

FCC FACT SHEET*

**Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment
Fourth Report and Order, Declaratory Ruling, and
Third Further Notice of Proposed Rulemaking – WC Docket No. 17-84**

Background: This Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, if adopted, would further the Commission’s efforts to reform its pole attachment rules and policies to promote faster and more cost effective broadband deployment. With consumers more dependent than ever on fixed and mobile broadband networks for work, healthcare services, education, and community, ensuring access to broadband remains one of the Commission’s foremost priorities. With the assistance of the Commission’s Universal Service Fund and the Infrastructure Investment and Jobs Act, which included the largest-ever federal investment in broadband, funding is available to build the necessary infrastructure to bring much-needed broadband services to the remaining unserved and underserved areas in the United States. Key to these broadband projects are the utility poles that support the wires and the wireless equipment that carry broadband to American homes and businesses.

What the *Report and Order* Would Do:

- Speed the pole attachment dispute resolution process by establishing a new intra-agency rapid response team—the Rapid Broadband Assessment Team (RBAT)— to provide coordinated review and assessment of pole attachment disputes and recommend effective dispute resolution procedures.
- Adopt specific criteria for the RBAT to use when considering whether a complaint (or portion thereof) should be included on the Commission’s Accelerated Docket.
- Increase transparency for new broadband buildouts by amending the Commission’s pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in the utilities’ most recent cyclical pole inspection reports.

What the *Declaratory Ruling* Would Do:

- Clarify that for purposes of the Commission’s pole replacement policies, 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 to accommodate a new attachment.
- Provide additional clarification on when a pole replacement is not “necessitated solely” under section 1.1408(b) of the Commission’s rules as a result of a third party’s attachment or modification request when a pole already requires replacement at the time that the new attacher’s request is made.

What the *Further Notice* Would Do:

- Seek comment on whether the Commission should take further action to facilitate the processing of pole attachment applications that are submitted in large numbers.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 17-84, which may be accessed via the Electronic Comment Filing System (<http://www.fcc.gov/ecfs>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s Meeting. See 47 CFR § 1.1200 *et seq.*

November 22, 2023

- Seek comment on whether the Commission should modify its self-help rules to enable prospective attachers to access poles more quickly.
- Seek comment on the impact of contractor availability when attachers seek to use their own contractors when conducting self-help or one-touch make-ready for surveys and make-ready work.

Before the
Federal Communications Commission
Washington, D.C. 20554

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

FOURTH REPORT AND ORDER, DECLARATORY RULING,
AND THIRD FURTHER NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its December open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

I. INTRODUCTION

1. Access to a broadband connection is a necessity of modern life. With consumers more dependent than ever on fixed and mobile broadband networks for work, healthcare services, education, and social activities, the Commission remains committed to ensuring consumers across the nation have meaningful access to broadband. With the support of the Commission’s universal service fund, the Infrastructure Investment and Jobs Act,¹ which included the largest ever federal investment in broadband, as well as other federal and state broadband deployment programs, more funding than ever is available to build the necessary infrastructure to bring much-needed broadband services to unserved and underserved areas in the United States.² Key to these broadband projects are the utility poles that support the wires and the wireless equipment that carry broadband to American homes and businesses.

2. Over the last several years, the Commission has taken significant steps in setting the “rules for the road” for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles,³ with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments.⁴ In this item, we take additional steps to speed broadband deployment by making the pole attachment process faster, more transparent, and more cost effective. Specifically, we adopt rules (1) establishing a new process for the Commission’s review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing communications providers with information about the status of the utility poles they plan to use as they map out their broadband builds. Additionally, as a follow-on to the pole replacement clarification issued

¹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act).

² See, e.g., NCTA Comments at i, 2 (“Broadband buildout to unserved and underserved areas has long been a top focus of the Commission and the federal government. This is more true than ever today, with Commission programs like the Rural Digital Opportunity Fund (RDOF), the Department of the Treasury’s Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program, NTIA’s broadband equity, access, and deployment (BEAD) program, and other similar programs all seeking to address broadband access issues in significant swaths of this country.”); Charter Comments at 1; Altice USA Comments at 2; INCOMPAS Comments at 4-5.

³ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*2018 Wireline Infrastructure Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936 (WCB 2020) (*2020 Declaratory Ruling*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd 776 (WCB 2021) (*2021 Pole Replacement Declaratory Ruling*).

⁴ Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. 47 U.S.C. § 224(c). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd 6724 (WCB 2022). The Commission’s pole attachment rules currently only apply to cable operators and providers of telecommunications services and therefore do not apply to broadband-only Internet service providers. *Restoring Internet Freedom et al.*, WC Docket No. 17-108 et al., Order on Remand, 35 FCC Rcd 12328, 12370-78, paras. 68-81 (2020) (“Section 224 applies to attachments of cable television systems and providers of telecommunications services, but not to providers of only information services.”). We recently proposed to reclassify broadband Internet access service as a telecommunications service, which would, if completed, apply section 224 and the Commission’s pole attachment rules to broadband-only Internet service providers. See *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Notice of Proposed Rulemaking, FCC 23-83 (Oct. 20, 2023) (*Open Internet Notice*).

in the *2021 Pole Replacement Declaratory Ruling*,⁵ in the Declaratory Ruling below we provide further clarification regarding cost causation when a pole must be replaced for any reason other than lacking capacity to support a new attachment. Specifically, we clarify 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 we provide additional examples of when a pole replacement is not “necessitated solely”⁶ as a result of a third party’s attachment or modification request—i.e., when a pole already requires replacement at the time the new attacher makes a request. Finally, we 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.

II. BACKGROUND

3. In 1996, as part of its implementation of the pole attachment requirements located in sections 224(h)⁷ and 224(i)⁸ of the Act, the Commission determined that when a modification, such as a pole replacement, is undertaken for the benefit of a particular party, then under cost causation principles, the benefiting party must assume the cost of the modification.⁹ The Commission also found that when a utility decides to modify a pole for its own benefit, and no other attachers derive a benefit from the modification, the utility must bear the full cost of the new pole.¹⁰ The Commission further adopted a cost sharing principle for when an existing attacher uses a modification by another party as an opportunity to add to or modify its own attachments¹¹ and applied this principle to utilities and other attachers seeking to use modifications as an opportunity to bring their own facilities into compliance with safety or other requirements.¹² In the *2018 Wireline Infrastructure Order*, the Commission reiterated that application of the cost sharing principle.¹³

⁵ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 777, para. 3.

⁶ 47 CFR § 1.1408(b).

⁷ Section 224(h) states that “[w]hen the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.” 47 U.S.C. § 224(h).

⁸ Section 224(i) states that “[a]n entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).” 47 U.S.C. § 224(i).

⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Report and Order, 11 FCC Rcd 15499, 16077, 16096, paras. 1166, 1211 (1996) (*Local Competition Order*) (subsequent history omitted).

¹⁰ *Id.* at 16077, para. 1166.

¹¹ *Id.* (“Other parties with attachments would not share in the cost [of a modification], unless they expanded their own use of the facilities at the same time.”).

¹² *Id.* at 16096-97, para. 1212 (“A utility or other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost.”).

¹³ *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, para. 121 (clarifying that new attachers “are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment”).

4. On July 16, 2020, NCTA—the Internet & Television Association (NCTA) filed a Petition asking the Commission to clarify its rules in the context of pole replacements.¹⁴ Specifically, NCTA asked the Commission to declare that: (1) utilities must share in the cost of pole replacements in unserved areas pursuant to section 224 of the Act, section 1.1408(b) of the Commission’s rules, and Commission precedent; (2) pole attachment complaints arising in unserved areas should be prioritized through placement on the Accelerated Docket under section 1.736 of the Commission’s rules; and (3) section 1.1407(b) of the Commission’s rules authorizes the Commission to order a utility to complete a pole replacement within a specified time frame or designate an authorized contractor to do so.¹⁵ NCTA argued that without Commission action, the costs and operational challenges associated with pole replacements will inhibit attachers from deploying broadband services to Americans in unserved areas.¹⁶

5. In the *2021 Pole Replacement Declaratory Ruling*, although the Wireline Competition Bureau declined to act on NCTA’s Petition, finding that “it is more appropriate to address questions concerning the allocation of pole replacement costs within the context of a rulemaking, which provides the Commission with greater flexibility to tailor regulatory solutions,” it observed that the record developed in response to the NCTA Petition revealed inconsistent practices by utilities with regard to cost responsibility for pole replacements.¹⁷ Accordingly, the Bureau clarified that, pursuant to section 1.1408(b) of the Commission’s rules and prior precedent, “utilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted.”¹⁸ The Commission subsequently affirmed the Bureau’s clarifications.¹⁹

6. Last year, the Commission issued a *Second Further Notice* in this proceeding seeking comment on the universe of situations where the requesting attacher should not be required to pay for the full cost of a pole replacement and the proper allocation of costs among utilities and attachers in those situations.²⁰ Specifically, the Commission sought comment on the applicability of cost causation and cost allocation principles in the context of pole replacements—e.g., when is a pole replacement not caused (necessitated solely) by a new attachment request, and when and how parties must share in the costs of a pole replacement.²¹ The Commission also sought comment on the extent to which utilities directly benefit from pole replacements, including a utility’s responsibility for the costs of pole upgrades and modifications unrelated to new attachments and the effect of early pole retirements on pole replacement cost causation and cost allocation calculations.²² The *Second Further Notice* also sought comment on whether the Commission should require utilities to share information with potential attachers concerning the condition and replacement status of their poles and other measures that may help avoid or expedite the

¹⁴ NCTA, Petition for Expedited Declaratory Ruling, WC Docket No. 17-84 (filed July 16, 2020), <https://www.fcc.gov/ecfs/filing/107161552527661> (NCTA Petition).

¹⁵ *Id.* at 9-31.

¹⁶ *Id.* at 5-9.

¹⁷ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 776, para. 2.

¹⁸ *Id.* at 779, para. 6.

¹⁹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 4144, 4147, para. 7 (2022) (*Second Further Notice*). Unless otherwise noted, the citations herein to comments, replies, and *ex parte* presentations are to such documents filed in response to the *Second Further Notice* in WC Docket No. 17-84.

²⁰ *Id.* at 4148-65, paras. 9-34. To the extent that this Report and Order does not expressly address a topic that was subject to comment in the *Second Further Notice*, that issue remains pending.

²¹ *Id.* at 4148-50, paras. 10-15.

²² *Id.* at 4155-58, 4161-65, paras. 20-26, 29-34.

resolution of disputes between the parties, including whether to expand use of the Commission's Accelerated Docket for pole attachment complaints and the specific criteria that Commission staff should use in deciding whether to place a pole complaint on the Accelerated Docket.²³

III. REPORT AND ORDER

7. In this Report and Order, we adopt measures to expedite resolution of pole attachment disputes that impede or delay broadband deployment. Specifically, we (1) establish an agency-wide rapid response team to provide coordinated review and assessment of such pole attachment disputes and to recommend effective dispute resolution procedures, and (2) adopt specific criteria to guide that team when considering whether a complaint (or portion thereof) should be included on the Enforcement Bureau's Accelerated Docket. We also require utilities to provide information regarding pole conditions and scheduled replacements to the extent that information is contained in cyclical pole inspection reports that utilities already create and maintain in the ordinary course of their business, or in pole inspection reports created between cyclical reports.²⁴

A. Accelerating Resolution of Pole Attachment Disputes that Impede or Delay Broadband Deployment

8. We amend our rules to prioritize and expedite the resolution of pole attachment disputes that impede or delay broadband deployment by establishing a Commission intra-agency rapid response team—called the Rapid Broadband Assessment Team (RBAT)—to provide coordinated review and assessment of such disputes.²⁵ At the outset, we emphasize that we expect all parties to comply with the Commission's pole attachment rules and to negotiate in good faith to craft solutions that suit the needs of attachers and utilities to facilitate deployment projects.²⁶ We recognize, however, that in some instances disagreements arise as to the conduct of one or multiple parties, and we encourage parties in those instances to avail themselves of the Commission's dispute resolution processes to both facilitate the

²³ *Id.* at 4165-66, paras. 35-36.

²⁴ Both pole attachers and utilities made several other proposals, not addressed herein, regarding the process for pole attachments and replacements and ways they believe the process could be improved to reduce disputes and promote broadband deployment.

²⁵ We codify these amendments in Part 1, Subpart J, of the Commission's rules (i.e., Pole Attachment Complaint Procedures) by redesignating current section 1.1415 as section 1.1416, and adding a new section 1.1415, as reflected in Appendix A. These rule amendments apply only to disputes involving pole attachments of a cable television system or a provider of telecommunications service and do not apply to disputes involving pole attachments of a broadband-only Internet service provider. *Restoring Internet Freedom et al.*, 35 FCC Rcd at 12370-78, paras. 68-81. They also do not apply to disputes involving poles that are owned or controlled by a railroad, the Federal Government, a state (including a political subdivision thereof such as a municipality), or a cooperative association, *see* 47 U.S.C. § 224(a)(1)-(a)(3), or where the poles at issue are located in a state, or the District of Columbia, that has certified to the Commission that it regulates the rates, terms, and conditions of pole attachments in that state or jurisdiction pursuant to 47 U.S.C. § 224(c). *See supra* note 4. Should we adopt the proposal set forth in the *Open Internet Notice* to reclassify broadband-only Internet service as a telecommunications service, section 224 would once again apply to broadband-only Internet service providers deployments. *See Open Internet Notice* at paras. 104, 110.

²⁶ *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7711, para. 13 (stating that “parties are welcome to reach bargained solutions that differ from our rules. Our rules provide processes that apply in the absence of a negotiated agreement, but we recognize that they cannot account for every distinct situation and encourage parties to seek superior solutions for themselves through voluntary privately-negotiated solutions”) (footnotes omitted); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936, para. 15 (*2020 Declaratory Ruling*) (clarifying that parties have flexibility to negotiate ‘superior solutions’ to pole attachment issues in their agreements, but any deviations from the Commission's rules must be mutually beneficial”) (footnote omitted).

resolution of disputes and, when necessary, use the formal adjudication process to develop precedent upon which parties can rely to settle future potential disputes.²⁷ Today, we amend our rules to create the RBAT in an effort to make the Commission's pole attachment dispute resolution process more responsive and adaptable with the goal of facilitating deployment.

9. The RBAT will be charged with expediting the resolution of these disputes by swiftly engaging key stakeholders, gathering relevant information, distilling issues in dispute, and recommending to the parties, where appropriate, an abbreviated mediation process, placement of a complaint (or portion of a complaint) on the Accelerated Docket based on consideration of specified criteria, and/or any other action that the RBAT determines will help the parties resolve their dispute.

10. In the *Second Further Notice*, the Commission sought comment on NCTA's proposed adoption of policies "favoring the placement of pole attachment complaints arising in unserved areas on the [Commission's] Accelerated Docket[.]" a mechanism that requires the Commission to quickly resolve disputes between parties within 60 days.²⁸ It also sought comment on measures that would expedite the resolution of "pole replacement[]" disputes and on criteria for determining more generally "when pole attachment complaints should be placed on the Accelerated Docket."²⁹ Based on broad record support among attachers for further streamlining our processes as applied to disputes that impede or delay broadband deployment,³⁰ we conclude that the targeted measures outlined below are warranted and will advance the Commission's goal of timely broadband deployment.

11. As the Commission observed in the *Second Further Notice*, our current rules provide a 180-day deadline (or shot clock) for final action on pole access complaints "where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility."³¹ In addition, a 270-day shot clock currently applies to final action on all other pole attachment complaints (i.e., those alleging unjust or

²⁷ See *2020 Declaratory Ruling* at para. 13 (encouraging parties to resolve disputes, but reminding parties of the usefulness of the complaint process to facilitate dispute resolution, which can enable the Commission "to consider the legitimacy of a utility's generally-applicable pole attachment policies in the context of an access complaint proceeding where a record can be developed regarding the specific situation").

²⁸ *Second Further Notice*, 37 FCC Rcd at 4166, para. 36 & n.106 (citing NCTA Petition at 27-29). Under section 1.736(a), complaint proceedings on the Accelerated Docket "must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings." See 47 CFR § 1.736(a); see also *id.* § 1.736(a)-(j) (Accelerated Docket procedures); *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Report and Order, 33 FCC Rcd 7178, 7184, para. 19 (2018) (*2018 Rule Consolidation Order*) ("The new rule extends the option of requesting inclusion on the Accelerated Docket beyond currently authorized cases to include Section 224 pole attachment complaints.").

²⁹ *Second Further Notice*, 37 FCC Rcd at 4166, para. 36.

³⁰ See, e.g., NCTA Comments at 38; INCOMPAS Reply at 8-9; Crown Castle Comments at 31; Charter Reply at 51-52; WIA Comments at 9; Altice USA Comments at 27.

³¹ See 47 CFR § 1.1414(a) (establishing 180-day deadline for final action on "pole access complaints," "[e]xcept in extraordinary circumstances"). For purposes of this subsection, the Commission has defined a "pole access complaint" as a complaint "filed by a cable television system or a provider of telecommunications service that alleges a complete denial of access to a utility pole[.]" and clarified that "[the] term [pole access complaint] does not encompass a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of pole access." *Accelerating Wireline Broadband Deployment By Removing Barriers To Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11132, para. 9 n.21 (2017).

unreasonable rates, terms, or conditions of attachment).³² Several commenters assert that these timeframes are commercially unreasonable for attachers seeking to deploy broadband networks, particularly in rural or unserved areas.³³ NCTA submits that the need for expedited procedures has gained greater urgency recently for “providers . . . receiving government funds to build out broadband under deadlines that afford no time for a lengthy complaint process.”³⁴ A number of commenters therefore propose more routine use of the Accelerated Docket, with its 60-day shot clock, especially for pole attachment disputes involving time-sensitive deployments in unserved areas.³⁵ Several commenters also contend that the current Accelerated Docket rule does not sufficiently motivate utilities to comply with their obligation to allow pole access because it is unclear when Commission staff, in the exercise of their discretion under section 1.736(d) of our rules, will include a matter on the Accelerated Docket.³⁶ Crown Castle asserts that “without certainty that the complaint will be promptly resolved, the decision to bring a formal complaint to the Commission involves business decisions about whether the resolution will be too late to meaningfully assist the deployment.”³⁷ On the other hand, other commenters argue that sweeping or widespread imposition of the Accelerated Docket rule, with its highly compressed timeframes, could raise potential fairness and due process concerns given the complexity of the issues raised in most pole attachment cases.³⁸ After considering these competing concerns, we find that the adoption of targeted dispute resolution reforms, as set forth below, will address the expressed need for quicker resolution of

³² See 47 CFR § 1.1414(b) (stating that “[a]ll other pole attachment complaints shall be governed by the review period in § 1.740,” which establishes a 270-day deadline for final action on a formal complaint); *2018 Rule Consolidation Order*, 33 FCC Rcd at 7185-86, paras. 21-23 (adopting 270-day “shot clock” for disposition of pole attachment complaints alleging unjust or unreasonable rates, terms, or conditions of attachment).

