

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

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statements.

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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

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

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 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. We also clarify the obligation to share easement information and the applicable timelines for the processing of attachment requests for 3,000 or more poles. 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.

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) (*State Regulation Public Notice*). 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*).

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

⁶ 47 CFR § 1.1408(b).

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

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

⁷ Section 224(h) states that “[w]henver 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”).

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.

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 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

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.

²³ *Id.* at 4165-66, paras. 35-36.

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 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.²⁸

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); *2020 Declaratory Ruling*, 35 FCC Rcd at 7944-45, para. 15 (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).

²⁷ *See 2020 Declaratory Ruling*, 35 FCC Rcd at 7943, 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 SHLB suggests that creation of the RBAT may result in a needless administrative step and associated delay, and

(continued....)

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.²⁹ 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.”³⁰ Based on broad record support among attachers for further streamlining our processes as applied to disputes that impede or delay broadband deployment,³¹ 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.”³² In addition, a 270-day shot clock currently applies to final action on all other pole attachment complaints (i.e., those alleging unjust or unreasonable rates, terms, or conditions of attachment).³³ Several commenters assert that these timeframes are commercially unreasonable for attachers seeking to deploy broadband networks, particularly in rural or unserved areas.³⁴ NCTA submits that the need for expedited procedures has gained

suggests that the RBAT, if created, be vested with authority to resolve disputes without going through the additional step of a complaint process. Letter from John Windhausen, Jr., Exec. Dir., Schools, Health & Libraries Broadband (SHLB) Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (SHLB Dec. 7, 2023 *Ex Parte*). We decline to adopt this approach. The RBAT is designed to assist parties in resolving their dispute expeditiously without need for litigation. But if parties are unable to reach a resolution, either through mediation or other means, our existing complaint procedures, including the Accelerated Docket, ensure a means of adjudicating the dispute in accordance with due process.

²⁹ *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.”).

³⁰ *Second Further Notice*, 37 FCC Rcd at 4166, para. 36.

³¹ 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.

³² 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).

³³ 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).

³⁴ 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”).

greater urgency recently for “providers . . . receiving government funds to build out broadband under deadlines that afford no time for a lengthy complaint process.”³⁵ 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.³⁶ 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.³⁷ 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.”³⁸ 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.³⁹ 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 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.”⁴⁰ 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

³⁵ NCTA Reply at 29-30.

³⁶ 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).

³⁷ 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.”).

³⁸ Crown Castle Reply at 27.

³⁹ 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”).

⁴⁰ *Second Further Notice*, 37 FCC Rcd at 4166, para. 36.

a dispute is suitable for accelerated disposition.⁴¹ 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,⁴² 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.⁴³ 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.⁴⁴

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.⁴⁵ 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).⁴⁶ In performing 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.⁴⁷

⁴¹ See *infra* paras. 19-21 (discussing specific criteria).

⁴² 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").

⁴³ 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.

⁴⁴ 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* paras. 18-20 (discussing specific criteria).

⁴⁵ 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).

⁴⁶ See 47 CFR § 1.736.

⁴⁷ 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).

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.⁴⁸ 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.⁴⁹

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 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. The RBAT also may request that one or both parties provide the RBAT with documentation or other information relevant to the dispute.⁵⁰ 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.⁵¹ 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 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

⁴⁸ 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.”).

⁴⁹ 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 non-disclosure agreement; 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.

⁵⁰ NCTA suggests that we specify the information the respondent will be required to provide. *See* Letter from Pamela Arluk, Vice Pres. and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed Dec. 5, 2023) (NCTA Dec. 5, 2023 *Ex Parte*). We find this approach impracticable, as the information required in a response will depend on the complainant's allegations. We employ a more flexible approach that enables the RBAT to request relevant information and documentation from either party, as appropriate.

⁵¹ Because mediation will be a prominent feature of the RBAT review, we decline to adopt INCOMPAS's proposal that the 180-day deadline for resolution of a pole access complaint be triggered by the submission of the request for RBAT Review and Assessment. *See* Letter from Christopher L. Shipley, Exec. Dir. of Public Policy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (INCOMPAS Dec. 7, 2023 *Ex Parte*). If mediation succeeds, there will be no need for a complaint. If it does not, the filing of a complaint will commence review period deadlines under the relevant Commission rules. *See* 47 CFR §§ 1.736, 1.1414.

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.⁵² 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.⁵³ 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).”⁵⁴ 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.⁵⁵ 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.”⁵⁶ 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.⁵⁷ 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).⁵⁸

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

⁵² See 47 CFR § 1.737.

⁵³ 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)).

⁵⁴ 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.”).

⁵⁵ See *infra* paras. 19-21.

⁵⁶ 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”).

⁵⁷ 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.”).

⁵⁸ See 47 CFR § 1.736(h) (stating that an ALJ may preside over a minitrial in Accelerated Docket proceedings).

attachment complaints should be placed on the Accelerated Docket.”⁵⁹ 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,⁶⁰ 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,⁶¹ 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.⁶² 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.⁶³ Although Charter argues that the presumption could simply be rebutted if a particular complaint raises unusually complex issues,⁶⁴ 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,⁶⁵ 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;

⁵⁹ *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.*

⁶⁰ *See, e.g.*, ACA Connects Reply at 41-42; ALLvanza Reply at 8; Crown Castle Comments at 30-31.

⁶¹ *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). *See also* INCOMPAS Dec. 7, 2023 *Ex Parte* at 2 (requesting that disputes of 300 or fewer poles rebuttably be presumed to be suitable for the Accelerated Docket). There is no basis for us to conclude that a dispute will be suitable for the Accelerated Docket simply based on the number of poles at issue as INCOMPAS’s proposal suggests.

⁶² 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”).

⁶³ Coalition of Concerned Utilities Comments at 43-44; *accord* Pennsylvania PUC Comments at 5-6; Utilities Technology Council Reply at 11.

⁶⁴ *See* Charter Reply at 52.

⁶⁵ *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.

- 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 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.⁶⁶ 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.⁶⁷

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,⁶⁸ or any intervening, periodic reports created before the next cyclical inspection, for the poles

⁶⁶ A responding party’s refusal to stipulate to facts or cooperate in the exchange of relevant information bearing on disputed facts will not itself defeat a request for acceptance of a pole attachment dispute on the Accelerated Docket.

⁶⁷ Two commenters suggest narrowing the list of criteria to avoid delay tactics by utilities. *See* Letter from D. Van Fleet Bloys, Managing Counsel, Crown Castle, to Marlene, H Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 6, 2023) (Crown Castle Dec. 6, 2023 *Ex Parte*); INCOMPAS Dec. 7, 2023 *Ex Parte* at 2-3. We find that eliminating criteria is unnecessary, however, as these criteria are holistic in nature, and no single one will be dispositive. Moreover, the RBAT is not required to credulously accept assertions from either party.

⁶⁸ 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

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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.⁶⁹ Several attaching entities indicated pole inspection information would be helpful in planning deployments.⁷⁰ We believe this new requirement strikes a reasonable balance between additional transparency for prospective attachers and ensuring the utilities’ expenditure of resources is no greater than necessary. As discussed below, however, we also strongly encourage utilities to voluntarily share pole-related information that is reasonably available and that they track in the normal course of business, both before and after receiving attachment applications, and we intend to continue to monitor the record in this proceeding to determine if additional information sharing mandates may be required.

24. For the purposes of the new transparency 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.⁷¹ We note that this

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 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).

⁶⁹ *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.

⁷⁰ *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 State Regulation Public Notice*, 37 FCC Rcd 6724. 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.

⁷¹ Electric Utilities request that the new rule not require utilities to provide periodic pole inspection reports, arguing that the requirement will create confusion and invite disputes. Letter from Robin F. Bromberg, Counsel for Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 4, 2023) (Electric Utilities Dec. 4, 2023 *Ex Parte*). We find that the definition of “periodic inspection report” is sufficiently clear and note that no other utility commenters claimed the definition was vague or otherwise problematic. We further find that this requirement is an important aspect of the rule. Cyclical pole inspections typically occur several years apart,

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new transparency requirement is consistent with the existing practices of certain utilities to prepare such reports.⁷² 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.⁷³ This should allow sufficient time before the make-ready survey for the attacher to revise or amend its application as may be appropriate based on the information it receives.⁷⁴

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.⁷⁵ 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.⁷⁶ To avoid unnecessary delays and

sometimes by ten or more years, *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); 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*); *see also, e.g.*, 52 Pa. Code § 57.198(n)(2); *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), and periodic inspection reports will contain more recent inspection information. We also decline the Electric Utilities' request to seek further comment on transparency requirements in lieu of adopting a rule on report sharing. *See* Electric Utilities Dec. 4, 2023 *Ex Parte* at 1-2. We find that the record is sufficient to adopt an information sharing rule at this time and the rule we adopt strikes an appropriate balance between providing attachers with additional helpful information while not being overly resource-intensive for utilities. Indeed, several utility parties are supportive of the new transparency requirement. *See* Letter from Brett Heather Freedson, Counsel to Dominion Energy and Xcel Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-4 (filed Dec. 6, 2023) (Dominion/Xcel Dec. 6, 2023 *Ex Parte*); Letter from Aryeh Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 1, 2023) (Edison Electric Institute Dec. 1, 2023 *Ex Parte*).

⁷² *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.”).

⁷³ 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).

⁷⁴ “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 Red 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).

⁷⁵ 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).

⁷⁶ *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.

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.⁷⁷ 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 its application.⁷⁸

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.⁷⁹ We find this new limited requirement achieves a balance between a potential attacher's 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 mandatory disclosures.

