

Attachment A

65-407 PUBLIC UTILITIES COMMISSION

[Revised] Chapter 880

1. DEFINITIONS

- A. **Assigned Space.** "Assigned space" on a utility pole is the space assigned by this Rule or by an order in a proceeding under 35-A M.R.S.A. § 711 for the attachments of conductors, ~~or~~ circuitry, or other facilities by electric utilities, telephone utilities, voice service providers, dark fiber providers, wholesale competitive local exchange carriers, and cable television systems, consistent with the provisions of the National Electric Safety Code or other reasonable practices of electric and telephone utilities and cable television systems. Assigned space does not include common space, including the neutral zone. Space which may be available on a joint-use utility pole for an additional attacher shall not be considered assigned space until an additional attachment is made, but shall instead be considered common space.
- B. **Cable Television System.** A "cable television system" is defined by 47 U.S.C. § 522(6).
- C. **Common Space.** The "common space" of a joint-use utility pole is space used by all of the joint users in common and consists of the portion of a pole beneath ground level, the portion from ground level to the lowest place on the pole at which a telecommunications circuit may be attached, plus all but 6 inches of the neutral zone. The common space is equal to the length of the pole minus the assigned spaces for each attacher. In addition, for the purpose of assigning and allocating space and costs on a joint-use pole, space which may be available for an additional attachment, and which would become assigned space if an additional attachment were made, shall be considered common space until such an attachment is made.
- D. **Dark Fiber Provider.** A "dark fiber provider" is defined in 35-A M.R.S.A. § 102(4-A).
- ~~D.E.~~ **Electric Utility.** An "electric utility" is defined in 35-A M.R.S.A. § 102(5).
- E.F. **Joint-Use Utility Pole.** A "joint-use utility pole" is a utility pole on which there are circuit, ~~or~~ electric conductor, or other facility attachments by an electric utility, a telephone utility, a voice service provider, a dark fiber provider, a wholesale competitive local exchange carrier, and a cable television system or any two of those attachers.
- E.G. **Neutral Zone.** The neutral zone is a 40-inch (three and one-third feet) space, or such other amount as required by the National Electric Safety Code for the purpose of safety, on which no electric or communications circuitry may be attached. It is located between the areas to which electric conductors and communication circuitry (telephone and cable television) may be attached. All but six inches of the "neutral zone" shall be considered part of the common space of a utility pole.
- H. **Non-utility Entity.** A "non-utility entity" is a voice service provider, dark fiber provider,

wholesale competitive local exchange carrier, or cable television system.

I. **Requesting Party.** A “requesting party” is a telephone utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier, or cable television system that is seeking to attach conductors, circuitry, or other facilities to one or more utility poles.

~~¶~~J. **Responsibility Requirement.** The "responsibility requirement" of a joint user is the portion of joint-use pole costs for which the joint user is responsible as established by the costs required to be included by Section ~~5~~4, the assignment and allocation of those costs required by Section ~~6~~5 and the rates described in Section ~~7~~6. A joint user's responsibility requirement may be satisfied by sole ownership, joint ownership or the payment of rates, as described in Sections 6 and 8.

~~¶~~K. **Standard Joint-Use Utility Pole.** A "standard joint-use utility pole" is a pole which is 35 feet long, including the portion of the pole which is in the ground.

~~¶~~L. **Telephone Utility.** A "telephone utility" is defined in 35-A M.R.S.A. § 102(19).

~~¶~~M. **Utility Pole.** A "utility pole" or a "pole" is a pole in the public way or on private property used to carry conductors, ~~and~~ circuitry, ~~and other facilities~~ of electric utilities, telephone utilities, voice service providers, dark fiber providers, wholesale competitive local exchange carriers, cable television systems or any combination thereof. A utility pole may be owned by an electric utility, by a telephone utility, a voice service provider, a dark fiber provider, a wholesale competitive local exchange carrier, or a cable television system, or jointly by any combination thereof.

N. **Voice Service Provider.** A “voice service provider” is defined in 35-A M.R.S.A. § 102(21-A).

O. **Wholesale Competitive Local Exchange Carrier.** A “wholesale competitive local exchange carrier” is defined in 35-A M.R.S.A. § 102(24).

