

SUPPORTING STATEMENT

Proposed collection entitled: Sections 1403(b), 1.1404(d), 1.1420, 1.1422, 1.1426, 1.1428, Pole Attachment Access Requirements

1. Section 224 of the Communications Act (section 224) directs the Commission to ensure that the rates, terms, and conditions of pole attachment are just and reasonable, and directs the Commission to adopt rules and regulations to carry out this mandate. The terms “pole attachment” and “poles” comprise other utility infrastructure, and include ducts, conduits, and rights-of-way as well as utility poles. Section 224 also mandates that telecommunications carriers (defined by section 224 to exclude incumbent local exchange carriers, which count as utilities) and cable companies have access to poles, subject to certain conditions regarding capacity, safety, reliability, and sound engineering practices. The Commission proposes a regulatory scheme to ensure that the terms and conditions of access to poles are just and reasonable.

The Order and Further Notice of Proposed Rulemaking (Further Notice), FCC 10-84, seeks comment on a variety of issues relating to implementation of section 224 pole attachment rules in light of increasing intermodal competition since the Commission began to implement the 1996 Act. Specifically, the Further Notice seeks comment on the adoption of a specific timeline regarding the pole attachment request, survey, and make-ready time period in order to provide greater certainty for the timely deployment of telecommunications, cable, and broadband services. Additionally, the Further Notice seeks comment on the adoption of several proposals regarding the ability of new attachers to use contractors to perform pole attachment make-ready work. The Further Notice also proposes improvements to the existing enforcement process. Finally, the Further Notice seeks comment on existing rules governing pole attachment rates for telecommunications carriers and incumbent local exchange carriers (LECs) in pursuit of a low, compensatory rate that will improve incentives for network deployment. *See item 6 of this Supporting Statement for specific information collection requirements.*

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

Statutory authority for this information collection is contained in 47 U.S.C. section 224.

2. Arranging for access to poles involves requests, responses, and coordination among pole owners, requesting attachers, and parties that own facilities that are already attached to the poles. The Commission proposes regulations that, if adopted, would formalize communication among the parties, and thus impose a paperwork burden. The Commission does not propose to collect data, but does seek comment regarding the costs and benefits of data collection, including the possibility of data collection by the parties, by third-party pole data specialists, or by the Commission itself.

3. The use of information technology would depend upon the parties. Much inter-party communication could probably be accomplished by e-mail and web postings, but paper letters and invoices will likely also be used. Any actual data collection would almost certainly be automated in order to be useful or practicable, but data collection is not proposed, only put forth for comment.
4. Not applicable. Each request for access is unique. There is no similar data available.
5. Small utilities are subject to requests to access to poles, but the paperwork burden is as light as possible consistent with the utility's own record-keeping standards.
6. Each proposal to govern access to pole attachments is required to ensure the process is just and reasonable, and consistent with safety, reliability, and sound engineering. The following information collection requirements are proposed:
 - a. 1.1403(b): Requests for access to a utility's poles must be in writing. If the utility denies access, or grants access conditioned on preparation of the poles, it must explain the denial or grant of access in writing by the 45th day. The writing must include all relevant evidence and information, and explain how the evidence and information relate to lack of capacity, safety, reliability or engineering standards. In practice, this requirement causes the utility to survey the requested poles where access is requested and to perform an engineering analysis. The survey and analysis are required to accommodate attachers, as the utility must under section 224, and at the same time preserve the structural integrity of its poles, as required by state law.
 - b. 1.1404(d). In order to keep utilities from exerting undue market power, prospective attachers may complain about aspects of its attachment with the utility that it considers unfair after its facilities have been attached. This exception to common-law expectations is called "sign and sue." The Commission proposes that attachers should have to notify the Commission and the utility in advance when it considers a term or condition unfair. The proposed notification may be necessary to ensure the integrity of the bargaining process.
 - c. 1.1420. The Commission proposes a comprehensive timeline to set standards of timeliness when a telecommunications carrier or cable operator requests access to poles. In addition to the survey discussed in 1.1403(b) above, the Commission proposes that utilities will present invoices for charges for the survey, engineering analysis, and pole preparation; will notify other attachers of the new attachment; will direct the sequence in which existing attachers move their attachments to make room for the new attachment; and, when no further payment is due, will confirm that the request for access is granted.
 - d. 1.1422. The Commission proposes that utilities make available (1) a list of authorized contractors; and (2) criteria and procedures for becoming an authorized contractor. If the prospective attacher hires an authorized contractor to complete a survey or preparation of the poles, the Commission proposes that the prospective attacher will invite a representative of the utility to co-direct and co-supervise the contractor.

