

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 television 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 (incumbent LECs, as defined in 47 U.S.C. 251(h)) to ensure that the rates, terms, and conditions of their pole attachments are just and reasonable.

Existing Information Collection Requirements:

Existing OMB Collection No. 3060-0392 tracks the paperwork burdens associated with a number of the pole attachment complaint rules, specifically 47 CFR §§ 1.1403, 1.1404, 1.1406, 1.1414, 1.1417 and 1.1424.¹ The paperwork burdens for this collection were recently renewed in May 2018, with an expiration date of May 31, 2021.² This submission is amending only the paperwork burdens associated with revised 47 CFR § 1.1413, which sets forth requirements for pole attachment complaints brought by incumbent LECs.³ All other paperwork burdens associated with Collection No. 3060-0392 will remain the same.

Modified Information Requirements:

In the 2018 Pole Attachment Order, the Commission, among other things, revised section 1.1413 of its rules to establish a presumption that an incumbent LEC is similarly situated to an attacher that is a telecommunications carrier or a cable television system providing telecommunications services for purposes of obtaining comparable pole attachment rates, terms, or conditions. The Commission also established a presumption that an incumbent LEC may be charged no higher than the Commission-defined pole attachment rate for telecommunications carriers, as determined in accordance with 47 CFR § 1.1406(e)(2). To rebut these presumptions, the utility must demonstrate by clear and convincing evidence that the incumbent LEC receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent LEC over other telecommunications carriers or cable television systems providing telecommunications services on the same poles. Such a presumption applies only to pole attachment agreements entered into or renewed after the effective date of the Order.

In this submission, the Commission is reporting a change in the paperwork burdens as a result of its amendment to 47 CFR § 1413 (as stated above, all other paperwork burdens associated with Collection No. 3060-0392 will remain the same). As a result, the Commission is requesting OMB approval for a revision to the information collection in 3060-0392, such approval to expire on May 31, 2021 when the rest of the paperwork burdens associated with Collection No. 3060-0392 expire.

¹ The Commission recently renumbered sections 1.1414, 1.1417, and 1.1424 of its rules to 1.1405, 1.1410, and 1.1413, respectively. See *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Report and Order, FCC 18-96, Appx. A (July 18, 2018).

² See FCC, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 83 Fed. Reg. 21722 (May 10, 2018).

³ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-70, Third Report and Order and Declaratory Ruling, FCC 18-111 (2018) (2018 Pole Attachment Order).

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

Statutory authority for this collection of information is contained in section 224 of the Communications Act of 1934, as amended.

2. The information required as a result of the revision to 47 CFR § 1.1413 will be used by the Commission to hear and resolve pole attachment complaints brought by incumbent LECs against utility pole owners. The information collected will be used to determine the merits of the complaints regarding just and reasonable rates, terms, and conditions for incumbent LEC pole attachments.
3. Complainants and respondents involved in pole attachment complaints and subsequent pleadings are required to file each document electronically through the Commission's online electronic filing system (ECFS), unless a filing is confidential in which case the materials are to be hand-delivered to the Commission. All standard, non-confidential filings should be submitted through ECFS, which can be accessed at <http://apps.fcc.gov/ecfs/>.
4. The information requested in this revision is not available elsewhere. It was created specifically to meet the requirements in Section 224 to ensure just and reasonable rates, terms, and conditions for utility pole attachments. 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 revision may have an impact on small utilities. In compliance with the Paperwork Reduction Act of 1995, the Commission is making every effort to minimize the burden on all utility respondents, regardless of size.
6. No specific interval is set for the filing of pole attachment complaints by incumbent LECs pursuant to recently-amended 47 CFR § 1.1413. If complaints were ordered to be made at specific intervals, then the Commission would not become aware of unjust or unreasonable rates, terms of access, and conditions for incumbent LEC pole attachments in a timely manner. The result would be an inability to minimize any adverse effects. Moreover, if this collection of information was not conducted, then 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 telecommunications attachers attach their equipment to utility poles are just and reasonable.
7. No special circumstances will apply to this revision to the existing information collection.
8. The Commission published a notice in the *Federal Register* initiating a 60-day comment period on this revised collection on September 24, 2018 (83 Fed. Reg. 48313). 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 revision.
10. There is no need for confidentiality.
11. This revision does not address any private matters of a sensitive nature, nor are there any privacy impacts.
12. Under the previous version of 47 CFR § 1.1413, the presumption was that incumbent LECs were not similarly-situated to other telecommunications attachers and thus not entitled to comparable rates, terms, and conditions for their attachments. The burden rested on incumbent LECs to rebut the presumption by demonstrating that there were similarly situated to other telecommunications carriers

