

# ARKANSAS PUBLIC SERVICE COMMISSION

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## POLE ATTACHMENT RULES

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### ADMINISTRATIVE HISTORY

<u>Docket</u>	<u>Order Date</u>	<u>No.</u>	<u>Subject Matter of Docket / Order</u>
08-073-R	07-30-08	5	Adopts rules relating to the rates, terms, and conditions upon which a Public Utility pole owner shall provide access for a Pole Attachment to comply with Ark. Code Ann. § 23-4-1001 through § 23-4-1006 (Act 740 of 2007).
15-019-R	XX-XX-15	X	Amends Rules.....

# Arkansas Public Service Commission

## Pole Attachment Rules (PARs)

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## SECTION 1. PURPOSE, APPLICABILITY, AND GENERAL MATTERS

### Rule 1.01. Definitions

The following definitions shall apply throughout the *Pole Attachment Rules* (PARs) except as otherwise required by the context and any references to the PARs shall include these definitions:

- (a) ~~“Attaching Entity.” An electric service provider, telecommunications provider, cable television service provider, Internet access service provider, or other information services provider to the extent that its anticipated and actual Pole Attachments are regulated by these Rules. An electric utility, a telecommunications provider, a cable television service provider, or a cable Internet access service provider. A provider of electric service, telecommunication service, cable television service, internet access service or other related information services.~~ The term "Attaching Entity" does not include a ~~Public Utility pole owner~~ **Pole Owner** to the extent that it makes Pole Attachments to its own poles, Ducts, or Conduits.
- (b) “Conduit.” A structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed.
- (c) “Duct.” A single enclosed raceway for conductors, cable or wire.
- (d) ~~“Inner-Duct.” A Duct-like raceway smaller than a Duct that is inserted into a Duct so that the Duct may carry multiple wires or cables.~~
- (e) ~~“Insufficient Capacity.” The inability of a Pole Owner to accommodate a new Pole Attachment or Overlashing through the performance of Make-Ready Work.~~
- (f) ~~“Make-Ready Work.” Engineering or construction activities necessary to make a pole, Duct, Conduit, or other support equipment available for a new Pole Attachment, Pole Attachment modifications, or additional facilities.~~
- (g) ~~“NEC.” The National Electrical Code published by the National Fire Protection Association.~~
- (h) ~~“NESC.” The American National Standards Institute’s National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc.~~
- (i) ~~“Overlashing.” The placement of telecommunications provider, cable television service, or Internet access service facilities on existing facilities that already are attached within the Usable Space allocated to an existing Attaching Entity. Overlashing is not considered a separate Pole Attachment.~~
- (j) “Pole Attachment.” As defined in Ark. Code Ann. § 23-4-1001(1).
- (k) ~~“Pole Attachment Audit.” Any audit done at the option of the Pole Owner to count~~



the number of Pole Attachments by one or more Attaching Entities.

- (l) “Pole Owner.” A public utility as defined in Ark. Code Ann. § 23-4-1001(2), having ownership or control of a pole, Duct, or Conduit.

**Public Utility**

~~As defined in Ark. Code Ann. § 23-4-1001(2).~~

- (m) “Safety Inspection.” Any inspection done at the option of the Pole Owner to ensure Pole Attachments comply with applicable safety standards.
- (n) “Safety Space.” As defined in the current issue of the NESC, the space located between the areas to which electric conductors and communication circuitry may be attached.
- (o) “Service Drop.” A connection from distribution facilities to the building or structure being served that does not require guys under standard industry design practice.
- (p) “Unusable Space.” The Unusable Space is equal to the length of the pole minus the Usable Space. Safety Space is included in Unusable Space.
- (q) “Usable Space.” The space above minimum grade level available for circuit, communications, coaxial cable, fiber optic, or electrical conductor Pole Attachments, by Public Utilities and Attaching Entities.

**Rule 1.012 Authority**

These Rules are promulgated pursuant to, and in accordance with, the provisions of Act 740 of 2007 as codified in Ark. Code Ann. § 23-4-1001 through § 23-4-1006.

**Rule 1.023 Applicability**

These Rules apply to ~~Public Utilities~~ Pole Owners and Attaching Entities as defined in these Rules.

**Rule 1.034 Purpose and Scope**

These Rules govern the Commission's regulation of the rates, terms, and conditions upon which a ~~Public Utility~~ Pole Owner shall provide nondiscriminatory access for a Pole Attachment in the absence of a voluntarily negotiated agreement. These Rules also govern the procedures necessary and appropriate to hear and resolve complaints arising from the failure or refusal to provide access, the inability of a ~~Public Utility~~ Pole Owner and an entity seeking access for a Pole Attachment to reach a voluntary negotiated written agreement, and disputes over implementation of an existing contract.

