Chapter 880: ATTACHMENTS TO JOINT-USE UTILITY POLES; DETERMINATION AND ALLOCATION OF COSTS; PROCEDURE

SUMMARY: This Chapter establishes the amounts which pole owners may include in their cost of service for attachments to joint-use utility poles; the allocation of those costs among joint users; the procedure for establishing cost responsibility and rates, the terms and conditions of attachment to joint-use utility poles, and the procedure for resolving pole attachment disputes.

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1. DEFINITIONS

A. **Assigned Space.** "Assigned space" on a utility pole is the space assigned by this Rule or by an order in a proceeding under 35-A M.R.S. § 711 for the attachments of conductors or circuitry by joint-use entities, consistent with the provisions of the National Electrical Safety Code, Blue Book, or other reasonable practices. Assigned space does not include common space, including the communications worker safety zone. Space which may be available on a joint-use utility pole for an additional attaching entity shall not be considered assigned space until an additional attachment is made, but shall instead be considered common space.

B. **Attaching Entity.** "Attaching entity" means a joint-use entity with an attachment to a joint-use utility pole.


D. **Cable Television System.** A "cable television system" is as defined by in Title 47 of the United States Code.

E. **Common Space.** The "common space" of a joint-use utility pole is space used by all of the joint users in common and consists of the portion of a pole beneath ground level, the portion from ground level to the lowest place on the pole at which a telecommunications circuit may be attached, plus all but 6 inches of the telecommunications worker safety zone. The common space is equal to the length of the pole minus the assigned spaces for each attaching entity. In addition, for the purpose of assigning and allocating space and costs on a joint-use utility pole, space which may be available for an additional attachment, and which would become assigned space if an additional attachment were made, shall be considered common space until such an attachment is made.

F. **Communications Space.** The "communications space" is the portion on a joint-use utility pole that begins at the bottom of the communications worker safety zone and ends at the lowest point above grade to which a horizontal communications wire can be attached consistent with the National Electrical Safety Code.

G. **Communication Worker Safety Zone.** The "communication worker safety zone" is a 40-inch vertical space, or other amount as required by the National Electrical Safety Code for the purpose of safety, on which no electric or communications circuitry may be attached. It is located between the areas to which electric conductors and communication circuitry may be attached. All but six inches of the "communications worker safety zone" shall be considered part of the common space of a utility pole.

H. **Electric Utility.** An "electric utility" is as defined in Title 35-A of the Maine Revised Statutes.
I. **Information Service Provider.** “Information service provider” means a provider of “information service” as that term is defined in Title 47 of the United States Code.

J. **Joint-Use Entity.** “Joint-use entity” means a public utility, voice service provider, wholesale or retail competitive local exchange carrier, cable television system, unlit fiber provider, telecommunications service provider or information service provider.

K. **Joint-Use Utility Pole.** A "joint-use utility pole" is a utility pole on which there are circuit or electric conductor attachments by an electric utility and attachments by one or more joint-use entities. Joint-use utility poles do not include poles whose sole purpose is supporting electrical transmission conductors as defined by the Federal Energy Regulatory Commission. However, if an electric utility under-builds a transmission line with distribution, those poles are considered joint-use utility poles.

L. **National Electrical Safety Code.** The "National Electric Safety Code" or "NESC" is published by the Institute of Electrical and Electronics Engineers and approved by the American National Standards Institute Code C2. The NESC is also described in 35-A M.R.S. § 2305-A.

M. **Overlash.** "Overlash" means the tying or lashing of additional communications wires, cables, and facilities to existing communications wires, cables, or supporting strand already attached to poles.

N. **Pole Attachment.** "Pole attachment" or "attachment" is the physical connection of a facility that a joint-use entity uses to provide communications or electric service.

O. **Pole Owner.** “Pole owner” means an entity that owns or jointly owns a joint-use utility pole, or controls usable space on a joint-use utility pole.

P. **Requesting Party.** "Requesting party” means a utility or joint-use entity that is seeking to place attachments on joint-use utility poles.

Q. **Responsibility Requirement.** The "responsibility requirement" of an attaching entity is the portion of joint-use utility pole costs for which the attaching entity is responsible.

R. **Standard Joint-Use Utility Pole.** A "standard joint-use utility pole" is a joint-use utility pole which is 35 feet long, including the portion of the pole which is in the ground.

S. **Telecommunications Carrier.** "Telecommunications carrier" is as defined in Title 47 of the United States Code.

T. **Telecommunications Service Provider.** Telecommunications service provider means a provider of telecommunications service as that term is defined in Title 47 of the United States Code.

U. **Telecommunications Service.** "Telecommunications service” is as defined in Title 47 of the United States Code.

V. **Telephone Utility.** A "telephone utility" is as defined in Title 35-A of the Maine Revised Statutes.
W. **Unlit Fiber.** "Unlit fiber” means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications.

X. **Unlit Fiber Provider.** “Unlit fiber provider” means a provider of “unlit fiber.” Unlit fiber provider also includes a "dark fiber provider" as defined in Title 35-A of the Maine Revised Statutes.