on a pole by reference to any relevant evidence, including their pole attachment agreements. In the 2018 Pole Attachment Order, the Commission reversed the presumption and now puts the burden on utilities to rebut the presumption that incumbent LECs are similarly situated to other telecommunications attachers on a pole. The burden is now on the utility to demonstrate by clear and convincing evidence that the incumbent LEC receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent LEC over other telecommunications attachers on the same poles.

The base estimates will not change for the hourly and cost burdens on incumbent LECs for bringing pole attachment complaints against utilities, as set forth in the 2018 renewal of OMB Collection No. 3060-0392. However, based on changes adopted in the 2018 Pole Attachment Order, now there is an incremental paperwork burden on utilities should they elect to challenge the presumption that incumbent LECs are entitled to rates, terms, and conditions of similarly-situated telecommunications attachers. Those incremental hourly and cost burdens for utilities are as follows and are estimated based on Commission staff's knowledge and familiarity with the availability of the data required.

Estimates	Calculation	Burden Hours
Section 1.1413 - The Commission continues to estimate that 23 pole attachment complaint cases will be filed annually by incumbent LECs against utility pole owners. We estimate that in 16 of those cases, the utilities will attempt to rebut the new presumption that incumbent LECs are similarly situated to other telecommunications attachers on the pole. In each of those 16 cases, we estimate that the hourly burden for providing clear and convincing evidence that the incumbent LEC receives benefits under its pole attachment agreement that materially advantages the incumbent LEC over its telecommunications competitors is 10 hours. We estimate that 75% of utilities that attempt to rebut the presumption will use the services of outside counsel. Parties that use outside legal counsel are estimated to undergo an average burden of 4 additional hours to coordinate information with outside legal counsel.	16 cases x 10 hours	160 hours
	12 cases x 4 hours	48 hours
Cumulative Totals	1,775 respondents	3,149 hours⁴

The Commission estimates that it will require approximately 208 total hours annually for utilities to file the necessary paperwork required to attempt to rebut the presumption in pole attachment complaint cases that incumbent LECs are similarly situated to other telecommunications attachers on a utility pole.

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

208 hours x \$175/hour = \$36,400 annual in-house cost burden to utilities.

⁴ The cumulative total burdens hours have increased with this revision and are as follows: 2,941 hours (currently approved) + 208 incremental burden hours = 3,149 hours.

In the most recent renewal for this collection, we estimated that the total annual paperwork burden hours for these pole attachment complaint rules would be 2,941 hours. We also estimated that in-house attorneys and legal assistants would be used in approximate equal measures in undertaking the various information collection requirements. As stated above, 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 in annual costs to comply with the already-approved burdens set forth in Collection No. 3060-0392.

Total Annualized “In-House” Cost to Respondents: \$36,400 + \$514,675 = \$551,075

13. Additional Annual Cost Burden to Respondents:

We estimate that utilities in incumbent LEC complaint proceedings will use outside legal counsel paid at a rate of \$300 per hour to perform approximately 10 additional hours of the legal work in each of the estimated 12 complaint proceedings where utilities use outside counsel. 12 complaint cases times 10 hours per case = 120 hours annually. 120 hours times \$300 per hour = \$36,000 total annual outside costs to utilities.

In the most recent renewal for this collection, we estimated that respondents would 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 Cost Burden to Respondents: \$36,000 + \$450,000 = \$486,000

14. There are no annualized costs to the federal government as a result of this revision. However, in the recent renewal for this collection, we estimated \$168,075 in total annual costs to the federal government for the burdens associated with this collection.

15. The Commission is reporting a program change in the number of annual responses and annual burden hours associated with section 1.1413 as previously reported to OMB as part of this collection. These program changes are reflected in the supporting statement which result from the Commission’s change from a burden on incumbent LECs to a burden on utility pole owners to challenge a presumption favoring incumbent LECs in complaint proceedings.

Otherwise, there are no adjustments to this information collection.

16. The Commission does not intend to publish any information at this time.

17. The Commission does not intend to seek approval to not display the expiration date for OMB approval of this revision to an existing 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.

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.