



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17-84; FCC 25-38; FR ID 308629]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission adopted a Fourth Further Notice of Proposed Rulemaking (FNPRM or Further Notice) addressing deployment of broadband facilities on utility poles. It seeks comment on requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work. It also seeks comment on whether the Commission should require attachers to make payment on an estimate to a utility within a specific period of time after acceptance. It additionally seeks comment on limiting the amount that final make-ready costs can exceed the utility's estimate without receiving prior approval from the attacher. It further seeks comment on whether to expand the availability of the one-touch, make-ready (OTMR) process to include complex survey and make-ready work. Moreover, it seeks comment establishing a deadline to on-board approved contractors. It also seeks comment on whether the Commission should define the term "pole" for purposes of Section 224 of the Communications Act of 1934, as amended, and whether the term should be construed to include light poles. Further, it seeks comment on legal authority to adopt each of the proposals as well as any other germane policy points or facts, and on how the costs, benefits, or burdens of any rules the Commission adopts might impact businesses of various sizes.

DATES: Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], and reply comments are due on or before

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Pursuant to §§ 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 in this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Interested parties may file comments or reply comments, identified by WC Docket No. 17-84 by any of the following methods:

- *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.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

People with Disabilities: 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), 202-418-0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For further information about this proceeding, please contact Michele Berlove, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-1477, or michele.berlove@fcc.gov, or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-0357 or michael.ray@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Further Notice of Proposed Rulemaking (FNPRM or Further Notice) in WC Docket No. 17-84, FCC 25-38, adopted on July 24, 2025, and released on July 25, 2025. The full text of this document is available for public inspection at the following internet address:

<https://www.fcc.gov/document/fcc-aims-remove-barriers-broadband-deployment-and-investment-0>.

Providing Accountability Through Transparency Act. The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this FNPRM is available at <https://www.fcc.gov/proposed-rulemakings>. To request materials in accessible formats for people with disabilities (e.g. Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

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.

Regulatory Flexibility Act. The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities in the Further Notice of Proposed Rulemaking. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

Paperwork Reduction Act. This document may also contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on any information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see

44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. INTRODUCTION

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

2. The Commission has taken significant steps in recent years to expedite the pole attachment process, but there is more work to be done. 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 and, in response to a Petition for Declaratory Ruling filed by CTIA, seek comment on whether light poles fall within the purview of Section 224(f) of the Communications Act of 1934, as amended (the Act).

II. BACKGROUND

3. Section 224(f) of the Act requires that utilities provide cable television systems and telecommunications carriers with nondiscriminatory access to their poles. (For purposes of this statutory provision, “utility” is defined as “any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts,

conduits, or rights-of-way used, in whole or in part, for any wire communications.” Railroads, cooperatives, and federally- and state-owned entities are expressly excluded from this definition. The term “pole attachment” is defined as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”) Section 224(b)(1) of the Act requires the Commission to set the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable. (Note that Section 224(c) of the Act exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves (so-called “reverse preemption”). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions.) The Commission has rules intended to ensure nondiscriminatory pole access and just and reasonable rates, along with a robust complaint process to ensure that our rules are enforced.

4. *Pole Attachment Process.* Attaching equipment to utility poles is a multi-stage process. In the first stage, the utility reviews the pole attachment application submitted by the communications attacher for completeness. In the second stage, the utility must determine whether to grant the complete application (review on the merits) and undertake a survey of the poles for which access has been requested. In the third stage, the utility must prepare for the attacher an estimate of the cost of preparing the affected poles for the new attachments. In the fourth stage, utilities (or the existing attachers, if they want to move their own existing equipment) perform the work to make the affected poles ready for the new attachments (also known as “make-ready” work) and then the new attachers deploy their equipment on the poles. The make-ready stage is the most time-intensive stage in the pole attachment process. (Make-ready is defined as “the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.” There are several different kinds of make-ready. Complex make-ready refers to “transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility

damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.” Simple make-ready is “where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.” There also is make-ready above the communications space on a pole, typically involving work either in the electric space or at the pole-top.)

5. *Existing Timelines.* The Commission’s rules set forth deadlines for each stage in the pole attachment process. A utility has up to 10 business days after receiving a new attachment application to determine whether it is complete. (If the utility timely notifies the new attacher that its application is not complete, it must specify all reasons for finding it incomplete, and any resubmitted application shall be deemed complete within 5 business days after its resubmission, unless the utility notifies the attacher of how the resubmitted application is insufficient. The new attacher may follow the resubmission procedure as many times as it chooses so long as it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the 5-day deadline shall apply to the utility’s review.) Upon receipt of a complete application, (A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles) the utility has 45 days in which to make a decision on the application and complete any surveys to determine whether and where attachment is feasible and what make-ready is required. The utility then must provide an estimate of all make-ready charges within 14 days of its response granting access or, where the new attacher has performed the survey, within 14 days of receipt of such survey. The new

attacher has 14 days or until withdrawal of the estimate by the utility, whichever is longer, to accept the estimate and make payment. Once the utility receives payment of the estimate, it then must notify existing attachers on the pole of the new attachment. The existing attachers then must move their equipment to make room for the new attachment within 30 days of receiving notice from the utility for attachments in the communications space or 90 days for attachments above the communications space. (Different portions of the vertical pole serve different functions. The bottom of the pole generally is unusable for most types of attachments. Above that, the lower usable space on a pole—the “communications space”—houses low-voltage communications equipment, including fiber, coaxial cable, copper wiring, and small wireless antennas. The topmost portion of the pole—the “electric space”—houses high-voltage electrical equipment. Work in the electric space generally is considered more dangerous than work in the communications space. Historically, communications attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space to attach pole-top small wireless equipment.) A utility must complete its make-ready work in the same time periods, except it may take up to 15 additional days to complete make-ready above the communications space. These deadlines apply to all pole attachment requests up to the lesser of 300 poles or 0.5 percent of the utility’s poles in a state (Regular Orders). For pole attachment requests larger than a Regular Order and up to the lesser of 3,000 poles or 5 percent of a utility’s poles in a state, a utility may add 15 days to the survey period and 45 days to the make-ready periods. For pole attachment requests larger than the lesser of 3,000 poles or 5 percent of a utility’s poles in a state, our rules currently provide that the utility and the attacher must negotiate in good faith the timing of the pole attachment process. (Note that a utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.) Utilities may deviate from the pole attachment timelines in our rules—for the make-ready phase only—for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the required timeline.

(Utilities may deviate from any of the pole attachment timelines in our rules before offering the estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment. In addition, existing attachers may deviate from the timelines specified in our rules during the performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the timelines.)

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

7. *One-Touch-Make-Ready.* In 2018, the Commission adopted a new framework that allows attachers to control the surveys, notices, and make-ready work necessary to attach their equipment to utility poles in certain circumstances. In what is known as one-touch, make-ready (OTMR), for an attachment involving simple make-ready, a new attacher may elect to perform the work to attach its wireline equipment to the communications space of a pole. (“Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.”) This framework includes safeguards to promote coordination among parties and ensures that new

attachers perform the work safely and reliably. As the Commission stated at the time, using OTMR will save new attachers “considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments.”

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

the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do.”)

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

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

III. FURTHER NOTICE OF PROPOSED RULEMAKING

11. We recognize the complexities attendant to the pole attachment process, with each side of the equation facing their own particular difficulties and concerns. Utilities and attachers have both proposed additional actions the Commission might take to ameliorate those concerns and thus make the process more efficient. We seek comment on certain of these proposals to determine whether they might help further the Commission’s goal of expediting broadband deployment by reducing barriers to infrastructure investment. To the extent not already flagged below, we seek comment on our legal authority to adopt each of these proposals as well as any other germane policy points or facts. We also seek comment on how the costs, benefits, or burdens of any rules we adopt might impact businesses of various sizes.

A. Deployment within 120 days of the completion of make-ready work

12. We seek comment on requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work. Utilities assert that attachers do not promptly begin deployment after make-ready is complete and, in some instances, fail to deploy at all. We seek comment on the frequency with which attachers fail to deploy in a timely manner or not at all after make-ready is complete and why this occurs. (We note that the Electric Utilities provide two concrete examples of attachers delaying deployment.) Utilities state that a failure of attachers to deploy in a timely manner (or at all) is inefficient because it both unnecessarily strains utilities that must process applications and denies space to other attachers whose applications were filed after those of the attacher at issue. The Coalition for Concerned Utilities asserts that requiring attachers to deploy in a timely manner will provide an incentive for them to more carefully plan their deployments further in advance with utilities. Would a rule requiring attachers to deploy equipment by no later than 120 days after completion of make-ready work alleviate this problem? Or do commenters agree with USTelecom that imposing a fixed timeline for deployment would instead “increase disputes and eliminate the coordination and flexibility that is essential to deployment”? If we adopt a fixed timeline for deployment, is 120 days reasonable, or should attachers be given more or less time? Should attachers be required to begin deployment by the end of any timeframe that we adopt or, as utilities argue, complete deployment by that time?

