

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. They also provide complaint and enforcement procedures for incumbent local exchange carriers (ILECs, as defined in 47 U.S.C. 251(h)) to ensure that their non-discriminatory access rights, rates, terms, and conditions of their pole attachments are just and reasonable.

Existing Information Collection Requirements:

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 explain the denial or grant of access conditioned on the performance of make-ready by the 45th day.

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 1.1409(a) requires parties to make additional filings or submit additional information, if requested by the Commission.

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.

Section 1.1424 states that the procedures for handling pole attachment, including pole access, complaints filed by incumbent local exchange carriers are the same as the procedures for handling other pole attachment complaints.

Section 1.1424 further requires incumbent local exchange carriers that claim they are similarly-situated to other attachers to bear the burden of demonstrating their similarity.

Modified Information Requirements:

On November 12, 2014, the Commission released an order entitled the *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, GC Docket No. 10-44, FCC 14-179 (rel. Nov. 12, 2014); 47 U.S.C. §§ 208, 224(b), 29 FCC Rcd 14078 (2014). This rulemaking required electronic filing through the Commission's Electronic Comment Filing System (ECFS) in two categories of cases: (1) formal complaints under Section 208 of the Communications Act (Act) and (2) pole attachment complaints under Section 224 of the Act (Order).¹ The Order also made a few minor, non-substantive revisions described below.

On November 29, 2017, the Commission released *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17-154 (rel. Nov. 29, 2017) (*Wireline Infrastructure Order*). In the *Wireline Infrastructure Order*, the Commission, among other things, expanded the type of pole attachment complaints that can be filed by incumbent local exchange carriers (ILECs) pursuant to 47 CFR § 1.1424, now allowing them to file complaints related to a denial of pole access by utilities. As a result, we are modifying the existing collection to add the burdens associated with pole access complaints that can now be brought by ILECs against utility pole owners.

Section 1.1408 specifies fee payment instructions, pleading service rules, and specifies the process parties must follow if they wish to designate as proprietary material in pole attachment complaint proceedings.

The Commission is requesting OMB approval for a revision to this information collection in order to obtain the three-year clearance.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

¹ *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, GC Docket No. 10-44, FCC 14-179 (rel. Nov. 12, 2014); 47 U.S.C. §§ 208, 224(b).

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. Complainants and respondents filing Section 224 pole attachment complaints and subsequent pleadings are required to file each document electronically through the Internet unless a filing is confidential in which case the materials are to be hand-delivered. The Commission does not anticipate any confidential filings. All standard, non-confidential filings should be submitted through ECFS which can be accessed at <http://apps.fcc.gov/ecfs/>.
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 of access, 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 of access, and conditions under which cable television operators, providers of telecommunications services, and ILECs 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 unredacted hard copy version of a complaint, response, or reply containing proprietary material.
8. The Commission published a notice in the *Federal Register* initiating a 60-day comment period on this revised collection on January 4, 2018 (83 Fed. Reg. 525). 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 respondents 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.

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	1,000 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, 1.1417, and 1.1424 - The Commission estimates that 23 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.	8 cases x 75 hours 8 cases x 25 hours 18 cases x 3 hours 18 cases x 1 hour	600 hours 200 hours (3rd party disclosure) 54 hours 18 hours (3rd 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	1,775 respondents	2,941 hours

Total Number of Respondents and Responses: 1,775

The Commission estimates that it requires approximately **2,941** hours to perform these various complaint and enforcement procedures:

2,717 hours for the reporting requirements

224 hours for the 3rd party disclosure requirements.

Total Annual Hourly Burden: 2,717 + 224 = 2,941 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.

2,941 hours x \$175/hour = **\$514,675.00**

Total Annualized “In-House” Cost to Respondents: \$514,675.00

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 Total Annual Costs

14. Cost to the Federal Government:

5 Petitions for Stay x 80 hours x \$75 per hour	= \$ 30,000
23 cases x 80 hours x \$75 per hour	= \$138,000
1 certification x 1 hour x \$75 per hour	= <u>\$ 75</u>
Total Cost to the Federal Government	= \$168,075

15. The Commission is reporting a program change/increase in the total number of annual responses and annual burden hours in this collection. The total number of annual responses increased from 1,772 to 1,775 (+3 responses), while the total number of annual burden hours increased from 2,629 to 2,941 (+312 hours). These increases result from the addition of the types of pole attachment complaints ILECs can file as a result of the rule change adopted pursuant to the *2017 Wireline Infrastructure Order* and the estimation that three additional complaints of this type will be filed annually.

There are no adjustments to this collection.

- 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.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ any statistical methods.