



## Spanmaster® Release 3.1 Sag / Tension Computations

BREMC CATV Sag Calculations 10/13/17 BREMC Average - 257'

1 - 1/4" EHS Messenger  
 1 - .565" Coax (Jacketed)  
 1 - 96 Fiber Optic Cable  
 1.5% Design Sag

Selected Cables	X-SECT AREA (sq.in)	EFF MODULUS (psi)	NOMINAL DIAM (in)	EFF.EXP. COEFF. (1/F)	CABLE WEIGHT (lb/ft)	E*A LOAD BEARING CAPACITY (lbs)	MAX. RATED LOAD (lbs)
1/4"6mEHS	0.0352	2.60E+07	0.250	5.60E-06	0.1210	914940	6650
ORF-O-096-LN	0.2612	5.52E+05	0.577	7.47E-06	0.1010	144156	611
P3-565JCA	0.3068	1.87E+06	0.625	1.79E-05	0.1120	573836	350
Bundle			1.202		0.3340		

## NESC RESULTS

Loading Condition	Temp. (F)	Ice Load lb/ft	Ice Thick in	Wind Constant lb/ft	Horz Wind Load lb/sq ft	Result Load + Const lb/ft	Sag ft	Tension lb	% Len Chg From Input Conditions
Rule 251 - Medium	15.0	0.451	.25	.2	4.0	1.169	5.76	1673	0.07
232A1	120.0	0.000	.00	.0	0.0	0.334	4.40	626	0.02

	Temp (F)	Midspan Sag (ft)	Tension (lb)	% Length Change	Clearance
Span Length = 257.00 ft					
Span Sag = 3.86 ft (46.3 in)					
Span Tension = 715 lb					
Max Load = 6,650 lb	-40.0	2.74	1,006	-0.03	N/A
Usable load (60%) = 3,990 lb	-30.0	2.83	973	-0.03	N/A
Catenary Length = 257.154 ft	-20.0	2.92	942	-0.03	N/A
Stress Free Length @	-10.0	3.02	912	-0.02	N/A
Installed Temperature = 256.953 ft	.0	3.12	883	-0.02	N/A
Unloaded Strand	10.0	3.22	856	-0.02	N/A
Sag = 2.51 ft (30.1 in) 0.98 %	20.0	3.32	830	-0.02	N/A
Tension = 398 lb	30.0	3.43	804	-0.01	N/A
	40.0	3.53	780	-0.01	N/A
	50.0	3.64	757	-0.01	N/A
	60.0	3.75	736	0.00	N/A
	70.0	3.85	715	0.00	N/A
	80.0	3.96	695	0.00	N/A
	90.0	4.07	677	0.01	N/A
	100.0	4.18	659	0.01	N/A
	110.0	4.29	642	0.01	N/A
	120.0	4.40	626	0.02	N/A
	130.0	4.51	611	0.02	N/A
	140.0	4.62	597	0.03	N/A



## Spanmaster® Release 3.1 Sag / Tension Computations

BREMC CATV Sag Calculations 10/13/17 BREMC 2014 Average - 258.51'

1 - 1/4" EHS Messenger  
 1 - .565" Coax (Jacketed)  
 1 - 96 Fiber Optic Cable  
 1.5% Design Sag

Selected Cables	X-SECT AREA (sq.in)	EFF MODULUS (psi)	NOMINAL DIAM (in)	EFF.EXP. COEFF. (1/F)	CABLE WEIGHT (lb/ft)	E*A LOAD BEARING CAPACITY (lbs)	MAX. RATED LOAD (lbs)
1/4"6.6mEHS	0.0352	2.60E+07	0.250	5.60E-06	0.1210	914940	6650
ORF-O-096-LN	0.2612	5.52E+05	0.577	7.47E-06	0.1010	144156	611
P3-565JCA	0.3068	1.87E+06	0.625	1.79E-05	0.1120	573836	350
Bundle			1.202		0.3340		