e. 1.1426. The Commission proposes that utilities will make available to attaching entities a schedule of common pole preparation charges, and that prospective attachers will pay for pole preparation in three installments.

f. 1.1428. The Commission proposes that when a pole is owned jointly by more than one utility, each owner shall make publicly available the identity of the managing pole owner. In addition, the Commission proposes that the managing pole owner will (1) collect from each existing attacher a statement of any costs attributable to rearrangement of the existing attachers' facilities to accommodate a new attacher. (2) bill the new attacher for these costs, plus any expenses the managing pole owner incurs in its role as clearinghouse; and (3) disburse compensatory payment to the existing attachers.

The consequences of not adopting a comprehensive set of rules to govern pole attachment access include delays in access that are unfair and unreasonable, failure to protect the legitimate rights and interest of the pole owners, existing attachers, and new attachers, suppression of competition to provide telecommunications or video services, retardation of broadband deployment, or self-help resulting in unauthorized and potentially hazardous attachments to utility infrastructure.

7. No special circumstances will apply to this information collection.

8. The Commission published a Further Notice of Proposed Rulemaking (FNPRM) in the Federal Register on July 15, 2010 (75 FR 41338) in compliance with 5 CFR 1320.8(d)(2). At the time of submission of this information collection to the Office of Management and Budget (OMB) for review and approval, no comments had been received.

9. There are no payments or gifts to respondents.

10. No questions of a confidential nature are asked.

11. This does not address any private matters or matters of a sensitive nature.

12. The burdens of the several proposed regulations are disaggregated by proposed rule below:

a. Section 1.1403(b):

Carriers and cable operators (attachers) may request access to utility poles. If they do so, proposed 47 C.F.R. § 1.1403(b) would require the utility to inspect the requested poles and prepare a written response including engineering statement. The burden-hours estimate below includes the existing burden hours for the existing collection in addition to estimated burden hours for this revised collection.

(1) Number of respondents: Approximately 2,961.

(2) Frequency of response: Attachers: On occasion reporting requirements. Utilities: Approximately 2,961 per year. Total: approximately **2,961** per year.

(3) Annual burden per response: Attachers: Approximately 12 hours per year. Utilities: Approximately 300 hours per response. The total annual hour burden is: **923,832 hours**.

(4) Total estimate of the annualized cost to respondents for the hour burdens for collection of information: Attachers: Approximately \$276 per year. Utilities: Approximately \$19,740 900 to **\$20,000,000** per year.

(5) Explanation of calculation: There are approximately 70 investor-owned electric utilities. Together, they own or control approximately 70% of the utility poles subject to our regulations. The remaining 30% of poles are owned by incumbent local exchange carriers. Thus, we calculate that the rule affects approximately 100 utilities. Utilities estimate their internal cost, on average, as \$200,000 per year on pole attachment surveys and engineering studies. $\$200,000 \times 100 \text{ utilities} = \mathbf{\$20,000,000}$ total annual cost.

(Alternatively, the average hourly wage of an experienced engineer is between \$23 and \$53. http://www.payscale.com/research/US/Job=Mechanical_Engineer/Hourly_Rate Because engineers would probably be the most highly paid workers involved in a survey and engineering analysis (earning more, on average, than linemen or office managers) we use the low end of the range, and infer that, on average, utilities pay a \$23-per-hour wage for these projects $\$23 \text{ per hour} \times 300 \text{ hours per response} \times 2,861 \text{ responses} = \$19,740 900$.)