**Rule 1.045 Negotiated Agreements**

Nothing in these Rules prevents or limits the ability of a ~~Public Utility Pole Owner, an electric utility, a telecommunications provider, a cable television service, or an internet Internet access~~

~~service~~ and an Attaching Entity to enter into a voluntarily negotiated written agreement regarding the rates, terms, and conditions ~~upon which access~~ for ~~a Pole Attachment~~ access is provided. Voluntarily negotiated agreements are preferred and encouraged by the Commission. Nothing in these rules ~~should~~shall be interpreted to supersede or modify any lawful rate, term, or condition of a voluntarily negotiated written agreement.

#### **1.06 Communications**

Pole Owners and Attaching Entities are encouraged to employ consistent and compatible communications systems for the purpose of notification and coordination associated with the Pole Attachments addressed in these rules.



## **SECTION 2. ACCESS AND NOTIFICATION**

### **Rule 2.01 Contracts and Permits**

- (a) Prior to installing a Pole Attachment, the Pole Owner and the Attaching Entity shall have a written contract that specifies the rates, terms, and conditions for the Pole Attachments.
- (b) An Attaching Entity shall have a permit from the Pole Owner, except as provided in Rule 2.01(c), for each Pole Attachment, including a permit covering any Overlapping, subject to the provisions of Rule 2.03 and Rule 2.04.
- (c) An Attaching Entity may install a Service Drop without first obtaining a separate permit for that Service Drop if the Service Drop can be installed by the Attaching Entity in compliance with Rule 3.01(a). The Attaching Entity shall account for and report the installation of Service Drops in compliance with the written contract for service as required by Rule 2.01(a).
- (d) Prior to the assignment, in whole or in part, of an existing Pole Attachment agreement, an Attaching Entity shall notify the Pole Owner of the assignment.
- (e) The Pole Owner shall notify all affected Attaching Entities of the sale or transfer of ownership of any pole.
- (f) The Pole Owner and the Attaching Entity shall exchange and maintain current contact information for both routine business and emergency notification, including but not limited to, name, telephone number, email address, and street address. Participation in a communication system consistent with Rule 1.06 is encouraged to facilitate this information exchange.
- (g) Pole Owners and Attaching Entities shall make a good faith effort to begin negotiations of the terms and conditions of a new agreement no less than ninety (90) days prior to the expiration of the current contract.

### **Rule 2.02 Request for Access**

- (a) Requests to a Pole Owner for a Pole Attachment or Overlapping permit shall be in writing. The Pole Owner may require the applicant to provide the following technical information:
  - (1) the location of the pole, Duct, or Conduit for which the attachment or occupancy is requested;
  - (2) the amount of space requested;
  - (3) the number and type of attachment for each pole, Duct, or Conduit addition;



- (4) the physical characteristics of the attachment or addition;
- (5) the attachment location on the pole or in the Duct or Conduit;
- (6) the proposed route;
- (7) the proposed schedule for construction; and
- (8) any other information reasonably required by the Pole Owner and which is necessary to process the request.

A request containing the information set forth in items (1) – (8) above shall be considered to be a complete request for purposes of Rule 2.02(f).

- (b) An Attaching Entity wishing to overlash facilities shall submit a written request to the Pole Owner identifying the size and type of facilities to be overlash, the size and type of facilities to be added, the poles over which such facilities will be overlash, and when such facilities will be overlash. In cases where a party is seeking to overlash facilities to another attaching entity, the party seeking to overlash shall also provide the pole owner evidence of the written consent of such host party.
- (c) The Pole Owner shall identify and account for the incremental engineering costs associated with a request for a Pole Attachment or Overlapping permit and the cost of estimating Make-Ready Work. A Pole Owner may charge an Attaching Entity incremental administrative costs associated with a request for a Pole Attachment or Overlapping permit and the cost of estimating Make-Ready Work, provided that the Pole Owner identifies and accounts for such incremental administrative costs. The Attaching Entity shall pay to the Pole Owner any incremental engineering costs or incremental administrative costs incurred and charged by the Pole Owner in connection with a request for a Pole Attachment or Overlapping permit, regardless of whether the Attaching Entity's request is rejected or withdrawn by the Attaching Entity.
- (d) A Pole Owner may reserve available space on its facilities for future provision of its core utility service, but must permit the use of such reserved space by Attaching Entities on an interim basis until the Pole Owner has an actual need for the space. The Pole Owner shall provide written notification to the Attaching Entity when a permit is being issued for the use of reserved space.
- (e) Within ~~45~~ 60 days of written notification that the space is needed by the Pole Owner, the interim Attaching Entity must vacate the occupied space at its own expense and pay for any modifications needed to maintain the attachment or pay for the expansion of capacity.
- (f) The Pole Owner shall approve, deny, or conditionally approve with Make-Ready Work provisions, the request for a Pole Attachment or Overlapping in writing as soon as practicable, but in no event later than:



- ~~(1) 14 days after the receipt of a complete request, if the permit request includes 10 or fewer poles;~~
- ~~(2) 45 days after receipt of a complete request, if the permit request includes between 11 and 30 poles; or~~
- (1) 45 days after receipt of a complete permit request, for requests including no more than 300 poles or 20 manholes; or
- (2) 60 days after receipt of a complete permit request, for requests greater than the preceding limits but less than 3,000 poles and 100 manholes.
- ~~(3) If the permit request includes more than thirty poles exceeds the preceding limits, the parties shall work in good faith to negotiate a mutually agreeable timeframe.~~

For purposes of this timeframe, multiple permit requests from a single Attaching Entity within a rolling 30-day period shall be treated as a single request.

### **Rule 2.03 Make-Ready Work Estimate**

- (a) If the Pole Owner grants an application for a Pole Attachment or Overlashing that requires Make-Ready Work, the Pole Owner shall provide a detailed list of Make-Ready Work to include a description of the work, the estimated number of days to complete, and a detailed list of the activities and materials to be used in the Make-Ready Work, along with a cost estimate, within 14 days from the date of approval, as provided for in Rule 2.02(f).
- (b) Within 15 days of the receipt of the Make-Ready Work estimate, the Attaching Entity shall provide a written response either accepting the estimate and making payment arrangements as provided in its contract with the Pole Owner, or if the Attaching Entity has any disagreement with the Make-Ready Work estimate or the estimated number of days to complete the work, it shall provide, in writing, a list of any areas of disagreement to the Pole Owner. The Pole Owner will have 15 days from the receipt of the list to provide a response to the Attaching Entity. If the Attaching Entity and the Pole Owner have no substantive disagreements regarding the terms but cannot reach a resolution within 15 days from the date the owner's response is provided to the Attaching Entity, either party may file a complaint with the Commission pursuant to the terms of this rule.
- (c) If the Pole Owner approves an application that requires Make-Ready Work, the Pole Owner shall perform the Make-Ready Work at the Attaching Entity's expense.
- (d) Make-Ready Work shall be completed in a timely manner and at a reasonable cost and as soon as practicable after the date payment is received but not later than:



- (1) 30 calendar days after the date payment is received for permit requests involving 10 or fewer poles including no more than 300 poles or 20 manholes; or
- (2) 45 75 days (105 days for attachments above the safety space) after the date payment is received for permit requests involving between 11 and 30 poles greater than the preceding limits but less than 3,000 poles and 100 manholes; or
- (3) For requests involving more than thirty poles or where Make Ready Work will require more than 45 days from the date payment is received to complete, the Pole Owner and the Attaching Entity shall work in good faith to negotiate other mutually satisfactory conditions to complete the Make-Ready Work.

If the permit requests exceed the preceding limits or where Make-Ready Work will require more than the above-referenced limit of days from the date payment is received to complete, the parties shall work in good faith to negotiate a mutually agreeable timeframe.

- (e) If Make-Ready Work is not completed by the Pole Owner in a timely manner, the Attaching Entity may complete the applicable work that is within the communications space using a contractor approved by the Pole Owner. This Rule does not apply to any work that is within the electric space.

#### **Rule 2.04 Denial of Access**

- (a) A Pole Owner may deny access for a Pole Attachment on a nondiscriminatory basis where there is Insufficient Capacity or for reasons of safety, reliability, or generally applicable engineering standards as referenced in Rule 3.01(a).
- (b) A Pole Owner may deny access for a Pole Attachment to all facilities used exclusively for transmission on a nondiscriminatory basis.
- (c) The Pole Owner shall confirm in writing the denial of access for Pole Attachment or Overlapping as soon as practicable, but in no event later than 45 days following receipt of the request the applicable timeframe prescribed in Rule 2.02(f).
- (d) The Pole Owner's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to denial of access consistent with the provisions of Rule 2.04(a) and (b).