13. We seek comment on the potential repercussions for an attacher that fails to deploy equipment within 120 days after the completion of make-ready work. Would requiring these attachers to restart the pole attachment process negatively impact broadband deployment such that any benefit would be outweighed by the cost? Should we tie any potential repercussion for attachers to whether a utility completed the prior phases of the pole attachment process in a timely manner? If a utility fully complied with the Commission’s timelines, does the utility incur any costs from an attacher’s late deployment or failure to deploy? Alternatively, rather

than the Commission codifying rules on these issues, should any deployment timeframes and noncompliance fees be dealt with through the Commission's complaint process, the Rapid Broadband Assessment Team, other enforcement mechanisms, or by the parties in their pole attachment agreement? Should there be any Commission rules, policies, or guidance governing the terms of such provisions in a pole attachment agreement?

B. Deadline to Make Payment

14. We seek comment on whether we should require attachers to make payment on an estimate to a utility within a specific period of time after the attacher's acceptance of the estimate. Utilities suggest that attachers should be required "to pay all estimated make-ready costs, in full, within 30 days of the date on which the estimate is accepted by the attacher. If an attacher fails to make any payment within the time frame specified in the rule, the applicable make-ready timeline should be deemed waived." We seek comment on this request. Is such action necessary and, if so, why? Is 30 days reasonable, or should we specify a different time interval?

15. Under the Commission's rules, an attacher currently may accept and pay a valid estimate any time after receipt, unless the utility withdraws the estimate before acceptance. (Note, however, that a utility must leave the estimate open at least 14 days after presenting it to the attacher.) The timelines for make-ready, however, do not begin to run until after the attacher makes payment. Therefore, the pole access timeline is effectively paused until the attacher makes payment. Utilities state that this leads to deployment delays that create significant uncertainty and unpredictability that make it difficult for them to determine how to allocate their resources effectively. Utilities further explain that attachers' current payment practices compound this difficulty, as attachers often "make a single, lump-sum payment for the total of all estimated make-ready costs for multiple applications submitted weeks or months apart." This "floods the pole owner's make-ready queue" and requires the utility "to determine which specific make-ready projects the lump-sum payments should be allocated to before work begins." How

common is it for attachers to delay payment after accepting an estimate? In those instances, why are attachers delaying payment to utilities? Will imposing a deadline to make payment incentivize broadband deployment and allow utilities to more efficiently allocate their resources?

16. NCTA and Altice ask that we prohibit utilities from requiring full or partial payment upon an attacher's acceptance, and instead implement a payment schedule based on make-ready work progress, something the Commission explicitly declined to do in 2011. They argue that prohibiting prepayment will better incentivize utilities to meet timelines for make-ready work, claiming that utilities frequently fail to do so. Utilities disagree, explaining that they will instead be less incentivized to complete work quickly if they can only recoup costs later and that prepayment is the only way they can be certain that they will recover make-ready costs. Should we prohibit utilities from requiring full or partial up-front payment? Alternatively, should we allow utilities to require that attachers pay a portion of make-ready costs up-front and make further payments based upon make-ready work progress? If so, what percentage of the estimate should be paid up-front and as the work progresses? For example, NCTA cites to Utah's approach, which requires attachers to pay 50% up-front, 25% after half the work is done, and then the remaining 25% upon completion, but allows attachers to elect to make full up-front payment. Are there other examples of states limiting prepayment or basing payment on work progress that we should consider? If we were to require a percentage of the make-ready costs to be paid as work progresses, what specific metrics should be used to define that progression? For instance, if the Commission adopted a 50/25/25 payment schedule for make-ready costs, should the determination of when the utility has completed half of the make-ready work be based upon the number of poles for which make-ready is completed by application? If we allow for partial upfront payment, should we require a commitment from utilities to complete the work within a specific timeframe? How should utilities demonstrate this commitment? Would prohibiting utilities from requiring partial or full prepayment violate Section 224 of the Act by "precluding utilit[ies from] full recovery of costs that [they] incur[] to provide pole access?" While utilities

also observe that the Commission previously declined to adopt any form of payment schedule for make-ready work in the *2011 Report and Order*, NCTA asserts that the subsequent record supports its proposal. Do commenters agree with NCTA? Why or why not? Have circumstances changed since 2011 such that the Commission's concerns at that time either no longer exist or are outweighed by other factors? Alternatively, rather than the Commission codifying rules on these issues, should establishing payment deadlines and schedules similarly be left to the parties in their pole attachment agreement? If that is the better option, should there be any Commission rules, policies, or guidance governing the terms of such provisions in a pole attachment agreement?

C. Imposing a Cost Ceiling

17. We seek comment on limiting the amount that final make-ready costs can exceed the utility's estimate without requiring the utility to have obtained prior approval from the attacher. Attachers had previously reported instances where the costs in final invoices for make-ready work significantly exceeded those in accepted estimates, often attributing this discrepancy to delays in utilities completing the various pole attachment phases. While the Commission subsequently required detailed make-ready cost estimates and post-make-ready invoices, the record reflects continued attacher frustration with utility delay and unexpectedly high final make-ready costs. Some states that regulate pole attachments themselves have imposed a ceiling, or upper limit, on the range of costs that a utility can incur while completing make-ready work and bill to the attacher. For example, New York requires that "[m]ake-ready estimates shall be binding within a certain range, specified by the parties, and then be trued up to actual costs within the range." And Utah provides that "if [an attacher] accepts the make-ready estimate and make-ready construction time line, the work must be done on schedule and for the estimated make-ready amount, or less, and the [attacher] will be billed for actual charges up to the bid amount."

18. In practice, we believe that imposing any cost ceiling would require a utility to gain an attacher's approval before the utility can incur make-ready costs beyond those contemplated in the estimate. Do commenters believe that a cost ceiling would incentivize utilities to meet the Commission's pole attachment timelines to avoid price increases that could lead to significantly higher costs than had been estimated? Should the cost ceiling differ in any way for an attacher that has exercised the self-help remedy we adopt today for the estimate phase of the pole attachment process? What cost ceiling would best motivate utilities and attachers to timely deploy broadband? If the cost ceiling is a range, should it be a percentage of a make-ready estimate, or would a dollar amount added on top of all estimates be more appropriate? What percentage or dollar amount do commenters believe is reasonable? Like Utah, should we prohibit utilities from billing attachers for any true-up costs without prior attacher approval rather than specifying a cost ceiling? Have any other reverse-preemption states adopted different cost-ceiling approaches that we should consider? Should a cost ceiling instead be a negotiable term of the make-ready estimate, similar to New York's approach? Do pole attachment agreements already include such cost ceilings? Would such cost ceilings best be left to private agreement?

19. We seek comment on our tentative conclusion that adopting a cost ceiling will prevent some disputes over unexpectedly high final make-ready costs by increasing transparency between attachers and utilities during the make-ready process. Do commenters agree? Does the cost ceiling's impact on disputes depend on its size? To the extent parties are already free to negotiate a cost ceiling, are disputes regarding final invoices amenable to resolution through the Rapid Broadband Assessment Team or the Commission's complaint process? If we prohibit utilities from billing true-up costs without prior attacher approval, should we combine that with a requirement that attachers remit full or partial up-front payment for make-ready work? If we adopt a cost ceiling, do we need to account for any conditions or provide certain guardrails for attachers or utilities? If so, what would such guardrails entail? Is there other Commission action

regarding make-ready estimates or final costs that would increase transparency between utilities and attachers, encourage compliance with the Commission's pole attachment timelines, or promote faster broadband deployment? Are there concerns with imposing a cost ceiling at the federal level? For example, reverse-preemption states have authority over their utilities to require them to recoup any excess costs, presumably through regulation of electric rates. Does the Commission's lack of similar authority over utilities in Commission-regulated states counsel against adopting cost ceilings?

D. Availability of OTMR for Complex Work

20. We seek comment on whether to expand the availability of the OTMR process to include complex survey and make-ready work. (Electric Utilities proposed that the Commission establish an "enhanced" OTMR rule that would require new attachers to perform all required make-ready within the communications space, whether simple or complex. Attachers strongly oppose this proposal because they claim it: (1) is counter to the purpose of OTMR; (2) would eliminate their investment in current practices and procedure while requiring further resources to adapt to the proposal; (3) would revert control of the survey process; (4) would prevent performance of make-ready in one touch for simple make-ready; and (5) would force existing attachers to allow competitors to do work that could reasonably cause a service outage or facility damage.) Under the Commission's current rules, an attacher has the option to elect the OTMR process for attachments involving simple make-ready, an election the attacher makes in its application. When an attacher avails itself of this option, it achieves certain efficiencies by not having to rely on the utility to complete each phase of the pole attachment process within the prescribed timelines. The record suggests that very few attachers have elected to use OTMR since it was created in 2018. According to utility commenters, one of the impediments is that it is not available for complex work. We seek comment on whether attachers would be more likely to elect OTMR if it were available for complex work. Are there other obstacles to the use of OTMR that would prevent its use even if it were available for complex work? For example,

what, if any, role does attacher reticence to touch third-party equipment play in decisions to not make use of OTMR? If we were to make OTMR available for complex work, would we need additional requirements for contractors to safely perform complex work in the communications space, such as any qualification requirements necessary for contractors to do work on wireless equipment in the communications space? Would any additional safeguards be necessary or appropriate for complex OTMR?

