



Ohio Administrative Code

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

Effective: June 30, 2023

[Comment: For dates of references to a section of either the United States Code or a regulation in the code of federal regulations see rule 4901:1-3-02 of the Administrative Code Code.]

(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 will be filed as an application for tariff amendment (ATA) and will be approved in accordance with a sixty-day automatic approval process. Increases to tariffed rates pursuant to this paragraph require customer notice to be sent to all affected attachers concurrent with the filing of the ATA. Any objections to the ATA application should be filed within twenty-one days of its filing. The applicant will have ten days to file its reply to the stated objections. The tariffed rates, terms and conditions are to be 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.

(1) An automatic time frame will begin on the day after a filing is made with the commission's docketing division. Under the automatic approval process, if the commission does not take action before the expiration of the filing's applicable time frame, the filing is deemed approved and may become effective on the following day, or a later date if requested by the company. For, example, a filing subject to a sixty-day process will, absent suspension or other commission action, become effective on the sixty-first day after the initial filing is made with the commission. Unless otherwise ordered, any motions not ruled upon by the commission during the filing's applicable time frame are deemed to be denied.

(2) Unless the law specifically precludes suspension of an automatic approval process, a pending application filed with the commission under full or partial suspension will be automatically approved



thirty days from the date of suspension if all issues are resolved. If all issues are not resolved by the thirtieth day, the application will be either dismissed by entry or suspended a second time. Any such second suspension will be accompanied by notice to the applicant explaining the rationale for the additional suspension. Applications under a second suspension cannot be approved without a commission entry or order.

(3) Under this paragraph, an application under full suspension is entirely precluded from taking effect.

(4) Under this paragraph, an application under partial suspension is permitted to take effect, in part or in its entirety, under the proposed terms and conditions, subject to further review by the commission. The applicant is put on notice that the commission, subsequent to further review, may modify the rates and/or terms and conditions of tariffed pole, duct, conduit, and rights-of-way access affected by the applications.

(5) A full or partial suspension of tariffed pole, duct, conduit, and rights-of-way access may also be imposed, after an application is approved under the automatic approval process, if an ex post facto determination is made that the tariff is in violation of law or commission rules. Applications proposing to change the rate shall include a calculation sheet, identification of the specific sources of the formula inputs, workpapers, and any company-specific records/data underlying the formula inputs including the appurtenance factor, pole height and pole count.

(B) Rates, terms, and conditions for nondiscriminatory access to public utility poles, ducts, conduits, and rights-of-way by another public utility are to 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 are to 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 will 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. When calculating the pole attachment and conduit occupancy rates, any unamortized excess accumulated deferred income tax resulting from the Tax Cut and Jobs Act of 2017 shall be deducted from the gross plant and gross pole investment total.

(2) The commission will apply the formula set forth in 47 C.F.R. 1.1406(d)(1) and (e), 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. 1.1406(d)(3), (4) and (e), 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 will 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 are not 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 will 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.