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POPE FLYNN
GROUP

**UNDERSTANDING POLE
ATTACHMENT AGREEMENTS**

SCAMPS ANNUAL MEETING: 06/03/25

C.D. Rhodes



POPE FLYNN
GROUP

Topics:

- Regulatory Landscape
- Template Agreement and Practice Pointers



Federal Regulation

- 1978 Pole Attachment Act
 - Intended to give cable providers low-cost (subsidized) access to utility poles to boost industry
 - Empowers FCC to regulate “rates, terms, and conditions for pole attachments”
 - Directs FCC to ensure that these are “just and reasonable”
- Telecommunications Act of 1996
 - Further expanded access to regulated poles
 - Established an attachment rate formula
 - Did not affect the municipal exemption
- Municipal Exemption (47 USC 224(a)(1))
 - Political subdivisions, agencies, and instrumentalities of states are exempt from FCC regulation
 - Also exempts Electric Coops
 - Not subject to federal requirements re access, attachment rates, timing (shot clock) requirements, and the FCC complaint process



State Regulation

- Pole Attachment Act defers to state regulation
 - States must certify that they regulate attachment rates and terms and take into account the interests of subscribers to services and utilities
 - Requires states to have review processes and deadlines

States that Regulate Pole Attachments

Alaska	Illinois	New Hampshire
Arkansas	Kentucky	New York
California	Louisiana	Ohio
Connecticut	Maine	Oregon
Delaware	Massachusetts	Utah
District of Columbia	Michigan	Vermont
Idaho	New Jersey	Washington



State Regulation

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States that Regulate Municipalities

Alaska

Arkansas

California

Connecticut

Delaware

District of Columbia

Idaho

Illinois

Kentucky

Louisiana

Maine

Massachusetts

Michigan

New Jersey

New Hampshire

New York

Ohio

Oregon

Utah

Vermont

Washington



South Carolina Regulation

- South Carolina defers to federal regulation
 - This is a good thing...for now
 - Munis remain exempt as long as federal law does not change!
- Broadband Accessibility Act of 2020 – Down go the Electric Coops!
 - Coops must give communication providers access to poles at “just, reasonable, and nondiscriminatory rates, fees, charges, terms, and conditions”
 - “Access includes the right to nondiscriminatory use . . . to the extent not prohibited by the National Electric Safety Code”
 - Empowers PSC to regulate disputes over attachments
- Spectrum v. York Electric Coop. (2022)
 - York tried to impose clearance requirements in excess of NESC standards
 - PSC held that York could not impose more stringent standards “without proper justification”
 - A glimpse into the future?



How the Other Half Lives: FCC Access Rules

- Non-Discrimination – Similar facilities must be treated similarly
- Limited Grounds for Denial – Reasons limited to insufficient capacity, safety, reliability, or generally applicable engineering standards
 - Aesthetics are not a valid reason for denial for FCC-regulated utilities
- Tight Application/Make-Ready Work Deadlines
 - 10 days to determine an application is complete
 - 45 days to review applications and determine Make-Ready Work
 - 30 – 90 days to complete Make-Ready Work, with self-help remedy for attacher
- Overlapping (including third-party overlaps)
 - Not attachments
 - Can be done without notice



How the Other Half Lives: FCC Rate Formula (Cable)

- Maximum Rate = $\frac{\text{Space occupied by CATV} \times \text{Net Cost of Bare Pole} \times \text{Carrying Costs}}{\text{Total Usable Space}}$
- Carrying charges” are expenses of owning and maintaining poles without pole attachments, including administrative, maintenance, depreciation, a return on investment, and taxes
- Under pole-assumptions, assigns:
 - 1/13.5 (7.4%) of the costs of a pole to a cable operator
 - 12.5/13.5 (92.6%) of the costs to the utility
- The cable formula generally yields a rate of between \$4-\$9 per pole, per year



How the Other Half Lives: Regulated v. Unregulated Rates (2018)

Average Attachment Rates for Regulated v. Unregulated Utilities	
Regulated (FCC or State)	\$13.97
Unregulated	\$21.86

Average Attachment Rates by Type of Facility Owner	
Municipalities	\$23.32
Coops	\$20.25
Investor-Owned Utilities	\$16.18
Private Companies	\$7.69

Source: Survey of Rates for Pole Attachments and Access to Rights of Way, Center for Technology, Innovation, and Competition, University of Pennsylvania Law School, April 24, 2018



Why Does This Matter?