E. Deadline for On-Boarding Approved Contractors

21. In Section III.D of today's Report and Order, we improve the self-help remedy by requiring utilities to respond to requests to add additional qualified contractors to a utility's existing approved contractor list within 30 days of receiving the request, while recognizing that utilities may need to take additional steps to on-board the contractors for work on the utility's poles. We understand that utilities must ensure that the individuals working on their poles are properly trained, have access to their internal systems, and do not present a safety or security risk. Some utilities suggest, however, that the process to on-board a newly approved contractor can take three months to a year or more. That is little help to an attacher that has invoked its right to self-help under our rules because a utility has missed survey or make-ready deadlines, finds that none of the contractors on the utility's approved list are available, and needs to request the addition of qualified contractors to the list in order to get the work done. In such a circumstance, an excessively long on-boarding process could effectively thwart the goals of the self-help remedy. We, therefore, seek comment on how much time it actually takes for a utility to responsibly on-board a new contractor and whether we should modify Section 1.1412 of the Commission's rules to set a deadline for utilities to complete the on-boarding process. (We, thus, decline EEI's request to remove this subject from this Further Notice.)

22. The Electric Utilities describe the processes used by two utilities to on-board newly approved contractors. (The entities represented in the comments filed by the Electric Utilities include Southern Company, Oncor Electric Delivery Company LLC, Entergy

Corporation, Duke Energy Corporation, American Electric Power Service Corporation, and Ameren Services Company.) At a high level, both processes involve three steps. The first is to negotiate and execute an agreement with the contractor, which the Electric Utilities state can take between three and six months depending on the utility. The second step is to on-board the newly approved contractor into the utility's internal systems, including its pole attachment-related software systems. This step can involve background checks, credential checks, drug-screening, and can take one to four months depending on the utility. The third step is to train the contractor's employees to use the utility's software and to perform work on the utility's poles. The Electric Utilities indicate that the time necessary to complete this step depends on the utility and the role that the contractor will perform. For instance, AEP may only need one to two weeks to train a survey crew to use AEP's survey tools, but training engineering employees may take between two and six months. Alabama Power, on the other hand, only needs one to two weeks to train contractor engineers before on-boarding is technically complete, but that contemplates an additional six to 12 months of on-the-job training.

23. Do other commenters agree that these are generally the three steps that need to be completed to on-board a contractor? Are there other on-boarding steps not mentioned above? (Dominion/Xcel describe a four step "vetting and approval" process: (1) "Data Review" that takes four weeks and looks at seven categories of safety data (including, but not limited to, OSHA 300 logs, fatalities, safety programs, and citations) and four categories of environmental data (including policy, performance, and mitigation plan); (2) "Field Evaluation" that takes three weeks; (3) "Formal Evaluation/All Metrics" that takes two weeks and looks at "[c]ompany data (employees, customers, references)," "Work experience (types, voltages, related experience)," "Crew availability (relevant experience, location)," and equipment; and (4) "Orientation and Training" that takes two weeks.) Are the steps the same for on-boarding contractors that do survey and make-ready work? Do commenters agree that the intervals of time mentioned by the Electric Utilities reflect the amount of time actually needed to complete each step? Could the

steps be completed in a shorter amount of time? For instance, when utilities execute an agreement with newly approved contractors, do they typically use form agreements that require little modification from contractor-to-contractor, and thus could be executed in a few weeks versus the suggested one to four months? If it really takes months to negotiate and execute agreements with newly approved contractors, why is that the case? As a threshold matter, is it correct that the utility is the entity responsible for executing an agreement with a contractor and on-boarding the contractor when the contractor is proposed by an attacher to perform self-help work? Can or does an attacher execute an agreement with a proposed contractor to perform work on a utility's poles and on-board that contractor to perform the work without the utility's involvement? Stated differently, is it necessary for a utility to also enter into an agreement with the proposed contractor to ensure it retains the control necessary to ensure that work performed on its poles does not create safety and reliability hazards? If only the attacher enters into an agreement with the proposed contractor, through what specific means could the attacher ensure that the contractor complies with the utility's safety standards and technical specifications, and do they have the experience necessary to do so for work performed above the communications space?

24. We assume that if a contractor is able to make the representations required by Section 1.1412(c) (e.g., it knows how to read and follow licensed-engineered pole designs for make-ready), it already has skilled professional staff, and the training that takes place during the on-boarding process is to ensure that the contractor's employees can use utility-specific software systems and execute utility-specific construction standards, protocols, and policies. Is that correct? If so, could that training be completed in a matter of weeks versus months? In the case of larger contractors that work with a number of utilities, would some employees already be familiar with a particular utility's systems and requirements or have a level of familiarity that could expedite the training process? For instance, NCTA points to mutual aid agreements in which utilities send crews to other parts of the country where there are power outages due to

natural disasters to help restore power as examples of when contractors are able to work on utility poles without extensive on-boarding processes. While NCTA “recognizes mutual aid agreements exist for emergency circumstances” and does not request “the same process a utility may invoke in an emergency,” do such agreements indicate that it is possible for large contractors with experienced staff to be on-boarded faster than utilities suggest? If not, why not? Are there significant variations between utility software systems, standards, and policies that require months to address, or are the variations minor such that contractors should be able to use them with minimal training? Could any of the steps described by utilities be expedited by having them run on parallel tracks? Are there steps in the on-boarding process that are or could be expedited by the contractors themselves (e.g., any internal vetting required for individual contractor employees)? On average, what is the actual overall time needed to complete all steps to on-board a newly approved contractor?

25. In seeking comment on these topics, our goal is to understand the amount of time actually needed to complete the contractor on-boarding process, based on the steps taken by different utilities, and how that timing impacts an attacher’s ability to invoke the self-help remedy and request that utilities add additional qualified contractors to their approved lists to complete the self-help work. Would the Commission improve the viability of the self-help remedy by setting a deadline for utilities to complete the on-boarding process for a contractor that meets the requirements of Section 1.1412(c) of the Commission’s rules? If so, based upon all of the steps a utility needs to take to address safety, reliability, and security concerns, what should that deadline be?

F. Defining the Term “Pole” for the Purposes of Section 224

26. We seek comment on whether a light pole is a “pole” for purposes of Section 224 of the Act. Neither Section 224 nor the Commission’s implementing rules define the term “pole.” In September 2019, CTIA filed a petition seeking a declaratory ruling that a light pole is a “pole” under Section 224 and that, consequently, utilities must afford nondiscriminatory access

to light poles at rates, terms, and conditions, consistent with Section 224 and the Commission's implementing rules. In its Petition, CTIA argued, in short, that: (1) light poles are optimal locations for small cells (For the purposes of this Further Notice, we assume that the small cells referred to in CTIA's Petition and comments filed in response to the Petition are facilities meeting the definition of Small Wireless Facilities in § 1.6002(l) of the Commission's rules, 47 CFR 1.6002(l), and we use that defined term going forward.) and are likely to be the only feasible location along rights-of-way where electric lines are buried; (2) utilities are denying access to light poles, or are charging high fees for access, in a manner that impedes deployment; (3) excluding light poles from the definition of "pole" under Section 224 would be inconsistent with the Commission's rules and congressional intent; (4) construing Section 224 to apply to light poles would be "consistent with the real-world practice of commingling street lights and communications attachments on the same poles; and (5) applying Section 224 to light poles would advance the public policy goals of promoting competition and the deployment of infrastructure to support broadband and 5G without harming utilities.

27. Promoting broadband and 5G deployments is one of our top priorities. The Commission is committed to expediting and removing obstacles to such deployments, and to that end, has recognized that light poles are suitable hosts for Small Wireless Facilities. 5G wireless networks rely on dense deployment of smaller antennas across provider networks in locations closer to customers. Requiring nondiscriminatory access to light poles for communications attachments at rates, terms, and conditions that are just and reasonable could thus be a significant positive step toward the Commission's connectivity goals. The question of what constitutes a "pole" for the purposes of Section 224 raises complex issues, however, so we take this opportunity to refresh the record on the CTIA Petition and seek targeted comment on whether the Commission should codify a definition of the term "pole," whether any codified definition should include light poles, whether any rule changes would be necessary to implement a definition that includes light poles, and the impact that requiring nondiscriminatory access to

light poles at rates, terms, and conditions that are just and reasonable would have on the deployment of broadband and 5G.

