

Commodity	Parts per million
Poultry, meat byproducts .....	2.0
Radish, tops .....	4.5
Rapeseed, meal .....	40
Rapeseed, seed .....	35
Safflower, seed .....	15
Salal .....	5.0
Sheep, fat .....	0.2
Sheep, meat .....	0.2
Sheep, meat byproducts .....	1.0
Soybean, hay .....	10
Soybean, seed .....	16
Spearmint, tops .....	30
Strawberry .....	10
Sunflower, meal .....	20
Sunflower, seed .....	7.0
Turnip, tops .....	5.0
Vegetable, brassica, leafy, group 5 .....	5.0
Vegetable, bulb, group 3 .....	1.0
Vegetable, cucurbit, group 9 ....	4.0
Vegetable, fruiting, group 8 .....	4.0
Vegetable, leafy, except brassica, group 4 .....	4.0
Vegetable, root and tuber, group 1 .....	4.0

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WC Docket No. 07-245; FCC 07-187]

#### Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on whether to amend its rules governing pole attachments, which are designed to ensure the attachment of facilities of cable television systems and telecommunications carriers to utility poles, ducts, conduits, or rights-of-way (collectively, "pole attachments") at just and reasonable rates, terms and conditions. The Commission has received petitions for rulemaking from Fibertech Networks, LLC and United States Telecom Association seeking review of the current pole attachment rules, which petitioners and commenters claim are inadequate in scope or no longer accord with developing technology and business models. The Commission seeks to resolve questions regarding appropriate regulation of pole attachment rates, terms, and conditions of access.

**DATES:** Comments are due March 7, 2008 and Reply Comments are due March 24, 2008. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 7, 2008.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 07-245, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Federal Communications Commission's Web site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- **E-mail:** [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

• **Mail:** Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

• **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A.\\_Fraser@omb.eop.gov](mailto:Nicholas_A._Fraser@omb.eop.gov) or via fax at 202-395-5167.

#### FOR FURTHER INFORMATION CONTACT:

Jonathan Reel, Wireline Competition Bureau, (202) 418-1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Jerry R. Cowden at (202) 418-0447, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file Comments on or before March 7, 2008 and Reply Comments on or before March 24, 2008. Comments may be filed using: (1) The Commission's Electronic

Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

• **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

• **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be

addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

#### **Initial Paperwork Reduction Act of 1995 Analysis**

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

#### **Synopsis of the Notice of Proposed Rulemaking**

Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments

1. In this Notice of Proposed Rulemaking (*NPRM*), the Commission seeks comment with regard to implementation of section 224 of the Communications Act of 1934, as amended (Act). Section 224 confers on cable television systems and telecommunications carriers the right to pole attachments at just and reasonable rates, terms and conditions. In the Telecommunications Act of 1996 (1996 Act), Congress expanded the definition of a “pole attachment” for purposes of section 224 to include not only poles but also “any attachment” to a “duct, conduit, or right-of-way owned or controlled by a utility.” The Commission seeks to ensure that its regulatory framework remains current and faithful to the pro-competitive, market-opening provisions of the Act in light of experience over the last decade, advances in technology, and developments in the markets for telecommunications and video services.

2. *Rate Regulation.* Congress first directed the Commission to ensure that the rates, terms, and conditions for pole attachments by cable television systems were just and reasonable in 1978 when it added section 224 to the Act. Then, as now, the statute provided that the Commission will regulate pole attachments except where such matters are regulated by a state. Eighteen states and the District of Columbia have certified that they regulate pole

