

Rule R746-345. Pole Attachments for All Utility Companies.

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R746-345-1. Authorization.

A. Authorization of Rules - Utah Code Annotated Sections 54-4-4 and 54-4-~~13~~**13**, **and the Pole Attachment Act, 47 U.S.C. Section 224** provide that the Public Service Commission shall have the power to regulate the rates, terms, and conditions by which a Public Utility can permit attachments to its poles by **any** other Public Utility ~~companies, telecommunications corporations~~ **Wireless Provider**, or cable television ~~companies~~ **company**.

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

1. Although specifically excluded from regulation by the Commission in Utah Code Annotated Section 54-2-1(23)(b), solely for the purposes 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, ducts, conduits, and rights-of way on 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 ~~companies, telecommunications corporations~~ **Wireless Provider**, or cable television ~~companies~~ **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. "Pole Attachment" - The attachment by a Public Utility, ~~telecommunications corporation~~ **Wireless Provider**, or cable television company of equipment that requires a bolt, bracket, hook, or other device to secure attachment to a utility pole.

C. "Pole Owner" - A Public Utility having an established ownership or control over poles used, in whole or in part, for any electric or telecommunications services.

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

R746-345-3. Tariffs and Contracts

A. Tariff Filings and Standard Contracts - A Public Utility shall submit a tariff, which includes a standard contract specifying the rates, terms, and conditions for any Pole Attachments Attachment, to the Commission for approval.

1. A Public Utility must petition the Commission for any changes or modifications to the rates, terms, or conditions of the standard tariff contract. A petition for change or modification must include a statement about why the rates or terms need to be changed and why the existing rates are no longer just and reasonable. A change in rate, terms or conditions can only become effective after approval by the Commission.

2. The standard contract shall identify all rates, fees, and charges applicable to any Pole Attachments Attachment. The standard contract shall identify all non-recurring charges for pre-construction survey, engineering, make-ready, and change-out. The ~~Standard~~ standard Contract contract shall also include but is not limited to:

- a. the permitting process and all applicable non-recurring fees and charges;
- b. emergency access provisions; and
- c. rate recovery and penalty process for any unauthorized Pole ~~Attachments~~ Attachment.

B. Adoption of the Standard Tariff Contract - Except as specified in Subsection R746-345-3C, any Attaching Entity shall notify the Pole Owner of the effective date of its adoption of the standard tariff contract terms.

C. Exception - In situations in which the standard contract does not cover certain aspects of a specific attachment arrangement, a Public Utility or Attaching Entity may petition the Commission for approval of a case specific contract. An approved contract under this exception shall not deviate from the rates, terms, and conditions ~~of the standard contract~~, 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 may label poles to indicate ownership. Labels shall be based on a good faith showing of ownership.

R746-345-5. Rate Formula and Methodology.

A. Basis - The rates for any Pole Attachments Attachment ~~will~~ must be based on a fair and reasonable portion of the Public Utility's costs and expenses for the pole plant investment jointly used with any other Public Utility ~~companies~~, ~~telecommunications~~ Wireless ~~corporations~~ Provider, or cable television companies. Any rate based on the rate formula in Subsection R746-345-5B shall be considered fair and reasonable unless determined otherwise by the Commission.

B. Rate Formula - Pole Attachment rates 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 Net Cost of Bare Pole x Carrying Charge Rate

2. Formula Definitions:

- a. "Carrying Charge Rate" means the percentage of a Public ~~Utilities~~ Utility's depreciation expense, administrative and general

expenses, maintenance expense, taxes, or other expense that directly or indirectly attributable to the ~~utilities investments~~ Public Utility's investment in poles. Carrying charges shall include the Pole Owner's costs of conducting audits directly relating to the provision of a Pole Attachment Attachment.

b. "Net Cost of Bare Pole" 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 used for attachment by any other Public Utility ~~companies, telecommunications corporations~~ Wireless Provider, or cable television companies company.

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 Public Utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes the space occupied by the Pole Owner.

3. Rebuttable presumptions:

a. Pole height equals 37.5 feet (an average of 35 to 40 foot poles.)

b. Usable space per pole equals 13.5 feet

c. Space used by Attaching Entity:

(1) electric equals 7.5 feet;

(2) telecommunications equals ~~1.5~~ up to 13.5 feet; and,

(3) cable television equals 1.5 feet.

4. A Public Utility may not charge a non-recurring fee or charge for any cost included as a component of its annual Pole Attachment rate such as audit costs if they are included as part of the annual Pole attachment rate.

C. Statewide Average - The Commission shall determine a statewide average rate using the rate formula in Section R746-345-6B. The statewide average rate shall be adopted by ~~all~~ every Public ~~Utilities~~ Utility owning utility poles in the state. The statewide average may be calculated using costs and expenses associated with the Public Utility's owning the most utility poles in the state, or a combination costs and expenses of any Public ~~Utilities~~ Utility owning utility poles in the state.

D. Exception - A Public Utility or Attaching Entity may petition the Commission for exception from any provision of this rule. The petition must include a factual showing that a deviation from the statewide average rate, rate formula, rebuttable presumptions, or any other part of this rule is required to be consistent with the public interest.

R746-345-6. Dispute Resolution

A. Except as otherwise precluded by law, a resolution of any disputes concerning any Pole ~~Attachments~~ Attachment, ~~permits~~ permit, ~~audits~~ 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, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement is contrary to law, the Commission will approve the agreement and dismiss or cancel proceedings concerning the matters settled.

1. If the mediated agreement 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.

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