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SMALL ENTITY COMPLIANCE GUIDE

**Section 224: One Touch Make-Ready and Amendments to the Commission's Existing Pole Attachment Regulations
FCC 18-111
WC Docket No. 17-84
Released August 3, 2018**

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

Section 224 of the Communications Act of 1934 provides the Federal Communications Commission (Commission) with the authority to regulate attachments to utility owned and controlled poles, ducts, conduits, and rights-of-way.¹ Specifically, section 224 authorizes the Commission to promulgate rules to: ensure that rates, terms, and conditions of pole attachments are just and reasonable;² require utilities to provide non-discriminatory access to poles, ducts, conduits, and rights-of-way to telecommunications carriers and cable television systems;³ provide procedures for resolving pole attachment complaints;⁴ regulate pole attachment rates for attachers;⁵ and allocate make-ready costs between attachers and utilities.⁶

On August 2, 2018, the Commission adopted the *Wireline Infrastructure Third Report and Order (Order)*⁷ in WC Docket No. 17-84. In the *Order*, the Commission sought to promote broadband deployment by speeding the process by which an attacher may locate new facilities on a utility pole and reducing the cost of attaching new facilities to utility poles.⁸ The *Order* significantly amended the Commission's regulatory framework for pole attachments by adopting a new pole attachment process that includes one-touch make-ready (OTMR).⁹ OTMR authorizes new attachers to conduct surveys, provide notice to the utility and affected existing attachers, and perform the make-ready work that is necessary to attach their facilities to utility poles.¹⁰

Specifically, the *Order* allows new attachers to elect OTMR for simple make-ready work¹¹ for attachments in the communications space on a utility pole.¹² The Commission reasoned that "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process," and puts "the parties most interested in efficient broadband deployment—new attachers—in a position to control the survey and make-ready process."¹³ Additionally, the Commission took several steps to promote cooperation and coordination among new attachers, utilities, and existing attachers by requiring that: (1) new attachers use utility approved contractors to perform OTMR work; (2) new attachers provide advance notice and allow representatives from the utility and affected attachers to be present when surveys and OTMR are performed; and (3) new attachers allow utilities and existing attachers to inspect and request corrective measures after the new attacher has performed OTMR work to address concerns that the new

¹ 47 U.S.C. § 224.

² 47 U.S.C. § 224(b)(1)-(2).

³ 47 U.S.C. § 224(f).

⁴ 47 U.S.C. § 224(b)(1).

⁵ 47 U.S.C. § 224(d)-(e).

⁶ 47 U.S.C. § 224(b), (h)-(i).

⁷ *Accelerating Broadband Deployment By Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*Order*).

⁸ *Id.* at 7706, para. 2.

⁹ *Id.*

¹⁰ *Id.* at 7714, para. 16.

¹¹ Simple make-ready work is defined as "make-ready where 'existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.'" *Id.* at 7714, para. 17 (citing Broadband Deployment Advisory Committee January 2018 Recommendations at 21).

¹² *Id.* at 7714, para. 17.

¹³ *Id.* at 7717, para. 22.

attacher's contractor may have damaged equipment or caused an outage.¹⁴

Furthermore, the *Order* adopted amendments to speed broadband deployment for attachments that are not eligible for OTMR, or for new attachers that elect not to use the OTMR process.¹⁵ Specifically, these changes include: revising the process and timeline for a utility's decision as to whether a pole attachment complaint is complete; requiring a utility to provide three business days advance notice to new and existing attachers when the utility plans to conduct a survey; establishing a 30-day timeline for completing all work within the communications space; streamlining utility notice requirements; extending the new attacher's self-help remedy to surveys and make-ready work for all attachments anywhere on the pole if the utility or existing attachers fail to meet the required deadlines; revising the new attacher's contractor selection process for self-help work; and requiring utilities to make detailed cost estimates and final invoices available to new attachers regarding make-ready costs.¹⁶

In addition, the *Order* codified the Commission's longstanding policy permitting attachers to overlash on existing attachments without obtaining pre-approval from the utility.¹⁷ The *Order* also permitted utilities to establish reasonable pre-notification requirements for overlashing work, allocated responsibility to the attacher for any damage resulting from overlashing, and established post-overlashing review procedures and requirements.¹⁸ The Commission also adopted reforms to ensure that incumbent LECs receive comparable pole attachment rates to similarly situated telecommunications carriers and cable providers.¹⁹

The reforms the Commission adopted in the *Order* are intended to benefit small and large telecommunications and cable service providers by speeding the process and reducing the cost of attaching new facilities to utility poles. Accordingly, the changes adopted in the *Order* will further the Commission's effort to promote broadband deployment.

II. COMPLIANCE REQUIREMENTS

A. General Provisions and Definitions

Make Ready Defined (47 CFR § 1.1402)

- “*Make-ready*” is defined to mean the modification or replacement of a utility pole, or of lines or equipment on the utility pole, to accommodate additional facilities on the utility pole. 47 CFR § 1.1402(o).
- “*Complex make-ready*” is defined to mean transfers and work within the communications space that would be reasonably likely to cause a service outage or facility damage, and includes work such as splicing of any communication attachment or relocation of existing wireless attachments.
 - The Commission considers any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers to be complex make-ready work. *Accelerating Broadband Deployment By Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 33 FCC Red 7705, 7715, para. 18 (2018) (*Order*); 47 CFR § 1.1402(p).
 - “Wireless activities” does not include a wireless attachers work on its wireline backhaul facilities. *Order* at 7715, para. 18.

¹⁴ *Id.* at 7720-21, para. 27-28.

¹⁵ *Id.* at 7743, para. 77.

¹⁶ *Id.* at 7743, para. 77.

