

Federal and State Laws/Proceedings Pertaining to Pole Attachments
(Legislative Council – 2/7/2019)

47 USCA § 224 (b) and (c) [Communications Act of 1934]

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

Update to federal rules: In August 2018, the FCC adopted “one-touch make ready” rules.

- **Applicable to simple wireline pole attachments in the communications space of utility poles (i.e., the middle section of most poles)**
- **Allows new attaching entities to move existing attachments and perform all other make ready work required for new attachments.**
- **Approval timeframe reduced from 45 to 15 days**
- **Encourages new attachers to complete all work in one trip (rather than 60 days)**
- **[For non-OTMR attachments, make ready timeframes shortened]¹**
- **No pre-approval for overlashing**

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall *certify* to the Commission that—

- (A) it regulates such rates, terms, and conditions; and

¹ Small cell pole-top attachments. However, DAS (distributed antenna systems), which are generally installed in the unusable pole sections below the communications space, not addressed by FCC.

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the *subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.*

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30 VSA § 209(i) (PSB Jurisdiction; General Scope)

(i) Pole attachments; broadband. For the purposes of Board rules on attachments to poles owned by companies subject to regulation under this title, *broadband service providers* shall be considered “attaching entities” with equivalent rights to attach facilities as those provided to “attaching entities” in the rules, regardless of whether such broadband providers offer a service subject to the jurisdiction of the Board. The Board shall adopt rules in accordance with 3 V.S.A. chapter 25 to further implement this section. *The rules shall be aimed at furthering the State's interest in ubiquitous deployment of mobile telecommunications and broadband services within the State.*

PSB Rule 3.700 – Pole Attachments

- **Tariffs (rates, terms, and conditions; just and reasonable)**
- **Contracts for Cost, Maintenance, and Use of Poles**
- **Joint Ownership of Poles**
- **Rental Calculation (rental charge formula)**
- **Non-exclusive Right of Access**
- **Applications for Attachment and Make-ready Work**
- **Notices from Pole-Ownning Utilities**
- **Complaint Procedures (PUC has 180 days)**

Relevant Proceedings Before the Public Utility Commission:

- **PUC proceeding concerning pole attachment rate formula.**
- **January 24, 2019 – DPS Petition to Amend Pole Attachment Rules Filed with the PUC**
 - Self-help remedy and a one-touch make-ready (OTMR) for new attachers
 - Timelines revised
 - Pole-owner approved contractors
 - OTMR – new attachers control surveys, notices, and make-ready work