TABLE 5 TO PARAGRAPH (b)(12)(ii)—Continued

U.S. Code citation	Maximum penalty after 2024 annual inflation adjustment
47 U.S.C. 503(b)(2)(B)	$244,958. $2,449,575.
47 U.S.C. 503(b)(2)(C)	$495,500. $4,573,840.
47 U.S.C. 503(b)(2)(D)	$24,496. $183,718.
47 U.S.C. 503(b)(2)(F)	$140,674. $1,406,728.
47 U.S.C. 507(a)	$2,426.
47 U.S.C. 507(b)	$356.
47 U.S.C. 511	$2,391,097. $119,555.
47 U.S.C. 554	$1,086.
Sec. 6507(b)(4) of Tax Relief Act	$1,317,380/incident.
Sec. 6507(b)(5) of Tax Relief Act	$131,738/call.

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[FR Doc. 2024–00624 Filed 1–11–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; FCC 23–109; FR ID 195734]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) establishes rules creating a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and providing communications providers with information about the status of the utility poles they plan to use as they map out their broadband buildouts.

DATES: Effective February 12, 2024, except for §§ 1.1411(c)(4) (amendatory instruction 2) and 1.1415 (amendatory instruction 4), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order* in WC Docket No. 17–84, adopted December 13, 2023, and released December 15, 2023. The full text of this document is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

Synopsis

I. Introduction

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

2. Over the last several years, the Commission has taken significant steps in setting the ''rules for the road'' for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles, with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments. (Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. The Commission's pole attachment rules currently only apply to cable operators and providers of telecommunications services and therefore do not apply to broadband-only internet service providers. We recently proposed to reclassify broadband internet access service as a telecommunications service, which would, if completed, apply section 224 and the Commission's pole attachment rules to broadband-only internet service providers.) In this item, we take additional steps to speed broadband deployment by making the pole attachment process faster, more transparent, and more cost effective. Specifically, we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing communications providers with information about the

status of the utility poles they plan to use as they map out their broadband builds.

II. Background

3. In 1996, as part of its implementation of the pole attachment requirements located in sections 224(h) and 224(i) of the Act, the Commission determined that when a modification, such as a pole replacement, is undertaken for the benefit of a particular party, then under cost causation principles, the benefiting party must assume the cost of the modification. (Section 224(h) states that whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible. Section 224(i) states that an entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).) The Commission also found that when a utility decides to modify a pole for its own benefit, and no other attachers derive a benefit from the modification, the utility must bear the full cost of the new pole. The Commission further adopted a cost sharing principle for when an existing attacher uses a modification by another party as an opportunity to add to or modify its own attachments and applied this principle to utilities and other attachers seeking to use modifications as an opportunity to bring their own facilities into compliance with safety or other requirements. In the *2018 Wireline Infrastructure Order* (83 FR 31659–02, July 9, 2018), the Commission reiterated that application of the cost sharing principle.

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

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

6. Last year, the Commission issued a *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) (87 FR 25181–01, Apr. 28, 2022) in this proceeding seeking comment on the universe of situations where the requesting attacher should not be required to pay for the full cost of a pole replacement and the proper allocation of costs among utilities and attachers in those situations. (To the extent that the Fourth Report and Order does not expressly address a topic that was subject to comment in the *Second FNPRM,* that issue remains pending.) Specifically, the Commission sought comment on the applicability of cost causation and cost allocation principles in the context of pole replacements—*e.g.,* when is a pole replacement not caused (necessitated solely) by a new attachment request, and when and how parties must share in the costs of a pole replacement. The Commission also sought comment on the extent to which utilities directly benefit from pole replacements, including a utility's responsibility for the costs of pole upgrades and modifications unrelated to new attachments and the effect of early pole retirements on pole replacement cost causation and cost allocation calculations. The *Second FNPRM* also sought comment on whether the Commission should require utilities to share information with potential attachers concerning the condition and replacement status of their poles and other measures that may help avoid or expedite the resolution of disputes between the parties, including whether to expand use of the Commission's Accelerated Docket for pole attachment complaints and the specific criteria that Commission staff should use in deciding whether to place a pole complaint on the Accelerated Docket. (To the extent that the Fourth Report and Order does not expressly address a topic that was subject to comment in the *Second FNPRM,* that issue remains pending.)

III. Report and Order

7. In the Fourth Report and Order, we adopt measures to expedite resolution of pole attachment disputes that impede or delay broadband deployment. Specifically, we (1) establish an agency-wide rapid response team to provide coordinated review and assessment of such pole attachment disputes and to recommend effective dispute resolution procedures, and (2) adopt specific criteria to guide that team when considering whether a complaint (or portion thereof) should be included on the Enforcement Bureau's Accelerated Docket. We also require utilities to provide information regarding pole conditions and scheduled replacements to the extent that information is contained in cyclical pole inspection reports that utilities already create and maintain in the ordinary course of their business, or in pole inspection reports created between cyclical reports. (Both pole attachers and utilities made several other proposals, not addressed herein, regarding the process for pole attachments and replacements and ways they believe the process could be improved to reduce disputes and promote broadband deployment.)

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

8. We amend our rules to prioritize and expedite the resolution of pole attachment disputes that impede or

delay broadband deployment by establishing a Commission intra-agency rapid response team—called the Rapid Broadband Assessment Team (RBAT)—to provide coordinated review and assessment of such disputes. (We codify these amendments in part 1, subpart J, of the Commission's rules (*i.e.,* Pole Attachment Complaint Procedures) by redesignating current § 1.1415 as § 1.1416 and adding a new § 1.1415. These rule amendments apply only to disputes involving pole attachments of a cable television system or a provider of telecommunications service and do not apply to disputes involving pole attachments of a broadband-only internet service provider. They also do not apply to disputes involving poles that are owned or controlled by a railroad, the Federal Government, a state (including a political subdivision thereof such as a municipality), or a cooperative association, or where the poles at issue are located in a state, or the District of Columbia, that has certified to the Commission that it regulates the rates, terms, and conditions of pole attachments in that state or jurisdiction pursuant to 47 U.S.C. 224(c). Should we adopt the proposal set forth in the *Open internet NPRM* (88 FR 76048–01, Nov. 3, 2023) to reclassify broadband-only internet service as a telecommunications service, section 224 would once again apply to broadband-only internet service providers deployments.) At the outset, we emphasize that we expect all parties to comply with the Commission's pole attachment rules and to negotiate in good faith to craft solutions that suit the needs of attachers and utilities to facilitate deployment projects. We recognize, however, that in some instances disagreements arise as to the conduct of one or multiple parties, and we encourage parties in those instances to avail themselves of the Commission's dispute resolution processes to both facilitate the resolution of disputes and, when necessary, use the formal adjudication process to develop precedent upon which parties can rely to settle future potential disputes. In this document, we amend our rules to create the RBAT in an effort to make the Commission's pole attachment dispute resolution process more responsive and adaptable with the goal of facilitating deployment.