Y. **Usable Space.** "Usable Space" means the space on a joint-use utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

Z. **Utility.** "Utility" has the same definition as "Public Utility" in Title 35-A of the Maine Revised Statutes.

AA. **Voice Service Provider.** "Voice service provider” is as defined in Title 35-A of the Maine Revised Statutes.

BB. **Wholesale Competitive Local Exchange Carrier.** "Wholesale competitive local exchange carrier” is as defined in Title 35-A of the Maine Revised Statutes.

**2. TERMS AND CONDITIONS**

A. **Reasonable Terms and Conditions.** The following terms and conditions shall be presumed to be reasonable for the joint use of utility poles:

1. **Request.** A pole owner shall provide a requesting party with nondiscriminatory access to any joint-use utility pole owned or controlled by it for the attachment of conductors, circuitry, antennas, or other facilities. A request to attach facilities to a joint-use utility pole shall be in writing and must provide the pole owner with the information necessary under its procedures to begin to survey the poles to which attachment is sought. Notwithstanding the foregoing, a joint-use entity may submit a request to attach a service drop to a pole within 45 days after the fact, and need not submit a request to overlash to existing facilities, so long as the joint-use entity provides written notice of the overlash within 10 days after making it. The pole owner then has 30 days in which to inspect the overlash and determine compliance.

2. **Survey.** A pole owner shall complete a survey and respond to a requesting party within 45 days of receipt of a request to attach facilities to its utility poles (or within 60 days, in the case of larger orders as described in Section 2(A)(7) of this Chapter). This response may be a notification that the pole owner has completed a survey of poles for which access has been requested.

3. **Denial.** A pole owner may deny a requesting party access to its poles on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. A denial must be in writing and must be issued within 45 days of the pole owner’s receipt of the request. The denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and
information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

4. **Estimate.** Where a request for access is not denied, a pole owner shall present to a requesting party an estimate of charges to perform all necessary make-ready work within 14 days of providing the survey required by Section 2(A)(2) of this Chapter, or in the case where a requesting party's contractor has performed a survey, within 14 days of receipt by the pole owner of such survey.

a. A pole owner may withdraw an outstanding estimate of charges to perform make-ready work beginning 60 days after the estimate is presented.

b. A requesting party may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

5. **Make-Ready.** Upon receipt of payment specified in Section 2(A)(4)(b) of this Chapter, a pole owner shall notify immediately and in writing all known joint-use entities with existing attachments that may be affected by the make-ready. All make-ready work shall be performed sequentially by attaching entities.

a. For attachments in the communications space, the notice shall:

   i. Specify where and what make-ready will be performed.
   
   ii. State the order in which attaching entities will perform their make-ready work.
   
   iii. State that the time period allowed for completion of make-ready for each attaching entity that is no later than 15 days after the attaching entity receives notification that the joint-use utility pole is available for the entity to perform its make-ready work (or 30 days in the case of larger orders, as described in Section 2(A)(7)(c) of this Chapter).
   
   iv. State that any attaching entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.
   
   v. State that the pole owner has and may assert a right to 15 additional days to complete make-ready.
   
   vi. State that if make-ready is not completed within the allotted time period (or, if the pole owner has asserted its 15-day right, 15 days later), the requesting party may complete the specified make-ready.
   
   vii. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.
b. For attachments above the communications space, the notice shall:

i. Specify where and what make-ready will be performed.

ii. Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in Section 2(A)(7)(c) of this Chapter).

iii. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

iv. State that the pole owner has and may assert a right to 15 additional days to complete make-ready.

v. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

6. Attachments Above the Communications Space. For attachments above the communications space, a pole owner shall ensure that make-ready is completed within the time periods established in Section 2(A)(5)(b) of this Chapter (or, if the pole owner has asserted its 15-day right, 15 days later).

7. Compliance with Time Periods. For the purposes of compliance with the time periods in this section:

a. A pole owner shall apply the time periods described in Sections 2(A)(1)-(6) of this Chapter to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the pole owner's poles in Maine.

b. A pole owner may add 15 days to the survey period described in Section 2(A)(2) of this Chapter to larger orders up to the lesser of 3000 poles or 5 percent of the pole owner's poles in Maine.

c. A pole owner may add 45 days to the make-ready periods described in Section 2(A)(5) of this Chapter to larger orders up to the lesser of 3000 poles or 5 percent of the pole owner's poles in Maine.

d. A pole owner shall negotiate in good faith the timing of all requests for pole attachment larger than the lesser of 3000 poles or 5 percent of the pole owner's poles in Maine.

e. A pole owner may treat multiple requests from a requesting party as one request when the requests are filed within 30 days of one another.

f. A pole owner may add up to 45 days to the make-ready periods described in Section 2(A)(5) if a force majeure event interrupts compliance.
8. **Deviation from Time Periods.** A pole owner or attaching entity may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the pole owner or attaching entity to complete the make-ready work within the prescribed time frame, for example the need to replace joint-use utility poles. A pole owner or attaching entity that so deviates shall immediately notify, in writing, the requesting party and other affected attaching entities, and shall include the reason for and date and duration of the deviation. The pole owner or attaching entity shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