³³ See, e.g., ACA Connects Reply at 40-41 (arguing that the current complaint process is an uneconomical means of resolving disputes for smaller attachers that lack bargaining power *vis-a-vis* utilities); NCTA Reply at 29-30 (arguing that the current timeframes are “simply too long and costly to be an effective means for attachers to challenge pole owner actions”).

³⁴ NCTA Reply at 29-30.

³⁵ See, e.g., Charter Reply at 51 & n.137 (citing NCTA Comments at 37-38, Altice USA Comments at 25-27, Crown Castle Comments at 30-33). Charter asserts that the “[m]ere *existence*” of a path allowing more routine use of the Accelerated Docket “could help broadband providers resolve disagreements without the need for Commission intervention” by “provid[ing] attachers facing government-imposed construction deadlines with a more credible option of seeking relief, thereby reducing the one-sided leverage held by pole owners today.” Charter Comments at 57 (emphasis in original).

³⁶ See, e.g., ACA Connects Reply at 40-42; ALLvanza Reply at 8 & n.28; SHLB Comments at 11-12; see also 47 CFR § 1.736(d) (“Commission staff has discretion to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket.”).

³⁷ Crown Castle Reply at 27.

³⁸ See, e.g., Coalition of Concerned Utilities Comments at 43-44 (asserting that the 60-day Accelerated Docket process “is far too short to resolve most pole attachment disputes” and that, among other fairness issues, “widespread imposition of [that process] would raise due process concerns”); Pennsylvania PUC Comments at 5-6 (noting that “the proposed accelerated 60-day timeframe may represent a due process violation in Pennsylvania under the Pa. PUC’s existing Chapter 52 procedural rules”). Other commenters question the necessity of new rules (1) due to the relative infrequency of requests for Accelerated Docket treatment, see, e.g., Edison Electric Institute Comments at 54 (challenging the need to further expedite “denial of access” complaints based on “[t]he complete absence of [such] complaints before the Commission”), or (2) due to the lack of evidence of instances where dilatory actions of utilities have caused broadband grant recipients to lose access to such funding. See, e.g., Coalition of Concerned Utilities Comments at 43. *But see* Charter Reply at 51 (asserting that the industry is anticipating “a dramatic expansion in coming years of new broadband deployment by third-party attachers . . . facing forfeitures and penalties if they fail to meet aggressive scheduling requirements[,]” such that the specific number of past complaints “is not a good indicator of the need for prompt resolution going forward”).

pole attachment disputes that may impede or delay broadband deployment while ensuring sufficient fairness and due process for all involved parties.

12. *Disputes Subject to RBAT Review and Assessment Procedures.* The Commission asked in the *Second Further Notice* whether any new dispute resolution procedures should be “limited to complaints that raise only discrete pole access issues” and do not require consideration of “whether a rate, term, or condition of attachment is unjust or unreasonable.”³⁹ To address the need for timely broadband deployment, particularly in unserved or underserved areas, we apply the new procedures discussed below to any pole attachment dispute that a party alleges is impeding or delaying the deployment of broadband facilities. To provide greater clarity regarding when such a dispute would be eligible for placement on the Accelerated Docket, we also adopt below specific criteria that will guide the RBAT in determining when a dispute is suitable for accelerated disposition.⁴⁰ In light of the strict time constraints of the Accelerated Docket, disputes raising relatively straightforward legal and evidentiary issues, as determined based on the RBAT’s review of these criteria, are more likely to be considered appropriate for placement on the Accelerated Docket.

13. Although the record reflects differing views regarding which disputes should be subject to new dispute resolution procedures,⁴¹ a significant proportion of commenters seeking such reforms ask that we limit the focus of any new procedures to disputes that are interfering with active broadband deployment plans or projects.⁴² We adopt this suggestion based on our conclusion that focusing on pole attachment disputes that impede or delay a provider’s ability to deploy new broadband facilities will align with, and advance most directly, the goal of timely broadband deployment.⁴³

14. *RBAT Review and Assessment of Disputes that Impede or Delay Broadband Deployment.* To expedite the resolution of pole attachment disputes that impede or delay an active broadband deployment project, we amend our rules to establish the RBAT, which will be comprised of Enforcement Bureau and Wireline Competition Bureau staff with expertise in the Commission’s pole attachment rules and orders.⁴⁴ We charge the RBAT with prioritizing the resolution of any pole attachment dispute that a party alleges is impeding or delaying the deployment of broadband facilities (including where the party is also seeking placement of the matter on the Accelerated Docket under section 1.736).⁴⁵ In performing

³⁹ *Second Further Notice*, 37 FCC Rcd at 4166, para. 36.

⁴⁰ *See infra* paras. 18-20 (discussing specific criteria).

⁴¹ *See, e.g.*, Altice USA Comments at 27 (“all pole-related disputes” connected to broadband facilities construction in unserved areas); TechFreedom Reply at 8 (“only for [disputes] involving pole replacements”); Charter Comments at 6-7 (disputes “involv[ing] pole access or unreasonable conditions to obtain access” in unserved and broadband grant areas); Southern Company et al. (Electric Utilities) Reply at 52 (“true ‘pole access complaints’ as previously defined by the Commission”).

⁴² *See, e.g.*, NCTA Comments at 38; INCOMPAS Reply at 8-9; Crown Castle Comments at 31; SHLB Reply at 6; WIA Comments at 9; Altice USA Comments at 27.

⁴³ Several utilities argue that across-the-board application of dispute resolution reforms to an entire category of disputes would fail to account for complexities in individual cases. *See, e.g.*, Electric Utilities Reply at 50 (asserting that “non-access complaints,” in particular, “often require the Commission to resolve complex technical and/or financial issues”). But such comments assume that Accelerated Docket treatment would automatically apply to all disputes within the identified category. In fact, under the reforms we adopt herein, such disputes will receive individualized assessment and review (by the RBAT) based on a totality of factors analysis. *See infra* paragraphs 18-20 (discussing specific criteria).

⁴⁴ *See* ACA Connects Comments at 8, 52 (urging adoption of an expedited process for smaller providers to resolve pole attachment disputes that is similar to the “Rapid Response Process” used by the Maine Public Utilities Commission).

⁴⁵ *See* 47 CFR § 1.736.

this role, the RBAT will gather and promptly review all pertinent information submitted by the parties and provide guidance and advice on the most effective means of resolving the parties' dispute. Where appropriate, the RBAT will recommend to the parties an abbreviated mediation process, placement of a complaint, or portion of a complaint, on the Accelerated Docket, and/or any other action that the RBAT determines will help the parties resolve their dispute. The RBAT will recommend use of the Accelerated Docket where it determines, based upon a totality of the criteria outlined below, that a complaint, or portion thereof, is suitable for accelerated disposition.⁴⁶

15. To request RBAT review and assessment of a dispute that a party to the dispute contends is impeding or delaying deployment of broadband facilities, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing.⁴⁷ The MDRD Chief will direct the party to a streamlined form on the MDRD website—Request for RBAT Review and Assessment—and to instructions for completing and electronically transmitting the form to the RBAT. The form will elicit information relevant to the scope and nature of the dispute, and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket.⁴⁸

16. Upon receipt of the completed Request for RBAT Review and Assessment, the RBAT will schedule a meeting through a manner of the RBAT's choosing, with all parties as soon as practicable. The RBAT also may request a written response from the other party or parties to the dispute with respect to one or more issues raised by the party seeking RBAT review. In the initial meeting, or in a meeting shortly thereafter, the RBAT will provide guidance and advice to the parties on the most effective means of resolving their dispute, including staff-supervised mediation, use of the Accelerated Docket, and/or other action. To that end, the RBAT will attempt to distill the issues in dispute and identify issues that are most impacting a party's broadband deployment plans. For example, the RBAT may encourage parties to focus on the resolution of one or more threshold issues, or what appears to be the most urgent issue(s), if

⁴⁶ The RBAT may recommend placement of a dispute on the Accelerated Docket in the exercise of the discretion afforded Commission staff "to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket." See 47 CFR § 1.736(d). A prospective complainant may accept the recommendation, with or without the consent of the other party or parties to the dispute, by moving forward with the agreed upon schedule and process established by Commission staff in the case. See *id.* § 1.736(f).

⁴⁷ The RBAT review and assessment process will be available only to attachers and pole owners that are direct parties to such dispute (including any legal counsel retained to represent a party in that specific dispute). For parties seeking both RBAT review *and* inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, this initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under section 1.736(b). See 47 CFR § 1.736(b) ("A complainant that seeks inclusion of a proceeding on the Accelerated Docket shall submit a request to the Chief of the Enforcement Bureau's Market Disputes Resolution Division, by phone and in writing, prior to filing the complaint.").

⁴⁸ The form will require a submitting party to provide: information identifying the parties and the services they offer; the section(s) of the Act or Commission rule or order alleged to have been violated; a brief description of the parties' dispute (including how it relates to broadband deployment plans or projects, whether such plans or projects are subject to a deadline under a government funded broadband program, whether the dispute arises in an unserved or underserved area, what harm is occurring or is likely to occur as a result of the situation, and what aspects of the dispute require immediate redress); the specific relief sought; whether the parties have entered into a protective order; the steps the party has taken to resolve the matter with other parties to the dispute; a statement as to whether the parties are amenable to mediation; and a statement indicating whether the party intends to seek inclusion of the matter on the Accelerated Docket. The form also will elicit information relevant to whether the dispute is suitable for accelerated disposition including, for example, the number of poles in question, the number and complexity of claims at issue, and the likely need for discovery or expert affidavits. The RBAT may request additional information from the submitting party if more information is necessary to determine a course of action.

it finds that doing so may help the parties to narrow their dispute. Likewise, the RBAT may encourage parties, where appropriate, to streamline the proceeding by agreeing to focus on “test cases”—i.e., disputes over specific poles that the parties agree are representative of disputes over multiple poles. In this way, deciding the issue as to the test case will have broader impact.

17. Should the RBAT recommend staff-supervised mediation, it shall be conducted pursuant to section 1.737 of the Commission’s rules.⁴⁹ Because section 1.737 generally contemplates that mediations will be conducted by MDRD staff, we delegate authority to the MDRD Chief, in consultation with the RBAT, to modify or waive the procedures or requirements of section 1.737 as appropriate in this context, or as needed in light of the facts or circumstances of a particular case.⁵⁰ The strict confidentiality requirements will apply to all written and oral communications prepared or made for purposes of a mediation pursuant to section 1.737(f), “including mediation submissions, offers of compromise, and staff and party comments made during the course of the mediation (Mediation Communications).”⁵¹ Through mediation, the RBAT will make every effort to settle or narrow the issues in dispute as expeditiously as possible.

18. In the event that the parties are unable to settle their dispute, and a prospective complainant seeks placement of its complaint on the Accelerated Docket, the RBAT will decide whether the complaint or a portion of the complaint is suitable for inclusion on the Accelerated Docket based on the totality of the criteria set forth below.⁵² Because of the very short deadlines that apply in Accelerated Docket proceedings, Commission staff historically have carefully evaluated whether a particular dispute is appropriate for expedited disposition, resulting in the placement of relatively few cases on the Accelerated Docket. In evaluating whether a matter is suitable for expedited disposition, the RBAT must similarly be mindful of the due process concerns raised by commenters, such as the Pennsylvania PUC, regarding affording parties “the opportunity to be heard at a meaningful time and in a meaningful manner.”⁵³ In addition, although mediation is generally voluntary, the RBAT may require that the parties participate, if appropriate, in pre-filing settlement negotiations or mediation under rule 1.737 as a condition for including a matter on the Accelerated Docket.⁵⁴ Finally, if the RBAT determines that a matter is suitable for inclusion on the Accelerated Docket, the RBAT is authorized to send appropriate matters to the Commission’s Administrative Law Judge (ALJ) for an expedited “minitrial” (i.e., trial-type hearing) as contemplated by section 1.736(h).⁵⁵

⁴⁹ See 47 CFR § 1.737.

⁵⁰ Waiver is appropriate for “good cause,” 47 CFR § 1.3, and is warranted only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest. See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

⁵¹ See 47 CFR § 1.737(f) (“Neither staff nor the parties may use, disclose or seek to disclose Mediation Communications in any proceeding before the Commission . . . or before any other tribunal, unless compelled to do so by law.”).

⁵² See *infra* paras. 18-20.

⁵³ Pennsylvania PUC Comments at 13 (citing *Montefiore Hosp. Ass’n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481 (Pa. Cmwlth. 1980)); see also Pennsylvania PUC Comments at 14 (stating that, based on its own experience “adjudicating pole attachment cases [with six-month or 180-day deadlines], the Pa. PUC does not believe that due process can generally be provided in 60 days”).

⁵⁴ See 47 CFR §§ 1.736(e) (“In appropriate cases, Commission staff may require that the parties participate in pre-filing settlement negotiations or mediation under § 1.737.”); 1.737(a) (“Participation in mediation is generally voluntary, but may be required as a condition for including a matter on the Accelerated Docket.”).

⁵⁵ See 47 CFR § 1.736(h) (stating that an ALJ may preside over a minitrial in Accelerated Docket proceedings).

19. *Criteria for Placement on the Accelerated Docket.* The Commission sought comment in the *Second Further Notice* on the adoption of specific criteria to guide Commission staff on “when pole attachment complaints should be placed on the Accelerated Docket.”⁵⁶ Based on the requests of several commenters for greater predictability surrounding Accelerated Docket placement decisions with respect to pole attachment disputes that impede or delay broadband deployment,⁵⁷ we establish criteria to aid the RBAT in making determinations regarding the placement of such matters on the Accelerated Docket.

20. In light of the strict time constraints that apply in Accelerated Docket cases, we decline to adopt a “presumption,” as suggested by some commenters,⁵⁸ that all pole access disputes for active deployments be placed on the Accelerated Docket and, instead, entrust the RBAT with this decision based on the criteria specified below. We agree with Dominion/Xcel that a “one-size-fits-all policy” would not adequately take into account the complexity of the issues in particular complaint proceedings.⁵⁹ We also agree with the Coalition of Concerned Utilities that the 60-day timeframe will be “too short” to resolve certain pole attachment disputes, and thus “blanket imposition” of the Accelerated Docket requirements would be unreasonable and “raise due process concerns” for utilities.⁶⁰ Although Charter argues that the presumption could simply be rebutted if a particular complaint raises unusually complex issues,⁶¹ we reject this argument based on our experience with formal complaints. In particular, when parties oppose the operation of a presumption in a particular proceeding, these rebuttal efforts often lead to significant additional argumentation attendant to resolving the specific question of the presumption, thus unnecessarily complicating resolution of the underlying issues in dispute. To avoid the potential for unnecessary rounds of argumentation and to ensure that complaints accepted onto the Accelerated Docket are suitable for decision under the relevant time constraints, we reject proposals to create a presumption that all pole access disputes for active deployments be placed on the Accelerated Docket.

21. After careful consideration of the record on this issue,⁶² we direct the RBAT to consider the factors below in determining whether to accept onto the Accelerated Docket a pole attachment dispute that is allegedly impeding or delaying a broadband facilities deployment plan or project. The RBAT shall determine eligibility for placement on the Accelerated Docket based on the totality of these factors:

- whether the prospective complainant states a claim for violation of the Act or a Commission rule or order that falls within the Commission’s jurisdiction;
- whether the expedited resolution of a particular dispute or category of disputes appears likely to advance the deployment of broadband facilities, especially in an unserved or

⁵⁶ *Second Further Notice*, 37 FCC Rcd at 4166, para. 36. For example, the Commission asked if its policy should “take into account the number and complexity of the claims, need for discovery, need for expert affidavits, and ability of the parties to stipulate to facts.” *Id.*

⁵⁷ *See, e.g.*, ACA Connects Reply at 41-42; ALLvanza Reply at 8; Crown Castle Comments at 30-31.

⁵⁸ *See, e.g.*, SHLB Comments at 11-12; ALLvanza Reply at 8; INCOMPAS Reply at 9 (asking the Commission to adopt a presumption that all pole access disputes for active deployments be placed on the Accelerated Docket).

⁵⁹ Dominion/Xcel Reply at 21-22 (arguing that Commission staff, in deciding whether to place a complaint on the Accelerated Docket, should retain the discretion to consider “the complexity of the issues involved” as well as “the number of poles affected, the need for discovery, expert affidavits, mediation discussions, and other factors that can make it difficult to fairly resolve disputes within such a limited time”).

⁶⁰ Coalition of Concerned Utilities Comments at 43-44; *accord* Pennsylvania PUC Comments at 5-6; Utilities Technology Council Reply at 11.

⁶¹ *See* Charter Reply at 52.

⁶² *See, e.g.*, Edison Electric Institute Comments at 55 (urging the Commission to consider the number and complexity of the claims raised, the need for discovery, the need for expert affidavits, and the ability of the parties to stipulate to facts); Dominion/Xcel Reply at 21-22.

- underserved area;
- whether the parties to the dispute have exhausted all reasonable opportunities for settlement during any staff-supervised mediation;
 - the number and complexity of the issues in dispute;
 - whether the dispute raises new or novel issues versus settled interpretations of rules or policies;
 - the likely need for, and complexity of, discovery;
 - the likely need for expert testimony;
 - the ability of the parties to stipulate to facts;
 - whether the parties have already assembled relevant evidence bearing on the disputed facts;
 - the willingness of the prospective complainant to seek a ruling on a subset of claims or issues (e.g., threshold or “test cases”); and
 - such other factors as the RBAT, within its discretion, may deem appropriate and conducive to the prompt and fair adjudication of the complaint proceeding.

The first three of these criteria will help the RBAT to ensure appropriate use of the Commission’s processes in support of the goal of timely broadband deployment and ensure that the parties have made a sufficient effort to resolve or, at a minimum, identify and narrow the disputed issues prior to filing a complaint. The remaining criteria will help the RBAT to determine if a dispute is suitable for decision under the strict time constraints of the Accelerated Docket, and also require it to consider whether including a matter on the Accelerated Docket would ensure the prompt and fair adjudication of the dispute. By specifying the criteria that the RBAT must consider in making its determination, we hope to make the Accelerated Docket a more useful tool in the resolution of eligible pole attachment disputes and provide prospective complainants with greater certainty regarding which complaints will be deemed suitable for expedited resolution.