9. The RBAT will be charged with expediting the resolution of these disputes by swiftly engaging key stakeholders, gathering relevant information, distilling issues in dispute, and recommending to the parties, where appropriate, an abbreviated mediation process, placement of a complaint (or portion of a complaint) on the Accelerated Docket based on consideration of specified criteria, and/or any other action that the RBAT determines will help the parties resolve their dispute. (The Schools, Health & Libraries Broadband (SHLB) Coalition suggests that creation of the RBAT may result in a needless administrative step and associated delay, and suggests that the RBAT, if created, be vested with authority to resolve disputes without going through the additional step of a complaint process. We decline to adopt this approach. The RBAT is designed to assist parties in resolving their dispute expeditiously without need for litigation. But if parties are unable to reach a resolution, either through mediation or other means, our existing complaint procedures, including the Accelerated Docket, ensure a means of adjudicating the dispute in accordance with due process.)

10. In the *Second FNPRM,* the Commission sought comment on NCTA's proposed adoption of policies ''favoring the placement of pole attachment complaints arising in unserved areas on the [Commission's] Accelerated Docket[,]'' a mechanism that requires the Commission to quickly resolve disputes between parties within 60 days. (Under § 1.736(a), complaint proceedings on the Accelerated Docket must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings.) It also sought comment on measures that would expedite the resolution of ''pole replacement[ ]'' disputes and on criteria for determining more generally ''when pole attachment complaints should be placed on the Accelerated Docket.'' Based on broad record support among attachers for further streamlining our processes as applied to disputes that impede or delay broadband deployment, we conclude that the targeted measures outlined below are warranted and will advance the Commission's goal of timely broadband deployment.

11. As the Commission observed in the *Second FNPRM,* our current rules provide a 180-day deadline (or shot clock) for final action on pole access complaints where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility. (For purposes of this subsection, the Commission has defined a ''pole access complaint'' as a complaint ''filed by a cable television system or a provider of telecommunications service that alleges a complete denial of access to a utility pole[,]'' and clarified that ''[the] term [pole access complaint] does not encompass a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of pole access.'') In addition, a 270-day shot clock currently applies to final action on all other pole attachment complaints (*i.e.,* those alleging unjust or unreasonable rates, terms, or conditions of attachment). Several commenters assert that these timeframes are commercially unreasonable for attachers seeking to deploy broadband networks, particularly in rural or unserved areas. (Charter asserts that the ''[m]ere *existence*'' of a path allowing more routine use of the Accelerated Docket ''could help broadband providers resolve disagreements without the need for Commission intervention'' by ''provid[ing] attachers facing government-imposed construction deadlines with a more credible option of seeking relief, thereby reducing the one-sided leverage held by pole owners today.'') NCTA submits that the need for expedited procedures has gained greater urgency recently for ''providers . . . receiving government funds to build out broadband under deadlines that afford no time for a lengthy complaint process.'' A number of commenters therefore propose more routine use of the Accelerated Docket, with its 60-day shot clock, especially for pole attachment disputes involving time-sensitive deployments in unserved areas. Several commenters also contend that the current Accelerated Docket rule does not sufficiently motivate utilities to comply with their obligation to allow pole access because it is unclear when Commission staff, in the exercise of their discretion under § 1.736(d) of our rules, will include a matter on the Accelerated Docket. Crown Castle asserts that ''without certainty that the complaint will be promptly resolved, the decision to bring a formal complaint to the Commission involves business decisions about whether the resolution will be too late to meaningfully assist the deployment.'' On the other hand, other commenters argue that sweeping or widespread imposition of the Accelerated Docket rule, with its highly compressed timeframes, could raise potential fairness and due process concerns given the complexity of the issues raised in most pole attachment cases. (Other commenters question the necessity of new rules (1) due to the relative infrequency of requests for Accelerated Docket treatment, *see, e.g.,* Edison Electric Institute Comments at

54 (challenging the need to further expedite ''denial of access'' complaints based on ''[t]he complete absence of [such] complaints before the Commission''), or (2) due to the lack of evidence of instances where dilatory actions of utilities have caused broadband grant recipients to lose access to such funding.) After considering these competing concerns, we find that the adoption of targeted dispute resolution reforms, as set forth below, will address the expressed need for quicker resolution of pole attachment disputes that may impede or delay broadband deployment while ensuring sufficient fairness and due process for all involved parties.

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

13. Although the record reflects differing views regarding which disputes should be subject to new dispute resolution procedures, a significant proportion of commenters seeking such reforms ask that we limit the focus of any new procedures to disputes that are interfering with active broadband deployment plans or projects. We adopt this suggestion based on our conclusion that focusing on pole attachment disputes that impede or delay a provider's ability to deploy new broadband facilities will align with, and advance most directly, the goal of timely broadband deployment. (Several utilities argue that across-the-board application of dispute resolution reforms to an entire category of disputes would fail to account for complexities in individual cases. But such comments assume that Accelerated Docket treatment would automatically apply to all disputes within the identified category. In fact, under the reforms we adopt herein, such disputes will receive individualized assessment and review (by the RBAT) based on a totality of factors analysis.)

