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July 25, 2018

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch,

In response to the Commission's draft third report and order on broadband infrastructure deployment,¹ NCTA submits the attached edits to rules regarding pole attachments. These edits are consistent with views NCTA expressed in *ex parte* meetings with legal advisors to Chairman Pai and Commissioners Carr, O'Rielly, and Rosenworcel.²

Specifically, the attached rule edits reflect NCTA's suggestions that the *Draft Third Report and Order* should be revised to include the following items to protect existing networks:

1. The right of an existing attacher to demand immediate correction of an outage in real time and an explicit statement in the rules that repairing outages to existing customers takes precedence over the completion of make-ready work. (Attachment page 6, rule 1.1412(i)(2)(iii) and pages 7-8, rule 1.1412(j)(4)(iii))

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, FCC-CIRC 1808-03 (circulated July 12, 2018) (*Draft Third Report and Order*).

² See Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (July 18, 2018); Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (July 23, 2018); Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (July 23, 2018).

2. The right of an existing attacher to object to a determination that make-ready is simple (e.g., to assert that the work will involve splicing, is likely to cause an outage, or is other “complex” work). (Attachment page 7, rule 1.1412(j)(4)(i))
3. The right of an existing attacher to disqualify a contractor selected by a new attacher if the existing attacher previously has terminated that contractor for poor performance or if the contractor does not meet the minimum qualification requirements. (Attachment page 9, rule 1.1413(d))
4. The right of an existing attacher to avoid the risks associated with OTMR by moving its own facilities during the initial notice period, which should be the 25-day period proposed by the BDAC. (Attachment page 7, rule 1.1412(j)(4) and (j)(4)(ii))
5. Reimbursement of “any of the costs” incurred by an existing attacher that are attributable to make-ready by a new attacher. (Attachment page 8, rule 1.1412(j)(7))
6. A requirement that new attachers indemnify existing attachers for liability attributable to outages caused by a new attacher that chooses OTMR, and an explicit statement that contractors’ insurance or performance bonds cover work performed on existing attachments. (Attachment page 8, rule 1.1412(j)(7) and page 9, rule 1.1413(c)(5))
7. A longer time frame for existing attachers (e.g., 60-90 days) to inspect make-ready work and raise claims about damage to existing networks, and a rule section allowing for a longer notification period and make-ready timeline for large projects (100 poles per week). (Attachment page 5, rule 1.1412(i)(2)(ii), page 8, rule 1.1412(j)(5), and page 8, rule 1.1412(j)(6))
8. The right of an existing attacher to file a complaint against a new attacher for failure to meet its obligations under the Commission’s rules. (Attachment page 10, rule 1.1417)³

Respectfully submitted,

/s/ Jennifer K. McKee

Jennifer K. McKee

Attachment

cc (via email): Erin McGrath
Jamie Susskind
Betsy McIntyre
Jay Schwarz

³ We have also included minor edits to rules 1.1412(e)(1)(iv) and (e)(2)(vi) to make clear that those rules refer to the self-help make-ready rules in section 1.1412(i). Attachment pages 3 and 4.

APPENDIX A

Final Rules

For the reasons set forth above, Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority for part 1 is amended to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

SUBPART J – POLE ATTACHMENT COMPLAINT PROCEDURES

Amend section 1.1402 by adding paragraphs (o), (p), (q), and (r) to read as follows:

§ 1.1402 Definitions.

* * *

(o) 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.

(p) The term *complex make-ready* means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

(q) The term *simple make-ready* means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(r) The term *communications space* means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

3. Amend section 1.1403 by revising paragraph (c) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * *

(c) A utility shall provide a cable television system or telecommunications carrier no less than 60 days written notice prior to:

* * *

(3) Any modification of facilities by the utility other than make-ready, routine maintenance, or modification in response to emergencies.

* * * * *

3. Amend section 1.1412 by revising paragraphs (a), (c), (d), (e), (f), (g), (h), and (i) and adding paragraph (j) to read as follows:

§ 1.1412 Timeline for access to utility poles.

(a) Definitions.

(1) The term “attachment” means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.

(2) The term “new attacher” means a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

(3) The term “existing attacher” means any entity with equipment on a utility pole.

* * *

(c) Application Review and Survey.

(1) *Application Completeness.* A utility shall review a new attacher’s attachment application for completeness before reviewing the application on its merits. A new attacher’s attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.

(i) A utility has 10 business days after receipt of a new attacher’s attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

(ii) Any resubmitted application need only address the utility’s reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility’s review.

(2) *Application Review on the Merits.* A utility shall respond as described in §1.1403(b) to a new attacher within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section).

(3) *Survey.*

(i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section).

(ii) A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(iii) A utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use a survey conducted by a new attacher pursuant to § 1.1412(j)(3) and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (c)(3)(i) of this section.