1. The Best Reading of the Term “Pole”: an Ordinary or Technical, Industry-Specific Meaning?

28. We seek comment on the best reading of the term “pole” in Section 224. We start by seeking comment on whether the term “pole” as used in the text of the Pole Attachment Act of 1978 (1978 Act) has an ordinary meaning (e.g., one consistent with a common dictionary definition) or a technical, industry-specific meaning (e.g., a utility pole built for providers of electric and local exchange services to attach their distribution facilities). (Courts may look beyond the common meaning of statutory language “where a statutory or regulatory term is a technical term of art, defined more appropriately by reference to a particular industry usage than by the usual tools of statutory construction,” in the which case “the term should be construed with reference to the actual context of the regulated industry in question.”) The 1978 Act authorized the Commission to regulate the rates, terms, and conditions of pole attachments to provide that they are just and reasonable, and defined “pole attachment” as “any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.” Congress defined a “utility” that may be subject to Section 224 as “any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication.” (Congress excluded from the definition of utility “any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.”) Congress further codified a standard for determining whether a pole attachment rate is just and reasonable, stating, in pertinent part, that a rate is just and reasonable “if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the

entire pole” “Usable space” is defined in the statute as “the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.”

29. Do these provisions, and the statute as a whole, show that Congress intended the term “pole” to have an ordinary, common meaning (as understood in 1978) or a technical or industry-specific meaning? Were the only poles used in 1978 for cable television system attachments traditional utility poles used for local distribution of electric and telecommunications services, or were other poles used for cable television system attachments as well? What poles were: (1) owned or controlled by “any person whose rates or charges are regulated by the Federal Government or a State;” (“State” was defined in the statute as “any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.”) and (2) “used, in whole or in part, for wire communication” in 1978? Is “usable space” a term of art and if so, to what industries and/or for what purposes did it apply in 1978? Are other words used in the 1978 Act terms of art? Is there other language in the 1978 Act that the Commission should consider to determine whether Congress intended the term “pole” to have an ordinary, common meaning or a technical, industry-specific meaning when the statute was enacted? In either case, what was that meaning?

30. The Telecommunications Act of 1996 (1996 Act) amended Section 224 to, in pertinent part, expand the definition of pole attachments to include attachments by providers of telecommunications service and to add a new requirement that utilities “provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” Congress codified an exception to this nondiscriminatory access provision, stating that “a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.” Congress retained its

standard for determining whether a pole attachment rate is just and reasonable and the definition of the term “usable space” used in that standard.

31. Some attachers have argued that the reference to “any pole” in the nondiscriminatory access provision enacted via the 1996 Act demonstrates that Section 224 applies to any type of pole that is owned or controlled by a utility. Specifically, they have argued that in the absence of a statutory definition, “pole” should be given its ordinary meaning, pointing to dictionary definitions, and that courts construe the term “any” expansively to mean “all.” Thus, these attachers have argued that the enactment of the “any pole” language in the 1996 Act language evinces that all types of poles owned or controlled by a utility are subject to the nondiscriminatory access provision in Section 224(f)(1). Some have gone further and suggested that while whether a person or entity owns or controls poles that are “used . . . for any wire communications” dictates that person’s or entity’s status as a “utility” under Section 224(a)(1), as long as an entity is a “utility” by virtue of its ownership or control of such poles, it must provide access to all poles it owns or controls, even those that are not used for wire communications. (We note that in the 1996 Act, Congress modified the language in the definition of “utility” to state “any person who is a local exchange carrier or an electric gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” It retained an exclusion for “any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.”)

32. We seek comment on this view. In so doing, we take note of the Eleventh Circuit’s decision in *Southern Company v. FCC*. After the enactment of the 1996 Act, the Commission adopted rules to implement its requirements, including rules to implement the new nondiscriminatory access provisions in Section 224(f). Construing that statutory provision, the Commission found that the “breadth of the language contained in Section 224(f)(1) precludes us from making a blanket determination that Congress did not intend to include transmission

facilities.” In an order on reconsideration in 1999, the Commission “reaffirm[ed its] decision . . . that electric transmission facilities are not exempted from the pole attachment provisions of section 224.” The Eleventh Circuit overturned this conclusion insofar as it referred to transmission towers or other transmission plant, stating in *Southern Company* that “Congress intended to limit [section 224’s] application to local distribution facilities.” (In reaching this conclusion, the Court found that poles are regular components of local distribution systems and not interstate transmission systems, which are regulated by the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act (FPA). The Court noted that the FPA divests FERC of jurisdiction over facilities used for local distribution and that the primary facility used to carry transmission wires (i.e., towers) is not mentioned in Section 224. The Court also looked at Section 224’s reverse preemption provision and noted that states lack jurisdiction to regulate interstate transmission facilities.)

33. Utilities have argued that *Southern Company* limits the Commission’s authority under Section 224 to the regulation of local distribution poles only, and that the Commission does not have authority to regulate other types of property that may be owned or controlled by a utility and commonly called a pole, but that is not used in local distribution. Attachers have argued that the Eleventh Circuit did not go that far in *Southern Company*. They have argued that the only issue before the Court was whether the Commission could regulate interstate transmission facilities that are already regulated by Federal Energy Regulatory Commission (FERC), not whether the Commission has jurisdiction to regulate other poles that are local in nature, such as light poles. Attachers have suggested that, in fact, *Southern Company* supports their argument that the term “pole” should be given an ordinary meaning because the Court stated in another part of its opinion that: (1) the term “any” is construed expansively to mean “all” unless Congress adds language limiting its breadth; and (2) “the lack of a limitation upon the adjective ‘any’ means that Section 224(f)(1) expands the Act’s coverage to all ‘poles, ducts, conduits, or rights-of-way owned or controlled by a utility.’” The Court made these statements

when concluding that utilities must provide nondiscriminatory access to all of their poles under Section 224(f)(1) “regardless of whether the facility is presently being used for telecommunications purposes,” (The Court concluded that the definition of a “utility” in the statute is not limited to entities that use “all” of their facilities for wire communications, and that “the natural inference” from the lack of such limiting language is “that a utility is an entity that owns or controls *some* facilities used for that purpose.” The Court coupled that inference with the language of Section 224(f)(1) to conclude that utilities must provide nondiscriminatory access to all of their poles if they use some of them for wire communications.) upholding a prior determination by the Commission that “use of any utility pole, duct, conduit, or right-of-way for wire communications triggers access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility, including those not currently used for wire communications.”

34. Does *Southern Company* limit the Commission’s jurisdiction under Section 224 to the regulation of local distribution poles as utilities have suggested, or does it recognize that Section 224 applies to any type of pole that is owned or controlled by a utility, as some attachers have suggested? Does the Court’s conclusion that the Commission’s jurisdiction does not extend to facilities used for interstate transmission necessarily limit the “any pole” language used in Section 224(f)(1), i.e., does the decision eliminate a class of poles subject to Section 224(f)(1)? Do attachers contend that the “transmission facilities” exempt from Section 224(f)(1) pursuant to *Southern Company* are not and do not include poles? (In *Southern Company*, the Court referenced an argument by the Commission that the distinction between electric transmission facilities and electric distribution facilities is not as clear as utilities argued, and concluded that the fact that a pole may have some transmission facilities attached to it “does not exclude it from the coverage of the Act. These local distribution facilities, festooned as they may be with transmission wires, are plainly within the FCC’s jurisdiction under the terms of the Act.” This appears to recognize that poles may be used in some capacity for interstate transmission, but as stated above, we seek comment on this point.) Does the Court’s conclusion that utilities must

provide access to any pole irrespective of whether it is currently being used for wire communications mean that utilities must provide access to all poles of all types, irrespective of whether a particular type ever has been or ever would be used for wire communications? Or, given that *Southern Company* was decided in the specific context of poles used for local distribution of electric service, does the decision simply hold that a particular local distribution pole does not need to have communications wires attached for the Section 224(f)(1) access obligation to apply if any of the utility's other local distribution poles have communications wires attached? Does the fact that the Court interpreted the scope of the "used, in whole or in part, for any wire communications" language in Section 224(a)(1) to interpret the scope of access required under Section 224(f)(1) indicate that Section 224(a) is a limiting factor on the "any pole" language of the latter provision? Fundamentally, should *Southern Company* be viewed as definitively determining what constitutes a "pole" for the purposes of Section 224 as opposed to the reach of the Commission's jurisdiction with respect to particular use cases or circumstances (e.g., use for interstate transmissions, whether wire communications are currently attached)?

35. Does the text of the 1996 Act otherwise establish a clear meaning of the term "pole" or demonstrate congressional intent to limit or expand the meaning of that term? For instance, the exception to the nondiscriminatory access provision in Section 224(f)(1) states that "a utility *providing electric service* may deny a cable television system or any telecommunications carrier access to its poles . . . on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." Does the specific reference to utilities providing electric service in the statutory text suggest that Congress had a particular type of pole (i.e., a local distribution pole for electricity) in mind when it enacted Section 224(f)? Or, does limiting the exception to electric facilities simply "reflect[] Congress' acknowledgment that issues involving capacity, safety, reliability and engineering raise heightened concerns when electricity is involved, because electricity is inherently more dangerous than telecommunications services"? Does other language in the text

of Section 224 demonstrate that Congress clearly intended a specific meaning for the term “pole”?

