

3.700 POLE ATTACHMENTS

3.701 Applicability and General Provisions

- (A) This Rule governs the attachment of lines, wires, cables, or other facilities by any Attaching Entity seeking to attach to a pole owned by a Pole-Ownning Utility, at rates, terms, and conditions that are just and reasonable. This Rule applies to poles used in the distribution system used to serve customers, and not to poles used as part of a company's transmission system. In applying this Rule, the Commission shall consider the interests of entities seeking or having attachments, Pole-Ownning Utilities, and the customers of each.
- (B) Except as specifically provided herein, nothing in this Rule shall be construed to confer a right upon any Attaching Entity to alter, move, or otherwise perform work upon facilities owned by another Attaching Entity or by a Pole-Ownning Utility.
- (C) Except as specifically provided, nothing in this Rule shall be construed to supersede, overrule, or replace any applicable safety code (including the National Electrical Safety Code (NESC) or safety rules, VOSHA regulations, any other law or regulation, tariffs, and protocols approved by the Commission, nor the reasonable engineering standards and good-faith work practices of any Attaching Entity or Pole-Ownning Utility.

3.702 Definitions

- (A) Access means physical access to poles and rights-of-way necessary and sufficient to allow connection of cables and other appurtenances by an Attaching Entity, and to inspect, maintain, and repair such cables and other appurtenances.
- (B) Attaching Entity means an entity holding a certificate of public good from the Commission, or a Broadband Service Provider, that seeks to attach a facility (or has attached a facility) of any type to a pole or right-of-way for the purpose of providing service to one or more customers, including but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities.
- (C) Broadband Service Provider means an entity authorized to do business in the state of Vermont that seeks to attach facilities that ultimately will be used to offer Internet access to the public. Wireless Broadband Service Providers must hold an FCC license or use equipment that complies with applicable FCC requirements¹. A Broadband Service Provider that does not hold a certificate of public good from the Commission must, before availing itself of the provisions of this Rule, file with the Commission and with any affected Pole-Ownning Utility an affidavit that sets forth the Provider's name, form of legal entity, contact information, agent for service of process, proposed general area of service, proof of insurance, and a representation

¹ See 47 C.F.R. Part 15.

that the Provider will abide by the terms and conditions of this Rule and any applicable pole attachment tariffs, including any protocols filed pursuant to Section 3.708(P) of this Rule and Orders issued by the Commission.

- (D) Communications Space means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.
- (F) Core Services means the original regulated business of a utility company. For example, the Core Service of an electric utility is the provision of electric service, but not the provision of telephone or cable television service.
- (G) Dual Utility Pole means the existence of at least two (2) utility poles in a single right-of-way where a new utility pole has been installed to replace an existing utility pole and the transfer of all cables and equipment to the new utility pole has been completed but the existing pole has not been removed.
- (H) Jointly Owned Utility Pole means a utility pole that is controlled or owned by two entities.
- (I) Make-Ready means work necessary to make a pole available for attachment of additional facilities, including but not limited to rearrangement or transfer of existing facilities, replacement of a pole, complete removal of any pole replaced, or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.
 - (1) Simple Make-Ready means Make-Ready where existing attachments in the Communications Space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.
 - (2) Complex Make-Ready means any work in the electrical space, as well as transfers and work within the Communications Space, that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex. Utility pole replacements are also considered to be complex.
- (J) Pole Attachment or Attachment means an attachment or addition by an Attaching Entity to a pole or right-of-way.
- (K) Pole-Owning Utility means a company, as defined in 30 V.S.A. § 201, that is subject to regulation by the Commission, and that has an ownership interest in utility poles or rights-of-way.

3.703 Tariff Required

- (A) Each Pole-Owning Utility shall file a pole-attachment tariff with the Commission. The tariff shall include rates, terms, and conditions governing attachment to poles

and rights-of-way in which the Pole-Owning Utility has an ownership interest.

- (B) The tariff may incorporate a standard contract or license for attachments, so long as it is available to any Attaching Entity within the scope of this Rule and its provisions are not contrary to the provisions of this Rule.
- (C) The tariff may include terms that are just and reasonable subject to approval by the Commission, and it may include limitations on liability, indemnification, insurance requirements, and restrictions on access to Pole-Owning Utility facilities.
- (D) Tariff provisions filed under this section shall not supersede the terms of any applicable contract.