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.⁸⁰ At the same time, we recognize the potential burdens on utilities

⁷⁷ Several parties asked that we require an automatic restart of the 45-day response period or start the application process over in such instances by requiring an attacher to file a new application rather than an amended application. Letter from Thomas Magee, Keller & Heckman, Counsel for Coalition of Concerned Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 5, 2023); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 2-3; Electric Utilities Dec. 4, 2023 *Ex Parte* at 2-3. We decline these requests and find that the procedures we adopt are sufficiently tailored to account for the needs of utilities to review amended applications while not needlessly slowing deployment. Under the new rule, utilities will always have the option of electing to restart the 45-day review period; but given that there may be instances where an amendment is minor or otherwise will not require a restart of the 45-day period, we find it reasonable to require utilities to actually review an amended application to determine whether a restart is necessary given the specific circumstances.

⁷⁸ See 47 U.S.C. § 224(i); 47 CFR § 1.1408(b).

⁷⁹ 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 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.

⁸⁰ 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

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that would result from imposing a mandate to compile extensive information for every pole attachment application the utility receives.⁸¹ We seek to strike a balance by (1) requiring utilities to provide 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),⁸² rather 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 by rule 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.⁸³ The record shows that many utilities do not create specific maintenance or replacement schedules for poles.⁸⁴ 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

(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.”).

⁸¹ 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.”).

⁸² 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*).

⁸³ See Electric Utilities Comments at 57; AT&T Reply at 31; Dominion/Xcel Reply at 34-35; Edison Electric Institute Reply at 35-37.

⁸⁴ 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.”).

make-ready survey.⁸⁵ 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 often the best ways to ensure the potential attacher and utility have up-to-date, accurate information on the current state of poles.⁸⁶ We also agree with Dominion/Xcel, however, that the information contained in general survey or pole inspection reports can be useful to prospective attachers in some cases.⁸⁷ Therefore, although we decline at this time 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 in pole inspection reports concerning specific poles upon request at the time an attachment application is submitted.⁸⁸

29. While we do not at this time codify a requirement for utilities to provide new attachers with information about poles *prior* to the attacher submitting a pole attachment application, as requested by some commenters,⁸⁹ we understand that often utilities share pole information with attachers prior to the application process, particularly information not easily attained through visual inspection. We strongly encourage this pre-application collaboration and cooperation because there is value for both utilities and attachers in having the best available pole information to inform deployment forecasts and attachment requests.⁹⁰ Although we recognize that some potential attachers could benefit from obtaining

⁸⁵ See Coalition of Concerned Utilities Comments at 13, 21; Edison Electric Institute Comments at 51-52; Electric Utilities Comments at 56.

⁸⁶ 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.”). We recognize that a visual inspection may not necessarily provide all the information an attacher might desire. Letter from Jacqueline Clary, Altice USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 6, 2023) (Altice Dec. 6, 2023 *Ex Parte*); Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 2-3. This supports requiring disclosure of pole inspection reports.

⁸⁷ See ACA Connects 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 . . .”).

⁸⁸ Some commenters support the balance struck in this new rule. Letter from David D. Rines Lerman Senter, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-2 (filed Dec. 7, 2023) (Dominion/Xcel Dec. 7, 2023 *Ex Parte*) (rule on inspection reports “represents a workable and fair compromise”); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 2; Letter from Nirali Patel, Senior Vice Pres., Policy & Advocacy, US Telecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 6-7 (filed Dec. 6, 2023) (USTelecom Dec. 6, 2023 *Ex Parte*). Electric Utilities, on the other hand, request that any consideration of a rule to require disclosure of pole inspection reports be deferred to a further notice of proposed rulemaking. Electric Utilities Dec. 4, 2023 *Ex Parte* at 1-2.

⁸⁹ ACA Connects Reply at 34-35; ExteNet Comments at 8; INCOMPAS Comments at 18; NCTA Comments at 24; Crown Castle Reply at 24-25. Several attachers requested that utilities be required to provide information about their poles upon request at any time, not only after a submitted attachment application. Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 2; Letter from Geoffrey G. Why, Counsel for ExteNet, and Michael Saperstein, Counsel for Wireless Infrastructure Ass’n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (ExteNet/WIA Dec. 7, 2023 *Ex Parte*); INCOMPAS Dec. 7, 2023 *Ex Parte* at 3; SHLB Dec. 7, 2023 *Ex Parte* at 3.

⁹⁰ See, e.g., ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 4.

pole-related information prior to submitting an application,⁹¹ we decline to impose this requirement on utilities given that the underlying requests for information would be for preliminary build-out plans that may substantially change.⁹² Furthermore, establishing a pre-application duty for 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.⁹³ 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,⁹⁴ we find that imposing an additional pre-application requirement on utilities is not justified at this time.

30. We reject requests at this time that we mandate a variety of other disclosure requirements on utilities.⁹⁵ We agree with utilities that the most relevant information for purposes of an attachment

⁹¹ 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 7-8; INCOMPAS Comments at 18.

⁹² USTelecom Dec. 6, 2023 *Ex Parte* at 6 (stating that a duty to provide pole inspection reports in response to a submitted application strikes an appropriate balance because it “*expands* a pole owner’s disclosure obligations while correctly tailoring the new disclosure requirements to poles that are subject to pending pole attachment requests, as any other standard would require pole owners to divert resources to address information requests that may never result in an actual deployment”) (footnote omitted). But see Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 2 (“Crown Castle does not engage in speculative deployments[.]”); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 3 (stating that it “does not engage in speculative build-out plans that may never come to fruition”).

⁹³ See 47 CFR § 1.1411.

⁹⁴ 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 40-41 (“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).”). As noted above, however, we also recognize that visual inspection alone may not always provide all the information an attacher may desire, thus supporting the new requirement that utilities provide attachers with cyclical and periodic pole inspection reports. For example, with regard to utility tags on poles, Crown Castle asserts that “not all poles are appropriately tagged or inspection tags may be missing, damaged, or unable to be interpreted without additional information from the pole owner.” Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 3.

⁹⁵ Several attachers requested that utilities be required to provide any relevant requested information about their poles that they retain in the ordinary course of business, which would go beyond pole inspection reports. Letter from Jacqueline Clary, Altice USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. A at 2-4 (filed Dec. 6, 2023) (Altice Dec. 6, 2023 *Ex Parte with Attachment*); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 2-4; INCOMPAS Dec. 7, 2023 *Ex Parte* at 3; NCTA Dec. 5, 2023 *Ex Parte* at 3-4; Letter from Pamela Arluk, Vice Pres. & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. A at 1-4 (filed Dec. 7, 2023) (NCTA Dec. 7, 2023 *Ex Parte*); SHLB Dec. 7, 2023 *Ex Parte* at 3. While we encourage

(continued....)

request is whether the poles at issue are available or due for replacement.⁹⁶ 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.⁹⁷ They also ask that utilities be required to provide data from the owners' periodic load analyses for poles;⁹⁸ the age, height, class, and condition of poles;⁹⁹ and data on current attachments and pending attachment requests for relevant poles.¹⁰⁰ And ACA Connects asks the Commission to require utilities to provide more details in their make-ready cost estimates to support those costs.¹⁰¹ For the reasons discussed below, we decline to adopt these requirements. With respect to certain financial information requested by some commenters regarding pole rates, we do not adopt new disclosure requirements, but make clear that some financial information is already required to be disclosed under our rules.

31. Before addressing these specific proposals, however, we note some attachers express concern that, by adopting a requirement to provide pole inspection reports but not codifying additional mandates, we may be inadvertently discouraging utilities from voluntarily providing pole-related information before receiving an attachment application, which at least some utilities do today.¹⁰² We stress that our actions today should not be understood to undermine or disincentivize such voluntary sharing. To the contrary, voluntary sharing of pole-related information is consistent with longstanding Commission policy favoring transparency in the pole attachment context, and we strongly encourage both utilities and attachers to collaborate and voluntarily share information with each other whenever such

parties to voluntarily share information, we find that codifying a broad disclosure requirement for all information collected in the ordinary course of business could force utilities to expend significant resources to gather such information and could lead to additional disputes and complaints related to information sharing.

⁹⁶ 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.

⁹⁷ 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.”); ACA Connects Reply Comments at 37-38; INCOMPAS Reply at 7.

⁹⁸ NCTA Comments at 34-35.

⁹⁹ ExteNet Comments at 8; NCTA Comments at 25; Crown Castle Reply at 24-25; NCTA Reply at 23.

¹⁰⁰ ExteNet Comments at 8; NCTA Comments at 25; Crown Castle Reply at 24-25.

¹⁰¹ ACA Connects Comments, Attach. A, Breezeline Decl. at 4.

¹⁰² Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 3-4 (“Many (although not all) utilities today share information about their poles prior to the submission of an application.”; urging Commission to not “disincentivize this kind of information sharing, which is critical to the efficient planning and deployment of broadband.”); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 3-4 (referring to “the current practice of some utilities sharing information prior to a pole application”; “often utilities share pole information with attachers prior to the application process”); INCOMPAS Dec. 7, 2023 *Ex Parte* at 3 (urging Commission not to “discourage” the “voluntary sharing that is occurring in the market”); NCTA Dec. 5, 2023 *Ex Parte* at 2-3 (referring to “the sharing of information that currently occurs between pole owners and attachers prior to the attacher submitting a pole application” and expressing concern that the pole inspection report disclosure requirement could disincentivize it); SHLB Dec. 7, 2023 *Ex Parte* at 3.

information is reasonably available and obtained in the normal course of business.¹⁰³ Voluntary sharing can be helpful to both attachers and utilities to promote more efficient buildouts by informing deployment forecasts, allowing more accurate applications, and decreasing disputes or delays after an application is submitted.¹⁰⁴ Having better and more accurate information prior to attachment applications will likely reduce make-ready costs, the frequency and severity of disputes, and improve the efficiency of the attachment process—benefiting both attachers and utilities.¹⁰⁵ We will continue to monitor the record in this proceeding and will take further action if it becomes clear that voluntary information sharing arrangements are insufficiently promoting broadband deployment.