22. We will closely monitor the impact of the dispute resolution procedures adopted here and consider additional streamlining measures should we observe ongoing delay tactics or other unreasonable practices that hinder the ability of broadband providers to deploy new services or facilities.

B. Increasing Transparency By Providing Attachers with Utility Pole Inspection Information

23. We next amend our pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports,⁶³ or any intervening, periodic reports created before the next cyclical inspection, for the poles

⁶³ The record demonstrates that utilities conduct inspections of their poles on a multi-year cycle, either as part of normal network management or as required by state law. *See, e.g.*, Letter from Brett Heather Freedson, Counsel to Dominion Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 14, 2023) (Dominion Energy June 14, 2023 *Ex Parte*) (“[E]ach pole within the Company’s pole plant is inspected on a 12-year cycle If any pole is determined upon inspection not to be safe and in serviceable condition [or not likely to remain in safe and serviceable condition for the entire next inspection cycle], it will be identified for replacement or restoration at the time of inspection.”); Letter from Aryeh Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed May 8, 2023) (Edison Electric Institute May 8, 2023 *Ex Parte*); Letter from Robin F. Bromberg, Counsel to the Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 26, 2023) (Electric Utilities June 26, 2023 *Ex Parte*) (“[T]he Electric Utilities proactively inspect their pole networks on a cyclical basis Between 2019-2021, the

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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 (if any). In the *Second Further Notice*, the Commission sought comment on requiring utilities to provide more information about their poles to prospective attachers, in order to reduce disputes.⁶⁴ Several attaching entities indicated pole inspection information would be helpful in planning deployments.⁶⁵ We believe this new requirement strikes a reasonable balance between additional transparency for prospective attachers and ensuring the burden on utilities is no greater than necessary.

24. For the purposes of this requirement, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the routine inspection of its poles during the utility’s normal pole inspection cycle, while a periodic pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the inspection of any of its poles outside the utility’s normal pole inspection cycle. We note that this new transparency requirement is consistent with the existing practices of certain utilities to prepare such reports.⁶⁶ When asking for information about the status of a utility’s poles for a planned buildout, the attacher must submit its information request no earlier than contemporaneously with an attachment application. The utility will have ten business days to respond to the request.⁶⁷ This should allow sufficient time before the make-

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Electric Utilities collectively inspected more than 4 million poles and replaced more than 100,000 poles at their own expense as a result of these inspections.”); *see also, e.g.*, 52 Pa. Code § 57.198(n)(2) (“Distribution poles shall be inspected at least as often as every 10-12 years except for the new southern yellow pine creosoted utility poles which shall be initially inspected within 25 years, then within 12 years annually after the initial inspection.”); *Proposal to Required Investor-Owned Electric Utilities to Implement a Ten-Year Wood Pole Inspection Program*, Docket No. 060078-EI, Order No. PSC-06-0144-PAA-EI, <https://www.floridapsc.com/pscfiles/library/Orders/2006/01671-2006.PDF#search=PSC-06-0144-PAA-EI> (Fla. Pub. Serv. Comm’n 2006) (requiring investor-owned electric utilities to establish an eight-year inspection cycle for wood pole strength, including the effects of pole attachments).

⁶⁴ *Second Further Notice*, 37 FCC Rcd at 4165, para. 35. Utilities did not challenge the Commission’s general jurisdiction to require them to provide relevant information to prospective attachers, and ACA Connects asserted the Commission has such authority. *See* ACA Connects Comments at 44 & n.88.

⁶⁵ *See, e.g.*, ACA Connects Reply at 33-34 (“Information gathered during the most recent pole inspection, however long ago it occurred, would be valuable to cable operators and telecommunications providers as they plan their deployments, upgrades, and expansions.”); Crown Castle Comments at 29-30 (“Crown Castle has been refused information regarding the status of utilities’ poles in terms of scheduled replacement or whether they have been tagged for replacement.”); NCTA Comments at 24 (“Cable operators and other attaching parties today are often denied access to critical and useful information about the poles in a utility’s network. This withheld information includes . . . which poles have been red tagged.”). This requirement applies only in the states that have not certified that they regulate pole attachments themselves. *See States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd 6724 (WCB 2022) (*State Regulation Public Notice*). To the extent such reports may include sensitive or confidential network or financial information, we rely upon utilities and attachers to address the issue through redactions or non-disclosure agreements.

⁶⁶ *See, e.g.*, Coalition of Concerned Utilities Comments at 12-13, 21 (“If [a pole] has been placed in the queue to be replaced, the attacher is already informed of that during the application process.”); Edison Electric Institute Comments at 51-52 (“Attachers currently are alerted if a pole is scheduled for replacement at the time that an attachment request is made.”); Electric Utilities Comments at 56 (“[T]he Electric Utilities also provide this information [on whether a pole had been red tagged] to attachers via their make-ready estimates.”). To be clear, this requirement applies to all information regarding specific poles that is included in the periodic and cyclical inspection reports, but not general information regarding all poles (if the periodic and cyclical reports contain any such information). Later in this section, we discuss specific types of information for which we decline to impose a specific, stand-alone disclosure duty on utilities. If such information is included in a cyclical inspection report with regard to specified poles, however, the information must be disclosed.

⁶⁷ The utility has the same amount of time to determine whether the application is complete. *See* 47 CFR § 1.1411(c)(1)(i) (giving utilities ten business days to determine whether an application is complete).

ready survey for the attacher to revise or amend its application as may be appropriate based on the information it receives.⁶⁸

25. We recognize that in some situations, the information provided by utilities in their pole inspection reports may lead new attachers to amend their attachment applications. In order to ensure that utilities have enough time to review such applications, in situations when the utility receives an amended attachment application prior to granting or denying the original application, we will allow a utility the option to restart the 45-day period for responding to the application on the merits and conducting the survey.⁶⁹ Utilities electing to restart the 45-day application review and survey period in this manner must notify the attacher within 5 business days of receipt of the amended application or by the 45th day after the original application is considered complete, whichever is earlier.⁷⁰ To avoid unnecessary delays and costs, we strongly encourage attachers to notify utilities of their intent to file, and to file, amended applications as quickly as possible after receiving a pole inspection report from the utility. We also encourage utilities to exercise their right to restart this 45-day period judiciously and to review amended applications as quickly as possible even when electing to restart the 45-day application review and survey period. Regardless of whether the utility elects to restart the 45-day response period, any additional survey costs necessitated by the amended application, such as a second survey after a survey for the original application has been completed, will be borne by the new attacher consistent with the new attacher's obligation to pay for make-ready costs associated with their application.⁷¹

26. In connection with the new transparency requirement we adopt today, we also require utilities to retain copies, in whatever form they were created, of any such cyclical or periodic pole inspection reports they conduct in the normal course of business, until such time as the utility completes a superseding cyclical pole inspection report covering the poles included in the attachment application. In creating these obligations, we reiterate that utilities are required to provide only the information they already possess and track in the normal course of conducting pole inspections at the time of the attacher's request for data. The new rule does not require utilities to collect or create new information for the sole purpose of responding to such requests or to provide all information they may possess on the affected poles outside their pole inspection reports.⁷² We find this new limited requirement achieves a balance

⁶⁸ "The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole." 47 CFR § 1.1402(o). After receiving a complete attachment application, a utility conducts a make-ready survey and provides a make-ready cost estimate to the attacher. 47 CFR § 1.1411(c)(3), (d). During the survey stage, "the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required." *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245 and GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5252, para. 22 (2011) (*2011 Pole Attachment Order*), *aff'd*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

⁶⁹ The option to restart the time period also applies to larger orders that are subject to a 60-day timeframe. *See* 47 CFR §§ 1.1411(c)(2), (c)(3)(i).

⁷⁰ *See* 47 CFR § 1.1411(c)(2), (c)(3)(i). For example, if an amended application was filed on the 42nd day following the utility's determination that the original application was complete, the utility would only have three days, not five business days, to notify the attacher that the utility is restarting the 45-day application review and survey.

⁷¹ *See* 47 U.S.C. § 224(i); 47 CFR § 1.1408(b).

⁷² Edison Electric Institute contends that "access to critical infrastructure by non-electric company personnel presents serious safety, reliability, and homeland security hazards," and that "existing law bars electric companies from releasing some information about system infrastructure." Edison Electric Institute Comments at 52 (citing, as an example, 6 CFR §§ 29.1-29.9 on Protected Critical Infrastructure Information); *see also* Lumen Comments at 32. It does not directly assert, however, that utilities would be barred from disclosing information contained in a pole inspection report. And it notes that most of the information is "already available" and an attacher "can readily learn the condition" of poles by driving a proposed route. Edison Electric Institute Comments at 51, 52. Although we do not know exactly what information utilities may include in their pole inspection reports, we anticipate that legal

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between a potential attachers' need for more information about the poles that it plans to use as part of a broadband buildout and the utility's interest in minimizing the burden of providing such information.

27. We conclude that requiring utilities to provide information about the state of their poles to attachers will help improve the attachment process and potentially reduce disputes. In particular, having such information early in the process will help attachers evaluate whether they want to adjust their plans in light of the poles' conditions.⁷³ At the same time, we recognize the potential burdens on utilities that would result from having to compile extensive information for every pole attachment application the utility receives.⁷⁴ We seek to strike a balance by (1) requiring utilities to provide only such information as they already collect in the normal course of inspections done as part of managing their network and poles (which the record indicates include which poles have been identified as needing replacement),⁷⁵ rather

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constraints on disclosure of critical infrastructure information can be addressed, to the extent that they arise, by the parties involved via appropriate redactions or use of a non-disclosure agreement. *See* Crown Castle Reply at 26 ("Pole owners can easily preserve any legitimate confidentiality concerns via confidentiality agreements in pole attachment agreements or separately."); Edison Electric Institute Reply at 37 ("It is reasonable for pole owners that agree to share proprietary information [sic] under non-disclosure agreements before providing access."). We do not intend our new rule to override laws precluding disclosure of certain information, but expect utilities to work in good faith to provide potential attachers with the information they can from their pole inspection reports.

⁷³ ACA Connects Comments at 6 ("The Commission's rules should ensure that prospective attachers can obtain such information from utilities so that they can better plan their deployments and expansions and avoid inefficient choices (e.g., paying application and sometimes large survey costs, only to find that the make-ready required, including pole replacements, would make a planned aerial build economically infeasible)."); Crown Castle Comments at 29 ("requiring record retention and increased information sharing by pole owners could . . . significantly increase the speed of deployment"); NCTA Reply at 20 ("Numerous examples provided by commenters in this proceeding demonstrate that pole-owner refusals to provide access to pole-related information has a material and adverse impact on broadband deployment.").

⁷⁴ *See, e.g.*, Electric Utilities Comments at 57 ("The Electric Utilities are not required to maintain, nor do they maintain, records on the 'condition of' each individual pole. . . . Maintaining a database on the condition of all poles within the Electric Utilities' service territories would also be an incredibly expensive and burdensome endeavor. The administrative burden and expense of providing attaching entities with the 'condition of, and replacement plans for,' the Electric Utilities' poles would outweigh any supposed benefit of such information."); AT&T Reply at 31 ("Commenters ask for detailed rules requiring pole owners to provide attachers with information about the age of the pole, condition of the pole, replacement plans for each pole, outside plant records, detailed accounting records, financial records regarding pole related charges, and information needed to rebut presumptions in calculating pole attachment rates. But the cost and burdens associated with such reporting would far outweigh its value The costs to survey every pole across the country to confirm its specific location, availability, and age and to keep that information current would be prohibitive. Pole owners own millions of poles and some do not keep electronic records of availability for attachments. They would have to create such systems and records from scratch, at significant cost." (footnote omitted)); Dominion/Xcel Reply at 34-35 ("Aside from the prohibitive cost of [collecting, storing, and providing several types of data on poles] and the enormous burden on already scarce internal resources, . . . the time and resources that would be required for any pole owner to produce (or for any attacher to review) the volume of information contemplated by commenters' proposals would slow the pace of broadband deployment and increase deployment costs."); Edison Electric Institute Reply at 35-37 ("[T]he marginal benefits to attachers of having access to this type of information is outweighed by the substantial burden on electric companies of making this information available to attachers. This information is not useful or necessary for pole owners, and often is not kept by pole owners.") (footnote omitted); USTelecom Reply at 20 ("Requiring pole owners to collect data about even just the poles subject to Commission's rules under Section 224 would require substantial personnel hours and unprecedented costs.").

⁷⁵ *See* Dominion Energy June 14, 2023 *Ex Parte* at 2; Electric Utilities June 26, 2023 *Ex Parte* at 2; Letter from Morgan Reeds, Director, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed June 29, 2023) (USTelecom June 29, 2023 *Ex Parte*).

than having to gather information solely for attachers or from many disparate sources, and (2) tying requests for such information to poles contained in submitted attachment applications.

28. In striking this balance, we agree with utilities that they should not be required to gather and provide extensive pole-related data for every pole attachment application about matters they do not track in the normal course of business through their inspections.⁷⁶ The record shows that many utilities do not create specific maintenance or replacement schedules for poles.⁷⁷ It also shows that some utilities provide a range of pole-related information—including whether any poles are red tagged or otherwise identified for replacement—when responding to an attachment application after conducting a make-ready survey.⁷⁸ We agree with the commenters asserting that a pre-application survey conducted by the attacher, or a make-ready survey conducted by a utility in response to a specific attachment application, are the best ways to ensure the potential attacher and utility have up-to-date, accurate information on the current state of poles.⁷⁹ However, we also agree with Dominion/Xcel that the information contained in general survey or pole inspection reports can be useful to prospective attachers in some cases.⁸⁰ Therefore, although we decline to impose broader duties on utilities to collect and provide more expansive pole-related information for every attachment application, we will require utilities to furnish already available information concerning specific poles upon request at the time an attachment application is submitted.

29. We decline to require utilities to provide new attachers with information about poles *prior* to the attacher submitting a pole attachment application as requested by some commenters.⁸¹

⁷⁶ See Electric Utilities Comments at 57; AT&T Reply at 31; Dominion/Xcel Reply at 34-35; Edison Electric Institute Reply at 35-37.

⁷⁷ AT&T Reply at 32 (“‘Poles are replaced when they need to be replaced, not on some fixed schedule.’ Thus, pole replacement plans do not exist and are not needed for all poles.”); Coalition of Concerned Utilities Comments at 42 (“Unless a pole has been identified through regular inspections or otherwise as needing replacement, utilities cannot predict when poles will need to be replaced.”); Edison Electric Institute Comments at 51-52 (“Electric company pole owners do not, in the ordinary course of business, prepare schedules for future pole maintenance, reinforcement, or replacement activity. . . . [P]oles are replaced when they need to be replaced, not on some fixed schedule.”).

⁷⁸ See Coalition of Concerned Utilities Comments at 13, 21; Edison Electric Institute Comments at 51-52; Electric Utilities Comments at 56.

⁷⁹ Electric Utilities Comments at 57 (“Pole networks are dynamic, and the condition of the poles could change markedly in between their cyclical inspections. Therefore, even if the Electric Utilities kept records on the condition of all their poles, attachers would still need to visit and visually inspect the poles along a proposed route.”); AT&T Reply at 31-32 (“Physical inspection of every pole remains the only means to verify or confirm all of the information attachers seek.”); USTelecom Reply at 19 (“The Commission accounted for the dynamic nature of pole networks by including a survey stage in the make-ready process.”).

⁸⁰ See Dominion/Xcel Reply at 34 (“Information gathered during the most recent pole inspection, however long ago it occurred, would be valuable to cable operators and telecommunications providers as they plan their deployments.” For example, these reports may include the installation date of the pole, which never changes and would “inform prospective attachers of the general degree to which poles on a potential route are depreciated and . . . give them some sense as to the share of costs they might carry should pole replacements be required because of insufficient capacity . . .”).

⁸¹ ACA Connects Reply at 34-35 (“By having access to pole replacement-related information prior to making an attachment request, attachers can better gauge whether an attachment request is likely to precipitate pole replacements, whether the poles are likely to be fully depreciated, and assess the prospective timing and cost of the overall deployment.”); ExteNet Comments at 8 (requesting that utilities be required to provide various pole-related information outside the make-ready process); INCOMPAS Comments at 18 (requesting that utilities be required to provide pole-related information “upon [an attacher’s] request”); NCTA Comments at 24; Crown Castle Reply at 24-25.

Although we recognize that some potential attachers could benefit from obtaining pole-related information prior to submission of an application,⁸² we decline to impose this burden on utilities given that the underlying requests for information would be for speculative build-out plans that may never come to fruition. Furthermore, establishing a pre-application duty on utilities would require the Commission to create a new process and timeline prior to the codified make-ready process, which has always been triggered by the filing of an application.⁸³ Finally, given that prospective attachers also have the ability to gather information about poles on prospective routes through pre-application surveys and visual inspection of poles on a prospective route,⁸⁴ we find that imposing an additional pre-application burden on utilities is not justified.

30. We reject requests at this time that we impose a variety of broader disclosure requirements on utilities. We agree with utilities that the most relevant information for purposes of an attachment request is whether the poles at issue are available or due for replacement.⁸⁵ For example, some attacher commenters ask the Commission to require utilities to create accessible databases (or establish a single database for all utilities) with information on things like pole age, condition, repair/replacement schedules, location, number of attachments, standard rate structure, and applicable engineering standards.⁸⁶ They also ask that utilities be required to provide data from the owners' periodic

⁸² See, e.g., ACA Connects Comments at 6 (“The Commission’s rules should ensure that prospective attachers can obtain such information from utilities so that they can better plan their deployments and expansions and avoid inefficient choices (e.g., paying application and sometimes large survey costs, only to find that the make-ready required, including pole replacements, would make a planned aerial build economically infeasible).”); Crown Castle Comments at 29 (“requiring record retention and increased information sharing by pole owners could . . . significantly increase the speed of deployment”); ExteNet Comments at 708; INCOMPAS Comments at 18.

⁸³ See 47 CFR § 1.1411.

