KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8518
EMAIL: tcohen@kelleydrye.com

July 25, 2018

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

On July 23, 2018, Ross Leiberman (Senior Vice President, American Cable Association ("ACA")) and Thomas Cohen (Kelley Drye & Warren LLP and Counsel to ACA) met with Jaime Susskind, Chief of Staff to Commissioner Carr, and Elizabeth McIntyre, Legal Advisor to Commissioner Rosenworcel. They also met with Kris Monteith, Lisa Hone, Daniel Kahn, Adam Copeland, Michael Ray, Annick Banoun and Matthew Collins of the Wireline Competition Bureau. The purpose of the meetings was to discuss ACA's views on the *Draft Third Report and Order* in the Wireline Broaband proceeding,[1] including ACA's mark-up of the proposed rules, which was contained in an *ex parte* ACA filed on July 23, 2018.[2] As noted in the *ex parte*, ACA supports the pole attachment provisions in the *Draft Order*,[3] which, among other things, clarify and reform rights and obligations in the access timeline for utilities and new and existing attachers and which codify the Commission's policy that overlashing can occur without pre-

---

1 *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Public Draft, Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03 (July 12, 2018) ("*Draft Third Report and Order*" or "*Draft Order*").

2 Letter from Thomas Cohen, Counsel for ACA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at Attachment (July 23, 2018) ("*ACA Ex Parte*").

3 ACA's views do not address the proposed One-Touch Make-Ready ("OTMR") rule.

approval from utilities.[4] All of these measures will expedite and lower the cost of access to poles and thereby speed broadband deployments.

While ACA generally supports the *Draft Order*, ACA representatives explained that the rules proposed in Appendix A of the *Draft Order* should be amended in multiple ways to add clarity and better align with the text of the order.[5] By making such edits, the Commission would enable all parties involved in the pole access process to clearly understand the processes, what they are entitled to, and what their duties are.

Regarding certain issues and proposed rule amendments raised in its *ex parte* in the meetings, as well as other issues raised by interested parties in recent filings, ACA makes the following additional points:

Deemed Granted Applications – In its amendments to the proposed rules in § 1.1412(c)(2) and § 1.1412(i)(1), ACA recommended that if a utility does not grant or deny a complete application by the 45-day deadline (or 60 days for larger orders), the application would be deemed granted. This amendment seeks to implement the important policy that a utility cannot simply forestall a decision on an application by making no decision – a delaying tactic that would undermine the purpose of the Commission's timeline. This "deemed granted" provision should not be viewed as inconsistent with (or running counter to) a utility's right, pursuant to 47 U.S.C. § 224(f)(2), to "deny a cable television system or any telecommunications carrier access."[6] Rather, since the utility has been given an adequate period to either grant or deny the application, it is reasonable for the Commission to advance the overall public interest in enabling access by adopting a "deemed granted" requirement, while assuming that the utility understands its obligation and has chosen not to exercise its right to deny if it does not act within this period.[7] In addition, a "deemed granted" remedy rests on the sound premise that a utility will still be able to oversee the

---

4 *Draft Third Report and Order* at paras. 14-112.

5 *See id.* at Appendix A.

6 *See also* 47 C.F.R. § 1.1403(a)-(b), which implement 47 U.S.C. § 224(f).

7 In interpreting 47 U.S.C. § 224(f), the Commission must balance a utility's right under § 224(f)(2) to deny access with the right of a cable television system or telecommunications carrier under 47 U.S.C. § 224(f)(1) to obtain nondisciminatory access to any pole. Accordingly, the Commission cannot give meaing to § 224(f)(1) if it permits a utility to effectively deny such access by simply not responding to a new attacher's application. This conclusion is buttressed by the fact that § 224(f)(2) does not provide that a new attacher *may not* attach until the utility grants it permission. Instead, § 224(f)(2) only gives the utility the ability to deny access. Thus, it is reasonable for the Commission to conclude that, if a utility has been given a reasonable period of time to deny access and does not exercise such right, it has chosen not to deny, either directly or effectively.

attachment process and protect its rights by being able to accompany the new attacher when the new attacher conducts a survey[8] or undertakes self-help make-ready,[9] or to deviate from the make-ready time limits for good and sufficient cause.[10] Finally, the Commission can have a reasonable basis for assuming that a new attacher will act consistent with safety, reliability, and generally applicable engineering practices by performing any survey or make-ready using a contractor subject to the new § 1.1413.

