

47 C.F.R. 1 Subpart J – Pole Attachment Complaint Procedures

SUPPORTING STATEMENT

A. Justification:

1. The rules and regulations contained in 47 CFR Part 1 Subpart J provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms and conditions that are just and reasonable.

Section 1.1403(b) requires that requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing.

Section 1.1403(c) requires a utility to provide a cable television system operator or telecommunications carrier no less than 60 days written notice prior to removal of facilities, termination of any services to those facilities, increase in pole attachment rates, or modification of facilities.

Section 1.1403(d) allows a cable television system operator or telecommunications carrier to file a "Petition for Temporary Stay" of the action contained in a notice received pursuant to Section 1.1403(c) within 15 days of receipt of such notice. The "Petition for Temporary Stay" must contain, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunications service, a copy of the notice, and a certificate of service. The named respondent may file an answer within 7 days of the date the Petition was filed.

Section 1.1403(e) requires cable operators to notify pole owners upon offering telecommunications services.

Section 1.1404 specifies the information that must be included in a pole attachment complaint.

Section 1.1406(b) requires a complainant to file additional information supporting its complaint, if requested by the Commission.

Section 1.1407 requires the respondent to file a response within 30 days from the date the complaint was filed. The complainant then has 20 days from the date the response was filed to file a reply. The response and reply shall be served on all parties listed in the certificate of service.

Section 1.1414 requires states that regulate the rates, terms and conditions for pole attachments to file a certification with the FCC.

Section 1.1417 requires a utility to apportion the cost of providing unusable space on a pole so that such apportionment equals two-thirds of the costs of providing unusable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities. Section 1.1417 sets forth the procedures to be followed in establishing a maximum just and reasonable pole attachment rate.

As noted on the Form OMB 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

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Statutory authority for this collection of information is contained in Sections 1, 4(i) and 224 of the Communications Act of 1934, as amended.

2. This information will be used by FCC to hear and resolve petitions for stay and complaints as mandated by Section 224 of the Communications Act of 1934, as amended. Information filed is used to determine the merits of the petitions and complaints. Additionally, state certifications are used to make public notice of the states' authority to regulate rates, terms and conditions for pole attachments, and to determine the scope of the FCC's jurisdiction.
3. Because the information to be gathered for this collection is by its nature unique to each filing, no automation or use of information technology is foreseen.
4. The information is not available elsewhere. It was created specifically to meet the requirements in Section 224. The information requested is either in the sole possession of the entity from whom it is requested or the entity that is in the best position to have the most updated information.
5. This collection may have an impact on a substantial number of small entities. In compliance with the Paperwork Reduction Act of 1995, FCC is making the effort to minimize the burden on all respondents, regardless of size. The FCC has limited the notification requirement to that which is absolutely necessary to provide a written record, or to determine the merits of a dispute or calculated rate formula.
6. No specific interval for the filing of disputes is set. If the filings were ordered to be made at specific intervals, the FCC would not become aware of unjust or unreasonable rates, terms and conditions in a timely manner. The result would be an inability to minimize any adverse effects. Moreover, if these collections of information were not conducted, the Commission would not be able to adequately comply with the Congressional mandate that the Commission ensure that the rates, terms and conditions under which cable television operators attach their hardware to utility poles are just and reasonable.
7. A cable television system operator or telecommunications carrier may file a Petition for Temporary Stay of the action contained in a notice within 15 days of receipt of such notice, and the respondent may file a response to the Petition within 7 days. Section 1.1407 states that respondents have 30 days from the date a complaint was filed to file a response, and that complainants have 20 days from the date the response was filed to file a reply. Also, Section 1.1408 of the Commission's rules requires the filing of an original and three copies of complaints, responses, and replies.
8. The Commission published a notice in the *Federal Register* initiating a 60-day comment period on July 14, 2009 (74 FR 34014). No comments were received. A copy of the notice is included in the submission to OMB.
9. No gifts or payments will be given to respondent for this collection.
10. There is no need for confidentiality.
11. This collection does not address any private matters of a sensitive nature nor are there any privacy impacts, as noted in Question 1.