32. *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.¹⁰⁶ The Commission rejected previous calls for a similar database requirement in 2011, in part based on the large burden outweighing potential benefits.¹⁰⁷ We find that the 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 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.¹⁰⁸ 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.¹⁰⁹ Utilities, however, assert that due to the very

¹⁰³ See, e.g., *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, CC Docket No. 78-144, First Report and Order, 68 F.C.C.2d 1585, 1587, 1595, paras. 7, 29 (1978) (citing S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 22 (1977) (“The Committee desires that the Commission institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation.”)); see also Altice Dec. 6, 2023 *Ex Parte* at 2 (describing Commission’s information sharing precedent). We reject claims that our actions here are inconsistent with the policy of promoting transparency, as Crown Castle asserts. Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. 2 at 2. To the contrary, this Order increases transparency by adopting a new disclosure requirement. USTelecom Dec. 6, 2023 *Ex Parte* at 6.

¹⁰⁴ Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 3 (voluntary information sharing “is critical to the efficient planning and deployment of broadband”); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 4; see also *id.* at 3 (“Earlier access to more transparent pole information reporting is likely to reduce the frequency and severity of attachment disputes”); INCOMPAS Dec. 7, 2023 *Ex Parte* at 3 (noting that pre-application sharing of information can help avoid the “substantial costs that a new attacher may incur if it is forced to amend or modify an attachment application once it receives pole inspection information from the pole owner”). Such voluntary sharing also is helpful because “not all pole owners conduct these denominated inspections,” yet attachers still could benefit from receiving the kind of information that would have been included in such inspections had they occurred. NCTA Dec. 5, 2023 *Ex Parte* at 3; see also ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 3 (stating that “inspection reports do not always contain the types of information this requirement targets, while other readily available records created in the regular course of business do”).

¹⁰⁵ See, e.g., ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 4.

¹⁰⁶ See, e.g., ACA Connects Comments at 41-44; INCOMPAS Comments at 20; ACA Connects Reply Comments at 37-38; INCOMPAS Reply at 7.

¹⁰⁷ *2011 Pole Attachment Order*, 26 FCC Rcd at 5280-81, para. 89.

¹⁰⁸ 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).

¹⁰⁹ ACA Connects Comments at 43; ExteNet Comments at 7-8; INCOMPAS Reply at 7.

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.¹¹⁰ One utility also submits that granting access to such voluminous pole information could result in the submission of incorrect applications.¹¹¹ 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.

33. While some commenters argue that circumstances have changed since 2011, with some state utility commissions adopting database requirements for pole-related information,¹¹² 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.¹¹³ As a result, compliance with 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,¹¹⁴ the record indicates that attachers are interested in specific types of data, not merely access to existing databases,¹¹⁵ 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 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.¹¹⁶ Moreover, any added benefit would likely be minimal in light of the new information-sharing requirement we adopt today.

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.¹¹⁷ 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

¹¹⁰ 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.

¹¹¹ 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.

¹¹² *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).

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

¹¹⁴ 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.

¹¹⁵ *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.”).

¹¹⁶ 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.”).

¹¹⁷ NCTA Comments at 34-35.

to incur the expense and delay of performing a duplicative and redundant study.”¹¹⁸ We decline to adopt this proposal. To the extent pole inspection reports include loading studies,¹¹⁹ attachers will have access to such information under the new rule we adopt today.¹²⁰ 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.”¹²¹

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.¹²² The utilities state that they either routinely provide this type of data with make-ready estimates,¹²³ 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,¹²⁴ or that they do not track this data.¹²⁵ 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. Given that attachers can often obtain this information either from the utility or through their own survey or inspection, we reject any additional requirement for pole condition information beyond that which we have already outlined, but we strongly encourage utilities to share this information when it is readily available and collected in the normal course of business.

¹¹⁸ *Id.* at 35.

¹¹⁹ See Coalition of Concerned Utilities Reply at 13.

¹²⁰ In cases where the loading study is not part of the inspection report, we decline, at this time, to codify a requirement for a utility to provide an attacher with a loading study as NCTA requests, see NCTA Dec. 5, 2023 *Ex Parte* at 3, but strongly encourage utilities to provide such loading studies when reasonably requested and readily available.

¹²¹ *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.

¹²² ExteNet Comments at 8; INCOMPAS Comments at 11, 17-19; NCTA Comments at 24-25; ExteNet Dec. 6, 2023 *Ex Parte* at 2-3; NCTA Dec. 5, 2023 *Ex Parte* at 3; SHLB Dec. 5, 2023 *Ex Parte* at 3.

¹²³ 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.”).

¹²⁴ 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).

¹²⁵ 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].”).

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.¹²⁶ As the utilities explain, pole networks are dynamic and pole conditions frequently change.¹²⁷ 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.¹²⁸ 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,¹²⁹ we find that, as with the proposed pole attachment database discussed above, any purported benefit is outweighed by the potentially considerable cost utilities would have to bear in complying with such a requirement.

37. *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,¹³⁰ 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.¹³¹ If utilities are not complying with those rules, attachers remain free to invoke the complaint process or seek mediation.¹³²

38. *Financial Records Regarding Poles.* We decline attachers' requests to create new obligations requiring utilities to provide additional financial data regarding poles and attachment rates, including outside plant records (also called continuing property records) as part of the rules being adopted at this time.¹³³ Attachers argue that such a duty for utilities to provide information will reduce rate

¹²⁶ See ExteNet Comments at 8; Crown Castle Reply at 24.

¹²⁷ See, e.g., Electric Utilities Comments at 36; 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.

¹²⁸ 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.

¹²⁹ ACA Connects Reply at 32-33.

¹³⁰ ACA Connects Comments, Attach. A, Breezeline Decl. at 4.

¹³¹ 47 CFR § 1.1411(d).

¹³² 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).

¹³³ 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 pole 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 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. Several attachers repeated these requests in later submissions, asking that utilities be required to disclose a range of information related to rates, rather than only the information the utility relied on in computing rates, to enable attachers to, for example, evaluate the validity of

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disputes or make them easier to resolve.¹³⁴ Our focus here, however, is on deployment rather than rate disputes. Further, sections 1.1404(e) and (f) of the Commission’s rules—which we do not alter here—already require that “pole owners, upon request of a cable operator or telecommunications carrier, provide the information they have relied on in calculating rates,”¹³⁵ and information an attacher seeks to rely on in establishing that a rate, term, or condition is not just and reasonable.¹³⁶ The Commission has explained that “it is critical that attaching entities have this information well in advance of executive-level discussions to ensure that those pre-complaint negotiations have a chance of success.”¹³⁷ In light of these existing rules and the policy stated by the Commission in 2018, to the extent an attacher has a specific dispute with a utility, it already can seek and obtain certain financial data from the utility, prior to filing a complaint, under current rules. We therefore decline to impose a new, broader duty to disclose additional financial records related to poles.¹³⁸

IV. DECLARATORY RULING

39. In this Declaratory Ruling, we: (1) clarify that for purposes of our pole replacement policies,¹³⁹ 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); (2) provide additional examples for when a pole replacement is not “necessitated solely”¹⁴⁰ 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; (3) clarify attachers’ right to access documentation regarding utility easements; and (4) clarify that the first 3,000 poles in an attachment application are subject to the processing timeline set forth in section 1.1411(g)(3). In providing these clarifications, we resolve apparent controversies surrounding these issues.¹⁴¹

utilities’ reliance on presumptions in the pole attachment rate formula. Letter from Jacqueline Clary, Altice USA, Inc., to Marlene, H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 1, 2023); Altice Dec. 6, 2023 *Ex Parte*, Attach. 1 at 1-3; Letter from D. Van Fleet Bloys, Managing Counsel, Crown Castle, to Marlene, H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 1, 2023); Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 5-6; NCTA Dec. 5, 2023 *Ex Parte* at 2-3.

¹³⁴ Altice USA Comments at 25; NCTA Comments at 25.

¹³⁵ 2018 *Rule Consolidation Order*, 33 FCC Rcd at 7187, para. 24.

¹³⁶ 47 CFR § 1.1404(e), (f).

¹³⁷ 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 sought to “streamline the rules in section 1.1404” by removing the long list of information specified in that section but did not narrow the scope of information utilities must provide attachers. 2018 *Rule Consolidation Order*, 33 FCC Rcd at 7187, para. 24; *see also* 47 CFR § 1.1404(f)-(g).

¹³⁸ USTelecom, whose members include both pole owners and attachers, argues that imposing a duty beyond current law “would *not* accelerate broadband deployment or reduce its costs, but would likely have the opposite effect by diverting broadband providers’ capital away from their own broadband deployment to subsidize their competitors’ builds.” USTelecom Dec. 6, 2023 *Ex Parte* at 4; *see also* Dominion/Xcel Dec. 6, 2023 *Ex Parte* at 4 (arguing that current rule 1.1404 strikes an appropriate balance regarding disclosure of financial information related to rates).

¹³⁹ 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); 2018 *Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450; 2021 *Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780 & n.25.

¹⁴⁰ 47 CFR § 1.1408(b).

