

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Pole Attachments of) DOCKET NO. 05-R345-01
Public Utility Companies)
) DOCKET NO. 04-999-03
In the Matter of an Investigation into Pole)
Attachments) NOTICE OF TECHNICAL CONFERENCE

ISSUED: November 1, 2005

By The Commission:

Notice is hereby given that a technical conference in the above-entitled matter will be held on **Thursday, November 17, at 9:00 a.m.**, Room 427, Heber M. Wells Office Building, 160 East 300 South, Salt Lake City, Utah. The purpose of this technical conference is to allow parties to review and comment on the revised language prior to submitting the Proposed Rule for publication. The proposed publication is attached below.

Individuals wishing to participate by telephone should contact the Commission at least two days in advance by calling (801) 530-6716 or call toll-free 1-866-PSC-UTAH (1-866-772-8824). Participants attending by telephone should then contact the Public Service Commission five minutes prior to the beginning of the Conference to ensure participation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this technical conference should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6713, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, this 1st day of November, 2005.

/s/ Julie Orchard
Commission Secretary
G#46353

R746. Public Service Commission, Administration.

R746-345. Pole Attachments[~~for Cable Television Companies~~].

R746-345-1. Authorization.

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(C), and 54-3-1, 54-4-1, 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 54-2-1(15) (a) including telephone corporations as defined in 54-2-23(a), can permit attachments to its poles by an attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits pole attachments to utility's poles by an attaching entity.

1. Although specifically excluded from regulation by the Commission in 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 an attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company or other entity that attaches to a pole owned or controlled by a public utility. [~~excluding those attachments used for signage and lighting.~~]

B. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

C. "Pole Attachment" -- All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule. Additional equipment that [~~meets all applicable code and contractual requirements that~~] is placed within an attaching entity's existing attachment space is not an additional attachment for rental rate purposes. All equipment and devices shall meet applicable code and contractual requirements. Pole attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

D. "Attachment Space" -- The amount of usable space on a pole occupied by a pole attachment as provided for in Subsection R746-345-5(B) (3) (d).

E. "Pole Owner"-- A public utility having ownership or control of poles used, in whole or in part, for any electric or

telecommunications services.

F. "Secondary Pole" -- A pole used solely to provide service wire drops, the aerial wires or cables connecting to a customer premise.

G. "Secondary Pole Attachment" -- A pole attachment to a secondary pole.

H. "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 and 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, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rates, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. [~~The tariff, standard contract or SGAT 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 tariff, standard contract or SGAT and billed on a time-and-materials basis for costs actually incurred and at rates or charges consistent with tariffs, standard contracts, or SGATs on file with the Commission.~~] The tariff, standard contract, and SGAT shall also include [~~but not be limited to~~]:

a. a description of the permitting process, the inspection process, the joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;

b. emergency access provisions; and

c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract, or SGAT, or other Commission-approved contract.

1. Exception - The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some,

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all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which 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 resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

C. Make Ready Work, Timeline and Cost Methodology -- As a part of the application process, the pole owner shall provide the applicant with an estimate of the cost of the make ready work required and the expected time to complete the make ready work as provided for in this sub-section. All applications by a potential attacher within a rolling 60 day period shall be counted as a single application for the purposes of calculating the response times for the pole owner. The due date for a response to all applications within the 60 day window shall be calculated from the date of the last application.

1. For applications up to 20 poles, the pole owner shall respond with either an approval or a rejection within 45 days. At the same time as an approval is given, a completed make ready estimate must be provided to the applicant explaining what make ready work must be done, the cost of that work, and the time by which the work would be finished, that is no later than 120 days from receiving an initial deposit payment for the make ready work. Alternatively, a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay.

2. For applications that represent greater than 20 poles, but equal to or less than .5% of the pole owner's poles in Utah, or 300 poles, whichever is lower, the time for the pole owner's approval and make ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

3. For applications that represent greater than [~~.5%~~] the number of poles calculated in section 3(2)(c)(2) above, but equal to or less than 5%, or 3,000, whichever is lower, of the pole owner's poles in Utah, the time for the approval and make ready estimate shall be extended to 90 days, and the time for construction will be extended to 180 days.