14. *RBAT Review and Assessment of Disputes that Impede or Delay Broadband Deployment.* To expedite the resolution of pole attachment disputes that impede or delay an active broadband deployment project, we amend our rules to establish the RBAT, which will be comprised of Enforcement Bureau and Wireline Competition Bureau staff with expertise in the Commission's pole attachment rules and orders. We charge the RBAT with prioritizing the resolution of any pole attachment dispute that a party alleges is impeding or delaying the deployment of broadband facilities (including where the party is also seeking placement of the matter on the Accelerated Docket under § 1.736). In performing this role, the RBAT will gather and promptly review all pertinent information submitted by the parties and provide guidance and advice on the most effective means of resolving the parties' dispute. Where appropriate, the RBAT will recommend to the parties an abbreviated mediation process, placement of a complaint, or portion of a complaint, on the Accelerated Docket, and/or any other action that the RBAT determines will help the parties resolve their dispute. The RBAT will recommend use of the Accelerated Docket where it determines, based upon a totality of the criteria outlined below, that a complaint, or portion thereof, is suitable for accelerated disposition. (The RBAT may recommend placement of a dispute on the Accelerated Docket in the exercise of the discretion afforded Commission staff ''to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket.'' A prospective complainant may accept the recommendation, with or without the consent of the other party or parties to the dispute, by moving forward with the agreed upon schedule and process established by Commission staff in the case.) To request RBAT review and assessment of a dispute that a party to the dispute contends is impeding or delaying deployment of broadband facilities, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing. (The RBAT review and assessment process will be available only to attachers and pole owners that are direct parties to such dispute (including any legal counsel retained to represent a party in that specific dispute). For parties seeking both RBAT review *and* inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, this initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under § 1.736(b).) The MDRD Chief will direct the party to a streamlined form on the MDRD website—Request for RBAT Review and Assessment—and to instructions for completing and electronically transmitting the form to the RBAT. The form will elicit information relevant to the scope and nature of the dispute, and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket. (The form will require a submitting party to provide: information identifying the parties and the services they offer; the section(s) of the Act or Commission rule or order alleged to have been violated; a brief description of the parties' dispute (including how it relates to broadband deployment plans or projects, whether such plans or projects are subject to a deadline under a government funded broadband program, whether the dispute arises in an unserved or underserved area, what harm is occurring or is likely to occur as a result of the situation, and what aspects of the dispute require immediate redress); the specific relief sought; whether the parties have entered into a non-disclosure agreement; the steps the party has taken to resolve the matter with other parties to the dispute; a statement as to whether the parties are amenable to mediation; and a statement indicating whether the party intends to seek inclusion of the matter on the Accelerated Docket. The form also will elicit information relevant to whether the dispute is suitable for accelerated disposition including, for example, the number of poles in question, the number and complexity of claims at issue, and the likely need for discovery or expert affidavits. The RBAT may request additional information from the submitting party if more information is necessary to determine a course of action.)

15. Upon receipt of the completed Request for RBAT Review and Assessment, the RBAT will schedule a meeting through a manner of the RBAT's choosing, with all parties as soon as practicable. The RBAT may

request a written response from the other party or parties to the dispute with respect to one or more issues raised by the party seeking RBAT review. The RBAT also may request that one or both parties provide the RBAT with documentation or other information relevant to the dispute. (NCTA suggests that we specify the information the respondent will be required to provide. We find this approach impracticable, as the information required in a response will depend on the complainant's allegations. We employ a more flexible approach that enables the RBAT to request relevant information and documentation from either party, as appropriate.) In the initial meeting, or in a meeting shortly thereafter, the RBAT will provide guidance and advice to the parties on the most effective means of resolving their dispute, including staff-supervised mediation, use of the Accelerated Docket, and/or other action. (Because mediation will be a prominent feature of the RBAT review, we decline to adopt INCOMPAS's proposal that the 180-day deadline for resolution of a pole access complaint be triggered by the submission of the request for RBAT Review and Assessment. If mediation succeeds, there will be no need for a complaint. If it does not, the filing of a complaint will commence review period deadlines under the relevant Commission rules.) To that end, the RBAT will attempt to distill the issues in dispute and identify issues that are most impacting a party's broadband deployment plans. For example, the RBAT may encourage parties to focus on the resolution of one or more threshold issues, or what appears to be the most urgent issue(s), if it finds that doing so may help the parties to narrow their dispute. Likewise, the RBAT may encourage parties, where appropriate, to streamline the proceeding by agreeing to focus on ''test cases''—*i.e.,* disputes over specific poles that the parties agree are representative of disputes over multiple poles. In this way, deciding the issue as to the test case will have broader impact.

16. Should the RBAT recommend staff-supervised mediation, it shall be conducted pursuant to § 1.737 of the Commission's rules. Because § 1.737 generally contemplates that mediations will be conducted by MDRD staff, we delegate authority to the MDRD Chief, in consultation with the RBAT, to modify or waive the procedures or requirements of § 1.737 as appropriate in this context, or as needed in light of the facts or circumstances of a particular case. (Waiver is appropriate for ''good cause,'' and is warranted only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.) The strict confidentiality requirements will apply to all written and oral communications prepared or made for purposes of a mediation pursuant to § 1.737(f), including mediation submissions, offers of compromise, and staff and party comments made during the course of the mediation (Mediation Communications). Through mediation, the RBAT will make every effort to settle or narrow the issues in dispute as expeditiously as possible.

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

18. *Criteria for Placement on the Accelerated Docket.* The Commission sought comment in the *Second FNPRM* on the adoption of specific criteria to guide Commission staff on ''when pole attachment complaints should be placed on the Accelerated Docket.'' (For example, the Commission asked if its policy should ''take into account the number and complexity of the claims, need for discovery, need for expert affidavits, and ability of the parties to stipulate to facts.'') Based on the requests of several commenters for greater predictability surrounding Accelerated Docket placement decisions with respect to pole attachment disputes that impede or delay broadband deployment, we establish criteria to aid the RBAT in making determinations regarding the placement of such matters on the Accelerated Docket.

19. In light of the strict time constraints that apply in Accelerated Docket cases, we decline to adopt a ''presumption,'' as suggested by some commenters, that all pole access disputes for active deployments be placed on the Accelerated Docket and, instead, entrust the RBAT with this decision based on the criteria specified below. (There is no basis for us to conclude that a dispute will be suitable for the Accelerated Docket simply based on the number of poles at issue as INCOMPAS's proposal suggests.) We agree with Dominion/Xcel that a ''one-size-fits-all policy'' would not adequately take into account the complexity of the issues in particular complaint proceedings. We also agree with the Coalition of Concerned Utilities that the 60-day timeframe will be ''too short'' to resolve certain pole attachment disputes, and thus ''blanket imposition'' of the Accelerated Docket requirements would be unreasonable and ''raise due process concerns'' for utilities. Although Charter argues that the presumption could simply be rebutted if a particular complaint raises unusually complex issues, we reject this argument based on our experience with formal complaints. In particular, when parties oppose the operation of a presumption in a particular proceeding, these rebuttal efforts often lead to significant additional argumentation attendant to resolving the specific question of the presumption, thus unnecessarily complicating resolution of the underlying issues in dispute. To avoid the potential for unnecessary rounds of argumentation and to ensure that complaints accepted onto the Accelerated Docket are suitable for decision under the relevant time constraints, we reject proposals to create a presumption that all pole access disputes for active deployments be placed on the Accelerated Docket.

