

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of

CMN-RUS, Inc.

Complainant

v.

Windstream Kentucky East, LLC

Respondent

No. 2018-00157

**Rebuttal Testimony of Anita Larson
on behalf of CMN-RUS, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2018, pursuant to the Commission's 8/7/18 Order ¶2, a conformed copy of the verified rebuttal testimony of Anita Larson, with three (3) attached exhibits, has been served on the attorneys for Respondent by electronic mail or by hand-delivery to: Casey C. Stansbury <cstansbury@mrrlaw.com>, Tia J. Combs <tcombs@mrrlaw.com>; MAZANEC, RASKIN & RYDER CO.; 230 Lexington Green Circle, Suite 605; Lexington, KY 40503. I have also provided PSC Staff Counsel Benjamin Bellamy with a courtesy copy of this Response in the form served on the attorneys for Respondent.


Taraanne J. Tucker
Attorney for Complainant

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Rebuttal Testimony Verification

STATE OF KANSAS)

COUNTY OF JOHNSON)

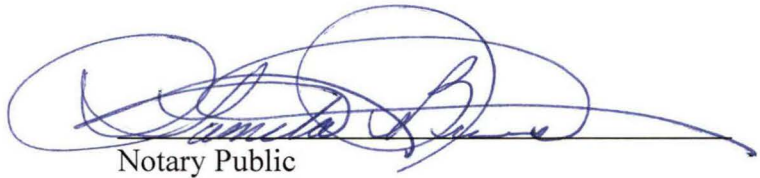
I, Anita F. Larson, being duly sworn, state that the attached is my Rebuttal Testimony in the above-styled matter, that I would respond in the same manner to the questions if so asked upon taking the stand, and that my testimony is true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.



Anita F. Larson

Subscribed and sworn to this 5th day of October, 2018, before me, a Notary Public in and before said County and State.





Notary Public

My Commission expires: July 8, 2020

1 INTRODUCTION

2 **Q1. State your name, position, and business address.**

3 A. Anita Larson, Vice President and Senior Counsel, CMN-RUS, Inc. (“CMN”), and its
4 affiliates, Metro Fibernet, LLC, Metronet Technologies, LLC and Metronet Holdings,
5 LLC (collectively, “MetroNet”). My business address is 8837 Bond Street, Overland
6 Park, Kansas 66214.

7 **Q2. Summarize your educational background and business//professional experience.**

8 A. I graduated from the University of Kansas with a Bachelor of Arts and Juris Doctor
9 degrees. Over the past 30 years, I have been in house counsel for various businesses.
10 One-fourth of this time, I have focused on telecommunications.

11 **Q3. What are your duties at MetroNet?**

12 A. I am responsible for providing legal support to MetroNet’s construction group, among
13 other responsibilities. In this regard, I have assisted MetroNet in accessing poles and
14 rights of way, and understanding the legal protections afforded to providers
15 constructing broadband networks.

16 **Q4. Have you previously testified before this Commission?**

17 A. No. I am, however, listed as the witness (or one of the witnesses) for CMN responses
18 to certain of the First and Second Sets of requests from the Commission Staff and
19 from Windstream Kentucky East, LLC (“Windstream East”), and have verified those
20 responses.

21 **Q5. Are you familiar with the direct testimony offered by Windstream East?**

22 A. Yes. Windstream East takes the position that it may limit CMN’s pole attachment
23 applications and take an indeterminate amount of time to process CMN applications

1 because (1) it is not reasonable for the Windstream Group process more applications
2 at a timely rate, or (2) if it were reasonable, it should not be required to do so for
3 CMN pole attachment applications because (Windstream contends) CMN is a “bad
4 customer.” Windstream East also takes the position that it is not treating CMN
5 differently from other attachers.

6 **Q6. What is the purpose of your rebuttal testimony?**

7 A. I will respond to some of the positions and contentions found in Windstream East’s
8 responses to information requests and direct testimony filed on its behalf. In parti-
9 cular, I will address why it is reasonable for Windstream East to process a higher
10 volume of pole applications for CMN and refute the contention of Windstream East
11 that CMN is a “bad customer.”

12 **Q7. Are you including any exhibits or schedules with your testimony?**

13 A. Yes, I am attaching an exhibit of a 7/25/18 Windstream *ex parte* letter filing with the
14 FCC (CMN 00618-20) and (b) exhibits with excerpts from two FCC Orders.

15 REASONABLE PROCESSING SPEEDS

16 **Q8. Do you agreed with Mr. Lloyd’s response to 2 PSC 16 that no federal law
17 prohibits the Windstream Group from restricting applications to 300 poles in
18 a 30 day period?**

19 A. No. Contrary to his statement that no federal law prohibits restricting applications to
20 300 poles in a 30 day period, in 15 of the states where the Windstream Group owns

1 poles (*see* WIN 0002),¹ federal law requires that the Windstream Group process ap-
2 plications for access to up to 3000 poles in a 30 day period. In these states governed
3 by federal law, Windstream Group ILECs cannot limit the number of applications to
4 300 poles in a 30 day period. By statute (47 U.S.C. §224(f)(2)) utilities are allowed
5 to deny access to poles only for insufficient capacity or for reasons of safety, reliabil-
6 ity and generally applicable engineering purposes. Federal law does not allow pole
7 owners to deny access because it finds it inconvenient or burdensome to process more
8 than 300 poles in a 30 day period. A federal regulation, 47 CFR § 1.1420(g), man-
9 dates that the pole owner process large orders (up to 3000 poles in a 30-day period) in
10 a specific time frame. The utility is permitted only to add 15 days to the 45 day
11 survey period and given additional time to perform make ready.

12 **Q9. Is it reasonable for Windstream East to process applications for up to 1500 poles**
13 **in a 30 day period in a timely manner?**

14 A. Yes, is it reasonable that Windstream East process applications for up to 1500 poles
15 (and even more) in a thirty day period. More importantly, the Windstream Group
16 believes that processing more applications in a faster time frame is reasonable as
17 evidenced by its active support of One Touch Make Ready (OTMR). *See* Wind-
18 stream’s letter of July 25, 2018, to Marlene H. Dortch, Secretary, FCC (CMN 00618-
19 20). In this letter, “Windstream agrees with the Commission’s determination that
20 ‘OTMR speeds and reduces the cost of broadband deployment by allowing the party
21 with the strongest incentive — the new attacher — to prepare the pole quickly to

¹ That is, in Alabama, Florida, Georgia, Iowa, Mississippi, Missouri, Minnesota, Nebraska, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, and Wisconsin.