⁸⁴ Through such visual inspection, an attacher typically can learn the age of a pole, whether it has been red tagged, when the most recent inspection occurred, and a pole’s load and potential suitability for more attachments. Edison Electric Institute Comments at 51-52; Electric Utilities Comments at 56 (stating that because poles are physically red tagged when due for replacement, “if an attacher exercises its right to attend the field inspection, the attacher would learn in real time the condition of all poles along its proposed route”); AT&T Reply at 32 (“Pole attachers seeking information more quickly to plan their deployments are free to retain their own contractors to map and survey poles at their cost on the timelines that best suit them, rather than trying to impose those timelines and costs on pole owners.”); Coalition of Concerned Utilities Reply at 13; Dominion/Xcel Reply at 40-42 (“A pole that is scheduled for replacement is physically marked as such (i.e., ‘red tagged’), and can be identified by an attacher upon physical inspection.”; “the year in which the pole was first installed [is] marked on the body of the pole”; “the year of a pole’s most recent inspection is clearly marked on the body of the pole”; “pre-application inspection” allows an attacher to “determine a pole’s specifications, current load, and suitability for new attachment”); Electric Utilities Reply at 26; Electric Utilities June 26, 2023 *Ex Parte* at 4 (“Where the Electric Utilities find poles in need of immediate replacement (or repair) during their cyclical inspections, they identify such poles by placing a physical ‘tag’ on the deficient pole. Attachers can see which poles have been tagged when they visit the pole line as part of planning their proposed routes—in other words, the documentation is literally on the pole (and evident during the field visit).”).

⁸⁵ Coalition of Concerned Utilities Comments at 42 (“[D]ecisions by new attachers whether to attach are informed only by whether the pole is suitable for attachment or not. If the pole remains standing and has not been scheduled for replacement, it is suitable for attachment, provided there is sufficient capacity.”). Some utilities suspect that the purpose of many of the attachers’ requests is only to provide ammunition for rate disputes with utilities, not to improve the attachment process. See, e.g., Dominion/Xcel Comments at 35-36; Coalition of Concerned Utilities Reply at 12.

⁸⁶ ACA Connects Comments at 41-44 (“ACA Connects urges the Commission to require utilities to provide electronic access to a subset of this information related to pole replacements, i.e. pole location, specifications, installation date, condition, and any planned replacements or reinforcements.”); INCOMPAS Comments at 20 (asking the Commission to “either require or establish a subscription-based digitized utility database. Specific data

(continued....)

load analyses for poles;⁸⁷ right-of-way and easement information for poles;⁸⁸ the age, height, class, and condition of poles;⁸⁹ and data on current attachments and pending attachment requests for relevant poles.⁹⁰ Other requests seek to require pole owners to produce financial records and outside plant records to support their attachment rates and other records to enable attachers to rebut the presumptions in the pole attachment rate formula.⁹¹ And ACA Connects asks the Commission to require utilities to provide more details in their make-ready cost estimates to support those costs.⁹² We agree with utilities' contentions that these proposed additional information requirements are unduly burdensome, unnecessary in many cases, unfeasible in others, and would impose significant costs on utilities with little or no benefit to broadband deployment.⁹³

31. *Database(s) of Pole Information.* We decline (1) to require that each utility create an accessible database with an array of data on all its poles, or (2) to establish a single pole-information database for all utilities.⁹⁴ The Commission rejected previous calls for a similar database requirement in 2011, in part based on the large burden outweighing potential benefits.⁹⁵ We find that 2011 reasoning remains valid. In particular, we find that the record continues to demonstrate that the burdens and costs of creating such a database (if a utility does not already have one) would be very large given the number

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such as a standardized rate structure, pole retirement and replacement plans, pole audit information, previous work order details, and safety and engineering standards can be regularly uploaded by pole owners and the database can be maintained by making this information available to users through a per report fee."); ACA Connects Reply Comments at 37-38; INCOMPAS Reply at 7.

⁸⁷ Crown Castle Reply at 24-25 (seeking access to utilities' "loading catalogs").

⁸⁸ ExteNet Comments at 8; Crown Castle Reply at 24-25.

⁸⁹ ExteNet Comments at 8; NCTA Comments at 25; Crown Castle Reply at 24-25; NCTA Reply at 23.

⁹⁰ ExteNet Comments at 8; NCTA Comments at 25; Crown Castle Reply at 24-25.

⁹¹ Altice USA Comments at 23-25 & n.52 ("certain internal, pole owner-controlled information is needed to run the calculations and to rebut certain formula presumptions"; asking that utilities be required to provide "[a]ll outside plant records relevant to poles, . . . [including] a detailed accounting of the units associated with FERC Account 364, which is used to report the utility's pole plant investment," and "[t]he pole owner's financial records related to poles"); Crown Castle Comments at 30; NCTA Comments at 24-25 (asking that utilities be required to provide "[f]inancial records related to poles than enable attachers to verify the accuracy and reasonableness of pole-related charges" and "[a]ny information used or necessary to rebut the FCC's presumptions in calculating pole-attachment rates"); NCTA Reply at 22-23. Continuing Property Records are "[o]utside plant records relevant to poles," typically "including a detailed accounting of the units associated with accounts used to report pole plant investment such as vintage height, class, etc." Coalition of Concerned Utilities Reply at 11 n.20.

⁹² ACA Connects Comments, Attach. A, Breezeline Decl. at 4.

⁹³ Edison Electric Institute Comments at 55; Edison Electric Institute Reply at 35-37 ("Unless a pole has been identified through regular inspections or otherwise as needing replacement, pole owners cannot predict when poles will need to be replaced. Thus, the marginal benefits to attachers of having access to this type of information is outweighed by the substantial burden on electric companies of making this information available to attachers. This information is not useful or necessary for pole owners, and often is not kept by pole owners.") (footnote omitted); Electric Utilities Comments at 56-57; Electric Utilities Reply at 26-28; Coalition of Concerned Utilities Comments at 42; Coalition of Concerned Utilities Reply at 12-15; Dominion/Xcel Reply at 34-36, 39-41; AT&T Reply at 30-33; Lumen Comments at 32; Verizon Comments at 10-11; Verizon Reply at 10; USTelecom Reply at 19-20; Utilities Technology Council Comments at 21; Utilities Technology Council Reply at 10; TechFreedom Comments at 5.

⁹⁴ See, e.g., ACA Connects Comments at 41-44; INCOMPAS Comments at 20; ACA Connects Reply Comments at 37-38; INCOMPAS Reply at 7.

⁹⁵ 2011 Pole Attachment Order, 26 FCC Rcd at 5280-81, para. 89.

of poles many utilities own or jointly own and the scope of pole data attachers seek, and that the alleged benefits of requiring such a database would be reduced by the new requirement we adopt today that utilities provide information from their pole inspection reports.⁹⁶ Commenters contend that requiring such a pole-related database would help speed deployment by helping attachers plan better and avoid intermediate steps for both attachers and utilities.⁹⁷ Utilities, however, assert that due to the very large number of poles they own or co-own and the ever-changing nature of pole networks, maintaining a fully up-to-date database would be almost impossible, and so the information for any given group of poles in a database could easily be out of date when the attacher needs it.⁹⁸ One utility also submits that granting access to such voluminous pole information could result in the submission of incorrect applications.⁹⁹ We find that the benefits of a database requirement remain speculative at best given how difficult it would be to keep such a large database up-to-date.

32. While some commenters argue that circumstances have changed since 2011 with some state utility commissions adopting database requirements for pole-related information,¹⁰⁰ the states cited by these commenters are limited and, in any event, all regulate pole attachments at the state level pursuant to section 224(c) of the Act.¹⁰¹ As a result, compliance with a pre-existing state-specific database requirements would likely offer little, if any, relief in complying with a newly imposed federal database requirement. To the extent any utilities may have developed pole-related databases in states that do not regulate pole attachments,¹⁰² the record indicates that attachers are interested in specific types of data, not merely access to existing databases,¹⁰³ which would require utilities to absorb additional, and potentially substantial, costs of either adding specific types of new data or searching databases for specific data of

⁹⁶ See, e.g., Electric Utilities Comments at 36, 57; Coalition of Concerned Utilities Reply at 14-15 (creating such a database would be “enormously expensive” and attachers would have to pay for it); Edison Electric Institute Reply at 36-37; Electric Utilities Reply at 27-28 (“Maintaining a database showing this level of detail for each pole would impose a crippling burden—both administratively and financially—on pole owners.”); Utilities Technology Council Comments at 20-21; Verizon Reply at 10. Indeed, some individual utilities may own millions of poles. See AT&T Reply at 31; Edison Electric Institute May 8, 2023 *Ex Parte* at 2 (stating that Xcel Energy owns approximately 1.5 million distribution poles and FirstEnergy owns approximately 3.9 million distribution poles).

⁹⁷ ACA Connects Comments at 43; ExteNet Comments at 7-8; INCOMPAS Reply at 7.

⁹⁸ Electric Utilities Comments at 36; Coalition of Concerned Utilities Reply at 14-15; Edison Electric Institute Reply at 36-37; Electric Utilities Reply at 27-28.

⁹⁹ Dominion/Xcel Reply at 34-36 (“[I]t is impossible to comprehend how the ability to consider the immense quantity of detailed pole data requested by commenters would make the pole access process more expeditious or less contentious Xcel Energy has witnessed that attachers that rely on electronic resources to develop their deployment plans—particularly in lieu of preliminary field inspections—are most likely to submit incorrect applications that ultimately delay their access to poles.”); see also *2011 Pole Attachment Order*, 26 FCC Rcd at 5280-81, para. 89.

¹⁰⁰ See ACA Connects Comments at 41-43; ACA Connects Reply at 37-38; NCTA Reply at 22 n.84 (noting state database requirements in California, Connecticut, Maine, and Massachusetts).

¹⁰¹ 47 U.S.C. § 224(c); see also *State Regulation Public Notice*, 37 FCC Rcd 6724.

¹⁰² ACA Connects asserts that many utilities have developed pole-related databases since 2011, but it does not identify utilities that have done so in states that do not regulate pole attachments. ACA Connects Comments at 42.

¹⁰³ See ACA Connects Comments at 41-44 (“ACA Connects urges the Commission to require utilities to provide electronic access to a subset of this information related to pole replacements, i.e. pole location, specifications, installation date, condition, and any planned replacements or reinforcements.”); INCOMPAS Comments at 20 (asking the Commission to “either require or establish a subscription-based digitized utility database. Specific data such as a standardized rate structure, pole retirement and replacement plans, pole audit information, previous work order details, and safety and engineering standards can be regularly uploaded by pole owners and the database can be maintained by making this information available to users through a per report fee.”).

interest to attachers. Again, we agree with the utilities that the value of such database information to attachers is highly unlikely to outweigh those burdens, as the information may well be out of date by the time an attacher submits an attachment request.¹⁰⁴ Moreover, any added benefit would likely be minimal in light of the new information-sharing requirement we adopt today.

33. *Financial Records Regarding Poles.* We decline attachers' requests to require utilities to provide financial data regarding poles and attachment rates, including outside plant records (also called continuing property records) and records to help attachers rebut presumptions in the pole attachment rate formula outside the context of a complaint proceeding before the Commission.¹⁰⁵ Attachers argue that such a duty for utilities to provide information prior to a complaint being filed will reduce rate disputes or make them easier to resolve.¹⁰⁶ To the extent an attacher has a specific dispute with a utility, however, it already can seek and obtain relevant financial data from the utility through the formal complaint and discovery process.¹⁰⁷ We therefore decline to impose a broad duty to disclose financial records related to poles, as such a duty would impose a heavy burden on utilities with little to no corresponding benefit, and would be difficult for the Commission to administer outside the established procedural structure for complaints.¹⁰⁸

¹⁰⁴ Coalition of Concerned Utilities Reply at 14-15 (creating such a database would be "enormously expensive" and attachers would have to pay for it); Electric Utilities at 28 ("Maintaining a database showing this level of detail for each pole would impose a crippling burden—both administratively and financially—on pole owners.").

¹⁰⁵ Altice USA Comments at 23-25 & n.52 ("certain internal, pole owner-controlled information is needed to run the calculations and to rebut certain formula presumptions"; asking that pole owners be required to provide "[a]ll outside plant records relevant to poles, . . . [including] a detailed accounting of the units associated with FERC Account 364, which is used to report the utility's pole plant investment," and "[t]he pole owner's financial records related to poles"); NCTA Comments at 24-25 (asking that pole owners be required to provide "[f]inancial records related to poles that enable attachers to verify the accuracy and reasonableness of pole-related charges" and "[a]ny information used or necessary to rebut the FCC's presumptions in calculating pole-attachment rates"); NCTA Reply at 22-23. Continuing Property Records are "[o]utside plant records relevant to poles," typically "including a detailed accounting of the units associated with accounts used to report pole plant investment such as vintage height, class, etc." Coalition of Concerned Utilities Reply at 11 n.20.

¹⁰⁶ Altice USA Comments at 25; NCTA Comments at 25.

¹⁰⁷ See 47 CFR § 1.1404(f).

¹⁰⁸ NCTA asks the Commission to reinstate language formerly found in section 1.1404(g) of its rules which, when read in conjunction with former section 1.1404(j), required utility disclosure of certain pole-related data (when requested by an attacher) in the context of a pole complaint proceeding. NCTA contends the former language in section 1.1404(g) was inadvertently removed in a prior rule revision. NCTA Comments at 22-23; NCTA Reply at 23. We disagree. The Commission removed the rule's former requirement to provide a long list of specified information supporting a complainant's claim "that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable," but expressly retained the general requirement that "pole owners, upon request of a cable operator or telecommunications carrier, provide the information they have relied on in calculating rates." *2018 Rule Consolidation Order*, 33 FCC Rcd at 7187, para. 24; see also 47 CFR § 1.1404(e) ("The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable and provide all data and information supporting such claim."); *id.* § 1.1404(f)-(g). In addition, the language in the current version of section 1.1404(g) is the same language NCTA itself proposed in an *ex parte* submission that the Commission cited and relied on in the *2018 Rule Consolidation Order* in the paragraph discussing data to be provided by utilities under revised section 1.1404(g). *2018 Rule Consolidation Order*, 33 FCC Rcd at 7187, para. 24 n.74 (citing Letter from Steve Morris, Vice Pres. and Assoc. General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 17-245 (filed July 5, 2018)). An NCTA *ex parte* filed two days earlier in the same proceeding listed the information-disclosure rules NCTA urged the Commission to retain, and that list did not include former section 1.1404(g). Letter from Steve Morris, Vice Pres. and Assoc. General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 17-245, at 3 n.1 (filed July 3, 2018).

34. *Loading Studies.* According to NCTA, some utilities provide and allow attachers to rely on loading studies included in the utilities' cyclical pole inspection reports rather than making the attacher do its own loading study, but other utilities do not.¹⁰⁹ NCTA asserts that "[w]here such studies have been conducted, pole owners should be required to use that existing analysis rather than forcing a new attacher to incur the expense and delay of performing a duplicative and redundant study."¹¹⁰ We decline to adopt this proposal. To the extent pole inspection reports include loading studies,¹¹¹ attachers will have access to such information under the new rule we adopt today. We will not, however, dictate when a utility can require a loading study, as NCTA seems to request, as we continue to believe, consistent with the *2018 Wireline Infrastructure Order*, that such studies "can be important tools to address safety, reliability, and engineering concerns."¹¹²

35. *Age, Height, Class, and Condition of Poles.* We reject attachers' request to require utilities to provide data on the age, height, class, and condition of their poles, or the last date the pole was inspected, make-ready was conducted, or a pre-existing violation on the pole was fixed.¹¹³ The utilities state that they either routinely provide this type of data with make-ready estimates,¹¹⁴ or that the information is accessible to attachers through their own pre-application surveys or when the attacher accompanies the utility on a make-ready survey,¹¹⁵ or that they do not track this data.¹¹⁶ To the extent utilities' pole inspection reports include such data, that information would be covered by the new transparency requirement we adopt today and available to attachers upon request after an application is filed. We reject any additional requirement for pole condition information beyond that which we have already outlined. There are already several means by which prospective attachers can obtain pole information, either prior to or shortly after filing an application, so adding a requirement for disclosure of

¹⁰⁹ NCTA Comments at 34-35.

¹¹⁰ *Id.* at 35.

¹¹¹ See Coalition of Concerned Utilities Reply at 13.

¹¹² *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7745, para. 80. NCTA also asserts that a utility should have to bear the cost of a loading analysis where none has been performed but the utility believes a study is necessary before allowing an attachment, and that utilities can instead recover the costs of such loading studies through annual attachment rental fees. NCTA Comments at 35. As that issue relates to cost recovery rather than transparency, we do not address it here.

¹¹³ ExteNet Comments at 8; INCOMPAS Comments at 11, 17-19; NCTA Comments at 24-25.

¹¹⁴ Coalition of Concerned Utilities Reply at 12 ("Pole locations, height and class: This information is all already available as part of the pole attachment application process. There is no need to see this information beforehand, and making such information widely available raises security concerns."); Electric Utilities Reply at 26 ("Virtually all of the broadband commenters seek a rule that would require pole owners to collect and disclose information regarding the age and condition of [poles]. . . . [This] is entirely unnecessary because electric utilities already provide this information to new attachers during the application process.").

¹¹⁵ AT&T Reply at 32 ("Potential attachers seeking information more quickly to plan their deployments are free to retain their own contractors to map and survey poles at their cost on the timelines that best suit them, rather than trying to impose those timelines and costs on pole owners."); Dominion/Xcel Reply at 50-51 ("the age of a pole" and "the year of a pole's most recent inspection" are "marked on the body of the pole" and thus visible during an attacher's own inspection); USTelecom Reply at 19 ("During the survey stage, 'the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required.' Pole owners should not be required to collect the information sooner, particularly when attachers may conduct their own field visits of poles at any time at their own cost to acquire information about existing attachers and conditions."). *But see* ExteNet Comments at 7 (denying that an attacher's visual inspection of poles is adequate for the information they need to plan attachment projects); ACA Connects Reply at 35 n.94 (same).

¹¹⁶ Coalition of Concerned Utilities Reply at 13 ("Many utilities do not have this information [on when the last make-ready on a pole was performed or the last pre-existing violation was fixed].").

information pre-application would yield only a marginal benefit. In our view, that minimal benefit would not outweigh the burden of such a requirement on utilities.

36. *Existing Attachments and Pending Attachment Requests.* We also decline to require that utilities provide data on the number of attachments or pending attachment applications for each pole covered by an attachment request.¹¹⁷ As the utilities explain, pole networks are dynamic and pole conditions frequently change.¹¹⁸ We find that the record sufficiently demonstrates that attempting to keep a fully up-to-date list of the number of attachments or pending applications on every pole would be a very time-consuming and expensive proposition.¹¹⁹ Even if some utilities track this information, requiring them to compile the information and send it across a vast and shifting landscape of attachers and poles—and to keep that information updated—would be a considerable burden. Although attachers assert there would be some value in having this kind of data earlier, even if it is old,¹²⁰ we find that, as with the proposed pole attachment database discussed above, any purported benefit is outweighed by the considerable cost utilities would have to bear in complying with such a requirement.