9. **Contractors.** If a pole owner fails to respond as specified in Sections 2(A)(2) or 2(A)(3) of this Chapter, a requesting party requesting attachment in the communications space may hire a contractor to complete a survey so long as it provides the pole owner 10 days’ written notice of its intent to do so. Further, if make-ready is not complete within the time period specified in Section 2(A)(5) of this Chapter, a requesting party requesting attachment in the communications space may hire a contractor to complete the make-ready:

   a. Immediately, if the pole owner has failed to assert its right to perform remaining make-ready work by notifying the requesting party that it will do so; or

   b. After 15 days if the pole owner has asserted its right to perform make-ready by the date specified in Section 2(A)(5) of this Chapter and has failed to complete make-ready.

10. **Approved Contractors for Survey and Make-Ready.**

    a. A pole owner shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready in the communications space on its utility poles in cases where the utility has failed to meet deadlines specified in Sections 2(A)(2) and 2(A)(5) of this Chapter.

    b. If a requesting party hires a contractor for purposes specified in Section 2(A)(9) of this Chapter, the requesting party shall choose from the pole owner's list of authorized contractors.

    c. A requesting party that hires a contractor for survey or make-ready work shall provide a pole owner with a reasonable opportunity for a representative to accompany and consult with the authorized contractor and the requesting party.

    d. The consulting representative of an electric utility may make determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.
11. **Non-Compliant Poles and Attachments**

A requesting party is not responsible for make-ready costs to the extent that those costs are included in the pole owner’s maintenance as administrative expenses or booked asset costs. A requesting party shall not be required to bear the costs of modifying attachments that are on the pole at the time of the requesting party’s application but that were not in compliance with applicable safety, engineering, and construction codes and standards at the time of the attachments’ construction or installation.

12. **Notice.** A pole owner shall provide a utility or joint-use entity no less than 60 days written notice prior to:

a. Any increase in pole attachment rates; or

b. Any modification of facilities other than routine maintenance or modification in response to emergencies.

**B. Unreasonable Terms and Conditions.** The following terms and conditions shall be presumed to be unreasonable for the joint-use of utility poles:

1. **Boxing.** A prohibition on boxing poles (i.e., placing cables on both the road side and the field side of a pole) which can be safely accessed by emergency equipment and bucket trucks or ladders provided that such technique complies with the requirements of applicable codes.

2. **Extension Arms.** A prohibition on using extension arms to clear obstacles, improve alignment, or provide space that would not otherwise be available without a replacement pole, to the extent that the installation of extension arms complies with applicable codes.

3. **Lowest Pole Position.** A prohibition against attachments below existing attachments, to the extent that space is not available above existing attachments along the proposed route (or most of the route) of the additional attachments.

4. **Pole Top Attachments.** A prohibition against pole top attachments and the use of space above the primary or secondary power for wireless attachments, to the extent such proposed pole top installations comply with the NESC.

**C. Presumptions Rebuttable.** A pole owner or joint-use entity may overcome the presumption that a term or condition described in paragraph A or B of this Section is reasonable or unreasonable by presenting clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result.
3. **APPROVAL OF ATTACHING ENTITIES**

Any prospective attaching entity that is not attached to any joint-use utility poles in Maine prior to the effective date of this Chapter must obtain a Pole Attachment License from the Commission prior to attaching to any joint-use utility pole in Maine.

A. **Application Requirements for Attaching Entities.**

1. **Evidence of Financial Capability.**

   All applications by attaching entities shall include the entity's most recent financial disclosures. If an attaching entity does not make financial disclosures, it shall include the most recent financial disclosures of its corporate parent. If the applicant is a newly formed entity that is not part of another organization, the Commission may accept other documentation to demonstrate financial capability.

2. **Evidence of Technical Capability.**

   All applications by attaching entities shall include a description of the entity's applicable industry experience, including the experience, if any, of the corporate parent of the attaching entity, and the experience of the individuals that will be responsible for the provision of service in Maine. Industry experience includes the telecommunications industry, electricity industry, pole attachments, and other experience related to pole attachments.

3. **Authorization to Conduct Business in Maine.**

   All applications by attaching entities shall include evidence that demonstrates that the entity is authorized to conduct business in Maine.

4. **Application Information.** An applicant must provide the following information:

   a. Legal name and name(s) under which the attaching entity does or will do business in Maine;

   b. Business street and mailing address;

   c. Location and mailing address of any office available to the general public or Maine customers of the attaching entity;

   d. Contact person, address, e-mail and telephone number for regulatory matters;

   e. A list of all jurisdictions in which the attaching entity or any affiliated interest of the attaching entity is engaged or has been engaged in deploying pole attachments;

   f. Whether the attaching entity or affiliated interest of the attaching entity has filed for bankruptcy within the past six years;
g. A copy of the documents which demonstrate the type of organization of the attaching entity (sole proprietor, corporation, partnership, association, or other business form);

h. The state(s) in which the attaching entity is incorporated or otherwise registered or licensed to do business and a copy of its registration or license number, where applicable; and

m. The name, business address, and title of each officer and director, partner, or other similar officer.

