

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-Owning 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-Owning 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-Owning 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 ~~Owner~~-Owning 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 who 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-Owning 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 that the Provider will abide by the terms and conditions of this Rule and any applicable pole attachment

¹ See 47 C.F.R. Part 15.

tariffs, including any protocols filed pursuant to section 3.708(K) of this Rule and Orders issued by the Commission.

(D) Communications Space means the lower usable space on a utility pole typically reserved for low-voltage (anything other than “high-voltage” or 110v) 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.

~~(E)~~

(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) 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.

(F)I) Pole Attachment or Attachment means an attachment or addition by an Attaching Entity to a pole or right-of-way.

(G)J) 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.

3.708 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 its procedures to begin to survey the facility to which attachment is sought.

~~(B) Responsibility. During the Make-ready process, the Pole Owner is presumed to have control of the pole and is responsible for meeting all time limits in this section. Pre-existing Attaching Entities are responsible for completing their work within a time that allows the Pole Owner to comply with the requirements of this section.~~

~~(1) If the work on a pole is not completed within the allowed time because of delays caused by another entity attached to the pole, and the Pole Owner is liable for any penalties or damages because of the delay, the Entity causing the delay shall indemnify the Pole Owner for penalty or damages paid.~~

~~(2) The allowed time periods and deadlines in this section apply unless otherwise agreed by the various parties, and except for extraordinary circumstances and~~

~~reasons beyond the Pole Owner's control.~~

- ~~(3) If an application involves poles owned by multiple owners, then the longest applicable time limit applies.~~

(B) Initial Action and Survey. Any required

~~(4)(1) A Pole-Owning Utility shall complete a Make-ready survey is to be completed within 45 days (or within 60 days in the time period set out in case of larger orders as described in paragraph (E) of this subsection, starting section) from the date the completed application is received, unless otherwise agreed by the parties. The Make-ready survey period shall depend on the number of poles or attachments involved, as a percentage of the total number of poles owned. 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.~~

~~(5) Make-ready survey work on fewer than 0.5% if a company's poles or attachments shall be completed within 60 days.~~

~~(2) Make-ready survey work on 0.5% or more but less than 3% of a company's poles or attachments shall be completed within 90 days. Where the applicant has conducted a survey, a Pole-Owning Utility can elect to satisfy its survey obligations in this paragraph (B) by notifying affected Attaching Entities of its intent to use the survey conducted by the applicant and by providing a copy of the survey to the affected Attaching Entities within the time period set in paragraph (B)(1) of this section. A Pole-Owning Utility relying on a survey conducted by the applicant to satisfy all its obligations under this paragraph (B) shall have 15 days to make such a notification to affected Attaching Entities rather than a 45 day survey period.~~

~~(6)~~

~~(7) Make-ready survey work on 3% or more of a company's poles or attachments shall be completed within a time to be negotiated between all the affected owners and attachers. The time shall be negotiated in good faith and shall be reasonable in light of subsections (1) and (2), above.~~

~~(C) Applicant's Authorization and Payment. After completion of the Make-ready survey, the entity seeking attachment shall authorize the Pole-Owning Utility to complete Make-ready work and shall make all required advance payments.~~

~~(1) Unless otherwise agreed, Make-ready work, permits, inspection, and rearrangement costs shall be based on a reasonable estimate of costs and shall be paid in advance.~~

~~(2)(3) The Pole-Owning Utility's tariff may require prepayment, or other reasonable assurance of credit worthiness, before performing the Make-ready survey.~~

(C) Estimate, Applicant's Authorization and Payment.

(1) After completion of the Make-ready survey, a Pole-Owning Utility shall present to an applicant an estimate of charges to perform all necessary Make-ready work, within 14 days of providing the survey required by paragraph (C)(1) of this section, or in the case where an applicant has performed a survey, within 14 days

of receipt by the Pole-Owning Utility of such survey.

- (i) A Pole-Owning Utility may withdraw an outstanding estimate of charges to perform Make-ready work beginning 14 days after the estimate is presented.
- (ii) An applicant shall accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.
- (2) Unless otherwise agreed, within 14 days of receipt, the applicant shall accept a valid estimate and make payment before any Make-ready work is performed.
- (3) The costs of thea Make-ready survey shall be payable even if the entity decides not to go forward with construction of its attachments.

