

## Federal Communications Commission

## § 1.1501

cable operator or telecommunications carrier requesting attachment in the communications space may hire a contractor to complete the make-ready:

(1) Immediately, if the utility has failed to assert its right to perform remaining make-ready work by notifying the requesting attacher that it will do so; or

(2) After 15 days if the utility has asserted its right to perform make-ready by the date specified in paragraph (e)(1)(ii) of this section and has failed to complete make-ready.

[76 FR 26640, May 9, 2011]

### § 1.1422 Contractors for survey and make-ready.

(a) A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready in the communications space on its utility poles in cases where the utility has failed to meet deadlines specified in § 1.1420.

(b) If a cable operator or telecommunications carrier hires a contractor for purposes specified in § 1.1420, it shall choose from among a utility's list of authorized contractors.

(c) A cable operator or telecommunications carrier that hires a contractor for survey or make-ready work shall provide a utility with a reasonable opportunity for a utility representative to accompany and consult with the authorized contractor and the cable operator or telecommunications carrier.

(d) The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

[76 FR 26640, May 9, 2011]

### § 1.1424 Complaints by incumbent local exchange carriers.

Complaints by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that a rate, term, or condition for a pole attachment is not just and reasonable shall follow the same complaint procedures specified for other

pole attachment complaints in this part, as relevant. In complaint proceedings where an incumbent local exchange carrier (or an association of incumbent local exchange carriers) claims that it is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system for purposes of obtaining comparable rates, terms or conditions, the incumbent local exchange carrier shall bear the burden of demonstrating that it is similarly situated by reference to any relevant evidence, including pole attachment agreements. If a respondent declines or refuses to provide a complainant with access to agreements or other information upon reasonable request, the complainant may seek to obtain such access through discovery. Confidential information contained in any documents produced may be subject to the terms of an appropriate protective order.

[76 FR 26641, May 9, 2011]

## Subpart K—Implementation of the Equal Access to Justice Act (EAJA) in Agency Proceedings

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 3786, Jan. 27, 1982, unless otherwise noted.

### GENERAL PROVISIONS

#### § 1.1501 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called *the EAJA* in this subpart), provides for the award of attorney's fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called *adversary adjudications*) before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust, or when the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the