5. **Commission Review.**

The Commission will review applications and may request additional information. The Commission will issue a license, deny the application, or initiate a formal investigation of the application within 30 calendar days of the submission of a complete application. If the Commission requires additional time for the initial review, the Administrative Director, the Director of Telephone and Water Industries, the Director of Consumer Assistance, or the Presiding Officer assigned to a proceeding related to this Chapter may extend the review period for an additional 30 calendar days. In the event the Commission initiates a formal investigation, it shall provide notice to interested persons.

6. **Issuance Criteria.**

The Commission will issue a license unless it finds that the attaching entity has not complied with all applicable licensing requirements of this Chapter, that the attaching entity does not have the financial and technical capability to conduct its business, or that sufficient reason exists to conclude that issuance of a license is not in the public interest.

7. **Term of License.**

Licenses are valid until revoked by the Commission or abandoned by the attaching entity.

8. **Transfer of License.**

A license shall not be transferred without prior Commission approval. A request for transfer of a license shall be in writing accompanied by a completed license application from the transferee.

9. **Abandonment of License.**

A licensee shall not abandon service without providing at least 30 days written notice to the Commission.
4. **DETERMINATION OF TOTAL COST OF SERVICE FOR A STANDARD-SIZE JOINT-USE UTILITY POLE**

A. **Use of Rate Case Practice.** The cost of service or revenue requirement for a standard joint-use utility pole shall be determined in the same manner as in a general rate case proceeding for an electric or telephone utility, except that the parties may rely on historical data rather than the use of a test year. The investments and expenses which shall be included and excluded are described in this Section, and, for telephone utilities, shall otherwise be calculated in accordance with the Federal Communications Commission's rules, regulations, and orders arising under Title 47 of the United States Code.

B. **Use of Cost Information Applicable to Standard Joint-Use Utility Poles.** The investment, expense and revenue quantities required by this section for calculating the cost of service for a standard-joint-use utility pole shall be limited to those applicable to the owner's investment in joint-use utility poles.

C. **Determination of Amounts of Investments, Expenses and Revenues for Standard Joint-Use Utility Poles.** Where the investment, expense or revenue amounts, or amounts applicable to the subclass of standard joint-use utility poles, which are required by this Section are not provided by the pole owners' books of accounts, those amounts may be calculated by any method designed to produce a reasonably accurate result. These methods may include the use of subaccount information, sampling techniques, cost studies, apportionment ratios developed from historic or current equipment costs, expenses or quantities which are applied to broader cost categories, including system-wide costs, or similar techniques. It is not necessary to determine separately the cost of service for the subclass of standard joint-use utility poles which are actually jointly-used.

D. **Investments.**

1. **Included Investments.** The following investments shall be included:

   a. The pole owner's net investment in standard joint-use utility poles;

   b. An electric utility's net investment in guy wires, anchors, supporting poles, and other equipment which support standard joint-use utility poles and which are reasonably attributable to mutual use by both the electric utility, the telephone utility, and other joint-use entities.

   c. In the case of a telephone utility's rate for an electric utility, its net investment in guy wires, anchors, supporting poles, and other equipment which support standard joint-use utility poles and which are reasonably attributable to mutual use by both the telephone utility and the electric utility.

   d. In the case of a telephone utility's rate for a joint-use entity, its investment in guy wires, anchors, supporting poles, and other equipment which support standard joint-use utility poles and which are reasonably attributable to mutual use by telephone utilities and joint-use entities.
2. **Excluded Investments.** The following investments shall not be included:
   a. 40-foot, 45-foot and taller joint-use utility poles and associated guy wires, supporting anchors, poles and other supporting equipment;
   b. Joint-use utility poles that are not used for attachment by entities other than the pole owner;
   c. Guy wires, anchors, supporting poles and other supporting equipment which are used to balance only the load of the attaching entity's own conductors, circuits and other attachments;
   d. Conductors and circuitry, cross arms, transformers, street lighting fixtures and other attachments or appurtenances used by only one of the joint users;
   e. Investments in standard utility poles and supporting equipment for standard poles which were provided by contributions in aid of construction from customers or from other attaching entities, including equipment installed as part of rearrangement ("make ready") work;
   f. Any unreasonable or imprudently-incurred investment.

3. **Deduction for Retirement Revenue.** When, under an excess height agreement or pursuant to Section 7(C) of this Chapter, a pole owner receives revenue to recover the cost of a 30 or 35 foot pole which must be replaced, because of the need for a taller pole, the amount received shall be deducted from the pole owner's net investment in 30 and 35 foot poles described in Section 3(D)(1)(a) of this Chapter.

E. **Cost of Capital.**

1. **Electric Utilities.** The cost of capital for an electric utility shall be calculated using its current embedded cost of debt and, in the case of an investor-owned utility, the cost of equity and capital structure actually found in or reasonably ascertainable from (e.g., in a stipulation) its last general rate proceeding. If that proceeding was not concluded within 5 years of the commencement of the proceeding under 35-A M.R.S. § 711, the Commission shall determine an interim cost of equity solely for the purpose of the proceeding under 35-A M.R.S. § 711, pending the utility's next rate proceeding. The Commission may use the cost of equity findings or stipulations in recent general rate proceedings for other comparable utilities, applied to a reasonable capital structure and the known characteristics of the utility in question.