¹⁴¹ *Second Further Notice*, 37 FCC Rcd at 4148, para. 10 & n.27. We reject NCTA’s recommendation that “the Commission add a sentence clarifying that new attachers would only rarely be responsible for 100% of the cost of a
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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.¹⁴² 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.¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵

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.”¹⁴⁶ 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.”¹⁴⁷ 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 construction standards or it has been red-tagged) at the time a request for a new or modified attachment is filed.”¹⁴⁸ 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.”¹⁴⁹

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.¹⁵⁰ We find that our new use of the term “red tag” expands the range of scenarios

new pole, such as when a pole has been very recently replaced,” as it is unclear to us from the record whether that is, in fact, the case when examining the full universe of pole replacements.

¹⁴² See Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3; 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.

¹⁴³ 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; Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3; INCOMPAS Dec. 7, 2023 *Ex Parte* at 2.

¹⁴⁴ Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3.

¹⁴⁵ See NCTA Comments at 20; Electric Utilities Comments at 37; Altice USA Reply at 8-10.

¹⁴⁶ *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, n.450.

¹⁴⁷ *Id.*

¹⁴⁸ *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).

¹⁴⁹ *Second Further Notice*, 37 FCC Rcd at 4148, para. 10.

¹⁵⁰ See *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450.

under which it would be impermissible for a utility to require an attachers 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 attachers when the utility determines that a pole will not accommodate a new attachment for reasons unrelated to the pole’s capacity.¹⁵¹

43. We decline Altice’s request that the Commission use the definition of “red tagged pole” adopted by the Kentucky Public Service Commission.¹⁵² We find that the definition we adopt is more straightforward, and in any event, the Kentucky PSC’s definition limits the scope of scenarios in which a pole can be considered “red tagged,” while our definition provides that a pole is “red tagged” in any scenario where a utility determines that a pole must be replaced for a reason other than a lack of capacity.¹⁵³ Even though we do not adopt the Kentucky PSC’s definition of what constitutes a “red tagged” pole, we note that the scenarios identified by the Kentucky PSC definition all appear to qualify as scenarios in which the utility cannot allocate all of the costs of a pole replacement to an attachers if the pole must be replaced given that the pole would need replacement for reasons that are not “necessitated solely” by the attachment request.¹⁵⁴ We also decline Altice’s request to include in the definition of “red tagged” those poles that have been fully depreciated by the utility based on its depreciation rate and the pole’s age.¹⁵⁵ We agree with USTelecom that the pole’s depreciation status is not relevant to whether the pole needs replacement.¹⁵⁶

44. 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 irrelevant¹⁵⁷ 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.¹⁵⁸ The Commission’s use of the

¹⁵¹ See Edison Electric Institute Comments at 19; INCOMPAS Dec. 7, 2023 *Ex Parte* at 2 (stating that “the Commission’s decision to broaden the term 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’ will prevent unnecessary costs from being imposed on new attachers, facilitate pole attachment disputes, and help speed more affordable deployment”); USTelecom Dec. 6, 2023 *Ex Parte* at 5 (“This straightforward definition is consistent with the Draft Order’s adherence to cost-causation principles because it will prevent pole owners from charging an attachers the full cost of a pole replacement if, at the time of the pole replacement, the pole would have required replacement even if the new attachment were not made.”).

¹⁵² Altice Dec. 6, 2023 *Ex Parte with Attachment*, Attach. 1 at 4; 807 KAR 5:015, Section 1(10) (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 attachers’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”).

¹⁵³ USTelecom Dec. 6, 2023 *Ex Parte* at 5-6 (“The Commission also should retain the straightforward definition from the Draft Order in lieu of the more complicated definition with subparts that the Kentucky Public Service Commission adopted because its subparts include ambiguities that could increase—rather than minimize—disputes.” (footnote omitted)).

¹⁵⁴ See *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8.

¹⁵⁵ Altice Dec. 6, 2023 *Ex Parte* at 2.

¹⁵⁶ See USTelecom Dec. 6, 2023 *Ex Parte* at 1-2.

¹⁵⁷ 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.

¹⁵⁸ The same principle generally applies to the use of space-saving techniques, such as boxing and extension arms, that can be used to increase capacity on an existing pole. While we encourage utilities to use space-saving techniques when they can be accommodated, the discretion to allow such techniques lies with utilities, subject to the

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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.¹⁵⁹ 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 applicable utility construction standards.¹⁶⁰ 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 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).¹⁶¹

45. “*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.”¹⁶² 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.”¹⁶³ 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.¹⁶⁴ The Commission adopted this

requirement that “utilities must allow attachers to use the same attachment techniques that the utility itself uses in similar circumstances, although utilities retain the right to limit their use when necessary to ensure safety, reliability, and sound engineering.” *Implementation of Section 224 of the Act; A National Broadband Plan for our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, 11869-73, paras. 8-9, 11 (2010). The Commission previously found that “a pole does not have ‘insufficient capacity’ if it could accommodate an additional attachment using conventional methods of attachment that a utility uses in its own operations, such as boxing and bracketing.” *Id.* at 11871-72, para. 14. However, we decline the requests of Altice and NCTA to adopt a more broad presumption that a pole should always be considered to have capacity when space-saving techniques are available, as utilities ultimately have the ability to determine under section 224(f)(2) of the Act whether such techniques are appropriate for a particular pole. 47 U.S.C. § 224(f)(2); NCTA Dec. 5, 2023 *Ex Parte* at 2; Altice Dec. 6, 2023 *Ex Parte* at 2.

¹⁵⁹ 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”). We disagree with Altice’s suggestion that we caveat our use of the term “red tag” to include scenarios where the utility “should have identified” a pole as needing replacement for any reason other than a lack of capacity, Altice Dec. 6, 2023 *Ex Parte with Attachment*, Attach. 1 at 4, as we find that this caveat would interfere with the utility’s expert discretion on pole management. We note, however, that utilities cannot allocate all of the costs of a pole replacement to an attacher simply by failing to “red tag” a pole that fails to meet applicable safety and construction standards.

¹⁶⁰ 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.

¹⁶¹ 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”).

¹⁶² *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8.

¹⁶³ *Id.* at 780, para. 8.

¹⁶⁴ *Id.* at 780-81, para. 8.

clarification in the *Second Further Notice*.¹⁶⁵ 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.¹⁶⁶

46. Although we decline to codify a definition of the term “necessitated solely” as it relates to pole replacements,¹⁶⁷ we clarify the situations in which a pole replacement is not “necessitated solely” by an attachment request because the pole already requires replacement.¹⁶⁸ 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.¹⁶⁹ To help utilities and attachers better understand when, under our cost-causation principles, a pole replacement is *not* “necessitated solely” by an attachment request, we provide the following additional examples: at the time an attachment request is made, (1) a pole replacement is required pursuant to applicable law;¹⁷⁰ (2) the current pole fails applicable engineering standards, such as those contained in the NESC;¹⁷¹ (3) a utility’s previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole;¹⁷² (4) the pole is required to be replaced due to road expansion or moves, property development, in connection with storm hardening, or similar government-imposed requirements;¹⁷³ or (5) the current pole already is on the utility’s internal replacement schedule, regardless of when the replacement is scheduled to take place.¹⁷⁴ Note that these examples are not exhaustive, but are illustrative examples to help the

¹⁶⁵ *Second Further Notice*, 37 FCC Rcd at 4147, para. 7.

¹⁶⁶ *Id.* at 4147, 4148, paras. 8, 10; *see also* Dominion/Xcel Reply at 20-21.

¹⁶⁷ 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”).

¹⁶⁸ *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”).

¹⁶⁹ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8.

¹⁷⁰ *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); NCTA Dec. 5, 2023 *Ex Parte* at 2; *see also* Altice Dec. 1, 2023 *Ex Parte* at 2 (requesting that pole replacements due to storm hardening requirements also be specified as “not necessitated solely” by a new attachment); USTelecom Dec. 5, 2023 *Ex Parte* at 2.

¹⁷¹ 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 pursuant to the NESC or other applicable law or code; or (ii) the requested pole was already placed in queue for immediate replacement”).

¹⁷² Crown Castle Dec. 5, 2023 *Ex Parte* at 2 (stating that “a pole replacement is not ‘necessitated solely’ by a new attacher . . . where a pole replacement is required due to a utility changing its construction standard after the pole is constructed”). For instance, if a utility has “grandfathered” a pole from compliance with its updated construction standards, a pole replacement to bring that pole into compliance with those updated standards would not be “necessitated solely” by an attacher’s request to attach to that pole.

¹⁷³ NCTA Dec. 5, 2023 *Ex Parte* at 2; *see also* Altice Dec. 1, 2023 *Ex Parte* at 2 (requesting that pole replacements due to storm hardening also be specified as “not necessitated solely” by a new attachment).

¹⁷⁴ 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

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parties apply our “necessitated solely” cost-causation principle.¹⁷⁵ These examples also appear to be consistent with some commenter proposals and the practices of some commenters in the record.¹⁷⁶

47. We disagree with Charter and the Electric Utilities that the “necessitated solely” cost-causation language in section 1.1408(b) does not apply to pole replacements.¹⁷⁷ 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.”¹⁷⁸ 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.”¹⁷⁹ The Bureau based its application of both the cost-causation and cost-allocation language of section 1.1408(b) to pole replacements on Commission precedent dating back to the 1996 *Local Competition Order*,¹⁸⁰ and we continue to follow that precedent here.¹⁸¹

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); Altice Dec. 6, 2023 *Ex Parte with Attachment*, Attach. 1 at 5.