(d) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized pole-by-pole estimate of charges to perform all necessary make-ready within 14 days of providing the response required by § 1.1412(c), or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey. Where the utility determines that make-ready charges will not vary from pole-to-pole, the utility may aggregate individual charges rather than present a pole-by-pole estimate for those charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

* * *

(2) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(3) *Final invoice.* After the utility completes make-ready, it shall provide the new attacher with a detailed final invoice of the actual make-ready charges incurred on a pole-by-pole basis to accommodate the new attacher's attachment. Where the utility determines that make-ready charges did not vary from pole-to-pole, the utility may aggregate individual charges rather than present a pole-by-pole invoice for those charges.

(e) * * *

(1) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of larger orders as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(1)(ii) in this section, the new attacher may complete the specified make-ready [pursuant to paragraph \(e\)\(1\)\(i\) in this section.](#)

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(2) For attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(iii) Set a date for completion of make-ready that is no later than 60 days after notification is sent (or 105 days in the case of larger orders, as described in paragraph (g) of this section).

(iv) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(v) State that the utility may assert its right to 15 additional days to complete make-ready.

(vi) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the specified make-ready [pursuant to paragraph \(e\)\(1\)\(i\) in this section](#).

(vii) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (e)(1)(ii) for communications space attachments or paragraph (e)(2)(ii) for attachments above the communications space.

(f) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (e)(1)(ii) or its make-ready above the communications space by the same dates for existing attachers in paragraph (e)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(g) * * *

(1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

* * *

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(h) *Deviation from the time limits specified in this section:*

(1) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

(2) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready without discrimination when it returns to routine operations.

(3) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall include a detailed explanation of the reason for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (e)(1) of this section is sent by the utility (or up to 105 days in the case of larger orders described in paragraph (g) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready.

(i) *Self-help remedy.*

(1) *Surveys.* If a utility fails to respond as specified in paragraph (c) of this section, then a new attacher may, as specified in §1.1413, hire a contractor to complete a survey.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

(ii) A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(2) *Make-ready.* If make-ready is not complete by the date specified in paragraph (e) of this section, then a new attacher may, as specified in §1.1413, hire a contractor to complete make-ready.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any make-ready. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(ii) A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers ~~30-60~~ days from receipt in which to inspect the make-ready. The affected utility and existing attachers have ~~14-30~~ days after completion of their inspection to notify the new attacher of any damage caused by make-ready conducted by the new attacher on their equipment. If the utility or existing attachers discover damage caused by make-ready conducted by the new attacher on equipment belonging to the utility or an existing attacher, then the utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to fix

the damage, or (B) require the new attacher to fix the damage at its expense within 14 days following notice from the utility or existing attacher.

(iii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or existing attacher or causes an outage condition to any facility or service of a utility or existing attacher. In the event of an outage, the new attacher shall immediately cease make-ready work and coordinate with the affected attacher or utility with respect to service restoration. The utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage and restoring service, or (B) require the new attacher to immediately take steps to fix the damage and restore service at its expense. The new attacher may resume make-ready work only after service is restored.

(j) *One-touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (c)-(f) and (i) of this section.

(1) Attachment Application.

(i) A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

(ii) The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

(A) A utility has 10 business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

(B) If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application Review on the Merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of larger orders as described in paragraph (g) of this section).

(i) If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence

and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

(ii) Within the 15-day application review period (or within 30 days in the case of larger orders as described in paragraph (g) of this section), an electric utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the electric utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The electric utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(3) *Surveys.* The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in §1.1413(b).

(i) The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(4) *Make-ready.* If the new attacher's attachment application is approved and if it has provided ~~15-25~~ days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in §1.1413(b).

(i) The prior written notice shall include the specific date and time of the make-ready, a description of the work involved, a copy of the survey and/or the attachment application, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready. If an existing attacher objects to the contractor's determination that make-ready for the existing attacher's facilities is simple, then it is deemed complex. The existing attacher's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(ii) If the new attacher does not commence the make-ready on the date and time in the prior written notice, it shall issue a new 25-day notice with the new date and time it will commence make-ready. After a new attacher's attachment application is approved, but prior to the date the new attacher commences make-ready, an existing attacher may perform make-ready work on its own facilities identified in the prior written notice.

~~(ii)(iii)~~ (iii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage ~~condition that is reasonably likely to interrupt the~~ to any facility or service of a utility or existing attacher. In the event of an outage, the new attacher shall immediately cease make-ready work and coordinate with the affected attacher or utility with respect to service restoration. Upon receiving notice from the new attacher, ~~The utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to~~ fixing the damage and restoring service ~~fix the damage,~~ or (B) require the new attacher to immediately take steps to fix the damage and restore service at its expense ~~fix the damage at its expense within 14 days following notice from the~~

utility or existing attacher. The new attacher may resume make-ready work only after service is restored.