attachments, and thus the Commission does not regulate pole attachments in those states. In a series of orders, the Commission implemented a formula that cable television system attachers and utilities could use to determine a just and reasonable rate, and procedures for resolving rate complaints. In 1987, the U.S. Supreme Court found that the formula the Commission devised for pole attachments by cable television systems (the cable rate) did not result in an unconstitutional “taking.” Congress expanded the reach of section 224 in several notable ways in the 1996 Act. Congress granted attachers an affirmative right to access utility poles. The 1996 Act also added ducts, conduits, and rights-of-way to the facilities covered by section 224. Congress included a proviso, however, that utilities providing electric service may deny access, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes. Further, Congress added “telecommunications carrier” as a category of attacher under section 224. Congress established two separate provisions governing the maximum rates for pole attachments—one for attachments used by “telecommunications carriers” to provide telecommunications services (the telecommunications rate), and another for attachments used “solely to provide cable service.” For purposes of section 224, Congress excluded incumbent local exchange carriers (LECs) from the definition of “telecommunications carriers.”

3. *Access Regulation.* To implement the new section 224 access requirements of the 1996 Act, the Commission adopted five rules of general applicability and several broad policy guidelines addressing such issues as capacity expansion, reservation of space by utilities for their own use, and the right of non-electric utilities to deny access for capacity or safety reasons. The Commission declined at that time to mandate specific access requirements, concluding instead that the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis. The Commission stated that it would monitor the effect of the case-specific approach, and would propose specific rules at a later date if conditions warranted. The Commission also concluded that section 224’s principle of nondiscrimination required utilities to expand capacity for attachers as they would for themselves. In

*Southern Co. v. FCC*, 293 F.3d 1338, 1346–47 (11th Cir. 2002), the U.S. Court of Appeals for the Eleventh Circuit rejected the Commission’s requirement that utilities expand capacity for attachers, holding that, under the plain language of section 224 of the Act, “[w]hen it is agreed that capacity is insufficient, there is no obligation to provide third parties with access” to poles. The Eleventh Circuit also held, however, that the term “insufficient capacity” is not defined by statute and is ambiguous, and that utilities do not “enjoy the unfettered discretion to determine when capacity is insufficient.” *Southern*, 293 F.3d at 1348.

4. *Petitions for Rulemaking.* On December 7, 2005, Fibertech Networks, LLC (Fibertech) petitioned the Commission to conduct a rulemaking to adopt seven “standard practices” for pole and conduit access. On October 11, 2005, United States Telecom Association (USTelecom) petitioned the Commission to conduct a rulemaking to consider whether, as providers of telecommunications services, incumbent LECs are entitled to regulated pole attachment rates. Among the numerous ex parte filings submitted in these dockets, Time Warner Telecom, Inc. (TWTC) filed a White Paper seeking adoption of a single pole attachment rate for both cable television systems and telecommunications carriers in order to remove regulatory bias from investment decisions regarding deployment of broadband and other services.

5. *Market Forces and Change.* The Commission inquires about the current state of pole attachments, ducts, conduits, and rights-of-way, and the relationship between these facilities and the competitive telecommunications market. It seeks data on the nature and scope of pole attachments by the various types of providers, and inquires about the difference in pole attachment prices paid by cable systems, incumbent LECs, and competing telecommunications carriers that provide the same or similar services. The Commission asks, for example, in what ways do pole attachments affect the expansion of broadband Internet access service and how do pole attachments by cable systems and providers of telecommunications services affect competition to deliver services. Over the last few years, the Commission has recognized that the once-clear distinction between “cable television systems” and “telecommunications carriers” has blurred as each type of company enters markets for the delivery

of services historically associated with the other.

6. The Commission also seeks comment regarding possible changes in bargaining power between electric utilities and incumbent LECs, and whether pole attachment rates paid by incumbent LECs could affect the vitality of competition to deliver telecommunications, video services, and broadband Internet access service. The Commission seeks comment on developments related to rates, costs, and bargaining power between electric utilities and incumbent LECs. The Commission seeks comment regarding "joint use agreements," including the number and percentage of poles that are owned or managed jointly, and how to evaluate when ownership and control of poles is truly "joint." The Commission also seeks comment on claims that small and rural incumbent LECs are particularly at a disadvantage.