37. *Right-of-Way and Easement Information.* We also decline to require that utilities provide attachers with specifics about the utilities' rights-of-way or easements related to property where the poles covered by an attachment application are located.¹²¹ Attachers do not explain the relevance of such information in the context of their attachment requests or assert or show that the lack of such information has adversely affected broadband deployment.

38. *Data Supporting Make-Ready Estimates.* With regard to the request that utilities be required to provide more detailed supporting data in their make-ready estimates,¹²² particularly regarding the utility's costs, we again decline to adopt any new requirement. Current rules already require utilities to provide supporting cost details in their make-ready cost estimates.¹²³ If utilities are not complying with those rules, attachers remain free to invoke the complaint process or seek mediation.¹²⁴

IV. DECLARATORY RULING

39. In this Declaratory Ruling, we: (1) clarify that for purposes of our pole replacement

¹¹⁷ See ExteNet Comments at 8; Crown Castle Reply at 24.

¹¹⁸ See, e.g., Electric Utilities Comments at 36; Coalition of Concerned Utilities Reply at 14-15; Edison Electric Institute Reply at 36-37; Electric Utilities Reply at 27-28.

¹¹⁹ See AT&T Reply at 30-31 (“Pole owners own millions of poles and some do not keep electronic records of availability for attachments. They would have to create such records and systems from scratch, at significant cost.”); Coalition of Concerned Utilities Reply at 13 (“many utilities do not have this information [about the number of attachments on each pole or applications pending]”). Some attachers also sought to require pole owners to produce information on utility transformers or voltage on a pole or the total attachment load on the pole, ExteNet Comments at 8; Crown Castle Reply at 24, but utilities either deny the usefulness of such information or state that they do not track it. See Coalition of Concerned Utilities Reply at 13-14.

¹²⁰ ACA Connects Reply at 32-33.

¹²¹ ExteNet Comments at 8; Crown Castle Reply at 24-25.

¹²² ACA Connects Comments, Attach. A, Breezeline Decl. at 4.

¹²³ 47 CFR § 1.1411(d).

¹²⁴ See 47 CFR §§ 1.737, 1.1404; FCC EB – Market Disputes Resolution Division, *Section 224 Complaints* (“Before filing a Section 224 complaint, please contact MDRD staff to discuss the issues in dispute and explore the possibilities for resolution through pre-complaint mediation supervised by MDRD staff.”), <https://www.fcc.gov/enforcement/processes-services/section-224-complaints> (last visited Aug. 26, 2023).

policies,¹²⁵ 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 to accommodate a new attachment (e.g., the pole is on the utility’s replacement schedule or there are safety and/or engineering concerns); and (2) provide additional examples for when a pole replacement is not “necessitated solely”¹²⁶ as a result of a third party’s attachment or modification request when a pole already requires replacement at the time that the new attacher’s request is made. In providing these clarifications, we resolve an apparent controversy regarding the use of these terms so that new attachers and utilities can better understand when attachers are responsible for pole replacement costs.¹²⁷

40. “Red tagged.” While the Commission’s previous use of the term “red tagged” focused narrowly on whether poles were marked as out of compliance with safety standards *and* placed on a utility’s replacement schedule, we find that our use of the term “red tagged” should be understood more broadly to include poles that the utility identifies for replacement for any reason other than the pole’s lack of capacity to accommodate a new attachment.¹²⁸ As an initial matter, we recognize that the practice of “red tagging” poles and the underlying reasons for doing so may vary from utility to utility and, indeed, some utilities may not actually red tag poles at all.¹²⁹ This Declaratory Ruling does not purport to regulate utilities’ individual decisions regarding whether or how to “red tag” poles, and those decisions remain the sole responsibility of the utility. Regardless of how utilities may engage in the practice of “red tagging” or how the term may be used by specific utilities, through this Declaratory Ruling, we clarify how the Commission’s use of the term “red tagged” should be understood within the context of the Commission’s pole replacement policies. In addition, we decline the requests of some commenters to formally codify a definition of “red tagged” given that the term is not otherwise used in our rules.¹³⁰

41. In the *2018 Wireline Infrastructure Order*, the Commission found that “when a pole has been red tagged, new attachers are not responsible for the cost of pole replacement.”¹³¹ For purposes of that *Order*, the Commission defined a “red tagged” pole as one “found to be non-compliant with safety standards and placed on a [utility’s] replacement schedule.”¹³² The Bureau used the same definition in the *2021 Pole Replacement Declaratory Ruling* when making clear that it is contrary to Commission rules and policies “to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility

¹²⁵ By policies, we mean the use of the term “red tagged” in both the *2018 Wireline Infrastructure Order* and the *2021 Pole Replacement Declaratory Ruling* when interpreting section 1.1408(b) of our rules. See 47 CFR § 1.1408(b) (stating that “a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party”); *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450; *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780 & n.25.

¹²⁶ 47 CFR § 1.1408(b).

¹²⁷ *Second Further Notice*, 37 FCC Rcd at 4148, para. 10 & n.27.

¹²⁸ See Crown Castle Comments at 19 (arguing that “at a minimum, the Commission should clarify that its rules prohibiting the pole owner from imposing the entire cost on the new attacher apply to any pole where, based on an existing condition, the utility contends the pole must be replaced before any new attachment, or change to an existing attachment, may be made”); Wireless Infrastructure Association Comments at 8.

¹²⁹ See Crown Castle Comments at 22-23 (“The issue with referring to a particular tagging label (whether ‘red tag’ or something else) is that there is no universal meaning for the terms and, in practice, different utilities may include different poles within a particular label where another utility may not.”); INCOMPAS Comments at 14.

¹³⁰ See NCTA Comments at 20; Electric Utilities Comments at 37; Altice USA Reply at 8-10.

¹³¹ *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, n.450.

¹³² *Id.*

construction standards or it has been red-tagged) at the time a request for a new or modified attachment is filed.”¹³³ The Commission sought comment in the *Second Further Notice* on whether it should codify a definition of “red-tagging” or “other terminology that distinguishes between priority replacements that need to be performed immediately due to the status of a pole from non-priority replacements that may be implemented at a later time.”¹³⁴

42. We find that the Commission’s previous use of the term “red tagged” was too restrictive, as it required that a pole be both non-compliant with safety standards *and* placed on a utility’s replacement schedule.¹³⁵ We find that our new use of the term “red tag” expands the range of scenarios under which it would be impermissible for a utility to require an attacher to pay the entire cost of a pole replacement and best accommodates the cost causation and cost allocation policies as they relate to pole replacements—it still preserves the utility’s right to deny a new attachment request for a lack of capacity on a pole, but it also prevents the utility from allocating all of the costs of a pole replacement to a new attacher when the utility determines that a pole will not accommodate a new attachment for reasons unrelated to its capacity.¹³⁶

43. We agree with Crown Castle that, for purposes of the Commission’s use of the term “red tagged,” whether the pole is out of compliance with the National Electric Safety Code (NESC) or any other safety code is irrelevant¹³⁷ because a utility’s decision as to whether or not to “red tag” a pole (for an NESC violation or otherwise) remains the sole province of the utility. The Commission’s use of the term “red tagged” includes any situation where the utility determines that a pole needs to be replaced for any reason other than a lack of capacity to accommodate a new attachment.¹³⁸ However, a utility may not evade application of our cost causation and cost replacement policies with respect to a particular pole replacement simply by failing to “red tag” a pole that has safety violations or is otherwise out of compliance with utility construction standards.¹³⁹ We remind interested parties, as the Bureau noted in the *2021 Pole Replacement Declaratory Ruling*, “red tagging” a pole is just one of the possible situations where a utility cannot allocate all of the costs of a replacement pole to a new attacher—utilities may also not do so in any situation where the pole already requires replacement before a new attachment request is

¹³³ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8 (footnotes omitted). A footnote appended to the term “red-tagged” cited the definition of “red tagged” from the *2018 Wireline Infrastructure Order*. *See id.* at 780 n.25 (citing *Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450).

¹³⁴ *Second Further Notice*, 37 FCC Rcd at 4148, para. 10.

¹³⁵ *See 2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450.

¹³⁶ *See* Edison Electric Institute Comments at 19; *see also, e.g.*, 807 KAR 5:015, Section 1(10) (Kentucky PSC defining a “red tagged pole” as “a pole that a utility that owns or controls that: (a) Is designated for replacement based on the pole’s non-compliance with an applicable safety standard; (b) Is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher’s request for attachment; *or* (c) Would have needed to be replaced at the time of replacement even if the new attachment were not made” (emphasis added)).

¹³⁷ 2023 National Electrical Safety Code (NESC), C2-2023, Institute of Electrical and Electronics Engineers (IEEE) (Aug. 1, 2022) (specifies best utility practices for the safety of electric supply and communication utility systems); *see also* Crown Castle Comments at 20-21.

¹³⁸ *See* Wireless Infrastructure Association Comments at 7 (arguing to eliminate use of the term “red tagged” and “instead make clear that a pole replacement is not necessitated by an attachment when the pole is identified by the owner for replacement under any circumstances, regardless of whether the replacement is necessary to bring the pole up to safety standards or simply due to age and maintenance concerns”).

¹³⁹ Crown Castle Reply at 19 (stating that “[t]he key is to avoid allowing pole owners to evade the rules by claiming that whatever they have done is not ‘red tagging’ or that a particular condition is not ‘red tagging’”); *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8.

made, including when poles are out of compliance with current safety and utility construction standards (i.e., there is a preexisting condition preventing the addition of a new attachment to a pole).¹⁴⁰

44. “*Necessitated Solely.*” We further clarify the meaning of the phrase “necessitated solely” by providing additional examples of situations where, under section 1.1408(b) of the Commission’s rules, a pole replacement is not “necessitated solely” by a new attachment or modification request “when a pole already requires replacement.”¹⁴¹ In the *2021 Pole Replacement Declaratory Ruling*, the Bureau clarified that “when section 1.1408(b) is applied to pole replacements, 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 (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made.”¹⁴² The Bureau reasoned that even if the new attacher might benefit from the pole replacement, the pole replacement is not “necessitated solely” as a result of the new attachment, and therefore the utility may not use the cost causation language of section 1.1408(b) to impose all costs of that pole replacement on the new attacher.¹⁴³ The Commission adopted this clarification in the *Second Further Notice*.¹⁴⁴ Because the Commission found “significant disagreement between utilities and attachers” regarding what constitutes “necessitated solely” for purposes of a pole replacement, it sought comment in the *Second Further Notice* on whether it should codify a definition of “necessitated solely” for the purposes of section 1.1408(b) of our rules and, if so, what that definition should be.¹⁴⁵

45. Although we decline to codify a definition of the term “necessitated solely” as it relates to pole replacements,¹⁴⁶ we clarify the situations in which a pole replacement is not “necessitated solely” by an attachment request because the pole already requires replacement.¹⁴⁷ In the *2021 Pole Replacement Declaratory Ruling*, the Bureau used the examples of a pole being “red tagged” and a pole being out of compliance with current safety and utility construction standards.¹⁴⁸ To help utilities and attachers better understand when, under our cost-causation principles, a pole already requires replacement at the time an attachment request is made, we provide the following additional examples of when a pole replacement is not “necessitated solely” by an attachment request: (1) a pole replacement is required pursuant to applicable law;¹⁴⁹ (2) the current pole fails engineering standards, such as those contained in the NESC;¹⁵⁰

¹⁴⁰ See *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8; Crown Castle Comments at 22 (stating “the Second Further Notice correctly treats ‘red tagging’ and non-compliance as separate issues”).

¹⁴¹ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8.

¹⁴² *Id.* at 780, para. 8.

¹⁴³ *Id.* at 780-81, para. 8.

¹⁴⁴ *Second Further Notice*, 37 FCC Rcd at 4147, para. 7.

¹⁴⁵ *Id.* at 4147, 4148, paras. 8, 10; see also Dominion/Xcel Reply at 20-21.

¹⁴⁶ Because pole replacements already are covered by section 1.1408(b), it is not necessary to codify a definition of “necessitated solely” for that purpose. See *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8; see also Edison Electric Institute Comments at 19 (arguing against defining “necessitated solely”).

¹⁴⁷ See Crown Castle Comments at 22 (stating that “the Commission should make clear that a safety violation is not the lone scenario for which sole cost responsibility for pole replacement may fall on the pole owner”).

¹⁴⁸ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8.

¹⁴⁹ See, e.g., AT&T Comments at 15 (citing pole replacements necessitated by state and local requirements, such as road expansion or moves, or property development).

¹⁵⁰ Dominion/Xcel Reply at 21 (arguing that “a replacement or modification of a pole owner’s facility or attachment is ‘necessitated solely’ as a result of a third party’s attachment or modification request unless, at the time that the third party’s request is made (i) replacement or modification of the pole owner’s facility or attachment is required

(continued....)

or (3) the current pole already is on the utility's internal replacement schedule.¹⁵¹ Note that these examples are not exhaustive, but are illustrative examples to help the parties apply our "necessitated solely" cost-causation principle. These examples also appear to be consistent with some commenter proposals and the practices of some commenters in the record.¹⁵²

46. We disagree with Charter that the "necessitated solely" cost-causation language in section 1.1408(b) does not apply to pole replacements.¹⁵³ We agree with the Bureau's analysis in the *2021 Pole Replacement Declaratory Ruling* that the cost-allocation and cost-causation provisions in section 1.1408(b) must be read together and, when doing so, stand for the proposition that "parties benefitting from a modification share proportionately in the costs of that modification, unless such a modification is necessitated solely as a result of an additional or modified attachment of another party, in which case that party bears the costs of the modification."¹⁵⁴ As a result, when specifically applied to pole replacements, the Bureau found 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. Even if the new attacher might 'benefit' from that pole replacement, the pole replacement is not 'necessitated solely as a result' of the new attachment, and therefore the utility may not use the cost-causation language of section 1.1408(b) to impose all make-ready costs of that pole replacement on the new attacher."¹⁵⁵ The Bureau based its application of both the cost-causation and cost-allocation language of section 1.1408(b) to pole

(Continued from previous page) _____
pursuant to the NESC or other applicable law or code; or (ii) the requested pole was already placed in queue for immediate replacement").

¹⁵¹ Some commenters ask that the "replacement schedule" example be limited to poles that are scheduled for replacement in the "immediate future." See *Electric Utilities June 26, 2023 Ex Parte* at 4 (noting that "if a pole attachment application includes poles that have been identified by an electric utility as needing immediate replacement, the electric utility—and not the new attacher—bears the cost of replacing those poles"); *Dominion/Xcel Reply* at 21. We decline to adopt such a limitation, finding instead that when a pole has been scheduled to be replaced by a utility, a subsequent new attachment request does not solely necessitate the replacement of the scheduled-to-be-replaced pole. *Accord NCTA Comments* at 20 (arguing to include in the definition of "red tagged" those poles that already have been designated for replacement at the time of the pole attachment application).

¹⁵² See *Dominion/Xcel Reply* at 21; *Dominion Energy June 14, 2023 Ex Parte* at 2-3 (noting that "each pole within the Company's pole plant is inspected on a 12-year cycle, in accordance with the then-current NESC standards. If any pole is determined upon inspection not to be in safe and serviceable condition, it will be identified for replacement or restoration at the time of inspection. Additionally, any pole that is not likely to remain in safe and serviceable condition for the entire next inspection cycle (*i.e.*, for the 12 years that follow the date of inspection) will be identified for replacement or restoration at the time of inspection."); *AT&T Comments* at 15; *ACA Connects Comments* at 22-23 ("Even if there is insufficient capacity on an existing pole to accommodate a new attachment and the requested attachment can be accommodated only by replacing the pole, the requested attachment is not the cause of the pole replacement where (a) the pole is in such a condition that it must be replaced whether there is a new attachment or not, (b) the pole has been fully depreciated, (c) the existing pole is already out of compliance with existing safety standards or the utility's own construction standards, or (d) existing attachments (including the utility's own attachments) have already overloaded the pole or are in violation and these conditions cannot be corrected within the existing electrical and communications space on the pole, *i.e.*, a new larger pole is required to allow these corrections and the next larger class pole would have enough additional space in the communications to accommodate the new attacher.") (footnotes omitted)).

¹⁵³ *Charter Comments* at 32-33.

¹⁵⁴ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 779-80, para. 7.

¹⁵⁵ *Id.* at 780-81, para. 8.

replacements on Commission precedent dating back to the 1996 *Local Competition Order*,¹⁵⁶ and we continue to follow that precedent here.¹⁵⁷

47. We also disagree with the Electric Utilities that the phrase “necessitated solely” should be eliminated from section 1.1408(b) because of the confusion caused by use of the term.¹⁵⁸ The term “necessitated solely” is a key element in determining the causer of pole modification and replacement costs, and its use is consistent with the existing practices of certain electric and incumbent LEC pole owners.¹⁵⁹ For example, Dominion Energy has noted that a pole replacement is not “necessitated solely” by a new attachment request if the pole “is determined upon inspection not to be in safe and serviceable condition” or if the pole “is not likely to remain in safe and serviceable condition for the entire next inspection cycle (i.e., for the 12 years that follow the date of inspection).”¹⁶⁰ However, we agree with USTelecom that, based on cost causation principles, “the prospective attacher is responsible for the incremental cost of a taller or stronger pole needed to support its new facilities, not the cost to replace the defective or deteriorated pole with an equivalent-sized replacement pole” since the new attachment request solely necessitates the need for an incrementally taller or stronger pole.¹⁶¹

¹⁵⁶ *Id.* at 779-80, paras. 7-8 nn.22-23.

¹⁵⁷ *Id.* at 779-80 n.22 (citing *Local Competition Order*, 11 FCC Rcd at 16077, 16096, paras. 1166, 1211 (“[I]f . . . a cable operator seeks to make an attachment on a facility that has no available capacity, the operator would bear the full cost of modifying the facility to create new capacity, such as by replacing an existing pole with a taller pole. Other parties with attachments would not share in the cost, unless they expanded their own use of the facilities at the same time.”); *id.* at 779 n.21 (citing *Local Competition Order*, 11 FCC Rcd at 16077, para. 1166 (“If the electric utility decides to change a pole for its own benefit, and no other parties derive a benefit from the modification, then the electric company would bear the full cost of the new pole.” (emphasis added)); *id.* at 780 n.23 (citing *Local Competition Order*, 11 FCC Rcd at 16075-77, 16091, paras. 1161, 1163, 1166, 1200 (“When a utility cannot accommodate a request for access because the facility in question has no available space, it often must modify the facility to increase its capacity A utility pole filled to capacity often can be replaced with a taller pole.”))).