1 perform all of the work itself, rather than spreading the work across multiple par-
2 ties.” Windstream goes on to comment that “the OTMR process outlined in the
3 Draft Order helpfully realigns incentives to ensure that make ready work is done in an
4 efficient and cost-effective manner.” Finally, “Windstream supports the adoption of
5 the Commission’s Draft Order on August 2nd and we anticipate that its OTMR and
6 rate-leveling provisions will have a significant and positive impact on the ability of
7 service providers like Windstream to rapidly deploy broadband infrastructure.” No-
8 where in its comments does Windstream express concerns with the speedier timelines
9 imposed by OTMR or about the new attacher conducting the survey work and make
10 ready work.

11 Support of more and faster pole access is not a position newly adopted by
12 Windstream Group. It expressed its frustration with slow pole attachment processes
13 and lack of imposed timelines in comments filed with the FCC when the FCC was
14 considering the 2011 Order. Specifically, in support of the finding that “Evidence in
15 the record reflects that, in the absence of a timeline, pole attachments may be subject
16 to excessive delays,²” the FCC cites Windstream’s comment filed on March 31, 2011:
17 “One of the greatest challenges Windstream has faced in deploying fiber is the leng-
18 thy, unpredictable, and costly make ready process. It is not uncommon for a fiber
19 deployment project to be delayed by one or two years simply because of make ready
20 issues.”³

² 2011 Order at ¶21 (See excerpt in Exhibit 2).

³ 2011 Order at FN65. A further Windstream expression of frustration with make ready time frames is cited at FN72. (See excerpt in Exhibit 2).

1 While Windstream Group has long expressed its frustrations with slow make
2 ready and pole access processes utilized by utilities when such practices are applied
3 to it, Windstream entities have used the same unacceptably slow make ready and pole
4 access processes to delay its competitors' entry into Windstream markets. This non-
5 competitive behavior was called out in comments made in support of adoption of pole
6 access timelines when the FCC was considering adoption of the 2011 Order.⁴

7 **Q10. Is Windstream East able to process applications for up to 1500 poles in a 30 day**
8 **period and complete the attachment process in a timely manner?**

9 A. Yes, Windstream East is able to process a higher volume of applications in faster time
10 frames. In fact, it has done so. Windstream Group's processes call for completing
11 make ready in 90 days for 301+ poles in an application. *See* Latham Exh. 1 (WIN
12 0872) flow chart and Exh. 2 (WIN 0873-79, *see esp.* 0877). The Windstream Pole
13 Attachment Application and Proposal Process (Latham Exh. 2) states that Wind-
14 stream has 45 days to respond to an application and 60/90 days to complete make
15 ready depending on the application rate.

16 For around nine months, under the KIH Amendment, Windstream processed
17 up to 1500 poles in a thirty day period — until this number was reduced upon KIH's
18 request, not at the behest of Windstream. In addition, Windstream has not restricted
19 New Cingular and perhaps other attachers from submitting more than 300 poles in a
20 thirty day period. Windstream contends that its agreement with New Cingular is dis-
21 tinguishable because the agreement is limited to wireless attachments which are

⁴ 2011 Order at FN69, reporting that Windstream refused to agree to make-ready timelines for wireline and wireless attachments.

1 “faster, cheaper, and easier.” The New Cingular agreement (WIN 1473-1507) is not
2 restricted to wireless attachments. Furthermore, it is baseless to contend that wireless
3 attachments are “faster, cheaper, and easier”. The reality is exactly the opposite, and
4 for this reason, pole owners are given additional time to process wireless attachments.
5 As the FCC stated in its 2018 Order at ¶19 (see Exhibit 3 excerpt): “We also recog-
6 nize that wireless attachments involve unique physical and safety complications that
7 existing attachers must consider (e.g., wireless configurations cover multiple areas on
8 a pole, considerably more equipment is involved, RF impacts must be analyzed), thus
9 increasing the challenges of using an accelerated, single-party process at this time.”

10 **Q11. Do you agree with Windstream East’s position that engineering surveys and**
11 **make ready work can only be performed by long-term employees of Wind-**
12 **stream?**

13 A. No. This is another example of how Windstream East’s words are different from
14 what it does. For example:

15 a. The Windstream Group agreement with contractors contemplates that the con-
16 tractor will be doing survey engineering, including “detailing out any make ready
17 work required on aerial designs, including attachment heights on each pole and
18 position numbering. Also, will be required to prepare support drawings as re-
19 quired to submit for make ready approval.” (See WIN 0341) Windstream con-
20 templates that contractors will be conducting pole loading engineering analysis,
21 OSP inspection and OSP compliance verification (See WIN0338). Windstream
22 contemplates that contractors will conduct make ready work, including raising or
23 lowering aerial strand, cables, aerial wire, arms, drops, pole mounted terminals,

1 and/or guys on the same pole and transferring facilities to new poles. (*See* WIN
2 0336).

3 b. Windstream East's agreement with KIH indicated that Windstream would add on
4 a temporary basis five additional survey engineers. However, it appears from the
5 response to CMN's Request No. 32(d) that Windstream East processed KIH's
6 high volume applications by hiring eight temporary employees for its Permitting
7 Team, and without adding staff to its OSP Engineering team.

8 c. Windstream East's agreements with KIH and New Cingular also show that
9 Windstream East allows authorized contractors to conduct make-ready work if it
10 is unable to meet agreed upon deadlines.

11 d. Windstream Group recently announced that it had hired 450 additional field tech-
12 nicians (80 in the Lexington area) in the past year and projected hiring as many as
13 100 more before year-end 2018 (*see* CMN 419-21). Although these new hires
14 may become seasoned, long-term employees, the announcement suggests that
15 Windstream is generally able to hire and train people quickly for technical jobs.

16 EXPERIENCE with WINDSTREAM

17 **Q12. Is CMN a "bad customer" because it has not paid the Duke invoices?**

18 A. No. In good faith, CMN has disputed the Duke invoices. Even Windstream KDL has
19 disputed the invoices (*see* CMN 00179). Now Windstream East is using the invoices
20 disputed in good faith as a pretext to slow CMN's entry into the LFUC market.

21 The dispute between CMN and Windstream KDL regarding Duke invoices is
22 governed by the United States Code and the Code of Federal Regulations. Under
23 federal law, access to electric-utility poles can be denied only for insufficient capacity

1 and for reasons of safety, reliability and generally applicable engineering purposes.
2 47 U.S.C. §224(f)(2). Neither Kentucky nor federal law allows pole owners to deny
3 access pending payment of invoices disputed in good faith.⁵ There is no question that
4 CMN has disputed the Duke invoices in good faith. The invoices that CMN has
5 failed to pay are deficient for several reasons. They lack detail and support, are prima
6 facie evidence the original estimates were grossly unreasonable, and were submitted
7 in many cases years after the estimated invoices were paid.⁶ CMN is currently
8 researching the \$118,000 in Duke related invoices that Windstream East contends are
9 due to Windstream KDL (WIN 8028-8256). Although these invoices lack the detail
10 and support Windstream KDL is required to provide, CMN will pay each one of these
11 invoices if/once determined that they are properly payable.