¹⁷ *Id.* at 7761, para. 115.

¹⁸ *Id.* at 7761-66, paras. 115-20.

¹⁹ *Id.* at 7767-71, paras. 123-29.

- Replacing a pole constitutes complex make-ready work. *Order* at 7715, para. 18.
- “Simple make-ready” is defined to mean make-ready work 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. *Order* at 7714, para. 17; 47 CFR § 1.1402(q).

Communications Space Defined (47 CFR § 1.1402)

- “Communications space” is defined to mean the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment. 47 CFR § 1.1402(r).
- OTMR is not available above the communications space. *Order* at 7716, para. 20.

Attachments and Attachers Defined (47 CFR § 1.1411)

- “Attachment” is defined to mean any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility. 47 CFR § 1.1411(a)(1).
- “New Attacher” is defined to mean a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility. 47 CFR § 1.1411(a)(2).
- “Existing Attacher” is defined to mean any entity with equipment on a utility pole. 47 CFR § 1.1411(a)(3).

Standard, Large, and Larger Pole Attachment Requests Defined (47 CFR § 1.1411(g))

- Standard pole attachment requests are orders up to the lesser of 300 poles or 5 percent of the utility’s poles in a state.
- Large pole attachment requests are orders up to the lesser of 3000 poles or 5 percent of a utility’s poles in a state.
- Larger pole attachment requests are orders that are larger than the lesser of 3000 poles or 5 percent of the utility’s poles in a state.

New Attachers are Not Responsible for Preexisting Violations

- New attachers are not responsible for costs associated with bringing poles or third-party equipment into compliance with safety and pole owner construction standards if a pole or third-party equipment is not in compliance with safety and pole owner construction standards prior to the new attachment. *Order* at 7767, para. 121.
- Utilities may not deny new attachers access to poles solely based upon safety concerns arising from a preexisting violation. Furthermore, utilities are prohibited from delaying completion of make-ready work while the utility attempts to identify or collect from the party who should pay for correction of preexisting violations. *Order* at 7767, para. 122.

B. Contractor Selection Requirements for Survey and Make-Ready Work

Contractor Selection for Simple Make-Ready Work (47 CFR § 1.1412)

- A utility may keep an up-to-date reasonably sufficient list of contractors that the utility authorizes to perform surveys and simple make-ready work. A utility is not required to keep such a list. *Order* at 7725, para. 37; 47 CFR § 1.1412(b).
- If a utility provides a list of approved contractors, then the new attacher must choose a contractor from this list to perform the make-ready work. *Order* at 7725, para. 37; 47 CFR § 1.1412(b).
- If the utility maintains a list of approved contractors, then new and existing attachers may request that a contractor that is not on the list, and meets the minimum qualifications pursuant to 47 CFR 1.1412(c)(1)-(5), be added to the list. Utilities are prohibited from unreasonably refusing to add a contractor that meets the requirements of 47 CFR § 1.1412(c)(1)-(5) to the list. *Order* at 7725, para. 38; 47 CFR § 1.1412(b).

- For a utility's decision not to add a contractor to the list of approved contractors to be reasonable, the utility's decision must be prompt, set forth in a writing that describes the rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability. *Order* at 7725, para. 38.

Minimum Qualification Requirements for Contractors on Utility Approved Lists and for Contractors Selected by New and Existing Attachers (47 CFR § 1.1412(c))

- Utilities are required to ensure that contractors on the approved list meet the following criteria:
 - The contractor agrees to follow published safety and operational guidelines of the utility, if these guidelines exist, but if they do not exist the contractor agrees to follow National Electrical Safety Code (NESC) guidelines;
 - The contractor has acknowledged that it knows how to read and follow pole designs for make-ready, if required by the utility;
 - The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational Health and Safety Administration (OSHA) rules;
 - The contractor meets or exceeds any uniformly applied and reasonable safety and reliability thresholds set and made available by the utility. The contractor cannot have a record of significant safety violations or worksite accidents.
 - The contractor is adequately insured or will establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers. *Order* at 7726, para. 39; 47 CFR § 1.1412(c)(1)-(5).
- If a utility does not provide a list of approved contractors, or no utility-approved contractor is available within a reasonable time period, then new attachers proceeding with OTMR may select a contractor that meets the requirements of 47 CFR § 1.1412(c). *Order* at 7726-27, para. 40; 47 CFR § 1.1412(b)(1).
 - The new attacher must certify to the utility that the selected contractor meets the five requirements in 47 CFR § 1.1412(c)(1)-(5) by giving the utility notice three business-days in advance for surveys, or fifteen days in advance for make-ready work. *Order* at 7727, para. 41; 47 CFR § 1.1412(b)(1).
 - A utility may mandate other commercially reasonable requirements for contractors that relate to issues of safety and reliability. These requirements must clearly communicate the safety or reliability issue, be non-discriminatory, in writing, and publicly available. *Order* at 7727, para. 41.
- If there is no utility approved list of contractors, a utility may veto a contractor selected by the new attacher, so long as the utility's veto is based upon reasonable safety or reliability concerns related to the contractor's ability to meet one or more of the minimum qualifications described in 47 CFR § 1.1412(c)(1)-(5), or the utility's previously posted safety standards. The utility must make its veto within the three-business day notice period for surveys, or the fifteen-day notice period for make ready work. The vetoing utility must identify at least one qualified contractor available to do the work. *Order* at 7727, para. 41; 47 CFR § 1.1412(b)(2).

Final Determinations Made By an Electric Utility's Consulting Representative (47 CFR § 1.1412(d))

- A consulting representative of the utility may make final determinations, on a non-discriminatory basis, concerning surveys and make ready work performed by new attachers, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes. *Order* at 7731, para. 51; 47 CFR § 1.1412(d).