2. **Telephone Utilities or Joint-Use Entities.** If a telephone utility or joint-use entity owns any joint-use utility poles, its cost of capital shall be determined in an adjudicatory proceeding pursuant to 35-A M.R.S. § 711 or, if the telephone utility or joint-use entity agrees, its cost of capital may be set at the average cost of capital of the electric utility owning joint-use utility poles in the telephone utility's or joint-use entity's service territory.
3. **Income Tax Adjustment.** The cost of equity shall be adjusted to account for the effect of federal and state corporate income taxes.

### F. Expenses and Revenues.

1. **Included Expenses.**

   a. Depreciation;

   b. Operations and maintenance expense reasonably attributable to standard joint-use utility poles, except for tree trimming and brush control;

   c. Property taxes;

   d. Administrative expenses, including billing, reasonably attributable to the administration of joint-use utility poles;

2. **Excluded Expenses.** The following expenses shall be excluded, deducted or adjusted:

   a. Operations and maintenance and other expense related to the equipment described in Section 3(D)(2) of this Chapter;

   b. Tree trimming, brush control and rearrangement ("make-ready") expense;

   c. Administrative and overhead expenses which are not related to the provision of attachment space on joint-use utility poles (for example, marketing expense, customer service expense, meter reading and billing expense which should be assignable to the provision of electric and telephone services);

   d. Any unreasonable or imprudently incurred expense.

3. **Adjustments.** Adjustments shall be made to account for any expense which provides no direct or indirect benefit to a user of the joint-use utility pole other than the entity incurring the expense.

4. **Other Revenues.** Electric and telephone utilities shall deduct from their joint-use utility pole revenue requirements that portion of revenues received as support charges from customers served by joint-use line extensions which are reasonably attributable to costs for standard joint-use utility poles (but not conductor, circuitry and cross-arm costs).

### G. Carrying Cost; Cost Per Pole

The information provided by a pole owner in a proceeding under 35-A M.R.S. § 711 shall include the annual cost per joint-use utility pole for each investment and expense category required to be included by this Section, the total annual cost of service per joint-use utility pole, and the annual carrying cost stated as a percentage of net investment in joint-use utility poles, or the equivalent of this information.
5. ASSIGNMENT AND ALLOCATION AMONG JOINT USERS OF JOINT-USE UTILITY POLE COSTS

A. General Findings and Policy. The Commission recognizes that joint-use utility poles are more cost-effective than separate-use poles and that entities attaching to these joint-use utility poles benefit from those cost savings. It is the policy of this Commission that each attaching entity pay for the costs of assigned space on joint-use utility poles in proportion to the vertical space which is necessary for its attachments; and that attaching entities should pay for the common space (including the communications worker safety zone) on joint-use utility poles in proportion to the stand-alone cost of each attaching entity if it were to construct its own sole-use utility poles. The Commission finds that the allocations required by this Section, in combination with the mitigating effects of Section 10 of this Chapter, take into account the interests of the subscribers of cable television systems as well as the customers of electric and telephone utilities.

B. Standard Joint-Use Utility Poles.

For the assignments and the allocation formula which is set forth below in this Section, the standard joint-use utility pole length shall be 35 feet:

C. Standard Assigned Space for Attachments.

1. Electric Utility Space. Electric utilities shall be assigned a standard four plus one-half foot of space in the communications worker safety zone, for a total of four and one-half feet of space unless a different amount is established as provided in Section 5(C)(4) below;

2. Telephone Utility Space. Telephone utilities who are also pole owners shall be assigned a standard two feet of space, unless a different amount is established as provided in Section 5(C)(4) below;

3. Joint-Use Entities. Joint-use entities that are not pole owners shall be assigned a standard one foot of space unless it is established that a joint-use entity uses a different amount as provided in Section 5(C)(4) below.

4. Evidence of Different Space Assignments. In an adjudicatory proceeding, a party may establish that different (non-standard) amounts of attached space should be assigned, based on measurements of attached space on representative and statistically significant samples of standard joint-use utility poles. Separate samples may be used for (1) poles used by an electric utility and two or more joint-use entities, and (2) for poles used by an electric utility and a single joint-use entity.
D. Common Space; Allocation.

1. **Common Space on Standard Joint-Use Utility Poles.** On a standard joint-use utility pole, the common space (which includes all but 6 inches of the communications worker safety zone) shall be equal to 35 feet minus the total amount of assigned space for each of the attachment combinations listed below, as follows:

- three attachments: 27 1/2’
- electric and telephone utility that is a pole owner: 28 1/2’
- electric and other joint-use entity: 29 1/2’

2. **Calculation of Common Space on Joint-Use Utility Poles with Nonstandard Assignments.** Common space on standard joint-use utility poles for which alternative attached space assignments have been made pursuant to Section 5(C)(4) above shall equal the joint-use utility pole length minus the total assigned space.