## NESC RESULTS

Loading Condition	Temp. (F)	Ice Load lb/ft	Ice Thick in	Wind Constant lb/ft	Horz Wind Load lb/sq ft	Result Load + Const lb/ft	Sag ft	Tension lb	% Len Chg From Input Conditions
Rule 251 - Medium	5.0	0.451	.25	.2	4.0	1.169	5.80	1681	0.07
232A1	120.0	0.000	.00	.0	0.0	0.334	4.43	630	0.02

	Temp (F)	Midspan Sag (ft)	Tension (lb)	% Length Change	Clearance
Span Length = 258.51 ft					
Span Sag = 3.88 ft (46.5 in)					
Span Tension = 720 lb	-40.0	2.76	1,010	-0.03	N/A
Max Load = 6,650 lb	-30.0	2.85	978	-0.03	N/A
Usable load (60%) = 3,990 lb	-20.0	2.94	947	-0.03	N/A
Catenary Length = 258.665 ft	-10.0	3.04	917	-0.02	N/A
Stress Free Length @	.0	3.14	888	-0.02	N/A
Installed Temperature = 258.462 ft	10.0	3.24	860	-0.02	N/A
	20.0	3.34	834	-0.02	N/A
Unloaded Strand	30.0	3.45	809	-0.01	N/A
Sag = 2.52 ft (30.2 in) 0.97 %	40.0	3.55	785	-0.01	N/A
Tension = 402 lb	50.0	3.66	762	-0.01	N/A
	60.0	3.77	740	0.00	N/A
	70.0	3.88	719	0.00	N/A
	80.0	3.99	700	0.00	N/A
	90.0	4.10	681	0.01	N/A
	100.0	4.21	663	0.01	N/A
	110.0	4.32	646	0.01	N/A
	120.0	4.43	630	0.02	N/A
	130.0	4.54	615	0.02	N/A
	140.0	4.65	601	0.03	N/A



## Spanmaster® Release 3.1 Sag / Tension Computations

BREMC CATV Sag Calculations 10/13/17 BREMC 2015 Average - 257.53'

1 - 1/4" EHS Messenger  
 1 - .565" Coax (Jacketed)  
 1 - 96 Fiber Optic Cable  
 1.5% Design Sag

Selected Cables	X-SECT AREA (sq.in)	EFF MODULUS (psi)	NOMINAL DIAM (in)	EFF.EXP. COEFF. (1/F)	CABLE WEIGHT (lb/ft)	E*A LOAD BEARING CAPACITY (lbs)	MAX. RATED LOAD (lbs)
1/4"6.6mEHS	0.0352	2.60E+07	0.250	5.60E-06	0.1210	914940	6650
ORF-O-096-LN	0.2612	5.52E+05	0.577	7.47E-06	0.1010	144156	611
P3-565JCA	0.3068	1.87E+06	0.625	1.79E-05	0.1120	573836	350
Bundle			1.202		0.3340		

## NESC RESULTS

Loading Condition	Temp. (F)	Ice Load lb/ft	Ice Thick in	Wind Constant lb/ft	Horz Wind Load lb/sq ft	Result Load + Const lb/ft	Sag ft	Tension lb	% Len Chg From Input Conditions
Rule 251 - Medium	15.0	0.451	.25	.2	4.0	1.169	5.78	1676	0.07
232A1	120.0	0.000	.00	.0	0.0	0.334	4.41	628	0.02