12 **Q13. Is CMN a bad pole attachment customer because it has submitted incomplete**
13 **applications?**

14 A. No. The four applications⁷ to which Windstream East refers do not demonstrate that
15 CMN generally fails to follow application processes. If anything, they are evidence

⁵ *In the Matter of Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City vs. Kansas City Power & Light Company*, 14 FCC Rcd 11599 at ¶18 (emphasis added): “Neither can KCPL condition access on payment of a disputed claim. Time Warner states that they fully intend to “pay a fair price for all work performed,” but indicates that the appropriate amount is in dispute. Debt collection is not permissible grounds for denial of access.” *See also* 807 KAR 5:006, §§ 11(6), 12 (considering a customer account to be current pending a billing dispute).

⁶ *Knology, Inc. v. Georgia Power Company*, Order, File No. EB-04-MD-011 (2005) at ¶¶ 61 and 62. “We [the FCC] believe that Georgia Power had an obligation to provide a reasonable amount of information sufficient to substantiate its make-ready charges and do not view this as an ‘extra’ administrative service for which a separate charge should apply. In our view, requiring Knology to pay for the collection and provision of adequate billing back up information would impose an unreasonable cost on Knology’s attempt to evaluate the reasonableness of Georgia Power’s underlying charges.” The FCC therefore held that Georgia Power’s refusal to provide the detailed billing information that Knology requested was an unreasonable practice under 47 U.S.C. §224.

⁷ Windstream admits that one of the five applications was not incomplete.

1 of an industry-wide problem that the FCC is working to fix. The FCC noted at ¶60 of
2 the 2018 Order (see excerpt in Exhibit 3), “that ‘poles owners are not transparent
3 about telling applicants all information that is required to be included on the applica-
4 tions at the time of their submission,’ often resulting in delays to the pole attachment
5 process while the pole owner requests additional information over a series of weeks
6 or months.” The FCC further noted in the table at ¶14 of the 2018 Order (Exhibit 3,
7 and CMN 00422-23) that what has been considered a complete application has been
8 “vague,” and revised its definition of what is deemed a “complete application” to
9 make it more clear. As noted in Mr. Greenbank’s rebuttal testimony, four of the five
10 applications referenced by Windstream East were revised, resubmitted and approved;
11 as Windstream East admits, one of the five (the Brownstone A Pole Application) was
12 submitted correctly.

13 In any event, Windstream East’s reliance on the four applications rejected by
14 Duke in 2017 is irrelevant to CMN’s complaint against Windstream East.

- 15 a. The poles belong to Duke, not Windstream East.
- 16 b. The poles are outside of the Commonwealth of Kentucky.
- 17 c. The pole applications were processed by Windstream KDL, not Windstream East,
18 under different attachment standards and a different agreement.
- 19 d. The applications were rejected by Duke, not the Windstream Group.
- 20 e. Windstream East’s implication that this in some way has harmed the Windstream
21 Group or represents a drain of Windstream Group resources is misleading. KDL

1 processed the applications using the \$3,700 per month data entry fee reimburse-
2 ment paid by CMN to KDL. In addition to the \$3,700, CMN pays KDL a 15%
3 surcharge to process third party charges.

4 **Q14. Do you agree with Mr. Lloyd's response to 2 PSC 15 that it would risk serious**
5 **liability for Windstream East to outsource the review of engineering surveys and**
6 **the make ready construction for new attachments?**

7 A. No. The four cases he cited were interesting, but not probative. Out of the four cited
8 cases, it does not appear that the Windstream defendants joined any third party
9 attacher or contractor into the litigation. If the sag that was alleged in at least two of
10 the underlying accidents was arguably a result of a negligent third party contractor,
11 Mr. Lloyd's response indicates that the claimant or Windstream would have joined
12 the contractor in the suit.

13 CONCLUSION

14 **Q15. What relief does CMN request from the Commission?**

15 A. CMN seeks an order from the Commission directing Windstream to grant CMN
16 access to its poles on fair, just and reasonable terms. Windstream has imposed re-
17 strictions and delays in the pole-attachment process that are neither part of its Tariff
18 nor fair, just, and reasonable terms for its pole-attachment service. In addition, Wind-
19 stream's treatment of CMN discriminates against a direct competitor, and its refusal
20 to even negotiate toward arrangements provided to others is for the stated reason of
21 aiding the business of an affiliate in another jurisdiction. The time frames that CMN
22 asks the Commission to order Windstream to follow simply require it to furnish

1 adequate, efficient, and reasonable service and to render that service to CMN in

2 accordance with generally-applicable standards and the Windstream Tariff.

3 **Q16. Does this conclude your rebuttal testimony?**

4 A. Yes.

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VIA ECFS

EX PARTE

July 25, 2018

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

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

Dear Ms. Dortch:

Windstream supports the reforms proposed by the Federal Communications Commission (“Commission”) in the draft *Third Report and Order* in the above-referenced proceedings and commends the Commission for its work on this issue.¹ In general, the proposed “One-Touch Make Ready” (OTMR) process will speed-up infrastructure deployment, reduce the overall costs associated with make-ready work and encourage the rollout of broadband. Windstream agrees with the Commission’s determination that “OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive—the new attacher—to prepare the pole quickly to perform all of the work itself, rather than spreading the work across multiple parties.”² However, some modifications to the Draft Order could help ensure that attachers receive, to the greatest extent possible, the benefits of the proposed reforms.

Rate Disparities

Windstream is grateful for the Commission’s recommendations seeking to address outdated rate disparities (“rate-leveling provisions”),³ but agrees with CenturyLink that it should grant incumbent local exchange carriers (ILECs) the same rate relief that has been given to their

¹ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Draft Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03, WT Docket No. 17-79, WC Docket No. 17-84 (rel. July 12, 2018) (“Draft Order”).

² *Id.* at para. 2.

