

July 20, 2011

Pole Attachment Timeline Rules Now Effective

The rules governing the timeline for access to pole attachments and the use of utility-approved, independent contractors by attaching cable and telecommunications providers are now effective. New pole attachment rules were adopted by the Commission on April 7, 2011, as part of its Pole Attachments Order.¹ While a portion of the new rules took effect June 8, 2011, the remaining rules that related to a timeline for access and use of contractors could not take effect until they were approved by the Office of Budget and Management (OMB).

Timeline – 47 CFR §1.1420

The new timeline for access works in four parts: survey, estimate, acceptance and make-ready notification. The following table summarizes the various stages of the timeline.²

Pole Attachment Timeline			
Stage	Days	Duration	Remedy
Survey	0-45	45 days	Attacher may hire contractor to conduct survey
Estimate	45-59	14 days	File complaint with the Commission
Acceptance	59-73	14 days	File complaint with the Commission
Make-Ready	73-133	60 days	Attacher may hire contractor to perform make-ready

Stage 1: Survey – The first stage of the timeline is the survey stage. During this stage, the pole owner has 45 days after receipt of a complete application to respond to the request for access to attach facilities on the utility’s poles and conduct an engineering study to determine feasibility of

¹ *Report and Order and Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, 26 FCC Rcd 5240 (2011) (“*Pole Attachments Order*”).

² The numbers in the table vary based on the size of the pole attachment request.

attachment, placement of the attachment and the necessity of make-ready.³ The current rules provide that if a utility denies a request for attachment, the utility must provide a written explanation of the denial that is specific, includes all supporting evidence and information and explains how such evidence and information relate to denial for lack of capacity, safety, reliability or engineering standards.⁴ Pole owners must “timely” notify the attacher of any errors in the application and may not stop the clock during the survey stage once an application is accepted as complete.

If an attachment request involves an attachment that is unfamiliar to the utility, the application should include engineering specifications. If engineering specifications are not included in the application, the utility must respond to the application within a “reasonable and timely” manner but no later than 45 days. The Commission has left the process for establishing engineering specifications up to the utility with the caveat that they must be “reasonable and timely.”

Stage 2: Estimate – Within 14 days of a utility providing its Stage 1 response, the utility must provide an estimate of make-ready charges. The 14-day rule also applies in cases where the attacher provides the utility with its own survey because the utility failed to produce a survey within the established survey timeline.

In the Pole Attachments Order, the Commission recognized that a master agreement typically needs to be in place before make-ready can be performed. However, the Commission noted that the survey portion of the pole attachment request can proceed regardless of whether the parties have negotiated the rates, terms and conditions of a master pole attachment agreement. Accordingly, the Commission refused to allow the utility to “stop the clock” during the survey portion of the timeline, but found that a utility could stop the clock during the estimate stage of the timeline in order to finalize a master pole attachment agreement. The Commission, though, emphasized that negotiations for pole attachment agreements must be conducted in good faith and that “dragging out” negotiations on a master agreement while the clock is stopped would not be considered reasonable.

Stage 3: Acceptance – During the third stage of the timeline, the attacher has 14 days to approve the estimate and provide payment. After 14 days, the utility has the right to withdraw the estimate. If the utility withdraws the estimate, the attacher must submit a new application.

Stage 4: Make-Ready – Upon receipt of payment from the attacher, the pole owner must notify, in writing, any existing attachers that make-ready for a new attacher needs to be performed within 60 days.⁵

The notice must include: (1) where and what make-ready will be performed; (2) the completion date; (3) a statement that any existing attacher may add or modify their attachment before the completion date; (4) a statement that the utility has a right to an extra 15 days to complete make-

³ The timeline applies to orders consisting of less than 0.5% of poles owned within a state or 300 poles within a state during any 30-day period. “Large orders,” defined as the lesser of 5% of the utility’s poles within a state or 3,000 poles within a state receive an extra 15 days. For in-state orders of more than 3,000 poles, the Commission requires the parties to negotiate in good faith.

⁴ 47 CFR §1.1403(b).

⁵ For “large order,” as defined above in Footnote 3, the utilities have 105 days to provide notification.

ready after the expiration of the 60-day period⁶ if the existing attacher has not completed its make-ready work and that if the utility fails to complete the make-ready after the additional 15-day period, the make-ready work may be completed by the new attacher; and (5) state the name, telephone number and email address of a person to contact for more information regarding the make-ready.

Use of Independent Contractors Timeline – 47 CFR §1.1422

As of July 12, 2011, each utility must make available a “reasonably sufficient” list of contractors that it authorizes to perform surveys or make-ready work after missing a deadline. Assuming a list is available, the attacher may use any company from the list if the pole owner does not meet its deadlines. If the utility fails to produce the list, the attacher may use the “same qualifications” standard to hire a contractor, meaning that a contractor must have the same qualifications as the utility’s own workers. Attachers must also permit a representative of the utility to accompany and consult with the contractor prior to the initiation of any make-ready work. The utility has the final say on any disputes regarding “capacity, safety, reliability, and generally applicable engineering purposes.”

Complaints by ILECs Timeline – 47 CFR §1.1424

Incumbent Local Exchange Carriers (ILECs) may now follow the same pole attachment complaint procedures as telecommunications carriers and cable operators. The ILEC has the burden of proving that it is “similarly situated” to telecommunications carriers and/or cable operators and may do so using any relevant evidence, including pole attachment agreements.

If you have any questions, contact [Mark Palchick](#), [Rebecca Jacobs](#) or any member of the firm’s [Communications Law Group](#).

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⁶ For “large orders” the period is 105 days.