2. APPLICABILITY OF RULE

The provisions of this Rule shall apply to all proceedings under 35-A M.R.S.A. § 711, ~~including any proceeding pending at the time the Rule becomes effective, except as provided in Section 13(A).~~

3. TERMS AND CONDITIONS

A. **Reasonable terms and conditions.** In any proceeding under 35-A M.R.S.A. § 711, the following terms and conditions shall be presumed to be reasonable for the joint use of utility poles:

1. **Request.** A request to attach facilities to a utility pole shall be in writing and must provide the utility with the information necessary under its procedures to begin to survey the poles to which attachment is sought.

2. **Survey.** A utility shall respond to a requesting party within 45 days of receipt of a request to attach facilities to its utility poles (or within 60 days, in the case of

larger orders as described in paragraph A(7) of this section). This response may be a notification that the utility has completed a survey of poles for which access has been requested.

3. **Denial.** A utility may deny a requesting party access to its poles on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. A denial must be in writing and must be issued within 45 days of the utility's receipt of the request. The 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 a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

4. **Estimate.** Where a request for access is not denied, a utility shall present to a requesting party an estimate of charges to perform all necessary make-ready work within 14 days of providing the survey required by paragraph A(2) of this section, or in the case where a requesting party's contractor has performed a survey, within 14 days of receipt by the utility of such survey.

(a) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

(b) A cable operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

5. **Make-ready.** Upon receipt of payment specified in paragraph A(4)(b) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(a) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 60 days after notification is sent (or 105 days in the case of larger orders, as described in paragraph A(7)(c) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility has and may assert a right to 15 additional days to complete make-ready.

(v) State that if make-ready is not completed by the completion date set by the utility (or, if the utility has asserted its 15-day right of control, 15

days later), the cable operator or telecommunications carrier requesting access may complete the specified make-ready.

(vi) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(b) For wireless attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph A(7)(c) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility has and may assert a right to 15 additional days to complete make-ready.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

6. For wireless attachments above the communications space, a utility shall ensure that make-ready is completed by the date set by the utility in paragraph A(5)(b)(ii) of this section (or, if the utility has asserted its 15-day right of control, 15 days later).

7. For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline described in paragraphs A(1) through A(6) of this section to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

(b) A utility may add 15 days to the survey period described in paragraph A(2) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(c) A utility may add 45 days to the make-ready periods described in paragraph A(5) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(d) A utility shall negotiate in good faith the timing of all requests for pole attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(e) A utility may treat multiple requests from a single cable operator or telecommunications carrier as one request when the requests are filed within 30 days of one another.

8. A 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 the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the requesting party and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

9. If a utility fails to respond as specified in paragraphs A(2) or A(3) of this section, a cable operator or telecommunications carrier requesting attachment in the communications space may hire a contractor to complete a survey. If make-ready is not complete by the date specified in paragraph A(5) of this section, a cable operator or telecommunications carrier requesting attachment in the communications space may hire a contractor to complete the make-ready:

(a) Immediately, if the utility has failed to assert its right to perform remaining make-ready work by notifying the requesting attacher that it will do so; or

(b) After 15 days if the utility has asserted its right to perform make-ready by the date specified in paragraph A(5) of this section and has failed to complete make-ready.

10. Contractors for survey and make-ready.

(a) A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready in the communications space on its utility poles in cases where the utility has failed to meet deadlines specified in paragraphs A(2) and A(5) of this section.

(b) If a requesting party hires a contractor for purposes specified in A(9) of this section, the requesting party shall choose from among a utility's list of authorized contractors.

(c) A requesting party that hires a contractor for survey or make-ready work shall provide a utility with a reasonable opportunity for a utility representative to accompany and consult with the authorized contractor and the requesting party.

(d) The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

11. A utility shall provide a non-utility entity no less than 60 days written notice prior to:

(a) Any increase in pole attachment rates; or

(b) Any modification of facilities other than routine maintenance or modification in response to emergencies.

12. Cable operators shall notify pole owners upon offering telecommunications services.

B. Unreasonable terms and conditions. In any proceeding under 35-A M.R.S.A. § 711, the following terms and conditions shall be presumed to be unreasonable for the joint-use of utility poles:

1. A prohibition against attachers placing their cables below the cables of a telephone utility where space is not available above the telephone utility's cables along the majority of the route of attachment.