³ *Id.* at paras. 114-120.

competitors.⁴ While Windstream supports the Commission's proposed adoption of a presumption that ILECs are similarly situated to other telecommunications attachers and are thus entitled to comparable attachment rates, terms and conditions,⁵ those benefits will not flow to ILECs without the large-scale termination and replacement of their current joint use agreements. This will be difficult or impossible because ILEC pole ownership is falling and, as the Commission has concluded, "[ILEC] bargaining power vis-à-vis utilities has continued to decline."⁶

Therefore, the Commission should clarify that, for the purpose of establishing rates, the presumption that ILECs are similarly situated to other telecommunications attachers shall apply to all ILEC pole attachment agreements at the sooner of: (1) two years from the effective date of the final *Third Report and Order* in the above-referenced proceedings; or (2) the date that such an agreement is renewed, extended or renegotiated. Eventually, given the aforementioned market context and dynamics, the Commission should seek to ensure that all communications providers are subject to the same attachment rates, terms and conditions.

Utilities Not Regulated by the Commission

Although the Draft Order usefully addresses some issues around rate disparities, there will continue to be significant differences in the rates that are charged by regulated and unregulated service providers, including cooperatively-organized entities ("co-ops"). For example, in a sample state, Windstream pays between approximately \$6.00 per pole attachment to other telecommunications and/or investor-owned electric utilities. By contrast, in that same state, Windstream pays approximately \$24.00 to several electric co-ops, or four times what Windstream pays to the other telecommunications and/or investor-owned electric utilities. This is not an outlier and is typical of co-op rates. Despite the co-ops' statements about their selfless desires to increase broadband deployment in rural America, charging this level of pole attachment rates belies those statements. At the very least, the Commission should not permit unregulated entities to receive the benefits of some provisions in the Draft Order (such as OTMR) while they do not agree to other critical provisions (such as those addressing rate disparities).

OTMR Process

The OTMR process outlined in the Draft Order helpfully realigns incentives to ensure that make-ready work is done in an efficient and cost-effective manner. However, the Draft Order only provides "electrical utilities" with the right to reasonably object to a contractor's determination that make-ready work is either "simple" or "complex" and therefore excludes all other providers.⁷ The relevant provisions should be clarified so that all utilities, as defined in the

⁴ Letter from Nicholas G. Alexander, Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed July 23, 2018) at 5.

⁵ Draft Order at para. 117.

⁶ *Id.*

⁷ See Draft Order at paras. 50-53.

Marlene H. Dortch
July 25, 2018
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Communications Act of 1934, as amended (“the Act”),⁸ including local exchange carriers, have the right to object to a contractor’s simple/complex make ready determination.

Conclusion

Windstream supports the adoption of the Commission’s Draft Order on August 2nd and we anticipate that its OTMR and rate-leveling provisions will have a significant and positive impact on the ability of service providers like Windstream to rapidly deploy broadband infrastructure. However, Windstream urges the Commission to consider the clarifications and issues it has identified above. Addressing these recommendations will help ensure that the intent of the Draft Order is fulfilled.

Sincerely,



Thomas W. Whitehead

CC: Adam Copeland
Daniel Kahn
Travis Litman
Erin McGrath
Michael Ray
Jay Schwarz
Jamie Susskind

⁸ As defined in the Act, “utility” includes “any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” 47 U.S.C. § 224(a)(1).

Tribal, state, and local government, and with the private sector to reduce barriers to broadband deployment.⁶²

III. IMPROVED ACCESS TO UTILITY POLES

19. We take several steps to improve access to utility poles. Our rules are generally consistent with proposals in the *Further Notice*, but also reflect a close examination of the record developed in this proceeding.⁶³ We adopt a four-stage timeline that provides a maximum of 148 days for attachers to access the communications space on utility poles. For wireless attachments above the communications space, we adopt a modified form of the timeline.⁶⁴ The timeline begins to run after the requester submits a complete application. We also establish that a utility may stop the clock for emergencies pursuant to a “good and sufficient cause” standard. We adopt rules that allow attachers to use independent contractors pre-authorized by the utilities to complete survey and make-ready work in the communications space, subject to a number of protections and conditions, if the pole owner does not meet the prescribed timelines. In particular, electric utilities have ultimate decision-making authority regarding the contractor’s work with respect to section 224(f)(2) denial-of-access issues. We allow a utility to limit on a per-state basis the size of a pole attachment request that is subject to the timeline, and allow extra time for large orders. Specifically, we apply the basic timeline to requests of up to 300 pole attachments per state or attachments to 0.5 percent of the utility’s in-state poles, whichever is less. For larger requests of up to 3,000 pole attachments per state or 5 percent of the utility’s in-state poles, whichever is less, additional time is provided for survey and make-ready. Utilities may treat multiple in-state requests from a single attacher during a 30-day period as one request. Our rules further provide that any denial of a request to attach must cite with specificity the particular safety, reliability, engineering, or other valid concern that is the basis for denial. We clarify that blanket prohibitions on pole top access are not permitted. And, as noted elsewhere in this Order, we encourage a high degree of pre-planning and coordination between attachers and pole owners, to begin as early in the process as possible.

20. We decline to adopt several proposals set forth in the *Further Notice* or that commenters recommend, and explain those decisions. For example, we determine that the timeline will provide adequate incentives for joint owners of poles to coordinate, and thus do not require joint owners to name a single management entity. We also conclude that several subsections of section 224 provide the Commission with sufficient authority to adopt a timeline and other access rules.

A. Timeline for Section 224 Access

1. Stages of the Timeline

21. We find that adopting a specific timeline for processing pole attachment requests will give necessary guidance to both pole owners and attachers. Evidence in the record reflects that, in the absence of a timeline, pole attachments may be subject to excessive delays.⁶⁵ Moreover, having a specific

⁶² *The FCC’s Broadband Initiative: Reducing Barriers to Spur Broadband Buildout*, Public Notice (rel. Feb. 9, 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DOC-304571A2.pdf; see Julius Genachowski, Chairman, FCC, *Remarks at Broadband Acceleration Conference* (Feb. 9, 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DOC-304571A1.pdf.

⁶³ See *infra* para. 21 (discussing the record evidence regarding adoption of a timeline).

⁶⁴ The modified timeline for access to poles above the communications space adopted in this Order applies solely to wireless attachments because the record in this proceeding does not demonstrate any need for a timeline for non-wireless attachments above the communications space. Thus, issues regarding wireline attachments above the communications space are beyond the scope of this Order.

