FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; FCC 25–38; FR ID 308601]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, a *Fifth Report and Order* adopted by the Federal Communications Commission (Commission) establishes rules ensuring greater collaboration and cooperation between utilities and attachers, establishing a timeline for large pole attachment requests, revising and improving the pole attachment timeline, and establishing a deadline for the contractor approval process. In addition, the Commission denies in part and grants in part a Petition for Clarification and/or Reconsideration from the Edison Electric Institute of portions of the Commission's December 2023 *Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking.* Finally, the Commission denies a Petition for Reconsideration from the Coalition of Concerned Utilities of a portion of the *Fourth Report and Order.*

DATES: Effective September 25, 2025, except that the amendments to §§ 1.1403(b), 1.1411(c) through (k), and 1.1412(a) and (b), (e) of the Commission's rules, which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: For further information about this proceeding, please contact Michele Berlove, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418–1477, or *michele.berlove@fcc.gov,* or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418–0357 or *michael.ray@fcc.gov.* For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order* in WC Docket No. 17–84, FCC 25–38, adopted on July 24, 2025, and released on July 25, 2025. The full text of this document is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-25-38A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

Synopsis

I. Introduction

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

2. The Commission has taken significant steps in recent years to expedite the pole attachment process, but there is more work to be done. Today, we take further action to advance the goal of ubiquitous high-speed broadband by revising our pole attachment rules to eliminate barriers to efficient broadband deployment by building on the work begun in the Commission's *December 2023 Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking.* Specifically, we adopt rules (1) ensuring greater collaboration and cooperation between utilities and attachers, (2) establishing a timeline for large pole attachment requests, (3) improving the pole attachment timeline, and (4) speeding up the contractor approval process. We also seek comment in the Further Notice on ways to further facilitate the processing of pole attachment applications and make-ready to enable faster broadband deployment and, in response to a Petition for Declaratory Ruling filed by CTIA, seek comment on whether light poles fall within the purview of Section 224(f) of the Communications Act of 1934, as amended (the Act). We then deny in part and grant in part a Petition for Clarification and/or Reconsideration from the Edison Electric Institute of portions of the Declaratory Ruling. Finally, we deny a Petition for Reconsideration from the Coalition of Concerned Utilities of a portion of the *Fourth Wireline Infrastructure Order,* 89 FR 2151 (Jan. 12, 2024).

II. Background

3. Section 224(f) of the Act requires that utilities provide cable television systems and telecommunications carriers with nondiscriminatory access to their poles. (For purposes of this statutory provision, ''utility'' is defined as ''any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.'' Railroads, cooperatives, and federally- and state-owned entities are expressly excluded from this definition. The term ''pole attachment'' is defined as ''any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.'') Section 224(b)(1) of the Act requires the Commission to set the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable. (Note that Section 224(c) of the Act exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves (so-called ''reverse preemption''). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions.) The Commission has rules intended to ensure nondiscriminatory pole access and just and reasonable rates, along with a robust complaint process to ensure that our rules are enforced.

4. *Pole Attachment Process.* Attaching equipment to utility poles is a multi-stage process. In the first stage, the utility reviews the pole attachment application submitted by the communications attacher for completeness. In the second stage, the utility must determine whether to grant the complete application (review on the merits) and undertake a survey of the poles for which access has been

requested. In the third stage, the utility must prepare for the attacher an estimate of the cost of preparing the affected poles for the new attachments. In the fourth stage, utilities (or the existing attachers, if they want to move their own existing equipment) perform the work to make the affected poles ready for the new attachments (also known as ''make-ready'' work) and then the new attachers deploy their equipment on the poles. The make-ready stage is the most time-intensive stage in the pole attachment process. (Make-ready is defined as ''the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.'' There are several different kinds of make-ready. Complex make-ready refers to ''transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.'' Simple make-ready is ''where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.'' There also is make-ready above the communications space on a pole, typically involving work either in the electric space or at the pole-top.)

5. *Existing Timelines.* The Commission's rules set forth deadlines for each stage in the pole attachment process. A utility has up to 10 business days after receiving a new attachment application to determine whether it is complete. (If the utility timely notifies the new attacher that its application is not complete, it must specify all reasons for finding it incomplete, and any resubmitted application shall be deemed complete within 5 business days after its resubmission, unless the utility notifies the attacher of how the resubmitted application is insufficient. The new attacher may follow the resubmission procedure as many times as it chooses so long as it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the 5-day deadline shall apply to the utility's review.) Upon receipt of a complete application, (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) the utility has 45 days in which to make a decision on the application and complete any surveys to determine whether and where attachment is feasible and what make-ready is required. The utility then must provide an estimate of all make-ready charges within 14 days of its response granting access or, where the new attacher has performed the survey, within 14 days of receipt of such survey. The new attacher has 14 days or until withdrawal of the estimate by the utility, whichever is longer, to accept the estimate and make payment. Once the utility receives payment of the estimate, it then must notify existing attachers on the pole of the new attachment. The existing attachers then must move their equipment to make room for the new attachment within 30 days of receiving notice from the utility for attachments in the communications space or 90 days for attachments above the communications space. (Different portions of the vertical pole serve different functions. The bottom of the pole generally is unusable for most types of attachments. Above that, the lower usable space on a pole—the ''communications space''—houses low-voltage communications equipment, including fiber, coaxial cable, copper wiring, and small wireless antennas. The topmost portion of the pole—the ''electric space''—houses high-voltage electrical equipment. Work in the electric space generally is considered more dangerous than work in the communications space. Historically, communications attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space to attach pole-top small wireless equipment.) A utility must complete its make-ready work in the same time periods, except it may take up to 15 additional days to complete make-ready above the communications space. These deadlines apply to all pole attachment requests up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state (Regular Orders). For pole attachment requests larger than a Regular Order and up to the lesser of 3,000 poles or 5 percent of a utility's poles in a state, a utility may add 15 days to the survey period and 45 days to the make-ready periods. For pole attachment requests larger than the lesser of 3,000 poles or 5 percent of a utility's poles in a state, our rules currently provide that the utility and the attacher must negotiate in good faith the timing of the pole attachment process. (Note that a utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.) Utilities may deviate from the pole attachment timelines in our rules—for the make-ready phase only—for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the required timeline. (Utilities may deviate from any of the pole attachment timelines in our rules before offering the estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment. In addition, existing attachers may deviate from the timelines specified in our rules during the performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the timelines.)

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

7. *One-Touch-Make-Ready.* In 2018, the Commission adopted a new framework that allows attachers to control the surveys, notices, and make-ready work necessary to attach their equipment to utility poles in certain circumstances. In what is known as one-touch, make-ready (OTMR), for an attachment involving simple make-ready, a new attacher may elect to

perform the work to attach its wireline equipment to the communications space of a pole. (''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.'') This framework includes safeguards to promote coordination among parties and ensures that new attachers perform the work safely and reliably. As the Commission stated at the time, using OTMR will save new attachers ''considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments.''

8. *Recent Commission Action.* In December 2023, the Commission took additional steps to speed-up broadband deployment by making the pole attachment process faster, more transparent, and more cost-effective. Specifically, the Commission adopted rules: (1) establishing the Rapid Broadband Assessment Team (RBAT) to provide coordinated review and assessment of qualifying pole attachment disputes and recommend effective dispute resolution procedures, and (2) requiring utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been ''red tagged'' by the utility for replacement, and the scheduled replacement date or timeframe. Additionally, the Commission clarified that a ''red tagged'' pole is one that the utility has identified as needing replacement for any reason other than the pole's lack of capacity and provided additional examples of when, under § 1.1408(b) of our rules, a pole replacement is not ''necessitated solely'' as a result of a third party's attachment or modification request because the pole already requires replacement at the time of the new request. The Commission also clarified the obligation to share easement information and the applicable timelines for the processing of attachment requests for 3,000 or more poles. (For the processing of pole attachment requests, the Commission specifically clarified that ''when an application is submitted requesting access to more than the lesser of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in § 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do.'')

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

10. The rise in government funding for broadband deployment has contributed to a significant increase in deployment of extensive new broadband facilities, resulting in a significant increase in the number of applications seeking to attach these facilities to large numbers of utility poles. Both attachers and utilities acknowledge that these increases, along with increases in privately funded projects, have put greater demand on utility resources and the pool of qualified contractors and have resulted in difficulties and delays in accessing poles. As a result, the Commission sought comment in the *Third Further Notice* (89 FR 1859; Jan. 11, 2024) on: (1) a tentative conclusion that utilities should have an additional 90 days for make-ready work for requests exceeding the lesser of 3,000 poles or 5 percent of the utility's poles in a state; (2) whether the Commission should prohibit utilities from limiting the number of poles included in a pole attachment application and from limiting the number of applications an attacher may submit at a time; (3) a proposal that the Commission add additional time to the existing timelines for larger orders; (4) whether the Commission should create additional make-ready timeline tiers for attachment applications of different sizes; (5) a proposal that a utility notify an attacher within 15 days after receiving a complete application if it cannot conduct the survey within the required 45-day period (so that the attacher can elect self-help for the survey sooner); (6) whether the Commission should make self-help available for the make-ready estimate process; and (7) the impact of contractor availability when attachers seek to use their own contractors for self-help and whether to amend the Commission's rules to make it easier for attachers to use their own contractors for self-help when there are no contractors available from a utility contractor list. Comments on the *Third Further Notice* were due on February 13, 2024, and replies were due on March 13, 2024.