#### **Rule 2.05 Notification**

- (a) Except as provided for in Rule 2.05(b) or when a regulation, statute, ordinance or other similar legal requirement otherwise provides, a Pole Owner shall provide an Attaching Entity no less than 60 days written notice prior to:
  - (1) Removal or abandonment of the Pole Owner's facilities, except in situations outside the Pole Owner's control in which case it shall do so as soon as reasonably possible.
  - (2) Any modification of the Pole Owner's facilities other than routine maintenance or modification in response to emergencies or in situations outside the Pole Owner's control.
- (b) If removal or modification of facilities is required because of imminent danger to life or property, a Pole Owner shall have discretion to make that removal or modification without advance notice and shall provide verbal notice and subsequently confirm in writing, whatever action was taken as soon as practicable but in no event later than 10 days thereafter, except in extraordinary circumstances.



## SECTION 3. SAFETY

### Rule 3.01 Safety Responsibilities

An Attaching Entity shall:

- (a) Install and maintain its Pole Attachments and any Overlashing in compliance with:
  - (1) the current edition of the NESC and NEC in effect at the time of construction and the Pole Owner's applicable engineering standards related to safety and reliability in effect at the time of construction; and
  - (2) the codes, rules or regulations of any federal, state or local governing body having jurisdiction.
- (b) Remove idle facilities as soon as is reasonably practicable, but in no event more than 45 days after their replacement. This requirement does not apply when fiber optic cable is authorized to be overlashed to existing copper cable that becomes dormant as a result.
- (c) Repair, disconnect, isolate or otherwise correct any violation that poses an imminent danger to life or property immediately after discovery.
- (d) Upon receipt of a Pole Owner's notification of any safety violation, immediately correct a violation that poses imminent danger to life or property and correct other safety violations within 1030 days except in extraordinary circumstances or as mutually agreed. All reasonable costs associated with correcting undisputed safety violations shall be incurred by the party responsible for the violation.
- (e) Transfer or remove its Pole Attachments from utility poles that have been abandoned by the Pole Owner within 60 days of being notified of such abandonment. If Pole Attachments have not been removed after 60 days' notice, the Pole Owner may remove Attaching Entity Pole Attachments at the Attaching Entity's expense.

### Rule 3.02 Safety Inspections

- (a) All Attaching Entities shall participate in a joint Safety Inspection with the Pole Owner, with each Attaching Entity bearing its own expense.
- (b) Pole Owners shall establish safety inspection schedules so that thean inspection of all of the Pole Owner's Arkansas facilities will be completed no more often than at least every 5 years, but not more frequently than every 3 years, but in no event may the inspection of these facilities take longer than 5 years.
- (c) Prior to engaging in a Safety Inspection, the Pole Owner shall provide 180 days advance written notice to the Attaching Entities.



- (d) All of the Pole Owner's inspection costs associated with a Safety Inspection shall be paid by the Attaching Entities and the Pole Owner. The Pole Owner shall be responsible for 25% of its inspection costs and the remaining 75% of the Pole Owner's inspection costs shall be paid by the Attaching Entities on a pro-rata basis, based on the number of poles each Attaching Entity occupies.
- (e) Prior to conducting a Safety Inspection, the Pole Owner and the Attaching Entities shall work in good faith to negotiate mutually agreeable terms of the Safety Inspection.

### **Rule 3.03 Pole Attachment Audits**

- (a) All Attaching Entities shall participate in a joint Pole Attachment Audit with the Pole Owner, with each Attaching Entity bearing its own expense.
- (b) Pole Owners shall establish Pole Attachment Audit schedules so that the audit of all of the Pole Owner's Arkansas facilities will be completed ~~no more often than every 3 years, but in no event may the audit of these facilities take longer than 5 years~~ at least every five years, but not more frequently than every 3 years.
- (c) Prior to engaging in a Pole Attachment Audit, the Pole Owner shall provide 180 days advance written notice to the Attaching Entities.
- (d) All of the Pole Owner's audit costs associated with a Pole Attachment Audit shall be paid by the Attaching Entities and the Pole Owner. The Pole Owner shall be responsible for twenty-five percent (25%) of its attachment audit costs and the remaining seventy-five percent (75%) of the Pole Owner's attachment audit costs shall be paid by the Attaching Entities on a pro-rata basis, based on the number of poles each Attaching Entity occupies.
- (e) Prior to conducting a Pole Attachment Audit, the Pole Owner and the Attaching Entities shall work in good faith to negotiate mutually agreeable terms of the Pole Attachment Audit.
- (f) Additional equipment that is normally required by the presence of a Pole Attachment in the Attaching Entity's Usable Space and equipment placed in the Unusable Space, which is used in conjunction with the Pole Attachment and to the extent is allowed by the Pole Owner, is not an additional Pole Attachment for rental rate purposes.