- Make-ready. Upon receipt of payment specified in paragraph (C)(2) of this section, a
- (D) Time to Complete Make-ready. The Pole-Owning Utility and shall notify immediately and in writing all known Attaching Entities already attached to that may be affected by the pole shall complete necessary Make-ready work within the periods allowed by this section. Make-ready.
- (1) The Make-ready completion period shall depend on the number of poles or attachments involved, as a percentage of the total number of poles owned.
 - (1) TheFor attachments in the Communications Space, the notice shall:
 - (i) Specify where and what Make-ready work on fewer will be performed.
 - (a)(ii) Set a date for completion of Make-ready work in the Communications Space that is no later than 0.5% of a company's poles or attachments shall be completed within 12030 days of authorization and payment after notification is sent (or up to 75 days in the case of larger orders as described in paragraph (E) of this section).
 - (b) Make-ready work on 0.5% or more but less than 3% of a company's poles or attachments shall be completed within 180 days of authorization and payment.
 - (iii) 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.
 - (c) State that if Make-ready work on 3% or more of a company's poles or attachments shall be completed within a time to be negotiated in good faith and shall be reasonable in light of subsections (a) and (b), above.
 - (2) Time shall be measured from the later to occur if:
 - (a) receipt of the authorization and payment (if any) under subsection (D); and
 - (iv) all applicable state or municipal permits have been obtained. If the permitting authority requires participation is not completed by the completion date set by the Pole-Owning Utility in paragraph (E)(1)(ii) in this section, the latternew Attaching Entity may complete the Make-ready work specified pursuant to paragraph (E)(1)(i) of this section.
 - (v) State the name, telephone number, and email address of a person to contact for more information about the Make-ready procedure.
 - (2) For attachments above the Communications Space, the notice shall:
 - (i) Specify where and what Make-ready work will be performed.
 - (ii) Set a date for completion of Make-ready work that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (E) of this section).

- (iii) 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.
 - (iv) State that the Pole-Owning Utility may assert its right to 15 additional days to complete Make-ready work.
 - (v) State that if Make-ready work is not completed by the completion date set by the Pole-Owning Utility in paragraph (E)(2)(ii) in this section (or, if the Pole-Owning Utility has asserted its 15-day right, 15 days later), the new Attaching Entity may complete the Make-ready work specified pursuant to paragraph (E)(1)(i) of this section.
 - (vi) State the name, telephone number, and email address of a person to contact for more information about the Make-ready procedure.
 - (3) 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 where the Pole-Owning Utility sent the notices. 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 (E)(1)(ii) of this section for Communications Space attachments or paragraph (E)(2)(ii) of this section for attachments above the Communications Space.
 - (4) A Pole-Owning Utility shall complete its Make-ready work in the Communications Space by the same dates set for existing Attaching Entities in paragraph (E)(1)(ii) of this section or its Make-ready work above the Communications Space by the same dates for existing Attaching Entities in paragraph (E)(2)(ii) of this section (or if the Pole-Owning Utility has asserted its 15-day right of control, 15 days later).
- (E) Time to Complete Make-ready. -aetFor 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 all requests for attachment up to 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 3000 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 to larger orders up to the lesser of 3000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.
 - (4) A Pole-Owning Utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 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) A Pole-Owning Utility may add up to 45 days to the Make-ready periods described in paragraph (D) of this section if a force majeure event interrupts

compliance.

- ~~(b)~~(F) Deviation from Time to Complete Make-ready. A Pole-Owning Utility or Attaching Entity may deviate from the time limits specified in paragraphs (D) and (E) of this section during performance of Make-ready for good and sufficient cause that renders it infeasible for the Pole-Owning Utility or Attaching Entity to complete the Make-ready work within the prescribed time period. A Pole-Owning Utility or Attaching Entity that so deviates shall immediately notify, in writing, the applicant and other affected Attaching Entities, and shall include the reason for and date and duration of the deviation. The Pole-Owning Utility or attaching entity shall deviate from the time limits specified in this Rule 3.708 for a period no longer than necessary and shall resume Make-ready work without discrimination when it returns to routine operations.
- ~~(E)~~(G) 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 constructions standards.
- ~~(F)~~ Outside Contractors. ~~All Pole-Owning Utilities and Attaching Entities shall maintain a list of contractors whom they allow to perform Make-ready surveys, Make-ready, installation or maintenance, or other specified tasks upon their equipment. In the event that a Pole-Owning Utility cannot perform such work in a timely manner, the Attaching Entity may demand that outside contractors be sought. The Pole-Owning Utility shall thereupon exercise best efforts to hire one or more contractors from the list to perform such work, under the supervision and control of the Pole-Owning Utility. If the Pole-Owning Utility is not an electric utility and there are electric lines on the pole, the pole owner 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.~~
- ~~(G)~~(H) Payments. After completion of Make-ready work, the applicant 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 applicant shall not be responsible for any portion of the Make-ready expense that is attributable to the correction of pre-existing violations, unless the applicant has ~~caused~~ 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 ~~subsection (F) of this paragraph (H)~~ this paragraph (H) as part of its normal operating procedures but refuses to utilize such ~~techniques~~ techniques for the benefit of the ~~entity seeking attachment~~ applicant, 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).