11. *CTIA Petition for Declaratory Ruling.* In 2019, CTIA filed a Petition for Declaratory Ruling in this proceeding. (The CTIA Petition was also filed in the Wireless Telecommunications Bureau's *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* proceeding. The Wireline Competition and Wireless Telecommunications Bureaus placed the CTIA Petition on public notice and in response received dozens of comments, replies, and *ex parte* presentations from communication providers and utility groups. The Bureaus twice extended the comment deadlines.) CTIA requested three declarations concerning pole attachments in its Petition: (1) that the term ''pole'' in Section 224 includes light poles; (2) that utilities may not impose ''blanket'' restrictions on access to portions of any poles they own; and (3) that utilities may not seek bargained-for terms and conditions that are inconsistent with the Commission's pole attachment rules. The latter two issues were addressed in a *Declaratory Ruling* released in July 2020. The question of whether the term ''pole'' encompasses light poles remains pending.

III. Report and Order

12. In this Report and Order, we adopt new requirements that will aid attachers and utilities in planning for larger broadband deployments and in allocating critical contractor resources to ensure that large broadband deployments are completed in an efficient and timely manner. During this critical time of infrastructure deployment and with both utilities and attachers seeking guidance from the Commission, these requirements represent a multi-pronged, holistic

approach that will best balance the difficulties faced by utilities in processing large applications against attachers' need for speedier deployments, as follows: (1) requiring attachers to provide written notice to utilities of forthcoming pole attachment orders that are greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state up to the lesser of 6,000 poles or ten percent of a utility's poles in a state; (2) providing that an attacher that fails to provide timely advance notice of such orders must, upon prompt notice from the utility, still wait the relevant advance notice period before the applicable timeline begins; (3) imposing a meet-and-confer requirement following the requisite advance notice for orders exceeding the lesser of 3,000 poles or five percent of a utility's poles in a state up to the lesser of 6,000 poles or ten percent of a utility's poles in a state; and (4) establishing a new set of timelines for utilities to complete each pole access phase for large orders.

13. We also revise our pole attachment timelines as follows: (1) require utilities to notify attachers within 15 days of receiving a complete application if they know or reasonably should know that they cannot meet the survey deadline, and require utilities to notify attachers within 15 days of payment of the estimate, and existing attachers to notify utilities and new attachers within 15 days of receiving notice from the utility, if they know or reasonably should know that they cannot meet the make-ready deadline; (2) add a self-help remedy for make-ready estimates, provided certain safeguards are met; and (3) prohibit utility-imposed limits on application size and frequency that have the effect of restricting the number of pole attachments attachers may seek in a given timeframe. We also adopt improvements to the contractor approval process. Our current rules require that a utility may not unreasonably withhold its consent to an attacher request to add qualified contractors to the utility's list of contractors approved to do pole work. (As the Commission stated in the *Third Wireline Infrastructure Order,* ''to be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.'') To ensure promptness in the utility's contractor decision-making, we require utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request. We note, however, that the parties are free to negotiate for a longer approval period. (Parties have always been free to reach negotiated agreements with terms that differ from our rules.)

A. Advance Notice and Meet-and-Confer Requirements

14. Both attachers and utilities cite the need for better coordination in the pole attachment process. And the Commission has always encouraged ''a high degree of pre-planning and coordination between attachers and pole owners, to begin as early in the process as possible.'' (We note that the advance notice and meet and confer requirements adopted here are an outgrowth of the large order management issues on which the Commission sought comment in the *Third Further Notice,* particularly: (1) seeking comment on utility concerns related to large-order processing, especially workforce availability and the submission of multiple applications at the same time; (2) asking about steps the Commission could take to facilitate the pole attachment process for larger orders; (3) asking about other ways to assist utilities in processing the expected increase in large applications; and (4) seeking comment on factors identified by USTelecom as reasons to give utilities additional time to process larger orders—permitting delays, workforce shortages, staffing issues, and the coordination required among attachers to make room for a new attachment.) To that end, we adopt a requirement that attachers provide written advance notice to utilities of Mid-Sized Orders associated with a single network deployment (For Mid-Sized Orders only, the advance notice requirement is limited to instances where the order threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher.) and Large Orders. (Several commenters advocate that we extend the advance notice requirement to orders involving government-funded broadband projects, while EEI supports advance notice for Large Orders, but limited only to those involving government-funded broadband projects. We disagree with EEI's proposed limitation, as we find that a prior notice requirement will benefit the processing of both Mid-Sized Orders associated with a single network deployment and Large Orders for all broadband projects, including privately funded projects. We note that government-funded orders more than likely are Large Orders or Mid-Sized Orders associated with a single network deployment and thus already will be covered by the advance notice requirement. Additionally, attachers give no proposed definition of a government-funded project, nor any size limitation on such an order, and also put the onus on the utility to determine whether an order is associated with a government-funded project (*i.e.,* allegedly because such grants are in the public domain and easily verifiable). Moreover, many government-funded projects will involve areas where the utilities are cooperatives that are not subject to our rules.) Mid-Sized Orders are orders exceeding the lesser of 300 poles or 0.5 percent of a utility's poles in a state up to the lesser of 3,000 poles or 5 percent of a utility's poles in the state. Large Orders are orders exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state up to the lesser of 6,000 poles or 10 percent of a utility's poles in a state. We require the written advance notice to be sent as soon as practicable, but not less than 15 days in advance of submitting a Mid-Sized Order or 60 days in advance of submitting a Large Order, and that it shall set forth detailed information that will allow the utility to properly assess the potential resource needs for the order. While we expect the notice to be as detailed as possible, at the very least it must contain (1) the attacher's contact information; (2) description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) a request to meet and confer with the utility within 30 days of the date of the notice for a Large Order. (There are three categories of information requested by Dominion, UTC, and USTelecom that we do not find should be required for the advance notice, although such information could be helpful to share with the utility, if available at the time of the notice: (1) in the case of a government-funded project, all deployment plans prepared in connection with the attacher's application for funds; (2) a list of all contractors that the attacher seeks to have pre-approved for one-touch and self-help make-ready work; and (3) a list of all permits and authorizations necessary for the proposed deployment and their status. The lists of contractors, permits, and authorizations may not be readily discernable until after the Mid-Sized or Large Order is submitted, while the detailed deployment plans for government-funded projects can be shared after the advance notice is sent.) We do not adopt a meet-and-confer

requirement for Mid-Sized Orders. We also clarify, as requested by NCTA, that ''minor changes to routes should not necessitate new notice and/or a new meet-and-confer, but that the attacher and utility should jointly work to accommodate these changes.''

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

16. In adopting a written advance notice requirement for Mid-Sized Orders associated with a single network deployment and Large Orders, we acknowledge the concerns of utilities that ''[w]ithout ample advanced notice, there is a risk that attachers may flood pole owners with applications predictably leading to delays due to scarcity of resources.'' The record does not reflect opposition to this requirement for Large Orders, and both utilities and attachers generally agree that it will be useful for all parties. However, we disagree with attachers who argue that we should not apply an advance notice requirement for Mid-Sized Orders. (We disagree with NCTA's assertion that ''[p]rior to the release of the Draft Order, utilities had not requested that advanced notice requirements apply to smaller or mid-size orders.'' We note that both EEI and the Electric Utilities advocated for an advance notice for Mid-Sized Orders during the comment period.) Instead, we agree with utilities that a written advance notice requirement will promote broadband deployment and lead to greater efficiency in the processing of not just Large Orders but also Mid-Sized Orders associated with a single network deployment, especially with regard to allocating important contractor resources. As CCU notes, ''[a]dvance notice would enable utilities to better prepare by, for example, working to secure as many additional contractor resources as possible to support the negotiated timeframes.'' However, in recognition that applying the prior notice requirements to Mid-Sized Orders risks slowing the process for completing these orders, which according to commenters are often not scheduled in advance and can regularly exceed 300 poles in a thirty-day period, we shorten the advance notice period for Mid-Sized Orders associated with a single network deployment to 15 days. And in light of attachers' concern that ''[t]he 300 poles in a 30-day period threshold, if it included even unrelated 'business as usual' builds, would require notice nearly every month,'' we limit the advance notice requirement for Mid-Sized Orders to when the threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher.

17. If an attacher submits an application to the utility without giving the required the advance notice, then the utility may promptly notify the attacher that it is treating the application as the requisite advance notice, that the application will commence the advance notice period, and, if it is a Large Order, that the attacher must request the meet-and confer required by our rules. If the attacher fails to request the meet-and-confer described below, then the advance notice period will not begin to run until such request is made. At the end of the advance notice period, the new attacher can submit a new application or notify the utility that it is continuing with its original submission as its application, and the utility may not charge any additional or increased application fee. Failure by the utility to give prompt notice that it is treating the attacher's application as the advance notice will result in the application proceeding to be processed under the applicable timelines without an advance notice period or meet-and-confer requirement. This approach still will provide utilities with the advance notice they assert is routinely lacking. (We note that if disputes arise regarding the sufficiency of the attacher's notice (especially with regard to the adequacy of the required information in the notice), the parties can resort to the RBAT to resolve such conflicts.) Although we encourage advance notice from attachers to utilities for larger orders as early in the process as possible, we find that a minimum of 15 days is needed for the utility to begin planning for how to process Mid-Sized Orders associated with a single network deployment, and a minimum of 60 days is needed for Large Orders, which present more complications that the parties will need to iron out in the ensuing meet-and-confer. (Utilities generally agree that 60 days is the minimum amount of time needed for an advance notice of Large Orders. We find that 60 days' advance notice for Large Orders strikes the right balance between giving the utility enough time to begin planning for the new project and the time at which an attacher's plans become more concrete and less likely to change. We also find that the advance notice for Mid-Sized Orders associated with a single network deployment should be shorter than the notice for Large Orders, as such orders are smaller and presumably easier to process.) It also will require responsiveness on the part of utilities, which attachers assert is often not forthcoming. We expect that this requirement will foster a more collaborative approach to the pole attachment process and increase efficiency and planning in processing larger orders, resulting in speedier broadband deployment.