36. If commenters argue that Congress’ intent regarding the meaning of the term “pole” as used in Section 224 is not clear from the text, what extrinsic sources should the Commission consider to determine the best reading of the statutory language? Does the statute’s legislative history clearly indicate the scope of poles that Congress intended to be regulated under the statute? The Senate Report for the 1978 Act indicates that Congress was concerned about electric utilities and telephone companies using their monopoly ownership or control of existing utility poles to extract exorbitant fees from cable system operators for access to the existing poles they needed to distribute their facilities. It states that the poles to which cable television systems need to attach their facilities “are usually owned by telephone and electric utilities,” and refers to poles used for the provision of telephone and electric service when discussing a formula to be used by the Commission to determine whether pole attachment rates are just and reasonable. (For instance, the legislative history discusses make-ready costs as “those necessary to rearrange existing telephone and power lines to maintain clearances between different pole lines required by individual utility construction and safety standards and National Electrical Safety Codes and to reinforce poles when necessary to increase load capacity.” The Report also explains how “usable space” factors into its formula, and states that “on a typical utility pole 35 feet in length there are 11 feet of usable space (that space above the minimum grade level clearance used to attach cable, telephone, and electric wires and associated equipment).” The Report also states that the jurisdictional reach of the Commission under Section 224 “extends only to those entities which participate in the provision of communications space on utility poles.”)

37. Do commenters interpret the Senate Report for the 1978 Act as contemplating a particular type of pole that would be subject to the Commission’s jurisdiction under Section 224? We would expect the legislative history of the 1978 Act to discuss existing poles owned and

controlled by providers of electric and telecommunication services as obvious examples of structures to which cable system operators needed to attach their facilities, but discussing certain types of poles may not necessarily evidence congressional intent to exclude others. Are there other statements from the legislative history of the 1978 Act or the 1996 Act that indicate Congress's intent? We note that, in 1996, the Commission held that the "intent of Congress in Section 224(f) was to permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility." Was that conclusion correct? Are there other extrinsic sources the Commission should consider if we determine that the term "pole" is ambiguous and seek to adopt a definition based on the best reading of the statutory language?

2. Whether the Best Reading of the Term "Pole" Specifically Includes Light Poles

38. If the Commission were to give the term "pole" in Section 224 its ordinary, common meaning, such as "a long slender usually cylindrical object (such as a length of wood)," objects falling within that definition would arguably still need to satisfy explicit requirements in the text of Section 224 to be subject to regulation under that statute. In this section, we seek comment on whether light poles meet those requirements, and whether they would qualify as local distribution poles if the Commission were to conclude that its jurisdiction is limited to regulating such poles.

39. *Scope of Light Poles.* We begin this inquiry by seeking comment on the types of light poles that attachers seek to have regulated by Section 224 and their characteristics, so that the Commission may evaluate how the requirements of Section 224 would apply to them. We assume that attachers are not concerned about poles that are already subject to Section 224 because they are local distribution poles that also have lamp attachments. Is that assumption correct? What are the light pole structures that attachers seek access to under Section 224? Are

they limited to street lighting? Do they include area lighting poles located away from streets (e.g., along walking paths, in parking lots)? Do they include light poles on both private or public property, e.g., in or out of the public rights-of-way? Would they include flag poles owned or controlled by utilities and that have a lamp attachment? Do the light poles that attachers seek to have regulated have particular dimensions or features? Are they constructed using a particular type of material? Do they already meet certain loading and power requirements for communications attachments? Are they all regulated by federal, state, or local government agencies or do they include light poles that are unregulated? At a basic level, what are the common attributes of light poles that attachers seek to have regulated under Section 224 and why do commenters believe these attributes should cause those light poles to be regulated? Would the Commission need to define what constitutes a light pole if it were to determine that light poles are subject to regulation under Section 224, and if so, what should that definition be? How many light poles would be brought within the Commission's jurisdiction if we determine that they are poles within the meaning of Section 224? What else does the Commission need to know to understand the type and scope of light poles that attachers seek to have regulated under Section 224?

40. *Owned or Controlled by a Utility.* Section 224 only applies to poles that are owned or controlled by a utility. What utilities own or control light poles? Are most light poles owned or controlled by electric utilities versus other types of utilities? The record on the CTIA Petition indicates that many light poles are installed pursuant to private agreements with third parties, including localities, that confer rights and obligations on the third parties with respect to the poles. Under those agreements, what entity owns the light pole and what entity controls it? Are there arrangements where the light pole may be owned by the utility but a third party controls it? Is the reverse true, where a third party owns the light pole but a utility controls it? Are there co-ownership and/or co-controller arrangements? Who are the third parties that may have an ownership or control interest in a light pole (e.g., private residential communities,

private retailers or venue owners)? How frequently is the third-party owner or controller of the light pole a state or municipality, and what are the implications of that given that Section 224(a) excludes states and “any political subdivision, agency, or instrumentality” of a state from the definition of “utility” subject to regulation under Section 224? How frequently is the third-party owner or controller another entity excluded from the definition of “utility” under Section 224(a)(1)? What specific rights are conferred on third parties with respect to the location, design, construction, modification, and removal of light poles? Do the third-party agreements contain any express provisions prohibiting utilities from providing access to light poles for communications attachments, either at all or without the third party’s consent?

41. What percentage of light poles that attachers seek to have regulated under Section 224 are installed pursuant to third-party agreements? The record on CTIA’s Petition indicates that attachers are currently obtaining at least some access to light poles under private agreements. How has that process worked, and could it serve as a model for enabling access if it were mandated under Section 224(f)(1)? Who are the parties to light pole access agreements when a third party has some degree of ownership or control of the light pole? Just the attacher and the utility, or does the third party also execute the agreement? If the third party is a party to the agreement, how would that impact the Commission’s jurisdiction to adjudicate matters under the access agreement, i.e., could the Commission require the third party to comply with any ordered relief?

42. We observe that in the context of private easements, the Commission has found that the extent of a utility’s ownership or control is a question of state law, and that “consistent with the purposes of Section 224, utility ownership or control of rights-of-way and other covered facilities exists only if the utility could voluntarily provide access to a third party and would be entitled to compensation for doing so.” Do commenters agree that the extent of a utility’s ownership or control of poles is also determined under state law, and what are the implications of that for light poles that are installed pursuant to private agreements with third parties? If the

Commission were to determine that at least some light poles are subject to Section 224, would it have to create an exception for cases in which utilities cannot provide access in exchange for a fee voluntarily and/or unilaterally under state law?

43. *Used, in Whole or in Part, for Wire Communications.* Are light poles used, in whole or in part, for any wire communications? If so, for what specific forms of wire communication? We note that the Commission has found that “[a]lthough internal communications are used solely to promote the efficient distribution of electricity, the definition of ‘wire communication’ is broad and clearly encompasses an electric utility’s internal communications.” Do utilities use internal wire communications for their light poles? If so, in what manner? If light poles are not used in whole or in part for wire communications, does that necessarily mean that light poles must be excluded from regulation under Section 224? As stated above, in *Southern Company*, the Eleventh Circuit agreed with the Commission that it is not necessary for *all* of a utility’s poles to be used for wire communications for the nondiscriminatory access provision in Section 224(f)(1) to apply. Does that mean that if a particular utility owns or controls both light poles and local distribution poles, and uses any of them for wire communications, that is enough to bring all of them under Section 224?

44. *Local Distribution Poles.* Crown Castle has suggested that light poles are local distribution poles within the meaning of the Eleventh Circuit’s decision in *Southern Company*. Specifically, it observes that “Street Lighting and Signal Systems” are facilities listed under “Distribution Plant” in FERC Form 1, the comprehensive financial and operating report utilities submit annually for electric rate regulation, market oversight analysis, and financial audits, and a primary source of data in the Commission’s pole attachment rate formulas. (As discussed below, FERC Form 1 provides key data inputs for the Commission’s pole attachment rate formulas.) “Poles, Towers, and Fixtures” are listed separately under “Distribution Plant,” however. (FERC’s rules for its Uniform System of Accounts state that Account 364, used for “Poles, Towers, and Fixtures,” “shall include the cost installed of poles, towers, and appurtenant fixtures

used for supporting overhead distribution conductors and service wires.” Account 373, used for “Street Lighting and Signal Systems,” “shall include the cost installed of equipment used wholly for public street and highway lighting or traffic, fire alarm, police, and other signal systems.”) Does that suggest that light poles are local distribution *plant*, but something different than local distribution *poles* under FERC’s Uniform System of Accounts? Or, are those merely semantics? Is FERC’s Uniform System of Accounts dispositive with respect to what constitutes a local distribution pole? What factors determine what constitutes a local distribution pole? In *Southern Company*, the Eleventh Circuit considered a state public service commission’s description of an electric utility’s distribution system as being “comprised of substations, underground cables, poles, overhead conductors, transformers, service drops, and meters that supply power to the customers.” Are light poles part of an equivalent local distribution system to provide lighting? If so, is that lighting a similar public utility service, what are the components of the distribution system, and who are the customers?

