

APPENDIX A**Revised Rules**

Part 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 1 -- PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1402 is amended by revising paragraph (c) and by adding new paragraphs (i), (j), (k), (l) and (m) to read as follows:

Sec. 1.1402 Definitions.

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(c) With respect to poles, the term usable space means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment. With respect to conduit, the term usable space means space within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications services.

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(i) The term conduit means a pipe placed in the ground in which cables and/or wires may be installed.

(j) The term conduit system means structures that provide physical protection for cable and/or wires that allow new cables to be added along a route.

(k) The term duct means a single enclosed raceway for conductors, cable and/or wire.

(l) With respect to poles, the term unusable space means the space on a utility pole below the

usable space, including the amount required to set the depth of the pole. With respect to conduit, the term unusable space means space involved in the construction of a conduit system, without which there would be no usable space, and maintenance ducts reserved for the benefit of all conduit users.

(m) The term attaching entity includes cable operators, telecommunications carriers, incumbent local exchange carriers, utilities and governmental entities providing cable or telecommunications services.

3. Section 1.1403 is amended by retitling the section and by adding new paragraph (e) to read as follows:

Sec. 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

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(e) Cable operators must notify pole owners upon offering telecommunications services.

4. Section 1.1404 is amended to add a new subsection (g)(12) and new paragraphs (h), (i), and (j) to read as follows, and to redesignate old paragraphs (g)(12), (h), (i), (j) and (k) as (g)(13), (k), (l), (m) and (n), respectively:

Sec. 1.1404 Complaint.

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(g) * * * * *

(12) The average amount of unusable space per pole for those poles used for pole attachments (a 24 foot presumption may be used in lieu of actual measurement, but the presumption may be rebutted); and

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(h) With respect to attachments within a duct or conduit system, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information

in support of said claim. The data and information shall include, where applicable, equivalent information as specified in paragraph (g) of this section.

(i) With respect to rights-of-way, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim. The data and information shall include, where applicable, equivalent information as specified in paragraph (g) of this section.

(j) If any of the information and data required in paragraphs (g), (h) and (i) of this section is not provided to the cable television operator or telecommunications carrier by the utility upon reasonable request, the cable television operator or telecommunications carrier shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a cable television operator or telecommunications carrier shall be dismissed where the utility has failed to provide the information required under paragraphs (g), (h) or (i) of this section, as applicable, after such reasonable request. A utility must supply a cable television operator or telecommunications carrier the information required in paragraph (g), (h) or (i) of this section, as applicable, along with the supporting pages from its FERC Form 1, FCC Form M, or other report to a regulatory body, within 30 days of the request by the cable television operator or telecommunications carrier. The cable television operator or telecommunications carrier, in turn, shall submit these pages with its complaint. If the utility did not supply these pages to the cable television operator or telecommunications carrier in response to the information request, the utility shall supply this information in its response to the complaint.

5. Section 1.1409 is amended by revising paragraph (e) and adding a new paragraph (f) to read as follows:

Sec. 1.1409 Commission consideration of the complaint.

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(e) When parties fail to resolve a dispute regarding charges for pole attachments and the Commission's complaint procedures under Section 1.1404 are invoked, the Commission will apply the following formulas for determining a maximum just and reasonable rate:

(1) The following formula shall apply to attachments by cable operators providing cable services. This formula shall also apply to attachments by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

Maximum Rate = Space Occupied by Attachment X Net Cost of X Carrying

Total Usable Space

Bare Pole

Charge Rate

(2) Subject to subsection (f) the following formula shall apply to pole attachments on a pole by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services beginning on February 8, 2001:

Maximum Pole Rate = Unusable Space Factor + Usable Space Factor

For purposes of this formula, the unusable space factor, as defined under Section 1.1417(b), and the usable space factor, as defined under Section 1.1418(b), shall apply per pole.