¹⁵⁸ Electric Utilities Comments at 24-26.

¹⁵⁹ *See, e.g.*, Dominion Energy June 14, 2023 *Ex Parte* at 2-3 (“All costs incurred by DEV in connection with its scheduled inspection, restoration, and replacement of poles are borne solely by DEV, and are not apportioned to third-party attachers.”); Edison Electric Institute May 8, 2023 *Ex Parte* at 3 (“Xcel Energy and FirstEnergy explained that it is their practice to bear the expense of replacing poles that have been red tagged or have otherwise already been identified for replacement at the time an attachment request is received.”); Electric Utilities June 26, 2023 *Ex Parte* at 4; USTelecom June 29, 2023 *Ex Parte* at 1 (explaining that if a pole fails inspection and must be replaced, “its members do not delay replacement of such poles” and that “[i]f the replacement is pending when USTelecom members receive an application from a prospective attacher” or “if USTelecom members learn during the survey stage that the pole requires replacement due to defect or deterioration,” its members “bear the cost to replace the defective or deteriorated pole with a pole of like height and class”).

¹⁶⁰ Dominion Energy June 14, 2023 *Ex Parte* at 2; *see also* Electric Utilities June 26, 2023 *Ex Parte* at 4 (stating that “if a pole attachment application includes poles that have been identified by an electric utility as needing immediate replacement, the electric utility—and not the new attacher—bears the cost of replacing those poles”).

¹⁶¹ USTelecom June 29, 2023 *Ex Parte* at 1; Letter from Morgan Reeds, Director, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Oct. 6, 2023) (“USTelecom stated that the Commission could clarify that, in this scenario, the pole owner is responsible for the cost to replace the deteriorated or defective pole with a pole of similar height and class, and the new attacher is only responsible for the incremental cost associated with the need for a taller or stronger pole to support its facilities.”).

V. FURTHER NOTICE OF PROPOSED RULEMAKING

48. We recognize that Congress has undertaken a number of initiatives allocating funding to further the deployment of broadband to unserved and underserved areas of the United States.¹⁶² In connection with this funding, broadband providers will have to deploy extensive facilities. This, in turn will require that they file significant numbers of applications seeking to attach these facilities to large numbers of poles.¹⁶³ To that end, we seek comment on ways to further facilitate the approval process for pole attachment applications and make-ready to enable speedier broadband deployment. In seeking comment on these areas, we emphasize that even when there is not a specific Commission rule or policy that governs a particular situation, it is our expectation that parties negotiate in good faith to resolve issues that may arise.

49. *Large Orders.* We seek comment on whether the Commission should take further action to facilitate the processing of pole attachment applications that are submitted in large numbers. Our current make-ready rule requires make-ready in the communications space to be completed within 30 days after the utility sends a notification to all existing attachers on a pole.¹⁶⁴ The 30 day timeframe applies for communications space make-ready requests up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.¹⁶⁵ This make-ready timeframe is extended 45 extra days for requests up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state.¹⁶⁶ For requests exceeding 3,000 poles or 5 percent of the utility's poles in the state, the Commission's rules require that a utility shall negotiate the timing of the make-ready in good faith.¹⁶⁷

50. NCTA asserts that our rules do not at present sufficiently address the needs of attachers with these larger requests in the latter category.¹⁶⁸ For example, NCTA asserts that its members have faced situations where the utilities have imposed limits on (1) the number of poles that may be included in any one application, and (2) the number of applications an attacher may submit at a time.¹⁶⁹ NCTA states

¹⁶² See, e.g., *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686 (2020) (established an auction framework to distribute up to \$20.4 billion in support for connecting millions more homes and small businesses in rural areas to broadband networks); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 905(c), 134 Stat. 1182 (2020), as amended by the Infrastructure Act, § 60201 (providing up to \$3 billion in funding for NTIA's Tribal Broadband Connectivity Fund); American Rescue Plan Act of 2021, § 604 Pub. L. No. 117-2, 135 Stat. 4 (2021) (granting \$10 billion to the U.S. Treasury Department to allocate via its Capital Projects Fund to eligible governments to carry out critical capital projects that directly enable work, education, and health monitoring, including high-quality and affordable broadband infrastructure and digital connectivity projects); U.S. Dept. of Agriculture, Rural Development, *Telecom Programs, Telecom Programs | Rural Development (usda.gov)* (last visited Nov. 20, 2023) (various loan and grant funding programs for rural broadband infrastructure projects under the U.S. Department of Agriculture's Rural Utilities Service); Infrastructure Act, § 60401 (establishing grants for middle mile infrastructure); *id.* § 60502 (providing \$14.2 billion to establish the Affordable Connectivity Program).

¹⁶³ See, e.g., NCTA Comments at 28; Charter Comments at 58-59; Coalition of Concerned Utilities Reply at 18 (stating that "for large projects to provide broadband to unserved parts of the country, a carefully developed cooperative process is necessary that is managed by a healthy relationship between pole owners and attachers").

¹⁶⁴ 47 CFR § 1.1411(e)(1)(ii). The rule provides 90 days from attachments above the communications space. 47 CFR § 1.1411(e)(2)(ii).

¹⁶⁵ 47 CFR § 1.1411(g)(1).

¹⁶⁶ 47 CFR § 1.1411(g)(3).

¹⁶⁷ 47 CFR § 1.1411(g)(4).

¹⁶⁸ See NCTA Comments at 28.

¹⁶⁹ *Id.* at 28.

that these limitations “create problematic delays and jeopardize operators’ ability to meet broadband build-out commitments.”¹⁷⁰ We seek comment on NCTA’s proposal that the Commission revise its rules to prohibit utilities from limiting “the size of an application or the number of poles included in an application so as to avoid the timelines.”¹⁷¹ How prevalent are situations of the type described by NCTA? What are the reasons underlying utilities’ imposition of such limitations?¹⁷² Would prohibiting utilities from imposing such limitations in fact speed up the attachment process, or would the same delays still exist for other reasons (e.g., lack of qualified workers, shortages in materials, etc.)?¹⁷³ Specifically, NCTA proposes adding additional time to the existing timelines for these “larger” orders,¹⁷⁴ for which our rules require that utilities negotiate the timing in good faith.¹⁷⁵ Would NCTA’s proposed new timing requirements for larger orders facilitate the pole attachment process for such orders? Utilities have raised multiple concerns with such requirements.¹⁷⁶ For example, they assert that compliance with expanded timelines may not be possible “if many permit applications by multiple attachers are submitted at approximately the same time, or if the contractor’s workload is already heavy.”¹⁷⁷ They also assert that given constraints on workforce availability, utilities would be forced to “choose between providing safe, reliable and affordable power to electric customers (which is mandated by the states), and performing requested pole replacements in an unreasonable and likely unattainable amount of time.”¹⁷⁸ Are these

¹⁷⁰ *Id.* at 28.

¹⁷¹ *Id.* at 29.

¹⁷² Coalition of Concerned Utilities at 18 (noting that the processing of attachment applications for large projects requires attachers (and utilities) “to plan well in advance, and coordinate well in advance with utility pole owners, to develop a process whereby sufficient time is allotted for pole inventory to be increased, sufficient time is allotted for engineering and construction crews to become mobilized and committed, sufficient time is allotted to receive all necessary local permits, sufficient time is allotted to plan and conduct necessary service outages affecting electricity customers, sufficient time is allotted to address electric utility safety and reliability concerns, and sufficient time is allotted in anticipation of seasonal and other weather events”); AT&T Reply at 34 (stating that “the volume of applications, and poles or conduit they implicate, fluctuates significantly over time and by location, creating manpower challenges, especially when multiple large orders are received”); Charter Comments at 59 (noting that the purpose of the rules surrounding the processing of large attachment orders “is to ensure that pole owners are not overwhelmed and held to impossible standards,” but “not to throttle the pace of broadband deployment”); Electric Utilities Reply at 28-29 (noting that “where delays occur under high-volume applications, it is due to the fact that labor and materials are finite resources”); Edison Electric Institute Reply at 38-39 (“The challenges related with reviewing applications for large pole attachment orders are even more complex than those related to smaller projects due to the number of poles involved and the type of attachments required.”).

¹⁷³ Coalition of Concerned Utilities Reply at 18 (arguing that creating new timelines for processing large attachment orders “would have the opposite effect that NCTA and Charter would like”); Electric Utilities Reply at 32-33 (noting that “electric utilities will typically impose limitations on the number of poles that can be included within an application, and these smaller applications can then be allocated across multiple contractors depending on their capacity for work. This practice does not hinder broadband deployment as NCTA contends; instead, it promotes broadband deployment by enabling electric utilities to assign the survey and make-ready work out in a much more efficient manner (than just sending a large application to a single contractor.”); Edison Electric Institute Reply at 39 (noting that “prescribing more a more stringent the application review process, especially for larger projects, can cause greater concerns, including but not limited to those related to significant safety and compliance problems”).

¹⁷⁴ NCTA Comments at 31.

¹⁷⁵ 47 CFR § 1.1411(g)(4).

¹⁷⁶ *See, e.g.*, Edison Electric Institute Reply at 38-40; Coalition of Concerned Utilities Reply at 18; Electric Utilities Reply at 36-37.

¹⁷⁷ Edison Electric Institute Reply at 38-39; *see also* Electric Utilities Reply at 36-37.

¹⁷⁸ Coalition of Concerned Utilities Reply at 18.

concerns valid? Are there any other reasons why NCTA's proposed new timing requirements for larger orders would not work? What are the respective costs and benefits of such potential requirements? What other steps could we take to facilitate the pole attachment process for larger orders? Should the Commission require that utilities conduct the make-ready for the first 3,000 (or 5 percent) poles of an overall request that exceeds that amount within the 75 day timeframe in section 1.1411(g)(4)?¹⁷⁹

51. *Self-help and Use of Contractors.* Should the Commission consider modifying its self-help rules to enable prospective attachers to access poles more quickly? NCTA also asserts that it has faced issues with utilities failing to process attachment applications in a timely manner.¹⁸⁰ NCTA therefore proposes that utilities notify attachers in advance of survey and make-ready deadlines if the utility will be unable to complete a portion of the process.¹⁸¹ For instance, NCTA proposes 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.¹⁸² NCTA also proposes making self-help available for the estimate process, which is not contemplated under current Commission rules.¹⁸³ We seek comment on NCTA's proposal. How prevalent is the issue cited by NCTA? Can utilities 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? Do sufficient contractors exist that meet the minimum qualification requirements set forth in our rules¹⁸⁴ such that adoption of NCTA's proposal would have the desired effect of speeding broadband deployment? What are the respective costs and benefits of adopting NCTA's proposal? Are there other ways to assist utilities in processing the larger number of applications they will likely receive in the coming months and years based on the funding initiatives in place for accelerating broadband deployment to unserved and underserved areas?

52. We also seek comment on the impact of contractor availability when attachers seek to use their own contractors when conducting self-help or one-touch make-ready for surveys and make-ready work. Specifically, do we need to amend the Commission's rules to make it easier for attachers to use their own contractors to do self-help and one-touch make-ready surveys and make-ready work when there are no contractors available from a utility list? Utility commenters point out the labor constraints in the contractor workforce;¹⁸⁵ given such constraints, do our current rules provide adequate relief to attachers to timely identify and use qualified contractors to do self-help and one-touch make-ready work? If not, what can the Commission do to change this dynamic?

53. Pursuant to our rules, an attacher can do its own work when (1) completing surveys and make-ready work when the utility misses the deadlines for these activities, or (2) electing to use the one-touch make-ready process.¹⁸⁶ When conducting self-help or one-touch make-ready work, the attacher

¹⁷⁹ See Charter Comments at 59.

¹⁸⁰ See NCTA Comments at 31-32.

¹⁸¹ *Id.* at 32.

¹⁸² See *id.* at 40.

¹⁸³ See *id.*

¹⁸⁴ 47 CFR § 1.1412(c).

¹⁸⁵ Dominion-Xcel Reply at 49; Electric Utilities Reply at 29; Edison Electric Institute Reply at 39 ("From a practical standpoint, there may also simply not be enough qualified additional workers to hire. There is currently a shortage of properly trained technicians to do supply space line work. Training additional workers is not an easy task.").

¹⁸⁶ 47 CFR §§ 1.1411(i)-(j). Note that there are no attacher self-help remedies for pole replacements. *Id.* § 1.1411(i)(3).

must use a utility-approved contractor.¹⁸⁷ For self-help surveys and make-ready work that is complex¹⁸⁸ or is above the communications space on a pole, our rules require that a utility make available and keep up to date a reasonably sufficient list of contractors that it authorizes to perform such work.¹⁸⁹ Attachers can request to add contractors to the utility's list—provided the contractor meets the minimum qualifications in the Commission's rules¹⁹⁰—and the utility cannot unreasonably withhold its consent.¹⁹¹ Further, a utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready.¹⁹² If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work.¹⁹³ Again, attachers may request the addition to the list of any contractor that meets the minimum qualifications in the Commission's rules, and the utility cannot unreasonably withhold its consent.¹⁹⁴ However, if the utility does not provide a list of approved contractors for surveys or simple make-ready work or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor who meets the Commission's minimum requirements.¹⁹⁵ Utilities retain the right to disqualify such contractor, but disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the Commission's minimum qualifications or to meet the utility's publicly available and commercially reasonable safety or reliability standards.¹⁹⁶ The utility must provide notice of this objection to the attacher and must identify at least one available qualified contractor that the attacher can use instead to perform simple surveys and make-ready work.¹⁹⁷

54. Given that our current rules allow for attachers to choose their own contractors for one-touch make-ready and for self-help when the utility fails to meet the Commission's deadlines (provided such contractors meet the minimum qualifications set forth in our rules), we seek comment on whether attachers are availing themselves of this option. Have attachers faced any obstacles from utilities when seeking to invoke this option? While a utility cannot be blamed for a lack of available contractors in an area due to workforce constraints, are utilities seeking to use their discretion set forth in the rules to disqualify otherwise-qualified contractors whom attachers may seek to bring in from outside of an area? We note that, at least for surveys and simple make-ready work, our current rules already require the utility to designate an available contractor if it properly exercises its discretion to disqualify one chosen by an

¹⁸⁷ 47 CFR § 1.1412(a)-(b).

¹⁸⁸ The term “complex make-ready” means transfers and work within the communications space on a pole 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. 47 CFR § 1.1402(p).

¹⁸⁹ 47 CFR § 1.1412(a).

¹⁹⁰ See 47 CFR § 1.1412(c).

¹⁹¹ 47 CFR § 1.1412(a); *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7725, 7757, paras. 38, 107 (“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.”).

¹⁹² 47 CFR § 1.1412(b).

¹⁹³ *Id.*

¹⁹⁴ 47 CFR §§ 1.1412(b)-(c).

¹⁹⁵ 47 CFR §§ 1.1412(b)-(c).

¹⁹⁶ 47 CFR § 1.1412(b)(2).

¹⁹⁷ *Id.*

attacher¹⁹⁸—is this not being done? If not, is it due to labor constraints for which the utility should not be held responsible? In the instance where no qualified contractors are available for a project, how could the Commission help to solve that problem?

VI. PROCEDURAL MATTERS

55. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁹⁹ 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.”²⁰⁰ Accordingly, we have 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.

56. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals in the Further Notice on small entities. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Further Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

57. *Congressional Review Act.* [The Commission will submit this draft Fourth Report and Order and Declaratory Ruling to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2).] The Commission will send a copy of this Fourth Report and Order and Declaratory Ruling to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

58. *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 §§ 1.1411, 1.1415, and 1.1416 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 information collection burdens on small entities.²⁰¹

59. The Further Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.²⁰² All such new or modified information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business

¹⁹⁸ *Id.*

¹⁹⁹ 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁰⁰ 5 U.S.C. §§ 605(b).

²⁰¹ *See infra* Appx. B at paras. 60-61.

²⁰² Pub. L. No. 104-13.

Paperwork Relief Act of 2002,²⁰³ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”²⁰⁴

60. *Ex Parte Presentations.* The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

61. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by paper. Commenters should refer to WC Docket No. 17-84 when filing in response to the Further Notice.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at <https://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings.²⁰⁵
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority Mail must be addressed to 45 L Street NE, Washington, D.C. 20554.

62. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a

²⁰³ Pub. L. No. 107-198.

²⁰⁴ 44 U.S.C. § 3506(c)(4).

²⁰⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, DA 20-304, Public Notice, 35 FCC Rcd 2788 (2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

brief plain-language summary of the proposed rule.²⁰⁶ Accordingly, the Commission will publish the required summary of this Further Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

63. *Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

64. *Contact Person.* 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.

VII. ORDERING CLAUSES

65. 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 Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking hereby IS ADOPTED and Part 1 of the Commission's Rules, 47 CFR Part 1, IS AMENDED as set forth in Appendix A.

66. IT IS FURTHER ORDERED that the Fourth Report and Order shall become effective 30 days after publication in the Federal Register, except that the amendments to section 1.1411(c)(4) and new section 1.1415, 47 CFR §§ 1.1411(c)(4), 1.1415, 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 section 1.1411(c)(4) and new section 1.1415 by subsequent Public Notice.

67. IT IS FURTHER ORDERED that the Declaratory Ruling and the obligations set forth therein ARE EFFECTIVE upon release of this document.

68. 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 Fourth Report and Order and Declaratory Ruling will commence on the date that a summary of this Fourth Report and Order and Declaratory Ruling is published in the Federal Register.

69. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

70. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Fourth Report and Order and Declaratory Ruling 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).

²⁰⁶ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

The Federal Communications Commission amends part 1 of Title 47 of the Code of Federal Regulations 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, unless otherwise noted.

2. Amend § 1.1411 by adding a new paragraph (c)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(c) *Application review and survey* —

* * * * *

(4) Information from cyclical pole inspection reports.

(i) Upon submitting its attachment application, a new attacher may request in writing that the utility provide, as to the poles covered by such attachment application, the information regarding those poles contained in the utility's most recent cyclical pole inspection reports, or, if available, any more recent pole inspection report. The utility shall provide the new attacher with this information within ten (10) business days of the new attacher's written request.

(ii) Utilities shall retain copies of their pole inspection reports, in the form they are created, until a superseding report covering the poles included in the attachment application is completed.

(iii) For purposes of this section, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility's normal pole inspection cycle.

(iv) After requesting and receiving pole inspection information from a utility related to poles covered by its application, a new attacher may amend an attachment application at any time until the utility grants or denies the original application.

(A) A utility that receives such an amended attachment application may, at its option, restart the 45-day period (or 60-day period for larger 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 larger 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 day, if applicable) after the original application is considered complete, whichever is earlier.