	Temp (F)	Midspan Sag (ft)	Tension (lb)	% Length Change	Clearance
Span Length = 257.53 ft					
Span Sag = 3.86 ft (46.4 in)					
Span Tension = 717 lb	-40.0	2.74	1,007	-0.03	N/A
Max Load = 6,650 lb	-30.0	2.84	975	-0.03	N/A
Usable load (60%) = 3,990 lb	-20.0	2.93	944	-0.03	N/A
Catenary Length = 257.685 ft	-10.0	3.03	914	-0.02	N/A
Stress Free Length @	.0	3.13	885	-0.02	N/A
Installed Temperature = 257.483 ft	10.0	3.23	857	-0.02	N/A
	20.0	3.33	831	-0.02	N/A
Unloaded Strand	30.0	3.43	806	-0.01	N/A
Sag = 2.51 ft (30.1 in) 0.97 %	40.0	3.54	782	-0.01	N/A
Tension = 400 lb	50.0	3.65	759	-0.01	N/A
	60.0	3.75	737	0.00	N/A
	70.0	3.86	717	0.00	N/A
	80.0	3.97	697	0.00	N/A
	90.0	4.08	678	0.01	N/A
	100.0	4.19	661	0.01	N/A
	110.0	4.30	644	0.01	N/A
	120.0	4.41	628	0.02	N/A
	130.0	4.52	613	0.02	N/A
	140.0	4.63	598	0.03	N/A



## Spanmaster® Release 3.1 Sag / Tension Computations

BREMC CATV Sag Calculations 10/13/17 BREMC 2016 Average - 257.01'

1 - 1/4" EHS Messenger  
 1 - .565" Coax (Jacketed)  
 1 - 96 Fiber Optic Cable  
 1.5% Design Sag

Selected Cables	X-SECT AREA (sq.in)	EFF MODULUS (psi)	NOMINAL DIAM (in)	EFF.EXP. COEFF. (1/F)	CABLE WEIGHT (lb/ft)	E*A LOAD BEARING CAPACITY (lbs)	MAX. RATED LOAD (lbs)
1/4"6.6mEHS	0.0352	2.60E+07	0.250	5.60E-06	0.1210	914940	6650
ORF-O-096-LN	0.2612	5.52E+05	0.577	7.47E-06	0.1010	144156	611
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## NESC RESULTS

Loading Condition	Temp. (F)	Ice Load lb/ft	Ice Thick in	Wind Constant lb/ft	Horz Wind Load lb/sq ft	Result Load + Const lb/ft	Sag ft	Tension lb	% Len Chg From Input Conditions
Rule 251 - Medium	5.0	0.451	.25	.2	4.0	1.169	5.76	1673	0.07
232A1	120.0	0.000	.00	.0	0.0	0.334	4.40	626	0.02

	Temp (F)	Midspan Sag (ft)	Tension (lb)	% Length Change	Clearance
Span Length = 257.01 ft					
Span Sag = 3.86 ft (46.3 in)					
Span Tension = 715 lb	-40.0	2.74	1,006	-0.03	N/A
Max Load = 6,650 lb	-30.0	2.83	973	-0.03	N/A
Usable load (60%) = 3,990 lb	-20.0	2.92	942	-0.03	N/A
Catenary Length = 257.164 ft	-10.0	3.02	912	-0.02	N/A
Stress Free Length @	.0	3.12	883	-0.02	N/A
Installed Temperature = 256.963 ft	10.0	3.22	856	-0.02	N/A
	20.0	3.32	830	-0.02	N/A
Unloaded Strand	30.0	3.43	804	-0.01	N/A
Sag = 2.51 ft (30.1 in) 0.98 %	40.0	3.53	780	-0.01	N/A
Tension = 398 lb	50.0	3.64	757	-0.01	N/A
	60.0	3.75	736	0.00	N/A
	70.0	3.86	715	0.00	N/A
	80.0	3.96	695	0.00	N/A
	90.0	4.07	677	0.01	N/A
	100.0	4.18	659	0.01	N/A
	110.0	4.29	642	0.01	N/A
	120.0	4.40	626	0.02	N/A
	130.0	4.51	611	0.02	N/A
	140.0	4.62	597	0.03	N/A

September 1989

Approved for Reprint - April 1988

SPECIFICATIONS FOR CONSTRUCTION1. General

All construction work shall be done in a thorough and workman-like manner in accordance with the Staking Sheets, Plans and Specifications, and the Construction Drawings.

The Sixth Edition of the National Electrical Safety Code shall be followed except where local regulations are more stringent, in which case local regulations shall govern.

2. Distributing Poles

In distributing the poles, large, choice, close-grained poles shall be used for transformer, deadend, angle, and corner poles.