3.704 Contracts for Cost, Maintenance, and Use of Poles

- (A) Contracts Authorized. Pole-Owning Utilities and Attaching Entities may enter contracts concerning the cost, maintenance, and use of poles.
 - (1) Any contract purporting to take effect after the effective date of this Rule shall be submitted to the Commission for review pursuant to 30 V.S.A. § 229.
 - (2) Unexpired contracts on the effective date of this Rule between Attaching Entities and Pole-Owning Utilities shall remain in effect until they expire according to their terms.
- (B) Investigations. The Commission may investigate the terms and rental rate of any proposed or existing contract between Attaching Entities and Pole-Owning Utilities. Where the public interest so requires, the Commission may order that terms or rates be modified.
- (C) Expiring Contracts. When a pole-attachment contract has expired or is about to expire, and an Attaching Entity cannot reach agreement on a rental rate with the Pole-Owning Utility, any party may petition the Commission to set an attachment rate. In reaching a decision the Commission may consider the terms and conditions of previous contracts between the parties and the rental calculation in section 3.706.
- (D) Public Records. A pole-attachment contract in the possession of the Commission is a public record unless the Commission orders otherwise, for good cause shown.

3.705 Joint Ownership of Poles

- (A) Joint Ownership. Two or more utilities may own poles jointly. The cost, maintenance, and use of such poles may be controlled by a contract under Section 3.704 and shall be reviewed as required under that section.
- (B) Shared Revenue. Unless otherwise provided by contract, each owner of a jointly-owned pole shall receive rental payment from each Attaching Entity in accordance with its ownership interest.

3.706 Rental Calculation

- (A) Scope. This section establishes pole-attachment rates for inclusion in the tariffs of Pole-Owning Utilities.

- (1) Unless the Commission rules to the contrary in a particular case, rates under this section do not apply where the rights of the Attaching Entity and the Pole-Owning Utility are defined by a contract (including a Joint Ownership Agreement or Joint Use Agreement).
 - (2) Where an electric utility or an incumbent local exchange carrier cannot reach agreement on a rental rate with the Pole Owner, either party may petition the Commission to set a rate. The Commission may consider the terms and conditions of any previous attachment or joint-use contracts between the parties in setting a rate not inconsistent with the principles of this Rule.
- (B) Single Rate. Each Pole-Owning Utility shall calculate a single pole rental rate and shall include that rate in its pole-attachment tariff.
- (C) Rental Charge Formula. The annual rental rate per pole shall be calculated using the following formula:

$$\left[\begin{array}{c} \text{Annual} \\ \text{Rental} \\ \text{per Pole} \end{array} \right] = \left[\frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \right] \times \left[\begin{array}{c} \text{Net} \\ \text{Investment} \\ \text{per Pole} \end{array} \right] \times \left[\begin{array}{c} \text{Carrying} \\ \text{Cost} \\ \text{Ratio} \end{array} \right]$$

(D) Definitions.

- (1) Except where otherwise controlled by contract, “Space Occupied by Attachment” is defined as follows:
 - (a) If the Pole-Owning Utility has conducted a study of the space actually occupied by a particular type of attachment (including safety space) on the Pole-Owning Utility’s poles, then an amount defined in a tariff, but in no event less than the amounts specified in paragraph (b) below.
 - (b) Otherwise, “Space Occupied by Attachment” equals 1.25 feet.
- (2) “Total Usable Space” is defined as follows:
 - (a) If the Pole-Owning Utility has conducted a study of its average pole height, total usable space means the Pole-Owning Utility’s average pole height less the unusable space on the pole. Any study may be based upon plant records or field inspections. Poles not suitable for bearing an Attaching Entity’s attachments shall be excluded. The 40-inch safe space below the electric attachments, as required by the National Electrical Safety Code, shall be counted as usable space.
 - (b) “Unusable space” shall mean the 6 feet buried in the ground plus the first 18 feet above ground and below the first attachment, unless the Pole-Owning Utility has conducted a study of the actual average amount buried or the clearance above ground below the first attachment.