Prospective attachers:

We assume that each prospective attacher's request-application includes a letter and a map. We estimate the telecommunications and cable systems paperwork burden to be 6 hours per request. We estimate any individual attacher may make, on average, 2 requests per year. $2 \text{ applications} \times 6 \text{ hours} = 12 \text{ hours per year}$. We applied the "experienced engineer" wage of \$23 (see below). $12 \times \$23 = \mathbf{\$276}$ per year.

b. Section 1.1404(d):

(1) Number of respondents: Approximately 4.

(2) Frequency of response: On occasion reporting requirement.

(3) Estimated Time per Response: Approximately **4 hours**.

(4) Total Annual Burden: **16 hours**.

(5) Total estimate of the annualized cost to respondents for the hour burdens: **\$208**.

(6) Explanation of calculation: Attachers: We estimate 4 written statements memorializing objections to contract terms per year at one hour per statement. Median hourly rate for lawyer: \$52. per hour. $4 \times \$52 = \mathbf{\$208}$ per year.

http://www.payscale.com/research/US/Industry=Law_Firm_%2f_Law_Office/Hourly_Rate

c. Section 1.1420:

Part 1: Letter from utility to existing attachers announcing request for attachment:

(1) Number of respondents: Approximately 100.

- (2) Frequency of response: Approximately **8,583** per year.
- (3) Annual burden per response: 3 letters each per 2,861 requests; 1 hour per letter. The total annual burden is: **8,583 hours**.
- (4) Total estimate of the annualized cost to respondents for the hour burdens: **\$125,295.**
- (5) Explanation of calculation: The burden hours of letters of notification of a request to attach include identifying the proper recipients and sending the letters. The letters will probably be pre-drafted form letters. We estimate that this obligation will apply to approximately 2,861 requests per year, and will generate 3 letters per request. Total: 8,583 letters. We estimate that the work will be performed by an administrative office manager. Administrative office manager salary = \$15 per hour.
http://www.payscale.com/research/US/Country=United_States/Hourly_Rate
Total estimated cost: \$15 x 8,353 = **\$125,295** per year.

Part 2: Directing sequence of rearrangement of facilities.

- (1) Number of respondents: Approximately 100.
- (2) Frequency of response: Approximately **2,861 per year**.
- (3) Annual burden per response: 8 hours of letters and e-mail and telephone calls per request. The total annual burden is: **22,888 hours**.
- (4) Total estimate of the annualized cost to respondents for the hour burdens: **\$343,320 per year.**
- (5) Explanation of calculation: The burden hours of directing a sequence of rearrangement of facilities include letters, e-mail, and telephone calls to existing attachers. Although utilities will probably develop standard operating procedures, each rearrangement of facilities will require individual scheduling and direction. We estimate that this obligation will apply to approximately 2,861 requests per year, and will require 8 hours per request. Total, 22,888 hours. We estimate that the work will be performed by an administrative office manager. Administrative office manager salary = \$15 per hour.
http://www.payscale.com/research/US/Country=United_States/Hourly_Rate
Total estimated cost: \$15 x 22,888 = \$ 343,320.

d. Section 1.1422:

Authorized contractors.

Part 1: Posting approved contractors

- (1) Number of respondents: Approximately 100.
- (2) Frequency of response: Approximately **100 per year**.
- (3) Annual burden per response: 6 hours for web posting or update of authorized contractors per year. The total annual burden is: **600 hours**.
- (4) Total estimate of the annualized cost to respondents for the hour burdens: **\$9,000.**
- (5) Explanation of calculation: The annual burden hours for web posting (both initial post and updates) of authorized contractors are estimated at approximately 6 hours, and will affect 100 utilities. We estimate that the work will be performed by an administrative office manager. Administrative office manager salary = \$15 per hour.
http://www.payscale.com/research/US/Country=United_States/Hourly_Rate
Total estimated cost: \$15 x 600 = \$9,000.