⁶⁵ See, e.g., Fibertech/KDL Comments at 8 (citing an increase of 159 customers per year after NY adopted a timeline at an average of 100 days from application submission to licensing, contrasted with MD where applications average over 250 days); Letter from Michael P. Miller, CEO, Fiberlight LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, at 1 (filed Feb. 23, 2011) (Fiberlight Feb. 23 *Ex Parte* Letter) (citing examples of (continued....))

timeline offers certainty to attachers and allows them to make concrete business plans.⁶⁶ Beyond generalized problems caused by utility lack of timeliness from initial request through completion,⁶⁷ the record shows pervasive and widespread problems of delays in survey work,⁶⁸ delays in make-ready performance,⁶⁹ delays caused by a lack of coordination of existing attachers,⁷⁰ and other issues.⁷¹ Adopting a specific timeline will also generate jobs and help to move large broadband projects forward more expeditiously, including those providing broadband to schools under the E-rate program.⁷²

(Continued from previous page)

network deployment significantly delayed by failure to timely attach to poles); Letter from Clifford K. Williams, Director—Regulatory & Compliance, Sidera Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, RM-11303, RM-1293, at 1–2 (filed Mar. 11, 2011) (Sidera Mar. 11, 2011 *Ex Parte* Letter) (citing delays of up to 2 years); Letter from Brian Regan, Director, Government Relations, PCIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, GN Docket No. 09-51, at 3–4 (filed Mar. 2, 2011) (PCIA Mar. 15 *Ex Parte* Letter) (describing specific obstacles, including delays, faced by wireless providers); Letter from Jennie P. Chandra, Senior Counsel, Windstream to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245 at 1 (filed Mar. 31, 2011) (Windstream Mar. 31, 2011 *Ex Parte* Letter) (“One of the greatest challenges Windstream has faced in deploying fiber is the lengthy, unpredictable, and costly make-ready process. It is not uncommon for a fiber deployment project to be delayed by *one or two years* simply because of make-ready issues.”). Unless otherwise noted, all comments are in response to the *Further Notice*. A list of commenters is provided in Appendix C.

⁶⁶ See, e.g., Alpheus and 360networks *NPRM* Comments at 2 (arguing that unknown make-ready intervals make it extremely difficult to introduce services or promise timely delivery on potential sales); Cavalier *NPRM* Comments at 6 (arguing for predictability with regard to make-ready because potential customers will not engage a service without knowing whether it will begin receiving the service in months or in years).

⁶⁷ See, e.g., TWTC *NPRM* Comments at 15 (“Pole owners often wait months or even years after receiving an initial application to complete make-ready work, and these delays are exacerbated by the pole owners’ refusal to permit a mutually agreed upon third party to perform the make ready work.”); Cavalier *NPRM* Comments at 6 (stating that some utilities provide Cavalier access within three months after receiving an application, but others take more than five times as long); Alpheus *NPRM* Comments at 2 (complaining that the length of time for completion of make-ready varies significantly); Letter from Jean L. Kiddoo, counsel to MetroPCS Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, at 3 (filed Mar. 30, 2011) (stating that a significant hurdle with the issue of delay is that “most pole owners reject the notion of having any timeline in any circumstance”).

⁶⁸ See, e.g., Comments of Indiana Fiber Works, RM-11303 (filed Jan. 30, 2006) (noting that it has experienced serious delays involving its applications to one of the principal pole owners in its service area, often exceeding 45 days); Sigecom Comments, RM-11303, at 4 (filed Jan. 27, 2006) (citing mediation on delayed pre-construction survey to confirm Fibertech’s allegation that pole owners frequently do not meet the 45-day time frame set forth in the Commission’s rules).

⁶⁹ See, e.g., PCIA Mar. 2, 2011 *Ex Parte* Letter at 4 (reporting that after months of negotiation, one utility provided a distributed antenna system (DAS) provider with make-ready estimation of 260 days for the installation of 20 DAS nodes); *id.* at 4 (reporting that Windstream has refused to agree to make-ready timelines for wireline and wireless attachments, as has Frontier in Minnesota); Crown Castle *NPRM* Comments at 7 (asserting that make-ready work can take up to a year to complete when completed by the pole owner’s internal personnel, often because of difficulty in scheduling of crews in the field); Montgomery and Anne Arundel Counties Reply at 4 (asserting that recent experience with broadband deployments requiring pole attachments has been that the make-ready work performed by utility pole owners typically takes up to a year to complete, can take up to eighteen months in many cases, and is especially slow for larger deployments).

⁷⁰ See, e.g., Sidera Mar. 11, 2011 *Ex Parte* Letter at 4.

⁷¹ Current Group *NPRM* Comments at 3 (complaining that utilities often seek to delay potential competitors’ market entry by forcing them to engage in disputes over well-settled issues).

⁷² FiberLight Feb. 23, 2011 *Ex Parte* Letter at 2 (“With a pole attachment timeline in place consistent with that proposed by the Commission, FiberLight would be able to provide between 4–5 times as many construction projects thus creating more jobs and serving more areas.”); Windstream Mar. 31, 2011 *Ex Parte* Letter at 3 (“Time and (continued....)

22. As shown in Tables 1 (for attachments in the communications space) and 2 (for wireless attachments above the communications space), the timeline features four stages:

- Stage 1: Survey. During the 45-day survey phase, the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required. (This period has an additional 15 days for large orders as defined below.)⁷³
- Stage 2: Estimate. The pole owner provides an estimate of the make-ready charges within 14 days of receiving the results of the engineering survey.
- Stage 3: Attacher Acceptance. The attacher has up to 14 days to approve the estimate and provide payment.
- Stage 4: Make-Ready. The pole owner must notify any attachers with facilities already on the pole that make-ready for a new attacher needs to be performed within 60 days (or 105 days in the case of larger orders, as defined below).⁷⁴ In most cases, any required make-ready work will be completed within this period, but we provide for additional time in certain circumstances. For wireless attachments above the communications space, we adopt a longer make-ready period of 90 days (or 135 days in the case of larger orders), based on safety considerations and the fact that, at present, there is less experience with application of timelines to wireless attachments at the pole top.⁷⁵ Finally, an owner may take 15 additional days after the make-ready period runs to complete make-ready itself.

23. For most attachments, the total time from submission of the request through completion of make-ready should take between 105 and 148 days, depending on how long the parties take to prepare and accept an estimate.⁷⁶ Attachers may hire contractors authorized by the utility to complete make-ready either on the 133rd or 148th day, depending on whether an owner timely notifies the attacher that it intends to move existing facilities and conduct make-ready if existing attachers have failed to move their attachments. Although we establish this timeline as a maximum, we recognize that the necessary work can often proceed more rapidly, especially at the estimate and acceptance stages, or for relatively routine requests. It would not be reasonable behavior for a utility to take longer to fulfill any requests simply because a timeline with maximum timeframes is being adopted. Likewise, for large orders, we allow 15 more days for the survey and 45 more days to complete make-ready.

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again, KDL's fiber deployment efforts for schools, like cell towers, have been stalled for many months by delays in the make-ready phase of its projects.”).

⁷³ See *infra* para. 63.

⁷⁴ See *infra* para. 63.