7. *Authority To Regulate Pole Attachments.* The Commission seeks general comment regarding the contours of the Commission's flexibility to interpret section 224. Section 224(b)(1) states that "the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable" and section 224(a)(4) states that "[t]he term 'pole attachment' means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." In addition to this broad mandate, and as noted above, section 224 also provides two separate and explicit rate formulas. One rate—the cable rate—applies to cable television systems' attachments used solely to provide cable service; the other—the telecommunications rate—applies to both cable systems and telecommunications carriers' attachments used to provide telecommunications services.

8. The statute does not specify which of these rates, if either, should apply to transmission of information access services. The Commission seeks comment on the extent to which the current cable rate formula, whose space factor does not include unusable space, results in a subsidized rate, and, if so, whether cable operators should continue to receive such subsidized pole attachment rate at the expense of electric consumers. The Commission seeks comment on whether cable operators should continue to qualify for the cable rate where they offer multiple services in addition to cable service, and whether all telecommunications carriers must pay the telecommunications rate,

regardless of what other services they may provide over their attachments. The Commission asks under what circumstances the Commission may adopt another rate, what is the extent of the Commission's ability to modify how the cable and telecommunications rates are applied. The Commission further asks whether wireless carriers are entitled to attach equipment at the subsection (e) telecommunications rate, or whether their attachments differ to such an extent that another rate would be more reasonable. The Commission seeks comment on the reach of its general authority to regulate pole attachments pursuant to section 224(b), asking whether it has the authority under section 224 to regulate pole attachment rates for all providers of telecommunications services, including incumbent LECs.

9. *A Unified Pole Attachment Rate and the Existing Cable and Telecommunications Rates.* The Commission seeks comment on the statutory limits, if any, to unifying the pole attachment rate paid by both cable systems and telecommunications carriers when their pole attachments are used to provide broadband Internet access service. TWTC proposes that the Commission should eliminate the telecommunications rate and apply the cable rate to all pole attachments, and argues that the Commission should use its broad authority to apply the cable rate to all pole attachments. TWTC further argues that section 224(e)(1) mandates that rates must be nondiscriminatory, and that where cost allocation guidelines yield discriminatory rates, that the nondiscrimination mandate trumps the cost allocation guidelines. The Commission questions TWTC's assertion that the cable rate should apply to all pole attachments, particularly because the cable rate does not include an allocation of the cost of unusable space. The Commission seeks comment on the advantages and disadvantages of a unitary rate for all providers of broadband Internet access service, and the appropriate level of such rate.

10. *The Rights of Incumbent LECs under Section 224.* The Commission seeks comment on the extent of its authority to regulate pole attachment rates for incumbent LECs. In the Local Competition Order and succeeding orders, and in the rules implementing section 224, the Commission interpreted the exclusion of incumbent LECs from the term "telecommunications carrier" (and from the corresponding right to attach to utility poles) to mean that section 224 does not apply to

attachment rates paid by incumbent LECs. USTelecom asks the Commission to revisit that interpretation. USTelecom acknowledges that incumbent LECs are excluded from the section 224 definition of "telecommunications carrier." USTelecom argues, however, that sections 224(b)(1) and 224(a)(4) provide an independent right to reasonable rates, terms, and conditions for any pole attachment by a provider of telecommunications service, and that the statute thus mandates the Commission to apply the "just and reasonable" standard to pole attachments for all such providers, including incumbent LECs. USTelecom asks the Commission to revise any pole attachment rule that conflates "right of access" with "just and reasonable rates, terms, and conditions." USTelecom argues that Congress could have required just and reasonable rates only for "a cable television system or any telecommunications carrier"—the phrase used to specify the right of access—but Congress chose instead to afford such protection to "any attachment by a cable television system or provider of telecommunications service." Therefore, according to USTelecom, because the Commission's current rules ignore this distinction, they only partially implement section 224. Under USTelecom's proposal, although only cable television systems and "telecommunications carriers" would be assured of access to poles, all attaching "providers of telecommunications service," including incumbent LECs, would be assured of just and reasonable rates. The Commission seeks comment on the view that, under section 224, "access" and "rates, terms, and conditions" are severable rights that should be implemented separately.