- (c) Otherwise, total usable space shall be 16 feet, which is based upon a presumed pole height of 40 feet, less 24 feet presumed unusable space.
- (3) “Net Investment per Pole” is that part of the pole account attributable to poles physically located in Vermont, and adjusted for depreciation and deferred taxes. This net amount is then divided by the number of poles owned by the Pole-Ownning Utility in Vermont.
- (4) “Carrying Cost Ratio” is the allowable revenue for each dollar of net pole investment, taking into account annual maintenance expense, depreciation, administrative expense, taxes, and return on net investment.
- (E) Associated Companies. A Pole-Ownning Utility that also engages in the provision of another utility service or cable service shall impute to its costs of providing such other services (and charge any affiliate, subsidiary, or associated company engaged in the provision of such other services) an amount equal to the pole-attachment rate for which a company providing such other service would be liable under this section if it were not the pole owner.

3.707 Non-Exclusive Right of Access

- (A) Right of Access. A Pole-Ownning Utility shall provide all Attaching Entities non-discriminatory access to any pole, support structure, or right-of-way in which it has an ownership interest.
 - (1) A Pole-Ownning Utility may deny access for reasons of safety, reliability, or generally applicable and accepted engineering standards.
 - (2) A Pole-Ownning Utility may deny access on a non-discriminatory basis where there is insufficient capacity. Insufficient capacity shall not be legitimate grounds for denial of access where Make-Ready work can be used to increase or create capacity.
 - (3) A Pole-Ownning Utility may not favor itself over any Attaching Entity, nor deny access based on a reservation of space for its own use. However, a Pole-Ownning Utility may favor itself when it has a need for space on a pole or poles in order to provide its core service and when it also has a bona fide development plan that shows a need for additional attachments to the poles in question within three years of the date of adoption of the plan, provided that the Pole-Ownning Utility may not so favor itself for more than three years in any ten-year period.
 - (4) Broadband Service Providers and wireless telephone providers shall be authorized to have antennas installed within or above the electric supply space. All such installations of Broadband Service Provider and wireless telephone provider facilities on utility poles must conform to the most recent edition of the NESC as well as the other rules and practices in 3.701(C). Installation and maintenance work in this area shall be done only by the electric utility or Outside Contractors as provided in 3.708(L).
 - (5) Termination demarcation. An Attaching Entity may designate one or more

utility poles as its customer interface location for purposes of utility service delivery to the Attaching Entity.

- (B) Exclusive Access Prohibited. No utility, cable television system, or telecommunications carrier subject to the Commission's jurisdiction may enter into a contract with a property owner that provides exclusive access to poles or rights-of-way inside or upon commercial or residential buildings.
- (C) Burden. In any proceeding before the Commission or a court concerning a denial of access to a pole or right-of-way, the party contending that access is not available shall have the burden of making a *prima facie* case.

3.708 Applications for Attachment and Make-Ready Work

- (A) Application. Applications for attachment by an Attaching Entity to a Pole-Owning Utility shall be submitted in writing and must provide the Pole-Owning Utility with the information necessary under the Pole-Owning Utility's procedures, as specified in requirements that are made available in writing by the Pole-Owning Utility, to begin to survey the facility to which attachment is sought.
 - (1) A Pole-Owning Utility shall determine within 10 business days after receipt of an application whether the application is complete and notify the new Attaching Entity of that decision. If the Pole-Owning Utility does not respond within 10 business days after receipt of the application, or if the Pole-Owning Utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the Pole-Owning Utility timely notifies the new Attaching Entity that its attachment application is not complete, then it must specify all reasons for finding it incomplete.
 - (2) Any resubmitted application need only address the Pole-Owning Utility's reasons for finding the application incomplete and shall be deemed complete within five business days after its resubmission, unless the Pole-Owning Utility specifies to the new Attaching Entity which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons.
- (B) Initial Action and Survey.
 - (1) A Pole-Owning Utility shall complete a Make-Ready survey within 45 days (or within 60 days in the case of larger orders as described in paragraph (E) of this section) from the date the completed application is received, unless otherwise agreed to by the parties. If a Pole-Owning Utility intends to deny access to poles under 3.707(A)(1), (2), or (3), it shall state with specificity the grounds for the denial.