- Telcos negotiate Attachment Agreements to align with FCC rules
- Telcos argue that FCC rules apply and threaten litigation
- If S.C. regulates munis:
 - State laws often incorporate federal requirements
 - State PSCs often rely on FCC rules as “reasonable standards”
- Congress could remove the municipal exemption
- “Bad facts make bad law” – risk of a municipal utility going overboard with rates or standards

PRACTICE POINTERS FOR ATTACHMENT AGREEMENTS

Pointer #1 – Review Existing Agreements

- Rates under old agreements are often low:

Old v. New Attachment Rates	
\$3.00 per pole (1974)	\$20.00 per pole (2017)
\$5.25 per pole (1998)	\$20.00 per pole (2018)
\$4.50 per pole (1980)	\$27.40 per pole (by 2031)

- Agreements often auto-renew and have long notice periods for termination
- New attachment rates should be subject to annual escalation

The Attachment Fee shall be \$ _____ in the first year of the term of this Agreement, and shall increase year over year by the greater of (i) 3%, or (ii) the total increase in the CPI-U (Energy Services, Electricity) for the State of South Carolina for the calendar year preceding the year for which such Attachment Fee is calculated.

Pointer #2 – Overlashing

6.1 Licensee shall provide written notice to Owner prior to Overlashing of an existing Attachment, including any third-party attachment, including the specific existing Attachments to be Overlashed and sufficient information regarding its Overlash to allow Owner to determine the impact of the proposed Overlash on the Pole loading. Owner shall notify Licensee within 15 days of receipt of such notice if it reasonably believes the applicable Overlash will cause damage to Owner's Poles or facilities or result in the violation of any Applicable Standard, or if Owner requires additional information to make such determination. Licensee shall notify Owner upon the completion of any such Overlash.

[Note to Drafter: Include the section below to include overlashing of third-party facilities as an additional attachment. Overlashing of Licensee's existing facilities is generally not considered an additional attachment.]

6.2 An Overlash shall not constitute a separate Attachment unless such Overlash is made on a wire, cable, strand, or similar facility owned by a third-party, in which case such Overlash shall be considered an Attachment of Licensee. If an Overlash is subject to an Attachment Fee, such Overlash shall be included in the number of Attachments for such year and each year thereafter.

Pointer #3 – Rules and Practices

3.2 Licensee acknowledges that Owner may modify or supplement its Rules and Practices from time to time, without the modification thereof constituting an amendment to this Agreement, and Licensee shall be bound by any such modification or supplement, provided that Owner provides Licensee with 30-days written Notice of such modification or supplement; provided, however, in lieu of being bound by such modification or supplement, Licensee may remove its Attachment to any Pole that may be affected by such modification or supplement.

1. **Application Fee.** The Application Fee for all Applications shall be [\$10.00] per-Pole, with a minimum Application Fee of \$100.00.

2. **Grounding Fee.** The one-time fee for all bonding and grounding wires to be attached to any Pole in connection with the installation of Attachments shall be \$_____ per affected-Pole, which shall be collected along with the costs of Make-Ready Work.

3. **Transfer Fee.** The fee for all Transfers undertaken pursuant to the Transfer Agreement, if any, shall be \$_____ per-Pole for which a Transfer is made.

Pointer #4 – Deadlines and Response Times

[Note to Drafter: The deadlines, time frames, and pole-number thresholds below may change from utility to utility based upon capacity, staffing, etc. Note that Section 5.4 allows Owner to extend timeframes upon request for good reason.]