Overlashing Notice – The Commission's proposed rule, § 1.1416(c), requires an existing attacher that overlashes to "ensure that it complies with reasonable safety, reliability, and engineering practices." Yet, the Commission still gives a utility the ability in § 1.1416(b) to require an existing attacher to notify it prior to overlashing and enables a utility to deny overlashing that "creates a capacity, safety, reliability, or engineering issue." While ACA would prefer the Commission resolve this conflict by eliminating any right of the utility to require notice, at least the Commission should provide specifics about the grounds for a denial and give the existing attacher the ability to cure the problem – both fixes proposed by ACA.[11] In addition, ACA appreciates the Commission's admonition that "utilities may not use advanced notice requirements to impose quasi-application or quasi-pre-approval requirements, such as requiring engineering studies,"[12] and urges it to closely monitor actions of utilities.

Further, regarding the overlashing proposed rule, ACA agrees with AT&T that the rule should apply to overlashing by a third party of the facilities of a host attacher that has granted prior approval.[13] As AT&T noted, such an amendment is consistent with Commission precedent.[14] ACA also agrees with AT&T that the existing attacher should include in the advance notice to the utility confirmation that it would comply, pursuant to § 1.1416(c), with "reasonable safety, reliability, and engineering practices."[15]

---

8 *Draft Order* at Appendix A, § 1.1412(i)(1)(i).

9 *Id.* at § 1.1412(i)(2)(i).

10 *Id.* at § 1.1412(h)(2).

11 *See ACA Ex Parte* at Attachment.

12 *Draft Order* at para. 111.

13 *See* Letter from Frank S. Simone, Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 3 (July 23, 2018) ("*AT&T Ex Parte*").

14 *Id.*

15 *Id.*

ACA, however, disagrees with parties, such as CenturyLink,[16] that want to extend the notice period to 45 days.[17] First, as the *Draft Order* explains, a 15-day notice is the same duration as the notice period adopted for OTMR.[18] Second, any concern CenturyLink has about safety and reliability is met because an existing attacher undertaking overlashing on its own facilities has an inherent self-interest to do so safely and consistent with generally accepted engineering practices and will have a regulatory obligation (§ 1.1416(c)) to comply with with "reasonable safety, reliability, and engineering practices," which ACA believes the existing attacher should confirm in its advance notice. Finally, the utility can inspect for damage post-overlashing, and the overlasher will be responsible for repairing the damage (§ 1.1416(c)).

Contractors for Surveys and Make-Ready – The existing contractor provision has been a weak link in the self-help survey and make-ready process. Many utilities never maintained a list of acceptable contractors, or contractors on maintained lists were unacceptable to new attachers. The Broadband Deployment Advisory Committee supported a fix that gave new attachers more control to choose a contractor for self-help make-ready.[19] The fixes proposed in the *Draft Order* in § 1.1413 also aim to alleviate these problems. In particular, for simple work, the *Draft Order* appropriately gives the new attacher the right to choose a qualified contractor where the utility provides no list.[20] However, ACA believes the *Draft Order*'s rule for contractor selection for complex work and work above the communications space, which does not permit a new attacher to choose a qualified contractor where the utility does not provide a list,[21] may prove to be a barrier to undertaking this work. Accordingly, the Commission should monitor the implementation of this process and may need to provide additional guidance.

Estimates – AT&T proposes that for non-OTMR, existing attachers should provide the estimate and invoice to the new attacher since existing attachers "are best positioned to estimate the costs

---

16 *See* Letter from Nicholas G. Alexander, Associate General Counsel, CenturyLink, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2-3 (July 23, 2018).