- (2) Where the new Attaching Entity has conducted a survey subject to paragraph (M)(2) of this section, a Pole-Owning Utility can elect to satisfy its survey obligations in this paragraph (B) and retain control over the Make-Ready process by notifying existing Attaching Entities of its intent to use the survey conducted by the new Attaching Entity and by providing a copy of the survey to the existing Attaching Entities within the time period set in paragraph (B)(1) of this section. A Pole-Owning Utility relying only on a survey conducted by the new Attaching Entity to satisfy all its obligations under this paragraph (B), and is not performing any additional survey work of its own, shall have 15 days to make such a notification to existing Attaching Entities rather than a 45-day survey period.
 - (3) The Pole-Owning Utility's tariff may require prepayment, or other reasonable assurance of credit worthiness, before performing a Make-Ready survey.
- (C) Estimate, New Attaching Entity's Authorization and Payment.
- (1) A Pole-Owning Utility shall present to a new Attaching Entity a detailed estimate of charges to perform all necessary Make-Ready work within 60 days (or within 75 days in the case of larger orders as described in paragraph (E) of this section) of the date the completed application is received, unless otherwise agreed to by the parties. In the case where a new Attaching Entity has performed a survey, the Pole-Owning Entity shall present the estimate within 21 days of receipt unless otherwise agreed to by the parties. Upon request from the new Attaching Entity, the estimate shall itemize the work on a pole-by-pole basis and identify the necessary Make-Ready work as Simple or Complex. The estimate should also identify any permits that are required in connection with the Make-Ready work.
 - (a) A Pole-Owning Utility may withdraw an outstanding estimate of charges to perform Make-Ready work beginning 14 days after the estimate is presented unless otherwise agreed by the parties.
 - (b) A new Attaching Entity shall accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.
 - (2) The costs of a Make-Ready survey shall be payable even if the entity decides not to go forward with construction of its attachments.
- (D) Make-Ready. Upon receipt of payment specified in paragraph (C)(1)(b) of this section, a Pole-Owning Utility shall notify within 5 business days and in writing all known Attaching Entities that may be affected by the Make-Ready.
- (1) The notice shall:
 - (a) Specify where and what Make-Ready work will be performed.
 - (b) Set a date for completion of Make-Ready work that is no later than 60 days after notification is sent (or up to 105 days in the case of larger orders as described in paragraph (E) of this section).

- (c) State that any Attaching Entity with an existing attachment may modify the attachment consistent with the specified Make-Ready work before the date set for completion.
 - (d) State that if Make-Ready work is not completed by the completion date set by the Pole-Owning Utility in paragraph (D)(1)(b) in this section, the new Attaching Entity may complete the Make-Ready work specified pursuant to paragraph (L)(2)(b) of this section.
 - (e) State the name, telephone number, and email address of a person to contact for more information about the Make-Ready procedure.
 - (2) Once a Pole-Owning Utility provides the notices described in this section, it then must provide the new Attaching Entity with a copy of the notices and the existing Attaching Entities' contact information and address(es) where the Pole-Owning Utility sent the notices. The Pole-Owning Utility shall also notify the new Attaching Entity when applications for any required permits have been submitted and when those permits are received. The new Attaching Entity shall be responsible for coordinating with existing Attaching Entities to encourage their completion of Make-Ready work by the dates set forth by the Pole-Owning Utility in paragraph (D)(1)(b) of this section.
 - (3) A Pole-Owning Utility shall complete its Make-Ready work by the same dates set for existing Attaching Entities in paragraph (D)(1)(b) of this section.
- (E) Time to Complete Make-Ready. For purposes of compliance with the time periods in this section:
 - (1) A Pole-Owning Utility shall apply the time periods described in paragraphs (B) through (D) of this section to surveys and Make-Ready work on the lesser of 300 poles or 0.5 percent of the Pole-Owning Utility's poles in Vermont.
 - (2) A Pole-Owning Utility may add 15 days to the survey period described in paragraph (B) of this section to larger orders up to the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.
 - (3) A Pole-Owning Utility may add 45 days to the Make-Ready periods described in paragraph (D) of this section if Make-Ready work is needed on the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.
 - (4) A Pole-Owning Utility shall in good faith negotiate the Make-Ready period if the number of poles requiring Make-Ready work exceeds the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.
 - (5) A Pole-Owning Utility may treat multiple requests from a single new Attaching Entity as one request when the requests are filed within 30 days of one another.
 - (6) All time periods stated above may be modified by agreement between the Pole-Owning Utility and the new Attaching Entity.