## SECTION 4. RATE FORMULAS AND MODIFICATION COSTS

### Rule 4.01 Pole Attachment Rate Formula

- (a) When the parties fail to reach a voluntarily negotiated written agreement regarding the Pole Attachment rate and the complaint procedures under Section 5 of these Rules are invoked, the Commission will apply the formula in Appendix A of the Rules for determining the maximum just and reasonable rate.
- (b) The investments and expenses used in the Pole Attachment rate formula shall be based on historical or original cost.
- (c) The Pole Owner's net pole investment shall be adjusted to eliminate the investment in crossarms and other costs not associated with owning a pole. There is a rebuttable presumption that these costs are equal to 15% of net investment for electric utilities and 5% for telephone companies.
- (d) When the net pole investment is zero or negative, the gross investment may be substituted for the net investment in Appendix A, except for the Return Element of the carrying charges which is always a net calculation- The Return Element shall be calculated as follows:

$$\text{Return Element} = 8.00\% \times \text{Net Pole Investment} \div \text{Gross Pole Investment}$$

- (e) The following rebuttable presumptions are used in the calculation of the space factor:
  - (1) The height of a pole is equal to 37.5 feet.
  - (2) Usable Space on the pole is equal to 10.17 feet.
  - (3) Unusable Space on the pole is equal to 27.33 feet, which includes the Safety Space.
  - (4) Occupied Usable Space is:
    - (A) Cable television service is equal to ~~one~~ (1) foot.
    - (B) Telecommunications service is equal to ~~one~~ (1) foot.
  - (5) The presumptive average number of attachers on a pole is equal to three (3), which includes the Pole Owner.
  - (6) A Pole Owner may only challenge the presumptive average number of attachers in Rule 4.01(e)(5), upon a showing that:



- (A) EachThe Pole Owner upon request, provided all Attaching Entities and all entities seeking access, the methodology and information upon which the Pole Owner's average number of attachers is based,
  - (B) EachThe Pole Owner exercised good faith in establishing and updating its average number of attachers, and
  - (C) The methodology used to demonstrate why the presumptive number is incorrect.
- (7) An Attaching Entity may only challenge the presumptive average number of attachers in Rule 4.01(e)(5) or the average number of attachers propounded by the Pole Owner pursuant to Rule 4.01(e)(6), upon a showing of:
- (A) information demonstrating why the Pole Owner's average is incorrect, and
  - (B) what the Attaching Entity believes should be the average and the methodology used obtain that average. Where a complete inspection is impractical, a statistically sound survey may be submitted.
- (8) Upon successful challenge of the existing average number of attachers pursuant to Rule 4.01(e)(6) or (7), the resulting data determined shall be used by the utility as the number of attachers within the rate formula.
- (f) The presumptions in 4.01(e)(1)-(4) may be rebutted by either the Pole Owner or the Attaching Entity.

#### **Rule 4.02 Duct/Conduit Rate Formula**

- (a) When the parties fail to reach a voluntarily negotiated written agreement regarding the Duct/Conduit rate and the Commission's complaint procedures under Section 5 are invoked, the Commission will apply the formula in Appendix A of the Rules for determining the maximum just and reasonable rate.
- (b) The investments and expenses used in the Duct/Conduit rate formula shall be based on historical or original cost.
- (c) In the calculation of the percentage of Conduit capacity occupied, if no Inner-Duct is installed in the Conduit, the number of Inner-Ducts is presumed to be ~~2~~two (2).

#### **Rule 4.03 Modification Costs**

Pole Owners shall charge Attaching Entities separately for the following:

- (a) Make-Ready Work pursuant to Rule 2.03.



(b) (1) Solely Assigned; Excess Height. When an Attaching Entity, including the Pole Owner except as provided for under Rule 2.02(d), requires additional space which is not available on that pole, and the pole must be replaced by a taller pole, the entity causing the need for replacement shall pay for the replacement cost of such pole, including the cost of removing the old pole, less any salvage value plus the costs of transferring the facilities of all other attachers.

(12) Mutual Assignment. When a taller pole is required by two or more Attaching Entities, including the Pole Owner, except as provided under Rule 2.02(d), the costs identified in Rule 4.03(b) shall be shared equally among the entities requiring the replacement.

(c) Rearrangements.

Except as provided for under Rule 2.02(e), an entity that obtains a Pole Attachment shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity.

## SECTION 25. COMPLAINT PROCEDURES

### Rule 25.01 Time for Resolution

The Commission shall resolve any formal complaint ~~or dispute~~ filed in accordance with these Rules and the Commission's Rules of Practice and Procedure within 180 days after the complaint is filed, except that the Commission, for good cause shown, may extend the time for resolution up to 360 days after the complaint is filed.