3. Redesignate § 1.1415 as § 1.1416 to read as follows:

§ 1.1416 Overlashing.

* * * * *

4. Add a new § 1.1415 to read as follows:

§ 1.1415 Dispute Resolution Procedures for Pole Attachment Disputes that Impede or Delay

Broadband Deployment; Functions of the Rapid Broadband Assessment Team.

(a) An inter-Bureau team, to be known as the Rapid Broadband Assessment Team (RBAT), shall be established to prioritize and expedite the resolution of pole attachment disputes that are alleged to impede or delay the deployment of broadband facilities and to provide coordinated review and assessment of such disputes. The RBAT shall consist of one or more staff from the Enforcement Bureau and one or more staff from the Wireline Competition Bureau. Senior staff in the Enforcement Bureau and the Wireline Competition Bureau shall designate individuals from their respective bureaus to serve on the RBAT.

(b) The RBAT shall prioritize the resolution of a pole attachment dispute that a party seeking RBAT review has alleged is impeding or delaying an active broadband deployment project, including where the party is also seeking placement of the dispute on the Accelerated Docket pursuant to § 1.736. The RBAT shall gather and promptly review all pertinent information submitted by the parties and shall have discretion to decide the most appropriate process for resolving the dispute, including recommending an RBAT-supervised mediation process pursuant to § 1.737, use of the Accelerated Docket, and/or other appropriate action. Although RBAT-supervised mediation is generally voluntary, the RBAT may require that the parties participate in pre-filing settlement negotiations or mediation under § 1.737 as a condition for including a matter on the Accelerated Docket. The RBAT may recommend to the parties use of the Accelerated Docket where it determines, based upon a totality of the criteria outlined in paragraph (e) of this section, that a complaint, or a portion of a complaint, is suitable for inclusion on the Accelerated Docket.

(c) A party to a pole attachment dispute, prior to filing a formal complaint, may request RBAT review and assessment of such dispute if the party believes the dispute is impeding or delaying the deployment of a broadband facilities project. The party seeking RBAT review and assessment shall first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) by phone and in writing of the request. The MDRD Chief shall direct the requesting party to the location of a form on the MDRD website—FCC-5653, Request for RBAT Review and Assessment—and to instructions for completing and electronically transmitting the form to the RBAT.

(d) Upon receipt of the completed Request for RBAT Review and Assessment, the RBAT shall schedule a meeting, through a manner of the RBAT's choosing, with all parties as soon as practicable. The RBAT also may request a written response from the other party or parties to the dispute with respect to one or more issues raised by the party seeking RBAT review. In the initial meeting, or shortly thereafter, the RBAT shall provide guidance and advice to the parties on the most effective means of resolving their dispute, including RBAT-supervised mediation pursuant to § 1.737; use of the Accelerated Docket; and/or any other appropriate action. If the parties seek RBAT-supervised mediation, the MDRD Chief, in consultation with the RBAT, may waive the procedures or requirements of § 1.737 as appropriate in this context, or as needed in light of the facts or circumstances of a particular case.

(e) The RBAT shall have discretion to decide whether a complaint, or a portion of a complaint, involving a dispute that a party alleges to be impeding or delaying the deployment of broadband facilities is suitable for inclusion on the Accelerated Docket pursuant to § 1.736. In determining whether to accept a complaint, or a portion of a complaint, on the Accelerated Docket, the RBAT shall base its decision on a totality of the factors from the following list:

- (1) whether the prospective complainant states a claim for violation of the Act, or a Commission rule or order that falls within the Commission's jurisdiction;
- (2) whether the expedited resolution of a particular dispute or category of disputes appears likely

to advance the deployment of broadband facilities or services, especially in an unserved or underserved area;

(3) whether the parties to the dispute have exhausted all reasonable opportunities for settlement during any staff-supervised mediation;

(4) the number and complexity of the issues in dispute;

(5) whether the dispute raises new or novel issues versus settled interpretations of rules or policies;

(6) the likely need for, and complexity of, discovery;

(7) the likely need for expert testimony;

(8) the ability of the parties to stipulate to facts;

(9) whether the parties have already assembled relevant evidence bearing on the disputed facts;

(10) willingness of the prospective complainant to seek a ruling on a subset of claims or issues (*e.g.*, threshold or “test cases”); and

(11) such other factors as the RBAT, within its discretion, may deem appropriate and conducive to the prompt and fair adjudication of the complaint proceeding.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Second Further Notice of Proposed Rulemaking (Second Further Notice)* released in March of 2022.² The Commission sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

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

2. In the *Fourth Report and Order*, the Commission creates 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,⁴ with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments.⁵ In the *Fourth Report and Order*, we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing telecommunications companies with information about the status of the utility poles they plan to use as they map out their broadband builds. .

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

3. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Second 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.

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 4144, 4170, App. A (2022) (*Second Further Notice*).

³ 5 U.S.C. § 604.

⁴ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*2018 Wireline Infrastructure Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936 (WCB 2020) (*2020 Declaratory Ruling*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd 776 (WCB 2021) (*2021 Pole Replacement Declaratory Ruling*).

⁵ Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. 47 U.S.C. § 224(c). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd 6724 (WCB 2022).

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

4. 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.⁶ 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 Rules Will Apply

5. 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.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁹ 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.¹⁰

6. *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.¹¹ 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.¹² These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹³

7. 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.”¹⁴ 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.¹⁵ Nationwide, for tax year 2020, there

⁶ 5 U.S.C. § 604(a)(3).

⁷ *See id.* § 604(a)(4).

⁸ *See id.* § 601(6).

⁹ *See id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁰ *See* 15 U.S.C. § 632.

¹¹ *See* 5 U.S.C. § 601(3)-(6).

¹² *See* SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹³ *Id.*

¹⁴ *See* 5 U.S.C. § 601(4).

¹⁵ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of

(continued....)

were approximately 447,689 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.¹⁶

8. 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.”¹⁷ U.S. Census Bureau data from the 2017 Census of Governments¹⁸ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁹ Of this number, there were 36,931 general purpose governments (county,²⁰ municipal, and town or township²¹) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts²² with enrollment populations of less than 50,000.²³ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁴

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small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁶ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁷ See 5 U.S.C. § 601(5).

¹⁸ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁹ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²⁰ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²¹ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²² See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²³ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments

(continued....)

1. Internet Access Service Providers

9. *Wired Broadband Internet Access Service Providers (Wired ISPs).*²⁵ 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.²⁶ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.²⁷ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.²⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁹ Of this number, 2,964 firms operated with fewer than 250 employees.³⁰

10. 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.³¹ 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*,³² we believe that the majority of wireline Internet access service providers can be considered small entities.

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category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁴ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁵ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

²⁶ See 47 CFR § 1.7001(a)(1).

²⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

³⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³¹ See Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

³² See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

11. *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.³³ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³⁴ 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.³⁵ Of those firms, 1,039 had revenue of less than \$25 million.³⁶ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

12. *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.³⁷ 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.³⁸ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³⁹ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁰

13. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴² Of this number, 2,964 firms operated

³³ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³⁴ See 13 CFR § 121.201, NAICS Code 517919.

³⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

⁴¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

with fewer than 250 employees.⁴³ 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.⁴⁴ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *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 Carriers⁴⁶ is the closest industry with an SBA small business size standard.⁴⁷ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁵¹ 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.⁵² Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *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.

⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁴⁵ *Id.*

⁴⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁸ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁴⁹ *Id.*

⁵⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵³ *Id.*

Wired Telecommunications Carriers⁵⁴ is the closest industry with an SBA small business size standard.⁵⁵ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁵⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁸ 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.⁵⁹ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁶⁰ 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.

16. *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.⁶¹ Wired Telecommunications Carriers⁶² 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.⁶³ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁵ 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

⁵⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁶ *Id.*

⁵⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

⁵⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁰ *Id.*

⁶¹ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁶² See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

⁶⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

exchange service providers.⁶⁶ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁶⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁶⁸ is the closest industry with an SBA small business size standard.⁶⁹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁷¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁷² 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.⁷³ 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.

18. *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.⁷⁴ The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.⁷⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁷⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were

⁶⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁷ *Id.*

⁶⁸ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁰ *Id.*

⁷¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

20 providers that reported they were engaged in the provision of operator services.⁷⁸ Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.⁷⁹ Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

19. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁸⁰ is the closest industry with an SBA small business size standard.⁸¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸² U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸³ Of this number, 2,964 firms operated with fewer than 250 employees.⁸⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸⁵ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

20. The broadband Internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services.⁸⁷ 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

⁷⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁹ *Id.*

⁸⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸² *Id.*

⁸³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

⁸⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸⁶ *Id.*

⁸⁷ This includes, among others, the approximately 800 members of WISPA, including those entities who provide fixed wireless broadband service using unlicensed spectrum. See WISPA, *About WISPA*, <https://www.wispa.org/About-Us/Mission-and-Goals> (last visited June 27, 2019). We also consider the impact to these entities today for the purposes of this FRFA, by including them under the "Wireless Providers – Fixed and Mobile" category.

unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

21. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁸⁸ 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.⁸⁹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁹¹ Of that number, 2,837 firms employed fewer than 250 employees.⁹² 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.⁹³ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁹⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *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.⁹⁵ *Wireless Telecommunications Carriers (except Satellite)*⁹⁶ 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.⁹⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁸ Of this number, 2,837 firms employed fewer than 250

⁸⁸ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁸⁹ *Id.*

⁹⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁹² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹³ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2022)*, <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁹⁴ *Id.*

⁹⁵ See 47 CFR §§ 27.1 – 27.1607.

⁹⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

employees.⁹⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. 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.¹⁰⁰

24. 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.

25. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.¹⁰¹ Wireless Telecommunications Carriers (except Satellite)¹⁰² 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.¹⁰³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

26. According to Commission data as of November 2021, there were three active licenses in this service.¹⁰⁶ 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

⁹⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁰ See 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

¹⁰¹ See 47 CFR § 27.902.

¹⁰² See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁰⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁶ Based on a FCC Universal Licensing System search on November 8, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

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.¹⁰⁷ The 1670-1675 MHz service band auction’s winning bidder did not claim small business status.¹⁰⁸

27. 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.

28. *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).¹⁰⁹ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.¹¹⁰ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.¹¹¹ Of this number, 2,837 firms employed fewer than 250 employees.¹¹² 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.¹¹³ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.¹¹⁴ Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

29. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.¹¹⁵ The closest industry with a SBA small business size standard applicable to these services is Wireless

¹⁰⁷ See 47 CFR § 27.906(a).

¹⁰⁸ See *1670–1675 MHz Band Auction Closes; Winning Bidder Announced; FCC Form 600s Due May 12, 2003*, Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

¹⁰⁹ See U.S. Census Bureau, *2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite),”* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹¹⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹¹² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹³ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2022)*, <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹¹⁴ *Id.*

¹¹⁵ See 47 CFR § 24.200.

Telecommunications Carriers (except Satellite).¹¹⁶ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹¹⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹¹⁸ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

30. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.¹²⁰ 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.¹²¹ Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.¹²²

31. 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.

32. *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)¹²³ is the closest industry with a SBA small business size

¹¹⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹¹⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹¹⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²⁰ Based on a FCC Universal Licensing System search on November 16, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹²¹ See 47 CFR § 24.720(b).

¹²² See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, <https://www.fcc.gov/auctions>.

¹²³ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

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.¹²⁴ 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.¹²⁵ Of this number, 2,837 firms employed fewer than 250 employees.¹²⁶ 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.¹²⁷ Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.¹²⁸ Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.¹²⁹

33. Based on Commission data as of December 2021, there were 3,924 active SMR licenses.¹³⁰ 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.

34. *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.¹³¹ Wireless Telecommunications Carriers (*except* Satellite)¹³² 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.¹³³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the

¹²⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹²⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

¹²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

¹²⁸ *Id.*

¹²⁹ We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

¹³⁰ Based on a FCC Universal Licensing System search on December 15, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match radio services within this group", Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹³¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/44/factsheet>, <https://www.fcc.gov/auction/49/factsheet>, <https://www.fcc.gov/auction/60/factsheet>.

¹³² See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

entire year.¹³⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹³⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

35. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.¹³⁶ 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.¹³⁷ In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,¹³⁸ twenty-six winning bidders claiming a small business classification won 214 licenses,¹³⁹ and three winning bidders claiming a small business classification won all five auctioned licenses.¹⁴⁰

36. 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.

37. *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-

¹³⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

¹³⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁶ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹³⁷ See 47 CFR § 27.702(a)(1)-(3).

¹³⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf>.

¹³⁹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf>.

¹⁴⁰ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf>.

763 MHz and 788-793 MHz bands.¹⁴¹ 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.¹⁴² Wireless Telecommunications Carriers (*except* Satellite)¹⁴³ 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.¹⁴⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁴⁵ Of that number, 2,837 firms employed fewer than 250 employees.¹⁴⁶ Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

38. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.¹⁴⁷ 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.¹⁴⁸ Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.¹⁴⁹

39. *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.¹⁵⁰ A licensee may provide any type of air-ground service (i.e., voice telephony,

¹⁴¹ See 47 CFR § 27.4.

¹⁴² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/73/factsheet>. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

¹⁴³ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁴⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁴⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

¹⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁴⁷ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁴⁸ See 47 CFR § 27.502(a).

¹⁴⁹ See *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

¹⁵⁰ 47 CFR § 22.99.

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.¹⁵¹

40. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).¹⁵² The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁵³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁵⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹⁵⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

41. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.¹⁵⁶ 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.¹⁵⁷ In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.¹⁵⁸

42. 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

¹⁵¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/65/factsheet>.

¹⁵² See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁵³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁵⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁵⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁵⁶ Based on a FCC Universal Licensing System search on December 20, 2021, <https://wireless2.fcc.gov/ULsApp/ULsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁵⁷ See 47 CFR § 22.223(b).

¹⁵⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf>.

estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

43. *3650–3700 MHz band.* Wireless broadband service licensing in the 3650-3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).¹⁵⁹ Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.¹⁶⁰ Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)¹⁶¹ industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.¹⁶² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁶³ Of this number, 2,837 firms employed fewer than 250 employees.¹⁶⁴ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

44. The Commission has not developed a small business size standard applicable to 3650–3700 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 3650–3700 MHz band.¹⁶⁵ 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.

45. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁶⁶ private-operational fixed,¹⁶⁷ and broadcast auxiliary radio services.¹⁶⁸ They also include the Upper Microwave Flexible Use Service (UMFUS),¹⁶⁹ Millimeter Wave Service (70/80/90 GHz),¹⁷⁰ Local

¹⁵⁹ See 47 CFR §§ 90.1305, 90.1307.

¹⁶⁰ See *id.* § 90.1309.

¹⁶¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁶² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁶⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁶⁵ Based on an FCC Universal Licensing System search on November 19, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁶⁶ See 47 CFR Part 101, Subparts C and I.

¹⁶⁷ See *id.* Subparts C and H.

¹⁶⁸ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁶⁹ See 47 CFR Part 30.

Multipoint Distribution Service (LMDS),¹⁷¹ the Digital Electronic Message Service (DEMS),¹⁷² 24 GHz Service,¹⁷³ Multiple Address Systems (MAS),¹⁷⁴ and Multichannel Video Distribution and Data Service (MVDDS),¹⁷⁵ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁷⁶ Wireless Telecommunications Carriers (*except* Satellite)¹⁷⁷ 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.¹⁷⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁷⁹ Of this number, 2,837 firms employed fewer than 250 employees.¹⁸⁰ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

46. 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.¹⁸¹

47. 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.

48. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel

(Continued from previous page) _____

¹⁷⁰ See 47 CFR Part 101, Subpart Q.

¹⁷¹ See *id.* Subpart L.

¹⁷² See *id.* Subpart G.

¹⁷³ See *id.*

¹⁷⁴ See *id.* Subpart O.

¹⁷⁵ See *id.* Subpart P.

¹⁷⁶ See 47 CFR §§ 101.533, 101.1017.

¹⁷⁷ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁷⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁷⁹ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

¹⁸⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁸¹ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

Multipoint Distribution Service (MMDS) systems, and “wireless cable,”¹⁸² 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)).¹⁸³ 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.¹⁸⁴

49. 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).¹⁸⁵ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁸⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁸⁷ Of this number, 2,837 firms employed fewer than 250 employees.¹⁸⁸ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

50. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.¹⁸⁹ 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,

¹⁸² The use of the term “wireless cable” does not imply that it constitutes cable television for statutory or regulatory purposes.

¹⁸³ See 47 CFR § 27.4; *see also* Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

¹⁸⁴ Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

¹⁸⁵ See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁸⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁸⁷ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁸⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁸⁹ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

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.¹⁹⁰ 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.¹⁹¹ One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.¹⁹²

51. 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.¹⁹³ 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

52. *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."¹⁹⁴ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$35 million or less in annual receipts as small.¹⁹⁵ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹⁹⁶ Of this number, 242 firms had revenue of less than \$25 million.¹⁹⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring

¹⁹⁰ See 47 CFR § 27.1218(a).

¹⁹¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

¹⁹² Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁹³ See 47 CFR § 27.1219(a).

¹⁹⁴ See U.S. Census Bureau, 2017 NAICS Definition, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹⁹⁵ See 13 CFR § 121.201, NAICS Code 517410.

¹⁹⁶ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁹⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.¹⁹⁸ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹⁹⁹ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

53. *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.²⁰⁰ 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.²⁰¹ 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.²⁰² The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.²⁰³ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.²⁰⁴ Of those firms, 1,039 had revenue of less than \$25 million.²⁰⁵ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

5. Cable Service Providers

54. 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.

55. *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.²⁰⁶ 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.²⁰⁷ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for

¹⁹⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹⁹⁹ *Id.*

²⁰⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See 13 CFR § 121.201, NAICS Code 517919.

²⁰⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

²⁰⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁰⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "515210 Cable and Other Subscription Programming," <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

²⁰⁷ *Id.*

transmission to viewers.²⁰⁸ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.²⁰⁹ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.²¹⁰ 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.²¹¹ Based on this data, the Commission estimates that a majority of firms in this industry are small.

56. *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.²¹² Based on industry data, there are about 420 cable companies in the U.S.²¹³ Of these, only seven have more than 400,000 subscribers.²¹⁴ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²¹⁵ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.²¹⁶ Of these, about 639 have more than 15,000 subscribers.²¹⁷ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

57. *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."²¹⁸ 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.²¹⁹ Based on industry data, only six cable system operators have

²⁰⁸ *Id.*

²⁰⁹ See 13 CFR § 121.201, NAICS Code 515210.

²¹⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

²¹¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²¹² 47 CFR § 76.901(d).

²¹³ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²¹⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

²¹⁵ 47 CFR § 76.901(c).

²¹⁶ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²¹⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

²¹⁸ 47 U.S.C. § 543(m)(2).