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

- whether the prospective complainant states a claim for violation of the Act or a Commission rule or order that falls within the Commission's jurisdiction;
- whether the expedited resolution of a particular dispute or category of disputes appears likely to advance the deployment of broadband facilities, especially in an unserved or underserved area;
- whether the parties to the dispute have exhausted all reasonable opportunities for settlement during any staff-supervised mediation;
- the number and complexity of the issues in dispute;
- whether the dispute raises new or novel issues versus settled interpretations of rules or policies;
- the likely need for, and complexity of, discovery;
- the likely need for expert testimony;
- the ability of the parties to stipulate to facts;
- whether the parties have already assembled relevant evidence bearing on the disputed facts;
- the willingness of the prospective complainant to seek a ruling on a subset of claims or issues (*e.g.,* threshold or ''test cases''); and
- such other factors as the RBAT, within its discretion, may deem appropriate and conducive to the prompt and fair adjudication of the complaint proceeding.

The first three of these criteria will help the RBAT to ensure appropriate use of the Commission's processes in support of the goal of timely broadband deployment and ensure that the parties have made a sufficient effort to resolve or, at a minimum, identify and narrow the disputed issues prior to filing a complaint. The remaining criteria will help the RBAT to determine if a dispute is suitable for decision under the strict time constraints of the Accelerated Docket, and also require it to consider whether including a matter on the Accelerated Docket would ensure the prompt and fair adjudication of the dispute. (A responding party's refusal to stipulate to facts or cooperate in the exchange of relevant information bearing on disputed facts will not itself defeat a request for acceptance of a pole attachment dispute on the Accelerated Docket.) By specifying the criteria that the RBAT must consider in making its determination, we hope to make the Accelerated Docket a more useful tool in the resolution of eligible pole attachment disputes and provide prospective complainants with greater certainty regarding which complaints will be deemed suitable for expedited resolution.

21. We will closely monitor the impact of the dispute resolution procedures adopted here and consider additional streamlining measures should we observe ongoing delay tactics or other unreasonable practices that hinder the ability of broadband providers to deploy new services or facilities. (Two commenters suggest narrowing the list of criteria to avoid delay tactics by utilities. We find that eliminating criteria is unnecessary, however, as these criteria are holistic in nature, and no single one will be dispositive. Moreover, the RBAT is not required to credulously accept assertions from either party.)

B. Increasing Transparency by Providing Attachers With Utility Pole Inspection Information

22. We next amend our pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, 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 (if any). (The record demonstrates that utilities conduct inspections of their poles on a multi-year cycle, either as part of normal network management or as required by state law.) In the *Second FNPRM,* the Commission sought comment on requiring utilities to provide more information about their poles to prospective attachers, in order to reduce disputes. (Utilities did not challenge the Commission's general jurisdiction to require them to provide relevant information to prospective attachers, and ACA Connects asserted the Commission has such authority.) Several attaching entities indicated pole inspection information would be helpful in planning deployments. (This requirement applies only in the states that have not certified that they regulate pole attachments themselves. To the extent such reports may include sensitive or confidential network or financial information, we rely upon utilities and attachers to address the issue through redactions or non-disclosure agreements.) We believe this new requirement strikes a reasonable balance between additional transparency for prospective attachers and ensuring the utilities' expenditure of resources is no greater than necessary. As discussed below, however, we also strongly encourage utilities to voluntarily share pole-related information that is reasonably available and that they track in the normal course of business, both before and after receiving attachment applications, and we intend to continue to monitor the record in this proceeding to determine if additional information sharing mandates may be required.

23. For the purposes of the new transparency requirement, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the routine inspection of its poles during the utility's normal pole inspection cycle, while a periodic pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the inspection of any of its poles outside the utility's normal pole inspection cycle. (Electric Utilities request that the new rule not require utilities to provide periodic pole inspection reports, arguing that the requirement will create confusion and invite disputes. We find that the definition of ''periodic inspection report'' is sufficiently clear and note that no other utility commenters claimed the definition was vague or otherwise problematic. We further find that this requirement is an important aspect of the rule. Cyclical pole inspections typically occur several years apart, sometimes by ten or more years, and periodic inspection reports will contain more recent inspection information. We also decline the Electric Utilities' request to seek further comment on transparency requirements in lieu of adopting a rule on report sharing. We find that the record is sufficient to adopt an information sharing rule at this time and the rule we adopt strikes an appropriate balance between providing attachers with additional helpful information while not being overly resource-intensive for utilities. Indeed, several utility parties are supportive of the new transparency requirement.) We note that this new transparency requirement is consistent with the existing practices of certain utilities to prepare such reports. When asking for information about the status of a utility's poles for a planned buildout, the attacher must submit its information request no earlier than contemporaneously with an attachment application. The utility will have ten business days to respond to the request. (The utility has the same amount of time to determine whether the application is complete.) This should allow sufficient time before the make-ready survey for the attacher to revise or amend its application as may be appropriate based

on the information it receives. (''The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.'' After receiving a complete attachment application, a utility conducts a make-ready survey and provides a make-ready cost estimate to the attacher. During the survey stage, ''the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required.'')

24. We recognize that in some situations, the information provided by utilities in their pole inspection reports may lead new attachers to amend their attachment applications. In order to ensure that utilities have enough time to review such applications, in situations when the utility receives an amended attachment application prior to granting or denying the original application, we will allow a utility the option to restart the 45-day period for responding to the application on the merits and conducting the survey. (The option to restart the time period also applies to larger orders that are subject to a 60-day timeframe.) Utilities electing to restart the 45-day application review and survey period in this manner must notify the attacher within 5 business days of receipt of the amended application or by the 45th day after the original application is considered complete, whichever is earlier. (For example, if an amended application was filed on the 42nd day following the utility's determination that the original application was complete, the utility would only have three days, not five business days, to notify the attacher that the utility is restarting the 45-day application review and survey.) To avoid unnecessary delays and costs, we strongly encourage attachers to notify utilities of their intent to file, and to file, amended applications as quickly as possible after receiving a pole inspection report from the utility. We also encourage utilities to exercise their right to restart this 45-day period judiciously and to review amended applications as quickly as possible even when electing to restart the 45-day application review and survey period. (Several parties asked that we require an automatic restart of the 45-day response period or start the application process over in such instances by requiring an attacher to file a new application rather than an amended application. We decline these requests and find that the procedures we adopt are sufficiently tailored to account for the needs of utilities to review amended applications while not needlessly slowing deployment. Under the new rule, utilities will always have the option of electing to restart the 45-day review period; but given that there may be instances where an amendment is minor or otherwise will not require a restart of the 45-day period, we find it reasonable to require utilities to actually review an amended application to determine whether a restart is necessary given the specific circumstances.) Regardless of whether the utility elects to restart the 45-day response period, any additional survey costs necessitated by the amended application, such as a second survey after a survey for the original application has been completed, will be borne by the new attacher consistent with the new attacher's obligation to pay for make-ready costs associated with its application.

