30]

The failure to timely deploy after the completion of make-ready work also wreaks havoc on a pole owner's joint use program more generally. The most common issue arising from the failure to timely deploy is that the Electric Utilities receive a subsequent "overlapping" application for the same poles that were previously made ready for the initial attacher. In this situation, the Electric Utilities are left in an administrative conundrum. On the one hand, the poles have been

[29] ¶ 33 of Fourth FNPRM ("We also note that in utilities' experience, the self-help remedy is rarely, if ever, used[.]").
[30] In Ameren Missouri's service area, some attachers have completed the entire application process and later decided not to attach at all. Oncor inspects poles 180 days after attachers are approved to attach and has, on occasion, found them still not attached.

made ready and clearly have capacity to host the attachment proposed in the "overlapping" applications but on the other hand the make-ready has been paid for by the previous applicant. The Electric Utilities must then perform engineering for the subsequent overlapping applications as if the attachment were on the pole. Moreover, the Electric Utilities are forced to constantly follow up with the attacher to ascertain whether the attacher has attached or plans to attach in the future, creating further administrative burdens. Delayed attachment also encourages unauthorized attachers to use the space that was created on the pole without submitting an application to the utility. This means that when the original applicant finally decides to attach, the unauthorized attacher must be removed or additional make-ready must be performed, creating further delay and confusion regarding the party that must bear the cost of the additional make-ready.

The problem of delayed construction of attachments is driven primarily by attachers' practice of flooding the Electric Utilities' pole attachment application systems with applications without sufficient planning or prioritization. Utilities process applications and perform make-ready on a first-in-first-out basis. Accordingly, without proper planning by the attacher, utilities will complete construction on lower priority but earlier-submitted applications before later submitted but higher-priority applications. This leads to the dilemma described above wherein significant resources are expended on processing and completing construction related to applications that are not a priority for the attacher. While a Commission rule requiring attachers to complete their deployments within 120 days after receiving notice that make-ready work is complete may mitigate this problem by forcing attachers to prioritize their applications prior to submission, the issue is more easily addressed in pole license agreements. In fact, many of the Electric Utilities already include language addressing this issue in their agreements. Duke Energy and Oncor, for example, provide in their pole license agreement that the applicant's application is cancelled and

must be re-submitted if attachment is not complete within 180 days after the applicant is provided with notice that make-ready has been completed. Some AEP operating companies take a different approach and simply begin billing new attachers for the attachments after the notice of make-ready completion has been issued. Both approaches have helped to mitigate, but not eliminate, the problems associated with delayed deployment.

C. Any Rule Imposing a Deployment Timeline Must be Accompanied by a Strict Enforcement Mechanism.

As expressed in the preceding sections, the issue of timeliness of deployment should be dealt with through the implementation of Enhanced OTMR and private contract. However, if the Commission determines that it must regulate the issue, the rule must ensure that deployment is completed in a reasonable time and be accompanied by a strict enforcement provision. In the Fourth FNPRM, the Commission asks whether a fixed timeline of 120 days is reasonable or if attachers should be given more or less time to deploy their facilities after make-ready has been completed. As an initial matter, the longer deployment is delayed after make-ready is complete, the greater the chance will be that there is an overlapping application, or that an unauthorized attacher will place its attachments on the pole. Likewise, the cost of multiple post-inspections rise as the Electric Utilities continually inspect the poles for non-existent new attachments. Accordingly, the Electric Utilities propose that, if the Commission sets a timeline by regulation, the Commission should dictate that deployment must **commence** within 30 days of the date on which a utility notifies an attacher that make-ready associated with an application has been completed and must be **complete** within 120 days of that date.

Further, any schedule the Commission adopts will only be as effective as the consequences of violating it. Accordingly, if an attacher fails either to commence deployment within 30 days or complete deployment within 120 days of receiving notice that make-ready work associated with

an application has been completed, that application should be deemed cancelled. Further, the attacher should forfeit any payments made to the pole owner for either the make-ready work or the engineering associated with the subject application and the utility should be free to allocate the space to another attacher. Given the resources utilities expend making poles ready for attachers and the costs and burdens associated with delayed deployment, this remedy is proportionate to the harm.

III. THE COMMISSION SHOULD NOT DISTURB THE STATUS QUO WITH RESPECT TO THE PAYMENT OF MAKE-READY ESTIMATES.

A. Imposing a Deadline for Payment of Make-Ready Estimates is Unnecessary.

In the Fourth FNPRM, the Commission correctly notes that attachers often delay issuing payment of make-ready estimates. The lack of timely pre-payment significantly strains a utility's ability to meet the Commission's timelines for completion of make-ready construction because the timelines apply on an as-submitted basis. For example, an attacher may submit applications for 3,000 poles for three consecutive 30-day periods, but if the attacher delays payment until it has submitted all the applications (which attachers often do), it would instantly start the clock running on 9,000 applications simultaneously. The rules are not clear on what timelines would apply in this situation given that the attaching entity did not technically exceed the 3,000-pole threshold on submissions in any given 30-day period. However, this burden can be alleviated through the parties' pole license agreements. Some of the Electric Utilities enforce a make-ready estimate payment deadline upon which applications will be canceled if payment has not been received,[31] while others are in the process of implementing such a deadline.[32] This has reduced the frequency

[31] Oncor Electric cancels permits if payment is not made within 30 days of issuance of the estimate; Duke Energy requires payment within 30 days after issuance of the estimate.