²¹⁹ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 Subscriber Threshold PN). In this Public Notice, the Commission determined that there

(continued....)

more than 498,000 subscribers.²²⁰ 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.²²¹ 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

58. *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.”²²² 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.”²²³ 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.²²⁴

59. 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.²²⁵ 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.²²⁶ Of this number, 1,552 firms had less than 250 employees.²²⁷ Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

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were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice.. See 47 CFR § 76.901(e)(1).

²²⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

²²¹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. See 47 CFR § 76.910(b).

²²² See U.S. Census Bureau, *2017 NAICS Definition, “Sector 22- Utilities, 2211 Electric Power Generation, Transmission and Distribution,”* <https://www.census.gov/naics/?input=2211&year=2017&details=2211>.

²²³ See *id.*

²²⁴ *Id.*

²²⁵ See 13 CFR § 121.201, NAICS Codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122.

²²⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 2211, <https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

²²⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

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

60. In the *Fourth Report and Order*, we (1) establish a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) adopt a new requirement that utilities retain copies of their cyclical pole inspection reports and, upon request, provide prospective pole attachers with the information included in the most recent report regarding the poles affected by a prospective attacher's submitted attachment application. Our new requirements are minimally burdensome as they merely require (1) parties seeking to have complaints placed on the Accelerated Docket to submit a form to the newly-established Rapid Broadband Assessment Team (RBAT) that will elicit information relevant to the scope and nature of the dispute and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket, and (2) utilities to provide information they already collect in the normal course of business for cyclical pole inspection reports.

61. Parties seeking both RBAT review and assessment of a dispute that a party contends is impeding or delaying deployment of broadband facilities, and inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing. This initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under section 1.736(b). Additionally, the RBAT may require that the parties participate, if appropriate, in pre-filing settlement negotiations or mediation under rule 1.737 as a condition for including a matter on the Accelerated Docket. We amend our pole attachment make-ready rules to require 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. The record indicates that utilities already prepare such reports, making this new transparency requirement consistent with the existing practices. For these reasons, we believe that small and other utilities will not have an issue complying with the new obligation.

62. 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 *Fourth 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 have minimal cost implications because many of these obligations are consistent with existing Commission regulations to file disputes, and existing practices by utilities to prepare pole inspection reports.

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

63. The Commission took steps to minimize significant economic impact on small entities and considered alternatives to new rules and processes adopted in the *Fourth Report and Order* that may impact small entities. By establishing RBAT, we addressed commenters' with utilities that they should not be required to gather and provide pole-related data for matters they do not track in the normal course of business through their inspections. We also declined to require that small and other utilities provide new attachers with information about poles prior to the attacher submitting an application because this data would be speculative and the build-out may never occur. Additionally, we declined to establish a single pole-information database or require each utility to create a database of all its poles. Similar to our prior decisions on this matter, the record demonstrates that the burdens and costs of creating such a

database are considerable given that many utilities own or jointly own poles.²²⁸ Further, the scope of pole data attachers seek exists in information from pole inspection reports we require small and other utility companies to provide in the *Fourth Report and Order*. We considered and declined to require small and other utilities to provide financial data regarding poles and attachment rates because this would be overly burdensome for the utilities. We also considered but declined to require small and other utilities to provide information on the age or condition of the poles, or number of current or pending attachment applications for each pole. Finally, we declined to require small and other utilities to provide more detailed supporting data in their make ready estimates because the current complaint process should be sufficient to address a potential dispute on this matter.

G. Report to Congress

64. The Commission will send a copy of the Fourth Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²²⁹ In addition, the Commission will send a copy of the Fourth Report and Order and Declaratory Ruling, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Fourth Report and Order (or summaries thereof) will also be published in the Federal Register.²³⁰

²²⁸ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245 & GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5280-81, para. 89. (2011).

²²⁹ 5 U.S.C. § 801(a)(1)(A).

²³⁰ *See id.* § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Third Further Notice of Proposed Rulemaking (Further Notice)*. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided on the first page of the item. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. The *Further Notice* seeks comment on proposals that might further facilitate the pole attachment process. The *Further Notice* specifically seeks comment on a proposal that the Commission revise its rules to prohibit utilities from limiting “the size of an application or the number of poles included in an application so as to avoid the timelines.” The *Further Notice* also seeks comment on a proposal that the Commission “establish a maximum time for a pole owner to review projects of any size.” Additionally, the Commission seeks comment on a proposal that 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. NCTA also proposes making self-help available for the estimate process. Finally, the *Further Notice* seeks comment on the impact of contractor availability when attachers seek to use their own contractors when conducting self-help or one-touch make-ready for surveys and make-ready work and whether to amend the Commission’s rules to make it easier for attachers to use their own contractors to do self-help and one-touch make-ready surveys and make-ready work when there are no contractors available from a pole owner list.

B. Legal Basis

3. The proposed action is authorized 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).

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

4. 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 proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A “small business

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public

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.⁷

5. *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.⁸ 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.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁰

6. 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.”¹¹ 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.¹² Nationwide, for tax year 2020, there were approximately 447,689 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.¹³

7. 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.”¹⁴ U.S. Census Bureau data from the 2017 Census

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comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁷ 15 U.S.C. § 632.

⁸ See 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁰ *Id.*

¹¹ See 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ See 5 U.S.C. § 601(5).

of Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,931 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments—-independent school districts¹⁹ with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²¹

1. Internet Access Service Providers

8. *Wired Broadband Internet Access Service Providers (Wired ISPs).*²² 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.²³ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.²⁴ The SBA small business size standard for this industry

¹⁵ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁶ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

¹⁹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²⁰ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

²² Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

²³ See 47 CFR § 1.7001(a)(1).

²⁴ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

classifies firms having 1,500 or fewer employees as small.²⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁶ Of this number, 2,964 firms operated with fewer than 250 employees.²⁷

9. 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.²⁸ 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*,²⁹ we believe that the majority of wireline Internet access service providers can be considered small entities.

10. *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.³⁰ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³¹ 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.³² Of those firms, 1,039 had revenue of less than \$25 million.³³ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

²⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

²⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁸ See Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

²⁹ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

³⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³¹ See 13 CFR § 121.201, NAICS Code 517919.

³² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

2. Wireline Providers

11. *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.³⁴ 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.³⁵ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁷

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁰ 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.⁴¹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *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 Carriers⁴³ is the closest industry with an SBA small business size standard.⁴⁴ Wired

³⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

³⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁴⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁴² *Id.*

⁴³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁵ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁸ 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.⁴⁹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁵⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *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 Carriers⁵¹ is the closest industry with an SBA small business size standard.⁵² The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵³ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁵⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁵ 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.⁵⁶ Of these providers, the Commission estimates that 916 providers have

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⁴⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁵ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁴⁶ *Id.*

⁴⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁰ *Id.*

⁵¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵³ *Id.*

⁵⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

1,500 or fewer employees.⁵⁷ 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.

15. *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.⁵⁸ Wired Telecommunications Carriers⁵⁹ 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.⁶⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁶² 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 exchange service providers.⁶³ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁶⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁶⁵ is the closest industry with an SBA small business size standard.⁶⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁹

⁵⁷ *Id.*

⁵⁸ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁵⁹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

⁶² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶³ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2022)*, <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁴ *Id.*

⁶⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁷ *Id.*

⁶⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

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.⁷⁰ 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.

17. *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.⁷¹ The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.⁷² U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁷³ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁴ 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.⁷⁵ Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.⁷⁶ Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

18. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁷ is the closest industry with an SBA small business size standard.⁷⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸⁰

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⁶⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

⁷⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁶ *Id.*

⁷⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁹ *Id.*

⁸⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

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Of this number, 2,964 firms operated with fewer than 250 employees.⁸¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸² Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

19. The broadband Internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services.⁸⁴ 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.

20. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁸⁵ 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.⁸⁶ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁸⁸ Of that number, 2,837 firms employed fewer than 250 employees.⁸⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report,

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<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁸¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸³ *Id.*

⁸⁴ This includes, among others, the approximately 800 members of WISPA, including those entities who provide fixed wireless broadband service using unlicensed spectrum. See WISPA, *About WISPA*, <https://www.wispa.org/About-Us/Mission-and-Goals> (last visited June 27, 2019). We also consider the impact to these entities today for the purposes of this FRFA, by including them under the “Wireless Providers – Fixed and Mobile” category.

⁸⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁸⁶ *Id.*

⁸⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁸⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁹⁰ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁹¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *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.⁹² Wireless Telecommunications Carriers (*except* Satellite)⁹³ 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.⁹⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁵ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁶ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

22. 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.⁹⁷

23. 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.

⁹⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁹¹ *Id.*

⁹² See 47 CFR §§ 27.1 – 27.1607.

⁹³ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁷ See 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

24. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.⁹⁸ Wireless Telecommunications Carriers (except Satellite)⁹⁹ 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.¹⁰⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰¹ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰² Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

25. According to Commission data as of November 2021, there were three active licenses in this service.¹⁰³ 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.¹⁰⁴ The 1670-1675 MHz service band auction’s winning bidder did not claim small business status.¹⁰⁵

26. 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.

27. *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).¹⁰⁶ The size

⁹⁸ See 47 CFR § 27.902.

⁹⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

¹⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰³ Based on a FCC Universal Licensing System search on November 8, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁰⁴ See 47 CFR § 27.906(a).

¹⁰⁵ See *1670–1675 MHz Band Auction Closes; Winning Bidder Announced; FCC Form 600s Due May 12, 2003*, Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

¹⁰⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.¹⁰⁷ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.¹⁰⁸ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁹ 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.¹¹⁰ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.¹¹¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

28. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.¹¹² The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).¹¹³ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹¹⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹¹⁵ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁶ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

29. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.¹¹⁷ 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

¹⁰⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁰⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹¹¹ *Id.*

¹¹² See 47 CFR § 24.200.

¹¹³ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹¹⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁷ Based on a FCC Universal Licensing System search on November 16, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.¹¹⁸ Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.¹¹⁹

30. 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.

31. *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)¹²⁰ 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.¹²¹ 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.¹²² Of this number, 2,837 firms employed fewer than 250 employees.¹²³ 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.¹²⁴ Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.¹²⁵ Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.¹²⁶

32. Based on Commission data as of December 2021, there were 3,924 active SMR

¹¹⁸ See 47 CFR § 24.720(b).

¹¹⁹ See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, <https://www.fcc.gov/auctions>.

¹²⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹²¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹²² See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹²³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

¹²⁵ *Id.*

¹²⁶ We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

licenses.¹²⁷ 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.

33. *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.¹²⁸ Wireless Telecommunications Carriers (*except* Satellite)¹²⁹ 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.¹³⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹³¹ Of this number, 2,837 firms employed fewer than 250 employees.¹³² Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

34. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.¹³³ 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

¹²⁷ Based on a FCC Universal Licensing System search on December 15, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match radio services within this group", Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹²⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/44/factsheet>, <https://www.fcc.gov/auction/49/factsheet>, <https://www.fcc.gov/auction/60/factsheet>.

¹²⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

¹³² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³³ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

average gross revenues not exceeding \$3 million for the preceding three years.¹³⁴ In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,¹³⁵ twenty-six winning bidders claiming a small business classification won 214 licenses,¹³⁶ and three winning bidders claiming a small business classification won all five auctioned licenses.¹³⁷

35. 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.

36. *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.¹³⁸ 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.¹³⁹ Wireless Telecommunications Carriers (*except* Satellite)¹⁴⁰ 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.¹⁴¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁴² Of that number, 2,837 firms employed fewer than 250 employees.¹⁴³ Thus,

¹³⁴ See 47 CFR § 27.702(a)(1)-(3).

¹³⁵ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf>.

¹³⁶ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf>.

¹³⁷ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf>.

¹³⁸ See 47 CFR § 27.4.

¹³⁹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/73/factsheet>. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

¹⁴⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁴¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁴² See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

37. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.¹⁴⁴ 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.¹⁴⁵ Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.¹⁴⁶

38. *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.¹⁴⁷ 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.¹⁴⁸

39. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).¹⁴⁹ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁵⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁵¹ Of this number, 2,837 firms employed fewer than 250 employees.¹⁵² Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

¹⁴⁴ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁴⁵ See 47 CFR § 27.502(a).

¹⁴⁶ See *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

¹⁴⁷ 47 CFR § 22.99.

¹⁴⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/65/factsheet>.

¹⁴⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁵⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁵¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁵² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

40. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.¹⁵³ 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.¹⁵⁴ In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.¹⁵⁵

41. 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.

42. *3650–3700 MHz band.* Wireless broadband service licensing in the 3650-3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).¹⁵⁶ Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.¹⁵⁷ Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)¹⁵⁸ industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.¹⁵⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁶⁰ Of this number, 2,837 firms employed fewer than 250 employees.¹⁶¹ Thus

¹⁵³ Based on a FCC Universal Licensing System search on December 20, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁵⁴ See 47 CFR § 22.223(b).

¹⁵⁵ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf>.

¹⁵⁶ See 47 CFR §§ 90.1305, 90.1307.

¹⁵⁷ See *id.* § 90.1309.

¹⁵⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁵⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁶¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

43. The Commission has not developed a small business size standard applicable to 3650–3700 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 3650–3700 MHz band.¹⁶² 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.

44. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁶³ private-operational fixed,¹⁶⁴ and broadcast auxiliary radio services.¹⁶⁵ They also include the Upper Microwave Flexible Use Service (UMFUS),¹⁶⁶ Millimeter Wave Service (70/80/90 GHz),¹⁶⁷ Local Multipoint Distribution Service (LMDS),¹⁶⁸ the Digital Electronic Message Service (DEMS),¹⁶⁹ 24 GHz Service,¹⁷⁰ Multiple Address Systems (MAS),¹⁷¹ and Multichannel Video Distribution and Data Service (MVDDS),¹⁷² where in some bands licensees can choose between common carrier and non-common carrier status.¹⁷³ Wireless Telecommunications Carriers (*except Satellite*)¹⁷⁴ 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.¹⁷⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁷⁶ Of this number,

¹⁶² Based on an FCC Universal Licensing System search on November 19, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁶³ See 47 CFR Part 101, Subparts C and I.

¹⁶⁴ See *id.* Subparts C and H.

¹⁶⁵ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁶⁶ See 47 CFR Part 30.

¹⁶⁷ See 47 CFR Part 101, Subpart Q.

¹⁶⁸ See *id.* Subpart L.

¹⁶⁹ See *id.* Subpart G.

¹⁷⁰ See *id.*

¹⁷¹ See *id.* Subpart O.

¹⁷² See *id.* Subpart P.

¹⁷³ See 47 CFR §§ 101.533, 101.1017.

¹⁷⁴ See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except Satellite*),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁷⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁷⁶ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312,

(continued....)

2,837 firms employed fewer than 250 employees.¹⁷⁷ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

45. 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.¹⁷⁸

46. 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.

47. *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,"¹⁷⁹ 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)).¹⁸⁰ 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.¹⁸¹

48. 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

(Continued from previous page) _____
<https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁷⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁷⁸ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹⁷⁹ The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

¹⁸⁰ See 47 CFR § 27.4; see also *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

¹⁸¹ Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

Carriers (*except* Satellite).¹⁸² The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁸³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁸⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹⁸⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

49. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.¹⁸⁶ 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.¹⁸⁷ 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.¹⁸⁸ One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.¹⁸⁹

50. 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

¹⁸² See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁸³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁸⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁸⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁸⁶ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁸⁷ See 47 CFR § 27.1218(a).

¹⁸⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

¹⁸⁹ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

(5) years.¹⁹⁰ 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

51. *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.”¹⁹¹ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$35 million or less in annual receipts as small.¹⁹² U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹⁹³ Of this number, 242 firms had revenue of less than \$25 million.¹⁹⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.¹⁹⁵ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹⁹⁶ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

52. *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.¹⁹⁷ 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.¹⁹⁸ 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.¹⁹⁹

¹⁹⁰ See 47 CFR § 27.1219(a).

¹⁹¹ See U.S. Census Bureau, 2017 NAICS Definition, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹⁹² See 13 CFR § 121.201, NAICS Code 517410.

¹⁹³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁹⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹⁹⁶ *Id.*

¹⁹⁷ See U.S. Census Bureau, 2017 NAICS Definition, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.²⁰⁰ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.²⁰¹ Of those firms, 1,039 had revenue of less than \$25 million.²⁰² Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

5. Cable Service Providers

53. 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.

54. *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.²⁰³ 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.²⁰⁴ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.²⁰⁵ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.²⁰⁶ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.²⁰⁷ 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.²⁰⁸ Based on this data, the Commission estimates that a majority of firms in this industry are small.

²⁰⁰ See 13 CFR § 121.201, NAICS Code 517919.

²⁰¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

²⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁰³ See U.S. Census Bureau, *2017 NAICS Definition, “515210 Cable and Other Subscription Programming,”* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See 13 CFR § 121.201, NAICS Code 515210.

²⁰⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

²⁰⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

55. *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.²⁰⁹ Based on industry data, there are about 420 cable companies in the U.S.²¹⁰ Of these, only seven have more than 400,000 subscribers.²¹¹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²¹² Based on industry data, there are about 4,139 cable systems (headends) in the U.S.²¹³ Of these, about 639 have more than 15,000 subscribers.²¹⁴ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

56. *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."²¹⁵ 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.²¹⁶ Based on industry data, only six cable system operators have more than 498,000 subscribers.²¹⁷ 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.²¹⁸ 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

57. *Electric Power Generators, Transmitters, and Distributors*. The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating,

²⁰⁹ 47 CFR § 76.901(d).

²¹⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²¹¹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

²¹² 47 CFR § 76.901(c).

²¹³ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²¹⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

²¹⁵ 47 U.S.C. § 543(m)(2).

²¹⁶ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 Subscriber Threshold PN). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice.. See 47 CFR § 76.901(e)(1).

²¹⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

²¹⁸ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

transmitting, and/or distributing electric power.²¹⁹ 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.²²⁰ 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.²²¹

58. 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.²²² 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.²²³ Of this number, 1,552 firms had less than 250 employees.²²⁴ Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

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

59. In this *Further Notice*, we seek comment on ways to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment.

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

60. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²²⁵

61. The *Further Notice* does not propose specific changes to the Commission’s pole attachment rules, but seeks comment on whether the Commission should revise its rules to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment. The Commission’s objective in requesting this information is to determine

²¹⁹ See U.S. Census Bureau, *2017 NAICS Definition, “Sector 22- Utilities, 2211 Electric Power Generation, Transmission and Distribution,”* <https://www.census.gov/naics/?input=2211&year=2017&details=2211>.

²²⁰ See *id.*

²²¹ *Id.*

²²² See 13 CFR § 121.201, NAICS Codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122.

²²³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 2211, <https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

²²⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²²⁵ 5 U.S.C. § 603(c)(1)–(4).

whether it can and should establish clear standards for when and how attachers and utilities must share the costs of a pole replacement precipitated by a new attachment request. The Commission also seeks comment on the relative costs and benefits of any such revisions to its rules. Information submitted in response to these requests for comment will enable the Commission to evaluate the impact that revising its pole attachment rules would have on smaller entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

62. None.