18. We reject utilities' request that if an attacher fails to comply with the advance notice requirement, then it forfeits the right to have its application processed under the Mid-Sized and Large Order timelines and instead will have to negotiate timelines for their application in good faith with the utility. We find that such a penalty is too onerous. The impact of failure to comply with the advance notice requirement is readily ameliorated by utilities' ability to deem the associated application to constitute the attacher's advance notice, still requiring the parties to meet and confer (as described below) within the specified period of time after a Large Order is filed, and tolling for the length of the advance notice period the applicable pole attachment timeline, which includes the time the utility has to review the associated application for completeness and begin its review on the merits.

19. To further enhance collaboration between the parties, we require attachers and utilities to meet and confer within 30 days after written advance notice is given to negotiate in good faith the mechanics and timing by which Large Orders will be processed. We encourage the parties to discuss and plan, among other things, the utility's ability to meet deadlines for an order, the availability of contractors (particularly the need for, and availability of, electric space contractors to the extent necessary), a prioritization of the poles to be worked on, the status of local permitting efforts, and estimated timelines for the work. We also require that the parties find a mutually agreeable day and time for the meeting (which can be in-person, virtual, or by phone), and to conduct the meeting, within the 30-day period after the attacher sends written advance notice.

Any allegations of bad faith by either party in fulfilling this requirement can be referred to the RBAT for resolution. We agree with utilities that such a pre-planning requirement will ''enable utilities and attaching entities to prepare for larger orders or better yet avoid the need to submit larger orders altogether and instead submit applications in stages.'' (UTC in particular supports the idea that ''processing applications incrementally is more efficient and enables utilities to process as many applications as quickly as possible and avoids the situation where if there is a hold-up with one application, then the attachers' entire project is held up'' and that a pre-planning requirement will enable the parties ''to prioritize the work appropriately so that resources can be allocated and projects can be completed as efficiently as possible with the resources that are available.'')

B. Large Orders

20. While we do not change the existing timelines for processing pole attachment applications for Regular Orders and Mid-Sized Orders, (The pole attachment deadlines for all four phases of the pole attachment process apply to all requests for Regular Orders. Utilities currently get an extra 15 days for the survey process and an extra 45 days for the make-ready process for Mid-Sized Orders. There currently are no required timelines for the processing of orders exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state; rather, the current rules require the parties to negotiate such timelines in good faith. Note also that attachers have the right to engage in self-help for surveys and make-ready work if utilities fail to complete those items by the deadlines established in our rules.) we agree with attachers that fixed timelines are necessary for some level of pole attachment applications above 3,000 poles (or 5 percent of a utility's poles in a state). Presently, our rules require attachers and utilities to negotiate in good faith the timelines for such applications, but today we shift away from an uncertain negotiation method and adopt a new level of defined timelines for processing applications exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state, up to the lesser of 6,000 poles or 10 percent of a utility's poles in a state. We define this grouping as Large Orders, and the timelines we adopt are as follows:

LARGE ORDER TIMELINE

Pole access phase	Time for completion
Application Completeness Review	10 business days after receipt.
OTMR Application Review	10 business days for completeness, 45 days on the merits after application is complete.
Survey/Review on Merits	90 days after application is complete.
Estimate	29 days after survey.
Communications Space Make-Ready	120 days after attacher payment.
Above Communications Space Make-Ready (Power space)	180 days after attacher payment.

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

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

22. We agree with attacher commenters that an additional defined timeline layer is needed to process these Large Orders. As NCTA asserts, having defined timelines only for applications up to 3,000 poles, and requiring attachers to negotiate the timing of applications exceeding this threshold, fails to provide the required certainty and expediency necessary to meet critical broadband buildout needs and requirements. As the Commission noted when it first adopted timelines to govern the pole attachment process, ''in the absence of a timeline, pole attachments may be subject to excessive delays.'' Since that time, when the Commission established a good-faith negotiation solution for the processing of orders exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state, circumstances have changed, with an established nationwide priority on broadband deployment and the need for communications attachers to move quickly to achieve the needed buildouts.

23. Utilities' opposition to an additional layer of defined timelines for Large Orders centers on the desire for flexibility, especially with regard to the allocation of contractor resources for pole attachment work; as USTelecom notes, no utility can ''escape the realities of workforce shortages, staffing issues, permitting delays, supply chain difficulties, and the need to divert resources to address storms or other emergencies, which can add time to a deployment project.'' While we recognize these realities and the benefits of flexibility, we address utilities' concerns by adopting the advance notice and meet-and-confer requirements that will jump start the pole attachment process for Large Orders earlier than under our current rules, a requirement that utilities have identified as crucial to adopting timelines for Large Orders. With additional planning added to the process on the front end (especially with regard to planning for contractor resources), and given the over-arching need of communications attachers to deploy broadband as quickly as possible, we find that a defined pole attachment timeline for Large Orders will greatly facilitate the pole attachment process. And we agree that in adopting new timelines for Large Orders, ''the parties will remain free to negotiate alternative solutions.''

24. *Timelines for Large Orders.* We find that the new timelines for Large Orders strike a balance between a utility's need for sufficient time to

process such orders and an attacher's need for a quicker pole attachment process in order to meet buildout deadlines. For ease of reference, the pole attachment timelines for all sizes of orders will now be as follows:

POLE ATTACHMENT TIMELINES

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

25. While we adopt the Commission's proposal in the *Third Further Notice* to add 90 days to the make-ready timelines for Large Orders, (The proposed additional 90 days for make-ready were in addition to the make-ready deadlines for Regular Orders (*i.e.,* 30 days for communications space make-ready and 90 days for make-ready above the communications space).) we also find it necessary to adopt longer timelines for other stages of the pole attachment process, not just the make-ready phase. As a result, we add incremental days for the application review, survey, and estimate phases of the pole attachment process for Large Orders in recognition of utilities' concerns that as pole attachment orders become larger, they become more complex and thus require even more time to complete. The new timelines we adopt for Large Orders are the same as those proposed by NCTA, but are shorter than the Large Order timelines proposed by USTelecom (USTelecom proposes incremental timelines for each 300-pole batch over 3,000 poles in an order, which would be added to the timelines for Regular Orders: (1) *Review of Application for Completeness*—for each increment of 300 poles over 3,000 poles, the utility has 10 additional business days to determine whether an application is complete; (2) *Survey/Application review on the merits*—for each increment of 300 poles over 3,000 poles, the utility has 45 additional days to decide whether to grant a complete application and to complete any surveys; (3) *Estimate*—for each increment of 300 poles over 3,000 poles, the utility has 14 additional days to provide an estimate of make-ready charges; (4) *Attacher acceptance*—for each increment of 300 poles over 3,000 poles, the attacher has 14 additional days, or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment; (5) *Make-ready for attachments in the communications space*—for each increment of 300 poles over 3,000 poles, there are 30 additional days to complete make-ready work for attachments in the communications space; and (6) *Make-ready for attachments above the communications space*—for each increment of 300 poles over 3,000 poles, there are 90 additional days to complete make-ready work for attachments above the communications space, and a utility may take an additional 15 days to complete the make-ready.) and Dominion/Xcel Energy, (We note that Dominion/Xcel generally are opposed to additional pole attachment timelines for Large Orders, but are proposing timelines in the alternative ''if the Commission is compelled to reach this result.'' Dominion/Xcel also caveat that their proposed timeline should be limited to broadband projects funded by government programs and expressly conditioned on their proposed notice requirement. The Dominion/Xcel timeline for Large Orders would provide: (1) 30 days for application completeness review; (2) 75 days for OTMR application review; (3) survey/application review on the merits 150 days after application is complete; (4) estimate due 30 days after the survey is completed; (5) communications space make-ready within 165 days after attacher payment; and (6) make-ready work above the communication space within 285 days after attacher payment.) which we find are too lengthy to help attachers efficiently meet broadband buildout deadlines. For example, the proposed Dominion/Xcel timelines would extend the total make-ready time period to over five months for utilities and existing attachers to complete make-ready work for attachments in the communications space and to over nine months for utilities to complete work for attachments above the communications space. Given that make-ready timelines follow several months already afforded to utilities by the Commission's rules for assessing the completeness of applications, deciding the merits of an application, performing surveys, and providing make-ready estimates, adding an additional 5–7 months for make-ready would extend the pole attachment process to almost a year, thereby unnecessarily delaying the process. While some utility commenters oppose the Commission's proposal for additional make-ready time for Large Orders, we conclude that the 90-day increase in the make-ready deadlines for Large Orders strikes a balance between getting attachers onto poles faster while still making it more likely that a utility will be able to meet our pole attachment timelines. The new timelines we adopt today would mean that Large Orders would be processed more slowly than if an applicant broke the requests up into two smaller applications and submitted them separately a month apart. As a result, attachers will have an incentive to submit smaller orders that allow utilities to better manage their workflows and contractors and thus complete applications in a timely manner.

26. To the extent utilities need additional time for make-ready work, we note that the Commission's rules allow for deviations to the make-ready deadlines ''for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section.'' (While utilities are concerned about the increased complexities associated with

increasingly larger orders and the inability to predict what might arise in the course of the work related to these orders, the advance notice and meet-and-confer requirements will go a long way toward obviating these concerns.) USTelecom requests that we provide additional examples of what constitutes ''good and sufficient cause'' for deviations to the make-ready timelines, but we decline to do so at this time. Our rules currently provide that a utility may deviate from the make-ready timeline ''for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the [specified] time limits.'' (When so deviating, the utility must ''immediately notify, in writing, the new attacher and affected existing attachers,'' and identify the affected poles and provide a detailed explanation of the reason for the deviation and a new completion date.'' The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.'') In interpreting this provision, the Commission in 2011 stated that ''utilities may toll the timeline to cope with an emergency that requires federal disaster relief, but may not stop the clock for routine or foreseeable events such as repairing damage caused by routine seasonal storms; repositioning existing attachments; bringing poles up to code; alleged lack of resources; or awaiting resolution of regulatory proceedings, such as a state public utilities commission rulemaking, that affect pole attachments. Aside from these examples of very serious occurrences that impede make-ready on the one hand, and routine events that do not justify tolling the timeline on the other hand, a utility must exercise its judgment in invoking a clock stoppage in the context of its general duty to provide timely and nondiscriminatory access.'' We find that this previous guidance on what constitutes ''good and sufficient cause'' under our rules affords sufficient flexibility while still providing the certainty and expediency needed to ensure timely broadband buildouts.