- (7) The applicable time periods shall not be extended solely because a pole is jointly owned.

(F) Dual Utility Poles.

- (1) In the event Make-Ready work requires a replacement utility pole to be installed, the Pole-Owning Utility shall have 90 days from the date of installation of the new utility pole to remove the obsolete pole.
- (2) If an existing Attaching Entity does not complete Make-Ready work in the time specified in paragraphs (D) or (E) of this section, the Pole-Owning Utility or the new Attaching Entity may utilize the Self-Help Remedy specified in paragraph (L) of this section to move the existing attachment from the existing pole to the new pole. Costs associated with moving the existing attachment under these circumstances shall be paid by the existing Attaching Entity.
- (3) Except as provided in paragraph (I)(1), if the Make-Ready work for a new Attaching Entity requires replacing poles, all costs associated with the removal of the existing utility pole shall be paid by the new Attaching Entity.
- (4) If removal of the existing utility pole is shown to be infeasible for good and sufficient cause, a Pole-Owning Utility shall have six months from the date of installation of the new utility pole and the transfer of all cables and equipment to the new utility pole to remove the existing utility pole.

(G) Deviation from Time to Complete Make-Ready.

- (1) A Pole-Owning Utility may deviate from the time limits specified in this section during performance of Make-Ready for good and sufficient cause that renders it infeasible for the utility to complete Make-Ready within the time limits specified in this section. A Pole-Owning Utility that so deviates shall immediately notify, in writing, the new Attaching Entity and affected existing Attaching Entity and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The Pole-Owning Utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete Make-Ready on the affected poles and shall resume Make-Ready without discrimination when it returns to routine operations. A Pole-Owning Utility cannot delay completion of Make-Ready because of a preexisting violation on an affected pole not caused by the new Attaching Entity.
- (2) An existing Attaching Entity may deviate from the time limits specified in this section during performance of complex Make-Ready for reasons of safety or service interruption that renders it infeasible for the existing Attaching Entity to complete Complex Make-Ready within the time limits specified in this section. An existing Attaching Entity that so deviates shall immediately notify, in writing, the new Attaching Entity and other affected existing Attaching Entities and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 90 days from the date the notices described in paragraph (D) of this

section are sent by the utility (or up to 120 days in the case of larger orders described in paragraph (E) of this section). The existing Attaching Entity shall not deviate from the time limits specified in this section for a period longer than necessary to complete Make-Ready on the affected poles.

- (H) Least Cost Methods. In completing Make-Ready work, a Pole-Owning Utility shall pursue reasonable least-cost alternatives, including space-saving techniques currently relied upon by that utility; however, it shall at all times maintain compliance with the National Electrical Safety Code, state and local laws and regulations, and Pole-Owning Utility construction standards.
- (I) Payments. After completion of Make-Ready work, the new Attaching Entity shall pay the cost of all Make-Ready work actually required for the attachment that has not been pre-paid, or shall be refunded any excess of the pre-payment not actually required.
- (1) The new Attaching Entity shall not be responsible for any portion of the Make-Ready expense that is attributable to the correction of pre-existing violations, unless the new Attaching Entity has caused a portion of the violation.
 - (2) The costs of any modification that is also specifically used by other existing Attaching Entities shall be apportioned accordingly.
 - (3) Where a Pole-Owning Utility currently relies upon one or more techniques referenced in this paragraph (I) as part of its normal operating procedures but refuses to utilize such techniques for the benefit of the new Attaching Entity, that entity shall only be responsible for the cost that would have been incurred had such techniques been utilized (provided such use would have been in accordance with generally accepted engineering practices).
 - (4) Where Make-Ready work has not been completed consistent with paragraphs (B) through (E) of this section, within 30 days of the expiration of the applicable timeline, the Pole-Owning Utility and any existing Attaching Entities shall refund to the new Attaching Entity any portion of payment received for the applicable Make-Ready work to the new Attaching Entity for any work not yet completed.
- (J) Lowest Attachment Point. No Attaching Entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest facility wishes to relocate its existing facilities to a lower allowable point of attachment so that the new Attaching Entity will be above all existing facilities, the owner of such existing facilities shall pay one-half of the cost of moving its facilities.
- (K) Outside Contractors.
- (1) All Pole-Owning Utilities and Attaching Entities shall maintain and keep up-to-date a reasonably sufficient list of contractors they authorize to perform Make-Ready surveys and work, or other specified tasks upon their equipment (“Outside Contractor List”). The list shall identify the contractors that are authorized to

perform complex Make-Ready work.