¹⁷⁵ We decline, however, to include the following examples requested by Altice and NCTA: (1) if “the pole owner determines that the removed pole is unsalvageable, such that it cannot be reused for the same purpose in another location or sold for reuse”; (2) the pole is fully depreciated; or (3) the pole is older than 30 years. Altice Dec. 6, 2023 *Ex Parte with Attachment*, Attach. 1 at 5; NCTA Dec. 5, 2023 *Ex Parte* at 2. We find that these examples are not germane to whether a pole must be replaced at the time a new attachment request is made. USTelecom Dec. 6, 2023 *Ex Parte* at 6 (noting that these examples “will only serve to confuse, rather than clarify, matters” and “are incompatible with th[e] general overarching standard”).

¹⁷⁶ 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.

¹⁷⁷ Charter Comments at 32-33; Electric Utilities Dec. 4, 2023 *Ex Parte* at 3.

¹⁷⁸ *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 779-80, para. 7.

¹⁷⁹ *Id.* at 780-81, para. 8.

¹⁸⁰ *Id.* at 779-80, paras. 7-8 nn.22-23.

¹⁸¹ *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.”))).

48. 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.¹⁸² 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.¹⁸³ 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).”¹⁸⁴ 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.¹⁸⁵ We also clarify, as requested by Crown Castle, that the prospective attacher is generally not responsible for the make-ready costs associated with installing the replacement pole in this scenario,¹⁸⁶ unless the utility can sufficiently document that there are incremental make-ready costs specifically associated with having to install a stronger or heavier pole to accommodate the new attachment, in which case the utility is permitted to charge the prospective attacher for such incremental make-ready costs.

49. *Right-of-Way and Easement Information.* Crown Castle and ExteNet request that we require utilities to 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.¹⁸⁷ They base this request on section 224(f) of the Act,¹⁸⁸ which requires utilities to grant access to their easements and rights-of-way, and the Commission’s previous determination that an attacher’s right of access to utility poles is limited by the scope of the utility’s easement under state law.¹⁸⁹ An attacher therefore must be able to evaluate these easements to determine their scope; however, some utilities reportedly refuse to provide

¹⁸² Electric Utilities Comments at 24-26.

¹⁸³ 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”).

¹⁸⁴ 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”); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3.

¹⁸⁵ 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.”); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3.

¹⁸⁶ See Crown Castle Dec. 5, 2023 *Ex Parte* at 2.

¹⁸⁷ ExteNet Comments at 8; Crown Castle Reply at 24-25; Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 4-5.

¹⁸⁸ 47 U.S.C. § 224(f).

¹⁸⁹ *Local Competition Order*, 11 FCC Rcd at 16082, para. 1179 (1996) (subsequent history omitted).

copies of their easements on private property.¹⁹⁰ We thus clarify that in order to enable attachers to effectuate their right of access under section 224(f) of the Act, utilities must provide potential attachers with a copy of a utility's easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement. In making this clarification, we find that the section 224(f) right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher; it does not require the utility to alter the underlying easement or act in contravention of state law.

50. *Large Orders.* Finally, given concerns raised in the record,¹⁹¹ we clarify that when an application is submitted requesting access to more than the lesser of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in section 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do.¹⁹² We find this interpretation of our rules to be reasonable and consistent with the Commission's goal of promoting broadband deployment. We recognize that implementing the approach set forth in these clarifications, if not properly coordinated between attachers and utilities, could result in inefficiencies,¹⁹³ and we therefore strongly encourage parties to engage in mutually beneficial negotiations with the aim of balancing the challenges inherent in processing large applications and the needs of attachers for speedy deployment.

51. Several parties also proposed that the Commission adopt rules in the Fourth Report and Order that establish maximum timelines for large orders currently subject to section 1.1411(g)(4) of the Commission's rules,¹⁹⁴ which does not specify a make-ready timeline, but instead requires utilities to "negotiate in good faith" on a make-ready timeline.¹⁹⁵ While we recognize the importance of facilitating the deployment of large orders, we decline to adopt make-ready timelines for such orders at this time, finding the record insufficient to establish workable make-ready timelines for large orders especially given that the needs of utilities and attachers may vary greatly depending on the size of the application.¹⁹⁶ We thus instead seek comment on the timeline for large orders in the Further Notice below in order to develop a more fulsome record before we take further action on this issue.¹⁹⁷ While the Commission

¹⁹⁰ Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 5.

¹⁹¹ See Charter Comments at 59; INCOMPAS Dec. 7, 2023 *Ex Parte* at 3-4; NCTA Dec. 5, 2023 *Ex Parte*, Attach. A at 4.

¹⁹² 47 CFR § 1.411(g)(3).

¹⁹³ See USTelecom Dec. 6, 2023 *Ex Parte* at 8.

¹⁹⁴ 47 CFR § 1.411(g)(4).

¹⁹⁵ NCTA Dec. 5, 2023 *Ex Parte* at 4; see also Letter from John Windhausen, Jr., Exec. Dir., Schools, Health & Libraries Broadband (SHLB) Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 5, 2023) (SHLB Dec. 5, 2023 *Ex Parte*); NCTA Dec. 8, 2023 *Ex Parte*, Attach. A at 5-6; Letter from Robert Branson, Pres. & CEO, Multicultural Media and Internet Council, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 6, 2023); Letter from Reginal J. Leichy, Counsel for Consortium for School Networking and the State Educational Technology Directors Association, to Marlene H. Dortch, Secretary, FCC, Docket No. 17-84, at 1 (filed Dec. 7, 2023).

¹⁹⁶ See USTelecom Dec. 6, 2023 *Ex Parte* at 8 (stating that "based on USTelecom members' experience as both pole owners and attachers, a detailed factual record must be developed on the real-world ramifications associated with these issues before the Commission could address any specific proposals"). To reflect the Commission's commitment to continuing to examine additional ways to further broadband deployment, as requested by INCOMPAS, we set defined comment and reply comment dates of February 13 and 28, 2024. See INCOMPAS Dec. 7, 2023 *Ex Parte* at 4.

¹⁹⁷ See USTelecom Dec. 6, 2023 *Ex Parte* at 8; see also INCOMPAS Dec. 7, 2023 *Ex Parte* at 4 (noting that INCOMPAS "intends to recommend specific timelines for large pole orders in its comments in this proceeding").

considers timelines for large orders subject to the requirement in section 1.1411(g)(4), we make clear that a utility's obligation to "negotiate in good faith" regarding the timing of such requests necessarily implies an obligation by the utility to exercise reasonable efforts to accommodate the attachment needs, and utilities may not indefinitely delay or refuse to provide make-ready timelines in cases where section 1.1411(g)(4) applies.¹⁹⁸

V. FURTHER NOTICE OF PROPOSED RULEMAKING

52. 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.¹⁹⁹ 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.²⁰⁰ 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.

53. *Large Orders.* We tentatively conclude that we should adopt a defined make-ready timeline for orders that exceed 3,000 poles or 5 percent of the utility's poles in a state in order to facilitate the processing of pole attachment applications that are submitted in large numbers. We seek comment on this tentative conclusion. 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.²⁰¹ 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.²⁰² 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.²⁰³ 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.²⁰⁴ We tentatively

¹⁹⁸ See NCTA Dec. 5, 2023 *Ex Parte*, Attach. A at 4.

¹⁹⁹ 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).

²⁰⁰ 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").

²⁰¹ 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).

²⁰² 47 CFR § 1.1411(g)(1).

²⁰³ 47 CFR § 1.1411(g)(3).

²⁰⁴ 47 CFR § 1.1411(g)(4). As we clarify in the Declaratory Ruling above, the first 3,000 poles of these large orders are subject to the timeline set forth in section 1.1411(g)(3).

conclude that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state and seek comment on this tentative conclusion.²⁰⁵

54. NCTA asserts that our rules do not at present sufficiently address the needs of attachers with these larger requests in the latter category.²⁰⁶ 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.²⁰⁷ NCTA states that these limitations “create problematic delays and jeopardize operators’ ability to meet broadband build-out commitments.”²⁰⁸ At the same time, USTelecom notes the difficulties presented by these very large orders, noting that “make-ready requests involving more than 3,000 poles require flexibility that make-ready timelines cannot provide, given the many outside factors that impact the time required for make-ready for such large orders, including permitting delays, workforce shortages and staffing issues, and the coordination required among all the attachers to the poles.”²⁰⁹ Given these factors, would 90 additional days over the timeline set forth in section 1.411(e) be sufficient for processing these larger orders? Would some other amount of time be reasonable in all circumstances, or should the Commission create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles? If the Commission were to adopt additional make-ready timeline tiers, what would be an appropriate cut off number of poles for each tier? For instance, should the Commission add an additional number of days for application processing per 3,000 poles? Does the ability to deviate from the timelines specified in section 1.1411²¹⁰ provide utilities with enough flexibility such that imposing a 90 additional day limit would be reasonable?

55. We also 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.”²¹¹ How prevalent are situations of the type described by NCTA? Are the reasons underlying utilities’ imposition of such limitations as laid out by USTelecom valid, and do other reasons exist for these limitations?²¹² Would prohibiting utilities from imposing such limitations

²⁰⁵ See NCTA Dec. 7, 2023 *Ex Parte*, Attach. A at 6.

²⁰⁶ See NCTA Comments at 28; see also INCOMPAS Dec. 7, 2023 *Ex Parte* at 3-4; SHLB Dec. 5, 2023 *Ex Parte* at 2.

²⁰⁷ NCTA Comments at 28.

²⁰⁸ *Id.* at 28.

²⁰⁹ USTelecom Dec. 6, 2023 *Ex Parte* at 8.