3. Pole Setting

The minimum depth for setting poles shall be as follows:

<u>Length of Pole (feet)</u>	<u>Setting in Soil (feet)</u>	<u>Setting in All Solid Rock (feet)</u>
20	4.0	3.0
25	5.0	3.5
30	5.5	3.5
35	6.0	4.0
40	6.0	4.0
45	6.5	4.5
50	7.0	4.5
55	7.5	5.0
60	8.0	5.0

"Setting in Soil" specifications shall apply:

- a. Where poles are to be set in soil.
- b. Where there is a layer of soil of more than two (2) feet in depth over solid rock.
- c. Where the hole in solid rock is not substantially vertical or the diameter of the hole at the surface of the rock exceeds approximately twice the diameter of the pole at the same level.

"Setting in All Solid Rock" specifications shall apply where poles are to be set in solid rock and where the hole is substantially vertical, approximately uniform in diameter and large enough to permit the use of tamping bars the full depth of the hole.

Where there is a layer of soil two (2) feet or less in depth over solid rock, the depth of the hole shall be the depth of the soil in addition to

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Oct 16 2017

**WA Exhibit No. 14  
Pole Attachment  
Rental Formula Comparisons**

POLE SPACE	RENTAL FORMULAE				
	TVA	APPA	ARKANSAS	FCC CABLE	Telecom Plus - US HR
POLE HEIGHT	37.5'	37.5'	37.5'	37.5'	37.5'
POWER	7.17' Allocated	Part of 10.17' of "Assignable" (Usable) Space	8.17' Allocated	Not Specified - Part of 13.5' of "Usable" Space	Not Specified - Part of 13.5' of "Usable" Space
COMMUNICATIONS WORKER SAFETY SPACE	Allocated Equally to 2 Communications Entities	3.33' Allocated to "Common Space"	Included in the "Un-Usable" Space	Included in the "Usable" Space	Included in the "Usable" Space
COMMUNICATIONS SPACE	Allocated to Communications Attachers	Allocated to Communications Attachers	Allocated to Communications Attachers	Allocated to Communications Attachers - Part of 13.5' of "Usable" Space	Allocated to Communications Attachers - Part of 13.5' of "Usable" Space
CATV	1' Allocated	1' Allocated	1' Allocated	1' Allocated	1' Allocated
TELCO	2' Allocated	1' Allocated	1' Allocated	N/A	1' Allocated
SUPPORT SPACE	Shared Equally By All Attachers (Including Owner)	Included in "Common" Space	Included as Part of the "Un-usable" Space	Known as "Un-usable" Space	Known as "Un-usable" Space
MINIMUM ATTACHMENT HEIGHT TO GROUND LINE	18'	18'	27.33' Which includes the Safety Space. 1/3 Allocated Fully to Owner and 2/3 Allocated Equally to All Attachers Including Owner	18'	18'
IN GROUND FOR STABILITY	6'	6'		6'	6'
PRESUMED NUMBER OF ATTACHERS (INCLUDING OWNER)	3	3	3	N/A	3
CALCULATION	$1 + \frac{3.33}{2} + \frac{24}{3}$ 37.5	$1 + \frac{27.33}{3}$ 37.5	$1 + \frac{2}{3} \times \frac{27.33}{3}$ 37.5	$\frac{1}{13.5}$	$1 + \frac{24}{3}$ 37.5
% OF ANNUAL CHARGE ALLOCATED TO CATV	28.44%	26.96%	18.86%	7.41%*	24.00%
				* 1' Divided by 13.5' of "Usable" Space	

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# APPA Pole Attachment Work Book

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*by*

**James Baller, Sean Stokes,  
Thomas Unke, and Charles Forster**

**Prepared for the  
American Public Power Association**

**October 2002**



**American Public Power Association**

## B. Annual Attachment Fees

The second aspect of the Model Agreement's fee methodology is an annual attachment fee to compensate the utility for the use of its poles or conduits. As a starting point, the Model Agreement has adopted a pole/conduit attachment rate formula that parallels the new federal attachment formulas contained in the Telecommunications Act applicable to telecommunications service attachments.<sup>6</sup> Since municipal utilities are not, however, regulated by the FCC, the federal formula's methodology was used only as a reference source.