[32] AEP has recently begun withdrawing estimates after 14 days of non-acceptance and canceling applications within 30-45 days of no payment.

with which attaching entities are dilatory in their payments—at least with respect to applications they intend to pursue—because they are forced to determine, upon receipt of the estimate, whether they desire to proceed with the make-ready, amend their application to use an alternate route requiring less make-ready, or simply abandon the application altogether.

B. Requiring a Piece-Meal Payment Schedule Would Cripple Existing Deployment Efficiencies and Result in Utilities Providing Free Make-Ready Work for Attachers.

As an initial matter, each of the Electric Utilities currently requires full, up-front payment as a condition to begin make-ready work for several reasons. First, the Electric Utilities cannot adequately budget for make-ready work associated with an unpredictable volume of work that is completely unrelated to their core business purpose. The vast majority of make-ready costs are associated with pole replacements, and the budget for pole replacements in any given year is based upon the service needs of a particular utility. Accordingly, the money to perform the make-ready required by pole attachment applications simply does not exist within the Electric Utilities' budgets. Without full payment of the estimates up front, the Electric Utilities lack the funds necessary to perform make-ready pole replacements and other power space make-ready work.

Neither the Commission nor the vast majority of certified states currently impose a prescriptive schedule for the payment of make-ready estimates. The Commission's observation in its 2011 order that a staggered payment system would "unfairly expose [utilities] to a greater risk of non-payment for make-ready work necessary to accommodate attachers" remains true.[33] Attaching entities have identified only one state—Utah—that imposes such a schedule.[34] But this

[33] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC Rcd at 5280, ¶ 88 (2011).

[34] Utah's pole attachment rules dictate that, unless the parties agree to an alternative arrangement, "[a]pplicants must pay 50% of the make-ready estimate in advance of construction, and pay the

is not the only difference between Utah's pole attachment rules and the Commission's. The Utah rules permit the parties significantly more flexibility regarding the timelines within which make-ready work must be completed. Specifically, Utah's rules provide that "[a]s an alternative to all of the time periods allowed for construction [], a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay."[35] This flexibility regarding the time within which the work must be completed relieves the financial burden imposed by limitations on the amount of money to be paid up front. Work can be scheduled, sequenced and resourced more gradually, easing cash-flow pressure, and utilities are enabled to take into account other variables that affect the feasibility of construction timing such as existing attachers' deadlines, contractor scheduling, or logistical challenges.

These rules would allow a utility to plan for make-ready work to occur when approved contractors will be readily available rather than expending resources attempting to approve and onboard self-help contractors proposed by utilities only after voluminous attachment applications have been submitted. Additionally, pole attachment work can be organized to coordinate with core power delivery work. For instance, the utility could sequence make-ready work such that the work on the attachers' route occurred at the same time that the utility otherwise was required to replace poles near a railroad crossing on the same route to meet clearance standards. In this way, resources are used more efficiently such that the administrative and cost burdens on the utility are both

remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front."

[35] UTAH ADMIN. CODE § 746-345-3(C).

reduced. Thus, Utah's rules create an entirely different framework that would make its staggered payment protocol a poor fit within the Commission's existing rules.

Another reason to reject a piecemeal payment structure is its near-certain violation of 47 U.S.C. § 224(d)(1), which "assures a utility the recovery of not less than the additional costs of providing pole attachments[.]" After-the-fact payment for **any** part of the pole attachment process is a recipe for significant unpaid receivables. Unlike make-ready work, which is billed in advance, some engineering and post-attachment inspections are billed in arrears. AEP bills for engineering and post-attachment inspections after completion which are paid on an average of 45-60 days late (if they are paid at all). Similarly, Alabama Power has $3,600,000 in unpaid engineering fees. Duke Energy and Oncor have eight and seven figure balances respectively in unpaid charges billed in arrears. Some portion of these amounts will never be recovered. The Commission should not exacerbate this problem with after-the-fact payment of the most expensive part of the pole attachment process—power supply space make-ready (including but not limited to pole replacements).

Finally, as the Commission has also already pointed out, the payment schedule requested by NCTA and Altice would sabotage the current efficiencies created by full pre-payment for the make-ready process.[36] If payments were staggered, scheduling would become contingent on each installment. This would create inefficiencies and potentially leave contractor crews idle if funds are not yet received. And because attachers already delay make-ready payment, imposing **multiple** payment deadlines would only exacerbate a stop-and-start cycle of crew mobilization and material procurement. Another risk is that if an attacher's deployment is not an up-front, fully funded

[36] *2011 Report and Order*, 26 FCC Rcd at 5280, ¶ 88 ("A staggered payment system would . . . actually delay the make-ready process.").

project, contractors may push deployment projects back in priority in competition for projects with more promising and reliable payouts.

C. The Commission Should Not Impose a Cost Ceiling on Make-Ready True-Up Because it Would Unfairly Shift the Risk of Cost Overruns to Electric Utility Customers.

The Commission requested comments on "limiting the amount that final make-ready costs can exceed the utility's estimate without requiring the utility to have obtained prior approval from the attacher."[37] A cost ceiling would serve as a disincentive to the performance of the most expensive part of the pole attachment process: make-ready pole replacements. Though attachers contend otherwise, utilities are generally not the cause of cost increases between an estimate and the actual construction cost. Instead, the primary causes are the unpredictable factors inherent in make-ready work and the attachers' own delay. There are many factors that can cause the actual cost of a project to exceed the estimate, including changed labor rates or material costs, weather delays, latent challenges, and other circumstances on poles that are unforeseeable until the work is actually in progress. Examples of latent challenges include the need for hand digging for pole setting (instead of using an auger), and rock boring. The limited amount of time within which a utility is expected to provide an estimate increases the likelihood that the estimate is incorrect. This is particularly true with respect to large projects, where a utility is generating numerous estimates at the same time.