4. For applications that represent greater than 5% or 3,000, whichever is lower, of the pole owner's poles in Utah, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make ready estimate and make ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make ready estimate and construction

period information should be delivered or to arbitrate the negotiations.

5. If the pole owner rejects any application, the pole owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole ~~[owners]~~owner's stated reasons are sufficient grounds for rejection.

6. For all approved applications, the applicant will either accept or reject the make ready estimate. If it accepts the make ready estimate and make ready construction time line, the work must be done by the pole owner on schedule and for the estimated make ready amount, or less, and the applicant will be billed for actual charges up to the bid amount.

7. Applicants must pay 50% of the make ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.

8. If the applicant rejects the make ready estimate for an approved application, the applicant may, at its own expense use approved contractors to self-build the required make ready work subject to the pole owner's inspection.

D. Pole Attachment Placement - All new copper cable attachments shall be placed at the lowest level permitted by applicable safety codes. In cases where an existing copper attachment has been placed in a location higher than the minimum height the safety codes require, the pole owner shall determine if the proposed attachment may be safely attached either above or below the existing copper attachment. If these attachment locations, above or below the copper cable, comply with the applicable safety code the attacher may attach to the pole without paying to move the copper cable. The owner of the copper cable may elect to pay the costs of having the cable moved to the lowest position as part of the attachment process, or it may elect to move the cable themselves prior to the attaching entity's attachment. If the copper cable must be moved in order for the attacher to be able to safely make its attachment, the attacher shall pay the costs associated with moving the existing copper cable.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed, after the effective date of this rule, immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. 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. An attaching entity shall label any new pole attachment installed, after the effective date of this rule, immediately upon installation. Pole Attachments installed prior to the effective date of this rule shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

C. Exception - Electrical power company pole attachments do not need to be labeled.

R746-345-5 Rental Rate Formula and Method[oloty].

~~A. [Basis -- The rental rate for pole attachments, on average, must be sufficient to cover the recurring costs experienced by the pole owner as a result of the attachments. A fair and reasonable method that will accomplish this objective is to use the portion of the pole owner's costs and expenses for the pole plant investment that is jointly used by the attaching entities as a proxy for the incremental costs. The rental rate for any pole attachment shall be based on the pole owner's investment in distribution poles. Any rate based on the rate formula in Subsection R746-345-5(B) shall be considered just and reasonable unless determined otherwise by the Commission.~~

~~—B.] Rate Formula -- A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as an annual per attachment rental rate for each attachment space used by an attaching entity. The following formula and presumptions shall be used to establish pole attachment rates:~~

~~1. Formula:~~

~~Rate per attachment space = (Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate)~~

~~2. 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, pro-rated annualized costs for pole audits or other expenses that are attributable to the pole owner's investment and management of poles. 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 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 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.~~

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If using the net or gross cost results in an unfair or unreasonable outcome, a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the 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. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

(I) An electric pole attachment equals 7.5 feet;

(ii) A telecommunications pole attachment equals 1.0 foot;

(iii) A cable television pole attachment equals 1.0 foot; and

(iv) An electric, cable, or telecommunications secondary pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined by the amount of space on the pole that is rendered unusable for other uses, as a result of the attachment or the associated equipment. The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract, or SGAT, pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

(I) may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole;

(ii) may not exceed the average pole height established in Subsection R746-345-5(B)(2)(a).

(iii) In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider as determined in Subsection R746-345-5(B)(3)(d)(v), the pole owner or wireless provider may petition the Commission to determine the footage of space used by the wireless provider as provided in Subsection R746-345-3(C).

f. The Commission shall recalculate the rental rate only when it deems necessary. Pole owners or attaching entities may petition the Commission to reexamine the rental rate.

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

B[€]. 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, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Mediation -- Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, 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 hearing.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

3. A party need not pay the portion of a bill that is disputed if it has started a dispute proceeding within 60 days of the due date of the disputed amount. The party shall notify the Commission if the dispute process is not before the Commission.

B. Settlement -- 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 and this rule, R746-345, 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.

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation

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Notice of Continuation August 8, 2003

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