2. A prohibition on boxing poles (i.e., placing cables on both the road side and the field side of a pole) which can be safely accessed by bucket trucks, ladders or emergency equipment.

3. A prohibition on using extension arms to clear obstacles, improve alignment, or provide space that would not otherwise be available without a replacement pole.

C. Presumptions rebuttable. A party to a dispute under 35-A M.R.S.A. § 711 may overcome the presumption that a term or condition described in paragraph A or B of this section is reasonable or unreasonable by presenting clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result.

34. OVERVIEW OF SECTIONS 4, 5, 6, 7 AND 8

Sections 4, 5, 6, 7, and 8 below describe the calculation of rates and costs (or cost responsibility) related to the joint use of utility poles ~~for pole attachments~~ which shall be presumed to be reasonable in any dispute under 35-A M.R.S.A. § 711. ~~under this Rule~~. Section 54 describes the calculation of the cost of service for a standard (35-foot) utility pole. Section 65 describes how these costs will be allocated among users of joint-use poles. Section 76 describes the actual calculation of pole attachment rates, based on the costs calculated under Section 54 and the allocations calculated under Section 65. Pole attachment rates are applicable to standard and to all other joint-use poles. Section 87 describes other costs which are not included in Section 54 or in the pole attachment rate calculated under Section 76, including charges for excess height, and the manner in which these costs shall be charged to attachers. A party to a dispute under 35-A M.R.S.A. § 711 may overcome the presumption that rates or costs calculated in accordance with Sections 5, 6, 7, and 8 are reasonable by presenting clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable result.

45. DETERMINATION OF TOTAL COST OF SERVICE FOR A STANDARD-SIZE JOINT USE UTILITY POLE

- A. **Use of Rate Case Practice.** The cost of service or revenue requirement for a standard size joint-use utility pole shall be determined in the same manner as in a general rate case proceeding for an electric or telephone utility, including the use of a test year. The investments and expenses which shall be included and excluded are described in this section.
- B. **Use of Cost Information Applicable to Standard Poles.** The investment, expense and revenue quantities required by this section for calculating the cost of service for a standard-size (35-foot) utility pole shall be limited to those applicable to the owner's investment in 30 and 35-foot poles.
- C. **Determination of Amounts of Investments, Expenses and Revenues for Standard Poles.** Where the investment, expense or revenue amounts, or amounts applicable to the subclass of standard poles, which are required by this section are not provided by the utility's or non-utility entity's ~~cable system's~~ books of accounts, those amounts may be calculated by any method designed to produce a reasonably accurate result. These methods may include the use of subaccount information, sampling techniques, cost studies, apportionment ratios developed from historic or current equipment costs, expenses or quantities which are applied to broader cost categories, including system-wide costs, or similar techniques. It is not necessary to determine separately the cost of service for the subclass of standard utility poles which are actually jointly-used.
- D. **Investments.**
 - 1. **Included Investments.** The following investments shall be included:
 - a. The owner's net investment in 30 and 35-foot utility poles;
 - b. An electric utility's net investment in guy wires, anchors, supporting poles, and other equipment which support 30 and 35-foot poles and

which are reasonably attributable to mutual use by both the electric utility and ~~the telephone utility, by both the electric utility and the cable television system, or by and all three~~ attachers.

c. ~~In the case of a~~ telephone utility's rate for an electric utility, its net investment in guy wires, anchors, supporting poles, and other equipment which support 30 and 35-foot poles and which are reasonably attributable to mutual use by both the telephone utility and ~~the electric utility~~ all attachers.

~~d. In the case of a telephone utility's rate for a cable television system, its investment in guy wires, anchors, supporting poles, and other equipment which support 30 and 35 foot poles and which are reasonably attributable to mutual use by telephone utilities and cable television systems.~~

2. **Excluded Investments.** The following investments shall not be included:

- a. 40-foot, 45-foot and taller utility poles and associated guy wires, supporting anchors, poles and other supporting equipment;
- b. Guy wires, anchors, supporting poles and other supporting equipment which are used to balance only the load of the attacher's own conductors, circuits and other attachments;
- c. Conductors and circuitry, cross arms, transformers, street lighting fixtures and other attachments or appurtenances used by only one of the joint users;
- d. Investments in standard utility poles and supporting equipment for standard poles which were provided by contributions in aid of construction from customers or from other attachers, including equipment installed as part of rearrangement ("make ready") work;
- e. Any unreasonable or imprudently-incurred investment.