### 1. Pole Rates

The rate methodology for poles involves a series of calculations addressing the historical average cost of a bare pole, carrying charge components (including administrative, maintenance, depreciation, taxes and cost of capital, which is set at the utility's operating margin). The Rate Calculator program that has been developed as part of the Model Agreement allows the utility the option of entering its specific pole costs and accounts. Like the FCC's formula, the Model Agreement's Rate Calculator establishes an annual fee that is comprised of two elements: a charge for the actual space occupied by the attaching entity; and a charge for the common space on the pole that benefits all users of the pole equally. Together, these two elements create a fully allocated attachment fee.

#### a. Assigned Space Charge

The formula apportions the cost of "assigned space" on the pole among all attaching entities according to the percentage of the usable space required for each entity. "Assigned space," often referred to in the federal rules as "usable space," is space on a utility's poles that can be used, as defined by applicable engineering and safety standards,

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<sup>6</sup> Codified at 47 U.S.C. § 224(e). The FCC adopted regulations implementing the Act's new rate formula for attachments to investor-owned electric utility poles by telecommunications carriers on February 6, 1998, *FCC Report and Order*, CS Docket No. 97-151, FCC 98-20. These rules were subsequently modified as part of the *Order on Reconsideration*.



c. Algebraic Representation of the Formula

The Model Agreement Rate Formula can be expressed in algebraic terms as follows:

**Maximum Rate** = Assignable Space Factor + Common Space Factor

**Assignable Space Factor** =  $\frac{\text{Space Occupied by Attachment}}{\text{Assignable Space}} \times \frac{\text{Assignable Space}}{\text{Pole Height}} \times \text{Average Cost} \times \text{Carrying Charge of Bare Pole}$

**Common Space Factor** =  $\frac{\text{Common Space}}{\text{Pole Height}} \times \frac{\text{Average Cost of Bare Pole}}{\text{Number of Attachments}} \times \text{Carrying Charge}$

Explanation of Formula:

- **“Pole Height”** is presumed to be 37.5 feet.
- **“Space Occupied by Attachment”** is presumed to be one foot.
- **“Assignable Space”** is presumed to be 10.17 feet per pole.
- **“Common Space”** is presumed to be 27.33 feet per pole.
- **“Average Cost of Bare Pole”** is derived from FERC Account 364 (“gross pole investment”). This figure, representing the historical “Pole Investment,” is further reduced by 15 percent to account for the electric utilities’ costs of cross-arms, which are not used by communications attachers, and is finally divided by the number of poles owned by the utility to arrive at an historical “Average Cost of Bare Pole.”
- **“Carrying Charges”** are expenses attributable to the poles, and include: administrative expenses; taxes; costs of capital; depreciation; and operation and maintenance. The sum of these five expense items will yield a figure that represents the costs of a pole expressed as a percentage of pole investment.

d. Departures from the FCC's Formula

The Model Agreement's Rate Calculator departs from the FCC's formula in four significant respects.<sup>7</sup> First, the rate applies uniformly to all communications attachments. In contrast, the federal formula discussed above only applies to "telecommunications service providers" and does not apply to cable television companies. Under the federal rules, cable television companies that are utilizing their attachments solely to provide cable service are only required to pay an attachment rate based on the percentage of the assigned space on the pole that they occupy.<sup>8</sup> Thus, there is no allocation of the common space costs to cable television companies.

The Model Agreement specifically rejected the application of separate rates for cable television companies and telecommunications providers. The cable television rate is a holdover from a desire in the late 1970s to assist the (then) nascent cable television industry by establishing a low rate for cable attachments. The cable formula does not reflect the actual cost to utilities of providing pole space, nor does it compensate utilities fairly for the value of their assets. Instead, the cable formula only recognizes the incremental cost of providing pole attachment space. As a result, under the federal rules, cable pole attachment rates are, in effect, subsidized by utility customers. Conditions have changed dramatically since the enactment of the cable attachment formula in 1978. Cable operators no longer need financial incentives and protection, and in the increasingly competitive utility environment, it is even more difficult to justify the additional costs absorbed by utilities and their customers for services that are unrelated to their core electric service.