C. One-Touch Make Ready Pole Attachment Procedures

Pole Attachment Surveys by a New Attacher (47 CFR § 1.1411(j))

- New attachers are responsible for conducting surveys of affected poles to determine the make ready work that will need to be performed and must use a contractor as specified in 47 CFR § 1.1412(b). *Order at 7731-32, para. 53; 47 CFR § 1.1411(j)(3).*
- New attachers must permit representatives from the utility and potentially affected attachers to be present when any field inspection for the survey is conducted. New attachers must use commercially reasonable efforts to provide the utility and existing attachers with three days advance notice of the date, time, and location of the survey and the name of the contractor who is performing the survey. *Order at 7732, para. 54; 47 CFR § 1.1411(j)(3)(i).*

Notifying Utility of the Intent to Use One-Touch Make Ready (47 CFR § 1.1411(j))

- A new attacher is required to ensure that its contractor determines whether make-ready work identified in the survey is simple or complex. This requirement is subject to a utility's right to reasonably object to the determinations made by the new attacher's contractor. *Order at 7733, para. 55; 47 CFR § 1.1411(j)(1)(i).*
- A new attacher that elects to utilize the OTMR process must indicate this in its pole attachment application and identify the simple make-ready work to be performed. *Order at 7733, para. 55; 47 CFR § 1.1411(j)(1)(i).*
- A utility may object to a simple make-ready determination within the 15-day pole attachment application review period, or within 30 days in the case of larger pole attachment orders. *Order at 7733, para. 56; 47 CFR § 1.1411(j)(2)(ii).*
- If a utility objects to a simple make-ready determination made by a new attacher's contractor, then the work is deemed complex. The utility's objection is final and dispositive as long as the objection is specific and in writing, includes all relevant evidence and information supporting the decision, and provides a good faith explanation of how such evidence and information relate to the utility's determination that the make-ready work is not simple. *Order at 7734, para. 57; 47 CFR § 1.1411(j)(2)(ii).*
- If a new attacher determines that make-ready includes both simple and complex work, or involves work above the communications space, then the new attacher has the discretion to determine whether to bifurcate this work. Accordingly, a new attacher electing to bifurcate make-ready work must submit separate applications for simple and complex make-ready and work above the communications space. *Order at 7734, para. 58.*
- If it is determined by either the new attacher or the utility that make-ready work that was initially determined to be simple is in fact complex, then the specific work must be stopped. The party that determines that the make-ready work is complex must notify the other party of its determination and the affected poles. The affected make-ready work shall then be subject to the non-OTMR timeline and governed by the rules pursuant to 47 CFR § 1.1411(d)-(i), and the utility shall provide notice in accordance with 47 CFR § 1.1411(e) as soon as reasonably practicable. *Order at 7734-35, para. 59; 47 CFR § 1.1411(j)(4)(iii).*

Utility Review of Pole Attachment Applications for Completeness (47 CFR § 1.1411(j)(1))

- A utility is required to review a new attacher's pole attachment application for completeness prior to reviewing the application on the merits. A pole attachment application is complete if it provides the utility with the information necessary under the utility's procedures, which are specified in the utility's master service agreement or in publicly available requirements at the time the new attacher submits its pole attachment application, to make an informed decision on the application. *Order at 7735, para. 60; 47 CFR § 1.1411(j)(1)(ii).*
- A utility has ten business days after receiving a pole attachment application to determine whether the application is complete and notify the attacher of such decision. If a utility notifies an attacher that the application is not complete within the ten-business day review period, then the

utility must specify where and how the application is deficient. *Order at 7735-36, para. 62; 47 CFR § 1.1411(j)(1)(ii)(A)-(B).*

- The application is deemed complete if a utility fails to respond within ten business days after the receipt of a new attacher's application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application. *Order at 7735-36, para. 62; 47 CFR § 1.1411(j)(1)(ii)(A).*
- If a utility notifies the new attacher that the application is incomplete and specifies the deficiencies that make the application incomplete, then the new attacher may resubmit the application by supplementing the original application with the additional information that made the original application incomplete. A resubmitted application shall be deemed complete five business days after its resubmission, unless the utility specifies which deficiencies were not addressed and how the resubmitted application did not sufficiently address the utility's reasons for originally determining that the application was incomplete. *Order at 7736, para. 62; 47 CFR § 1.1411(j)(1)(ii)(B).*
- An applicant may resubmit its application, in accordance with the procedure specified in 47 CFR § 1.1411(j)(1)(ii)(B), as many times as it chooses so long as the applicant makes a bona fide attempt to correct the reasons for denial identified by the utility. The deadline set forth in 47 CFR § 1.1411(j)(1)(ii)(B) shall apply to the utility's review in each case. *Order at 7736, para. 62; 47 CFR § 1.1411(j)(1)(ii)(B).*

Utility Review of Pole Attachment Applications on the Merits (47 CFR § 1.1411(j)(2))

- A utility shall review a complete application requesting OTMR on the merits and respond to the new attacher's request, either granting or denying the application within 15 days of the utility's receipt of a complete application, or within 30 days for larger requests. *Order at 7736-37, para. 64; 47 CFR § 1.1411(j)(2).*
- If a utility denies a new attacher's application on the merits, then the utility's decision must be specific, must include all relevant evidence and information supporting the decision, and must explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards. *47 CFR § 1.1411(j)(2)(i).*

Proceeding with Make-Ready Work (47 CFR § 1.1411(j)(4))