3. **Deduction for Retirement Revenue.** When, under an excess height agreement or pursuant to Section 7(C) of this Rule, an owner receives revenue to recover the cost of a 30 or 35 foot pole which must be replaced, because of the need for a taller pole, the amount received shall be deducted from the owner's net investment in 30 and 35 foot poles described in subsection D(1)(a) above.

E. **Cost of Capital.**

1. **For Utilities.** The cost of capital for an electric or a telephone utility shall be calculated using its current embedded cost of debt and, in the case of an investor-owned utility, the cost of equity and capital structure actually found in or reasonably ascertainable from (e.g., in a stipulation) its last general rate proceeding. If that proceeding was not concluded within 5 years of the commencement of the proceeding under 35-A M.R.S.A. § 711, the Commission shall determine an interim cost of equity solely for the purpose of the proceeding under 35-A M.R.S.A. § 711, pending the utility's next rate proceeding. The

Commission may use the cost of equity findings or stipulations in recent general rate proceedings for other comparable utilities, applied to a reasonable capital structure and the known characteristics of the utility in question.

2. **For Non-utility Entities**~~Cable Television Systems~~. If a non-utility entity ~~cable television system~~ owns any joint-use poles, its cost of capital shall be determined in an adjudicatory proceeding pursuant to 35-A M.R.S.A. § 711 or, if the non-utility entity ~~cable television system~~ agrees, its cost of capital may be set at the average cost of capital of the telephone and electric utility owning joint-use poles in the non-utility entity ~~cable television system~~'s service territory.
3. **Income Tax Adjustment.** The cost of equity shall be adjusted to account for the effect of federal and state corporate income taxes.

F. **Expenses and Revenues.**

1. **Included Expenses.** The following expenses shall be included in a utility's or non-utility entity ~~cable television system~~'s expenses for joint-use poles:
 - a. Depreciation;
 - b. Operations and maintenance expense reasonably attributable to standard poles, except for tree trimming and brush control;
 - c. Property taxes;
 - d. Administrative expenses, including billing, reasonably attributable to the administration of joint-use poles;
2. **Excluded Expenses.** The following expenses shall be excluded, deducted or adjusted:
 - a. Operations and maintenance and other expense related to the equipment described in paragraph D(2)(a), (b) and (c) above;
 - b. Tree trimming, brush control and rearrangement ("make-ready") expense;
 - c. Administrative and overhead expenses which are not related to the provision of attachment space on joint-use poles (for example, marketing expense, customer service expense, meter reading and billing expense which should be assignable to the provision of electric and telephone services);
 - d. Any unreasonable or imprudently incurred expense.
3. **Adjustments.** Adjustments shall be made to account for any expense which provides no direct or indirect benefit to a user of the pole other than the entity incurring the expense.
4. **Other Revenues.** Electric and telephone utilities shall deduct from their pole revenue requirements that portion of revenues received as support charges from

customers served by joint-use line extensions which are reasonably attributable to costs for standard poles (but not conductor, circuitry and cross-arm costs).

G. Carrying Cost; Cost Per Pole

The information provided by a joint-pole owner in a proceeding under 35-A M.R.S.A. § 711 shall include (1) the annual cost per pole for each investment and expense category required to be included by this section, (2) the total annual cost of service per pole and (3) the annual carrying cost stated as a percentage of net investment in standard poles or joint-use poles, or the equivalent of this information.

~~56.~~ **ASSIGNMENT AND ALLOCATION AMONG JOINT USERS OF JOINT-USE UTILITY POLE COSTS**

A. General Findings and Policy. The Commission recognizes that joint-use utility poles are more cost-effective than separate-use poles and that entities attaching to these poles benefit from those cost savings. It is the policy of this Commission that each attacher to joint-use poles shall pay for the costs of assigned space on joint-use poles in proportion to the vertical space which is necessary for its attachments; and that joint users should pay for the common space (including the neutral zone) on joint-use poles in proportion to the stand-alone cost of each attacher if it were to construct its own sole-use poles. The Commission finds that the allocations required by this Section, in combination with the mitigating effects of Sections 10 and 11 of this Chapter, take into account the interests of the subscribers of cable television systems as well as the customers of electric and telephone utilities.