²¹⁰ See 47 CFR § 1.1411(h).

²¹¹ *Id.* at 29.

²¹² 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.”).

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.)²¹³ or even, as USTelecom alleges, “ultimately slow—rather than—accelerate deployment”²¹⁴ Specifically, NCTA proposes adding additional time to the existing timelines for these “larger” orders,²¹⁵ for which our rules require that utilities negotiate the timing in good faith.²¹⁶ 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.²¹⁷ 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.”²¹⁸ 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.”²¹⁹ Are these 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?

56. *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.²²⁰ 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.²²¹ 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.²²² NCTA also proposes making self-help available for the estimate process, which is not contemplated under current

²¹³ 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”).

²¹⁴ USTelecom Dec. 6, 2023 *Ex Parte* at 8.

²¹⁵ NCTA Comments at 31; NCTA Dec. 7, 2023 *Ex Parte*, Attach. A at 6.

²¹⁶ 47 CFR § 1.1411(g)(4).

²¹⁷ See, e.g., Edison Electric Institute Reply at 38-40; Coalition of Concerned Utilities Reply at 18; Electric Utilities Reply at 36-37.

²¹⁸ Edison Electric Institute Reply at 38-39; see also Electric Utilities Reply at 36-37; USTelecom Dec. 6, 2023 *Ex Parte* at 8.

²¹⁹ Coalition of Concerned Utilities Reply at 18.

²²⁰ See NCTA Comments at 31-32.

²²¹ *Id.* at 32.

²²² See *id.* at 40.

Commission rules.²²³ We seek comment on NCTA's proposal.²²⁴ 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 rules²²⁵ 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?

57. 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;²²⁶ 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?

58. 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.²²⁷ When conducting self-help or one-touch make-ready work, the attacher must use a utility-approved contractor.²²⁸ For self-help surveys and make-ready work that is complex²²⁹ 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.²³⁰ Attachers can request to add contractors to the utility's list—provided the contractor meets the minimum qualifications in the Commission's rules²³¹—and the utility cannot unreasonably withhold its consent.²³²

²²³ *See id.*

²²⁴ We decline NCTA's request to adopt rules in the Fourth Report and Order regarding self-help and the use of contractors. NCTA Dec. 5, 2023 *Ex Parte* at 4-5. We find that these issues would be better addressed after a more comprehensive record is developed.

²²⁵ 47 CFR § 1.1412(c).

²²⁶ 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.”).

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

²²⁸ 47 CFR § 1.1412(a)-(b).

²²⁹ 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).

²³⁰ 47 CFR § 1.1412(a).

²³¹ *See* 47 CFR § 1.1412(c).

²³² 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.”).

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.²³³ If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work.²³⁴ 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.²³⁵ 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.²³⁶ 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.²³⁷ 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.²³⁸

59. 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 attacher²³⁹—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

60. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²⁴⁰ 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.”²⁴¹ 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 C.

61. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in the Further Notice on small entities. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. Comments must be filed by the

²³³ 47 CFR § 1.1412(b).

²³⁴ *Id.*

²³⁵ 47 CFR §§ 1.1412(b)-(c).

²³⁶ 47 CFR §§ 1.1412(b)-(c).

²³⁷ 47 CFR § 1.1412(b)(2).

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ 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).

²⁴¹ 5 U.S.C. §§ 605(b).

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.

62. *Congressional Review Act.* The Commission will send a copy of this Fourth Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

63. *Paperwork Reduction Act.* This document may contain proposed 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.²⁴²

64. The Further Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.²⁴³ 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 Paperwork Relief Act of 2002,²⁴⁴ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”²⁴⁵

65. *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.

66. *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

²⁴² *See infra* Appx. C at paras. 60-61.

²⁴³ Pub. L. No. 104-13.

²⁴⁴ Pub. L. No. 107-198.

²⁴⁵ 44 U.S.C. § 3506(c)(4).

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.²⁴⁶
- 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.

67. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.²⁴⁷ Accordingly, the Commission will publish the required summary of this Further Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

68. *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).

69. *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

70. 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.

71. 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.

²⁴⁶ 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>.

²⁴⁷ 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.

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

73. 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 will commence on the date that a summary of this Fourth Report and Order is published in the Federal Register, and the period for filing petitions for reconsideration or petitions for judicial review of this Declaratory Ruling will commence upon release of this document.

74. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, 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.

75. 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 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).

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 paragraph (c)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(c) * * *

(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:

* * * * *

4. Add § 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 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. The RBAT also may request that the party seeking RBAT review or any other party or parties to the dispute provide the RBAT with documentation or other information relevant to the dispute. 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
Proposed 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 revising paragraph (g)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(g) For the purposes of compliance with the time periods in this section:

* * *

(4) A utility may add 90 days to the make-ready periods described in paragraph (e) of this section to all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility’s poles in a state.

APPENDIX C

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 adopts rules and policy changes that will make the pole attachment process faster and cheaper, particularly when poles have to be replaced during broadband buildouts. In the last five years, the Commission took significant steps in setting standards for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles,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.

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

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).

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 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

(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

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 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 -

(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.

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

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=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*).

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

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 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

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

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),

(continued....)

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. 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

<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: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&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.*

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.*

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 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

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.

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.*

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 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

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.

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.*

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 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

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.

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).

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 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

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&hidePreview=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&hidePreview=false>.

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.

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 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.

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: EC1700SIZEEMPFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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.

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).

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 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

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.

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.

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 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

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>.

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: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&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>.

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.

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 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

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).

¹³⁴ 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>.

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.

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 758-763 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

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>.

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&hidePreview=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.

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, 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

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.

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.

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 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–

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>.

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: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&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.

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 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

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.

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.

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 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

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

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).

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, 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

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.

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).

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 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

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.

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 (as of 10/1/22, NAICS Code 517810).

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 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

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.*

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).

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 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

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 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>.

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.

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.

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: EC1700SIZEEMPFIEM, NAICS Code 2211, <https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&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.

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 RFA requires an agency to provide “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”²²⁸

64. 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’ request that we expedite the resolution of pole attachment disputes, the delay of which may impose greater harm on small providers.²²⁹ In considering alternatives to the rules, we declined to adopt certain proposals that are burdensome, unnecessary, or would impose significant costs on utilities with little or no benefit to broadband deployment. For example, we agreed 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.²³⁰ 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 because it could be burdensome, unnecessary, or unfeasible in some cases, and would impose significant costs on utilities with little or no benefit to broadband deployment. 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

65. 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

²²⁸ 5 U.S.C. § 604(a)(6).

²²⁹ ACA Connects Comments at 8, 52.

²³⁰ *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).

Congressional Review Act.²³¹ 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.²³²

²³¹ 5 U.S.C. § 801(a)(1)(A).

²³² *See id.* § 604(b).

APPENDIX D

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 the tentative conclusion that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. It also seeks comment on a proposal from NCTA 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."⁴ 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." The *Further Notice* also seeks comment on whether the Commission should create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles. Additionally, the Commission seeks comment on a proposal that a 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.⁵ Finally, the *Further Notice* seeks comment on the impact of contractor availability when attachers seek to use their own contractors for 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.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

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² 5 U.S.C. § 603(a).

³ *Id.*

⁴ NCTA Comments at 28-32.

⁵ *Id.* at 41.

⁶ 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ 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.⁹

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.¹⁰ 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.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹²

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.”¹³ 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.¹⁴ 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.¹⁵

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

⁷ *Id.* § 601(6).

⁸ *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.”

⁹ 15 U.S.C. § 632.

¹⁰ *See* 5 U.S.C. § 601(3)-(6).

¹¹ *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).

¹² *Id.*

¹³ *See* 5 U.S.C. § 601(4).

¹⁴ 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.

¹⁵ *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.

districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2017 Census of Governments¹⁷ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number, there were 36,931 general purpose governments (county,¹⁹ municipal, and town or township²⁰) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts²¹ with enrollment populations of less than 50,000.²² 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.”²³

1. Internet Access Service Providers

8. *Wired Broadband Internet Access Service Providers (Wired ISPs).*²⁴ 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.²⁵ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.²⁶ The SBA small business size standard for this industry

¹⁶ See 5 U.S.C. § 601(5).

¹⁷ 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>.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

²³ 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.

²⁴ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

²⁵ See 47 CFR § 1.7001(a)(1).

²⁶ 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.²⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁸ Of this number, 2,964 firms operated with fewer than 250 employees.²⁹

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.³⁰ 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*,³¹ 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.³² The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³³ 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.³⁴ Of those firms, 1,039 had revenue of less than \$25 million.³⁵ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

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

²⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁸ 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>.

²⁹ *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.

³⁰ 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.

³¹ 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*).

³² See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³³ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

³⁴ 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>.

³⁵ *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.

infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.³⁶ 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.³⁷ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³⁸ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁹

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁴² 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.⁴³ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴⁴ 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 Carriers⁴⁵ is the closest industry with an SBA small business size standard.⁴⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁷

³⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ 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.

⁴⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴¹ 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>.

⁴² *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.

⁴³ 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>.

⁴⁴ *Id.*

⁴⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁷ 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.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁰ 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.⁵¹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁵² 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 Carriers⁵³ is the closest industry with an SBA small business size standard.⁵⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁵⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁷ 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.⁵⁸ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁵⁹ 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.

⁴⁸ *Id.*

⁴⁹ 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>.

⁵⁰ *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.

⁵¹ 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>.

⁵² *Id.*

⁵³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁵ *Id.*

⁵⁶ 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>.

⁵⁷ *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.

⁵⁸ 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>.