4. **Standard Allocation.** The allocation of common space on a standard joint-use utility pole used by three attachers shall be:

   - Electric: 41%
   - Telephone utility that is a pole owner: 34%
   - Joint-use entity that is not a pole owner: 25%

The allocation of common space on a standard joint-use utility pole used by an electric utility and a telephone utility that is a pole owner is:

   - Electric: 55%
   - Telephone: 45%

The allocation of common space on a standard joint-use utility pole used by an electric utility and a joint-use entity that is not a pole owner is:

   - Electric: 62%
   - Joint-use entity: 38%

E. Overall Allocation.

1. **General Formula.** The cost responsibility for each attaching entity shall equal the sum of the assigned space for that entity (as determined under Section 5(C)) plus the allocation of common space (as stated in Section 5(D)). This amount shall be divided by the length of the joint-use utility pole for the particular combination of attaching entities in order to calculate an attaching entity's percentage responsibility.

\[
\text{OVERALL ALLOCATION} = \frac{\text{ASSIGNED SPACE} + \text{ALLOCATION OF COMMON SPACE}}{\text{LENGTH OF POLE}}
\]
ILLUSTRATION 1

Assumes 35 foot pole, no CATV Attachment

<table>
<thead>
<tr>
<th></th>
<th>Attach.</th>
<th>Common</th>
<th>Total (ft.)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Space</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assign.</td>
<td>Alloc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elec.</td>
<td>4'</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neut.</td>
<td>0.5'</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common Neut.</td>
<td>2.83'</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CATV</td>
<td>1'</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tel.</td>
<td>2'</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6.5'</td>
<td>28.5'</td>
<td>35'</td>
<td>100%</td>
</tr>
</tbody>
</table>

ILLUSTRATION 2

Assumes 35 foot pole, 3 attachments

<table>
<thead>
<tr>
<th></th>
<th>Attach.</th>
<th>Common</th>
<th>Total (ft.)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Space</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assign.</td>
<td>Alloc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clear.</td>
<td>18.67</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Elec.</td>
<td>4.5'</td>
<td>11.28'</td>
<td>15.78'</td>
<td>45</td>
</tr>
<tr>
<td>Tel.</td>
<td>2'</td>
<td>9.35'</td>
<td>11.35'</td>
<td>32</td>
</tr>
<tr>
<td>CATV</td>
<td>1'</td>
<td>6.88'</td>
<td>7.88'</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>7.5'</td>
<td>27.5'</td>
<td>35'</td>
<td>100%</td>
</tr>
</tbody>
</table>

Assigned and Common Spaces on 35' Pole
2. **Separate Allocations.** Separate overall allocations shall be determined for joint-use utility poles with three joint users and for poles with the applicable combinations of two joint users.

6. **CALCULATION OF RATES OR RESPONSIBILITY REQUIREMENTS FOR STANDARD JOINT-USE UTILITY POLES**

A. **In General.** The rate or responsibility requirement for each attaching entity to a joint-use utility pole shall equal the total cost of service for a standard joint-use utility pole, as established pursuant to Section 4(G) above, multiplied by the overall percentage allocation established pursuant to Section 5(E) above. The rate shall be per joint-use utility pole and shall apply to all joint-use utility poles, including both standard and taller joint-use utility poles.

\[
\text{RATE OR RESPONSIBILITY} = \text{PER POLE COST OF SERVICE (§ 4(G))} \times \text{PERCENT ALLOCATION (§ 5(E))}
\]

B. **Separate Rates for Two-User and Three-Or-More-User Joint-Use Utility Poles.** Separate rates or responsibility requirements shall be established for joint-use utility poles with three or more attaching entities and for joint-use utility poles with the applicable combinations of two attaching entities.

7. **SEPARATE CHARGES**

Pole owners shall charge attaching entities separately for the following expenses and investments:

A. **Make-Ready Work.** An additional attaching entity or an existing attaching entity placing an additional attachment shall be charged reasonable expenses incurred in surveying existing joint-use utility poles or in moving conductors, circuitry or other equipment attached to a joint-use utility pole, for the purpose of making space available for the additional attachment ("rearrangements" or "make-ready" work). The attaching entity requiring additional space on an existing joint-use utility pole shall be presumed to be the attaching entity which must incur or be charged for the cost of make-ready work, unless the other attaching entities otherwise agree. If the make-ready expenses are caused by a municipality requesting space on the poles for non-commercial, non-competitive use consistent with the police power of the municipality, each current user shall each be responsible for its own costs for rearranging its facilities.