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

28. The advance notice and meet-and-confer requirements also will help utilities when multiple attachers submit applications in the same timeframe. As Dominion/Xcel identifies the problem, it is hard to manage utility resources ''to the extent that sudden upticks in its workload arise from multiple modest-sized orders, submitted simultaneously by multiple attachers.'' But, as Dominion/Xcel note, ''[t]o ensure that adequate resources are available to process applications submitted in connection with massive deployments, DEV [already] requests that attachers provide prior notice of expanded orders as soon as the details of such orders are known—and some attachers honor this request.'' As we now mandate advance notice and meet-and-confer requirements before the submission of Large Orders, utilities and attachers can work out beforehand any resource problems caused by multiple such orders being submitted by different attachers around the same time.

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

C. Improvements to the Pole Attachment Timeline

30. *Utility and existing attacher notification requirement to enable quicker self-help for surveys and make-ready.* We require utilities to notify new attachers within 15 days of receipt of a complete application if they know or reasonably should know that they cannot meet the survey timelines. We further require utilities to notify new attachers as soon as practicable but no later than 15 days after payment of the estimate if they know or reasonably should know that they cannot meet the make-ready timelines. (We disagree with NCTA that the 15-day make-ready notification deadline should begin on completion of the survey. As USTelecom points out, at completion of the survey, ''utilities will lack insight into several relevant facts . . . including when the make-ready period will begin (something that depends on when the attacher pays a make-ready estimate) and whether third-party attachers will comply with deadlines for moving their attachments (something that occurs during the make-ready period).'') Similarly, existing attachers shall notify the utility and the new attacher as soon as practicable but no later than 15 days after receiving notice from the utility pursuant to § 1.1411(e) of our rules that the existing attacher knows or reasonably should know that it cannot meet the make-ready deadline. Existing attachers giving such notice also must notify the utility of their inability to meet the make-ready deadline, and we note that existing attachers already receive notice of payment of the estimate when the utility sends them make-ready letters pursuant to § 1.1411(e). Where a utility or existing attacher notifies the new attacher that it is unable to meet the survey or make-ready timelines, the new attacher may then elect self-help for the work that the notifying party cannot do pursuant to § 1.1411(i)(1) (for surveys) or § 1.1411(i)(3) (for make-ready) of our rules upon receipt of the notice rather than having to wait until the relevant timeline period runs. However, if either a utility or an existing attacher does not give advance notice to the new attacher that it will be unable to meet the survey or make-ready deadlines, then the new attacher must wait until the end of the survey or make-ready timelines in our rules before availing itself of any self-help remedies for that party's work. Attachers can submit to the RBAT any allegations that the utility or existing attachers knew or reasonably should

have known that the survey or make-ready work could not be completed on time and advance notice was not timely given.

31. In the *Third Further Notice,* the Commission sought comment on NCTA's proposal ''that the utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period so that the attacher can elect self-help for the survey sooner.'' Specifically, the Commission asked whether utilities can ''feasibly be required to inform attachers within 15 business days of receiving a completed application that they will be unable to conduct a survey, estimate, or make-ready within the required time period.'' While utilities argue that it is not feasible for them to determine whether they can meet the survey or the make-ready deadlines so soon after their timetable begins, attachers assert that utilities ''generally know immediately upon reviewing an application whether they will be able to facilitate the pole access process in a timely manner'' and that such advance notice is key to speeding up the pole attachment process because they can then invoke the self-help option sooner.

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

33. With these changes to the proposed action, the advance notice and Large Order meet-and-confer requirements should help obviate the utilities' concerns that 15 days may be too short to give notice of being unable to meet the survey and make-ready deadlines, as the pre-planning and coordination that now will occur should give utilities earlier insight into the scope of a project and the viability of the associated deadlines. We also note that in utilities' experience, the self-help remedy is rarely, if ever, used, but we want to provide attachers with access to the tools they need to deploy broadband quickly and cheaply.

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

35. *Self-help for the estimate phase.* In order to further improve the pole attachment timeline, we adopt a self-help remedy for make-ready estimates where the utility is unable to meet the estimate timelines, provided there are certain safeguards as proposed by utility commenters. Currently in our rules, utilities have 14 days after giving notice of granting the new attacher's complete application or receiving the new attacher's self-help survey to complete an estimate of make-ready costs and present the estimate to the attacher. (''Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by paragraph (c) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey.'') Although note that herein we have adopted a 29-day period for the estimate phase for Large Orders. A utility may withdraw the estimate beginning 14 days after it is presented if the attacher has not yet accepted that estimate, and the new attacher may accept the estimate and make payment any time after receiving it unless it has been withdrawn. However, unlike for surveys and make-ready work, there currently is no self-help remedy for attachers if utilities miss the deadline to present the estimate of make-ready costs. In the *Third Further Notice,* the Commission sought comment on NCTA's proposal to make self-help available for the estimate process. In the ensuing record, both utilities and attachers supported this concept as a way to speed the pole attachment process and ensure broadband projects do not get stuck at the estimate phase.

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

acceptance of the attacher's estimate obviates any concern over the accuracy of any potential make-ready estimates for work above the communications space.

37. In addition, we adopt a requirement that utilities make a written decision on a self-help estimate within 14 days of receipt or before it is withdrawn by the attacher, whichever is later, noting that this is the same amount of time that a new attacher has to accept an estimate from the utility before the utility has the option to withdraw the estimate. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in § 1.1411(d)(3) of our rules. If the estimate is not accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The attacher then can submit a revised estimate to the utility without restarting the pole attachment timeline. If the self-help process does not result in an accepted estimate, then the attacher can resort to the RBAT to have the utility generate an estimate pursuant to § 1.1411(d) of our rules.

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

39. When the Commission first adopted pole attachment timelines in 2011, it addressed utilities' desire for flexibility by creating three size-categories of applications and allowing utilities to ''treat multiple in-state requests from a single attacher during a 30-day period as one request.'' While the subsequent record shows that utilities use application size and frequency limits to effectively manage application workflow, we want to ensure that such limits do not have the effect, whether intended or not, of restricting the number of pole attachments attachers may seek in a given 30-day period. Utilities still are able to accumulate together all orders received from an attacher within a 30-day period in order to determine the correct timeline for processing the combined orders, but those applications must be processed in accordance with our rules. (As the Commission clarified in the *Declaratory Ruling,* ''when an application is submitted requesting access to the larger of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in § 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do.'') For example, if an attacher has a 3,500 pole project, the utility cannot impose limits on the size and frequency of the attacher's pole attachment application(s) that would prevent the attacher from submitting a 3,500 pole order in a 30-day period. While the utility can limit the size of a pole attachment application and can treat all applications filed by the attacher in a 30-day period as one application, the limits cannot have the effect of preventing the attacher from applying to access 3,500 poles in a 30-day period (although the utility can process the application(s) under the Large Order timeline). We agree with Crown Castle that ''attachers should be allowed to file applications that make sense for their deployment plan, particularly for deployments under RDOF, BEAD, or other programs.'' Indeed, some utilities already adhere to this rule, thus demonstrating that it is reasonable. For example, Dominion Energy and Xcel Energy explain they ''follow administrative policies that prescribe a maximum number of poles per application, but also permit an attacher to submit an unlimited number of applications at its discretion.''

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

40. We amend § 1.1412 of the Commission's rules to establish a firm deadline by which utilities must respond to requests by attachers to add additional qualified contractors to their existing lists. Specifically, we require utilities to respond to such requests within 30 days of receipt by the utility. The response must state whether the proposed contractor meets the requirements in § 1.1412(c) of the Commission's rules and will be added to the utility's approved list of contractors following the completion of the utility's on-boarding process. (We seek comment in the *Further Notice* below on contractor on-boarding processes, the time required to complete such processes, and whether the Commission should adopt a deadline for the completion of that process.) If a utility fails to respond to an attacher's request to add a proposed contractor to its approved list within 30 days of receipt, the attacher's request will be deemed approved.

41. In the *Third Further Notice,* the Commission sought comment on whether it should modify the self-help rules to enable attachers to access poles more quickly. The self-help remedy allows attachers to perform surveys and make-ready work using utility-approved contractors. (Note that in this item, the Commission is extending the self-help remedy to the estimate phase as well.) For surveys and make-ready work that is complex or above the communications space, a utility must make available and keep up-to-date a reasonably sufficient list of contractors that it has authorized to perform such work on its poles. A new attacher engaging in self-help for complex or above the communications space make-ready must use a contractor from this list to perform the work. Attachers may, however, request that additional contractors meeting the minimum requirements of the Commission's rules be added to the utility-approved list, and utilities may not unreasonably withhold their consent. For surveys and make-ready work that is simple, utilities may—but are not required to—provide a reasonably sufficient list of contractors they authorize to perform such work. If a utility provides such a list, attachers must use a contractor from that list. Attachers may request that utilities add contractors that meet the minimum qualifications of the Commission's rules to their lists, and utilities may not unreasonably withhold their consent. (If a utility does not provide a list of

approved contractors for self-help surveys and make-ready that is simple, or none of the contractors on the utility-approved list are available within a reasonable time, attachers may retain their own contractors that meet the minimum qualifications of the Commission's rules to perform the work.) To be reasonable, a decision to withhold consent ''must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.''