B. Standard Length Poles.

For the assignments and the allocation formula which is set forth below in this Section, the standard pole length shall be 35 feet for each of the following joint uses:

- by an electric utility, a telephone utility, and a ~~cable television system~~ non-utility entity;
- by an electric utility and a telephone utility;
- by an electric utility and a non-utility entity ~~cable television system~~;

For joint use by a telephone utility and a non-utility entity, the standard pole length shall be 30 feet.

C. Standard Assigned Space for Attachments of Conductors and Circuitry.

1. **Electric Utility Space.** Electric utilities shall be assigned a standard four plus one-half foot of space in the neutral zone, for a total of four and one-half feet of space unless a different amount is established as provided in subparagraph C(4) below;
2. **Telephone Utility Space.** Telephone utilities shall be assigned a standard two feet of space, unless a different amount is established as provided in

subparagraph C(4) below;

3. **Non-utility Entities, Cable Television Space.** ~~Cable television systems.~~ Non-utility entities shall be assigned a standard one foot of space unless it is established that a non-utility entity~~cable television system~~ uses a different amount as provided in subparagraph C(4) below.
4. **Evidence of Different Space Assignments.** In an adjudicatory proceeding, a party may establish that different (non-standard) amounts of attached space should be assigned, based on measurements of attached space on representative and statistically significant samples of standard joint-use poles. Separate samples shall be used for (1) poles used by an electric utility, a telephone utility and a non-utility entity~~cable television system~~, and (2) for poles used by an electric utility and a telephone utility. Separate samples may be used for other categories of two-user poles (e.g., electric utility and CATV~~a non-utility entity, or and a telephone utility and a non-utility entity~~~~CATV~~).

D. **Common Space; Allocation.**

1. **Common Space on Standard Length 35-Foot Poles.** On a standard length pole (35 feet) the common space (which includes all but 6 inches of the neutral zone) shall be equal to 35 feet minus the total amount of assigned space for each of the attachment combinations listed below, as follows:

three attachments	27 1/2'	
electric and telephone	28 1/2'	
electric and CATV <u>non-utility entity</u>		29 1/2'

2. **Common Space on Standard Length 30-Foot Poles.** On a standard length pole (30 feet) used by a telephone utility and a ~~cable television system~~non-utility entity, common space shall equal 27 feet (30 feet minus 3 feet).
3. **Calculation of Common Space on Poles with Nonstandard Assignments.** Common space on standard poles for which alternative attached space assignments have been made pursuant to subsection C(4) above shall equal the standard pole length (of 35 or 30 feet as designated in paragraphs 1 and 2 above) minus the total assigned space.
4. **Standard Allocation.** The standard allocation of common space on a standard 35-foot pole used by three attachers shall be:

Electric	41%	
Telephone	34%	
<u>Non-Utility Entity</u> CATV		25%

The standard allocation of common space on a standard 35-foot pole used by an electric utility and a telephone utility is:

Electric	55%
Telephone	45%

The standard allocation of common space on a standard 35-foot pole used by an electric utility and a cable television system is:

Electric	62%	
<u>Non-Utility Entity</u> CATV		38%

The standard allocation of common space on a standard 30-foot pole used by a telephone utility and a cable television system is:

Telephone	57%	
<u>Non-Utility Entity</u> CATV		43%

E. Overall Allocation.

- General Formula.** The cost responsibility for each attaching entity shall equal the sum of the assigned space for that entity (as determined under subsection C above) plus the allocation of common space (as stated in subsection D). This amount shall be divided by the length of the standard pole for the particular combination of attachers (35 or 30 feet) in order to calculate an attacher's percentage responsibility.

$$\text{OVERALL ALLOCATION PERCENTAGE} = \frac{\text{ASSIGNED SPACE} + \text{ALLOCATION OF COMMON SPACE}}{\text{LENGTH OF POLE}}$$

- Separate Allocations.** Separate overall allocations shall be determined for poles with three joint users and for poles with the applicable combinations of two joint users.