25. In connection with the new transparency requirement we adopt in this final rule, we also require utilities to retain copies, in whatever form they were created, of any such cyclical or periodic pole inspection reports they conduct in the normal course of business, until such time as the utility completes a superseding cyclical pole inspection report covering the poles included in the attachment application. In creating these obligations, we reiterate that utilities are required to provide only the information they already possess and track in the normal course of conducting pole inspections at the time of the attacher's request for data. The new rule does not require utilities to collect or create new information for the sole purpose of responding to such requests or to provide all information they may possess on the affected poles outside their pole inspection reports. (Edison Electric Institute contends that ''access to critical infrastructure by non-electric company personnel presents serious safety, reliability, and homeland security hazards,'' and that ''existing law bars electric companies from releasing some information about system infrastructure.'' It does not directly assert, however, that utilities would be barred from disclosing information contained in a pole inspection report. And it notes that most of the information is ''already available'' and an attacher ''can readily learn the condition'' of poles by driving a proposed route. Although we do not know exactly what information utilities may include in their pole inspection reports, we anticipate that legal constraints on disclosure of critical infrastructure information can be addressed, to the extent that they arise, by the parties involved via appropriate redactions or use of a non-disclosure agreement. We do not intend our new rule to override laws precluding disclosure of certain information, but expect utilities to work in good faith to provide potential attachers with the information they can from their pole inspection reports.) We find this new limited requirement achieves a balance between a potential attacher's need for more information about the poles that it plans to use as part of a broadband buildout and the utility's interest in minimizing the burden of mandatory disclosures.

26. We conclude that requiring utilities to provide information about the state of their poles to attachers will help improve the attachment process and potentially reduce disputes. In particular, having such information early in the process will help attachers evaluate whether they want to adjust their plans in light of the poles' conditions. At the same time, we recognize the potential burdens on utilities that would result from imposing a mandate to compile extensive information for every pole attachment application the utility receives. We seek to strike a balance by (1) requiring utilities to provide such information as they already collect in the normal course of inspections done as part of managing their network and poles (which the record indicates include which poles have been identified as needing replacement), rather than having to gather information solely for attachers or from many disparate sources, and (2) tying requests for such information to poles contained in submitted attachment applications.

27. In striking this balance, we agree with utilities that they should not be required by rule to gather and provide extensive pole-related data for every pole attachment application about matters they do not track in the normal course of business through their inspections. The record shows that many utilities do not create specific maintenance or replacement schedules for poles. It also shows that some utilities provide a range of pole-related information—including whether any poles are red-tagged or otherwise identified for replacement—when responding to an attachment application after conducting a make-ready survey. We agree with the commenters asserting that a pre-application survey conducted by the attacher, or a make-ready survey conducted by a utility in response to a specific attachment application, are often the best ways to ensure the potential attacher and utility have up-to-

date, accurate information on the current state of poles. (We recognize that a visual inspection may not necessarily provide all the information an attacher might desire. This supports requiring disclosure of pole inspection reports.) We also agree with Dominion/Xcel, however, that the information contained in general survey or pole inspection reports can be useful to prospective attachers in some cases. Therefore, although we decline at this time to impose broader duties on utilities to collect and provide more expansive pole-related information for every attachment application, we will require utilities to furnish already available information in pole inspection reports concerning specific poles upon request at the time an attachment application is submitted. (Some commenters support the balance struck in this new rule. Electric Utilities, on the other hand, request that any consideration of a rule to require disclosure of pole inspection reports be deferred to a further notice of proposed rulemaking.)

28. While we do not at this time codify a requirement for utilities to provide new attachers with information about poles *prior* to the attacher submitting a pole attachment application, as requested by some commenters, we understand that often utilities share pole information with attachers prior to the application process, particularly information not easily attained through visual inspection. We strongly encourage this pre-application collaboration and cooperation because there is value for both utilities and attachers in having the best available pole information to inform deployment forecasts and attachment requests. Although we recognize that some potential attachers could benefit from obtaining pole-related information prior to submitting an application, we decline to impose this requirement on utilities given that the underlying requests for information would be for preliminary build-out plans that may substantially change. Furthermore, establishing a pre-application duty for utilities would require the Commission to create a new process and timeline prior to the codified make-ready process, which has always been triggered by the filing of an application. Finally, given that prospective attachers also have the ability to gather information about poles on prospective routes through pre-application surveys and visual inspection of poles on a prospective route, we find that imposing an additional pre-application requirement on utilities is not justified at this time. (Through such visual inspection, an attacher typically can learn the age of a pole, whether it has been red tagged, when the most recent inspection occurred, and a pole's load and potential suitability for more attachments. As noted above, however, we also recognize that visual inspection alone may not always provide all the information an attacher may desire, thus supporting the new requirement that utilities provide attachers with cyclical and periodic pole inspection reports. For example, with regard to utility tags on poles, Crown Castle asserts that ''not all poles are appropriately tagged or inspection tags may be missing, damaged, or unable to be interpreted without additional information from the pole owner.'')