- A new attacher may proceed with make-ready work, using a contractor in the manner specified for simple make-ready work in 47 CFR § 1.1412(b), once its application has been approved and after the new attacher has provided 15 days prior written notice of the make-ready work to the affected utility and existing attachers. The new attacher may provide the 15-day notice any time after the utility has decided the application is complete, thus allowing the 15-day notice period to run concurrently with the utility's evaluation of the application on the merits. If the new attacher cannot start make-ready work on the date specified in the 15-day notice, then the new attacher must provide 15 days advance notice of its revised make-ready date. *Order at 7737; 47 CFR § 1.1411(j)(4).*
- A new attacher's notice to the utility and existing attachers must include: the date and time of the make-ready work; a description of the make-ready work involved; the name of the contractor being used by the new attacher; and provide the affected utility and existing attachers with a reasonable opportunity to be present for any make-ready work. *Order at 7738, para. 67; 47 CFR § 1.1411(j)(4)(i).*
- A new attacher must immediately notify an affected utility or an existing attacher if the new attacher's make-ready work damages another companies' equipment or causes an outage that is reasonably likely to interrupt the provision of service. After receiving notice from the new attacher, the utility or the existing attacher may: complete any necessary remedial work and bill the new attacher for reasonable costs associated with fixing the damage; or require the new attacher to fix the damage at its own expense immediately following notice from the utility or existing attacher. *Order at 7739-40, para. 69; 47 CFR § 1.1411(j)(4)(ii)(A)-(B).*

- The new attacher is required to complete the repair work before resuming its make-ready work. Alternatively, if the utility or existing attacher elects to complete the work on its own, then the new attacher may proceed with make-ready work only if it does not interfere with the repair work being done. *Order* at 7739-40, para. 69.

Post Make-Ready Timeline and Inspection (47 CFR § 1.1411(j)(5))

- A new attacher must provide notice to the utility and affected existing attachers within 15 days after the new attacher has completed make-ready work on a particular pole. Notice from the new attacher to the utility or the pole owner must provide 90 days from the receipt of the notice for the utility or the existing attacher to inspect the make-ready work. *Order* at 7740, para. 71; 47 CFR § 1.1411(j)(5).
- A utility or existing attacher must notify the new attacher of any damage or any code (safety, electrical, engineering, construction, and the like) violations caused to their equipment by the new attacher's make-ready work, and provide adequate documentation of the damage, within 14 days after the post make-ready inspection. *Order* at 7740, para. 71; 47 CFR § 1.1411(j)(5).
- The utility or the existing attacher may either complete the necessary remedial work and bill the new attacher for the reasonable costs associated with fixing the damage or violations, or require the new attacher to fix the damage or violations at its own expense within 14 days after the utility or the existing attacher notifies the new attacher of the damage or violations. *Order* at 7740, at 24, para. 71; 47 CFR § 1.1411(j)(5).
- New attachers are responsible and liable for any damage or non-compliance resulting from work completed by the new attacher during the OTMR process. *Order* at 7741, para. 73.

D. Amendments to the Existing Pole Attachment Process

Utility Review of Non-OTMR Pole Attachment Applications for Completeness (47 CFR § 1.1411(c))

- A utility is required to review a new attacher's pole attachment application for completeness prior to reviewing the application on the merits. A pole attachment application is complete if it provides the utility with the information necessary under the utility's procedures, which are specified in the utility's master service agreement or are publicly available at the time the new attacher submits its pole attachment application, to make an informed decision on the application. *Order* at 7744, para. 79; 47 CFR § 1.1411(c)(1).
- A utility has ten business days after receiving a pole attachment application to determine whether the application is complete and notify the attacher of such decision. If a utility notifies an attacher that the application is not complete within the ten-business day review period, then the utility must specify where and how the application is deficient. *Order* at 7744, para. 79; 47 CFR § 1.1411(c)(1)(i).
- The application is deemed complete if a utility fails to respond within ten business days after the receipt of a new attacher's application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application. *Order* at 7744; 47 CFR § 1.1411(c)(i).
- If a utility notifies the new attacher that the application is incomplete and specifies the deficiencies that make the application incomplete, then the new attacher may resubmit the application by supplementing the original application with the additional information that made the original application incomplete. A resubmitted application shall be deemed complete five business days after its resubmission, unless the utility specifies which deficiencies were not addressed and how the resubmitted application did not sufficiently address the utility's reasons for originally determining the application was incomplete. *Order* at 7744, para. 79; 47 CFR § 1.1411(c)(1)(ii).
- An applicant may resubmit its application, in accordance with the procedure specified in 47 CFR § 1.1411(c)(1)(ii) as many times as it chooses so long as the applicant makes a bona fide attempt to correct the reasons for denial identified by the utility. *Order* at 7744, para. 79; 47 CFR § 1.1411(c)(1)(ii).

Non-OTMR Utility Survey Requirements (47 CFR § 1.1411(c)(3))

- A utility is required to provide a complete survey of the poles for which access has been requested within 45 days of a complete application to attach facilities to its utility poles, or within 60 days in the case of larger orders. 47 CFR § 1.1411(c)(3)(i).
- A utility is required to permit the new attacher and any potentially affected existing attachers to be present for any field inspections conducted in connection with the utility's survey. The utility is required to use commercially reasonable efforts to provide affected attachers with no less than 3 business days advance notice of any field inspection that will be performed during the survey. Notice shall include the date, time, and location of the survey, and the name of the contractor performing the survey. *Order at 7746, para. 82; 47 CFR § 1.1411(c)(3)(ii).*
- A utility is permitted to use a new attacher's survey where the new attacher has previously conducted a survey pursuant to 47 CFR § 1.1411(j)(3). If a utility elects to do so, the utility must provide at least a 15-day notice, that includes a copy of the survey, to affected attachers indicating that the utility intends to use the new attacher's survey. *Order at 7746-47, para. 83; 47 CFR § 1.1411(c)(3)(iii).*

