

Comcast's Proposed Replacement Sections for Agreement Sections 3.12-3.17¹

Section 3.12 Modification Costs For The Benefit Of The Licensee

Licensee shall assume the entire cost incurred by Pole Owner and other licensees to accommodate the new Attachments of Licensee or to bring Licensee's Attachments into compliance when the noncompliance is caused by Licensee, including all pole replacement costs (*i.e.*, the remaining life value of the old pole, plus the cost of removal, less the salvage value), rearrangement and transfer costs. If Pole Owner or other licensees use any such Licensee-requested modification as an opportunity to add to or modify their own attachments, the Pole Owner or other licensees shall bear a proportionate share of the costs incurred by the Licensee. Each Party's proportionate share shall be based on the ratio of the amount of new space occupied by that Party to the total amount of new space occupied by all the Parties joining in the modification. Any payments for poles made or work performed by the Licensee shall not entitle Licensee to ownership of any part of said poles.²

Section 3.13 Modification Costs For The Benefit Of The Pole Owner

Pole Owner shall assume the entire cost incurred by Licensee to accommodate the new Attachments of Pole Owner (subject to Section 2.03) or to bring Pole Owner's Attachments into compliance when the noncompliance is caused by the Licensor, including pole replacement costs, rearrangement and transfer costs. If Licensee uses any such Pole Owner-requested modification as an opportunity to add to or modify its own Attachments, the Licensee and any other party joining in the modification shall bear a proportionate share of the costs incurred by the Pole Owner. Each Party's proportionate share shall be based on the ratio of the amount of new space occupied by that Party to the total amount of new space occupied by all the Parties joining in the modification.

Section 3.14 Modification Costs For The Benefit Of Other Licensees

Licensee shall not be required to incur any cost for the benefit of another licensee. Notwithstanding the foregoing, if Licensee uses another licensee's modification request to add to or modify its existing Attachments, the Licensee and any other party joining in the modification shall bear a proportionate share of the costs incurred by the other licensee. Each Party's

¹ Comcast believes that the following sections should replace entirely Sections 3.12-3.17 of the draft Agreement.

² 47 U.S.C. §§ 224(h)-(i); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 1211 (1996) ("Where multiple parties join in the modification, each party's proportionate share of the total cost shall be based on the ratio of new space occupied by that party to the total amount of new space occupied by all of the parties joining in the modification. For example, a [CLEC's] access request might require the installation of a new pole that is five feet taller than the old pole, even though the [CLEC] needs only two feet of space. At the same time, a cable operator may claim one foot of the newly-created capacity. If these were the only parties participating in the modification, the [CLEC] would pay two-thirds of the modification cost and the cable operator one-third.").

proportionate share shall be based on the ratio of the amount of new space occupied by that Party to the total amount of new space occupied by all the Parties joining in the modification.

When the Licensee is required to relocate its facilities to accommodate another licensee, Pole Owner shall disclose the third party's name and contact information to the Licensee at the time the relocation or rearrangement is requested. Licensee shall be entitled to seek reimbursement from the third party attacher prior to relocating its facilities. Pole Owner shall use reasonable commercial efforts to ensure such reimbursement occurs in the event Licensee is unable to secure such reimbursement.³

Section 3.15 Reclamation of Reserved Space

In the event Pole Owner seeks to reclaim reserved space consistent with Section 2.03, Pole Owner will notify Licensee of the rearrangements or transfers of Equipment or pole replacements or other changes required in order to continue to accommodate Licensee's Attachments. If Licensee desires to continue to maintain its Attachments on the pole and so notifies Pole Owner in writing within thirty (30) days, Licensee may perform the necessary work (subject to Pole Owner's approval based on safety issues), or Licensee shall authorize Pole Owner to perform the work. Should Licensee authorize Pole Owner to perform the work, Pole Owner shall make such changes as may be required, and Licensee, upon demand, will reimburse Pole Owner for the entire expense thereby actually and reasonably incurred. If Licensee does not so notify Pole Owner of its intent to perform the necessary work or authorize Pole Owner to perform the work, Licensee shall remove its Attachments from the affected pole or poles within an additional ten (10) days from such original notification by Pole Owner for a total of forty (40) days.

Section 3.16 Notice Of Modification

Upon written notice from Licensor, Licensee shall rearrange and/or transfer its Attachments as required by Licensor to accommodate Licensor or other licensee requests, at the cost of the requesting party. If Licensee fails to rearrange or transfer its facilities within thirty (30) days after receipt of written notice from the Licensor requesting such rearrangement or transfer, the Licensor may perform, or have performed, such rearrangement or transfer, at the cost of the requesting party.

In cases of emergency, Pole Owner may, without prior notice or incurring any liability except for negligence or intentional misconduct, relocate or replace Licensee's Attachments or Equipment, transfer them to substituted poles, or perform any other work in connection with the Licensee's Attachments or Equipment that may be required, or authorize a third party to perform such tasks, and Licensee will, upon demand, reimburse Pole Owner or such third party for the reasonable expense associated with Licensee's Attachments thereby incurred. When prior notice is not given in case of emergency, Licensor shall provide notice of any work that has occurred on Licensee's Attachments as soon as practicable thereafter.

³ See *Cavalier Tele., LLC v. Virginia Elec. and Power Co.*, 15 FCC Rcd 9563, ¶¶ 16-17 (2002) (requiring pole owner to coordinate work and payments among licensees as part of pole owner responsibility).