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

43. The Commission authorized attachers to request that additional qualified contractors be added to utility-approved lists ''to prevent the utility list from being a choke-point that prevents deployment.'' We conclude that failing to respond to an attacher's request to add an additional contractor for months creates such a choke-point and failing to respond at all certainly does. Indeed, we find that the Commission's prior direction that decisions to withhold consent be ''prompt'' means that utilities may not simply hold requests in abeyance without providing a response at all. (We, thus, disagree with USTelecom that there is no need for the Commission to establish a deadline to respond to attacher requests to add additional qualifications because the Commission has already stated that such responses must be ''prompt.'') To conclude otherwise would defeat the purpose of allowing attachers to request that qualified contractors be added to utility-approved lists.

44. Thus, we amend § 1.1412 of the Commission's rules to require that utilities respond to any request by an attacher to add an additional contractor to a utility-approved list within 30 days of receipt of the request. (Because attachers currently have a remedy to retain their own contractors if a utility does not maintain an approved list of contractors for self-help surveys and make-ready that is simple, the deadline that we adopt today is particularly important for requests to add contractors to utility-approved lists for self-help surveys and make-ready that is complex or above-the communications space. We, thus, decline to limit the deadline to contractors that would perform work that is in the communications space, as some utilities have requested. We also decline the Electric Utilities' request that we revise § 1.1412(a) and (b) of our rules to apply to self-help work above and below the communications space, respectively, rather than to self-help work that is complex and above the communications space and self-help work that is simple, respectively.) The response must state whether the proposed contractor has been approved based on the requirements in § 1.1412(c) of the Commission's rules and will be on-boarded by the utility to work on its poles, after which the contractor will be added to the utility's approved list. We find that 30 days is enough time for utilities to evaluate whether a proposed contractor meets the minimum qualification requirements of the Commission's rules based on the information submitted by the attacher and to provide the response described above. To ensure swift compliance with this deadline by utilities, we require that requests to add attachers to utility-approved lists be deemed approved if a utility fails to respond to such requests by the 30-day deadline, and that the utility promptly on-board the contractor as necessary to commence work on the utility's poles. (Notwithstanding statements from utilities that contractors working on their poles must execute agreements with utilities, NCTA asserts that ''it is the attaching entity, not the utility, that is responsible for contracting with and onboarding the contractor and for the tasks the Electric Utilities identify as most time consuming.'' We find that the information in the record is insufficient for the Commission to determine the exact steps that must be taken to onboard a contractor to work on a utility's poles, how long those steps should take, and who the parties responsible for completing those steps are or should be. As stated above, we seek comment on these points in the Further Notice.) We find that a deemed approved remedy is appropriate to enable attachers to make meaningful use of the self-help remedy to timely complete their deployments when survey, estimate, and make-ready deadlines under our rules have been missed.

45. Some utilities argue that the Commission should not adopt a deadline to approve or deny requests to add additional contractors to their lists because it can take three months to a year or more to on-board contractors to perform surveys and make-ready work. We are not persuaded by this argument. We agree with NCTA that the process of approving the addition of a contractor that meets the requirements of § 1.1412(c) of the Commission's rules is distinct from the ''on-boarding'' requirements described by utilities, such as negotiating an agreement with the new contractor, providing employees of the new contractor with access to the utility's internal systems, and training. Section 1.1412(c) requires the proposed contractor to: (1) agree to follow published safety and operational guidelines of the utility, if available, but if not, to follow National Electrical Safety Code guidelines; (2) acknowledge that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility; (3) agree to follow all local, state, and federal laws and regulations including, but not limited to, requirements regarding Qualified and Competent Persons under the Occupational and Safety Health Administration rules; (4) agree to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and (5) demonstrate that it is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers. (Dominion/Xcel suggests that the minimum qualification requirements in § 1.1412(c) of the Commission's rules are not sufficient as applied to contractors that perform complex or

above the communications space make-ready work. The Commission decided otherwise when it authorized attachers to request that utilities add ''any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section'' to their lists of contractors authorized to perform self-help surveys and make-ready that is above the communications space and complex, and stated that utilities may not unreasonably withhold their consent. In so doing, the Commission did not ''mandate specific qualification requirements for third-party cont[r]actors that perform work on or in the vicinity of electric power facilities . . . .'' To the contrary, § 1.1412(c) of the Commission's rules requires contractors to agree to ''follow published safety and operational guidelines of a utility, if available'' and ''to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available.'' The Commission's rules thus require compliance with any such reasonable, nondiscriminatory requirements as-set by the utility for work that is complex and above the communications space.) We find it is reasonable to assume that a utility could review information submitted to demonstrate a proposed contractor's agreement to these requirements and issue a decision within 30 days that either approves the contractor contingent on completion of the utility's on-boarding process or denies the contractor based on the sufficiency of that information.

46. Some utilities argue that allowing a ''deemed approved'' remedy if utilities miss this deadline will necessarily create safety concerns for workers and the public and risk the reliability of electric distribution systems. We disagree. As an initial matter, we do not believe it will be difficult for utilities to avoid a deemed approved result by simply complying with the deadline. The response we require merely requires the utilities to review information submitted by attachers to determine if the proposed contractor has made the representations required by § 1.1412(c) of the Commission's rules. We acknowledge that utilities thereafter may need to take steps to on-board and train the contractors to perform work on their poles, and that the contractor will not be added to the utility's approved list until that process is complete. In recognition of potential safety concerns associated with work in the supply space, that process may differ in certain respects for contractors that will conduct work above the communications space as compared to contractors that will be working in the communications space. But, the first step is to approve or deny the contractor based on the requirements of § 1.1412(c) of the Commission's rules within 30 days of receiving a request from an attacher, and we do not view that as burdensome—particularly given that utilities insist that attachers rarely invoke the self-help remedy or request to add contractors to utility-approved lists.

47. Further, if an attacher does not submit information sufficient to demonstrate that a contractor has made the representations required by § 1.1412(c) of the Commission's rules, utilities may respond to the attacher within 30 days with a denial, provided that it is ''set forth in [a] writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.'' (As explained above, this is the standard that the Commission adopted in 2018 to assess whether a utility's withholding of consent to add additional contractors to its approved list is reasonable. We, therefore, decline Dominion's request to exclude the language ''fair application of commercially reasonable'' from the rule amendment that merely codifies the existing standard. Further, we disagree with Dominion's assessment that the rules we adopt today do not ''contemplate a utility's independent evaluation of any attacher-proposed contractor on the basis of its own standards, processes, and protocols to ensure safety and reliability.'' Section 1.1412(c)(4) of the Commission's rules requires the contractor to agree ''to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available,'' 47 CFR 1.1412(c)(4), and our new rules require proposed contractors to successfully complete a utility's on-boarding process (including its evaluation and training requirements) before they are added to the list of contractors approved to work on the utility's poles. The rules we adopt today, therefore, provide ample opportunity for a utility to evaluate a contractor based on its own standards, processes, and protocols to ensure safety and reliability before the contractor is authorized to perform self-help work.) Finally, as has always been the case, the parties are free to negotiate for a longer review period for contractor approvals if needed. (Parties have always been free to reach negotiated agreements with terms that differ from our rules.)

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

49. While we believe it is important to improve the self-help remedy by expediting action on requests to add additional qualified contractors to utility-approved lists, (As explained herein, the *Third Further Notice* sought comment on whether the Commission should modify the self-help remedy to enable attachers to access poles more quickly, and the record indicates that setting a deadline that ensures a prompt response to requests to add qualified contractors to utility-approved lists would promote that objective. We, thus, decline the request of some utilities to seek comment on such a deadline in the *Further Notice* rather than adopt one here.) we recognize that there may be circumstances where a utility may need to disqualify a contractor that was previously approved by a utility or deemed approved due to reasonable safety or reliability concerns, as is the case when an attacher selects its own contractor to perform surveys and simple make-ready if a utility does not provide a list of approved contractors or the contractors on that list are not available within a reasonable time. We understand that having the right to disqualify contractors causing reasonable safety and reliability concerns is particularly important for work that is complex and above the communications space. We, therefore, make clear that utilities may disqualify a contractor that was previously approved by a utility or deemed approved based on reasonable safety or reliability concerns related to a contractor's failure to meet the minimum qualifications described in § 1.1412(c) of the Commission's rules or to meet the utility's uniformly applied and reasonable safety or reliability standards. (We decline Dominion's request to remove qualifying language from the safety and reliability standards that may be applied to disqualify a contractor. We are concerned that this could lead to discriminatory disqualifications of contractors if the standards applied in disqualification

decisions are not uniformly applied and reasonable. We, thus, grant Dominion's request insofar as it seeks removal of a requirement that safety and reliability standards be ''public and commercially reasonable,'' but require that disqualification decisions be based on a contractor's failure to meet the minimum qualifications described in § 1.1412(c) of the Commission's rules or to meet the utility's *uniformly applied and reasonable* safety and reliability thresholds, consistent with § 1.1412(c)(4) of the Commission's rules.) We view this as consistent with the right afforded to utilities under our rules to have a representative present when self-help work is performed by a contractor and to ''monitor a contractor's work and insist that the work meet utility specifications for safety and reliability, including requirements that may exceed NESC standards'' on a nondiscriminatory basis. Although attachers and utilities are obligated to try to resolve any disagreements, electric utilities are entitled to make final determinations in disputes over capacity, safety, reliability, and generally applicable engineering purposes, consistent with Section 224(f)(2) of the Act. (By making it clear that utilities may disqualify a contractor that was previously approved by a utility or deemed approved based on reasonable safety or reliability concerns, we fully address the concern raised by Dominion/Xcel that Section 224(f)(2) of the Act ''necessarily encompasses the right of a utility pole owner to prohibit an attacher's use of third-party contractors that have not been fully evaluated and approved by the utility to perform the work for which they were retained on the utility's poles.'' The rule we adopt today requires that utilities respond within 30 days to a request to add additional contractors to utility-approved lists based on whether attachers submit sufficient information to demonstrate the contractor's agreement to the requirements in § 1.1412(c), which incorporates the utility's published safety and operational guidelines and uniformly applied and reasonable safety and reliability thresholds. Regardless of whether a contractor is approved by a utility or ''deemed approved'' due to a failure to provide a timely response, the contractor will not start work on the utility's poles until the successful completion of the utility's on-boarding process (*e.g.,* any required training). And, after that, the utility retains the right to remove the contractor from its approved lists due to noncompliance with safety and reliability requirements on a nondiscriminatory basis. Utilities, thus, retain ample and ultimate control over contractors working above the communications space on their poles.) Accordingly, whether a contractor is added to a utility's approved list by the utility or at the request of an attacher, the utility ultimately has the authority to determine whether the contractor remains on the list on a going-forward basis consistent with these standards and the Commission's rules. (We note that our rules require utilities to ''keep up-to-date'' their lists of contractors authorized to perform self-help surveys and make-ready.)