Make-Ready Deadlines for Pole Attachments (47 CFR § 1.1411(e), (h))

- New attachers have a 30-day, or 75-day for larger orders, make-ready deadline for both simple and complex make-ready work in the communications space. Additionally, utilities are required to provide notice to existing attachers that may be affected by the make-ready, and this notice must set a date for completion of the make-ready work that is no later than 30 days after the notification is sent. *Order at 7747, para. 84; 47 CFR § 1.1411(e)(1)(ii).*
- Utilities may deviate from the timelines specified in 47 CFR § 1.1411 during the performance of make-ready work for good and sufficient cause that renders the utility unable to complete make-ready work within the time lines specified in this section. 47 CFR § 1.1411(h)(2).
- Existing attachers may deviate from the timelines specified in 47 CFR § 1.1411 while performing complex make-ready work for reasons of safety or service interruption that makes it infeasible for the existing attacher to complete complex make-ready work within the timelines specified in this section. If an existing attacher deviates from the existing timelines in 47 CFR § 1.1411, then the existing attacher must provide immediate written notice to the new attacher and other affected existing attachers. Such notice must include a detailed explanation of the basis for the deviation and a new completion date, which cannot extend beyond 60 days from the date that the utility issues its make ready notice to existing attachers. *Order at 7748-49; 47 CFR § 1.1411(h)(3).*

New Attacher's Role After Utility Sends Make-Ready Notice (47 CFR § 1.1411(e)(3))

- After a utility has provided the required notice pursuant to 47 CFR § 1.1411, the utility must provide the new attacher with a copy of all notices, the existing attachers' contact information, and the address where the utility sent the notices. After the utility has met its notice requirements, the new attacher is responsible for coordinating with existing attachers to ensure that make-ready work is completed in a timely fashion. *Order at 7750, para. 94; 47 CFR § 1.1411(e)(3).*

The Self-Help Remedy (47 CFR § 1.1411(i))

- New attachers may invoke the self-help remedy for make-ready work above the communications space where the utility or existing attachers fail to meet make-ready work deadlines. When the new attacher invokes the self-help remedy it must comply with the contractor requirements in 47 CFR 1.1412 to complete the make-ready work. *Order at 7751-52, paras. 97, 99; 47 CFR § 1.1411(i)(2); 47 CFR § 1.1412.*
- The self-help remedy does not apply to pole replacements. *Order at 7754, para. 101; 47 CFR § 1.1411(i)(3).*

Notice Requirements for the Self-Help Remedy (47 CFR § 1.1411(i))

- When resorting to self-help to perform the survey, new attachers are required to use commercially reasonable efforts to give the affected utility and existing attachers advance notice of not less than three business days before a new attacher performs a field inspection as part of a survey it conducts. The notice must include the date and time of the survey, a description of the work that is involved, and the name of the contractor being used by the new attacher. *Order at 7754-55, para. 102; 47 CFR § 1.1411(i)(1)(ii).*
- New attachers are required to use commercially reasonable efforts to give the affected utility and existing attachers advance notice not less than five business days before a new attacher performs any make-ready work. The notice must include the date and time of the survey, a description of the work that is involved, and the name of the contractor being used by the new attacher. In addition, the new attacher must permit any affected utility or existing attacher to be present while the make-ready work is performed. *Order at 7754-55, at 34, para. 102; 47 CFR § 1.1411(i)(2)(i).*
- New attachers must immediately notify the affected utility and existing attachers if make-ready causes damage to the utility or the existing attacher's equipment or causes an outage that is reasonably likely to interrupt service of a utility or existing attacher. After receiving notice, the utility or affected existing attacher may either:
 - Complete the necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or
 - Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher. *47 CFR § 1.1411(i)(2)(ii)(A)-(B).*
- A new attacher must notify the affected utility and existing attacher 15 days after the completion of make-ready work on a pole, and the notice must provide the affected utility and existing attacher with 90 days to inspect the work. The affected utility and existing attacher have 14 days after the completion of the inspection to notify the new attacher of any damage or code violations, and the utility must provide adequate documentation of such damage or violations. The utility or existing attacher may either: complete the necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher. *47 CFR § 1.1411(i)(2)(iii).*

Contractor Selection for Simple Make-Ready Self-Help Work in the Communications Space

- A new attacher resorting to self-help for simple work in the communications space must select a contractor from a utility-maintained list where the utility maintains such a list. The contractor must meet all the requirements of 47 CFR § 1.1412(c)(1)-(5). New and existing attachers may request that qualified contractors be added to the utility's list, and the utility may not unreasonably withhold its consent for such additions. *Order at 7756, para. 104.*
- If the utility does not maintain a list of approved contractors, or no utility approved contractor is available within a reasonable time period, then the new attacher may select a contractor that meets the requirements of 47 CFR § 1.1412(c), and publicly available criteria related to safety and reliability that the utility specifies, and request that the contractor be added to the utility's approved list. The utility may veto a new attacher's contractor selection so long as it offers another available, qualified contractor. *Order at 7756, para. 104.*

Contractor Selection for Complex Self-Help Make-Ready Work and Self-Help Work Above the Communications Space (47 CFR § 1.1412(a))

- New attachers are required to select a contractor from the utility's approved list for complex make-ready work and work above the communications space. Utilities are required to keep a reasonably sufficient and up-to-date list of contractors they authorize to perform complex and non-communications space self-help surveys and make-ready work. *Order at 7756, para. 105; 47 CFR § 1.1412(a).*
- New and existing attachers may request that a contractor, meeting the requirements of 47 CFR

1.1412(c)(1)-(5), be added to the utility's list of approved contractors, and the utility may not unreasonably withhold its consent. *Order* at 7757, para. 107; 47 CFR § 1.1412(a).