29. We reject requests at this time that we mandate a variety of other disclosure requirements on utilities. (Several attachers requested that utilities be required to provide any relevant requested information about their poles that they retain in the ordinary course of business, which would go beyond pole inspection reports. While we encourage parties to voluntarily share information, we find that codifying a broad disclosure requirement for all information collected in the ordinary course of business could force utilities to expend significant resources to gather such information and could lead to additional disputes and complaints related to information sharing.) We agree with utilities that the most relevant information for purposes of an attachment request is whether the poles at issue are available or due for replacement. (Some utilities suspect that the purpose of many of the attachers' requests is only to provide ammunition for rate disputes with utilities, not to improve the attachment process.) For example, some attacher commenters ask the Commission to require utilities to create accessible databases (or establish a single database for all utilities) with information on things like pole age, condition, repair/replacement schedules, location, number of attachments, standard rate structure, and applicable engineering standards. They also ask that utilities be required to provide data from the owners' periodic load analyses for poles; the age, height, class, and condition of poles; and data on current attachments and pending attachment requests for relevant poles. And ACA Connects asks the Commission to require utilities to provide more details in their make-ready cost estimates to support those costs. For the reasons discussed below, we decline to adopt these requirements. With respect to certain financial information requested by some commenters regarding pole rates, we do not adopt new disclosure requirements, but make clear that some financial information is already required to be disclosed under our rules.

30. Before addressing these specific proposals, however, we note some attachers express concern that, by adopting a requirement to provide pole inspection reports but not codifying additional mandates, we may be inadvertently discouraging utilities from voluntarily providing pole-related information before receiving an attachment application, which at least some utilities do today. We stress that our actions in this final rule should not be understood to undermine or disincentivize such voluntary sharing. To the contrary, voluntary sharing of pole-related information is consistent with longstanding Commission policy favoring transparency in the pole attachment context, and we strongly encourage both utilities and attachers to collaborate and voluntarily share information with each other whenever such information is reasonably available and obtained in the normal course of business. (We reject claims that our actions here are inconsistent with the policy of promoting transparency, as Crown Castle asserts. To the contrary, this Order increases transparency by adopting a new disclosure requirement.) Voluntary sharing can be helpful to both attachers and utilities to promote more efficient buildouts by informing deployment forecasts, allowing more accurate applications, and decreasing disputes or delays after an application is submitted. (Such voluntary sharing also is helpful because ''not all pole owners conduct these denominated inspections,'' yet attachers still could benefit from receiving the kind of information that would have been included in such inspections had they occurred.) Having better and more accurate information prior to attachment applications will likely reduce make-ready costs, the frequency and severity of disputes, and improve the efficiency of the attachment process—benefiting both attachers and utilities. We will continue to monitor the record in this proceeding and will take further action if it becomes clear that voluntary information sharing arrangements are insufficiently promoting broadband deployment.

31. *Database(s) of Pole Information.* We decline (1) to require that each utility create an accessible database with an array of data on all its poles, or (2) to establish a single pole-information

database for all utilities. The Commission rejected previous calls for a similar database requirement in 2011, in part based on the large burden outweighing potential benefits. We find that the 2011 reasoning remains valid. In particular, we find that the record continues to demonstrate that the burdens and costs of creating such a database (if a utility does not already have one) would be very large given the number of poles many utilities own or jointly own and the scope of pole data attachers seek, and that the alleged benefits of requiring such a database would be reduced by the new requirement we adopt in this final rule that utilities provide information from their pole inspection reports. Commenters contend that requiring such a pole-related database would help speed deployment by helping attachers plan better and avoid intermediate steps for both attachers and utilities. Utilities, however, assert that due to the very large number of poles they own or co-own and the ever-changing nature of pole networks, maintaining a fully up-to-date database would be almost impossible, and so the information for any given group of poles in a database could easily be out of date when the attacher needs it. One utility also submits that granting access to such voluminous pole information could result in the submission of incorrect applications. We find that the benefits of a database requirement remain speculative at best given how difficult it would be to keep such a large database up-to-date.

32. While some commenters argue that circumstances have changed since 2011, with some state utility commissions adopting database requirements for pole-related information, the states cited by these commenters are limited and, in any event, all regulate pole attachments at the state level pursuant to section 224(c) of the Act. As a result, compliance with pre-existing state-specific database requirements would likely offer little, if any, relief in complying with a newly imposed Federal database requirement. To the extent any utilities may have developed pole-related databases in states that do not regulate pole attachments, the record indicates that attachers are interested in specific types of data, not merely access to existing databases, which would require utilities to absorb additional, and potentially substantial, costs of either adding specific types of new data or searching databases for specific data of interest to attachers. (ACA Connects asserts that many utilities have developed pole-related databases since 2011, but it does not identify utilities that have done so in states that do not regulate pole attachments.) Again, we agree with the utilities that the value of such database information to attachers is highly unlikely to outweigh those burdens, as the information may well be out of date by the time an attacher submits an attachment request. Moreover, any added benefit would likely be minimal in light of the new information-sharing requirement we adopt in this final rule.

33. *Loading Studies.* According to NCTA, some utilities provide and allow attachers to rely on loading studies included in the utilities' cyclical pole inspection reports rather than making the attacher do its own loading study, but other utilities do not. NCTA asserts that ''[w]here such studies have been conducted, pole owners should be required to use that existing analysis rather than forcing a new attacher to incur the expense and delay of performing a duplicative and redundant study.'' We decline to adopt this proposal. To the extent pole inspection reports include loading studies, attachers will have access to such information under the new rule we adopt in this final rule. (In cases where the loading study is not part of the inspection report, we decline, at this time, to codify a requirement for a utility to provide an attacher with a loading study as NCTA requests, but strongly encourage utilities to provide such loading studies when reasonably requested and readily available.) We will not, however, dictate when a utility can require a loading study, as NCTA seems to request, as we continue to believe, consistent with the *2018 Wireline Infrastructure Order,* that such studies ''can be important tools to address safety, reliability, and engineering concerns.'' (NCTA also asserts that a utility should have to bear the cost of a loading analysis where none has been performed but the utility believes a study is necessary before allowing an attachment, and that utilities can instead recover the costs of such loading studies through annual attachment rental fees. As that issue relates to cost recovery rather than transparency, we do not address it here.)

34. *Age, Height, Class, and Condition of Poles.* We reject attachers' request to require utilities to provide data on the age, height, class, and condition of their poles, or the last date the pole was inspected, make-ready was conducted, or a pre-existing violation on the pole was fixed. The utilities state that they either routinely provide this type of data with make-ready estimates, that the information is accessible to attachers through their own pre-application surveys or when the attacher accompanies the utility on a make-ready survey, or that they do not track this data. To the extent utilities' pole inspection reports include such data, that information would be covered by the new transparency requirement we adopt in this final rule and available to attachers upon request after an application is filed. Given that attachers can often obtain this information either from the utility or through their own survey or inspection, we reject any additional requirement for pole condition information beyond that which we have already outlined, but we strongly encourage utilities to share this information when it is readily available and collected in the normal course of business.