B. **Tree Trimming; Brush Control.** Joint-use entities occupying the same joint-use utility poles as the pole owner shall be charged forty percent of expenses borne by the pole owner for tree trimming and brush control, multiplied by the ratio of joint-use entity attachments to joint-use utility poles occupied by pole owners in the same municipality or municipalities served by the joint-use entity. Pole owners that are telephone utilities shall not charge electric utilities, and electric utilities shall not charge pole owners that are telephone utilities or other joint-use entities, for tree trimming or brush control unless the attaching entity demonstrates a benefit to another attaching entity from either the tree trimming or brush control that it has performed and establishes a reasonable quantification of that benefit.
C. **Excess Height.**

1. **Solely Assigned; Excess Height.** When an existing or a proposed attaching entity requires additional space which is not available on that joint-use utility pole, and the joint-use utility pole must be replaced by a taller joint-use utility pole, the existing or proposed attaching entity causing the need for replacement shall pay for (i) the difference between the cost for the taller joint-use utility pole and supporting equipment such as guys and anchors and the cost for a new standard joint-use utility pole and supporting equipment in the same location, plus (ii) a reasonable estimate of the net book value of the joint-use utility pole and supporting equipment, if any, which has been replaced.

2. **Mutual Assignment.** When a taller than standard joint-use utility pole is required to provide minimum clearances, or when more space for attachments than is available on a standard joint-use utility pole is required by two or more attaching entities, the cost (i) of the additional height of the excess height joint-use utility pole and supporting equipment and (ii) the reasonable estimate of the net book value of replaced joint-use utility pole and supporting equipment, if any, shall be shared equally among the users requiring the replacement.

8. **JOINT RESPONSIBILITY AGREEMENTS**

Attaching entities may enter agreements which establish joint responsibility for joint-use utility poles in their common service territories and which may eliminate or reduce the need for the payment of direct compensation. Joint responsibility may include the joint ownership of joint-use utility poles, sole ownership of joint-use utility poles in an agreed proportion, compensation or any combination thereof, provided that the net effect of the agreement assigns responsibility for joint-use utility pole costs in amounts generally consistent with this Chapter. In determining whether an existing agreement is generally consistent with this Chapter, the parties may take into account the burden of litigating a rate or charges before the Commission and the overall net effect of any reasonably likely change on their respective ratepayers or customers.

9. **RATE OR RESPONSIBILITY REQUIREMENTS FOR CABLE TELEVISION SYSTEMS TO ELECTRIC AND TELEPHONE UTILITIES SERVING THE SAME AREA**

Where an attaching entity attaches to poles not owned by itself, but which are jointly used by an electric utility and a telephone utility, the electric and telephone utilities shall set their respective rates for the attaching entity based on the relative overall ownership interest of the two utilities in joint-use utility poles. The electric utility rate established for the attaching entity under Section 5 shall be multiplied by the electric utility’s overall ownership percentage in joint-use utility poles in the whole area served jointly by it and the telephone utility. The telephone utility rate established for the attaching entity system under Section 5 shall be multiplied by the telephone utility’s overall ownership percentage in joint-use utility poles for the whole area served jointly by it and the electric utility. For each pole used by an attaching entity, the attaching entity shall pay the electric utility rate calculated under this section to the electric utility and the telephone utility rate calculated under this section to the telephone utility, regardless of the electric utility and telephone utility ownership interests in the joint-use utility pole.
EXAMPLE

1. 100% electric utility rate for attaching entity pole attachment (Section 5) = $12/yr.

2. 100% telephone utility rate for attaching entity pole attachment (Section 5) = $10/yr.

3. Electric utility ownership percentage = 55%.

4. Telephone utility ownership percentage = 45%.

5. Apportioned electric utility rate (Section 7) = $12 x .55 = $6.60.

6. Apportioned telephone utility rate (Section 7) = $10 x .45 = $4.50.

7. Total combined amount paid by attaching entity to electric utility and telephone utility = Step 5 + Step 6 = $11.10.

10. REVENUE-NEUTRAL RATE ADJUSTMENTS

A. Flow Through of Changes in Revenues From Joint-Use Entities

Increases in joint-use utility pole attachment revenues received by utility pole owner from a joint-use entity resulting from an order of the Commission under 35-A M.R.S. § 711 or from an agreement between utility pole owner and a joint-use entity shall be flowed through to customers of the pole owner by a revenue-neutral change in the pole owner's rates as provided in this Section. Following initial implementation of a new rate as described above, increases in revenues which are attributable solely to increased costs of the pole owner, rather than to changes in the inclusion or exclusion of costs contained in a joint-use utility pole attachment rate or to changes in the allocation of costs, shall not be subject to the flow-through provisions of this Section.

B. Immediate Flow-Through

The rate change required by this Section may be implemented by the pole owner at the time of the increase in revenues. If an electric utility chooses this option, the electric utility shall make the change in its rates for residential classes.

C. Delayed Flow-Through; Suspense Account.

1. Timing. A pole owner may choose to delay the rate change required by this Section until the conclusion of its next general rate case, if applicable. If the next general rate case is not commenced (or notice provided under Chapter 120, § 6 of the Commission's Rules) within four years of the change in revenues, the pole owner's rate shall be changed not later than 5 years following the effective date of the rate change.
2. **Rate Design.** If the change in joint-use utility pole rates is made at the conclusion of a general rate case, the change shall apply to the rates for services or to customer classes as ordered in that case. If the change is made outside of a general rate case, the change shall apply to rates for residential customers of the electric utility.