The more time that passes after the estimate is issued, the more outdated the estimate is likely to become. Severe storms can change terrain and accessibility; the labor force may become unavailable; labor rates and material costs may increase; or the statuses of existing attachers may have evolved. Amongst the Electric Utilities, the actual costs of make-ready projects exceed

[37] Fourth FNPRM at ¶ 57.

estimated costs between 50%-90% of the time. The cost increases can be minor (as little as 125% of estimated cost) or major (up to 800% of estimated cost). Given the relatively modest amount of make-ready work in the past and the administrative burden of true-up, some electric utilities have simply absorbed these cost overruns. For instance, Oncor and Ameren Missouri currently do not seek a true-up of actual costs incurred beyond the estimate, and AEP only recently started implementing a true-up policy. Duke Energy will only true-up jobs that have an original estimate over $50,000. But given the increasing volume of make-ready work, absorbing these costs is no longer feasible to electric utilities (or fair to their electric customers). Just as a make-ready payment schedule would violate 47 U.S.C. § 224(d)(1), so would the prohibition of recovering costs that were thrust upon utilities by pole attachment applications and exacerbated by forces outside of utility control. In fact, a cost ceiling would force the inflation of estimates so as to ensure the true-up did not substantially exceed the estimate.

IV. THE COMMISSION SHOULD RESTRAIN FROM ATTEMPTING TO REGULATE STREETLIGHT ATTACHMENTS.[38]

A. The Commission Lacks Jurisdiction Over Lighting Support Structures.

The Fourth FNPRM asks whether utility-owned lighting support structures may be considered "poles" for purposes of the Pole Attachments Act. In order to answer this question, the Commission asks stakeholders whether the term "pole," in the context of Section 224, should properly be read as having an ordinary meaning or a technical and specific meaning. Implied in the question is that, if the Commission gives the term its "ordinary" meaning—such as "a long slender usually cylindrical object (such as a length of wood)"—that definition would encompass

[38] To be clear, the Electric Utilities' arguments in this section are **not** related to distribution poles with streetlights. The support structures at issue here are those that exist exclusively or primarily for the purpose of street and/or outdoor area lighting.

lighting support structures. However, such broad definition of the term "pole" would give the Commission jurisdiction over a far broader scope of utility assets than Congress intended when Section 224 was enacted. The legislative history, subsequent judicial construction, the Commission's own precedent, and common sense make clear that the Commission does not have jurisdiction over every single "pole" owned by a utility. For example, no stakeholder contends that the Commission has jurisdiction over a flagpole at the entrance of a utility office. So, all stakeholders agree that "pole," as used in Section 224, cannot be read as having its "ordinary" meaning. Instead, it **must** have a technical and specific meaning.

1. The Legislative History of the 1978 Act and 1996 Amendments Demonstrate that the Act was Intended to Vest the Commission with Jurisdiction over "Utility Poles."

The Commission asks whether use of the phrase "any pole" in Section 224(f) when the Act was amended in 1996 indicates that Congress intended to expand the Commission's jurisdiction beyond its previously understood scope. The legislative history of both the initial adoption of the 1978 Act and the 1996 Amendments both demonstrate that the answer to this question is a resounding "**no.**" According to the Committee Report preceding the adoption of Section 224 in 1977, Congress intended to provide the Commission with jurisdiction over a specific type of "pole"—the "utility pole":

> **SUMMARY AND PURPOSE**
>
> The bill (S. 1547) serves two purposes:
>
> > (2) To establish jurisdiction within the Federal Communications Commission (FCC) to regulate the provision by utilities to cable television systems of space **on utility poles**, ducts, conduits, or other rights-of-way owned or controlled by those utilities . . .
>
> **POLE ATTACHMENT REGULATION**

> S. 1547, as reported, would empower the commission to hear and resolve complaints regarding the arrangements between cable television systems and the owners or controllers **of utility poles**. A pole attachment, for purposes of this bill, is the occupation of space **on a utility pole** by the distribution facilities of a cable television system—coaxial cable and associated equipment under contractual arrangements whereby a CATV system rents available space for an annual or other periodic fee from the owner or controller of the pole—usually a telephone or electric power company.[39]

The Committee Report uses the term "utility pole" twenty-seven (27) times. Similarly, the opening provision of Section 224 describes its purpose as follows: "An Act [t]o amend the Communications Act of 1934 to provide for the regulation of **utility pole** attachments."[40] In contrast, neither the Committee Report nor the Act itself contains a single reference to any form of lighting asset (e.g. streetlights, lampposts, light standards, light poles, lighting brackets, etc.).

The Federal Power Commission (predecessor to Federal Energy Regulatory Commission ("FERC")) first adopted a Uniform System of Accounts ("USoA") for electric utilities in 1947 and the categories of assets remain largely unchanged today. Lighting support structures have been categorized separately from utility poles from the inception of the USoA. The original text of the 1947 USoA lists "*Poles*, Towers, and Fixtures" separate and apart from "Street Lighting and Signal Systems." Section 101.354 (predecessor to Account 364) of the 1947 USoA provides:

> [t]his account shall include the cost installed of poles towers and appurtenant fixtures used for supporting overhead distribution conductors and service wires.

ITEMS

. . .
(10) ***Pole*** steps and ladders.
(11) ***Poles***, wood, steel, concrete, or other material.

By contrast, Section 101.363 (predecessor to Account 373) provides:

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[39] S. REP. NO. 95-580, at 1-2 (1977) (emphasis added).
[40] Communications Act Amendments of 1978 ("Pole Attachments Act"), PUB L. 95-234, 92 Stat. 33, 33 (1978).