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12. Estimates of hour burden are as follows. These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

Estimates	Calculation	Burden Hours
Section 1.1403(b) – The Commission estimates that 500 requests for access are requested annually. We estimate that each request will take 2 hours.	500 requests x 2 hours	1000 hours
Section 1.1403(c) - The Commission estimates that there are an average of 64 pole attachment contracts per state. 19 states plus the District of Columbia are certified to regulate the rates, terms and conditions for pole attachments, while the Commission maintains jurisdiction in the remaining 31 states. 64 contracts per state x 31 states = 1,984 estimated contracts. We estimate that these contracts expire on a 7 to 8 year basis, thus requiring an average of 248 notices to be issued per year. Utilities will undergo an average burden of 2 hours per notice.	248 notices x 2 hours per notice	496 hours
Section 1.1403(d) – The Commission estimates that 3 Petitions for Stay will be filed with the Commission annually. The average burden for this Petition is 12 hours for each petitioner and 12 hours for each respondent. The burden estimates account for all aspects of the petition procedure. (3 rd party disclosure)	3 petitions x 2 parties x 12 hours per party	72 hours
Section 1.1403(e) – The Commission estimates that 1,000 such notices will be made annually by cable operators who will undergo a burden 0.5 hours per notice.	1,000 notices x 0.5 hours	500 hours
Sections 1.1404, 1.1406, 1.1407 and 1.1417 - The Commission estimates that 20 complaint cases will be filed annually. The average burden is 100 hours for all aspects of the complaint process, including the filing of responses, replies, and any supplemental information. This estimate also accounts for the burden for parties to calculate rate formulas and to determine presumptive average number of attachments to poles. The Commission estimates that 75% of parties that undergo the complaint process will use the services of outside counsel. Parties that use outside legal counsel are estimated to undergo an average burden of 4 hours to coordinate information with outside legal counsel. 20 complaint cases; 40 parties.	5 cases (20 cases x 25%) x 75 hours 5 cases (20 x 25%) x 25 hours 15 cases (20 cases x 75%) x 3 hours 15 cases (20 x 75%) x 1 hour	375 hours 125 hours (3 rd party disclosure) 45 hours 15 hours (3 rd party disclosure)
Section 1.1414 – The Commission estimates that 1 state will file certifications with the Commission each year with an average burden of 1 hour per certification.	1 certifications x 1 hour	1 hour
Cumulative Totals	1,772 respondents	2,629 hours

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The Commission estimates that it requires approximately 2,629 hours to perform these various complaint and enforcement procedures:

2,417 hours for the reporting requirements

212 hours for the 3rd party disclosure requirements.

Total Annual Hourly Burden: 2,417 + 212 = 2,629 hours

We assume that in-house attorneys and legal assistants will be used in approximate equal measures in undergoing the various information collection requirements. These employees are estimated to be paid in a range of \$150 to \$200 per hour, for an average wage of \$175 per hour.

2,629 hours x \$175/hour = \$460,075.00

Total Annualized “In House” Cost to Respondents: \$460,075.00

13. Annual Cost Burden to Respondents:

We estimate that these parties in these various complaint procedures will use outside legal counsel paid at a rate of \$300 per hour to perform approximately 1,500 additional hours of the legal work in these various complaint and enforcement procedures.

1,500 hours x \$300/hour = \$450,000

Of this \$450,000 for outside legal work, we apportion it as follows:

Approximately 91.94% is for reporting requirements and 8.06% for the 3rd party disclosure:

\$450,000.00 x 0.9194 (reporting requirements) = \$413,712.44

\$450,000.00 x 0.0806 (3rd party disclosure) = \$36,287.56

Total Annual Costs: \$450,000.00

14. Cost to the Federal Government:

5 Petitions for Stay x 80 hours x \$75 per hour = \$30,000

20 cases x 80 hours x \$75 per hour = \$120,000

1 certification x 1 hour x \$75 per hour = \$75

Total Cost to the Federal Government = \$150,075

15. The decrease in burden hours is due to a re-estimate of the number of states certified to regulate rates.

16. The Commission occasionally publishes a listing of states, which have provided certification.

17. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

18. There are no exceptions to the Certification Statement in Item 19.

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B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.