17 *See* Letter from Robin F. Bromberg, Langley Bromberg, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (July 23, 2018) ("While we believe that 45 days is a more reasonable timeframe…we recognize that 15 days is better than no advance notice.") ("*Bromberg Ex Parte*").

18 *Draft Notice* at para. 111.

19 *See* "Report of the Competitive Access to Broadband Infrastructure Working Group," Broadband Deployment Advisory Committee of the Federal Communications Commission, at 42-52 (Jan. 23-24, 2018) (submitted June 28, 2018).

20 *Draft Order* at Appendix A, § 1.1413(b).

21 *Id*. at § 1.1413(a).

of transferring their facilities."[22] The *Draft Order* discusses this issue and rejects AT&T's position, finding that "utilities are best positioned to compile and submit these make-ready estimates and final invoices to new atachers due to their pre-existing and ongoing relationships with the existing attachers."[23] ACA agrees with the Commission. That said, the Commission may wish to add language to the order encouraging a utility to request that existing attachers provide make-ready estimates and account for any that are provided. ACA also opposes AT&T's proposal to eliminate the requirement that estimates and final invoices be detailed and itemized on a pole-by-pole basis, contending it is burdensome, not all new attachers seek such detail, and "AT&T and some other pole owners true-up their charges in the final invoice."[24] The *Draft Order*, however, already recognizes the potential burdens of the requirement, but finds these are outweighed because "a pole-by-pole estimate is necessary to enable new attachers to understand the cost of deployment and to make informed decisons about altering their deployment plans."[25] Accordingly, the Commission should reject AT&T's proposal.

---

22 *See AT&T Ex Parte* at 2. *See also Bromberg Ex Parte* at 4 ("[R]equiring electric utilities to estimate communications space make-ready just doesn't make sense.").

23 *Draft Order* at para. 103.

24 *AT&T Ex parte* at 2. *See also Bromberg Ex Parte* at 3 ("[F]ixed costs cannot be allocated on a pole by pole basis."). This "fixed cost" concern can be addressed by having the utility simply divide each fixed cost by the number of poles for which the fixed cost applied. While this may not be precise, it is a reasonable approach.

25 *Draft Order* at para. 104, which further justifies the decision by explaining that "[r]equiring per-pole estimates and invoices will also enable new attachers to better determine whether invoices are accurate." *Id.*

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.[26]

Sincerely,

Thomas Cohen

Thomas Cohen
J. Bradford Currier
Kelley Drye & Warren, LLP
3050 K Street N.W.
Washington, DC 20007
202-342-8518
tcohen@kelleydrye.com
Counsel for the American Cable Association

Attachment: ACA July 23, 2018 *Ex Parte* Letter

cc: Jaime Susskind
Elizabeth McIntyre
Jay Schwarz
Erin McGrath
Kris Monteith
Lisa Hone
Daniel Kahn
Adam Copeland
Michael Ray
Annick Banoun
Matthew Collins

[26] 47 C.F.R. § 1.1206.

ATTACHMENT

KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8518
EMAIL: tcohen@kelleydrye.com

July 23, 2018

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

On July 19, 2018, Ross Leiberman (Senior Vice President, American Cable Association ("ACA")) and Thomas Cohen (Kelley Drye & Warren LLP and Counsel to ACA) met with Jay Schwarz, Wireline Advisor to Chairman Pai, and Erin McGrath, Wireless, Public Safety, and International Legal Advisor to Commissioner O'Reilly. The purpose of the meetings was to discuss ACA's views on the *Draft Third Report and Order* in the Wireline Broaband proceeding,[1] which the Federal Communications Commission ("Commission") is scheduled to consider at its August 2nd meeting. Overall, ACA supports the pole attachment provisions in the *Draft Order*,[2] which, among other things, clarify and reform rights and obligations in the access timeline for utilities and new and existing attachers and codify the Commission's policy that overlashing can occur without pre-approval from utilities.[3] All of these measures will expedite and lower the cost of access to poles and thereby speed broadband deployments.

