

Rule R746-345. Pole Attachments of Public Utility Companies.

- R746-345-1. Authorization.
- R746-345-2. General Definitions.
- R746-345-3. Agreements and Contracts.
- R746-345-4. Pole Labeling.
- R746-345-5. Rental Rate Formula and Methodology.
- R746-345-6. Dispute Resolution

R746-345-1. Authorization.

A. Authorization of Rules - Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and Utah Code Annotated 54-4-4 and 54-4-13 the Public Service Commission shall have the power to regulate the rates, terms, and conditions by which a Public Utility, (as defined in Utah Code Annotated 54-2-1(15)(a) including telephone corporations as defined in 54-2-23(a)), can permit attachments to its poles by any other Public Utility, Wireless Provider, or cable television company.

B. Application of Rules - These rules shall apply to each Public Utility that permits attachments to its poles by any other Public Utility, Wireless Provider, or cable television company.

1. Although specifically excluded from regulation by the Commission in Utah Code Annotated 54-2-1(23)(b), solely for the purpose of any Pole Attachment, these rules apply to any Wireless Provider.

2. Pursuant to these rules, a Public Utility must allow any Attaching Entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology - The rate methodology described in Section R746-345-5 shall be used to determine rates that a Public Utility may charge any other Public Utility, Wireless Provider, or cable television company to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" - A Public Utility, Wireless Provider or cable television company that attaches to a pole owned or controlled by a Public Utility.

B. "Distribution Pole" - A pole. . .

C. "Pole Attachment" - The attachment by a Public Utility, Wireless Provider or cable television company of equipment that requires a bolt, bracket, hook, or other device to secure such equipment to a utility pole of another Public Utility.

D. "Pole Owner" - A Public Utility having ownership or control **of** poles used, in whole or in part, for any electric or telecommunications services.

E. "Primary Pole Attachment" - The Pole Attachment for an electric service. . .

x. "Secondary Pole Attachment" - The Pole Attachment for electric service. . .

E. "Transmission Pole" - A pole. . .

D. "Wireless Provider" - A corporation, partnership, or firm that provides cellular, personal communications systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts - A Pole Owner shall submit a tariff, which includes a standard contract, or a Statement of Generally Available Terms (SGAT)) specifying the rates, terms, and conditions for any Pole Attachment, to the Commission for approval.

1. A Pole Owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff or standard pole attachment contract. A petition for change or modification must include a showing why the rate needs or is no longer just and reasonable. A change in rate, terms or conditions will not become effective unless and until it has been approved by the Commission.

2. The standard contract shall identify all rates, fees, and charges applicable to any Pole Attachment. The standard contract shall set forth all non-recurring, standard charges for Pole Attachment work, including permitting, pre-construction surveys, inspections, and applicable processing. Other Pole Attachment work such as engineering, make-ready, and pole change-out shall also be identified in the standard contract and billed on a time-and materials basis for costs actually incurred and at rates or charges consistent with tariffs, price lists, or Statement of Generally Available Terms on file with the Commission. The standard contract shall also include but not be limited to:

- a. the permitting process and all applicable non-recurring fees and charges applicable thereto;
- b. emergency access provisions; and
- c. back rent recovery and penalties for any unauthorized Pole Attachment, and applicable procedures for the determination of the liability of an Attaching Entity to pay back rent and penalties.

B. Establishing the Pole Attachment Relationship - The Pole Attachment relationship shall be established when the Pole Owner and the Attaching Entity have executed the standard contract.

C. Exception - In situations in which the standard contract does not cover certain aspects of a specific Pole Attachment relationship and the Pole Owner and Attaching Entity are unable to agree following good faith negotiations, the Pole Owner or Attaching Entity may petition the Commission for approval of a case specific contract. An approved contract under this exception shall not materially deviate from the rates, terms and conditions, which are subject to Commission review under R746-345-3A(1), of the standard contract.

R746-345-4. Pole Labeling.

A. Pole Labeling - A Pole Owner must label poles to indicate ownership. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling - An Attaching Entity must label its Pole Attachments to indicate ownership. Pole Attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole.

R746-345-5. Rental Rate Formula and Methodology.

A. Basis - The rental rate for any Pole Attachment must be based on a fair and reasonable portion of the Pole Owner's costs and expenses for the pole plant investment jointly used with any Attaching Entity. The rental rate for an attachment to a distribution pole shall be calculated separately from a rental rate for an attachment to a transmission pole. Any rate based on the rate formula in Subsection R746-345-5B shall be considered just and reasonable unless determined otherwise by the Commission.

B. Rate Formula - Pole Attachment rental rates shall be based on publicly filed data and shall be determined as a per pole charge. The following formula and presumptions shall be used to establish Pole Attachment rates:

1. Formula:

Rate per pole = Space Factor x Cost of Bare Pole x Carrying Charge Rate

2. Formula Definitions:

a. "Carrying Charge Rate" means the percentage of a Pole Owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, or other expenses that are directly or indirectly attributable to the Pole Owner's investment in poles.

(1) Carrying charges shall include the Pole Owner's costs of conducting audits directly relating to the provision of a Pole Attachment.

(2) Carrying charge factors, except for the cost of capital, can be calculated on either a net or gross investment basis.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." Gross cost means the original investment (purchase price) of wood poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. Net cost means the original investment (purchase price) of wood poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount. A Pole Owner may use gross cost only when its net cost is a negative balance.

c. "Space Factor" means the space used by the Attaching Entity as a percentage of usable space on the utility pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the Pole Owner.

3. Rebuttable presumptions:

a. Average pole height equals 37.5 feet.

b. Usable Space per pole equals 13.5 feet.

c. Usable Space used by an Attaching Entity:

(1) an electric Primary Pole Attachment equals 7.5 feet;

(2) an electric Secondary Pole Attachment equals 1.0 feet;

(3) a telecommunications Pole Attachment equals 1.0 feet;

and,

(4) a cable television Pole Attachment equals 1.0 feet.

4. A Pole Owner may not assess a fee or charge in addition to an annual Pole Attachment rental rate, including non-recurring fees and charges described in Subsection R746-345-3A(2), for any cost included in the calculation of its annual Pole Attachment rental rate.

C. Statewide Average - The Commission shall determine a statewide average rental rate using the rate formula in Section R746-345-5B. The statewide average rental rate shall be adopted by every Public Utility owning utility poles in the state. The statewide average may be calculated using the costs and expenses associated with the Pole Owner who owns a majority of the utility poles in the state, or the costs and expenses associated with a combination of Pole Owners who own at least a majority of the utility poles in the state.

D. Commission Relief - A Pole Owner or Attaching Entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, the statewide average rental rate, rate formula, or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Except as otherwise precluded by law, a resolution of any disputes concerning any Pole Attachment, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may request a mediator from the Commission's staff or, so long as the Division is not a party to the dispute, the staff of the Division of Public Utilities.

B. If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.