[t]his account shall include the cost installed of equipment used wholly for public street and highway lighting or traffic, fire alarm, police, and other signal systems.

ITEMS

. . .
(6) Ornamental lampposts
. . .
(9) Posts and standards[.][41]

The current version of the USoA continues to distinguish between poles used to support electric distribution wires and conductors and posts, standards or lampposts used to support lighting and signal systems.[42] The fact that a clear distinction between these types of assets has existed since the inception of the regulatory accounting system for electric utilities and that Congress chose only to extend the Commission's jurisdiction to "utility **poles**" serves to underscore the fact that Congress never envisioned that the Commission would regulate lighting support structures.[43]

2. Judicial Precedent Confirms that the Commission's Jurisdiction is Limited to Local Distribution Poles.

In addition to the legislative history of both the 1978 Act and the 1996 Amendments, judicial precedent confirms that the Commission does not have jurisdiction over all utility-owned "poles." Specifically, as noted by the Commission in the Fourth FNPRM, in *Southern Company v. FCC*, the Eleventh Circuit held that the Commission has jurisdiction only over poles primarily used by a utility for local distribution.[44] In the underlying order at issue in *Southern Company*, the Commission had attempted to expand the scope of regulated "poles," stating:

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[41] 12 Fed. Reg. 8503 (Dec. 19, 1947).
[42] *Compare* 18 C.F.R. part 101, Appx. B (Account 364) *with* 18 C.F.R. part 101, Appx. B (Account 373).
[43] Not to be confused, lighting structures that are streetlight-only "poles" are not the same as distribution poles that have a streetlight.
[44] ¶ 72 of Fourth FNPRM; 293 F.3d 1338, 1343-46 (11th Cir. 2002).

> We reaffirm our decision in the *Local Competition Order* that electric transmission facilities are not exempted from the pole attachment provisions of section 224. We reject the argument that, because **a transmission pole** is not used by the utility for stringing communications wires, it would not fall within the access obligation of section 224(f)(1) . . . **To the extent an electric transmission facility is a 'pole, duct, conduit or right-of-way,' the facility would be subject to the access provisions of section 224.**[45]

The Eleventh Circuit rejected the Commission's expansive interpretation of the term "pole," explaining that "pole" under Section 224 was a relatively narrow term:

> We begin our analysis with the text of the statute. The relevant language concerning the scope of the Act's coverage provides that "the term pole attachment means any attachment by a cable television system or a provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4). "Poles, ducts, and conduits" are regular components of local distribution systems and not interstate transmission systems. Indeed, the primary physical unit responsible for carrying transmission wire—towers—are notably absent from the definition of "pole attachment." **This indicates to us that Congress intended the Act as a mechanism for regulating attachments on the utilities' distribution facilities,** not their transmission facilities and systems.[46]

In reference to the above language, the Commission asks whether lighting assets could be considered distribution poles because they are part of a local distribution network.[47] However, the premise of the question is false. Lighting structures are not part of the pole network used to distribute electricity to customers. Indeed, they do not exist as a part of any contiguous network whatsoever. All lighting support structures exist solely because of a particular customer request for street or outdoor lighting. Lighting customers range from cities to homeowners' associations, to private business, to individuals. Many are located on private property, as opposed to rights-of way. For example, as of 2024 Alabama Power Company (one of Southern Company's electric utility

[45] *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98 at ¶ 27 (Oct. 26, 1999) (emphasis added).
[46] *Southern Co.*, 293 F.3d at 1344 (emphasis added).
[47] *See* ¶ 84 of Fourth FNPRM ("Are light poles part of an equivalent local distribution system to provide lighting?").

operating companies) owned approximately 152,000 structures used primarily to support street and outdoor area lights, approximately 133,000 of which are located on private property.

The Electric Utilities do not construct contiguous "networks" or "local distribution systems" of lighting support structures for the generic purpose of meeting any kind of service requirements within their designated service areas. Lighting support structures are frequently stand-alone assets with their own dedicated power supply. In fact, other than cities, which may request installation of lights along particular streets or in particular areas, many lighting customers have only one or a few lights and regardless of the number, the support structure is often specifically chosen by the customer to meet decorative or aesthetic objectives. Further, because of their composition and purpose, lighting support structures—unlike distribution poles—are not generally suitable for third-party attachment.

Further, in determining that the Commission lacked jurisdiction over transmission poles, the Eleventh Circuit assigned significance to the categories of assets that Congress omitted from Section 224:

> "Poles, ducts, and conduits" are regular components of local distribution systems and not interstate transmission systems. **Indeed, the primary physical unit responsible for carrying transmission wire—towers—are notably absent from the definition of "pole attachment."** This indicates to use that Congress intended the Act as a mechanism for regulating attachments on the utilities' distribution facilities, not their transmission facilities and systems.[48]

Similarly, the primary physical units responsible for supporting lights—posts, standards, and ornamental lamp posts— are "notably absent from the definition of 'pole attachment.'"[49]

[48] *Id*. at 1344.

[49] *Id*.; *see also* FERC Uniform System of Accounts, Account 373 Street Lighting and Signal Systems, 18 C.F.R. pt. 101 (referring to light structures as "ornamental lamp posts" and "posts and standards").

Moreover, nothing in the Act contains any reference by any name to streetlights, outdoor lights or anything else relating to lighting infrastructure.