50. If a utility disqualifies a contractor that was previously added to its approved list at the request of an attacher or deemed approved pursuant to the requirements we adopt today, (We disagree with Dominion that the rule we adopt today does not permit utilities to deny a contractor for safety and reliability reasons. As we state above, the utility will have 30 days to deny a request to add the contractor to the utility-approved if the attacher fails to submit sufficient information to determine that the contractor has made the representations required by § 1.1412(c) of the Commission's rules. If the utility does not respond with a denial or an approval by that deadline, then the contractor will be deemed approved, but may nonetheless be disqualified (*i.e.,* have the approval rescinded) based on reasonable safety or reliability concerns related to a contractor's failure to meet the minimum qualifications described in § 1.1412(c) of the Commission's rules or to meet the utility's uniformly applied and reasonable safety or reliability standards. Further, as we have made clear, a proposed contractor will not be added to the utility's list of contractors approved to perform self-help work until it has successfully completed the utility's on-boarding process, which may include additional evaluations and training. Accordingly, none of the requirements we adopt today will allow a contractor to appear on a utility's approved list unless and until the utility has evaluated, trained, and otherwise completed its on-boarding steps for contractors that perform work on its poles.) we require that it provide written notice to the attacher that it has done so and specify the bases for the disqualification in that notice. An attacher wishing to challenge the reasonableness of the disqualification may avail itself of the Commission's Rapid Broadband Assessment Team process or submit a complaint to the Commission's Enforcement Bureau.

IV. Order on Reconsideration (EEI)

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

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

A. The ''Necessitated Solely'' Clarification Was Properly Included in the Declaratory Ruling

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

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

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

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

57. We deny EEI's requests. Specifically, we find that the reconsideration and clarifications sought by EEI go beyond (EEI and utilities such as CCU argue that ''simply because a new construction standard must apply to a pole whenever in the future it might be replaced does not mean that the pole needs to be replaced at the time the attacher requests access to the pole.'' This argument, and the argument that a grandfathered pole remains compliant with ''the electric utility's construction standards and does not require replacement until such time as there is a material modification to that pole,'' miss the point. It is the utility's change in its internal construction standards that has now made the pole unable to accommodate the new attachment and it is that condition that led us to clarify in the *Declaratory Ruling* that the new attachment request does not solely necessitate a pole replacement. This simple premise does not, as the Electric Utilities allege, ''undermine an electric utility's long-standing right (and responsibility) to adopt and implement non-discriminatory standards that exceed the NESC, where appropriate and necessary.'') our simple premise in including the internal constructions standard determination; namely, a pole replacement is not ''necessitated solely'' by a new attacher where a pole replacement is required due to a utility changing its construction standard after the pole is constructed. When a utility makes a unilateral decision to change its internal construction standards such that the existing pole must now be replaced the next time it is touched, it is not the case that replacing that pole is ''necessitated solely'' by a new attachment request that comes along. We agree instead with NCTA's characterization that ''[b]eing what EEI calls 'grandfathered' is not the same thing as compliant with current standards. As EEI's arguments make clear, the issue is one of the utility's choice of timing. The poles are not compliant with the latest construction standard, but the utility chooses when and why to replace the pole.'' (Because of the importance attached to the utility's sole purview on the timing of replacing a pole that is noncompliant with its construction standards, we disagree with the characterization of the Electric Utilities that ''the fact that 'the utility chooses when and why to replace the pole,' does not justify the grandfathered pole ruling.'') As a result, we found it necessary to clarify in the *Declaratory Ruling* that, when a utility's change in construction standards contributes to the need to replace a pole, the new attachment request does not solely necessitate the pole replacement.

58. However, we grant clarification insofar as we provide here an important caveat to the internal construction standards determination and associated example. We note that an important element of the internal construction standards determination is the capacity, or the lack thereof, on the existing pole. We clarify that, for purposes of the internal construction standards determination, when a utility is determining capacity on a pole to see whether a pole replacement is necessary, the relevant utility construction standards to consider are limited to the current standard and the standard immediately preceding that current standard. (We thus reject EEI's argument that the internal construction standards determination requires the utility to figure out ''which of the many previous iterations of an electric utility's construction standards would be applicable'' when a pole is replaced following a new attachment request.) That is, assuming a pole lacks capacity for a requested new attachment under the utility's new construction standard, but capacity would exist under its immediately preceding construction standard, the resulting pole replacement would not be ''necessitated solely'' by a new attachment request. By contrast, if the pole lacks capacity under both the new and immediately preceding construction standards, then application of § 1.1408(b) means that the new attachment request is the cause of the pole replacement, *i.e.,* it is ''necessitated solely'' by the new attachment. The clarification we offer today can be administered easily and also limits unreasonable actions to delay pole replacements in order to force new entrants to bear the entire cost of a pole replacement. To the extent this was not clear from the *Declaratory Ruling,* we hereby clarify accordingly.

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

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

61. Relatedly, we reject EEI's claim that in advancing the internal construction standards determination, the Commission failed to consider the ''enormous'' economic burden placed on utilities as a result of the *Declaratory Ruling* and failed ''to balance the respective interests, costs, burdens, and liabilities of pole owners and attachers, or to assess whether reasonable limitations are needed to minimize any adverse impact on utility pole owners.'' Instead, we recognize that this determination requires utilities to bear some of the burden, but we must also consider the burden on attachers. The internal construction standard determination spreads the burden across all of the parties who are causing the pole replacement.

62. Further, contrary to EEI's contention in its Petition, there was substantial record support for the clarification at issue. For example, several commenters have consistently advocated for the Commission to adopt a ''more transparent, just, and reasonable process that ensures a fair allocation of replacement costs between pole owners and new attachers seeking to use the poles.'' With regard specifically to the application of the ''necessitated solely'' language in the Commission's rules, Charter sought to have the Commission extend the clarification in the *2021 Pole Replacement Declaratory Ruling* to find that ''when a pole is scheduled for replacement or facing imminent replacement,'' the pole replacement is not ''necessitated solely'' by an attachment request. As ACA Connects states, ''almost 18 months before the Commission issued the [internal construction standards determination], Crown Castle filed comments . . . demonstrating that pole owners were using internal construction standards to avoid cost-causation principles and requiring prospective attachers to pay the entire cost of pole replacements.'' After full consideration of the record, the Commission decided to include the internal construction standards determination in the non-exclusive list of examples of when a pole replacement is not ''necessitated solely'' by an attachment request—an example put forward in the record by Crown Castle as far back as August 2022.

63. We also find unpersuasive EEI's argument in the Petition that the internal construction standards determination and the grandfathered pole example will result in less broadband deployment because they would cause ''uncertainty and financial

risk'' for utilities. We concur with INCOMPAS that in fact ''the clarity provided in the *Declaratory Ruling*'' will advance broadband deployment by competitive providers ''as these companies will now be able to devote more resources to extending builds and reaching new customers rather than paying to replace aging utility poles.'' As Crown Castle notes, the ''Commission's decision regarding replacement of poles to bring them into compliance with a utility's updated construction standards (including so-called 'grandfathered' poles) will promote broadband deployment by reducing costs and eliminating the opportunity and incentive for pole owners to manipulate the process to the detriment of attachers.''

64. Finally, we reject EEI's argument in the Petition that the Commission's application of the ''necessitated solely'' language in § 1.1408(b) to allocate make-ready pole replacement costs is ''confusing and inappropriate.'' EEI claims that the '' 'cost causation language of the fourth sentence of 1.1408(b)' speaks only of the costs for rearranging or replacing *existing attachments*.'' However, as the Commission explained in the *Declaratory Ruling,* it agreed with the Bureau's analysis in the *2021 Pole Replacement Declaratory Ruling* that when the cost-allocation and cost-causation provisions in § 1.1408(b) are read together, they ''stand for the proposition that parties benefiting from a modification share proportionately in the costs of that modification, unless such modification is necessitated solely as a result of an additional or modified attachment of another party, in which case that party bears the cost of the modification.'' The Commission further clarified that ''it would be contrary to the Commission's rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement . . . at the time a request for a new or modified attachment is made.''

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

B. Easement Ruling

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

67. Section 224(f)(1) of the Act requires a utility to provide ''a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.'' In the 1996 *Local Competition Order,* the Commission found that ''the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit such access.'' Based on the language in Section 224(f)(1) and the Commission's interpretation of that language as set out in the *Local Competition Order,* the Commission concluded in the *Declaratory Ruling* that ''in order to enable attachers to effectuate their right of access under section 224(f) of the Act, utilities must provide potential attachers with a copy of a utility's easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement. In making this clarification, we find that the Section 224(f) right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher; it does not require the utility to alter the underlying easement or act in contravention of state law.'' Such a requirement is consistent with the best reading of Section 224(f)(1) because without information on the actual easement, neither attachers nor the Commission can verify whether the utility's denial of access is justified, and the best source for easement information is the utility that holds the easement. After all, the utility's easement shows the extent of the utility's ownership or control of the right-of-way under the relevant state law. Providing this information—which necessarily shows whether the attacher has a statutory right of access—gives the attacher the ability to make use of the pole and thus fits within the ordinary meaning of ''access.'' (The dictionary definition of ''access'' is ''freedom or ability to obtain or make use of something.'')

