



Ohio Administrative Code

Rule 4901:1-3-04 Rates, terms, and conditions for poles, ducts, and conduits.

Effective: January 8, 2015

(A) Rates, terms, and conditions for nondiscriminatory access to poles, ducts, conduits, and right-of-way of a telephone company or electric light company by an entity that is not a public utility are established through tariffs pursuant to section 4905.71 of the Revised Code. Initial implementation of such tariff or any subsequent change in the tariffed rates, terms, and conditions for access to poles, ducts, conduits, or rights-of-way shall be filed in the appropriate proceeding consistent with parameters established in rule 4901:1-3-03 of the Administrative Code. Nothing in this chapter prohibits an attaching entity that is not a public utility from negotiating rates, terms, and conditions for access to poles, ducts, conduits, and rights-of-way of a telephone company or electric light company through voluntarily negotiated agreements.

(B) Rates, terms, and conditions for nondiscriminatory access to public utility poles, ducts, conduits, and rights-of-way by another public utility shall be established through negotiated agreements.

(C) Access to poles, ducts, conduits, and rights-of-way as outlined in paragraphs (A) and (B) of this rule shall be established pursuant to 47 U.S.C. 224, as effective in paragraph (A) of rule 4901:1-3-02 of the Administrative Code.

(D) Pole attachment and conduit occupancy rate formulas

(1) The commission shall determine whether a rate, term, or condition is just and reasonable in complaint proceedings or in tariff filings. For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the public utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) The commission will apply the formula set forth in 47 C.F.R. 1.1409(e)(1), as effective in



paragraph (A) of rule 4901:1-3-02 of the Administrative Code for determining a maximum just and reasonable rate for pole attachments.

(3) The commission will apply the formula set forth in 47 C.F.R. 1.1409(e)(3), as effective in paragraph (A) of rule 4901:1-3-02 of the Administrative Code for determining a maximum just and reasonable rate for conduit occupancy.

(4) With respect to the formula referenced in paragraph (D)(2) of this rule, the space occupied by an attachment is presumed to be one foot. The amount of usable space is presumed to be thirteen and one-half feet. The amount of unusable space is presumed to be twenty-four feet. The pole height is presumed to be thirty-seven and one-half feet. These presumptions may be rebutted by either party.

(5) Relative to joint use agreements, the default rates may be negotiated or determined by the commission in the context of a complaint case.

(E) The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification as provided in paragraph (B)(3) of rule 4901:1-3-03 of the Administrative Code, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

(F) A public utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this rule, pursuant to 47 U.S.C. 224(g), as effective in paragraph (A) of rule 4901:1-3-02 of the Administrative Code.