3. This Commission itself has Acknowledged that its Jurisdiction Under Section 224 is Limited to Distribution Poles.

The Commission has previously recognized that:

> The intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to "piggyback" **along the distribution networks** owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility.[50]

The inclusion of this language in the Local Competition Order, which predates the *Southern Company* opinion by several years, demonstrates that the Commission already understood that its jurisdiction extended only to "distribution networks owned or controlled by utilities."[51] Moreover, the Commission has repeatedly drawn an implicit distinction between "utility poles" and lighting assets, such as streetlights and streetlamps.[52]

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[50] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd. 15499, 16084-85 at ¶ 1185 (Aug. 1, 1996) (emphasis added) ("Local Competition Order"), *overruled in-part on other grounds by So. Co.*, 293 F.3d at 1338; *see also Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Development,* 33 FCC Rcd 7705, 7781 (2018) (Recognizing that distribution systems "convey electric power received from the generation facility or the transmission system to the final consumer.").

[51] *Id*.

[52] *See e.g., Acceleration of Broadband Deployment by Improving Wireless Siting Policies*, WT Docket No. 13-238, WC Docket No. 11-59, Wt Docket No. 13-32, Notice of Proposed Rulemaking, 28 FCC Rcd. 14238, 13243 at ¶ 11 (Sept. 26, 2013) (delineating "utility poles" and "street lamps" as two different types of structures: "These technologies, including distributed antenna systems ("DAS"), small cells, and others, can be deployed on utility poles, street lamps, water towers, or rooftops, as well as inside buildings to enhance capacity or fill in coverage gaps."); *see also In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; Acceleration of Broadband Deployment: Expanding the Reach and reducing the Cost of Broadband Deployment*, WT Docket No. 13-238, WC Docket No. 11-59, WT Docket No 13-32, Report and Order 29 FCC Rcd. 12865, 12907 at ¶ 91 (Oct. 21, 2014) ("For purposes of this exclusion, we define utility structures as utility poles or electric transmission towers in active use by a 'utility' as defined in section 224 of the Communications Act, **but not including light poles,**

The Commission also clearly understood that it lacked jurisdiction over lighting assets when the Commission developed the pole attachment rate formulas. These formulas do not include FERC accounts 371 (installation on customers' premises), 373 (street lighting and signal systems), 585 (emissions control expense), or 596 (maintenance of street lighting and signal systems), which account for lighting capital and operations and maintenance. Instead, the FCC rate formulas rely principally upon FERC Accounts 364 (poles, towers, and fixtures) and 593 (maintenance of overhead lines), and to a lesser extent FERC Accounts 365 (overhead conductors and devices) and 369 (services). While the Commission considered and rejected other capital and O&M accounts for inclusion in the formula, it never considered inclusion of accounts related to lighting assets. Though these accounts are not dispositive of the Commission's jurisdiction, the fact that the Commission never considered costs associated with lighting assets when developing the formulas for determining reasonable pole attachment rates, drives home the point that the Commission has correctly concluded that its jurisdiction does not extend to these assets.

4. The Commission's Rules Regarding Reasonable Rates, Terms, and Conditions for Pole Access Cannot be Applied to Lighting Support Structures.

The Commission asks whether its rules—particularly the formulas designed to calculate the maximum reasonable pole rental rate—can be applied to utilities' lighting support structures as written.[53] Given the myriad differences between standard distribution poles and lighting assets, neither the Commission's rules, nor any uniform set of rules, could apply universally to both types of utility assets. This is because the rules are based on assumptions regarding utility poles that

lamp posts, and other structures whose primary purpose is to provide public lighting.") (emphasis added).

[53] ¶ 87 of Fourth FNPRM.

cannot be made about lighting support structures. For instance, the Commission's formula for calculating reasonable pole attachment rental rates for utility poles is as follows:

Maximum Rate = Space Factor x Net Cost of a Bare Pole x Carrying Charge Rate

In this formula, the space factor is determined using a series of assumptions about the size of distribution poles. The average height is assumed to be 37.5 feet, 24 feet of which is unusable, which leaves 13.5 feet of usable space for attachment. These sorts of assumptions are not possible for lighting support structures because the size and type of structure that is used is as variable as the desires of the lighting customer. Accordingly, there is no quantifiable "usable" or "unusable" space for lighting assets. Even without accounting for the type of material used to construct the asset or its specific design, the height of the structure will vary significantly. Some lighting support structures may be 50 feet tall (like a streetlight on a highway) while others may only be waist high (like lighting bollards on a customer's premises). No uniform or standard size exists because utilities install the structures to meet the specific needs articulated by their lighting customers. Moreover, the usable and unusable space on each asset will depend on an engineering analysis of that particular asset to identify relevant clearance requirements as well as the loading capacity of the asset. Therefore, any determination regarding the space available on a lighting asset for attachment would necessarily have to be done on an *ad hoc* basis, rendering any formula similar to the one used for calculating rates for distribution poles completely unworkable.

Adding to these complications, some lighting support structures are not part of any regulated rate base. This is what is commonly referred to as "unregulated" lighting service, which is a significant portion of the lighting provided by Georgia Power Company and Alabama Power Company (both of which are electric utility operating companies owned by Southern Company).[54]

[54] As of the end of 2024, nearly 25% of Alabama Power's lighting assets were unregulated.

Accordingly, there is no publicly reported data from which the cost of owning those lighting structures can be calculated. Additionally, some utilities', such as Oncor's, contracts with lighting customers specifically prohibit third-party access to lighting assets. The lighting customer is not a "utility," "cable system" or "telecommunications service provider" that is either a regulated entity or beneficiary contemplated under Section 224 and the customer has freely bargained for a contract prohibiting third-party access to the lighting asset even if that asset is "owned" or "controlled" by the utility. These contracts are governed by state contract law and a prescriptive rule requiring utilities to permit access to these facilities would effectively coerce an entity over which the Commission has no jurisdiction (the lighting customer) to forego its contractual right to prevent access to the lighting facility.