68. EEI asserts that as written, the *Declaratory Ruling* implies that the utility, not the attacher, is responsible in the first instance for any determination that must be made about the scope of the utility easement, and that this goes against decades of precedent and standard practice. (Despite EEI's claim that the Commission's easement-sharing requirement goes against ''decades-old-precedent'', EEI cites to no such precedent. In rejecting this argument, we note that the Commission has not ruled on any easement-related parameters since 1996) In support of its Petition, EEI argues that: (1) ''easement information is not relevant to pole attachment requests or to broadband deployment''; (2) the clarification ''is premised on the baseless assertions of a single commenter to which no party had an opportunity to respond''; (3) the clarification ''fails to balance the costs, burdens, risks, and potential benefits that will flow from a new disclosure requirement''; and (4) the clarification ''fails to consider reasonable limitations on a pole owner's obligation to share easement information.'' We believe our clarification herein obviates the latter two concerns. For the reasons set forth below, however, we reject EEI's first two objections.

69. We do not agree with EEI's characterization that the *Declaratory Ruling* ''implies that the utility, and not the attacher, is responsible in the first instance for any determination that must be made about the scope the utility easement.'' (We do not disagree with EEI's assertion that ''where an attacher seeks to use a utility easement to access a pole that the utility approved for attachment under Section 224(f), the attacher (and not the utility) must determine whether the applicable easement for the pole location is sufficiently broad to allow or encompass a third-party communications facility.'') Rather, we plainly clarified in the *Declaratory Ruling* that ''the section 224(f) right of access requires the sharing of information regarding the easement *in cases where the utility claims the easement cannot accommodate an attacher.*'' Where the

utility claims the easement cannot accommodate an attacher, that claim is presumably based on some analysis of the easement by the utility. It is in this limited setting that the utility is required to share easement information. In such a case, an attacher must be able to evaluate the easement to determine its scope, and the best source for the easement is the utility that holds it.

70. With regard to EEI's other arguments against the easement ruling, they largely can be boiled down to an issue of balancing burdens against benefits, with EEI asserting that the Commission failed to consider and implement such a balance. We disagree. The burden of the sharing requirement is limited to ''cases where the utility claims the easement cannot accommodate an attacher.'' (In rejecting EEI's argument that the easement clarification ''fails to consider reasonable limitations on a pole owner's obligation to share easement information'', we note that just the opposite is true—the ''disclosure of easements should *only* be required when the pole owner denies an active request (*i.e.,* an application) for access to a specific pole based on its interpretation of the scope of an applicable easement.'') As for the benefits and relevance of the easement sharing requirement, we agree with commenters who assert that the potential for disputes is amplified by the asymmetrical information between parties, thus slowing down the process of pole attachments and, consequently, delaying broadband deployment. By requiring utilities to provide relevant easement information, we are helping to level the playing field between utilities and attachers while also reducing the potential delays in broadband deployment. (This is contrary to EEI's claim that easement information is not relevant to pole attachment requests or to broadband deployment.) Thus, limiting the sharing of easement information to situations where the utility denies easement access is a reasonable limitation on a utility's obligation to share easement information without exacerbating the problem of asymmetrical information.

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

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

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

V. Order on Reconsideration (CCU)

74. In this Order, we deny CCU's Petition for Reconsideration of our December 2023 *Fourth Wireline Infrastructure Order.* In that *Order,* the Commission adopted new regulations requiring utilities to provide copies of their cyclical pole inspection reports to prospective attachers upon request. The key purpose of this requirement is to increase transparency and provide attachers with more information that might assist them in planning broadband deployment projects. At the same time, the Commission sought to avoid imposing undue burdens on utilities by limiting the requirement to providing information they already possess and produce in the normal course of business.

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

A. Adequate Notice of the Rule

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

77. Groups representing attachers disagree. They state that the law does not require a notice of proposed rulemaking to have proposed the precise rule that the Commission ultimately adopts, but rather only that the final

rule be a ''logical outgrowth of its notice.'' They contend that the final rule on pole inspection reports was a logical outgrowth of a proposal in the *Second Further Notice* because the Commission specifically asked about the types of information utilities should be required to provide regarding the status of their poles, and both attachers and utilities addressed pole inspection reports as one such source of information in their comments, replies, and *ex parte* filings.

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

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

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

B. Substantive Challenges to the Rule

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

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

83. As a threshold matter, CCU and others already raised, and the Commission already considered, CCU's arguments regarding the value or need for the information in pole inspection reports, the potential for disputes or confusion, the possible impact on broadband deployment, and the burden of the new requirement on utilities. For example, as Altice notes, CCU's Petition incorporates entire passages from its Reply submitted in response to the *Second Further Notice,* altering only a few words. (For example, the arguments at pages 13–15 of the CCU Petition are a nearly verbatim repeat of the arguments at pages 12–14 of CCU's Reply to the *Second Further Notice.*) CCU's Petition also reiterates the same arguments already presented by it and other utilities in comments and replies submitted in response to the *Second Further Notice* and in *ex parte* submissions after the Draft Order was released.

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

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

86. CCU's argument does not warrant changing or removing the timing

requirements. At this time, the argument is speculative, and the Commission's rule already seeks to limit the burden on utilities by limiting its reach only to pre-existing pole inspection reports. (To the extent utilities find it impossible to comply with the deadline requirement, they may seek relief through appropriate channels.) We also decline to reconsider the requirements because the 10-business-day deadline was stated in the Draft Order, and CCU submitted an *ex parte* filing related to the pole inspection reports requirement after public release of the Draft Order. Thus, CCU should have raised its concerns about the response deadline then.

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

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

89. Finally, CCU asserts that the rule on cyclical pole inspection reports would reduce utilities' incentive to replace poles to accommodate attachers and could lead to some utilities simply denying access, which would be counter to the Commission's goals in the proceeding. In the *Fourth Report and Order,* however, the Commission took pains to adopt a rule that balanced the interests of utilities and attachers and limited the burden on utilities by requiring them to provide pole inspection reports that already exist and that the utilities already prepare in the normal course of business. The Commission also rejected a number of transparency proposals that would have been materially more burdensome and costly for utilities, and strongly encouraged utilities and attachers to collaborate and cooperate on ways to make the processing of pole attachment applications more efficient for all involved. CCU's arguments do not cause us to challenge the Commission's conclusion that the new transparency rule strikes the appropriate balance, and we therefore decline to reconsider the rule on that basis. (CCU previously argued that imposing more duties and deadlines on utilities would undermine their incentive to perform voluntary pole replacements. The Commission took account of such arguments when limiting the obligation here to pole inspection reports that already exist and that utilities already create in the normal course of business and in rejecting more extensive information-sharing proposals. CCU's Petition adds nothing new.)

VI. Final Regulatory Flexibility Analysis

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

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

91. In the *Fifth Report and Order,* the Commission adopts rules and policy changes that will make the pole attachment process faster and cheaper, particularly when poles have to be replaced during broadband buildouts. In the last five years, the Commission took significant steps in setting standards for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles, with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments. In the *Fifth Report and Order,* we adopt rules (1) requiring attachers to provide written notice to utilities of forthcoming pole attachment orders of a certain size; (2) providing that if an attacher submits an application for a Mid-Sized Order associated with a single network deployment or Large Order without the requisite advance notice, the utility can treat the application as the advance notice, and the timelines are tolled for the relevant advance notice period; (3) imposing a meet-and-confer requirement following the requisite advance notice for Large Orders; (4) establishing a new set of timelines for utilities to complete each pole access phase for large orders; (5) requiring utilities to notify attachers within 15 days of receiving a complete application whether they can meet the survey and notify attachers within 15 days of payment of a make-ready estimate that they will not be able to meet the and make-ready deadline; (6) adding a self-help remedy for make-ready estimates, provided certain safeguards are met; (7) declaring that application size and frequency limits that extend pole attachment timelines beyond the limits set forth in § 1.411 violate our rules; and (8) requiring utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request or the contractor will be ''deemed approved.''

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

92. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Third Further Notice* IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

93. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

94. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''mall governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

95. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses.

96. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

97. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of ''small governmental jurisdictions.''

1. Internet Access Service Providers

98. *Wired Broadband Internet Access Service Providers (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

99. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report,* we believe that the majority of wireline internet access service providers can be considered small entities.

100. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

101. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they

operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

102. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

103. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

104. *Incumbent Local Exchange Carriers* (*Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

105. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

106. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities

107. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

108. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

109. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

110. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

111. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

112. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

113. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

114. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

115. According to Commission data as of November 2021, there were three active licenses in this service. The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a ''small business'' is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

116. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

117. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of

these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

118. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

119. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

120. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

121. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.

122. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

123. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

124. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

125. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as

small under the SBA's small business size standard.

126. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

127. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

128. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

129. *Air-Ground Radiotelephone Service.* Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.,* voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

130. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

131. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

132. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

133. *3,650–3,700 MHz Band.* Wireless broadband service licensing in the 3,650–3,700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3,650 MHz band (*i.e.,* 3,650–3,700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3,650–3,700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

134. The Commission has not developed a small business size standard applicable to 3,650–3,700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3,650–3,700 MHz band. However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

135. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution

Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

136. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

137. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

138. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

139. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

140. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.

141. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

4. Satellite Service Providers

142. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $44 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Consequently, using the SBA's small business size standard most satellite telecommunications service providers can be considered small entities. The Commission notes however, that the SBA's revenue small business size

standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition. Additionally, the Commission neither requests nor collects annual revenue information from satellite telecommunications providers, and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

143. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

5. Cable Service Providers

144. Because Section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

145. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $47 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

146. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

147. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

148. *Electric Power Generators, Transmitters, and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of ''establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.

149. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

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

150. The RFA directs agencies to provide a description of the projected reporting, recordkeeping and other compliance requirements for the rules adopted herein, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

151. In the *Fifth Report and Order,* we adopt new, advance notice and pre-planning requirements in the pole attachment process for Orders of a

certain size to facilitate greater coordination between attachers and utilities. Parties seeking to use the pole attachment timelines for a Mid-Sized Order associated with a single network deployment or Large Order must send written advance notice of the forthcoming Order to utilities as soon as practicable, but not less than 15 days in advance of submitting a Mid-Sized Order associated with a single network deployment and not less than 60 days in advance of submitting a Large Order. The notice should contain, at a minimum, (1) the attacher's contact information; (2) a detailed description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) a request to meet with the utility within 30 days of the date of the notice for Large Orders. If an attachers submits an application with providing the required written advance notice (including the required minimum information), the utility can treat the application as the advance notice, and the applicable timelines will tolled during the relevant advance notice period. Attachers and utilities must also meet and confer within 30 days after written advance notice of Large Orders is given.

152. We also create new, fixed pole attachment phase timelines for Large Orders, specifying the time for completion of each pole access phase. These new timelines add incremental days to all stages of the pole attachment process to recognize the concern that, as pole attachment orders become larger, they become more complex and thus require more time to complete. Additionally, we improve our existing pole attachment timelines by (1) requiring utilities to notify attachers within 15 days of receiving a complete application when they know or should have reason to know that they can meet the survey and notify attachers within 15 days of payment of a make-ready an estimate when they know or have reason to know that they will be unable to meet the make-ready deadline, (2) adding a self-help remedy for make-ready estimates, provided certain safeguards are met; and (3) declaring that application size and frequency limits that extend pole attachment timelines beyond the limits set forth in § 1.411 violate our rules. Finally, we require utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request or the contractor will be deemed approved. These new requirements are expected to be minimally burdensome, as they merely require parties to (1) provide advanced information and collaboration that both utilities and attachers claim is lacking and will be useful, (2) continue collaborative efforts begun under the new advanced notice and pre-planning requirements, and (3) will ensure that parties can readily access and work on poles without concomitant burden on utilities and attachers.

153. The Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions, or to quantify the cost of compliance for small entities with the *Fifth Report and Order.* While some small entities may have some unique burdens, the Commission anticipates the requirements for pole attachment disputes and data collection by utility companies will result in greater cost savings because the more collaborative approach adopted in these rules will increase efficiency and result in faster broadband deployment.

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

154. The RFA requires an agency to provide ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

155. The Commission took steps to minimize significant economic impact on small entities and considered alternatives to new rules and processes adopted in the *Fifth Report and Order* that may impact small entities. By imposing a written advance notice requirement for Mid-Size and Large Orders and a meet-and-confer requirement for Large Orders, we address utilities' concern that attachers are often not providing sufficient notice and attachers' concern utilities are often nonresponsive, practices that harm utilities and attachers and ultimately delay buildout. However, we do not impose the same new written advance notice requirement for smaller orders because they do not have the same impact as larger orders, nor for Very Large Orders because the parties are still required to engage in good faith negotiation of the attachment timelines. And while we adopt a new timeline for Large Orders, it is longer than the timelines for Regular and Mid-Sized Orders to incentivize attachers to submit smaller orders, which will allow utilities to better manage their workflows and contractors and thus timely complete applications. The Commission also considered and adopted a proposal regarding the pole caps for the expanded timeline for Large Orders based on commenters' experience deploying broadband projects. Moreover, at utilities' request, we adopt certain safeguards for an attacher-produced estimate to ensure that utilities can manage their poles. We also clarified that a utility must approve or deny a contractor based on the sufficiency of the information provided under our newly adopted 30 day timeframe, the utility can take additional time to on-board and train the contractors and remain in compliance with the Commission's rules.

156. In considering alternatives to the rules, we declined to adopt certain proposals that are burdensome, unnecessary, or would impose significant costs on utilities or attachers with little or no benefit to broadband deployment. For example, we decline proposed new timelines for Large Orders that are too lengthy to help attachers efficiently meet broadband buildout deadlines. We also declined to establish timelines for Very Large Orders nor require a utility itself to establish ''reasonable'' timelines for Very Large Orders, as there may be reasons beyond the utility's control that will prevent it from establishing such timelines.

G. Report to Congress

157. The Commission will send a copy of the *Fifth Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Fifth Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA and will publish a copy of the *Fifth Report and Order,* and this FRFA (or summaries thereof) in the **Federal Register**.

VII. Procedural Matters

158. *Paperwork Reduction Act.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Specifically, the rules adopted in 47 CFR 1.1403(b), 1.1411(c) through (k), and 1.1412(a) and (b), (e) may require new or modified information collections. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for

review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the formation collection burdens on small entities.

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

160. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Fifth Report and Order and Orders on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).''

VIII. Ordering Clauses

161. Accordingly, *it is ordered* that pursuant to sections 1–4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201, 202, 224, and 303(r), the Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration hereby *is adopted* and part 1 of the Commission's rules, 47 CFR part 1, *is amended* as set forth in Appendix A. (Pursuant to Executive Order 14215, 90 FR 10447 (Feb. 20, 2025), this regulatory action has been determined to be not significant under Executive Order 12866, 58 FR 68708 (Dec. 28, 1993)).

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

163. *It is further ordered that,* pursuant to the authority contained in Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Clarification and/or Reconsideration filed by the Edison Electric Institute *is denied in part and granted in part.*

164. *It is further ordered that,* pursuant to the authority contained in Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of the Coalition of Concerned Utilities *is denied.*

165. *It is further ordered* that the Orders on Reconsideration *are effective* upon publication in the **Federal Register**.

166. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Fifth Report and Order and Orders on Reconsideration will commence on the date that a summary of this Fifth Report and Order and Orders on Reconsideration is published in the **Federal Register**.

167. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Fifth Report and Order and Orders on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

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

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

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

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

* * * * *

(b) Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within the time periods specified in §§ 1.1411(d)(1) through (2) and (h), the utility must confirm the denial in writing by the applicable deadline. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(c) * * *

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

* * * * *

■ 3. Amend § 1.1411 by:
■ a. Adding paragraphs (a)(4) and (5);
■ b. Redesignating paragraphs (c) through (j) as paragraphs (d) through (k);
■ c. Adding new paragraph (c);
■ d. Revising newly redesignated paragraphs (d)(2), (d)(3)(i) and (iii), (d)(4)(iv)(A) and (B);
■ e. Revising the first sentence in the introductory text of newly redesignated paragraph (e);
■ f. Revising the introductory text of newly redesignated paragraph (f) and paragraphs (f)(1)(ii) and (iv), (f)(2)(ii) and (v), and (f)(3);
■ g. Adding paragraph (f)(4);
■ h. Revising newly redesignated paragraphs (g), (h)(1) through (5), the second sentence of paragraph (i)(3), and the introductory text of paragraph (j)(1);
■ i. Redesignating the newly redesignated paragraph (j)(2) as paragraph (j)(3), adding new paragraph (j)(2), and revising the introductory text of newly redesignated paragraph (j)(3);
■ j. Revising the introductory text of newly redesignated paragraph (k), the introductory text of paragraph (k)(2),

The revisions and additions read as follows:

§ 1.1411 Timeline for access to utility poles.

(a) * * *

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

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

* * * * *

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

(2) If an application is filed without the required written advance notice, including the required minimum information, then the utility may, upon prompt notice to the new attacher, treat such application as the 15-day advance notice for Mid-Sized Orders associated with a single network deployment or the 60-day advance notice for Large Orders. Such notice from the utility to the attacher shall state that the application will commence the advance notice period and that the applicable timelines do not begin to run until after expiration of the relevant advance notice period. If it is a Large Order, the notice shall also state that the attacher must request the meet-and confer required by our rules. At the end of the advance notice period, the new attacher can submit a new application or notify the utility that it is continuing with its original submission as its application, and the utility may not impose any additional or increased fees. Failure by the utility to give prompt notice that it is treating the attacher's application as the advance notice will result in the application proceeding to be processed under the applicable timelines without an advance notice period or meet-and-confer requirement. If the attacher fails to request the meet-and-confer described in paragraph (c)(3) of this section, then the advance notice period will not begin to run until such request is made.

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

(d) * * *

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with § 1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of Mid-Sized Orders or within 90 days in the case of Large Orders as described in paragraph (h) of this section). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(3) * * *.

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

* * * * *

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

(4) * * *

(iv) * * *

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

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

(e) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of completing the survey required by paragraph (d)(3) of this section (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section), or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section). * * *

* * * * *

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

(1) * * *

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

* * * * *

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

* * * * *

(2) * * *

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

* * * * *

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

* * * * *

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

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

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

(h) * * *

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

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

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

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

(5) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another. However, a utility shall not impose application size limits in combination with application frequency limits that have the effect of restricting the number of pole attachments new attachers may seek in a given timeframe.

(i) * * *

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

(j) * * *

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

* * * * *

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

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

* * * * *

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

* * * * *

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

* * * * *

(ii) Within the 15-day application review period (or within 30 days in the case of Mid-Sized Orders or within 45

days in the case of Large Orders as described in paragraph (h) of this section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

* * * * *

(4) * * *

(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 (e) through (j) of this section and the utility shall provide the notice required by paragraph (f) of this section as soon as reasonably practicable.

* * * * *

■ 4. Amend § 1.1412 by revising the section heading, the first sentence in the introductory text of paragraph (b), paragraphs (b)(1) and (b)(2) and adding paragraph (e) to read as follows:

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

* * * * *

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

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

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

* * * * *

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

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

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

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

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