


**ADDENDUM TO THE
REPORT OF THE

COMPETITIVE ACCESS TO
BROADBAND INFRASTRUCTURE
WORKING GROUP**

**Presented to the
Broadband Deployment Advisory Committee
of the
Federal Communications Commission
Washington, DC
April 25, 2018**



ADDENDUM TO STREAMLINING MAKE-READY CONTRACTOR MANAGEMENT PROPOSAL

Methods and Practices Committee

Working Group Vote: **Pass** (10 Yes, 0 No, 0 Abstain)

Executive Summary of Proposal

This addendum provides a process for reviewing requests to become an approved Contractor, objections to requests to become an approved Contractor (and any subsequent appeal), and requests for removal of Contractors from approved Contractor lists. It also promotes the concept that a list of approved Contractors should be readily available on an ongoing basis from each pole owner. The Contractor review and approval process is most effective when Contractors who wish to be on a pole owner's list apply to the pole owner for approval well in advance of any planned or upcoming make-ready work or projects. When applying for approval of the pole owner and existing attachers, the new Contractor should provide ample evidence and documentation demonstrating they have the required qualifications, experience and track record of safety. The pole owner will notify the existing attachers within 14 days of a request from a new Contractor. The pole owner and the existing attachers have the right within 30 days to object to the addition of the Contractor, articulating the objective concerns about the workmanship, experience or qualifications of the new Contractor. The new Contractor has a right to respond to the objection and to host a "settlement conference" if necessary to try to resolve any and all objections. If resolution to the objection is not reached via the "settlement conference", the new Contractor and/or attacher have the option to appeal to the Federal Communications Commission (Commission) if they believe they were treated arbitrarily or unfairly.

Issue/Background

1. Current Commission rules do require pole owners to maintain a list of approved Contractors. In practice, this often has not been done.
2. One problem with the current system is it relies on pole owners to identify qualified Contractors for the communications space, something the pole owners have little interest or incentive to do. If there were established qualifications for Contractors, and they could apply to be put on the pole owner's approved list, then the pole owner would merely have to review the qualifications of Contractors which apply to maintain a working list of approved Contractors.
3. There is no existing process to address Contractor objections, whether relating to new requests or existing approved Contractors.

Proposal

To minimize potential delays to broadband deployment associated with Contractor approvals for make-ready work, it is strongly recommended pole owners adhere to the requirement of keeping current and accurate lists of approved make-ready Contractors. New Contractors may request to be added to the pole owner's list at any point in time, preferably well in advance (120 days minimum) of upcoming make-ready work activities or projects. And, in the rare case where a new attacher wants to use a Contractor not already on the pole owner's list, a new attacher could propose a Contractor to be added to the list.

Process for Approval of Contractor for Work in the Communications Space

1. A new Contractor who seeks to be included on a pole owner's approved list for the communications space shall apply to the pole owner to be included on the list. The new Contractor shall, in the application, list their qualifications and experience, and certify that they meet and agree to abide by the proposal approved by the BDAC for "Streamlining One-Touch Make-Ready Contractor Management".
2. The pole owner shall have 14 calendar days to notify in writing, the other existing attachers in the communications space and any new attachers that are either currently attaching or have attachment applications pending.
3. The pole owner and/or existing attachers then have 30 days to object to the inclusion of any new Contractor on the approved list. The pole owner and/or existing attachers may only object to the new Contractor on established, declared and transparent grounds

uniformly applied on the basis of safety or reliability problems or lack of proper qualifications. The objection, which should be sent in writing by the objecting party to the proposed new Contractor, shall describe the objection, in specific terms related to the qualifications, experience or track record of the proposed new Contractor. At the conclusion of 30 days, unless there has been an objection from the pole owner or existing attachers, the new Contractor shall be deemed approved and added to the pole owner's list.