The incongruity between the Commission's rules and lighting support structures demonstrates that these rules—like Section 224 itself— were not promulgated with such structures in mind. If the Commission were to define "pole" in a way that would give it jurisdiction over lighting support structures, it would need to develop any entirely new subset of rules applicable only to lighting support structures and reasonable rates for such structures would have to be determined on an *ad hoc* basis. This would introduce needless complexity into the already increasingly convoluted pole attachment process. Moreover, as set forth below, attachers, utilities and lighting customers are already working together successfully to deploy communications infrastructure on lighting support structures through collective engagement and innovation.

B. The Commission's Exercise of Jurisdiction over Lighting Assets Would Paralyze 5G Expansion.

As explained in detail above, lighting support structures are a fundamentally different class of utility asset from traditional distribution poles and are installed pursuant to agreements with third parties. Accordingly, any collocation of communication facilities on lighting support

structures is necessarily a three-party transaction at minimum: the structure owner, the collocating entity, and the lighting customer. The fact that the lighting customer (who often controls the underlying land) is often outside the Commission's jurisdiction means that collocation on lighting support structures is not as simple as declaring that such support structures are "poles" within the meaning of Section 224.

Given this, collocation of communications facilities on lighting support structures requires a level of innovation and cooperation that cannot be achieved through forced placed regulations. As a preliminary matter, the vast majority of lighting support structures will require complete replacement in order to accommodate small cell and other wireless antenna installations because those structures are not of sufficient strength to accommodate wireless antenna equipment. This is particularly true in highly populated, downtown areas, as well as special event areas, where the desire for wireless network densification is the greatest. Converting a downtown decorative streetlight into a miniature cell tower requires, among other things:

- a supply chain through which to procure the specialized multi-use structures necessary to accommodate both street lighting and wireless antenna collocation;
- buy-in (if not outright approval) from the lighting customer (often a city) on the aesthetic characteristics of the replacement structure;
- a power source sufficient to meet the needs of both the streetlight and the small cell (streetlight circuits are often insufficient to meet the additional electrical load of wireless antenna equipment); and
- electric utility crews and contractors that are willing to perform and capable of performing, the conversion.

The photographs below are an example of how Duke Energy Progress, LLC (one of Duke Energy's electric utility operating companies) successfully converted a decorative streetlight in Raleigh, North Carolina into a miniature cell tower:

BEFORE **AFTER**

The conversion above is an example of what can happen when the parties are motivated to pursue "innovative and mutually beneficial solutions."[55] Since CTIA's petition for declaratory judgment on this issue in 2019, the Electric Utilities, attaching entities, and lighting customers continue to make progress in this area through voluntary contractual arrangements. Duke Energy has

[55] *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 11864, 11908 at ¶ 107 (May 20, 2010) ("2010 FNPRM").

converted 1,530 lighting assets into miniature cell towers similar to the one shown above since the inception of its program in 2019. During that time, Duke Energy has approved **91%** of applications for attachment to its lighting assets.[56] The number of attachment requests is set to grow in the coming months as wireless providers must retrofit older equipment to meet growing demand for 5G. In fact, in just the previous three months, Duke Energy has received over 300 modification requests. Similarly, Southern Company has completed the conversion of 590 lighting support structures to miniature cell towers, and has 29 additional active orders in progress.

Government regulation—especially of the type the Commission is accustomed to promulgating in the pole attachment context—will snuff out this progress overnight because the innovation required to carry out the transformation of a lighting asset into a cell tower is only possible in the free market. This work not only requires collaboration but also is extremely costly and time-consuming. Without incentive, the Electric Utilities have no reason to participate in the process. As explained throughout these comments, the lighting customer is not a "utility," a "cable system," or a "telecommunications service provider." Accordingly, the lighting customer is not contemplated anywhere in either Section 224 or the Commission's rules.[57] However, the lighting customer can play a significant role in the costs associated with make-ready necessary to prepare a lighting structure for third-party attachment. This is because the lighting asset has been installed pursuant to standards requested by the customer and the customer is unlikely to accede to the cheapest possible plan to prepare the structure for attachment. The customer will insist on a plan

[56] Duke is occasionally forced to deny access due to excessive size or power requirements, if the work requested is in an easement or would block a right-of-way, or if the scope of work for the requested modification cannot be accommodated.

[57] Additionally, in some cases, the utility's contract with the lighting customer specifically prohibits any attachment on the lighting support structure without prior approval from the lighting customer.

that meets the customer's aesthetic and performance expectations as reflected in the customer's contract with the utility.

Moreover, because these facilities are not designed to support third-party attachments, they almost always lack capacity to host those attachments. Specifically, lighting assets are not designed to bear the load of additional attachments. Lights are far more likely than ordinary distribution poles to be knocked down by wind and adding attachments only exacerbates this problem because the lighting support structure is not engineered to support the additional weight of an attachment. Accordingly, the Commission cannot force the Electric Utilities to participate because Section 224 provides an unequivocal right to deny access for lack of capacity. Put simply, if the Commission regulates lighting support structure collocation anywhere near the way it currently regulates distribution pole attachments the collocation depicted in the example above will become extinct.