3. **Suspense Account.** A pole owner which delays implementation of a rate change pursuant to this Section shall defer all increased revenues in a suspense account and the rate change to its customers shall take into account the deferred amounts.

11. **RESOLUTION OF DISPUTES**

The Commission will adjudicate any disputes regarding joint-use utility poles, including disputes pursuant to 35-A M.R.S. § 711, in accordance with the Expedited Complaint Resolution Process of Disputes Regarding Utility Pole Attachments established in *Maine Public Utilities Commission, Investigation into Practices and Acts Regarding Access to Utility Poles*, Docket No. 2010-00371, Order (July 12, 2011). A summary of the dispute procedure is attached to this Chapter as Attachment A.

12. **NEGOTIATED AGREEMENTS**

Notwithstanding anything to the contrary in this Chapter, pole owners and attaching entities may enter into negotiated agreements for attachment to joint-use utility poles that contain rates, terms, or conditions that differ from those described in this Chapter. However, the Commission will apply the provisions of this Chapter in any dispute regarding rates, terms, or conditions for attachment to joint-use utility poles.

13. **WAIVER**

To the extent permitted by law, and for good cause shown, the Commission, the Director of Electric and Gas Utility Industries, the Director of Telephone and Water Utility Industries, the Director of Consumer Assistance and Safety, or the Presiding Officer assigned to a proceeding involving the provisions of this Chapter, may permit a temporary or permanent deviation, waiver or exemption from any provision of this Chapter. A finding that compliance would be unduly burdensome or that the deviation or waiver will not impair the policies of this Chapter may constitute a finding of good cause.

**STATUTORY AUTHORITY:** 35-A M.R.S. §§ 111, 301, 711, 7903 and 8302.; P.L. 2017, ch. 199.

**BASIS STATEMENT:** The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Factual and Policy Basis, Docket No. 2017-00247, issued on January 12, 2018. Copies of the Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.
EFFECTIVE DATE: This rule was approved as to the form and legality by the Attorney General on 1/17/18. It was filed with the Secretary of State on 1/19/18 as filing 2017-00247, and became effective on 1/24/18.
1. **Activities Prior to Filing a Complaint**

   a. Complainant shall call the contact for the party with whom there is a dispute and give notice that they are planning to file a complaint with the Commission Rapid Response Team the next business day.

2. **Filing Complaints**

   a. Complainant files Complaint electronically to the RRPT (rapidresponse.PUC@maine.gov) and the responding party contact. The filing shall contain the appropriate caption for the Complaint (name of company and date of filing), and the actual Complaint shall be a document attached to the email.

   b. A Complaint shall contain sufficient information to indicate:

      i. (1) the facts underlying the Complaint;
      ii. (2) the harm which is resulting or could result to the Complainant due to the situation;
      iii. (4) a description of the steps which the parties have taken to resolve the situation prior to the filing of the Complaint; and
      iv. (5) whether or not Complainant is requesting a preliminary finding. The Complainant shall also indicate the times both parties will be available for a conference call on the 2nd business day after the Complaint is filed.

3. **Response to Complaint**

   a. Respondent acknowledges the by email. The acknowledgement and any response shall be emailed to the RRPT and the Complainant. The Respondent may:

      i. respond to the factual issues in the Complaint;
      ii. argue the Complaint should be dismissed or is otherwise not ripe for review;
      or

   b. The RRT will schedule a time for the Preliminary Conference Call within 2 business days of the date when the Complaint is filed.

4. **Preliminary Conference Call and Intermediate Dispute Resolution Process.**

   a. Preliminary Conference Call: The following may occur:

      i. Respondent may provide oral response to Complaint;
      ii. Deadline established for written response, if appropriate;
      iii. RRPT may request additional information from each party and set a schedule for its production;
      iv. RRPT may schedule follow-up telephone conference among the parties;
      v. RRPT may issue a Preliminary Finding or dismiss the complaint; either party may appeal to the Commission an adverse Preliminary Finding or dismissal;
      vi. The issue may be resolved to the satisfaction of both parties.
b. Follow-up conference calls will be held at a time determined by RRPT and the following may occur:

   i. Parties will update RRPT on progress since last call;
   ii. Parties will discuss information provided in response to any RRPT requests;
   iii. RRPT may issue a Preliminary Finding or dismiss the Complaint; either party may appeal to the Commission an adverse Preliminary Finding or dismissal;
   iv. The issue may be resolved to the satisfaction of both parties; or
   v. RRPT may request written comments and/or schedule a Notice of Decision Call.

5. **Notice of Decision and Final Order**

   a. If required by RRPT, a final conference call is held and the following may occur:

      i. RRPT hears closing argument from parties and issues oral decision.
      ii. RRPT hears closing argument from parties and schedules time for written decision.

   b. Within 7 business days of the filing of the Complaint, the RRPT will issue a final written decision (Final Order). Unless stayed by RRPT, the Final Order remains in effect pending appeal.

   c. Within 5 business days after written decision is issued, a party may:

      i. Appeal the Final Order to full Commission.
      ii. Request a stay of the Final Order by the Commission pending appeal.