11. *Rate Level.* The Commission seeks comment on whether it should move toward a single rate for pole attachments used for the same or similar services, and whether adopting a single pole attachment rate would promote the goals of the Act with regard to competition, deregulation, and the deployment of advanced telecommunications capability. TWTC maintains that adopting a single attachment rate for both cable television systems and telecommunication carriers would remove regulatory bias from investment decisions regarding deployment of broadband and other services. TWTC also notes that both cable television systems and telecommunications carriers pay a single rate for using conduit, which suggests that having two different rates

for pole attachments is inherently baseless and discriminatory. TWTC further claims having two rates discourages investment in broadband networks, and for these reasons proposes that the Commission eliminate the telecommunications rate and apply the cable rate to all wire and cable pole attachments. The Commission seeks comment on whether having a single pole attachment rate better achieves the goals of the Act than having two separate rates, and asks whether the current pole attachment rate structure unreasonably discriminates between similarly situated entities or otherwise distorts the market.

12. The Commission also seeks comment regarding whether having two rates leads to recurring disputes over which rate to apply, and solicits general comment on whether the current system is clear, certain, and enforceable, and to what extent there is a perceived uncertainty about which rate to apply. The Commission adopted specific formulas implementing the cable rate and telecommunications rate, which differ only in the manner in which the costs associated with the unusable portion of the pole are allocated. Both of these formulas include a component for the net costs of a bare pole and the carrying charge rate. Carrying charges are the costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. TWTC argues that the similarities in the Commission's cable rate and telecommunications rate formulas are inappropriate, in light of textual differences between section 224(d) and section 224(e) regarding costs. In particular, TWTC contends that the telecommunications rate includes elements not mentioned in section 224(e), citing (1) the "carrying charges" and (2) the "rate of return" element. TWTC alleges that such costs "bear no relation" to the cost of providing space for attachment and should be eliminated from the telecommunications rate. The Commission seeks comment on the desirability of moving to a single pole attachment rate and also on the appropriate level of such a single rate. The Commission invites comment on the possible effect on small entities from adopting a single rate.

13. The Commission seeks comment on USTelecom's suggestion that the default "just and reasonable" attachment rate for incumbent LECs should be the telecommunications rate. The Commission asks if it adopts rules or guidelines for jointly owned poles how it should consider variables such as the proportion of poles owned, the division of maintenance costs and

responsibilities, the income each party receives from other attachers, and similar variables. The Commission also seeks comment regarding whether, given the historical and continuing relationship regarding pole ownership between electric utilities and incumbent LECs, a "just and reasonable" rate for incumbent LECs should be determined by a method other than by applying a rate formula, and seeks comment on alternative approaches. The Commission further seeks comment on whether the historical relationship between incumbent LECs and power companies suggests that it should adopt a purely procedural solution instead of applying a rate formula, such as requiring parties to engage in mediated negotiation or arbitration subject to Commission review.

14. Wireless telecommunications carriers urge the Commission to adopt rules explicitly stating that the Commission's telecommunications rate formula applies to the attachment of wireless devices. The Commission has found no clear indication that the rules could not accommodate wireless attachers' use of poles. The Commission now seeks comment on whether, when they are "telecommunications carriers," wireless providers are entitled to the telecommunications rate as a matter of law, or whether the Commission should adopt a rate specifically for wireless pole attachments. The Commission asks whether, if a wireless facility uses more than the presumptive one foot of space, the per-foot rate could simply be doubled, trebled, or otherwise multiplied as required. The Commission also asks whether, if wireless providers are permitted to attach facilities to pole tops, pole owners should receive a higher rate of compensation, because unlike lateral space, each pole has only one top. The Commission also seeks comment on the extent to which municipalities lease pole attachments for municipal broadband purposes or other services such as telecommunications services, and seeks comment on the impact that the tentative conclusion below might have on municipalities seeking to provide their residents municipal broadband or other services like telecommunications services.