35. *Existing Attachments and Pending Attachment Requests.* We also decline to require that utilities provide data on the number of attachments or pending attachment applications for each pole covered by an attachment request. As the utilities explain, pole networks are dynamic and pole conditions frequently change. We find that the record sufficiently demonstrates that attempting to keep a fully up-to-date list of the number of attachments or pending applications on every pole would be a very time-consuming and expensive proposition. (Some attachers also sought to require pole owners to produce information on utility transformers or voltage on a pole or the total attachment load on the pole, but utilities either deny the usefulness of such information or state that they do not track it.) Even if some utilities track this information, requiring them to compile the information and send it across a vast and shifting landscape of attachers and poles—and to keep that information updated—would be a considerable burden. Although attachers assert there would be some value in having this kind of data earlier, even if it is old, we find that, as with the proposed pole attachment database discussed above, any purported benefit is outweighed by the potentially considerable cost utilities would have to bear in complying with such a requirement.

36. *Data Supporting Make-Ready Estimates.* With regard to the request that utilities be required to provide more detailed supporting data in their make-ready estimates, particularly regarding the utility's costs, we again decline to adopt any new requirement. Current rules already require utilities to provide supporting cost details in their make-ready cost estimates. If utilities are not complying with those rules,

attachers remain free to invoke the complaint process or seek mediation.

37. *Financial Records Regarding Poles.* We decline attachers' requests to create new obligations requiring utilities to provide additional financial data regarding poles and attachment rates, including outside plant records (also called continuing property records) as part of the rules being adopted at this time. (Continuing Property Records are ''[o]utside plant records relevant to poles,'' typically ''including a detailed accounting of the units associated with accounts used to report pole plant investment such as vintage height, class, etc.'' Several attachers repeated these requests in later submissions, asking that utilities be required to disclose a range of information related to rates, rather than only the information the utility relied on in computing rates, to enable attachers to, for example, evaluate the validity of utilities' reliance on presumptions in the pole attachment rate formula.) Attachers argue that such a duty for utilities to provide information will reduce rate disputes or make them easier to resolve. Our focus here, however, is on deployment rather than rate disputes. Further, § 1.1404(e) and (f) of the Commission's rules—which we do not alter here—already require that pole owners, upon request of a cable operator or telecommunications carrier, provide the information they have relied on in calculating rates, and information an attacher seeks to rely on in establishing that a rate, term, or condition is not just and reasonable. The Commission has explained that ''it is critical that attaching entities have this information well in advance of executive-level discussions to ensure that those pre-complaint negotiations have a chance of success.'' (NCTA contends the former language in § 1.1404(g) was inadvertently removed in a prior rule revision. We disagree. The Commission sought to ''streamline the rules in [§] 1.1404'' by removing the long list of information specified in that section but did not narrow the scope of information utilities must provide attachers. In light of these existing rules and the policy stated by the Commission in 2018, to the extent an attacher has a specific dispute with a utility, it already can seek and obtain certain financial data from the utility, prior to filing a complaint, under current rules.) We therefore decline to impose a new, broader duty to disclose additional financial records related to poles. (USTelecom, whose members include both pole owners and attachers, argues that imposing a duty beyond current law ''would *not* accelerate broadband deployment or reduce its costs, but would likely have the opposite effect by diverting broadband providers' capital away from their own broadband deployment to subsidize their competitors' builds.'')

IV. Final Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second FNPRM.* The Commission sought written public comment on the proposals in the *Second FNPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

39. In the *Fourth Report and Order,* the Commission adopts rules and policy changes that will make the pole attachment process faster and cheaper, particularly when poles have to be replaced during broadband buildouts. In the last five years, the Commission took significant steps in setting standards for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles, with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments. In the *Fourth Report and Order,* we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing telecommunications companies with information about the status of the utility poles they plan to use as they map out their broadband builds.

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

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

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

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

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

42. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. (Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.) 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.

43. *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 SBA's 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.

44. 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. (The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.) 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. (The IRS Exempt Organization Business Master File (E.O. BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS E.O. BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1—Northeast Area (58,577), Region 2—Mid-Atlantic and Great Lakes Areas (175,272), and Region 3—Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.)

45. 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. (The Census of Governments survey is conducted every five (5) years compiling data for years ending with ''2'' and ''7''.) (Local governmental jurisdictions are made up of general purpose governments (county, municipal, and town or township) and special purpose governments (special districts and independent school districts).) Of this number, there were 36,931 general purpose governments (2,105 county, 18,729 municipal, and 16,097 town and township governments) with populations of less than 50,000 and 12,040 special purpose governments (independent school districts) with enrollment populations of less than 50,000. (While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.) 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.'' (This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations tbls. 5, 6 & 10.)

1. Internet Access Service Providers

46. *Wired Broadband internet Access Service Providers (Wired ISPs).* (Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.) 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.)

47. 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 technologies used by providers include asymmetric and symmetric digital subscriber line (aDSL and sDSL) (collectively xDSL), Other Wireline, Cable Modem, and fiber to the premises (FTTP).) Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T–1/DS–1 and T3/DS–1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.) 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.

48. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) as well as voice over internet protocol (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 $35 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

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

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

51. *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. (Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) 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.

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

53. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. (Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) 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 that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. 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.

54. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange 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 that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) 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.

55. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) 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.

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

57. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. (This includes, among others, the approximately 800 members of the Wireless internet Service Providers Association (WISPA), including those entities who provide fixed wireless broadband service using unlicensed spectrum. We also consider the impact to these entities for the purposes of this FRFA, by including them under the ''Wireless Providers—Fixed and Mobile'' category.) 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.

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

59. *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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

60. 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. (The Designated entities sections in subparts D through Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.)

61. 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.

62. *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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

63. According to Commission data as of November 2021, there were three active licenses in this service. (Based on an FCC Universal Licensing System search on November 8, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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.

64. 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.

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

66. *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 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

67. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. (Based on an FCC Universal Licensing System search on November 16, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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.

68. 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.

69. *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 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. 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) 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. (We note that there were also SMR providers reporting in the ''Cellular/PCS/SMR'' classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.)

70. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. (Based on an FCC Universal Licensing System search on December 15, 2021, search parameters: Service Group = All, ''Match radio services within this group'', Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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.

71. *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 frequency division duplex (FDD)- and time division duplex (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 an 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

72. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. (Based on an FCC Universal Licensing System search on December 14, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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.