⁵⁹ *Id.*

Providers of these services include several types of competitive local exchange service providers.⁶⁰ Wired Telecommunications Carriers⁶¹ 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.⁶² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶³ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁴ 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.⁶⁵ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁶⁶ 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 Carriers⁶⁷ is the closest industry with an SBA small business size standard.⁶⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁷⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁷¹ 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

⁶⁰ 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.

⁶¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶³ 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>.

⁶⁴ *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.

⁶⁵ 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>.

⁶⁶ *Id.*

⁶⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁹ *Id.*

⁷⁰ 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>.

⁷¹ *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.

fewer employees.⁷² 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.⁷³ The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.⁷⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁷⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁶ 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.⁷⁷ Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.⁷⁸ 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 Carriers⁷⁹ is the closest industry with an SBA small business size standard.⁸⁰ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸² Of this number, 2,964 firms operated with fewer than 250 employees.⁸³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were

⁷² 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>.

⁷³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁵ 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>.

⁷⁶ *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.

⁷⁷ 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>.

⁷⁸ *Id.*

⁷⁹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸¹ *Id.*

⁸² 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>.

⁸³ *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.

90 providers that reported they were engaged in the provision of other toll services.⁸⁴ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸⁵ 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.⁸⁶ 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.⁸⁷ 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.⁸⁸ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁹⁰ Of that number, 2,837 firms employed fewer than 250 employees.⁹¹ 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.⁹² Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁹³ 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

⁸⁴ 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>.

⁸⁵ *Id.*

⁸⁶ 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.

⁸⁷ 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>.

⁸⁸ *Id.*

⁸⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁰ 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>.

⁹¹ *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.

⁹² 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>.

⁹³ *Id.*

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.⁹⁴ Wireless Telecommunications Carriers (*except* Satellite)⁹⁵ 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.⁹⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁷ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁸ 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.⁹⁹

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.

24. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.¹⁰⁰ Wireless Telecommunications Carriers (*except* Satellite)¹⁰¹ 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.¹⁰² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this

⁹⁴ See 47 CFR §§ 27.1 – 27.1607.

⁹⁵ 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>.

⁹⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁷ 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>.

⁹⁸ *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.

⁹⁹ 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.

¹⁰⁰ See 47 CFR § 27.902.

¹⁰¹ 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>.

¹⁰² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry for the entire year.¹⁰³ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶ The 1670-1675 MHz service band auction's winning bidder did not claim small business status.¹⁰⁷

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).¹⁰⁸ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.¹⁰⁹ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.¹¹⁰ Of this number, 2,837 firms employed fewer than 250 employees.¹¹¹ Additionally, based

¹⁰³ 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>.

¹⁰⁴ *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.

¹⁰⁵ 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.

¹⁰⁶ See 47 CFR § 27.906(a).

¹⁰⁷ 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).

¹⁰⁸ 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>.

¹⁰⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹⁰ 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>.

¹¹¹ *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.

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.¹¹² Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.¹¹³ 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.¹¹⁴ The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).¹¹⁵ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹¹⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹¹⁷ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁸ 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.¹¹⁹ 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.¹²⁰ Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.¹²¹

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

¹¹² 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>.

¹¹³ *Id.*

¹¹⁴ See 47 CFR § 24.200.

¹¹⁵ 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>.

¹¹⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹⁷ 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>.

¹¹⁸ *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.

¹¹⁹ 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.

¹²⁰ See 47 CFR § 24.720(b).

¹²¹ 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>.

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)¹²² 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.¹²³ 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.¹²⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹²⁵ 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.¹²⁶ Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.¹²⁷ Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.¹²⁸

32. Based on Commission data as of December 2021, there were 3,924 active SMR licenses.¹²⁹ 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

¹²² 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>.

¹²³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹²⁴ 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>.

¹²⁵ *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.

¹²⁶ 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>.

¹²⁷ *Id.*

¹²⁸ 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.

¹²⁹ 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.

services.¹³⁰ Wireless Telecommunications Carriers (*except* Satellite)¹³¹ 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.¹³² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹³³ Of this number, 2,837 firms employed fewer than 250 employees.¹³⁴ 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.¹³⁵ 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.¹³⁶ In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,¹³⁷ twenty-six winning bidders claiming a small business classification won 214 licenses,¹³⁸ and three winning bidders claiming a small business classification won all five auctioned licenses.¹³⁹

35. In frequency bands where licenses were subject to auction, the Commission notes that as

¹³⁰ 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>.

¹³¹ 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>.

¹³² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³³ 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>.

¹³⁴ *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.

¹³⁵ 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.

¹³⁶ See 47 CFR § 27.702(a)(1)-(3).

¹³⁷ 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>.

¹³⁸ 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>.

¹³⁹ 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>.

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.¹⁴⁰ 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.¹⁴¹ Wireless Telecommunications Carriers (*except* Satellite)¹⁴² 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.¹⁴³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁴⁴ Of that number, 2,837 firms employed fewer than 250 employees.¹⁴⁵ Thus, 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.¹⁴⁶ 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.¹⁴⁷ Pursuant to these definitions, three winning bidders claiming very small

¹⁴⁰ See 47 CFR § 27.4.

¹⁴¹ 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.

¹⁴² 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>.

¹⁴³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁴⁴ 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>.

¹⁴⁵ *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.

¹⁴⁶ 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.

¹⁴⁷ See 47 CFR § 27.502(a).

business status won five of the twelve available licenses.¹⁴⁸

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.¹⁴⁹ 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.¹⁵⁰

39. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).¹⁵¹ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁵² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁵³ Of this number, 2,837 firms employed fewer than 250 employees.¹⁵⁴ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

40. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.¹⁵⁵ 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.¹⁵⁶ In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.¹⁵⁷

¹⁴⁸ 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.

¹⁴⁹ 47 CFR § 22.99.

¹⁵⁰ 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>.

¹⁵¹ 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>.

¹⁵² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁵³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁵⁴ *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.

¹⁵⁵ 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.

¹⁵⁶ See 47 CFR § 22.223(b).

¹⁵⁷ 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>.

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).¹⁵⁸ Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.¹⁵⁹ Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)¹⁶⁰ industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.¹⁶¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁶² Of this number, 2,837 firms employed fewer than 250 employees.¹⁶³ Thus 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.¹⁶⁴ 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,¹⁶⁵ private-operational fixed,¹⁶⁶ and broadcast auxiliary radio services.¹⁶⁷ They also include the Upper

¹⁵⁸ See 47 CFR §§ 90.1305, 90.1307.

¹⁵⁹ See *id.* § 90.1309.

¹⁶⁰ 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>.

¹⁶¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶² 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>.

¹⁶³ *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.

¹⁶⁴ 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.

¹⁶⁵ See 47 CFR Part 101, Subparts C and I.

¹⁶⁶ See *id.* Subparts C and H.

¹⁶⁷ 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

(continued....)

Microwave Flexible Use Service (UMFUS),¹⁶⁸ Millimeter Wave Service (70/80/90 GHz),¹⁶⁹ Local Multipoint Distribution Service (LMDS),¹⁷⁰ the Digital Electronic Message Service (DEMS),¹⁷¹ 24 GHz Service,¹⁷² Multiple Address Systems (MAS),¹⁷³ and Multichannel Video Distribution and Data Service (MVDDS),¹⁷⁴ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁷⁵ Wireless Telecommunications Carriers (*except* Satellite)¹⁷⁶ 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.¹⁷⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁷⁸ Of this number, 2,837 firms employed fewer than 250 employees.¹⁷⁹ 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.¹⁸⁰

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

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.

¹⁶⁸ See 47 CFR Part 30.

¹⁶⁹ See 47 CFR Part 101, Subpart Q.

¹⁷⁰ See *id.* Subpart L.

¹⁷¹ See *id.* Subpart G.

¹⁷² See *id.*

¹⁷³ See *id.* Subpart O.

¹⁷⁴ See *id.* Subpart P.

¹⁷⁵ See 47 CFR §§ 101.533, 101.1017.

¹⁷⁶ 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>.

¹⁷⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁷⁸ 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>.

¹⁷⁹ *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.

¹⁸⁰ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

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,”¹⁸¹ 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)).¹⁸² 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.¹⁸³

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 Carriers (*except* Satellite).¹⁸⁴ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁸⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁸⁶ Of this number, 2,837 firms employed fewer than 250 employees.¹⁸⁷ 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.¹⁸⁸ 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

¹⁸¹ The use of the term “wireless cable” does not imply that it constitutes cable television for statutory or regulatory purposes.

¹⁸² 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).

¹⁸³ 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.

¹⁸⁴ 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>.

¹⁸⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁸⁶ 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>.

¹⁸⁷ *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.

¹⁸⁸ 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.

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.¹⁸⁹ 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.¹⁹⁰ One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.¹⁹¹

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 (5) years.¹⁹² 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."¹⁹³ 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.¹⁹⁴ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹⁹⁵ Of this number, 242 firms had revenue of less than \$25 million.¹⁹⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring

¹⁸⁹ See 47 CFR § 27.1218(a).

¹⁹⁰ 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>.

¹⁹¹ 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.

¹⁹² See 47 CFR § 27.1219(a).

¹⁹³ See U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹⁹⁴ See 13 CFR § 121.201, NAICS Code 517410.

¹⁹⁵ 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>.

¹⁹⁶ *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.¹⁹⁷ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰ 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.²⁰¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.²⁰² U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.²⁰³ Of those firms, 1,039 had revenue of less than \$25 million.²⁰⁴ 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.²⁰⁵ 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.²⁰⁶ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for

¹⁹⁷ 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>.

¹⁹⁸ *Id.*

¹⁹⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

²⁰³ 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>.

²⁰⁴ *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.

²⁰⁵ 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>.