V. THE COMMISSION CAN TAKE ADDITIONAL STEPS TO REDUCE DELAY AND FACILITATE DEPLOYMENT.

The Fourth FNPRM also seeks comment "more generally on any other causes for delay or other issues that commenters believe will help facilitate deployment."[58] There are two particular steps the Commission can take to reduce delays and facilitate deployment: (1) provide clarity on its pre-existing violation rules; and (2) restore advance notice and good faith negotiation requirements to large deployments.

A. The Commission Should Clarify its Pre-Existing Violation Rules.

A major issue in deployment, especially as the volume of applications increases with grant-funded projects, relates to the Commission's so-called "pre-existing violation" rules, which were adopted in the 2018 Pole Attachments Order and are set forth below:

[58] Fourth FNPRM at ¶ 103.

- Rule 1.1411(c)(2): "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."

- Rule 1.1411(h)(2): "A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher."

- Rule 1.1411(d)(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."

Many attaching entities interpret these rules to mean that the mere presence of a pre-existing violation on a pole (1) strips a utility of its right to deny access under Section 224(f)(2) regardless of other conditions on the pole, (2) entitles a new attacher to access at a pace that exceeds the Commission's existing timelines, and (3) excuses the new attacher from any cost responsibility in connection with subsequent make-ready. This issue is most consequential (practically and financially speaking) when it comes to make-ready pole replacements, and specifically when it comes to poles that would require replacement to accommodate the new attacher even if the pre-existing violation was removed from the pole.

Attaching entities believe, in essence, that the presence of a pre-existing violation is some sort of windfall that displaces Section 224(f)(2), expedites the Commission's access timelines, and trumps the Commission's long-standing cost allocation principles (including but not limited to those set forth in Rule 1.1408(b)). The foundation of this set of beliefs is the hypothetical that a utility "should have addressed the pre-existing violation prior to the new attacher's request for access." This hypothetical is logically flawed for at least four reasons. First, it relies upon a hypothetical scenario (i.e. something the new attacher alleges should have happened in the past) rather than the actual conditions in the field. Second, it presumes an inspection cycle that, in every instance, will have detected a pre-existing violation prior to the new attacher's request for access.

Third, it presumes that the cure for an earlier-detected pre-existing violation would have been a pole replacement that provided capacity for the new attacher, when in fact the cure may have been removal of the pre-existing attachment (in which case the new attacher finds a pole with no violation, but no capacity). Fourth, even if pole had been replaced earlier in time, it presumes space would still be available for the new attacher rather than "consumed" by other attachers in the interim. The friction between utility pole owners and attaching entities over the implementation of the Commission's pre-existing violation rules has led to numerous disputes, some of which have been presented to the Rapid Broadband Assessment Team ("RBAT") for review and assistance, but many of which have not.

The Commission can help reduce disputes, reduce consumption of the RBAT's resources, and facilitate deployments by providing clarity to the intent of its pre-existing violation rules. In particular, the Electric Utilities request the following clarifications from the Commission:

- The presence of a pre-existing violation does not negate a utility's right to deny access to a pole under Section 224(f)(2) so long as the pre-existing violation is not the ***sole*** basis for denial of access.
- The presence of a pre-existing violation does not entitle a new attacher to accelerated access (i.e. faster than as otherwise set forth in Rule 1.1411); and
- The presence of a pre-existing violation does not absolve a new attacher from cost responsibility for make-ready pole replacements.

The Commission should also take a step further towards resolving disputes by providing guidance on the proper cost allocation for make-ready pole replacements under the above-described circumstances. Specifically, the Electric Utilities propose the following: the new attacher pays for 100% of the make-ready pole replacement, subject to a 50% refund if the pre-existing violator transfers to the new pole with the authorization of the pole owner. A pole owner can enforce this cost allocation by prohibiting the pre-existing violator from transferring to the new pole

unless/until it pays 50% of the pole replacement cost, in which case this amount would be refunded to the new attacher.

This proposal aligns with the language of Rule 1.1408(b) which provides in pertinent part:

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

The "unknown fact" bearing on the allocation of make-ready costs at the time of the pole replacement is whether the pre-existing violator will avail itself of the opportunity to transfer to the replacement pole. In other words, without prior notice to the pre-existing violator (and an opportunity for the pre-existing violator to take action), it is unknown whether the pole replacement corrects the violation. Upon receiving notice that it will not be permitted to transfer its facilities to the new pole unless or until it remits payment for 50% of the cost to replace the pole, the pre-existing violator may simply choose removal. If this is the case, then the new attacher will not have paid to correct a pre-existing violation and there is thus no conflict with Rule 1.1411(d)(4). Because the above proposal is not dependent upon any intervening action or inaction on the part of the pre-existing violator, there is no potential conflict with either Rule 1.1411(c)(2) or (h)(2), which prohibit denial of access or delay of access, respectively, on account of a pre-existing violation.

B. The Commission Should Restore Advance Notice and Good Faith Negotiation Requirements for Large Deployments.

All stakeholders agree that the availability of resources is the primary challenge when it comes to large deployments. This is the primary reason why the Commission adopted new rules relating to timely contractor approval in the Fifth Report and Order and why it is seeking comments

on the timeline and process for onboarding new contractors in the Fourth FNPRM. The most efficient way of addressing the resource challenge is through advance notice and bilateral negotiations. The Electric Utilities, in their initial and reply comments on the Third FNPRM, advocated specifically for:

- 60-day advance notice prior to submitting applications for more than 300 poles in any 30-day period; and
- Eliminating fixed timelines for applications for more than 300 poles in any 30-day period.