In the meetings, ACA representatives noted that because ACA's members are smaller service providers with fewer resources, they tend to rely only on the Commission's rules (and not

---

1 *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Public Draft, Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03 (July 12, 2018) ("*Draft Third Report and Order*" or "*Draft Order*").

2 ACA's views do not address the proposed One-Touch Make-Ready ("OTMR") rule.

3 *Draft Third Report and Order* at paras. 14-112.

lengthy Commission orders) to understand and determine their rights and obligations. Accordingly, ACA has reviewed the rules in the *Draft Order*[4] (other than the OTMR rule) to ensure they are clear, complete, and faithfully follow the intent and text. Attached to this letter are ACA's edits (in redline) to the proposed rules, which include the following recommended changes:

- § 1.1412(c)(2), "Application Review on the Merits"

  Issue: Because of the provision's reference to § 1.1403(b), which only discusses actions to occur upon denial of an application, it is likely to lead to misunderstanding between utilities and new attachers about whether a utility must respond to a new attacher when granting access and the status of the application when a utility fails to deny access within the prescribed deadline.

  Proposed Fix: The Commission should clarify that a utility must grant or deny access within 45 days of receipt of a complete application (or 60 days for larger orders). Moreover, the Commission should deem access granted when the utility fails to deny access in response to a complete application within the prescribed time period.

- § 1.1412(d)(3), "Estimates, Final Invoice"

  Issue: § 1.1412(d), which addresses estimates, includes an important requirement that the utility supply documentation sufficient to determine the basis of its estimate; however, in the final invoice provision, where this requirement is equally important, it is omitted without any explanation.

  Proposed Fix: The Commission should require a utility to provide documentation sufficient to determine the basis of all charges in the final invoice.

- § 1.1412(e)(3), "Make Ready" – Notice and Coordination

  Issue: § 1.1412(e)(3) adopts a new process for coordinating make-ready by having the new attacher coordinate the work by existing attachers after the utility supplies the initial notices. The provision, however, does not set forth the Commission's expectations for and specify the requirements on existing attachers to ensure that make-ready will be completed on time.[5]

---

4 *Id.* at Appendix A.

5 *See Draft Order* at para. 95, which, when referring to the process in self-help make-ready, makes the important point about the need for coordination among utilities and new and existing attachers in undertaking make-ready: "We recognize that coordinating work among existing attachers may be difficult, particularly for poles with many attachments, and existing attachers that are not the first to move may in some circumstances receive

Proposed Fix: The Commission should explicitly require existing attachers to respond and cooperate with the utility, new attacher, and other existing attachers in completing make-ready prior to the date set in the notice.

- § 1.1412(h)(3), "Make Ready, Deviation from the time limits specified in the section"

  Issue: The *Draft Order* permits existing attachers to deviate from the make-ready timeframe "for reasons of safety or service interruption" that make it infeasible to complete the work on time.[6] However, the provision does not require the existing attacher to have a reasonable basis for drawing such a conclusion.

  Proposed Fix: The Commission should clarify that existing attachers may deviate from the make-ready timeline only when they have a reasonable basis to conclude that the work cannot be completed within the regular timeframe without jeopardizing safety or causing service interruption.

- § 1.1412(i)(1), "Self-Help Remedy, Surveys"

  Issue: A self-help survey is an important remedy for a new attacher when a utility fails to undertake and complete a survey. But, while the provision permits a new attacher to invoke the self-help survey remedy and hire a contractor to complete a survey, it does not make explicit that the new attacher has the right to take responsibility for conducting the survey from the utility. Moreover, the provision is not clear that a utility cannot deny the new attacher's application once a new attacher invokes its right to conduct a self-help survey.

  Proposed Fix: The Commission should clarify that, if a utility does not deny access in response to a complete application and fails to complete the survey within the 45-day period (or 60 day period for larger orders), the new attacher assumes the right to undertake the survey.