Detailed Estimates and Invoices for the Performance of Make-Ready Work (47 CFR § 1.1411(d))

- Utilities are required to present new attachers with a detailed, itemized estimate, on a pole-by-pole basis when requested, of charges to perform all necessary make-ready work within 14 days of providing the response required in 47 CFR § 1.1411(c). If the new attacher has performed a survey instead of the utility, then the utility is required to provide this estimate within 14 days of receipt by the utility of such a survey. If the utility is complying with a request to calculate costs on a pole-by-pole basis, and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, then the utility is permitted to present those costs on a per-job basis. *Order* at 7760, para. 112; 47 CFR § 1.1411(d).
- The utility is required to provide new attachers with projected material, labor, and other related costs that form the basis of the utility's cost estimate. This cost estimate includes specifications of what costs, if any, the utility is passing through to the new attacher from the utility's use of a third-party contractor. *Order* at 7760, para. 113; 47 CFR § 1.1411(d).
- A new attacher may accept a utility's valid cost estimate, and subsequently make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn. 47 CFR § 1.1411(d)(2).
- After a utility has completed make-ready work, if the final cost differs from the cost estimate, then the utility must provide the new attacher with a detailed and itemized final invoice of the actual make-ready charges that are incurred, on a pole-by-pole basis when requested. If the utility is complying with a request to calculate costs on a pole-by-pole basis, and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, then the utility is permitted to present those costs on a per-job basis. The utility is required to provide new attachers with projected material, labor, and other related costs that form the basis of its the utility's cost estimate. *Order* at 7760-61, para. 113; 47 CFR § 1.1411(d)(3).
- When providing an estimate, utilities must provide estimates for all make-ready work to be performed, including work by existing attachers. In the case of make-ready work performed by existing attachers, the utility may satisfy this requirement by compiling cost estimates from existing attachers for submission to the new attacher. *Order* at 7759, para. 111

Prohibition Against Charging New Attacher's for Preexisting Violations (47 CFR § 1.1411(d)(4))

- A utility is not permitted to charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards if the poles, attachments, or third-party equipment in question was out of compliance due to work performed by a party other than the new attacher prior to locating the new attachment. 47 CFR § 1.1411(d)(4).

E. Overlashing

Prior Approval for Overlashing Attachments (47 CFR § 1.1415(a))

- Utilities are forbidden from requiring prior approval for:
 - An existing attacher to overlash existing wires on a pole; or
 - For third party overlashing of an existing attachment that is conducted with the permission of an existing attacher. *Order* at 7761-62, para. 115; 47 CFR § 1.1415(a)(1)-(2).

Preexisting Overlashing Violations (47 CFR § 1.1415(b))

- A utility is prohibited from preventing an attacher from overlashing because another existing attacher has not fixed a preexisting violation. A utility also may not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher. 47 CFR § 1.1415(b).

Overlapping Advance Notice Requirements (47 CFR § 1.1415(c))

- Utilities may, but are not required to, adopt reasonable notification requirements including a requirement that attachers provide 15 days advance notice of planned overlapping. *Order at 7762, para. 115; 47 CFR § 1.1415(c).*
- If a utility requires advance notice, then the utility must give advance notice of this requirement in an advanced written notice, or in the attachment agreement with an existing attacher. *Order at 7765, para. 119; 47 CFR § 1.1415(c).*
- If a utility determines that an overlap would create a capacity, safety, reliability, or engineering issue, then the utility must provide specific documentation of the issue to the attacher seeking to overlap within the 15-day notice period and the party seeking to overlap must address the identified issues by either modifying its proposal or by explaining why a modification is unnecessary before continuing with the overlap. *Order at 7762-63, para. 116; 47 CFR § 1.1415(c).*

Overlappers' Responsibility (47 CFR § 1.1415(d))

- The party that engages in overlapping is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. *Order at 7765, para. 119; 47 CFR § 1.1415(d).*
- If damage to a pole or other existing attachment occurs due to overlapping, or such work creates safety or engineering standard violations, then the overlapping party is responsible at its expense for any necessary repairs. *Order at 7765, para. 119; 47 CFR § 1.1415(d).*

Post-Overlapping Review Process (47 CFR § 1.1415(e))

- Overlapping parties are required to inform the affected utility within 15 days of completion of the overlap on a particular pole. The notice must provide the utility with at least 90 days to inspect the overlap. After the utility has performed its inspection of the overlap, the utility has 14 days to provide adequate documentation and notice to the overlapping party of any damage or code violations to equipment caused as a result of the overlap. *Order at 7766, para. 120; 47 CFR § 1.1415(e).*
- If the utility discovers damage or code violations to its equipment caused by the overlapping party, then the utility may complete the necessary remedial work and bill the overlapping party responsible for the damage or code violation for the reasonable costs associated with fixing the damage or code violation, or the utility may require the overlapping party to fix the damage or code violations at its own expense within 14 days following notice from the utility. *Order at 7766, para. 120; 47 CFR § 1.1415(e).*

F. Incumbent LEC Rates and Complaints

Presumption that an Incumbent LEC is Similarly Situated to Telecommunications Carriers and Cable Television Systems (47 CFR § 1.1413(b))

- With respect to newly negotiated and newly renewed pole attachment agreements between incumbent LECs and utilities, there is a presumption that the incumbent LEC will receive similar rates, terms, and conditions to those received by similarly situated telecommunications carriers (as defined by 47 U.S.C. 251(a)(5)) or a cable television system providing telecommunications service. There also exists a presumption for such agreements that incumbent LECs may be charged no higher than the rate determined in accordance with 47 CFR § 1.1406(d)(2) for telecommunications attachers. The utility may rebut one or both of these presumptions by demonstrating through clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement that give the incumbent LEC a material advantage over other telecommunications carriers or cable television systems on the same poles. *Order at 7767-71, para. 123, 126-28; 47 CFR § 1.1413(b); 47 CFR § 1.1406(d)(2).*