The motivation behind these recommendations was to enable bilateral planning so both parties could secure the resources necessary to successfully and timely complete the deployment. The "300 pole" threshold wasn't a magic number—it was just a point of demarcation in the Commission's existing rules. The point of the recommendations was to steer sizeable deployments towards the advance notice and good faith negotiation requirement (whether "sizeable" meant 500 poles, 1,000 poles or something else).

The Fifth Report and Order, though, went in the opposite direction by expanding the use of rigid timelines from 3,000 poles to 6,000 poles, and by adopting an advance notice requirement that (a) applies only to application volume in excess of 3,000 poles in any 30-day period, and (b) has no "teeth" whatsoever.[59] In other words, as compared to the Commission's pre-existing rules (which required good faith negotiations for application volume in excess of 3,000 poles in any 30-day period), the new rules take a step **backward** when it comes to advance notice and bilateral coordination.

[59] Though the Fifth Report and Order adopted an advance notice requirement for "mid-sized" order, the advance notice is only 15 days (which is grossly insufficient for any sort of resource requisitioning) and even the 15-day period applies only to certain, limited categories of "mid-sized" orders. Fifth Report and Order, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, at ¶ 14 (released July 25, 2025).

The Commission can take a step **forward** by:

- Eliminating the definition of "Mid-Sized Order" in Rule 1.1411(a)(4), and all references thereto; and
- Revising the definition of "Large Order" in Rule 1.1411(a)(5) to mean "pole attachment orders greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state and up to the lesser of 3,000 pole or 5 percent of the utility's poles in state.

Given the success of the RBAT, there is no reason to even attempt large deployments through prescriptive regulation. In fact, there aren't any success stories of large deployments under the Commission's previous timelines. Most of the success stories flow from privately negotiated high-volume deployment plans. Thus, it strains credulity to think that there will be success stories under timelines that (literally) double down on the fundamental error of the previous timelines. There are success stories through the RBAT, though. The RBAT, which has been functioning for less than a year, has already proven to be everything the Commission hoped it would be when it was first introduced in the Fourth Report and Order. The success of the RBAT where prescriptive timelines have failed demonstrates that private agreements, not prescriptive rules, provide the clearest path forward for large deployments.

In short, the Electric Utilities believe the stakeholders should collaboratively determine the parameters for any deployment of significance and lean on the RBAT if/when the parties are unable to solve a point of disagreement. This approach would reduce the likelihood of resource constraints and take pressure off the potential for disputes over contractor approval and onboarding by reducing the need for unplanned self-help.

CONCLUSION

The Electric Utilities appreciate the opportunity to submit comments on these important issues and look forward to further engagement with the Commission on these issues.

Respectfully submitted this 22nd day of September, 2025.

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APPENDIX A
Proposed Revisions to Enact Enhanced OTMR

§1.1402 Definitions.

(a) The term *utility* means any person that is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person that is cooperatively organized, or any person owned by the Federal Government or any State.

(b) The term *pole attachment* means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(c) With respect to poles, the term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the utility. With respect to conduit, the term *usable space* means capacity within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the utility.

(d) The term *complaint* means a filing by a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, or an association of telecommunications carriers alleging that it has been denied access to a utility pole, duct, conduit, or right-of-way in violation of this subpart and/or that a rate, term, or condition for a pole attachment is not just and reasonable. It also means a filing by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term *complainant* means a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, an association of telecommunications carriers, an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers who files a complaint.

(f) The term *defendant* means a cable television system operator, a utility, or a telecommunications carrier against whom a complaint is filed.

(g) The term *State* means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(h) For purposes of this subpart, the term *telecommunications carrier* means any provider of telecommunications services, except that the term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226) or incumbent local exchange carriers (as defined in 47 U.S.C. 251(h)).

(i) The term *conduit* means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

(j) The term *conduit* system means a collection of one or more conduits together with their supporting infrastructure.

(k) The term *duct* means a single enclosed raceway for conductors, cable and/or wire.

(l) With respect to poles, the term *unusable space* means the space on a utility pole below the usable space, including the amount required to set the depth of the pole.

(m) The term *attaching entity* includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities, governmental entities and other entities with a physical attachment to the pole, duct, conduit or right of way. It does not include governmental entities with only seasonal attachments to the pole.

(n) The term *inner-duct* means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

(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.

§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.

(b) All time limits in this subsection are to be calculated according to §1.4.

(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.

. . .

(3) *Survey.* (i) A utility may ~~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)~~, unless the utility waives its right to perform such survey in writing as set forth in paragraph (i)(1) 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.

. . .

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

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

(i) Specify where and what make-ready will be performed by the new attacher through the use of a qualified contractor.

(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.~~

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.~~ Following completion of make-ready above the communications space, the new attacher shall be responsible for completing all make-ready within the communications space specified in the notice pursuant to paragraph (e)(1) of this section, including any transfer of existing attachments within the communications space necessitated by a pole replacement. All such work shall be performed by a contractor that meets the requirements of §1.1412(c) and shall be performed contemporaneously with the installation of the new attachments.

(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).~~ [DELETED]

. . .

(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* . . .

(3) *Pole replacements.* Self-help shall not be available for pole replacements. As provided in paragraph (e)(3) of this section, in the event of a pole replacement, the new attacher shall, contemporaneously with the installation of its new attachments, transfer all existing attachments within the communications space by using a contractor that meets the requirements of §1.1412(e).

~~(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 attach'~~er'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 attach'er'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 utili'ty'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 utili'ty'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 utili'ty'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 attach'er's contractor that certain make-ready is simple. If the utility objects to the contract'or's determination that make-ready is simple, then it is deemed complex. The utili'ty'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 attach'er'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 attach'er'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.~~