⁷⁵ See Letter from Brian Regan, Director, Government Relations, PCIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, GN Docket No. 09-51, at 2 (filed Mar. 15, 2011) (PCIA Mar. 15 *Ex Parte* Letter) (indicating that Utah's total timeline applicable to wireless attachments for fewer than 300 poles ranges from 165 to 180 days, and Vermont's total timeline for up to 0.5% of a utility's poles is 180 days); Letter from Brian M. Josef, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, GN Docket No. 09-51, at 4 (filed Mar. 15, 2011) (CTIA Mar. 15 *Ex Parte* Letter) (noting timelines in Utah and Vermont and stating that “[m]ore states are progressing in the same direction, taking steps to ensure wireless attachers have access to poles, and specifically access to the pole top”).

⁷⁶ See *supra* para. 22 (describing the various stages of the timeline and their respective lengths). For wireless attachments above the communications space, the relevant end point of the timeline is 178 days rather than 148 days.

altering the ability of a state to exercise reverse preemption of our pole attachment rules.⁵⁶

A. Speeding Access to Poles

14. Most fundamentally, we amend our rules to allow new attachers⁵⁷ with simple wireline attachments in the communications space to elect an OTMR-based pole attachment process that places them in control of the work necessary to attach their equipment, and we improve our existing attachment process for other, more complex attachments. We summarize these changes, as well as our prior rules, in the table below:⁵⁸

⁵⁶ See 47 U.S.C. § 224(c).

⁵⁷ We define a new attacher as a cable television system or telecommunications carrier requesting to attach new or upgraded facilities (e.g., equipment or lines) to a pole owned or controlled by a utility. See *infra* Appx. A, 47 CFR § 1.1411(a)(2). Therefore, new attachers include existing attachers that need to upgrade their facilities with new attachments.

⁵⁸ This table is a summary for informational purposes only, and it sacrifices nuance for brevity. The text of this *Report and Order* (excluding the table) and the rules in Appendix A set forth our binding determinations.

Phase	Prior Rules	OTMR-Based Regime	Enhanced Non-OTMR Regime
<i>Review of Application for Completeness</i>	Vague definition of complete application can lead to delays. No timeline for utility to determine whether application is complete. <i>47 CFR § 1.1411(c)</i>	Revised definition of complete application makes it clear what must be included in application. A utility has 10 business days to determine whether an application is complete; the utility must specify any deficiencies and has limited time to review resubmitted applications. <i>Appx. A §§ 1.1411(c)(1), (j)(1)(ii)</i>	
<i>Review of Whether to Grant Complete Application; Survey</i>	The utility has 45 days to decide whether to grant a complete application and to complete any surveys. The utility has an additional 15 days for large orders. <i>47 CFR § 1.1411(c)</i>	The utility has 15 days to decide whether to grant a complete application. The new attacher conducts the survey and determines its timing. <i>Appx. A § 1.1411(j)(2), (j)(3)</i>	Largely same as prior rules, except that the utility must take certain steps to facilitate survey participation by new and existing attachers. <i>Appx. A § 1.1411(c)(3)</i>
<i>Estimate</i>	The utility must provide an estimate of the make-ready charges within 14 days of receiving the survey results. <i>47 CFR § 1.1411(d)</i>	N/A – no estimate stage	Same as prior rules, except the estimate must detail basis for charges. <i>Appx. A § 1.1411(d)</i>
<i>Attacher Acceptance</i>	The attacher has 14 days or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment. <i>47 CFR § 1.1411(d)(i)-(ii)</i>	N/A – no acceptance stage	Same as prior rules. <i>Appx. A § 1.1411(d)(2)</i>
<i>Make-Ready</i>	The existing attachers must prepare the pole within 60 days of receiving notice from the utility in the communications space (105 days for larger orders) or 90 days in the above the communications space (135 days for larger orders). A utility may take 15 additional days after the make-ready period to complete make-ready itself. <i>47 CFR § 1.1411(e)(1)(ii), (e)(1)(iv), (e)(2)(ii), (e)(2)(iv)</i>	The new attacher performs all work in as little as one trip. The new attacher must provide 15 days' notice to existing attachers before commencing work, and this notice period may run concurrently with the utility's review of whether to grant the application. The new attacher must notify existing attachers within 15 days after completion of work on a pole so that existing attachers can inspect the work. <i>Appx. A § 1.1411(j)(4)</i>	The existing attachers prepare the pole within 30 days in the communications space (75 days for larger orders) or 90 days above the communications space (135 days for larger orders). A utility may take 15 additional days after the make-ready period to complete make-ready itself for work outside the communications space. <i>Appx. A § 1.1411(e)(1)(ii), (e)(2)(ii), (e)(2)(iv)</i>
<i>Self-Help Remedy</i>	New attachers in the communications space may perform work themselves when the deadlines are not met. <i>47 CFR § 1.1411(i)</i>	N/A	New attachers in any part of the pole may perform work themselves when the deadlines are not met. We take steps to strengthen the self-help remedy. <i>Appx. A § 1.1411(i)(2)</i>

15. No matter the attachment process, we encourage all parties to work cooperatively to meet deadlines, perform work safely, and address any problems expeditiously. Utilities, new attachers, and

existing attachers agree that cooperation among the parties works best to make the pole attachment process proceed smoothly and safely.⁵⁹

1. New OTMR-Based Pole Attachment Process

16. We adopt a new pole attachment process that new attachers can elect that places them in control of the surveys, notices, and make-ready work necessary to attach their equipment to utility poles. With OTMR as the centerpiece of this new pole attachment regime, new attachers will save considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments. A better aligning of incentives for quicker and less expensive attachments will serve the public interest through greater broadband deployment and competitive entry.

a. Applicability and Merits of OTMR Regime

17. We adopt the BDAC's recommendation and amend our rules to allow new attachers to elect OTMR for simple make-ready for wireline attachments in the communications space on a pole.⁶⁰ We define simple make-ready as the BDAC does, i.e., 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."⁶¹ Commenters state that simple make-ready work does not raise the same level of safety concerns as complex make-ready or work above the communications space on a pole.⁶² There is substantial support in the record, both from utilities and attachers, for allowing OTMR for simple make-ready;⁶³ and because this option will apply to the substantial majority of pole

⁵⁹ See, e.g., CCU Wireline NPRM Comments at 3-4; Midwest Electric Utilities Wireline NPRM Comments at 18; CenterPoint Energy Houston Electric, LLC et al. (POWER Coalition) Wireline NPRM Comments at 9-10; AT&T Wireline NPRM Reply at 4 n.4.

⁶⁰ See BDAC January 2018 Recommendations at 21.