- If the presumption concerning the rates charged to incumbent LECs is rebutted, then the pre-2011 *Pole Attachment Order* telecommunications carrier rate is the maximum rate that the utility and incumbent LEC may negotiate. *Order* at 7771, para. 129.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

A. OTMR Recordkeeping and Reporting Requirements

Utility Review of OTMR Pole Attachment Applications for Completeness (47 CFR § 1.1411(j)(1))

- A new attacher is required to indicate in its pole attachment application that it elects to use OTMR. 47 CFR § 1.1411(j)(1)(i).
- A pole attachment application is complete if it provides the utility with the information necessary under its procedures to make an informed decision on the application in accordance with the standards in 47 CFR § 1.1411(j)(1)(ii). 47 CFR § 1.1411(j)(1)(ii).
- A utility has 10 days to notify an attacher of its decision as to whether or not an application is complete. 47 CFR § 1.1411(j)(1)(ii)(A).
- If the utility notifies the new attacher that an application is incomplete, then the utility is required to specify why the application is incomplete. The new attacher may then resubmit the application only addressing the utility's reasons for finding the application incomplete. 47 CFR § 1.1411(j)(1)(ii)(B).

Utility Review of OTMR Pole Attachment Applications on the Merits (47 CFR § 1.1411(j)(2))

- The utility is required review a complete OTMR application on the merits and respond to the new attacher either granting or denying the application within 15 days, or 30 days for larger requests. 47 CFR § 1.1411(j)(2).
- If a utility denies a complete OTMR application on the merits, the utility's decision must be specific, include all relevant evidence and information supporting the decision, and explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards. 47 CFR § 1.1411(j)(2)(i).
- A utility may object to a contractor's determination that make-ready work is simple, and if the utility does so then its decision will be deemed final and determinative, thus making the work complex, if the utility's decision is in writing, includes all the relevant evidence and information supporting why its decision, made in good faith, and explains how the evidence and information relate to the determination that the make-ready is not simple. 47 CFR § 1.1411(j)(2)(ii).

OTMR Survey Requirements (47 CFR § 1.1411(j)(3))

- New attachers are responsible for all surveys that are required as part of the OTMR process, and new attachers must comply with the associated notice requirements contained in 47 CFR § 1.1411(j)(3)(i). 47 CFR § 1.1411(j)(3).

Make-Ready Notice Requirements (47 CFR § 1.1411(j)(4))

- After the utility has approved the new attacher's OTMR application, the new attacher must provide 15 days advance written notice to the affected utility and existing attachers before proceeding with the make-ready work. 47 CFR § 1.1411(j)(4).
- The new attacher's prior written notice must include: the date and time of the make-ready, a description of the work involved, the name of the contractor being used, and provide the affected utility and existing attacher the opportunity to be present for any make-ready. 47 CFR § 1.1411(j)(4)(i).
- The new attacher is required to notify the affected utility or existing attacher immediately if the make-ready damages the equipment of the utility of an existing attacher or causes an outage that is likely to affect interrupt the service of the utility or existing attacher. 47 CFR §

1.1411(j)(4)(ii)(A)-(B)

- In performing make-ready, if a new attacher or the utility determines that make-ready work that was classified as simple is actually complex, then the determining party must provide immediate notice to the other party and the utility shall provide notice in accordance with 47 CFR § 1.1411(j)(4)(iii). 47 CFR § 1.1411(j)(4)(iii).

Post-OTMR Notice Requirements (47 CFR § 1.1411(j)(5))

- New attachers are required to provide notice to the utility and affected existing attachers within 15 days after completing make-ready work on a particular pole. 47 CFR § 1.1411(j)(5).
- A utility or existing attacher must notify the new attacher of any damage or any code violations caused to their equipment within 14 days after the post make-ready inspection. 47 CFR § 1.1411(j)(5).

B. Non-OTMR Recordkeeping and Reporting Requirements

Utility Review of non-OTMR Pole Attachment Applications for Completeness (47 CFR § 1.1411(c)(1))

- A pole attachment application is complete if it provides the utility with the information necessary under its procedures to make an informed decision on the application in accordance with the standards in 47 CFR § 1.1411(c)(1). 47 CFR § 1.1411(c)(1).
- A utility has 10 days to notify an attacher of its decision as to whether or not an application is complete. 47 CFR § 1.1411(c)(1)(i).
- If the utility notifies the new attacher that an application is incomplete, then the utility is required to specify why the application is incomplete. The new attacher may then resubmit the application only addressing the utility's reasons for finding the application incomplete. 47 CFR § 1.1411(c)(1)(ii).

Utility Survey Requirements (47 CFR § 1.1411(c)(3))

- A utility is required to provide a complete survey of the poles for which access has been requested within 45 days of a complete application to attach facilities to its utility poles, or within 60 days in the case of larger orders. 47 CFR § 1.1411(c)(3)(i).
- Utilities are required to use commercially reasonable efforts to provide affected attachers with advance notice of not less than 3 days of any field inspection conducted as part of a survey. The utility must provide the date, time, location of the survey, and name of the contractor performing the survey in the notice. 47 CFR § 1.1411(c)(3)(ii).
- If a utility elects to use a new attacher's survey pursuant to 47 CFR § 1.1411(c)(3)(iii), the utility must provide a notice, which includes a copy of the survey, to affected attachers indicating that the utility intends to use the new attacher's survey within 15 days. 47 CFR § 1.1411(c)(3)(iii).