5.1 To obtain a Permit, Licensee must submit an Application. The form of Owner's Application is attached to this Agreement at Exhibit B; provided, however, Owner may revise the form of the Application from time to time by providing [30]-days written notice to Licensee. Licensee's Application shall be accompanied by the Application Fee and construction plans and drawings for each Attachment, together with necessary maps, indicating specifically the applicable Poles, the number and character of the Attachments to be placed on such Poles, any rearrangement of Owner's or other entities' attachments, facilities, fixtures, and equipment necessary for such Attachment, any relocations, replacements, or upgrades of existing Poles, and any additional Poles that may be required.

5.2 Application Review and Survey: Owner shall review Applications in accordance with the following provisions:

5.2.1 Application Completeness. Owner shall review Licensee's Application for completeness and notify Licensee of Owner's decision within [15] business days (or within [20] business days for Applications including more than [300] Poles) of receiving the Application. An Application is complete if it includes the information required by Section 5.1, and otherwise provides Owner with the information necessary to begin to survey affected Poles. If Owner does not respond within [15] business days (or within [20] business days for Applications including more than [300] Poles) the Application is deemed complete. If Owner timely notifies Licensee that its Application is incomplete, Owner shall specify all reasons for finding it incomplete. Any resubmitted Application need only address the applicable reasons for incompleteness and shall be deemed complete within five business days of submission, unless Owner specifies which prior reasons for incompleteness were not addressed. Licensee may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by Owner, and in each case the deadline set forth in this paragraph shall apply to Owner's review.

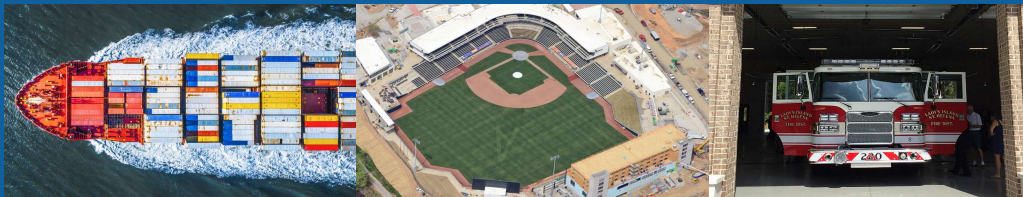
Pointer #5 – Pole Modification

5.3.5 Pole Modification. To the extent permitted under any other agreement with any other existing Attacher, the costs of modifying a Pole shall be borne by all parties that obtain new access to the Pole as the result of the modification or that directly benefit from the modification. Each party that obtains new access to a Pole as a result of a modification of a Pole and each party that directly benefits from the modification shall share proportionately in the cost of the modification. Except as otherwise provided in this subsection, a party with a preexisting attachment to the modified Pole is considered to directly benefit from a modification if, after receiving notification of that modification, it adds to or modifies its attachment (other than modifications that consist solely of rearranging or relocating its attachment). A party with a preexisting attachment to a Pole is not considered to directly benefit from modifying a Pole, and is not required to bear any of the costs of rearranging or replacing its attachment on such Pole, if that rearrangement or replacement is necessitated solely as a result of an additional attachment of another Attacher or the modification of an existing attachment sought by another party, unless the modification is necessitated by Owner's core electric service (excluding Pole upgrades), except as otherwise provided by law.

Pointer #6 – Indemnifications

22.1 Indemnification of Owner. Licensee shall indemnify, protect and save harmless Owner from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may be caused by Licensee's negligence or willful misconduct. In no way limiting the foregoing, in the event that Licensee or any contractor hired by Licensee conducts any make-ready work, Licensee shall indemnify, protect and save harmless Owner from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may be caused by Licensee's or Licensee's contractor's negligence or willful misconduct in connection with such make-ready work. The foregoing indemnity shall not apply to the extent of Owner's gross negligence or willful misconduct.

QUESTIONS



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C.D. Rhodes
cdrhodes@popeflynn.com
(803) 354-4911