45. *Prior Commission Statements.* Some utilities have suggested that the Commission has already determined that light poles are distinct from utility poles for the purposes of Section 224, citing a proceeding in which the Commission addressed exclusions from routine historic preservation review under the National Historic Preservation Act (NHPA). In the *2014 Infrastructure Order*, the Commission considered the impact wireless deployments have on the environment and historic properties, and expanded the scope of existing structures excluded from routine historic preservation review to include “collocations on existing utility structures, including utility poles and electric transmission towers, to the extent they are not already excluded in the Collocation Agreement,” subject to certain criteria and limitations. The Commission defined “utility structures” for the purpose of the exclusion as “utility poles or electric transmission towers in active use by a ‘utility’ as defined in Section 224 of the Communications Act, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting.” The Commission explained that “[u]tility

structures,” as it was defining them for purposes of the NHPA exclusion, “are, by their nature, designed to hold a variety of electrical, communications, or other equipment, and they already hold such equipment. Their inherent characteristic thus incorporates the support of attachments, and their uses have continued to evolve with changes in technology since they were first used in the mid-19th century for distribution of telegraph services.”

46. Does the Commission’s decision to define “utility structures” for the specific purpose of exclusions from routine historic reviews under the NHPA determine the scope of poles that may be regulated under Section 224? What inference, if any, should we draw from the fact that the *2014 Infrastructure Order* expressly defined “utility” by reference to the definition of that term in Section 224 of the Act, but did not similarly expressly define “pole,” “utility pole” or “utility structure” by reference to language in Section 224? Was the Commission focused on drawing distinctions relevant to the regulatory context at issue—exclusion from historic preservation review under NHPA—that could be entirely unrelated to the interpretation of a “pole” under Section 224 of the Act? We note that the Commission’s definition of “utility structures” includes “electric transmission towers,” which are outside of the Commission’s jurisdiction under Section 224 pursuant to the Eleventh Circuit’s holding in *Southern Company*. We also note that since the *2014 Infrastructure Order*, the Commission has stated that “light poles, traffic lights, utility poles, and other similar property” are suitable hosts for Small Wireless Facilities. (We recognize, as utilities suggest, that the Commission made this statement in the context of access to government-owned property in state and local rights-of-way under Sections 253 and 332 of the 1996 Act. Nevertheless, the statutory basis for regulating access does not alter the Commission’s general conclusion that the equipment is functionally suitable for wireless attachments.) Nevertheless, we seek comment on whether the Commission’s statements in the NHPA proceeding and other relevant proceedings are consistent or inconsistent with including light poles within a definition of poles regulated by Section 224.

3. Applying the Commission's Rules to Light Poles and Other

Implementation Matters

47. *Rule Application and Amendments.* We seek comment on whether the Commission's existing pole attachment rules can be applied to light poles if we conclude that they should be regulated under Section 224 and whether there are any specific rules that would need to be amended to do so. If commenters contend that some of the Commission's rules cannot be applied to light poles, we ask that commenters identify the specific rules at issue, the reasons the rule cannot be applied as currently written, and any proposed amendments that would enable the rule to be applied to light poles.

48. In particular, we seek comment on how the rate formulas that the Commission has adopted to determine whether a pole attachment rate is just and reasonable would apply to light poles. For instance, when an attacher submits a complaint to the Commission that a particular rate is unjust or unreasonable, it is required to submit data and information supporting the complaint, including all information necessary to apply the rate formulas, and those "[d]ata should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies" Two components of the Commission's recurring rate formulas (Capital costs that the utility recovers up-front via non-recurring make-ready fees are excluded from the recurring pole attachment rates determined by these formulas) for attachments to poles by telecommunications carriers are the Net Cost of a Bare Pole ($\text{Net Cost of a Bare Pole} = (\text{Net Pole Investment} / \text{Total Number of Poles}) \times .95$ (for ILEC-owned poles) or $\times .85$ (for Electric Utility-Owned Poles).) and the Carrying Charge Rate, ($\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return Elements}$, where:

$\text{Administrative Element} = \text{Total General and Administrative Expense} / \text{Net Plant Investment};$

$\text{Maintenance Element} = \text{Pole Maintenance Expense} / \text{Net Pole Investment};$

Depreciation Element = (Gross Pole Investment/Net Pole Investment) x Depreciation Rate for Gross Pole Investment;

Taxes Element = Tax Expense/Net Plant Investment;

Return Element = State Authorized Rate of Return (or FCC Authorized Rate of Return if there is no State Authorized Rate of Return); and

Net Investment = Gross Investment - Accumulated Depreciation - Accumulated Deferred Income Taxes with respect to a particular type of plant.)

the product of which represents the annual expense incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. (The maximum just and reasonable rate for attachments to poles by any telecommunications carrier or cable operator providing telecommunications services is the higher of the rates determined by using the formulas specified under §§ 1.1406(d)(2)(i) and 1.1406 (d)(2)(ii) of the Commission's rules. Typically, the § 1.1406(d)(2)(i) formula yields the higher of these two rates. The two formulas, re-written for ease of understanding, are: § 1.1406(d)(2)(i) Telecom Rate = Space Factor x Net Cost of a Bare Pole x Carrying Charge Rate x Cost Allocator, where:

Space Factor = (Space Occupied + (2/3 x Unusable Space/No. of Attachers))/Pole Height

Cost Allocator =

.66 where there are 5 attachers;

.56 where there are 4 attachers;

.44 where there are 3 attachers;

.31 where there are 2 attachers; and

an interpolated percentage where the number of attachers is not a whole number.

§ 1.1406(d)(2)(ii) Telecom Rate = Space Factor x Net Cost of a Bare Pole x Maintenance and Administrative Carrying Charge Rate.)

Data used to calculate values for these two components include pole investment, the number of utility-owned poles, total plant investment, pole maintenance expense, pole depreciation rate, accumulated depreciation, accumulated deferred income taxes, total general and administrative expense, tax expense, and the rate of return. An appurtenance factor (.85 for electric utility-owned poles) is used to remove estimates of crossarm and other non-pole investment from the pole investment account. (The specific FERC Form 1 accounts used in the Commission's pole attachment rate formulas are set forth in the *Pole Attachment Rates, Terms, and Conditions Reconsideration Order*, 16 FCC Rcd at 12176, Appx. E-2.)

49. Are all the cost and other data necessary to run the Commission's existing rate formulas available for light poles in FERC Form 1 or other reports filed with state or federal regulatory agencies? Utilities point out that FERC's Uniform System of Accounts establishes separate investment accounts for "Poles, Towers, and Fixtures" (Account 364) and "Street Lighting and Signal Systems" (Accounts 371 and 373). Do the latter accounts contain equivalent data, such that the Commission could use these data to calculate rates for light pole attachments? Would the investment data reflected in these accounts have to be adjusted to remove investments other than investment that is strictly for light poles (e.g., lamp investment) or to remove signal system investments? Would the expense data reflected in these accounts have to be adjusted to remove expenses other than expenses that are incurred strictly to maintain light poles (e.g., labor expenses incurred to replace or clean lamps) or to remove signal system expenses? As for depreciation expense, is the depreciation rate needed to calculate the depreciation element reflected in the Carrying Charge Rate routinely stated on FERC Form 1 for light poles in particular? Do the Commission's rules mandate use of data from specific FERC accounts (e.g., Account 364) in its rate formulas, to the exclusion of data from accounts related to light poles (e.g., Account 373) or other accounts? Some utilities have argued that some light poles are not regulated, suggesting that there is no accounting data submitted for those poles to regulatory bodies that could be used in the Commission's rate formula. Is that accurate? If that is the case,

what information could the Commission use in its pole attachment rate formulas to determine whether an attachment rate is just and reasonable? What other data issues may preclude use of the Commission's pole attachment rate formula to determine a rate for attachment to light poles?

50. A third component of the Commission's pole attachment rate formula is the Space Factor, which apportions the annual expense the utility incurs to provide space on a pole among all of the attachers including the utility. It requires estimates of the space occupied by an attachment, pole height, usable space, unusable space, and the average number of attachers on a pole. (The fourth and final component of the Commission's Telecom Rate formula in § 1.1406(d)(2)(i) of the Commission's rules, the cost allocator, reduces the rate that would otherwise be calculated as the number of attachers decreases. It operates to equate the rate obtained for attachments by telecommunications carriers using the Commission's formula under § 1.1406(d)(2)(i) to the rate for attachments to poles by cable operators providing cable services using the Commission's formula for such attachments under § 1.1406(d)(1) of the Commission's rules, 47 CFR 1.1406(d)(1), given use of the Commission's rebuttable assumptions in both formulas.) The Commission's rules contain rebuttable presumptions that "the space occupied by an attachment is presumed to be one foot. The amount of usable space is presumed to be 13.5 feet. The amount of unusable space is presumed to be 24 feet. The pole height is presumed to be 37.5 feet." We are not convinced that these presumptions could reasonably be applied to light poles. A 37.5-foot local distribution pole, for example, would have a buried depth of approximately six feet, reducing its otherwise usable space by an equal number of feet. In contrast, some light poles are bolted into a concrete footing at or above ground level, so otherwise usable space on these poles is not lost underground. Moreover, local distribution poles historically were built to accommodate attachments by incumbent local exchange carriers and electric utilities, and more recently cable operators, and thus the Commission's rebuttable presumptions were designed to reflect the specific pole height and usable space requirements of these particular attachers, rather than light poles. If these presumptions do not apply, would the

Commission need to adopt new presumptions specific to light poles, or would attachers and utilities seek to rebut the existing presumptions each time a rate complaint is filed? Do commenters believe that the Commission's existing pole attachment rate formulas and FERC Form 1 or data filed with other regulatory bodies are sufficient to determine whether attachments to light poles are just and reasonable, or would the Commission need to revise its rate formulas or specify use of a different set of FERC Form 1 or other reported investment and expense accounts to make that determination? The Commission's rate formulas (other than the specific FERC Form 1 accounts and rebuttable presumptions) reflect the specific requirements of the Section 224. What discretion does the Commission have to revise these rate formulas to better apply to attachments to light poles?