- (2) Within one month of adoption of this Rule for entities already holding a Certificate of Public Good or within one month of receiving a Certificate of Public Good to operate in the state, a Pole-Owning Utility or Attaching Entity shall submit its Outside Contractor List to the Commission and the Department, preferably in ePUC, as directed by the Commission. This list shall be updated as needed to maintain current contractor information. Upon request, the Commission or Department will provide the applicable Outside Contractor List to an Attaching Entity.
- (3) If an entity requesting attachment hires a contractor for purposes specified in this paragraph (K), the requesting entity shall choose from the authorized contractors on the Outside Contractor List.
 - (a) If a Pole-Owning Utility does not provide a list of authorized contractors or no contractor on the Outside Contractor List is available within a reasonable time period, the new Attaching Entity may choose its own qualified contractor that meets the requirements in paragraph (K)(5) of this section. When choosing a contractor that is not on the Outside Contractor List, the new Attaching Entity must certify to the Pole-Owning Utility that its contractor meets the minimum qualifications described in paragraph (K)(5) of this section when providing notices required by paragraph (L) and (M) of this section.
 - (b) The Pole-Owning Utility may disqualify any contractor chosen by the new Attaching Entity that is not on the applicable Outside Contractor List, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (K)(5) of this section or to meet the Pole-Owning Utility's publicly available and commercially reasonable safety or reliability standards. The Pole-Owning Utility must provide notice of its objection in compliance with the notice requirements of paragraph (L) and (M) of this section.
- (4) If the Pole-Owning Utility is not an electric utility and there are electric lines on the pole, the Pole-Owning Utility shall provide the operator of the electric lines with advance notice of the work to be done and shall allow the electric utility to join or take over the supervision and control of the work of the outside contractor in the electrical space. Pole-Owning Utilities and existing Attaching Entities shall refund amounts collected from Attaching Entities for work subsequently completed by outside contractors.
- (5) Pole-Owning Utilities and Attaching Entities must ensure that the Outside Contractor List meets the following minimum requirements:
 - (a) The contractor must follow National Electrical Safety Code (NESC) guidelines;

- (b) The contractor acknowledges that it knows how to read and follow licensed-engineered pole designs for Make-Ready, as required;
- (c) The contractor must follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the Requirements of the Occupational and Safety Health Administration (OSHA) rules;
- (d) The contractor must follow any procedures, standards, codes, and regulations that the Pole-Owning Utility requires of its own contractors;
- (e) The contractor must meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the Pole-Owning Utility; and
- (f) The contractor is adequately insured or will establish an adequate performance bond for the Make-Ready it will perform, including work it will perform on facilities owned by existing Attaching Entities.

(L) Self-Help Remedy.

- (1) If a Pole-Owning Utility does not complete survey work in the time specified in paragraph (B) of this section, the new Attaching Entity may hire a contractor from the Outside Contractor List.
 - (a) A new Attaching Entity shall permit the affected Pole-Owning Utility and existing Attaching Entities to be present for any field inspection conducted as part of the new Attaching Entity's survey.
 - (b) A new Attaching Entity shall use commercially reasonable efforts to provide the affected Pole-Owning Utility and existing Attaching Entities with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new Attaching Entity.
- (2) If a Pole-Owning Utility does not complete Make-Ready work in the time specified in paragraph (D) of this section, the new Attaching Entity may hire a contractor from the Outside Contractor List to complete the Make-Ready.
 - (a) A new Attaching Entity shall permit the Pole-Owning Utility and existing Attaching Entities to be present for any Make-Ready work. A new Attaching Entity shall use commercially reasonable efforts to provide the affected utility and existing Attaching Entities with advance notice of not less than 5 days of the impending Make-Ready. The notice shall include the date and time of the Make-Ready, a description of the work involved, and the name of the contractor being used by the new Attaching Entity.
 - (b) Self-Help Post Make-Ready Timeline. A new Attaching Entity shall notify the affected Pole-Owning Utility and existing Attaching Entities within 15 days after completion of self-help Make-Ready work for a particular application. The notice shall provide the affected Pole-Owning Utility and