(3) Subject to subsection (f) the following formula shall apply to pole attachments within a conduit system beginning on February 8, 2001:

$$\text{Conduit Rate} = \frac{\text{Maximum Conduit Unusable Space Factor}}{\text{Conduit Usable Space Factor}}$$

For purposes of this formula, the conduit unusable space factor, as defined under Section 1.1417(c), and the conduit usable space factor, as defined under Section 1.1418(c), shall apply to each linear foot occupied.

(f) Subsections (e)(2) and (e)(3) of this section shall become effective February 8, 2001 (i.e., five years after the effective date of the Telecommunications Act of 1996). Any increase in the rates for pole attachments that result from the adoption of such regulations shall be phased in over a period of five years beginning on the effective date of such regulations in equal annual increments. The five-year phase-in is to apply to rate increases only. Rate reductions are to be implemented immediately. The determination of any rate increase shall be based on data currently available at the time of the calculation of the rate increase.

6. Section 1.1417 is added to read as follows:

Sec. 1.1417 Allocation of Unusable Space Costs.

(a) A utility shall apportion the cost of providing unusable space on a pole, duct, conduit, or right-of-way so that such apportionment equals two-thirds of the costs of providing unusable space that would be allocated to such entity under an equal apportionment of such costs among all entities.

(b) With respect to poles, the following formula shall be used to establish the allocation of unusable space costs on a pole for telecommunications carriers and cable operators providing telecommunications services:

$$\text{Pole Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of Bare Pole}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

All attaching entities shall be counted as separate attaching entities for purposes of apportioning the costs of unusable space.

(c) With respect to conduit, the following formula shall be used to establish the allocation of unusable space costs for telecommunications carriers and cable operators providing telecommunications services within a conduit:

$$\text{Conduit Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Net Linear Cost of Unusable Conduit Space}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

All attaching entities with lines occupying any portion of a conduit system shall be counted as separate attaching entities for purposes of apportioning the costs of unusable space.

(d) Each utility shall establish a presumptive average number of attachers for each of its rural, urban, and urbanized service areas (as defined by the Bureau of Census of the Department of Commerce).

(1) Each utility shall, upon request, provide all attaching entities and all entities seeking access the methodology and information upon which the utilities presumptive average number of attachers is based.

(2) Each utility is required to exercise good faith in establishing and updating its presumptive average number of attachers.

(3) The presumptive average number of attachers may be challenged by an attaching entity by submitting information demonstrating why the utility's presumptive average is incorrect. The attaching entity should also submit what it believes should be the presumptive average and the methodology used. Where a complete inspection is impractical, a statistically sound survey may be submitted.

(4) Upon successful challenge of the existing presumptive average number of attachers, the resulting data determined shall be used by the utility as the presumptive number of attachers within the rate formula.

7. Section 1.1418 is added to read as follows:

Sec. 1.1418 Allocation of Usable Space Costs.

(a) A utility shall apportion the amount of usable space among all entities according to the percentage of usable space required by each entity.

(b) With respect to poles, the following formula shall be used to establish the allocation of usable space costs on a pole for telecommunications carriers and cable operators providing telecommunications services:

$$\text{Pole Usable Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \frac{\text{Total Usable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of Bare Pole}}{\text{Carrying Charge Rate}}$$

The presumptive 13.5 feet of usable space may be used in lieu of the actual measurement of the total amount of usable space. The presumptive 37.5 feet of pole height may be used in lieu of the actual measurement of each pole. The presumptive one foot of space occupied by attachment is applicable to both cable operators and telecommunications carriers.

(c) With respect to conduit, the following formula shall be used to establish the allocation of usable space costs within a conduit system:

$$\text{Conduit Usable Space Factor} = \frac{1}{2} \times \frac{1 \text{ Duct}}{\text{Average Number of Ducts less Adjustments for maintenance ducts}} \times \frac{\text{Linear Cost of Usable Conduit Space}}{\text{Carrying Charge Rate}}$$

With respect to conduit, an attacher is presumed to occupy one half-duct of usable space.