### Rule 25.02 Informal Resolution

- ~~(a)A.~~ Before filing a formal complaint, ~~Every~~ complainant shall, ~~before filing a complaint,~~ make a good faith effort to informally resolve the dispute with the respondent ~~the situation complained of~~.
- ~~(b)B.~~ The complainant and respondent shall, within 30 ~~calendar~~ days of a request by the other for data relevant to the situation, provide the data that is publicly available.
- ~~(c)C.~~ An entity shall not be required to submit data that is not publicly available until the other entity agrees, in writing, that it will use that information only for purposes of resolving the dispute ~~or complaint at issue~~ and will not disclose that information except as may be required by the Commission.

### Rule 25.03 Filing Requirements

The formal complaint shall be filed in compliance with the Commission's Rules of Practice and Procedure and meet the following requirements:-

- ~~(a)A.~~ The complaint shall be accompanied by supporting written testimony and exhibits of a person or persons with actual knowledge of the facts and any exhibits provided in support of complaint testimony shall be verified by the person providing the exhibit.
- ~~(b)B.~~ Workpapers and documentation shall be provided to all parties at the time of the filing of the complaint that are sufficient to support all information required by this Section.
- ~~(ea)C.~~ The complaint shall be accompanied by a copy of the Pole Attachment agreement, if any, between the Attaching Entity and the ~~Public Utility~~ pPole oWner.
- ~~(db)D.~~ The Public Utility pPole oWner or Attaching Entity shall state with specificity in its complaint the section(s) of these Rules or Ark. Code Ann. § 23-4-1001 et seq. that is(are) claimed to be violated, or, if a written Pole Attachment agreement already exists, the rate,(s), term,(s), or condition(s) of that agreement that is(are) claimed to have been violated. The complaint shall state with specificity the section(s) of these Rules, Ark. Code Ann. §§ 23-4-1001 et seq., or the agreement that is (are) claimed to have been violated.



~~(ec)E.~~ The complaint shall include the data and information necessary to support the claim, including where applicable, the data and information necessary to calculate the rate pursuant to Appendix A.

~~(fd)F.~~ No complaint filed by an Attaching Entity shall be dismissed for failure to provide the information and data required in Rule ~~25.03.E(e)~~, if the ~~Public Utility pole~~ ~~Owner~~ has failed to provide such information and data after ~~such a~~ reasonable request.

~~(ge)G.~~ In a case where an ~~Attaching Entity claimant claims-alleges~~ that it has been denied access to a pole, Duct, or Conduit despite a written request for such access, the complaint shall include the data and information necessary to support the ~~claim allegations~~, including:

- (1) The reasons given for the denial of access to the ~~Public Utility pole owner~~ Pole Owner's poles, Ducts or Conduits;
- (2) The basis for the complainant's ~~claim-allegation~~ that the denial of access is improper;
- (3) The remedy sought by the complainant;
- (4) A copy of the written request to the ~~Public Utility pole owner~~ Pole Owner for access to its poles, Ducts, or Conduits; and
- (5) A copy of the ~~Public Utility pole owner~~ Pole Owner's response to the written request including all information given by the ~~Public Utility pole owner~~ Pole Owner to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a ~~Public Utility pole owner's Pole Owner's~~ written response, or if the ~~Public Utility pole owner Pole Owner~~ denies the complainant any other information reasonably needed to establish ~~a-its~~ prima facie case.

~~(hf)H.~~ The source of data and information required under this Section shall be identified. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.

~~(ig)I.~~ The complaint shall include a brief summary of all steps taken to informally resolve the problem prior to filing.

~~(jh)J.~~ If any of the information ~~required to be~~ filed or provided under this Rule is data that is publically unavailable from the respondent and which was provided ~~under~~ pursuant to Rule ~~25.02.C.(c)~~:

- (1) The complainant shall not file or otherwise include ~~provide the~~ such data with the complaint, but the complaint shall generally-generically describe



the data.

- (2) The complainant shall include a notice to the respondent that the complainant intends to use the data in the complaint proceeding.
- (3) If the respondent desires to protect the data from public disclosure, the respondent shall have ~~twenty~~ (20) days from the date of service of the complaint to file a motion for protective order pursuant to the Commission's Rules of Practice and Procedure.
- (4) If the respondent has not filed a motion for protective order within ~~twenty~~ (20) days from the date of service of the complaint, the complainant shall file the data as a supplement to its complaint.