67. CALCULATION OF RATES OR RESPONSIBILITY REQUIREMENTS FOR STANDARD JOINT-USE POLES

- In General.** The rate or responsibility requirement for each attacher to a joint-use pole shall equal the total cost of service for a standard pole, as established pursuant to Section 4(G) above, multiplied by the overall percentage allocation established pursuant to Section 5(E) above. The rate shall be per pole and shall apply to all joint-use poles, including both standard and taller poles.

$$\text{RATE OR RESPONSIBILITY} = \text{PER POLE COST OF SERVICE } (\$ 4(G)) \times \text{PERCENT ALLOCATION } (\$ 5(E))$$

- Separate Rates for Two-User Poles and Three-User Poles.** Separate rates or responsibility requirements shall be established for poles with three attachers and for poles with the applicable combinations of two attachers.

78. SEPARATE CHARGES

Owners of joint-use utility poles shall charge attachers separately for the following expenses and investments:

- A. **Make-Ready Work.** An additional attacher or an existing user placing an additional attachment shall be charged reasonable expenses incurred in surveying existing poles or in moving conductors, circuitry or other equipment attached to a joint-use utility pole, for the purpose of making space available for the additional attachment ("rearrangements" or "make-ready" work). The user requiring additional space on an existing utility pole shall be presumed to be the attacher which must incur or be charged for the cost of make-ready work, unless the attachers otherwise agree. If the make-ready expenses are caused by a municipality requesting space on the poles, each current user shall each be responsible for its own costs for rearranging its facilities.
- B. **Tree Trimming; Brush Control.** ~~Non-utility entities~~ ~~Cable television systems~~ occupying the same poles as the telephone utility shall be charged forty percent of expenses borne by a telephone utility for tree trimming and brush control, multiplied by the ratio of ~~non-utility entity~~ ~~cable television~~ attachments to utility poles occupied by telephone utilities in the same municipality or municipalities served by the ~~non-utility entity~~ ~~cable television system~~. Telephone utilities shall not charge electric utilities, and electric utilities shall not charge telephone utilities or ~~non-utility entities~~ ~~cable television systems~~, for tree trimming or brush control unless the attacher demonstrates a benefit to another attacher from either the tree trimming or brush control that it has performed and establishes a reasonable quantification of that benefit.
- C. **Excess Height.**
1. **Solely Assigned; Excess Height.** When an existing joint user of a standard pole or a proposed additional attacher requires additional space which is not available on that pole, and the pole must be replaced by a taller pole, the existing or proposed joint-user causing the need for replacement shall pay for (i) the difference between the cost for the taller pole and supporting equipment such as guys and anchors and the cost for a new standard pole and supporting equipment in the same location, plus (ii) a reasonable estimate of the net book value of the pole and supporting equipment, if any, which has been replaced.
 2. **Mutual Assignment.** When a taller than standard pole is required to provide minimum clearances, or when more space for attachments than is available on a standard pole is required by two or more joint users, the cost (i) of the additional height of the excess height pole and supporting equipment and (ii) the reasonable estimate of the net book value of replaced pole and supporting equipment, if any, shall be shared equally among the users requiring the replacement.

82. JOINT RESPONSIBILITY AGREEMENTS

Joint-users of poles may enter agreements which establish joint responsibility for joint-user poles in their common service territories and which may eliminate or reduce the need for the payment of direct compensation. Joint responsibility may include the joint ownership of poles, sole ownership of poles in an agreed proportion, compensation or any combination thereof, provided that the net effect of the agreement assigns responsibility for joint-use utility pole costs in amounts generally consistent with this Chapter. In determining whether an existing agreement is generally consistent with this Chapter, the parties may take into account the burden of litigating a rate or charges before the Commission and the overall net effect of any reasonably likely change on their respective ratepayers or customers.