existing Attaching Entities at least 90 days from receipt in which to inspect the Make-Ready. The affected Pole-Owning Utility and existing Attaching Entities have 14 days after completion of their inspection to notify the Attaching Entity of any damage or code violation caused by Make-Ready conducted by the Attaching Entity on their equipment. If the Pole-Owning Utility or existing Attaching Entity notifies the Attaching Entity of such damage or code violations, then the Pole-Owning Utility or existing Attaching Entity shall provide adequate documentation of the damage or the code violations. The Pole-Owning Utility or existing Attaching Entity may either complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage or code violations or require the new Attaching Entity to fix the damage or code violations at its expense within 14 days following notice from the Pole-Owning Utility or existing Attaching Entity.

(M) One-Touch Make-Ready Option. For attachments involving Simple Make-Ready, new Attaching Entities may elect to proceed with the process described in this paragraph instead of the attachment process described in paragraphs (B) through (E) of this section. It is the responsibility of the new Attaching Entity to ensure that its contractor determines whether the Make-Ready requested in an attachment application is Simple Make-Ready.

(1) Attachment Application.

- (a) An application for attachment shall be submitted in writing and must provide the Pole-Owning Utility with the information necessary under its procedures to grant or deny the application.
- (b) A new Attaching Entity electing the one-touch Make-Ready process must indicate that it intends to perform one-touch Make-Ready in its attachment application and must identify the Simple Make-Ready it will perform.
- (c) A Pole-Owning Utility shall complete review of an attachment application and grant or deny a new Attaching Entity's application within 15 days of receipt of the application (or within 30 days, in the case of larger orders as described in paragraph (E) of this section). Within its review and response period, the Pole-Owning Utility may object to the designation by the new Attaching Entity that the attachment only requires Simple Make-Ready work. The Pole-Owning Utility's objection must be specific, in writing, and include all relevant information and evidence supporting its good-faith conclusion.

(2) Surveys. The new Attaching Entity is responsible for all surveys required as part of the one-touch Make-Ready process and shall use a contractor as specified in paragraph (K) of this section.

- (a) A new Attaching Entity may need to perform a survey to determine whether Make-Ready work is simple or complex before filing an application for one-touch Make-Ready.

- (b) The new Attaching Entity shall permit the Pole-Owning Utility and any existing Attaching Entities on the affected poles to be present for any field inspection conducted as part of the new Attaching Entity's surveys. The new Attaching Entity shall use commercially reasonable efforts to provide the Pole-Owning Utility and affected existing Attaching Entities with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and the name of the contractor performing the surveys.
- (3) Make-Ready. If the new Attaching Entity's attachment application is approved and if it has provided 15 days' prior written notice of the Make-Ready to the affected Pole-Owning Utility and existing Attaching Entities, the new Attaching Entity may proceed with Make-Ready using a contractor in the manner specified in paragraph (K) of this section.
- (a) Prior written notice shall include the date and time of the Make-Ready, a description of the work involved, and the name of the contractor being used by the new Attaching Entity, and shall provide the affected Pole-Owning Utility and existing Attaching Entities a reasonable opportunity to be present for any Make-Ready.
 - (b) The new Attaching Entity shall immediately notify an affected Pole-Owning Utility or existing Attaching Entity if Make-Ready damages the equipment of a Pole-Owning Utility or an existing Attaching Entity or causes an outage that is reasonably likely to interrupt the service of a Pole-Owning Utility or existing Attaching Entity. Upon receiving notice from the new Attaching Entity, the Pole-Owning Utility or existing Attaching Entity may either:
 - (i) Complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage; or
 - (ii) Require the new Attaching Entity to fix the damage at its expense immediately following notice from the Pole-Owning Utility or existing Attaching Entity.
 - (c) In performing Make-Ready, if the Attaching Entity or Pole-Owning Utility determines that Make-Ready classified as Simple Make-Ready is actually Complex Make-Ready, then that specific Make-Ready must be halted and the determining party must provide immediate notice to the other parties of its determination and the affected poles. The affected Make-Ready shall then be governed by paragraphs (B) through (E) of this section, and the Pole-Owning Utility shall provide notice required by paragraph (D) of this section as soon as reasonably practicable.
- (4) Post-Make-Ready Timeline. A new Attaching Entity shall notify the affected Pole-Owning Utility and existing Attaching Entities within 15 days after completion of Make-Ready work for a particular application. The notice shall provide the affected Pole-Owning Utility and existing Attaching Entities at least