4. If there is a timely objection to a new Contractor from an existing attacher or the pole owner, the new Contractor has the right, within 14 days, to respond, in writing, to the objections, sending the response to the objecting pole owner and/or existing attacher.
5. Upon receipt of the response of the proposed new Contractor to the objection, the objecting party has 14 days to make a final determination, based on objective evidence, as to whether the objection be removed and the new Contractor be approved.
6. If the new Contractor does not resolve the objection from the pole owner or existing attacher, they, or the new attacher, can appeal the objection based on objective evidence. The appealing Contractor and/or new attacher may call a meeting at a reasonable time either via phone conference or in person (if agreeable by the parties) among the objecting party or parties, the pole owner and all existing attachers, with each providing a representative with adequate decision-making authority to attempt in good faith to resolve the objection appeal (a settlement conference).
7. If the settlement conference is not successful in resolving the appeal, the appealing entity may submit its appeal to the Commission for an expedited letter ruling by the Commission staff. After a ruling by the Commission staff, the appealing entity may file a streamlined complaint with the Commission whereby a process similar to that described in section 130 of the recently published FCC 18-30 Second Report and Order in the matter of "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" WT Docket NO. 17-79, released on March 30, 2018, would be administered. All FCC reviews would be de novo.
8. In the rare case where a new or an existing attacher wants to use a Contractor not already on the approved list, a new attacher may make a special request for an expedited review by the pole owner and the existing attachers to utilize a particular Contractor. This expedited review follows the same process as a normal Contractor request, but it is

expected that the pole owner and existing attachers act in good faith to respond to the request as quickly as possible. As a worst case, the normal process interval requirements will apply to expedited requests.

Simple Make-Ready Work in the Communications Space Notification Period

Simple make-ready work is defined as work with no expected impact, resulting outage, splicing of any communication attachment, or relocation of existing wireless attachments. This would include the installation of a wireless attachment if the work on another party's equipment is simple work (complex work being that involving the attacher's own wireless attachment installation). For simple attachments in the communications space, an attacher would be authorized to proceed with one-touch make-ready after providing the required notice of twenty-five calendar days to the pole owner of its proposed work and its Contractor of choice from the approved Contractor list. Such notice would constitute the attacher's certification that its Contractor meets the required qualifications.

Existing Contractor Removal

Contractors may be removed from the approved Contractor list for cause, which includes, but is not limited to, documented and significant poor workmanship and/or safety violations. Existing attachers may also request of the pole owner that a Contractor be removed from the approved list for similar cause. After a pole owner either elects to remove a Contractor from the list or receives such a request from an existing attacher, the pole owner must provide notice to the Contractor in writing (and provide copies to all existing attachers) of its intention to remove the Contractor from the list. The notice shall describe the reason for taking the action in specific terms related to the qualifications, experience or track record of the Contractor. After the Contractor receives the notice, the Contractor has the right, within 14 days, to respond, in writing, to the objections, sending the response to both the pole owner and any objecting existing attacher. The objecting party then has 14 days to review the response from the Contractor and, after due consideration of the merits of the response, shall notify the pole owner of their final decision. Unless the objection is resolved or withdrawn, the pole owner shall then notify all existing attachers of the removal of the existing Contractor from the list. The existing Contractor has the right to follow the same appeal process as outlined in steps 7 and 8 of the new Contractor approval process outlined above.

Conclusion

A consistent, efficient, transparent and equitable method for identifying, qualifying and utilizing Contractors for all categories of make-ready work would materially speed broadband deployment. Contractors could be qualified for one, multiple, or all categories of make-ready work. New Contractors should apply for approval well in advance of any upcoming make-ready work or projects to allow ample time (up to 120 days) for review and resolution of potential objections by the pole owner or existing attachers. It is incumbent upon the pole owners to maintain a current and accurate list of approved Contractors. When objections arise, it is incumbent upon the new Contractor to work with the objecting party to resolve their concerns. If the new Contractor cannot resolve the issue with the objecting party, they would have the option to appeal the objection to the Commission once the proposed response and review process as proposed in this document has been exhausted.

It is highly recommended that new Contractors wishing to be added to the approved Contractor list start this process at least 120 days prior to the start of any make-ready work or projects.