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<sup>7</sup> While all of these departures are sound both legally and operationally, all APPA members should be aware that the cable and telecommunications industry will likely assert counter arguments.

<sup>8</sup> The FCC has concluded that the provision of cable modem access service is not a "cable service" but has nevertheless concluded that it is entitled to the "cable television pole attachment rate." The U.S. Supreme Court recently upheld this determination in *National Cable & Telecommunications Ass'n v. Gulf Power Co.*, 534 U.S. 327 (2002).

In addition, the application of two separate rates increases the administrative complexity of the pole attachment process. In contrast, the Model Agreement's single rate formula allows for administrative simplicity, is nondiscriminatory, and, as mentioned above, recognizes that the type or content of information transmitted over a communications system does not physically or materially impact the nature of the pole attachment or the burden that it places on the pole.

The second departure relates to the calculation basis for computing the carrying charge rate. The calculator computes a carrying charge rate based on a percentage of gross cost of a pole. This departure does not have a financial impact upon the calculation. However, it provides more clarity in the development in the attachment rate carrying charge.

The third departure relates to the allocation of common space, which adopts a "pure per capita" approach for the allocation of the common space. Under such an approach the assigned space would be allocated in the same manner as in the FCC formula, but all of the common space would be apportioned equally among the attaching entities rather than only two-thirds, as is provided under the federal rules. A pure-per-capita approach would require the utility to be included in the count of total entities attached to a pole, and the utility would be attributed an equal percentage of the common space with all other attachers.

The pure-per-capita approach has the advantage of being more equitable to all parties because the common costs are divided evenly among all of the users of the pole irrespective of the number of users. The Telecommunication Act's allocation, in all instances, of one-third of the common costs of the pole to the electric utility is arbitrary and the result of political compromise that does not represent a true equal allocation of common costs. The FCC formula is never equitable because the FCC treats the utility itself as an attaching entity, which means that in all cases the utility will bear one-third of the common space costs plus an additional percentage of the common space costs depending on how many parties have attached to the pole (e.g., if only one other party is on the pole, the utility would be allocated two-thirds of the common costs of the pole). In

contrast, a pure-per-capita approach will ensure full recovery of common costs from all users. Despite the fact that the utility is not included within the definition of “Attaching Entity” in Article 1 of the Model Agreement, in order to use a pure-per-capita approach the utility should nevertheless count itself as an attaching party when performing the rate calculations.

The fourth and final departure from the FCC’s formula is with respect to the FCC’s allocation of the 40-inch “neutral zone” or “safety space” that separates the electric space from the communications space on a pole as usable space (“assigned space”). Because communications attachments are presumed to occupy only one foot of assigned space, the allocation of the safety space to assigned space results in the utility bearing the full costs of the safety space. Since the safety space would not exist on electric utility poles but for the need to protect communications workers and communications facilities, it arguably should be attributed to the communications entities as part of the costs of their assigned space. Nevertheless, in recognition that the safety space provides benefits to all users of the pole including the utility, a more balanced approach would be to allocate the safety space to the common-space designation and apportion it evenly among all attaching entities. While the FCC has repeatedly resisted any such modification of its formula, a state court in Washington upheld the City of Seattle’s allocation of the safety space to the common space on a pole. Other authorities have reached similar conclusions. For example, the public service commissions of Kentucky, Maine and Wisconsin have allocated a portion of the safety space to cable and telecommunications providers.<sup>9</sup> In order to effectuate this change from the FCC’s presumptions, the utility will need to decrease the size of the assigned space by 40 inches and increase the size of the

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<sup>9</sup> The Illinois Commerce Commission (ICC) found that “it is fair and reasonable to assign 15% of the neutral space to the CATV operator; this results in an allocation of 6 inches of the 40-inch neutral space to the CATV operator.” The ICC, however, ultimately changed the allocation formula to eliminate allocation of any portion of neutral space to the attaching cable operator in a bow to political pressure over the potential impact on cable service rates from such a change. See, *Central Illinois Public Service Co. v. Illinois Commerce Commission*, 644 N.E.2d 817, 820, 821, 823-24 (1994).

common space by 40 inches. The Rate Calculator has been designed to make this adjustment.