51. Are there any other rules that the Commission would need to amend to regulate light poles under Section 224? Would we need to examine whether our rules establishing deadlines for pole attachment surveys, estimates, and make-ready are appropriate as-applied to light poles? Are there provisions of the Commission's pole attachment rules that have no relevance to light poles or that would unduly hamper attachments to light poles?

52. *Light Pole Replacements.* As stated above, the record developed in response to the CTIA Petition indicates that attachers are obtaining at least some access to light poles through private agreements with utilities. The record also indicates, however, that many light poles need to be replaced to accommodate telecommunications attachments. Section 224(f)(2) authorizes utilities to deny access to poles on a nondiscriminatory basis "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." In *Southern Company*, the Eleventh Circuit ruled that, pursuant to Section 224(f)(2), utilities are not required to expand capacity on their poles to accommodate new attachments, rejecting the Commission's prior determination that Section 224(f)(1) may require utilities to replace poles to provide nondiscriminatory access to them. Utilities have suggested that if the Commission were to determine that light poles are "poles" within the meaning of Section 224,

and that utilities must provide nondiscriminatory access to light poles under Section 224(f)(1), utilities will no longer be incentivized to work with attachers to replace light poles to accommodate their attachments and will simply deny access under Section 224(f)(2). Are attachers concerned that including light poles within the definition of “pole” for the purposes of Section 224 would actually result in fewer attachments to light poles than are currently completed pursuant to private agreements, due to refusals by utilities to replace poles to create capacity for their attachments? How many light poles need to be replaced to accommodate communications attachments? Why are the pole replacements necessary? (For instance, CCU has asserted that street lights must be replaced “because they were not designed or installed to provide access for fiber, to mount equipment, to conceal equipment, to disconnect power, or to provide necessary National Electrical Safety Code [] clearances, all of which wireless attachments require,” and that “most streetlight-only poles do not have separate raceways in which to run communications fiber separate from electrical power, as required by NESC.”) Are there particular types of light poles that need to be replaced and others that do not? What are the categories of costs of replacing a light pole to be able to host communications attachments (e.g., construction, materials)? Are those costs significantly different than those incurred when replacing a local distribution pole? Do utilities contend that a fair allocation of the costs would not be possible under the Commission’s rules if light poles were regulated under Section 224? Is there something the Commission can do to keep any need to replace light poles to accommodate communications attachments from being an impediment to nondiscriminatory access under Section 224(f)(1)?

53. *Reverse Preemption.* Twenty-three states and the District of Columbia have certified that they regulate pole attachments and have complied with associated requirements to reverse preempt the Commission’s jurisdiction under Section 224(c) of the 1996 Act. We seek comment on how defining the term “pole” to include light poles would impact the regulation of pole attachments by those states. Would any definition codified by the Commission apply to

states that have reverse preempted the Commission's jurisdiction? Do the pole attachment rules and regulations adopted by such states encompass attachments to light poles?

54. What if the reverse preemption states assert that they do not regulate attachments to light poles and that they decline to do so? Could jurisdiction over such attachments revert back to the Commission? If so, what would the process for implementing that be? Should the Commission require all states that have reverse preempted the Commission's jurisdiction to date to refile the certifications required under Section 224(c) to specify the pole attachment matters over which they assert jurisdiction, including with respect to light poles? Should the Commission amend its rules implementing Section 224(c) to require states seeking to reverse preempt the Commission's jurisdiction in the future to specify such details? What impact would bifurcating a state's pole attachment jurisdiction have on pole attachment regulation in the states and at the federal level, generally and/or specifically with respect to attachments to light poles? Could a state that has reverse preempted the Commission's jurisdiction over pole attachments determine that light poles are not "poles" under Section 224 and should not be regulated within its borders, irrespective of any determination by the Commission?

55. *Safety and Reliability.* Utilities and other commenters have contended that mandating access to light poles implicates safety and reliability concerns that are not at issue with standard local distribution poles. Attachers have pointed out that Section 224(f)(2) authorizes utilities providing electric service to deny attachments "for reasons of safety, reliability and generally applicable engineering purposes," and have argued that such concerns should not serve as an impediment to a threshold determination that nondiscriminatory access to light poles must be provided pursuant to Section 224(f)(1). What are the specific light pole attachment issues that utilities claim present safety and reliability concerns and why are they more significant than in the context of an electric utility's local distribution pole? Is it equipment associated with Small Wireless Facilities? If the issue is the need to run additional power to the pole for the Small Wireless Facilities, are the safety concerns mitigated if the utility that owns or

controls the pole is the electric utility that will either be handling that work or has expertise in that work? We ask about the types of utilities that own or control light poles above. Are there utilities that own or control light poles that do not provide electric service and would not be able to deny access under Section 224(f)(2)?

56. *Types of Attachments.* Section 224(a)(4) defines a pole attachment, in pertinent part, as “any attachment by a cable television system or provider of telecommunications service to a pole . . . owned or controlled by a utility.” If the Commission were to codify a definition of the term “pole” that includes light poles, would that mean that utilities would have a legal obligation to provide nondiscriminatory access to the light poles that they own and control for any cable or telecommunications service attachments, and not just for Small Wireless Facilities? Would wireline attachers seek access to light poles for attachments? Would utilities uniformly deny such access under Section 224(f)(2), or is there a way for wireline attachments to be accommodated on light poles? Does the Commission have the authority to condition any definition of the term “pole” that it adopts so that access is limited to Small Wireless Facilities if the pole in question is a light pole?

57. *State and Local Regulation.* Localities have argued that requiring utilities to provide nondiscriminatory access to light poles at rates, terms, and conditions that are just and reasonable pursuant to Section 224 would interfere with local requirements applicable to light poles, agreements that they have entered for the installation of light poles, and the management of their rights of way. We seek comment on the specific local requirements, agreements, and right-of-way management concerns that would be impacted by regulating light poles under Section 224 and why those concerns are unique to light poles. Stated differently, how and why would regulating utility owned or controlled light poles under Section 224 impinge on local requirements, agreements, and rights-of-way management in a way that is different than the current regulation of local distribution poles under Section 224? Is it because localities may contract with utilities for the installation of light poles and have ownership or control rights

under those agreements? (We note that government owned property in public rights-of-way, “such as light poles,” are subject to Sections 253 and 332(c)(7) of the Communications Act. Pursuant to those statutes, state and local governments may not impose legal requirements that unlawfully prohibit or have the effect of prohibiting the provision of telecommunications or personal wireless services.) If so, could any concerns that localities have about access to utility owned or controlled light poles be addressed in an access agreement? The record indicates that attachers are currently obtaining some access to light poles under private agreements. How are the concerns of localities currently being addressed when such agreements are reached, and why could the concerns not be similarly addressed in the future if nondiscriminatory access were mandated under Section 224(f)(1)?

F. Additional Legal and Policy Considerations

58. *Current Efforts to Obtain Access to Light Poles for Deployments.* In general, Small Wireless Facilities have a range of 1,000 to 1,500 feet. As a result, 5G networks rely on a dense distribution of antennas making point-to-point-to-point connections. Attachers have claimed that utilities commonly deny access to light poles or charge high fees for attachments in a manner that is impeding deployments. Promoting deployment of infrastructure that supports broadband and 5G is a priority for the Commission, so we seek specific data about these denials of access and the impact they are having on competition and connectivity. Specifically, we seek comment on the need to mandate nondiscriminatory access to light poles to expedite and expand the deployment of 5G technology and enable the densification necessary to meet capacity, coverage, and performance needs. How frequently are attachers being denied access to poles altogether? Has that resulted in certain deployments being derailed entirely? Have attachers been required to develop alternate plans to complete build outs due to denials of access? How have denials of access to light poles affected the ability of attachers to compete in certain areas? Is there evidence that denials have resulted in coverage gaps, dropped calls, data overloads, or otherwise resulted in poor service? What is the impact of light pole access denials on the cost

and pace of deployment projects? What are the common reasons that utilities give for denying a request to attach to a light pole? Where a utility denies access to a light pole in a right of way, what alternative means of establishing adequate network coverage are available to service providers and what are the cost and deployment timeline differences when service providers pursue these alternatives to light pole attachments?