- § 1.1412(i)(2), "Self-Help Remedy, Make-Ready"

  Issue: Similar to the issue with the self-help remedy for surveys, the provision permits a new attacher to invoke the self-help make-ready remedy and hire a contractor to complete make-ready, but it does not make explicit that the new attacher has the right to take responsibilty for conducting make-ready over from the utility.

---

limited or even no time for work during the make-ready stage. Despite these challenges, we expect utilities, new attachers, and existing attachers to work cooperatively to ensure that pole attachment deadlines are met."

6 *Id.* at para. 83.

Proposed Fix: The Commission should clarify that if a utility fails to complete make-ready within the prescribed time preiod, the new utility assumes the right to undertake make-ready.

- § 1.1412(i)(2)(ii), "Self-Help Remedy, Make-Ready"

  Issue: The provision, which applies when a new attacher conducts self-help make-ready, does not require a utililty or existing attachers seeking to address any post-make-ready damage to first notify the new attacher and provide documentation of the damage. Without this communication, misunderstandings between the utility, existing attachers, and the new attacher about the nature and extent of any damage are more apt to occur, especially when the utility or existing attacher exercises its right to fix the damage itself and bill the new attacher for the cost, which runs counter to the overall thrust of the *Draft Order* to foster cooperation.

  Proposed Fix: The Commission should require the utility or existing attachers to notify the new attacher of any damage and provide adequate documentation about the damage before repairing any damage themselves.

- § 1.1413(b)(ii), "Contractors for Surveys and Make-Ready, Contractors for simple work"

  Issue: The provision enables a utility to disqualify a new attacher's chosen contractor "based on safety or reliability concerns" that the contractor does not meet the minimum qualifications in § 1.1413(c). However, the provision does not require the utility to have a reasonable basis for reaching such a conclusion.

  Proposed Fix: The Commission should require a utility, to disqualify a new attacher's contractor, to demonstrate that it has a reasonable basis to conclude the contractor does not meet any of the minimum qualifications in subsection § 1.1413(c).

- § 1.1413(c), "Contractors for Surveys and Make-Ready, Contractor minimum qualifications requirements"

  Issue: Paragraph (1), which requires a contractor to follow "published safety" guidelines of the utility, and Paragraph (4), which requires the contractor to meet "reasonable safety . . . thresholds set by the utility," both address a utility's safety requirements for a contractor, which is likely to lead to confusion about the meaning of each and engender disputes between the new attacher and utility.

  Proposed Fix: The Commission should address the overlap between paragraphs (1) and (4) by incorporating relevant elements of (4) into (1) and deleting (4).

- § 1.1413(d), "Contractors for Surveys and Make-Ready"

  Issue: The *Draft Order* appears to delete the existing § 1.1412(c) (the old § 1.1422(c)), which provides that a utility representative shall have a reasonable opportunity to acccompany and consult with a new attacher's chosen consultant, because such rights are granted to a utility under the *Draft Order*'s new joint survey and joint make-ready provisions (§ 1.1412(i)(1)(i) and § 1.1412(i)(2)(i)). However, existing § 1.1412(d) (the old § 1.1422(d)), which is a companion provision to existing § 1.1412(c), remains in place without any explantion, and, most importantly, stands to render the improvements to the self-help process meaningless because a utility that forfeits its rights to conduct a survey or make-ready would retain a broad right to make "final determinations" regarding the new attacher's self-help survey or make-ready simply based on "reasons of safety, reliability, and generally applicable engineering purposes."[7] In sum, because the new make-ready regime in the *Draft Order* provides for an amended process giving the utility the ability to oversee the make-ready pursuant to new § 1.1412(i)(2)(i), this provision is moot.

  Proposed Fix: The Commission should clarify that the existing § 1.1412(d) (the old § 1.1422(d)) is deleted.