#### **Rule 25.04 Response and Reply**

- ~~(a)A. Respondent shall have 45 30 days from the date the complaint is was filed within which to file a response.~~
- ~~(b)B. The response shall address each of the complainant's allegations. Factual allegations Responses shall be supported by written testimony of a person or persons with actual knowledge of the facts and any exhibits provided in support of response testimony shall be verified by the person who prepares them providing the exhibit.~~
- ~~(c)C. Complainant shall have 20 days from the date the response filed within which to file a reply.~~
- ~~(d)D. The complainant's reply shall address each of the respondent's response responses. Factual allegations The reply shall be supported by written testimony of a person or persons with actual knowledge of the facts and any exhibits provided in support of reply testimony shall be verified by the person who prepares them. providing the exhibit.~~
- (a) The complaint shall be served on respondent pursuant to Rule 9.02 of the Commission's Rules of Practice and Procedure.
- (b) Respondent may file a response pursuant to Rule 9.02 of the Commission's Rules of Practice and Procedure.
- (c) Thereafter, the Commission may adopt a procedural schedule for the filing of written testimony with or without a hearing, as appropriate.

**Pole Attachment Rate Formula  
And  
Conduit Rate Formula**

**Appendix A**



**Pole Attachment Rate Formula  
Local Exchange Carrier Pole Owners  
FCC Part 32 Accounts**

$$\text{Maximum Per Pole Rate} = \text{Space Factor} \times \text{Net Cost of A Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Space Factor} = \frac{\text{Occupied Space} + \left[ \frac{2}{3} \times \left( \frac{\text{Unusable Space}}{\text{No. of Attachers (including the Public Utility pole owner)}} \right) \right]}{\text{Pole Height}}$$

$$\text{Net Cost of A Bare Pole} = \frac{\text{Net Pole Investment} \times 95\%}{\text{Total Number of Poles}}$$

$$\text{Net Pole Investment} = \text{Gross Pole Investment (Account 2411)} - \text{Accumulated Depreciation (Account 3100)(Poles)} - \text{Accumulated Deferred Income Taxes (Account 4100 + 4340)(Poles)}$$

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

$$\text{Administrative Element} = \frac{\text{Total General and Administrative (Accounts 6710 \& 6720)}}{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (Plant) (Accounts 4100+4340)}}$$

$$\text{Maintenance Element} = \frac{\text{Account 6411 - Rental Expense (Poles)}}{\text{Net Pole Investment}}$$

$$\text{Depreciation Element} = \frac{\text{Gross Pole Investment (Account 2411)}}{\text{Net Pole Investment}} \times \text{Depreciation Rate for Gross Pole Investment}$$

$$\text{Taxes Element} = \frac{\text{Operating Taxes (Account 7200)}}{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (Plant)(Accounts 4100+4340)}}$$

$$\text{Return Element} = 8.00\%$$

**Pole Attachment Rate Formula  
Electric Utility Pole Owners  
FERC Part 101 Accounts**

$$\text{Maximum Per Pole Rate} = \text{Space Factor} \times \text{Net Cost of A Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Space Factor} = \frac{\text{Occupied Space} + \left[ \frac{2}{3} \times \left( \frac{\text{Unusable Space}}{\text{No. of Attachers (including the Public Utility pole owner)}} \right) \right]}{\text{Pole Height}}$$

$$\text{Net Cost of A Bare Pole} = \frac{\text{Net Pole Investment} \times 85\%}{\text{Total Number of Poles}}$$

$$\text{Net Pole Investment} = \text{Gross Pole Investment (Account 364)} - \text{Accumulated Depreciation (Account 108)(Poles)} - \text{Accumulated Deferred Income Taxes (Account 190, 281 - 283)(Poles)}$$

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

$$\text{Administrative Element} = \frac{\text{Total General and Administrative (per FERC Form 1)}}{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (Plant) (per FERC Form 1) (Account 108) (Account 190, 281 - 283)}}$$

$$\text{Maintenance Element} = \frac{\text{Account 593}}{\text{Pole Investment in - Depreciation (Poles) Related to - Accumulated Deferred Accts. 364,365 & 369 Accts. 364,365 & 369 Inc. Taxes Related to Accts. 364,365 & 369}}$$

$$\text{Depreciation Element} = \frac{\text{Gross Pole Investment (Account 364)}}{\text{Net Pole Investment}} \times \text{Depreciation Rate for Gross Pole Investment}$$

$$\text{Taxes Element} = \frac{\text{Accounts 408.1, + 409.1 + 410.1 + 411.4 - 411.1}}{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (per FERC Form 1) (Account 108) (Plant)(Account 190, 281-283)}}$$