²⁰⁶ *Id.*

transmission to viewers.²⁰⁷ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.²⁰⁸ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.²⁰⁹ 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.²¹⁰ Based on this data, the Commission estimates that a majority of firms in this industry are small.

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.²¹¹ Based on industry data, there are about 420 cable companies in the U.S.²¹² Of these, only seven have more than 400,000 subscribers.²¹³ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²¹⁴ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.²¹⁵ Of these, about 639 have more than 15,000 subscribers.²¹⁶ 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."²¹⁷ 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.²¹⁸ Based on industry data, only six cable system operators have

²⁰⁷ *Id.*

²⁰⁸ See 13 CFR § 121.201, NAICS Code 515210.

²⁰⁹ 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).

²¹⁰ *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.

²¹¹ 47 CFR § 76.901(d).

²¹² S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²¹³ 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).

²¹⁴ 47 CFR § 76.901(c).

²¹⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²¹⁶ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

²¹⁷ 47 U.S.C. § 543(m)(2).

²¹⁸ *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

(continued....)

more than 498,000 subscribers.²¹⁹ 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.²²⁰ 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, transmitting, and/or distributing electric power.”²²¹ 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.²²² 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.²²³

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.²²⁴ 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.²²⁵ Of this number, 1,552 firms had less than 250 employees.²²⁶ 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 the *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. Some of these

publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice.. See 47 CFR § 76.901(e)(1).

²¹⁹ 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).

²²⁰ 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).

²²¹ 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>.

²²² See *id.*

²²³ *Id.*

²²⁴ See 13 CFR § 121.201, NAICS Codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122.

²²⁵ 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 2211, <https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

²²⁶ *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.

proposals may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities. Specifically, we seek comment on a proposal that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. We also seek comment on whether NCTA's proposal to add additional time to the existing application timelines for larger orders and prohibit utilities from limiting the size of an application or the number of poles included in an application, to avoid these timelines, will facilitate the pole attachment process for such orders. Additionally, we seek comment on whether the Commission should create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles. We also consider whether to require that a utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period, making self-help available for the estimate process, which is not contemplated under current Commission rules. We also seek comment on whether attachers face any obstacles from utilities when seeking to invoke self-help options, which allows 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. This information will help to inform whether potential rule changes are necessary. At this time, the Commission cannot quantify the cost of compliance for small entities with the approaches discussed in the *Further Notice*, or whether any compliance requirements will require small entities to hire professionals; however, the Commission requests information on the costs and benefits of the approaches discussed, such as the availability of qualified contractors and other workforce constraints that may impact the speed and cost of deployment for utilities and attachers.

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.”²²⁷

61. The *Further Notice* 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, including a tentative conclusion that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. The Commission's objective in requesting this information is to determine 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. Among the alternatives considered in the *Further Notice* is whether the Commission should allow additional time for the existing larger order timelines where our current rules require that utilities negotiate timing in good faith. We seek comment on whether requiring 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 would allow the attacher to elect self-help for the survey sooner. In the alternative, we inquire whether such expansion of time is reasonable for utilities if numerous permits are submitted around the same time or contractor workload is heavy. We also consider whether attachers are choosing to find their own contractors for one-touch make-ready and for self-help when utilities fail to meet the Commission's deadlines. Similarly, we request information on whether or not utilities designate an available contractor if it properly exercises its discretion to disqualify one chosen by an attacher. We also seek comment on how the Commission can help resolve situations where labor shortages may hinder utilities from meeting deadlines to respond to attachers. The Commission also seeks comment on and will consider 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

²²⁷ 5 U.S.C. § 603(c)(1)–(4).

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.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *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 (December 13, 2023)

In the Bipartisan Infrastructure Law, Congress made a historic \$65 billion commitment to ensure that everyone, everywhere in the United States has access to broadband. Reaching 100 percent of us with high-speed service takes work and the details matter. Networks need to be designed. Rights of way need to be negotiated. And fiber optic cable needs to be attached to utility poles, which are often owned by local electric companies or telephone companies.

Under Section 224 of the Communications Act, the Federal Communications Commission has authority to oversee the rates, terms, and conditions of these pole attachments. Though under the law states may elect to take on this task themselves, more than half of the states have chosen to rely on the system the Commission has established under Section 224. Today, we update that system in order to ensure that the investment Congress made in the Bipartisan Infrastructure Law is fully modern and meets this moment.

First, we are creating a new process to resolve pole attachment disputes fast and effectively. If a company trying to build new broadband service gets into a disagreement with a pole owner, it can bog down deployment. So we are establishing a new intra-agency rapid response team—the Rapid Broadband Assessment Team—to speed dispute resolution.

Second, we are increasing transparency by expanding access to pole inspection reports. This means pole owners will have to share reports with new attachers deploying broadband so they have information about where poles have been identified for replacement. Those building broadband benefit from having these facts upfront and early.

Third, we update our policies to make clear when an attacher does not have to pay the full cost to replace an existing pole. Again, clarifying this can help with new deployment.

Finally, we ask for input on additional reforms to help speed processing applications for big projects, like the kind we expect to see with the funding from the Bipartisan Infrastructure Law.

Pole attachments do not always receive the attention they deserve. They are not the most glamorous part of broadband deployment. But they are an essential part of our effort to ensure that high-speed service reaches everyone, everywhere across the country. Our action today puts them in the spotlight and readies them for the real work that follows the Bipartisan Infrastructure Law to help close the digital divide.

I want to thank the staff who have worked on this effort, including Michele Berlove, Adam Copeland, Ty Covey, Trent Harkrader, Jodie May, Kiara Ortiz, and Michael Ray from the Wireline Competition Bureau; Lisa Boehley, Loyaan Egal, Pamela Gallant, Lisa Griffin, Rosemary McEnery, Lisa Saks, and Adam Suppes from the Enforcement Bureau; Richard Mallen, Anjali Singh, Derek Yeo, and Chin Yoo from the Office of General Counsel; Eric Ralph from the Office of Economics and Analytics; and Jocyelyn James from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *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 Rulemaking

Pole attachments are essential. For broadband to be deployed nationwide to all Americans, Internet Service Providers (ISPs) need access to this vital infrastructure, especially utility poles, that enables fast and cost-efficient access to consumers. We have seen significant investment and deployment nationwide by ISPs, to the tune of billions of dollars. And of course, Congress created the Broadband Equity, Access, and Deployment (BEAD) program and appropriated over \$42 billion to expand high-speed Internet access nationwide. With the influx of so much broadband funding, it is imperative that we ensure that attachers can quickly get the attachments they need so that consumers have access to the broadband they want. So, on top of our efforts in the past to streamline the pole attachment process by adopting shot clocks and one touch-make ready, today we take additional steps that balance the needs of both pole attachers and pole owners, with consumers in mind.

Specifically, I strongly support the creation of the Rapid Broadband Assessment Team that should cut down disputes that threaten to impede broadband deployment. I also support clarification on the definition of a “red tagged” pole to minimize disputes going forward. Further, I’m glad that we take the opportunity in the Declaratory Ruling to clarify that for large attachment applications featuring more than 3,000 poles or 5% of a utility’s poles in a state, the first 3,000 designated poles are subject to our 45-day make-ready timeline. These are smart steps that will make a big difference.

But there are two topics that I want to highlight that are crucial if BEAD and the other broadband funding programs are to succeed. First, I support the Order’s amendments to our one touch-make ready rules, requiring utilities to provide attachers with information they have prepared about the poles covered in an attachment application.

I want to emphasize that this does not mean that additional information that has traditionally been shared to facilitate pole attachment agreements should no longer be shared. This is a floor, not a ceiling, and all parties should engage in further information sharing to facilitate the expeditious deployment of broadband. I’ll be watching closely.

Second, we seek further comment on two very important issues that will come into play as BEAD funding is deployed – large attachment applications and the self-help rules. I hope the Commission can move quickly on both of the topics in the Further Notice to eliminate as many outstanding questions as possible before BEAD funding flows. I look forward to engaging further to make sure our rules are appropriately balanced for all interested parties.

I thank the Chairwoman for her leadership and FCC staff for their continued efforts on pole attachments. I approve.

**STATEMENT OF
COMMISSIONER ANNA M. GOMEZ**

Re: *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 (December 13, 2023).

Utility poles are the unsung heroes of broadband deployment. In addition to bringing communities electricity, cable, and telephone service, these often-overlooked poles play a critical role in enabling efficient and widespread access to high-speed internet access service. Pole attachments are especially critical in rural areas—areas that are typically the hardest to serve and the last to be connected. Aerial deployment is often considered the fastest way to deploy broadband Internet access service and the most cost-effective. And while the idea of a “pole” may sound simple—I can assure you that it is anything but that.

We’ve just seen the largest investment in broadband in our nation’s history and to ensure that this funding connects everyone in America to high-speed Internet, we are going to need a lot of partners, but in particular utilities companies. That is because these utility poles are often owned and controlled by the local electric or telephone companies. We must ensure that the infrastructure is in place and our rules are streamlined so that broadband can be deployed as quickly and as cost-effectively as possible.

This item brings us one step closer to meeting the moment and ensuring that everyone, everywhere in America has access to high-speed broadband Internet access service. Today’s action takes important steps to increase transparency and provide clarity to pole owners and attachers, so that we are decreasing deployment times and reducing costs. Balancing the needs of both pole attachers and pole owners is crucial for a thriving and competitive telecommunications landscape, and this item strikes the right balance.

Thank you to the Chairwoman for her leadership on this item, and ensuring that we have policies that strike a fair balance by recognizing the legitimate interests of both pole owners and attachers. Thank you as well to the Wireline Competition Bureau and the Enforcement Bureau for their work on this item.