⁶¹ *Id.* at 20.

⁶² See, e.g., ExteNet Systems, Inc. (ExteNet) Wireline & Wireless NPRM Comments at 54-55; FBA Wireline NPRM Comments at 5 n.12, 8; AT&T Wireline NPRM Reply at 8-9; Letter from Kristine Laudadio Devine, Counsel to Google Fiber, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 4, 2018) (Google Fiber June 4, 2018 Wireline *Ex Parte* Letter); Letter from Charles A. Zdebski and Brett H. Freedson, Counsel to CenterPoint Energy Houston Electric, LLC and Florida Power & Light Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Feb. 13, 2018) (CenterPoint Energy/FPL Feb. 13, 2018 Wireline *Ex Parte* Letter); Letter from Eben M. Wyman, Principal, Power & Communication Contractors Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at [2] (filed Nov. 30, 2017) (PCCA Nov. 30, 2017 Wireline *Ex Parte* Letter).

⁶³ See CCU Wireline NPRM Comments at 17-18; Computing Technology Industry Association (COMPTIA) Wireline NPRM Comments at 2-3; EEI Wireline NPRM Comments at 32; Electric Utilities Wireline NPRM Comments at 7; FBA Wireline NPRM Comments at 5; Level 3 Wireline NPRM Comments at 2-3; POWER Coalition Wireline NPRM Comments at 10; Utilities Technology Council (UTC) Wireline NPRM Reply at 17-21; AT&T Wireline NPRM Reply at 7-8; CPS Energy Wireline NPRM Reply at 8-9; Google Fiber Wireline NPRM Reply at 1-2; Verizon Wireline NPRM Reply at 4-9; Letter from Angie Kronenberg, Chief Advocate & General Counsel, INCOMPAS, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84 et al., at Attach. 3 (filed Feb. 13, 2018) (INCOMPAS Feb. 13, 2018 Wireline *Ex Parte* Letter); Letter from Brett Heather Freedson, Counsel to CenterPoint Energy Houston Electric, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. 1 (filed May 25, 2018) (CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter); Letter from Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Feb. 6, 2018) (CWA Feb. 6, 2018 Wireline *Ex Parte* Letter); Letter from Lonnie R. Stephenson, International President, IBEW, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Jan. 30, 2018) (IBEW Jan. 30, 2018 Wireline *Ex Parte* Letter); Letter from Lisa R.

attachment projects,⁶⁴ it will speed broadband deployment. We also follow the BDAC's recommendation and do not provide an OTMR option for more complex projects in the communications space or for any projects above the communications space at this time.⁶⁵

18. Our new rules define "complex" make-ready, as the BDAC does, as "[t]ransfers 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."⁶⁶ We consider "[a]ny and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers[] . . . to be . . . complex."⁶⁷ We agree with Verizon that the term "wireless activities" does not include a wireless attacher's work on its wireline backhaul facilities, which is no different than wireline work done by other attachers.⁶⁸ While the BDAC recommendation did not explicitly address the treatment of pole replacements, we interpret the definition of complex make-ready to include all pole replacements as well. We agree with commenters that pole replacements are usually not simple or routine and are more likely to cause service outages or facilities damage,⁶⁹ and thus we conclude that they should fall into the complex category of work.

19. There is substantial support from commenters in the record for not using OTMR for complex make-ready work at this time.⁷⁰ We agree that we should exclude these more challenging

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Youngers, Executive Director, Fiber Broadband Association (FBA), to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 20, 2018) (FBA July 20, 2018 Wireline *Ex Parte* Letter).

⁶⁴ According to AT&T, approximately 80 percent of current make-ready work is "simple." See Letter from Ola Oyefusi, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at Attach. *Accelerating Wireline Broadband Deployment: Presentation – Pole Attachment Process with OTMR* at 2 (filed Jan. 22, 2018). See also Letter from Eric B. Langley, Counsel to Electric Utilities, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Mar. 19, 2018) (Electric Utilities Mar. 19, 2018 Wireline *Ex Parte* Letter) (stating that "more than 80[] [percent] of make-ready poles require communications space make-ready only"). We recognize that in the future, it is likely that less than 80 percent of make-ready work will be eligible for OTMR as wireless carriers ramp up non-simple 5G deployments. See, e.g., AT&T Wireline NPRM Comments at 8 (stating that "[i]ndustry-wide 5G network deployment is expected to involve 10 to 100 times more antenna locations than 4G or 3G."); EEI Wireline NPRM Comments at 29 (asserting that "[i]t can be expected that an increase in the volume of wireless attachment requests due to 5G deployments will exacerbate pole attachment delays due to the complex nature of the installations and the number of poles involved.").

⁶⁵ See BDAC January 2018 Recommendations at 21-22, 27.

⁶⁶ *Id.* at 20.

⁶⁷ *Id.* We deny Crown Castle's request to exclude wireless activity in the communications space from the definition of complex make-ready. See Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 4-5. We find that the BDAC carefully analyzed the impact of wireless pole attachment work and correctly concluded that such work is complex. See BDAC January 2018 Recommendations at 19-23, 27, 29-31.

⁶⁸ Letter from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 6-7 (filed July 26, 2018) (Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter). Consistent with the definition of "complex," a wireless attacher's work on its wireline facilities is complex if it is the work reasonably likely to cause a service outage or facility damage.

⁶⁹ See Letter from Kristine Laudadio Devine, Counsel to Google Fiber, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Apr. 12, 2018) (Google Fiber Apr. 12, 2018 Wireline *Ex Parte* Letter); Midwest Electric Utilities Wireline NPRM Reply at 25-26; Puget Sound Energy Wireline NPRM Comments at 7-8.