- (I) 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.
- (J) Outside Contractors. All Pole-Owning Utilities and Attaching Entities shall maintain and kept up-to-date a reasonably sufficient list of contractors they authorize to perform Make-ready surveys, Make-ready, installation or maintenance, or other specified tasks upon their equipment.
- (1) If a Pole-Owning Utility does not complete survey work in the time specified in paragraph (B) of this section, the entity requesting attachment in the Communications Space may hire a contractor to complete such work so long as it provides the Pole-Owning Utility 10 days' written notice of its intent to do so.
 - (2) If a Pole-Owning Utility does not complete Make-ready work in the time specified in paragraph (D) of this section, the entity requesting attachment in the Communications Space may hire a contractor to complete the Make-ready:
 - (i) Immediately, if the Pole-Owning Utility has failed to assert its right to perform remaining Make-ready work by notifying the requesting party that it will do so; or
 - (ii) After 15 days if the Pole-Owning Utility has asserted its right to perform Make-ready by the date specified in paragraph (D) of this section and has failed to complete it.
 - (3) If a Pole-Owning Utility does not complete Make-ready work in the time specified in paragraph (D) of this section, the entity requesting attachment above the Communications Space may hire a contractor to complete the Make-ready:
 - (i) Immediately, if the Pole-Owning Utility has failed to assert its right to perform remaining Make-ready work by notifying the requesting party that it will do so; or
 - (ii) After 15 days if the Pole-Owning Utility has asserted its right to perform Make-ready by the date specified in paragraph (D) of this section and has failed to complete it.
 - (iii) The contractor hired to complete the Make-ready work above the Communications Space must utilize and certify to the Pole-Owning Utility that its contractor is qualified to work in the space above the Communications Space and also meets the minimum qualifications described in paragraph (J)(7) of this section when providing notices required by paragraph (D) of this section
 - (4) If an entity requesting attachment hires a contractor for purposes specified in this paragraph (J), the requesting entity shall choose from the Pole-Owning Utility's list of authorized contractors.
 - (5) If a Pole-Owning Utility does not provide a list of authorized contractors or no Pole-Owning Utility contractor is available within a reasonable time period, the new attacher may choose its own qualified contractor that meets the requirements in paragraph (J)(7) of this section. When choosing a contractor that is not on a

Pole-Owning Utility-provided list, the new attacher must certify to the Pole-Owning Utility that its contractor meets the minimum qualifications described in paragraph (J)(7) of this section when providing notices required by paragraph (D) of this section.

(i) The Pole-Owning Utility may disqualify any contractor chosen by the new attacher that is not on a list provided by the Pole-Owning Utility, 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 (J)(7) 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 (E) of this section and must identify at least one available, qualified contractor.

(6) 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. Pole-Owning Utilities shall refund amounts collected from Attaching Entities for work subsequently completed by outside contractors.

(7) Pole-Owning Utilities and new attachers must ensure that the list of and selected contractors meet the following minimum requirements:

(i) The contractor must follow National Electrical Safety Code (NESC) guidelines;

(ii) The contractor acknowledges that it knows how to read and follow licensed-engineered pole designs for Make-ready, as required;

(iii) The contractor must follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the Requirements of the Occupational and Safety Health Administration (OSHA) rules;

(iv) The contractor must meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the Pole-Owning Utility; and

(v) 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..

(K) One-Touch Make-ready Option. For attachments involving Make-ready, applicants may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (B) through (E) of this section.

(1) Attachment Application.

(i) 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.

(ii) A new attachment applicant electing the one-touch Make-ready process must indicate that it intends to perform one-touch Make-ready in its attachment application.

(iii) A Pole-Owning Utility shall complete review of an attachment application

and respond to an applicant 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.

(2) Surveys. The applicant for attachment is responsible for all surveys required as part of the one-touch Make-ready process and shall use a contractor as specified in paragraph (J) of this section.

(i) The applicant 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 applicant's surveys. The applicant 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 name of the contractor performing the surveys.

(3) Make-ready. If the applicant'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 applicant may proceed with Make-ready using a contractor in the manner specified in paragraph (J) of this section.

(i) Prior written notice shall include the date and time of the Make-ready, a description of the work involved, the name of the contractor being used by the applicant, and provide the affected Pole-Owning Utility and existing Attaching Entities a reasonable opportunity to be present for any Make-ready.

(ii) The applicant shall 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 applicant, the Pole-Owning Utility or existing Attaching Entity may either:

a. Complete any necessary remedial work and bill the applicant for the reasonable costs related to fixing the damage; or

b. Require the applicant to fix the damage at its expense immediately following notice from the Pole-Owning Utility or existing Attaching Entity.

(4) Post-Make-ready Timeline. A new attacher shall notify the affected Pole-Owning Utility and existing Attaching Entities within 15 days after completion of Make-ready on a particular pole. 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 attacher of any damage or code violation cause by Make-ready conducted by the new attacher on their equipment. If the Pole-Owning Utility or existing Attaching Entity notifies the new attacher 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 attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the Pole-Owning Utility or existing Attaching Entity.

(L) Dual Utility Poles.

- (1) In the event Make-ready work requires a replacement utility pole to be installed, a Pole-Owning Utility shall have 90 days from the date of installation of a new utility pole and completion of the transfer of all wires and applicable repairs to:

 - (i) Transfer the Pole-Owning Utility's wires to the new pole; and
 - (ii) Remove the existing utility pole.
- (2) All costs associated with the removal of an existing utility pole shall be paid by the new attacher.
- (3) 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.

~~(H)~~(M) Overlashing. Any overlashing 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 overlashing.

- (1) No additional application or payment is required for an Attaching Entity to overlash 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.

~~(I) 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 it 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.~~

~~(J)~~(N) 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 a the separate pole is less expensive than the proposed attachment to the existing pole.

(3)