Pole Attachment Cost Estimates and Invoices (47 CFR § 1.1411(d))

- Utilities are required to present new attachers with a detailed, itemized estimate, on a pole-by-pole basis when requested, of charges to perform all necessary make-ready work. 47 CFR § 1.1412(d).
- The utility is required to provide new attachers with projected material, labor, and other related costs that form the basis of the utility's cost estimate. 47 CFR § 1.1412(d).
- If the final cost differs from the cost estimate after the utility has completed its make-ready work, then the utility must provide the new attacher with a detailed and itemized final invoice of the actual make-ready charges that are incurred. 47 CFR § 1.1412(d)(3).

Make-Ready Notice Requirements for Pole Attachments (47 CFR § 1.1411(e))

- Once the utility has received payment, it shall notify in writing all existing attachers with attachments that may be affected by the make-ready work. 47 CFR § 1.1411(e)
 - For attachments in the communications space the notice shall:

- Specify where and what make-ready work shall be performed;
 - Set a date for completion of make-ready in the communications space that is no later than 30 days after the notification is sent (or up to 75 days in the case of larger orders as described in paragraph (g) of this section);
 - State that an entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion;
 - State that if the make-ready work is not completed by the completion date set by the utility in 47 CFR § 1.1411(e)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph 47 CFR § 1.1411(e)(1)(i);
 - State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure. 47 CFR § 1.1411(e)(1)(i)-(v).
- For attachments above the communications space:
 - Specify where the work will be performed;
 - Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders);
 - State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion;
 - State that the utility may assert its right to 15 additional days to complete make-ready;
 - State that if make-ready is not completed by the completion date set by the utility in 47 CFR § 1.1411(e)(2)(ii) (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 47 CFR § 1.1411(e)(1)(i);
 - State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure. 47 CFR § 1.1411(e)(2)(i)-(vi).
- After the utility has provided the notices required by this section, the utility must then provide the new attacher with a copy of all the notices, the existing attacher's contact information and address where the utility sent the notices. 47 CFR § 1.1411(e)(3).

Deviation From Existing Make-Ready Timelines (47 CFR § 1.1411(h))

- If an existing attacher deviates from the existing timelines in 47 CFR § 1.1411, then the existing attacher must provide immediate written notice to the new attacher and other affected existing attachers. 47 CFR § 1.1411(h)(3).

Self-Help Remedy Notice Requirements (47 CFR § 1.1411(i))

- New attachers must use commercially reasonable efforts to give the affected utility and existing attachers advance notice not less than three business days before a new attacher performs a field inspection as part of a survey, and the notice must include the date and time of the survey, a description of the work that is involved, and the name of the contractor being used by the new attacher. 47 CFR § 1.1411(i)(1)(ii).
- New attachers must use commercially reasonable efforts to give the affected utility and existing attachers advance notice of not less than five business days before a new attacher performs any make-ready work. 47 CFR § 1.1411(i)(2)(i).
- New attachers must immediately notify the affected utility and existing attachers if make-ready causes damage to the utility or the existing attacher's equipment or causes an outage that is reasonably likely to interrupt service of a utility or existing attacher. 47 CFR § 1.1411(i)(2)(ii)(A)-(B).
- A new attacher must notify the affected utility and existing attacher 15 days after the completion of make-ready work on a pole. 47 CFR § 1.1411(i)(2)(iii).

Contractor Selection for Complex Self-Help Work and Work Above the Communications Space (47 CFR § 1.1412(a))

- Utilities are required to keep a reasonably sufficient, and up-to-date list of contractors they authorize to perform complex and non-communications space self-help surveys and make-ready work. 47 CFR § 1.1412(a).

C. Overlapping

Overlapping (47 CFR § 1.1415(c))

- If a utility requires advance notice of a planned overlapping, then the utility must give advance notice of this requirement in a prior written notice, or in the attachment agreement with an existing attacher. 47 CFR § 1.1415(c).
- If a utility determines that an overlap would create a capacity, safety, reliability, or engineering issue, then the utility must provide specific documentation of the issue to the attacher seeking to overlap within the 15-day notice period and the party seeking to overlap must address the identified issues by either modifying its proposal or by explaining why a modification is unnecessary before continuing with the overlap. 47 CFR § 1.1415(c).

IV. IMPLEMENTATION DATE

The *Wireline Infrastructure Third Report and Order* became effective October 15, 2018, 30 days after its publication in the Federal Register, except for sections III.A-E, which become effective on the latter of six months after August 3, 2018 or thirty days after publication in the Federal Register of the Office of Management and Budget (OMB) approval of the information collection requirements modified in the *Order*.

The following rules in the *Order* require approval by OMB under the Paperwork Reduction Act: 47 CFR § 1.1411(c)(1), 1.1411(c)(3), 1.1411(d), 1.1411(d)(3), 1.1411(e)(3), 1.1411(h)(2)-(3), 1.1411(i)(1)-(2), 1.1411(j)(1)-(5); 47 CFR 1.1412(a)-(b); 47 CFR § 1.1413(b); 47 CFR § 1.1415(b). These rules shall become effective 30 days after the Commission publishes a notice in the Federal Register announcing Office of Management and Budget approval of the information collection requirements in the *Order*.

V. INTERNET LINKS

A copy of the *Wireline Infrastructure Third Report and Order*, is available at:

<https://ecfsapi.fcc.gov/file/08031128928102/FCC-18-111A1.pdf>

A copy of the Federal Register Summary of the *Wireline Infrastructure Third Report and Order* is available at:

<https://www.gpo.gov/fdsys/pkg/FR-2018-09-14/pdf/2018-19547.pdf>