⁷⁰ See, e.g., Charter Communications, Inc. (Charter) Wireline & Wireless NPRM Comments at 55; FBA Wireline NPRM Comments at 5 n.12; Google Fiber Wireline NPRM Comments at 5-6; Level 3 Wireline NPRM Comments at 3; POWER Coalition Wireline NPRM Comments at 11; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; Letter from Frank S. Simone, Vice President-Federal Regulatory, AT&T, and Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC,

attachments from OTMR at this time to minimize the likelihood and impact of service disruption. In particular, cutting or splicing of existing wires on a pole has the heightened potential to result in a network outage.⁷¹ We also recognize that wireless attachments involve unique physical and safety complications that existing attachers must consider (e.g., wireless configurations cover multiple areas on a pole, considerably more equipment is involved, RF impacts must be analyzed), thus increasing the challenges of using an accelerated, single-party process at this time.⁷²

20. The new OTMR process also will not be available for work above the communications space, including the electric space.⁷³ Many utility commenters argue that work above the communications space, which mainly involves wireless attachments, frequently impacts electrical facilities and that such work should fall to the utilities to manage and complete.⁷⁴ We recognize that work above the communications space may be more dangerous for workers and the public and that impacts of electric outages are especially severe.⁷⁵ Therefore, we find at this time that the value of control by existing attachers and utilities over infrastructure above the communications space outweighs the benefits of allowing OTMR for these attachments. Based on the foregoing analysis, we decline Verizon's request to allow OTMR for complex make-ready and work above the communications space.⁷⁶ We recognize that by not providing an OTMR option above the communications space for the time being, we are not permitting OTMR as an option for small cell pole-top attachments necessary for 5G deployment. We take this approach because there is broad agreement that more complex projects and all projects above the communications space may raise substantial safety and continuity of service concerns.⁷⁷ At the same time, we adopt rules aimed at mitigating the safety and reliability concerns about the OTMR process we adopt today, and we are optimistic that once parties have more experience with OTMR, either they will by contract or we will by rule expand the reach of OTMR.⁷⁸ In the meantime, we find that the benefits of moving incrementally by providing a right to elect OTMR only in the communications space and only for simple wireline projects outweigh the costs.

21. We agree with commenters that argue that OTMR is substantially more efficient for new attachers, current attachers, utilities, and the public than the current sequential make-ready approach set

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WC Docket No. 17-84, GN Docket No. 17-83, at 1 (filed Jan. 16, 2018) (AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter); CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 1.

⁷¹ See Google Fiber Apr. 12, 2018 Wireline *Ex Parte* Letter at 2.

⁷² See CCU Wireline NPRM Comments at 27-28; EEI Wireline NPRM Comments at 28-29; Midwest Electric Utilities Wireline NPRM Comments at 28-29; American Public Power Association (APPA) Wireline NPRM Reply at 28.

⁷³ This accords with the BDAC's recommendations. See BDAC January 2018 Recommendations at 21-22.

⁷⁴ See CCU Wireline NPRM Comments at 28; EEI Wireline NPRM Comments at 28-29; Electric Utilities Wireline NPRM Comments at 6; Midwest Electric Utilities Wireline NPRM Comments at 30; POWER Coalition Wireline NPRM Comments at 11; Puget Sound Energy Wireline NPRM Comments at 5; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; UTC Wireline NPRM Comments at 13.

⁷⁵ See, e.g., CCU Wireline NPRM Comments at 28-29; Electric Utilities Wireline NPRM Comments at 8-9; Puget Sound Energy Wireline NPRM Comments at 4; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; EEI Wireline NPRM Reply at 20; Midwest Electric Utilities Wireline NPRM Reply at 24-26.

⁷⁶ See Letter from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84, at 4 (filed Mar. 8, 2018) (Verizon Mar. 8, 2018 Wireline *Ex Parte* Letter).

⁷⁷ See, e.g., CCU Wireline NPRM Comments at 28-29; EEI Wireline NPRM Comments at 28; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; Midwest Electric Utilities Wireline NPRM Reply at 25-26; APPA Wireline NPRM Reply at 28; AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter at 2; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2.

⁷⁸ See FBA July 20, 2018 Wireline *Ex Parte* Letter at 3.

contractor from performing the make-ready work in a ‘simple’ manner, if at all.”²¹⁸ In such situations, we find that if the new attacher or the utility discovers that work initially classified by the new attacher and approved by the utility as simple actually turns out to be complex, then that specific work must be stopped.²¹⁹ The determining party must notify the other party of its determination and the affected poles; the attachments at issue will then be governed by the non-OTMR timeline, and the utility should provide notice to existing attachers of make-ready work as soon as reasonably practicable.²²⁰

(iii) Review of Application for Completeness

60. In the interest of speeding application review, we adopt a rule to specify that under the OTMR regime, a pole attachment application is complete if it provides the utility with the information necessary under the utility’s procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to make an informed decision on the application.²²¹ We also establish a timeline for the utility’s review of the application for completeness. We adopt these requirements to address attachers’ complaints—made in response to the Commission’s request in the *Wireline Infrastructure Notice* for comments on ways to streamline and accelerate the pole attachment timeline²²²—that “pole owners are not transparent about telling applicants all information that is required to be included on applications at the time of their submission,” often resulting in delays to the pole attachment process while the pole owner requests additional information over a series of weeks or months.²²³

61. While the current definition of a complete application only requires “information necessary under [the utility’s] procedures,”²²⁴ our revised definition provides more transparency about what an attacher must include in its application, because the master service agreement or publicly-available requirements must be available to new attachers as they prepare their application.²²⁵ We reject NCTA’s proposal that we define an application as complete if it provides “only the information reasonably necessary to commence the application process and does not impose unreasonable or unnecessary additional requirements”²²⁶ because that definition fails to provide new attachers sufficient prior notice of the application requirements and invites disputes between the new attacher and utility over what information is “reasonably necessary to commence the application process” or what constitutes “unreasonable or unnecessary additional requirements.”²²⁷

62. To prevent unnecessary delays in starting the pole attachment process, we adopt rules consistent with the BDAC-recommended timeline for a utility to determine whether a pole attachment

²¹⁸ Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 4.

²¹⁹ See *infra* Appx. A, 47 CFR § 1.1411(j)(4)(iii). The new attacher may choose to continue OTMR work on other poles to the extent that such work is simple.

²²⁰ See *infra* section III.A.2.a.(iii); Appx. A, 47 CFR § 1.1411(e).

²²¹ See Letter from Thomas Cohen, Counsel to ACA, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed Sep. 14, 2017) (ACA Sep. 14, 2017 Wireline *Ex Parte* Letter). The BDAC recommended a definition of a complete pole attachment application that we adopt for our existing pole attachment timeline. See BDAC January 2018 Recommendations at 32; see also *infra* section III.A.1.c.(iii). We slightly revise that definition for purposes of our OTMR timeline to account for the new attacher, rather than the utility, conducting the pole surveys.

²²² See *Wireline Infrastructure Notice*, 32 FCC Rcd at 3268-69, 3273, paras. 7-8, 21.

²²³ See Lighttower Wireline NPRM Comments at 4-5; ACA Sep. 14, 2017 Wireline *Ex Parte* Letter at 4; FBA Apr. 10, 2018 Wireline *Ex Parte* Letter at 3; FBA July 20, 2018 Wireline *Ex Parte* Letter at 3-4.

²²⁴ 47 CFR § 1.1411(c).

²²⁵ See *infra* Appx. A, 47 CFR § 1.1411(c)(1).

²²⁶ NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter at Attach. at 1.

²²⁷ *Id.*