15. *Tentative Conclusion for Broadband Internet Access Service.* Due to the importance of promoting broadband deployment and the importance of technological neutrality, the Commission tentatively concludes that all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service, and the Commission

seeks comment on that tentative conclusion. Section 706 of the Act directs the Commission to promote the deployment of broadband infrastructure, and this directive leads the Commission to separate out those pole attachments that are used to offer broadband Internet access service from those used for other services. As a policy matter, the Commission tentatively concludes that the critical need to create even-handed treatment and incentives for broadband deployment would warrant the adoption of a uniform rate for all pole attachments used for broadband Internet access service. Additionally, the Commission concludes that the rate should be higher than the current cable rate, yet no greater than the telecommunications rate; seeks comment on these tentative conclusions; and seeks comment on the possible economic effect on small entities of adopting this tentative conclusion.

16. *Terms and Conditions of Access.* When the Commission adopted general rules governing requests for access pursuant to the 1996 Act, it declined to regulate specific techniques for pole and conduit modification. Rather, the Commission concluded that the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis. In the record developed in response to the Fibertech Petition, a number of concerns have been expressed regarding terms and conditions of access to pole attachments, and the Commission seeks comment on these concerns. For example, commenters raised concerns regarding searches and surveys of both poles and conduit, including related information management practices. Parties also expressed concerns regarding performance of make-ready work, including timeliness, safety, capacity, and the use of boxing and extension arms. Sunesys supports Fibertech's position, but also submits its own plan to limit survey and make-ready work to six months, proposing that utility-approved contractors could perform the work if they were required to meet the deadline. Other commenters also recommended the use of qualified third-party contract workers. Certain commenters raised additional issues regarding access to in-building ducts, conduit, and rights-of-way, including access to incumbent LEC central offices. Parties also express concern regarding practices relating to drop lines and poles. These are illustrative categories of access concerns, and the Commission seeks comment on these and any other pole attachment access concerns, such

as concerns about the process for obtaining access.

17. The Commission also seeks comment on allegations or concerns regarding unauthorized attachments, or attachments that have been installed without a lawful attachment agreement. The Commission seeks comment on the prevalence of this practice, and whether the Commission's existing enforcement mechanisms are sufficient to address any unlawful practices by attachers and ensure the safety and reliability of critical electric infrastructure. Commenters are asked to address whether, in addition to the right, under section 224(f)(2) of the Act, of a utility to deny access to poles on a nondiscriminatory basis for reasons of safety, reliability and generally applicable engineering purposes, specific enforceable safety requirements should be adopted. For example, commenters are asked to address to what extent safety codes, such as the National Electrical Safety Code, should apply to all attachers, and whether the Commission's enforcement authority can or should be used to address alleged violations of such codes. Finally, the Commission seeks comment on the general usefulness of rules, presumptions, or guidelines, as opposed to case-specific adjudication, and seeks comment on how these alternative approaches to resolving access issues may affect small entities.

#### Ex Parte Presentations

18. The rulemaking this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

#### Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth separately below. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA. Comments are

due on March 7, 2008 and Reply Comments are due on March 24, 2008.

#### Paperwork Reduction Act

20. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### Initial Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA. Comments are due March 7, 2008 and Reply Comments are due March 24, 2008. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

##### *A. Need for, and Objectives of, the Proposed Rules*

22. The *NPRM* seeks comment on a variety of issues relating to implementation of section 224 pole attachment rules in light of increasing intermodal competition in the decade since the Commission began to implement the 1996 Act. Specifically, the *NPRM* asks whether existing rules governing pole attachment rates remain appropriate in light of competition in the marketplace today; whether section 224 confers rights on incumbent local exchange carriers (LECs), including regulation of the rates they pay for pole attachments; and whether it would be appropriate to adopt specific rules regarding certain non-price terms and conditions associated with section 224 access rights. With regard to rates, the *NPRM* tentatively concludes that all attachments used for broadband Internet access service should be subject to a

single rate, regardless of the platform over which those services are provided.