90 days from receipt in which to inspect the Make-Ready. The affected Pole-Owning Utility and existing Attaching Entities have 14 days after completion of their inspection to notify the new Attaching Entity of any damage or code violation caused by Make-Ready conducted by the new Attaching Entity on their equipment. If the Pole-Owning Utility or existing Attaching Entity notifies the new Attaching Entity of such damage or code violations, then the Pole-Owning Utility or existing Attaching Entity shall provide adequate documentation of the damage or the code violations. The Pole-Owning Utility or existing Attaching Entity may either complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage or code violations or require the new Attaching Entity to fix the damage or code violations at its expense within 14 days following notice from the Pole-Owning Utility or existing Attaching Entity.

- (N) Jointly Owned Utility Poles. Pole-Owning Utilities that jointly own utility poles shall coordinate and cooperate with each other. When a complete application is received, the joint Pole-Owning Utilities shall inform new Attaching Entities which joint owner is responsible for completing Make-Ready work consistent with paragraphs (B) through (E) and (K) of this section. Joint Pole-Owning Utilities shall provide any received applications to the responsible pole owner.
- (O) Overlapping. Any overlapping must be done in accordance with generally accepted engineering standards. The Attaching Entity shall give ten days' notice to the Pole-Owning Utility before beginning such overlapping.
- (1) No additional application or payment is required for an Attaching Entity to overlap more of its facilities to its existing attached facilities, unless it necessitates additional costs such as guying or additional pole strength, occupies additional attachment space on the pole, or provides a different utility service than the existing facilities.
 - (2) If the new facilities deliver a utility service that ought to pay a higher rental under this Rule, the Attaching Entity shall begin paying the higher rate.
 - (3) If the new facilities are owned by someone other than the existing Attaching Entity, then both shall pay rental, each at the rate designated by this Rule.
- (P) Attachment Protocol. Each Pole-Owning Utility shall include in its pole-attachment tariff required by Section 3.703 a reasonable protocol under which it will allow attachments by Broadband Service Providers or wireless telephone providers in areas of its poles that are not ordinarily used for attachments or for equipment that is unusually large. Such protocol may include the provision of a separate pole for the attachment of this equipment if:
- (1) the proposed attachment cannot be made to the existing pole consistent with 3.701(C);
 - (2) the separate pole is requested by the Attaching Entity; or

- (3) the provision of the separate pole is less expensive than the proposed attachment to the existing pole.

3.709 Notices from Pole-Ownning Utility

- (A) A Pole-Ownning Utility shall provide each Attaching Entity 60 days' written notice prior to:
 - (1) removing facilities or terminating service to those facilities, where that action arises out of a rate, term, or condition of the pole-attachment agreement; or
 - (2) increasing pole-attachment rates by contract or tariff.
- (B) Unless otherwise agreed, a Pole-Ownning Utility shall provide an Attaching Entity 30 days' written notice before modifying any of the Attaching Entity's facilities. Less than 30 days' notice may be provided for routine maintenance, modification in response to emergencies, or modifications that are beyond the reasonable control of the Pole-Ownning Utility, provided that the notice is reasonable under the circumstances and as prompt as practicable.

3.710 Complaint Procedures

- (A) A party aggrieved by a violation of these rules may file a complaint or petition with the Commission. The Commission shall take final action within 30 days after the filing of the complaint or petition.
 - (1) Prior to filing a complaint or petition, the aggrieved party shall call the contact for the party with whom there is a dispute and give notice that they are planning to file a complaint with the Commission.
 - (2) A complaint or petition shall contain sufficient information to indicate:
 - (a) the facts underlying the complaint or petition;
 - (b) the harm that is resulting or could result to the aggrieved party due to the situation;
 - (c) a description of the steps that the parties have taken to resolve the situation prior to the filing of the complaint or petition; and
 - (d) the times that both parties will be available for a conference call within 10 days of the date the complaint or petition is filed.
- (B) An Attaching Entity aggrieved by a proposed change to a Pole-Ownning Utility's tariff may intervene in any rate case following such a tariff filing.

3.711 Effective Date

This rule shall take effect on July 10, 2020.