(iv) If the new attacher damages the equipment of a utility or an existing attacher but there is no outage, the utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage, or (B) require the new attacher to fix the damage at its expense within 14 days following notice from the utility or existing attacher.

(5) *Post-make-ready timeline.* A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers ~~30-60~~ days from receipt in which to inspect the make-ready. The affected utility and existing attachers have ~~14-30~~ days after completion of their inspection to notify the new attacher of any damage caused by make-ready conducted by the new attacher on their equipment. If the utility or existing attacher notifies the new attacher of such damage, then the utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fix the damage or require the new attacher to fix the damage at its expense within 14 days following notice from the utility or existing attacher.

(6) Large Projects. For large projects where the new attacher will attach to poles involving an existing attacher at an average rate of at least 100 poles per week, the new attacher must communicate with the utility and existing attachers 90 days in advance of its initial application for such a project in order to develop a more flexible timeline for approval and make-ready, and the existing attacher's time frame for completion of make-ready will be extended no less than the extensions provided for the utility's work under § 1.1420(g).

(7) Costs. An existing attacher shall not be required to bear any of the costs of a new attacher's activities under the one-touch make-ready process, and may bill the new attacher for any reasonable costs, including costs associated with being present at any field inspection conducted as part of the new attacher's surveys and/or one-touch make-ready work, for the cost of any make-ready work undertaken by the existing attacher, for post-make-ready inspections and remediations, and for other damages, costs and losses arising from work performed by the new attacher during the one-touch make-ready process.

7. Amend section 1.1413 by revising paragraphs (a), (b), and (c) to read as follows:

§ 1.1413 Contractors for surveys and make-ready.

(a) *Contractors for self-help complex and above the communications space make-ready.* A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in §§1.1413(c)(1)-(5) and the utility may not unreasonably withhold its consent.

(b) *Contractors for simple work.* A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, and requires that a new attacher use a contractor from the list to perform surveys or simple make-ready, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the

minimum qualifications in §§1.1413(c)(1)-(5) and the utility may not unreasonably withhold its consent.

(i) If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (c) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (c) of this section when providing notices required by §§1.1412(i)(1)(ii), 1.1412(i)(2)(i), 1.1412(j)(3)(i), and 1.1412(j)(4).

(ii) The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in §§1.1412(i)(1)(ii), 1.1412(i)(2)(i), 1.1412(j)(3)(i), and 1.1412(j)(4) and in its objection must identify at least one available qualified contractor.

(c) *Contractor minimum qualification requirements.* Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to paragraph (b)(i) of this section, meet the following minimum requirements:

(1) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(2) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

(3) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

(4) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

(5) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

(d) An existing attacher may disqualify a contractor from working on its facilities if it demonstrates that the contractor previously has been terminated by that attacher based on its prior performance or that the contractor is unable to satisfy the minimum qualification requirements set forth in § 1.1413(c).

* * * * *

8. Amend section 1.1414 by revising to read as follows:

§ 1.1414 Complaints by incumbent local exchange carriers.

(a) A complaint by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a local exchange carrier or that a utility's rate, term, or condition for a pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part.

(b) In complaint proceedings challenging utility pole attachment rates, terms, and conditions for pole attachment contracts entered into after [INSERT EFFECTIVE DATE OF THIS SECTION], there is a presumption that an incumbent local exchange carrier (or an association of incumbent local exchange carriers) is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system providing telecommunications services for purposes of obtaining comparable rates, terms, or conditions. In complaint proceedings challenging pole attachment rates, there is a presumption that incumbent local exchange carriers (or an association of incumbent local exchange carriers) may be charged no higher than the rate determined in accordance with § 1.1407(e)(2). A utility can rebut either or both of the two presumptions in this paragraph (b) with clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems providing telecommunications services on the same poles.

9. Add section 1.1416 to read as follows:

§ 1.1416 Overlashing.

(a) *Prior approval.* A utility shall not require prior approval for an existing attacher that overlashes its existing wires on a pole.

(b) *Advance notice.* A utility may require no more than 15 days' advance notice of planned overlashing. If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. A utility may deny access to the pole for overlashing within the 15-day advance notice period so long as the denial is accompanied by specific documentation demonstrating that the overlash creates a capacity, safety, reliability, or engineering issue.

(c) *Overlashers' Responsibility.* An existing attacher that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlashing, then the existing attacher is responsible at its expense for any necessary repairs.

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Add section 1.1417 to read as follows:

§ 1.1417 Complaints by new attachers and existing attachers.

An attaching party may file a complaint against another attaching party concerning any failure to meet the requirements of the rules and regulations of this subpart J. Such complaints shall follow the same complaint procedures specified for other pole attachment complaints in this part, as relevant.