##### *B. Legal Basis*

23. The legal basis for any action that may be taken pursuant to the *NPRM* is contained in sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)-(j), 224, 303, 403.

##### *C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply*

24. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

25. Small Businesses. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

26. Small Organizations. Nationwide, there are approximately 1.6 million small organizations.

27. Small Governmental Jurisdictions. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

##### 1. Telecommunications Service Entities

###### a. Wireline Carriers and Service Providers

28. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that,

for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

29. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

30. Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

31. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size

standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by Commission action.

#### b. Wireless Telecommunications Service Providers

32. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

33. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

34. Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the

census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission has estimated that 260 of these are small under the SBA small business size standard.

35. Paging. The SBA has developed a small business size standard for the broad economic census category of "Paging." Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. In addition, according to Commission data, 365 carriers have reported that they are engaged in the provision of "Paging and Messaging Service." Of this total, the Commission estimates that 360 have 1,500 or fewer employees, and five have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

36. We also note that, in the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third

auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The Commission also notes that, currently, there are approximately 74,000 Common Carrier Paging licenses.

37. Wireless Telephony. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

38. Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163

C and F Block licenses being available for grant.

39. Narrowband Personal Communications Services. To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

40. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone

Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

41. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

42. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

## 2. Cable and OVS Operators

43. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated



for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

44. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

45. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. Open Video Systems (OVS). In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard of Cable and Other Program

Distribution Services, which consists of such entities having \$13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. The Commission thus believes that at least some of the OVS operators may qualify as small entities.

### 3. Internet Service Providers

47. Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by Commission action.

48. All Other Information Services. "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

### 4. Public Utilities

49. Electric Power Generation, Transmission and Distribution. The Census Bureau defines this category as follows: "This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." This category includes Electric Power Distribution, Hydroelectric Power Generation, Fossil Fuel Power Generation, Nuclear Electric Power Generation, and Other Electric Power Generation. The SBA has developed a small business size standard for firms in this category: "A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours." According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

50. Natural Gas Distribution. This economic census category comprises: "(1) Establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers." The SBA has developed a small business size standard for this industry, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2002, there were 468 firms in this category that operated for the entire year. Of this total, 424 firms had employment of fewer than 500



employees, and 18 firms had employment of 500 to 999 employees. Thus, the majority of firms in this category can be considered small.

51. **Water Supply and Irrigation Systems.** This economic census category "comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems." The SBA has developed a small business size standard for this industry, which is: All such firms having \$6.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 3,830 firms in this category that operated for the entire year. Of this total, 3,757 firms had annual sales of less than \$5 million, and 37 firms had sales of \$5 million or more but less than \$10 million. Thus, the majority of firms in this category can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

52. Should the Commission alter the pole attachment rate structure, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners and attaching entities. For example, if the Commission were to adopt a uniform rate for all pole attachments used for broadband Internet access service, providers of such services might be required to record and report where such service is offered. If the Commission were to adopt a uniform rate for all pole attachments, such action could eliminate the need for cable television systems to record and report to utilities where they or their lessees offer telecommunications services. Changes to reporting, recordkeeping or other compliance requirements could either be new (e.g., if telecommunications carriers begin to record or report where they offer broadband Internet access service) or could reconfigure existing requirements (e.g., if cable television systems begin to record and report where they or their lessees offer broadband Internet access service, but cease to record and report where they or their lessees offer telecommunications services). If the Commission initiates regulation of the rates, terms, and conditions of pole attachment by incumbent LECs, such regulation could increase reporting, recordkeeping or other compliance requirements for pole owners and incumbent LECs where incumbent LECs attach to poles owned by other utilities.