- § 1.1416, "Overlashing"

  Issue: The section addressing overlashing raises multiple concerns. First, while it gives the utility the ability to deny overlashing if it finds that there are issues with "capacity, safety, reliability, or engineering," these grounds are far too vague and may lead to misunderstandings. By contrast, the text in the *Draft Order* is much more specific about what the utility must find to halt an overlashing.[8] Second, the section does not specifically enable an overlasher to cure any problem identified by the utility. Third, the provision does not reflect the Commission's current policy that a utility may not charge to review an overlash.[9] Finally, the post-overlashing inspection and damage remediation process does not align with the process used for make-ready and does not require the utility or existing attachers to notify the new attacher about and provide documentation on the damage, especially when the utility or existing attacher exercises its right to fix the damage itself and bill the overlasher for the cost.

---

7 47 C.F.R. § 1.1412(d).

8 *Draft Order* at para. 108.

9 *See* Comments of the American Cable Association on the Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (Jan. 17, 2018), which explain in detail that the Commission's current overlashing policy enables overlashing without utility approvals or paying additional charges.

> Proposed Fix: The Commission should: (1) confine the grounds under which a utility may deny overlashing by a new attacher; (2) clarify that an existing attacher can cure a utility's denial of overlashing; (3) clarify that a utility continues to be prohibited from charging a fee to review a proposed overlash; and (4) establish a process similar to that included elsewhere in the rules, as revised by ACA, for identifying and resolving damage post-overlash, including by providing notice and documentation of damage to the new attacher.

In addition to these issues and recommended fixes, while the *Draft Order* properly concludes that new attachers are not responsible for preexisting violations, this decision is not reflected in the rules. ACA's mark-up of the rules reflects this decision. Further, the rules should base all time limits on calendar days, which are fixed and thus are more easily calculated by utilities, providers, and contractors, and not on business days, which may vary and depend on whether the Commission is open and remains open for a full day, which are considerations that are irrelevant in the business market. ACA makes other suggestions, included in the attachment, that address language choices that complicate one's understanding of the rules.

ACA intends to discuss its recommended changes further with Commission staff and stands ready to answer any questions.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.[10]

Sincerely,

Thomas Cohen

Thomas Cohen
J. Bradford Currier
Kelley Drye & Warren, LLP
3050 K Street N.W.
Washington, DC 20007
202-342-8518
tcohen@kelleydrye.com
Counsel for the American Cable Association

cc: Jay Schwarz
Erin McGrath
Jaimie Susskind
Travis Litman
Elizabeth McIntyre
Daniel Kahn
Michael Ray
Adam Copeland

---

10 47 C.F.R. § 1.1206.

ATTACHMENT

TO JULY 23, 2018 *EX PARTE* LETTER
ON THE THIRD REPORT AND ORDER AND DECLARATORY RULING,
WC DOCKET NO. 17-84
OF THE AMERICAN CABLE ASSOCIATION

AMERICAN CABLE ASSOCIATION MARK-UP OF

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 operator or telecommunications carrier no less than 60 days written notice prior to:

* * *

(3) Any modification of facilities by the utility other than make-ready noticed pursuant to section 1.1412(c), 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~~ shall determine within 10 ~~business~~ days after ~~receipt of~~ a new attacher submits an~~'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 was submitted, or if the utility rejects the application as incomplete but fails to specify any reasons in ~~the application~~its response, ~~then~~ the application is

deemed complete. If the utility timely notifies the new attacher that its ~~attachment~~ application is ~~not~~ incomplete, ~~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 to the new attacher either by granting access or, ~~respond~~ consistent~~as described in~~ with §1.1403(b), denying access ~~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). If the utility fails to deny access by the date set forth in this paragraph, then access shall be deemed granted. A utility may not deny the new attacher pole access based on a pre-existing violation not caused by any prior attachments of the new attacher.

(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 survey~~s~~, a description of the work, and name of the contractor performing the survey~~s~~.

~~(iii)~~ Where a new attacher has conducted a survey pursuant to pursuant to § 1.1412(j)(3), a~~A~~ utility can elect to satisfy its survey obligations in this paragraph for that new attacher by notifying affected attachers of its intent to use ~~a~~ the survey conducted by the~~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.