910. RATE OR RESPONSIBILITY REQUIREMENTS FOR CABLE TELEVISION SYSTEMS TO ELECTRIC AND TELEPHONE UTILITIES SERVING THE SAME AREA

Where a ~~non-utility entity cable television system~~ attaches to poles not owned by itself, but which are jointly used by an electric utility and a telephone utility, the electric and telephone utilities shall set their respective rates for the ~~non-utility entity cable company~~ based on the relative overall ownership interest of the two utilities in joint-use poles. The electric utility rate established for the ~~non-utility entity cable television system~~ under Section 5 shall be multiplied by the electric utility's overall ownership percentage in poles in the whole area served jointly by it and the telephone utility. The telephone utility rate established for the ~~non-utility entity cable television system~~ under Section 5 shall be multiplied by the telephone utility's overall ownership percentage in poles for the whole area served jointly by it and the electric utility. For each pole used by a ~~non-utility entity cable television system~~, the ~~non-utility entity cable television system~~ shall pay the electric utility rate calculated under this section to the electric utility and the telephone utility rate calculated under this section to the telephone utility, regardless of the electric utility and telephone utility ownership interests in the pole.

EXAMPLE

1. 100% electric utility rate for ~~non-utility entity CATV~~ pole attachment (Section 5) = \$12/yr.
2. 100% telephone utility rate for ~~non-utility entity CATV~~ pole attachment (Section 5) = \$10/yr.
3. Electric utility ownership percentage = 55%.
4. Telephone utility ownership percentage = 45%.
5. Apportioned electric utility rate (Section 7) = $\$12 \times .55 = \6.60 .
6. Apportioned telephone utility rate (Section 7) = $\$10 \times .45 = \4.50 .
7. Total combined amount paid by ~~non-utility entity cable system~~ to electric utility and telephone utility = Step 5 + Step 6 = \$11.10.

1011. PHASE-IN OF RATES OR RESPONSIBILITY REQUIREMENTS

The combined annual increase in rates or responsibility requirements for any user of joint-use poles (from all entities charging for attachments, as described in Section 9) that is ordered by the Commission or that results from an agreement entered subsequent to the date of this Rule shall not be greater than \$4.80 (40¢ per month) per customer of that attacher. Any increase which is greater than \$4.80 per customer per year of the attacher shall be phased in over the number of years that is necessary to limit the annual per-customer increase to \$4.80 or less. Unless exempted pursuant to Section 15, an attacher eligible for the phase-in required by this section shall report annually its number of customers to the owner(s) of the poles or other attachers which charge for attachment.

1112. REVENUE-NEUTRAL RATE ADJUSTMENTS FOR UTILITIES

A. Flow Through of Changes in Revenues From Non-utility entities ~~Cable Television Systems~~

Increases in pole attachment revenues received by an electric or telephone utility from a ~~non-utility entity cable television system~~ resulting from an order of the Commission under 35-A M.R.S.A. § 711 or from an agreement between an electric or telephone utility and a ~~non-utility entity cable television system~~ shall be flowed through to customers of the utility by a revenue-neutral change in the utility's rates as provided in this Section. Following initial implementation of a new rate as described above, increases in revenues which are attributable solely to increased costs of the owning or rate-charging utility, rather than to changes in the inclusion or exclusion of costs contained in a pole attachment rate or to changes in the allocation of costs, shall not be subject to the flow-through provisions of this section.

B. Immediate Flow-Through

The rate change required by this Section may be implemented by the utility at the time of the increase in revenues. If that option is chosen, a telephone utility shall make the change in its rate for basic service for residential customers and an electric utility shall make the change in its rates for residential classes.

C. Delayed Flow-Through; Suspense Account.

- 1. Timing.** The utility may choose to delay the rate change required by this Section until the conclusion of its next general rate case. If the next general rate case is not commenced (or notice provided under Chapter 120, § 6) within four years of the change in revenues, the utility's rate shall be changed not later than 5 years following the effective date of the rate change to the ~~non-utility entity cable television system~~. If the revised rate to the ~~non-utility entity cable television system~~ is phased in pursuant to Section 10 of this Chapter, the time periods described above shall commence on the date of the initial phase of the rate change.
- 2. Rate Design.** If the change in rates is made at the conclusion of a general rate case, the change shall apply to the rates for services or to customer classes as ordered in that case. If the change is made outside of a general rate case, the change shall apply to rates for residential customers of the utility, as specified in subsection B.
- 3. Suspense Account.** A utility which delays implementation of a rate change pursuant to this section shall defer all increased revenues in a suspense account and the rate change to its customers shall take into account the deferred amounts.