53. Should the Commission adopt regulations concerning access to poles, ducts, conduits, and rights-of-way, such

action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners, attaching entities, and users of ducts, conduits, and rights-of-way. In particular, if the Commission adopts rules governing specific techniques for pole and conduit modification, as opposed to resolution on a case-specific complaint basis, reporting, recordkeeping or other compliance requirements could change. Examples of specific topics where recordkeeping, reporting, or compliance requirements could change by virtue of Commission action include: (1) Searches and surveys of both poles and conduit, including information management; (2) performance of make-ready work, including timeliness, safety, capacity, and the use of boxing and extension arms; (3) the use of qualified third-party contract workers; (4) access to in-building ducts, conduit, and rights-of-way, including access to incumbent LEC central offices; or (5) practices relating to drop lines and poles.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

54. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

55. The Commission tentatively concludes that it will promote broadband deployment and technological neutrality by requiring all categories of companies to pay the same pole attachment rate for all pole attachments used for broadband Internet access service, and the *NPRM* seeks comment on the possible economic effect on small entities of adopting this requirement. In coming to this tentative conclusion, the Commission first assessed the alternative of continuing a system of two rates. Another objective is to implement overarching policies concerning safety, certainty, administrability, and nondiscrimination. When alternatives are discussed, such as whether it would be better to choose an existing rate as

the broadband Internet access services rate (and, if so, which rate) or to modify existing rates, the *NPRM* invites small entities to discuss the economic ramifications of such action. The *NPRM* seeks comment on whether regulation of pole attachment rates is particularly necessary for small incumbent LECs, and asks how incumbent LECs could be affected if rates and terms were regulated absent a right of access. The *NPRM* also seeks comment on the general usefulness of rules, presumptions, or guidelines, as opposed to case-specific adjudication, and how these alternative approaches to resolving access issues may affect small entities.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

56. None. Since the enactment of the 1996 Act, the Commission has encouraged disputing parties to participate in staff-supervised, pre-complaint mediation. Such mediation has proven to be very successful, including in pole attachment disputes. Certain rules regarding pole attachment complaints, however, may have had the unintended consequence of discouraging pre-complaint mediation. Thus, the Commission seeks comment on whether those rules should be amended or eliminated to facilitate mediation of disputes. In addition, under current Commission rules, an attacher may execute a pole attachment agreement with a utility, and then later file a complaint challenging the lawfulness of a provision of that agreement. The Commission seeks comment on whether it should adopt some contours to the rule, such as timeframes for raising written concerns about a provision of a pole attachment agreement.

#### **Ordering Clauses**

57. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 224, 303, 403, this Notice of Proposed Rulemaking in WC Docket No. 07–245 *is adopted*.

58. *It is further ordered* that the Fibertech Networks, LLC, Petition for Rulemaking, RM–11303, and the United States Telecom Association Petition for Rulemaking, RM–11293, *are granted* to the extent indicated herein and otherwise *are denied*.

59. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM*, including the Initial

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8-2177 Filed 2-5-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WC Docket No. 07-267; FCC 07-202]

#### Petition To Establish Procedural Requirements To Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment regarding whether to adopt procedural rules to govern the Commission's consideration of petitions to forbear from enforcing rules that are alleged to be unnecessary or inconsistent with the public interest (forbearance petitions). The Commission is responding to arguments that current procedures governing consideration of forbearance petitions are unfair, and to several proposed new rules that would include, for example, requiring forbearance petitions to be complete-as-filed, and assigning the burden of proof on parties that file forbearance petitions. The Commission intends both to solicit comment on the proposals before it and to encourage suggestions of other rules that the Commission should consider that would govern the form and content of forbearance petitions.

**DATES:** Comments are due March 7, 2008 and Reply Comments are due March 24, 2008. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 7, 2008.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 07-267, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Reel, Wireline Competition Bureau, (202) 418-1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Jerry R. Cowden at (202) 418-0447, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file Comments on or before March 7, 2008 and Reply Comments on or before March 24, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or

rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**ADDRESSES:** You may submit comments, identified by WC Docket No. 07-267, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.