59. We ask that attachers provide specific examples of these impacts, including identifying the types of light poles involved, the utilities that own them, the geographic areas where access to light poles is being denied or delayed, and other details that will help the Commission assess the consequences of the denials and delays. (We remind commenters that they may request confidential treatment of information submitted to the Commission consistent with Section 0.459 of the Commission's rules.) For example, AT&T has reported that "three electric utilities operating in Texas refuse to allow AT&T access to light poles." AT&T has explained that it received assistance from one Texas city that required the utility to remove its light poles so that AT&T could install its own similar pole at its own expense, but even then, there were delays resulting in increased deployment costs. Verizon has stated that it has "encountered a utility in Massachusetts that refuses access to any of its metal light poles and a utility in Wisconsin that does not allow attachments to any of its light poles." Who are the specific utilities that denied access in these examples and what were their stated grounds upon which they denied access? What other concrete examples are there of attachers being denied access, and how long does it take attachers to receive responses to their requests?

60. We also seek comment on how frequently utilities approve access to light poles and the terms under which those approvals are granted. In particular, we seek specific data on the fees that utilities charge for access to light poles and how those fees compare to attachments on other facilities, such as local distribution poles. How are the fees calculated? Are they based on costs, and if so, which costs? How are the fees charged (e.g., annually, biannually) and what is the term of the agreements under which they are charged? Are the fees significantly higher

than those charged for attachments to standard local distribution poles? If so, what impact does that have on the attacher's ability to compete and finance future deployments? What else should the Commission consider when weighing the impact that regulating light poles under Section 224 will have on expediting broadband and 5G deployments?

61. *Additional Costs and Benefits.* We seek comment on the costs and benefits of defining the term "pole" for the purposes of Section 224 generally and specifically to include light poles. Would it result in additional administrative, operational, or capital costs for attachers, utilities, and states that have reverse preempted the Commission's jurisdiction over pole attachments? Are there other burdens stakeholders would need to assume to comply with a definition of "pole" that includes light poles? How do these costs, benefits, or burdens impact businesses of various sizes? What would the benefits of codifying such a definition be? Is there a way to quantify the extent to which deployments of broadband and 5G would be expedited if the Commission were to require nondiscriminatory access to light poles? Do attachers have data on the additional consumers that would be served and service offerings that may be made newly available in certain areas of the country? Would there be national security and other public safety benefits? We ask that commenters address, as specifically as possible, the full range of costs and benefits of determining that light poles are "poles" for the purposes of Section 224.

62. *Legal Authority.* We tentatively conclude that the Commission has authority to codify a definition of the term "pole" and to determine whether the term includes light poles. The Commission has previously codified definitions for statutory terms in Section 224, including "conduit" and "duct," consistent with Congress's directive in Section 224 that the Commission "prescribe by rule regulations to carry out the provisions of this section." The Commission has also adopted rules to implement Congress's explicit delegation of authority to "regulate the rates, terms, and conditions for pole attachments," as well as to develop procedures necessary for resolving complaints arising under the Commission's substantive regulations, and to fashion appropriate remedies. (The Commission has also established the Rapid Broadband Assessment

Team to prioritize and expedite the resolution of pole attachment disputes that are alleged to impede or delay broadband deployments.) It has also adopted rules to implement the nondiscriminatory access provisions mandated by Congress in Section 224(f). We believe that codifying a definition of the term “pole” generally and to include light poles would be a proper exercise of the same jurisdiction underpinning the adoption of those rules and seek comment on that view.

G. Miscellaneous Issues

63. We seek comment more generally on any other causes for delay or other issues that commenters believe will help facilitate deployments. And we also seek comment on the extent to which application fees and related costs that utilities impose upon prospective attachers before an application is even accepted for filing may impact deployments by smaller providers. To what extent do the fees that utilities charge to file applications and the utilities’ various pre-filing engineering requirements inhibit broadband deployment? Are there specific examples where these costs have prevented or delayed deployment? What, if any, actions might the Commission take to address utility-imposed fees or engineering requirements before the make-ready stage that inhibit broadband deployment?

IV. INITIAL REGULATORY FLEXIBILITY ANALYSIS

64. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the Fourth Further Notice of Proposed Rulemaking (Further Notice) assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the Further Notice. 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). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.

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

65. The Further Notice seeks comment on proposals from utilities and attachers that might further facilitate the pole attachment process and, thus, broadband deployment. The Further Notice specifically seeks comment on: (1) requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work; (2) whether the Commission should require attachers to make payment on an estimate to a utility within a specific period of time after acceptance; (3) limiting the amount that final make-ready costs can exceed the utility's estimate without receiving prior approval from the attacher; (4) whether to expand the availability of the one-touch, make-ready (OTMR) process to include complex survey and make-ready work; (5) establishing a deadline to on-board approved contractors; and (6) whether the Commission should define the term "pole" for purposes of Section 224 of the Communications Act of 1934, as amended, and whether the term should be construed to include light poles. The Further Notice also seeks comment on other policy considerations, including additional costs and benefits that may impact small and other business.

B. Legal Basis

66. 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

67. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term

“small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

68. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

69. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 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.

70. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose

governments—independent school districts with enrollment populations of less than 50,000. 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.”

1. Internet Access Service Providers

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

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

73. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry

classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

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

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

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

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

considered small entities.

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

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

80. *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 a SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

81. *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 Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

82. The broadband Internet access service provider category covered by these new rules

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

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

84. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's

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

85. 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.

86. 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.

87. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to

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

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

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

90. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or

fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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

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

93. 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.

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

95. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of

licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

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

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

Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

98. 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.

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

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

101. 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.

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

103. The closest industry with an SBA small business size standard applicable to these

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

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

105. 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.

106. *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). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.

Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

107. 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. 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.

108. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.

U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

109. 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.

110. 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.

111. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

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

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

an active licenses as of December 2021.

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

4. Satellite Service Providers

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

business size standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition.

Additionally, the Commission neither requests nor collects annual revenue information from satellite telecommunications providers, and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

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

5. Cable Service Providers

117. 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.

118. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines

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

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

120. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than

498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

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

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

employees. Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

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

123. The RFA directs agencies to describe the economic impact of proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

124. 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 the matters on which we seek comment may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities. Specifically, we seek comment on requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work and the potential repercussions against attachers that fail to do so. We also seek comment on whether we should require attachers to make payment on an estimate to a utility within a specific period of time after acceptance and, in particular, utilities' suggestion that attachers should be required to pay all estimated make-ready costs, in full, within 30 days of the date on which the estimate is accepted by the attacher. If an attacher fails to make any payment within the time frame specified in the rule, the applicable make-ready timeline should be deemed waived. We also ask, more generally, how imposing a timeframe in which an attacher must make payment after acceptance of an estimate can incentivize faster broadband deployment. We also seek comment on limiting the amount that final make-ready costs can exceed the utility's estimate without receiving prior approval from the attacher, providing some reverse pre-emption states as examples. Additionally, we ask whether to expand the availability of the OTMR process to include complex survey and make-ready work, rather than continue to limit the process to simple survey and make-ready work. We also ask whether setting a deadline

for utilities to complete the on-boarding process for a contractor would improve the viability of the self-help remedy in the Commission's rules. Finally, as neither Section 224 nor the Commission's implementing rules define the term "pole" and in response to CTIA's petition for a declaratory ruling on the matter, we seek comment on whether the Commission should define the term "pole" for purposes of Section 224 of the Act and whether the term should be construed to include light poles. This information will help to inform whether potential rule changes are necessary.

125. 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 beyond those necessary to comply with the current rules. The Commission requests information on the costs, benefits, and any cost savings related to the proposed rule changes that may be associated with operational needs 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. Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities

126. The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities. The discussion is required to include alternatives such as: "(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."

127. 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 requiring attachers to deploy equipment on poles within 120 days of completion of make-ready work and the potential repercussions against an attacher that fail to do so. While we ask whether we should impose a fee on those attachers, we alternatively seek comment on whether deployment timeframes and noncompliance fees would be better dealt with in the parties' pole attachment agreements instead of our rules. We also seek comment on whether we should require attachers to make payment on an estimate to a utility within a specific period of time after acceptance and, in particular, utilities' suggestion that we should require attachers make payment within 30 days after acceptance. We alternatively ask whether we should adopt attachers' suggestion that we prohibit utilities from requiring payment upon an attacher's acceptance and instead implement a payment schedule based on make-ready work progress. Additionally, while we seek comment on limiting the amount that final make-ready costs can exceed the utility's estimate without receiving prior approval from the attacher, we ask in the alternative whether such cost-ceilings are better left to private agreement. We further seek comment on whether to expand the availability of the OTMR process to include complex survey and make-ready work, and the obstacles to attachers using OTMR if it were available for complex work. Also, while we seek comment on whether to impose a deadline for utilities to on-board approved contractors, we emphasize that our goals are to understand the overall amount of time actually needed to complete the on-boarding process based on utility procedure and the associated implications for the self-help remedy. Finally, while seeking comment on whether a light pole is a "pole" for purposes of Section 224 of the Act, we consider several alternatives, such as various interpretations of the term "pole" based on its meaning in federal legislation and associated legislative history. 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 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

128. None.

V. ORDERING CLAUSES

129. Accordingly, it is ordered 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 Further Notice is adopted.

130. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, shall send a copy of this Further Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch
Secretary.