1113. RESOLUTION OF DISPUTES ARISING OVER TERMS AND CONDITIONS ESTABLISHED BY THE COMMISSION

If the Commission enters an order pursuant to 35-A M.R.S.A. § 711 which orders that joint use

be permitted or reasonable terms and conditions for that joint use (including ones governing make-ready surveys and make-ready work), and if a disagreement arises between joint users concerning the applicability or enforcement of the order requiring joint use or the terms and conditions included in the Order, a joint user may use the procedure provided for informal complaints provided in Chapter 110, § 1102 of the Commission's Rules.

1314. APPLICABILITY OF RULE AND COMPENSATION ORDERS TO PRIOR PERIODS

A. Applicability of Provisions of Rule

The provisions of this Rule concerning the calculation of pole attachment rates or responsibility requirements do not apply to the calculation of rates or responsibility requirements for periods prior to the effective date of the Rule. The Commission may, however, in its discretion, apply principles identical or similar to the principles set forth in the Rule in resolving disputes about the proper compensation for periods prior to the effective date of the Rule.

B. Applicability of Compensation Order in Cases Pending on Effective of Rule

In a case under 35-A M.R.S.A. § 711 that is filed with the Commission prior to the effective date of this Rule, an order issued by the Commission that establishes a rate, compensation or a responsibility requirement for joint-users of utility poles shall require recovery for periods following the effective date of the Rule, and may, in the Commission's discretion, require recovery for periods prior to the effective date of the Rule.

C. Applicability of Compensation Order in Cases Filed After Effective Date of Rule

In a case under 35-A M.R.S.A. § 711 that is filed with the Commission after the effective date of this Rule, an order issued by the Commission that establishes a rate, compensation or a responsibility requirement for joint-users of utility poles shall require recovery for periods following the filing of the complaint under section 711 and may, in the Commission's discretion, require recovery for periods prior to the filing of the complaint.

1415. PROCEDURE FOR SECTION 711 PROCEEDINGS

~~A. **Complaint, Adjudicatory Proceeding.** If an agreement cannot be reached, an electric utility, a telephone utility or a non-utility entity cable television system which is an owner, a joint user or a requesting party proposed joint user of utility poles may, pursuant to Chapter 110, § 12(B) of the Commission's Rules, file an informal complaint with the Commission Director of Telecommunications and Water Industries to commence an adjudicatory proceeding to determine whether joint use shall be permitted or to establish reasonable compensation, rates, terms and conditions for pole attachments or other joint use. The Commission shall proceed pursuant to Chapter 110, Parts 7-10 of these Rules.~~

B. Findings; Order. If the ~~Commission~~ Director of Telecommunications and Water Industries finds that the parties have failed to reach an agreement and that the public convenience and necessity require the use by one public utility or cable television system non-utility entity of the poles belonging to another public utility or cable television system non-utility entity, and that joint use will not result in irreparable injury to the

owner or other users of such poles, the ~~Director Commission~~ may issue an order requiring joint use, establishing reasonable terms and conditions for the joint use and/or compensation. The Director must resolve a dispute within 7 business days of the filing of the relevant complaint.

Any order requiring joint use or setting terms and conditions shall take into account the interests of the ~~subscribers of the affected cable television system as well as the~~ customers of the affected public utilities and non-utility entities. An order requiring compensation shall be governed by the provisions of Section ~~34~~ through ~~41~~12 of this Chapter.

~~C. Time Limit in Cable System Cases. The Commission's final order in a proceeding to establish compensation or terms and conditions in a case in which the failure to agree is between a cable television system and a utility shall be issued no more than 360 days after the complaint is filed with the Commission.~~

C. An order of the Director of Telecommunications and Water Industries may be appealed to the Commission within 21 days of the date of that order.

15. WAIVER

To the extent permitted by law, for good cause, the Commission may permit a temporary or permanent deviation, waiver or exemption from any provision of this Chapter. A finding that compliance would be unduly burdensome or that the deviation or waiver will not impair the policies of this Chapter may constitute a finding of good cause. ~~No waiver may be granted to the time limit contained in Section 14(C).~~