73. 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.

74. *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. (We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.) Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the

Commission estimates that a majority of licensees in this industry can be considered small.

75. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. (Based on an FCC Universal Licensing System search on December 14, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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.

76. *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.

77. 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

78. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. (Based on an FCC Universal Licensing System search on December 20, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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.

79. 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.

80. *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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

81. 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. (Based on an FCC Universal Licensing System search on November 19, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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.

82. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. (Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission's Rules. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.) 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 an 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

83. 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.

84. 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.

85. *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)). (The use of the term ''wireless cable'' does not imply that it constitutes cable television for statutory or regulatory purposes.) 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. (Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.)

86. In light of the use of wireless frequencies by BRS and EBS services, 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

87. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses. (Based on an FCC Universal Licensing System search on December 10, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) 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 license as of December 2021. (We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

88. 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

89. *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 $35 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

90. *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 $35 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

5. Cable Service Providers

91. 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.

92. *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 $41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. (The U.S. Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).) 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/ revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Based on this data, the Commission estimates that a majority of firms in this industry are small.

93. *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.

94. *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. (In the *2023 Subscriber Threshold Public Notice,* the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. This threshold will remain in effect until the Commission issues a superseding Public Notice.) 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. (The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules.) 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

95. *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.

96. 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. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

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

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

98. Parties seeking both RBAT review and assessment of a dispute that a party contends is impeding or delaying deployment of broadband facilities, and inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing. This initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under § 1.736(b). Additionally, the RBAT may require that the parties participate, if appropriate, in pre-filing settlement negotiations or mediation under § 1.737 as a condition for including a matter on the Accelerated Docket. We amend our pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been ''red tagged'' by the utility for replacement, and the scheduled replacement date or timeframe. The record indicates that utilities already prepare such reports, making this new transparency requirement consistent with the existing practices. For these reasons, we believe that small and other utilities will not have an issue complying with the new obligation.

99. The Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions, or to quantify the cost of compliance for small entities with the *Fourth Report and Order.* While some small entities may have some unique burdens, the Commission anticipates the requirements for pole attachment disputes and data collection by utility companies will have minimal cost implications because many of these obligations are consistent with existing Commission regulations to file disputes, and existing practices by utilities to prepare pole inspection reports.

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

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

101. The Commission took steps to minimize significant economic impact on small entities and considered alternatives to new rules and processes adopted in the *Fourth Report and Order* that may impact small entities. By establishing the RBAT, we addressed commenters' request that we expedite the resolution of pole attachment disputes, the delay of which may impose greater harm on small providers. In considering alternatives to the rules, we declined to adopt certain proposals that are burdensome, unnecessary, or would impose significant costs on utilities with little or no benefit to broadband deployment. For example, we agreed with utilities that they should not be required to gather and provide pole-related data for matters they do not track in the normal course of business through their inspections. We also declined to require that small and other utilities provide new attachers with information about poles prior to the attacher submitting an application because this data would be speculative and the build-out may never occur. Additionally, we declined to establish a

single pole-information database or require each utility to create a database of all its poles. Similar to our prior decisions on this matter, the record demonstrates that the burdens and costs of creating such a database are considerable given that many utilities own or jointly own poles. Further, the scope of pole data attachers seek exists in information from pole inspection reports we require small and other utility companies to provide in the *Fourth Report and Order.* We considered and declined to require small and other utilities to provide financial data regarding poles and attachment rates because this would be overly burdensome for the utilities. We also considered but declined to require small and other utilities to provide information on the age or condition of the poles, or number of current or pending attachment applications for each pole because it could be burdensome, unnecessary, or unfeasible in some cases, and would impose significant costs on utilities with little or no benefit to broadband deployment. Finally, we declined to require small and other utilities to provide more detailed supporting data in their make ready estimates because the current complaint process should be sufficient to address a potential dispute on this matter.

G. Report to Congress

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

V. Procedural Matters

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

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

105. *Paperwork Reduction Act.* This document may contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Specifically, the rules adopted in 47 CFR 1.1411, 1.1415, and 1.1416 may require new or modified information collections. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the information collection burdens on small entities.

VI. Ordering Clauses

106. Accordingly, *it is ordered* that pursuant to sections 1–4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201, 202, 224, and 303(r), the Fourth Report and Order and Declaratory Ruling hereby *is adopted* and part 1 of the Commission's Rules, 47 CFR part 1, *is amended* as set forth in Appendix A of the Fourth Report and Order.

107. *It is further ordered* that the Fourth Report and Order shall become effective 30 days after publication in the **Federal Register**, except that the amendments to § 1.1411(c)(4) and new § 1.1415, 47 CFR 1.1411(c)(4), 1.1415, which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for § 1.1411(c)(4) and new § 1.1415 by subsequent Public Notice.

108. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of the Fourth Report and Order will commence on the date that a summary of the Fourth Report and Order is published in the **Federal Register**, and the period for filing petitions for reconsideration or petitions for judicial review of the Declaratory Ruling will commence upon release of the Declaratory Ruling.

109. *It is further ordered* that the Commission's Office of the Secretary, *shall send* a copy of the Fourth Report and Order and Declaratory Ruling, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

The Federal Communications Commission amends part 1 of title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

■ 2. Delayed indefinitely, amend § 1.1411 by adding paragraph (c)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(c) * * *

(4) *Information from cyclical pole inspection reports.* (i) Upon submitting its attachment application, a new attacher may request in writing that the utility provide, as to the poles covered by such attachment application, the information regarding those poles contained in the utility's most recent cyclical pole inspection reports, or, if available, any more recent pole inspection report. The utility shall

provide the new attacher with this information within ten (10) business days of the new attacher's written request.

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

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

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

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

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

* * * * *

§ 1.1415 [Redesignated as § 1.1416]

■ 3. Redesignate § 1.1415 as § 1.1416.

■ 4. Delayed indefinitely, add a new § 1.1415 to read as follows:

§ 1.1415 Dispute resolution procedures for pole attachment disputes that impede or delay broadband deployment; functions of the Rapid Broadband Assessment Team.

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

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

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

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

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

(1) Whether the prospective complainant states a claim for violation of the Act, or a Commission rule or order that falls within the Commission's jurisdiction;

(2) Whether the expedited resolution of a particular dispute or category of disputes appears likely to advance the deployment of broadband facilities or services, especially in an unserved or underserved area;

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

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

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

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

(7) The likely need for expert testimony;

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

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

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

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

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