(iii) Nothing shall prevent a utility from permitting a new attacher to conduct a survey consistent with the requirements in § 1.1412(i)(1). If a new attacher conducts such a survey, the utility may not charge the new attacher for conducting the survey of the affected poles.

(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)(2), 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. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, labor, and other related costs.

(4) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with published safety, reliability, and operational guidelines of the utility or National Electrical Safety Code guidelines if such poles, attachment, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

(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.

(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.

(ii) 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).

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

(v) 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.

(vi) 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, including ~~and~~ the person's names and mailing addresses where the utility sent the notices, e-mail addresses, and telephone numbers. 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. Existing attachers shall be responsive to requests for information, including estimated completion dates and work status updates, from the new attacher and shall cooperate to the maximum extent with the new attacher and other existing attachers to complete make-ready prior to the date set forth in the notice.

(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 identify the affected poles and 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 to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.

(3) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready if it has a reasonable basis to conclude that its work cannot be completed within the time limits specified in this section without jeopardizing safety or causing ~~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 identify the affected poles and include a detailed explanation of the ~~reason~~ basis 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 on the affected poles.

(i) *Self-help remedy.*

(1) *Surveys*. If a utility does not deny access as specified in paragraph (c)(2) and fails to ~~respond~~ complete a survey as specified in paragraph (c)(3)(i) of this section, then a new attacher's application shall be deemed granted, and the new attacher may conduct the survey in place of the utility and, 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.

(iii) After the new attacher completes the survey and provides it to the utility, the utility then shall prepare the estimate pursuant to subsection (d).

(2) *Make-ready*. If make-ready is not complete by the date specified in paragraph (e) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, 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 on a pole. 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 shall have 30 days from ~~receipt~~ submission of the notice~~in which~~ to inspect the make-ready and ~~. The affected utility and existing attachers have 14 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 shall inform the new attacher and provide adequate documentation of the damage. 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.

(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 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 date and time of the make-ready, a description of the work involved, 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.

(ii) 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 that is reasonably likely to interrupt the service of a utility or existing attacher. 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 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.

(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 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 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.

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 utility 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 utility 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 if it has a reasonable basis to conclude that ~~, but such disqualification must be based on safety or reliability concerns related to~~ the contractor does not~~'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~~ agree~~s~~d to follow published, commercially reasonable, and uniformly applied safety, reliability, and operational guidelines of the utility~~, if available,~~, ~~but~~ or if such guidelines are unavailable, the contractor ~~shall~~ agrees to follow National Electrical Safety Code (NESC) guidelines;

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

(3) The contractor ~~has~~ agree~~s~~d to follow all applicable 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; and

~~(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~~

(4~~5~~) The contractor is adequately insured or will establish an adequate performance bond for the make- ready it will perform.

(d) [deleted]

* * * * *

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) *Pre-existing violation.* A utility may not prevent an existing attacher from overlashing because another existing attacher has not fixed a pre-existing violation. A utility may not require an existing attacher that overlashes its existing wires on a pole to fix pre-existing violations caused by another existing attacher.

(c~~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. If, upon receiving advance notice, a utility determines through an engineering analysis that there is insufficient capacity on the pole for an overlash, the overlash would be inconsistent with generally applicable engineering practices, or the overlash would compromise pole safety or reliability, it ~~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. The utility may not prevent the existing attacher from continuing with the overlash once the problem is resolved. A utility may not charge a fee to the existing attacher for reviewing its proposed overlash.

(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.~~

(d) *Post-Overlashing Review.* An existing attacher shall notify the utility within 15 days after completion of the overlashing. The utility shall have 30 days from receipt of the notice to inspect the overlashing and notify the existing attacher of any damage caused by overlashing to their equipment. If the utility discovers damage caused by overlashing conducted by the existing

attacher on equipment belonging to the utility or an existing attacher, then the utility shall notify and provide adequate documentation of the damage to the existing attacher who performed the overlashing. The utility may either (A) complete any necessary remedial work and bill the existing attacher for the reasonable costs related to fix the damage, or (B) require the existing attacher to fix the damage within 14 days following notice from the utility.