Part 2: Invitation to accompany contract workers:

- (1) Number of respondents: Approximately 2,961.
- (2) Frequency of response: Attachers: On occasion. Utilities: Approximately 2861 per year. Total: approximately **2,961** per year.
- (3) Annual burden per response: 1 hour for sending or receiving and responding to invitations to accompany contract workers: **2,961 hours.**
- (4) Total estimate of the annualized cost to respondents for the hour burdens: **\$44,415.**
- (5) Explanation of calculation: The annual burden hours on attachers of drafting and sending invitations, or on utilities for receiving and responding to invitations, is estimated as a total of 2,961 for both groups considered together. We estimate that the work will be performed by an administrative office manager. Administrative office manager salary = \$15 per hour.

[http://www.payscale.com/research/US/Country=United States/Hourly Rate](http://www.payscale.com/research/US/Country=United_States/Hourly_Rate)

Total estimated cost: $\$15 \times 2,961 = \$44,415$.

e. Section 1.1426:

Schedules of charges

- (1) Number of respondents: Approximately 100.
- (2) Frequency of response: Approximately **100** per year.
- (3) Annual burden per response: 6 hours for web posting or update of schedule of charges per year. The total annual burden is: **600 hours.**
- (4) Total estimate of the annualized cost to respondents for the hour burdens: **\$9,000.**
- (5) Explanation of calculation: The annual burden hours for web posting (both initial post and updates) of schedules of charges are estimated at approximately 6 hours, and will affect 100 utilities. We estimate that the work will be performed by an administrative office manager. Administrative office manager salary = \$15 per hour.

[http://www.payscale.com/research/US/Country=United States/Hourly Rate](http://www.payscale.com/research/US/Country=United_States/Hourly_Rate)

Total estimated cost: $\$15 \times 600 = \$9,000$.

f. Section 1.1428:

Reimbursement of expense of existing attachers

- (1) Number of respondents: Approximately 100.
- (2) Frequency of response: Approximately **2,861** per year.
- (3) Annual burden per response: 4 transactions per request (11,444) at .5 hours per transaction. The total annual burden is: **5,722 hours.**
- (4) Total estimate of the annualized cost to respondents for the hour burdens: **\$85,830.**
- (5) Explanation of calculation: Section 224 mandates that new attachers must pay the cost of attaching their facilities, and that no incidental costs shall be borne by existing attachers. Therefore, utilities must invoice the new attacher on behalf of the existing attachers, and reimburse the existing attachers for their expenses. We assume that the utilities will coordinate four transactions per request, and 2891 requests per year. $4 \times 2861 = 11,444$. We also estimate .5 hours per transaction, for a total 5,722 hours. We

estimate that the work will be performed by an administrative office manager.
Administrative office manager salary = \$15 per hour.
http://www.payscale.com/research/US/Country=United_States/Hourly_Rate
Total estimated cost: $\$15 \times 5,722 = \$ 85,830$.

All estimates exclude any paperwork associated with “customary and usual business practices” including, for example, the generation, review, or payment of invoices, other than for work performed for the benefit of third parties.

Total proposed estimated annual frequency of response:
 $2,961 + 8,583 + 2,861 + 100 + 2,961 + 100 + 2,861 = 20, 427$ responses.

Total proposed estimated burden hours:
 $923,832 + 16 + 8,583 + 22,888 + 600 + 2,961 + 600 + 5,722 = 965,202$ hours.

Total proposed estimated in-house cost:
 $\$20,000,000 + \$276 + \$208 + \$125,295 + \$9,000 + \$44,415 + \$9,000 + \$85,830 =$
 $\$20,274,024$.

13. There are no outside contracting costs to the respondents.
14. There are no annualized costs to the federal government.
15. The Commission is requesting OMB approval for this proposed new information collection which imposes a program change 966,337 hours.
16. The Commission does not intend to publish any information at this time.
17. The Commission does not intend to seek approval not to display the OMB expiration date for OMB approval of the information collection. The Commission publishes a list of OMB-approved information collections displaying the OMB control number, OMB expiration date and title of each collection in 47 CFR 0.408 of the Commission’s rules.
18. Not applicable. No exceptions are being requested.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.