$$\text{Return Element} = 8.00\%$$



**Conduit Rate Formula**  
**Local Exchange Carrier Conduit Owners**  
**FCC Part 32 Accounts**

$$\text{Maximum Rate} = \frac{\text{Percentage of Conduit Capacity Occupied}}{\text{Percentage of Conduit Capacity Occupied}} \times \frac{\text{Net Linear Cost of Conduit}}{\text{Net Linear Cost of Conduit}} \times \text{Carrying Charge Rate}$$

$$\frac{\text{Percentage of Conduit Capacity Occupied}}{\text{Percentage of Conduit Capacity Occupied}} = \frac{1 \text{ Duct}}{\text{Number of Inner Ducts}}$$

$$\frac{\text{Net Linear Cost of Conduit}}{\text{Net Linear Cost of Conduit}} = \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}}$$

$$\text{Net Conduit Investment} = \frac{\text{Gross Conduit Investment (Account 2441)}}{\text{Gross Conduit Investment (Account 2441)}} - \frac{\text{Accumulated Depreciation (Account 3100)(Conduit)}}{\text{Accumulated Depreciation (Account 3100)(Conduit)}} - \frac{\text{Accumulated Deferred Income Taxes (Account 4100 + 4340)(Conduit)}}{\text{Accumulated Deferred Income Taxes (Account 4100 + 4340)(Conduit)}}$$

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

$$\text{Administrative Element} = \frac{\text{Total General and Administrative (Accounts 6710 \& 6720)}}{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (Plant) (Accounts 4100+4340) (Account 2001) (Account 3100)}}$$

$$\text{Maintenance Element} = \frac{\text{Conduit Maintenance Expense (Account 6441)}}{\text{Net Conduit Investment}}$$

$$\text{Depreciation Element} = \frac{\text{Gross Conduit Investment (Account 2441)}}{\text{Net Conduit Investment}} \times \text{Depreciation Rate for Conduit}$$

$$\text{Taxes Element} = \frac{\text{Operating Taxes (Account 7200)}}{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (Plant)(Accounts 4100+4340) (Account 2001) (Account 3100)}}$$

$$\text{Return Element} = 8.00\%$$

**Conduit Rate Formula  
Electric Utility Conduit Owners  
FERC Part 101 Accounts**

$$\text{Maximum Rate} = \frac{\text{Percentage of Conduit Capacity Occupied}}{\text{Capacity Occupied}} \times \frac{\text{Net Linear Cost of Conduit}}{\text{of Conduit}} \times \text{Carrying Charge Rate}$$

$$\frac{\text{Percentage of Conduit Capacity Occupied}}{\text{Capacity Occupied}} = \frac{1 \text{ Duct}}{\text{Number of Inner Ducts}}$$

$$\frac{\text{Net Linear Cost of Conduit}}{\text{of Conduit}} = \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}}$$

$$\text{Net Conduit Investment} = \frac{\text{Gross Conduit Investment (Account 366)}}{\text{Investment}} - \frac{\text{Accumulated Depreciation (Account 108)(Conduit)}}{\text{Depreciation}} - \frac{\text{Accumulated Deferred Income Taxes (Conduit) (Account 190, 281 - 283)}}{\text{Income Taxes (Conduit)}}$$

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

$$\text{Administrative Element} = \frac{\text{Total General and Administrative (per FERC Form 1)}}{\frac{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (Plant) (Account 190, 281 - 283)}}{(\text{per FERC Form 1}) \quad (\text{Account 108})}}$$

$$\text{Maintenance Element} = \frac{\text{Account 594}}{\frac{\text{Conduit Investment in - Depreciation (Conduit) in - Accumulated Deferred Inc. Taxes Related to Accts. 366,367 \& 369}}{\text{Accts. 366,367 \& 369} \quad \text{Accts. 366,367 \& 369} \quad \text{Accts. 366,367 \& 369}}}$$

$$\text{Depreciation Element} = \frac{\text{Gross Conduit Investment (Account 366)}}{\text{Net Conduit Investment}} \times \frac{\text{Depreciation Rate for Conduit}}{\text{for Conduit}}$$

$$\text{Taxes Element} = \frac{\text{Accounts 408.1, + 409.1 + 410.1 + 411.4 - 411.1}}{\frac{\text{Gross Plant Investment - Accumulated Depreciation - Accumulated Deferred Taxes (Plant)(Account 190, 281-283)}}{(\text{per FERC Form 1}) \quad (\text{Account 108})}}$$

$$\text{Return Element} = 8.00\%$$