The model incorporates two assumptions that may be considered rebuttable by attachers. Those two assumptions are the allocation of the one-foot usable space for attaching entities and the assignment of an average pole height of 37.5 feet for purposes of allocating costs. In addition, the model allows for the input of an average number of attachers, which may also be rebutted by attaching entities.

## 2. Conduit Formula

Although the agreement is written to be applicable to both poles and conduits, the development of a conduit rate calculator is beyond the scope of this project and will need to be developed on an individual basis by utilities.

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## POLE ATTACHMENT TOOLKIT

### Overview

The members of the National Rural Electric Cooperative Association (NRECA), in a resolution passed in March 2003, directed the Association to develop a "toolkit"—a set of practical guidelines, legal and accounting information, and examples—to help electric cooperatives address a host of issues associated with pole attachments. The resolution stated:

A growing problem nationwide with pole attachments is the lack of communication and coordination by telecommunications and cable television providers when they attach to the pole. Commonly, cables are attached without the cooperative's knowledge, and/or in such a fashion that they endanger the distribution system through ice, snow or wind loading. Although this is a state-by-state issue it is occurring nationwide. Therefore, we ask NRECA to develop a toolkit of information to provide cooperatives with guidance to address the legal, regulatory, financial and safety issues associated with pole attachments.

NRECA Resolution 03-K-1 (2003)  
"Regulation of Pole Attachments and  
Safeguarding of Electric Cooperative Infrastructure"

This document is a product of NRECA's response to that resolution. It should be a helpful resource for electric cooperatives, and their attorneys and advisors, in managing their relationships with pole-attaching entities, whether it be in drafting new contracts or renegotiating existing ones, ensuring appropriate recovery of costs, avoiding legal and liability risks, dealing with potential or member fallout from a difficult relationship with an attaching company, or handling the day-to-day safety and other related concerns of operating a distribution system with attachments.

The toolkit consists of six main sections:

1. **Political and Member Relations Issues.** Attachments to electric cooperative poles are not generally subject to federal regulation, but they may be subject to state regulation. In fact, attachers in some states have been actively lobbying state legislatures and state utility commissions to regulate electric cooperatives in the rates, terms, and conditions of attachment they impose. This section offers guidance on dealing with this trend and presents case histories in which three statewide associations of electric cooperatives—Arkansas, Tennessee, and Virginia—share lessons they learned from such challenges.
2. **Engineering and Operations Issues.** Electric cooperatives want to be sure that attachments don't present a hazard to personnel or property and don't interfere with cooperatives' primary mission: to provide electricity to consumers. This section presents a series of practical, commonsense "dos"—recommended practices and policies—that will help cooperatives maintain good relationships with attachers and ensure that they adhere to construction and safety standards in order to avoid engineering/operations problems.



3. **Rate Methodologies and Tax Implications.** Most electric cooperatives have no regulatory requirements for how to set rates for pole attachments. This section offers cooperatives three cost-based rate methodologies to consider, along with a discussion of their advantages and disadvantages: (1) formulas developed and approved by the Federal Communications Commission (the cable-only formula and the telecom formula), (2) a formula considered by the U.S. Congress when it was developing the 1996 Telecommunications Act (the telecom-plus formula), and (3) a formula developed by a state (the State of Maine formula). The section presents spreadsheets that illustrate how the calculations are done for each methodology. It also examines accounting and income tax issues—federal and state—on revenues and costs from pole attachments. It notes that the tax treatment of pole attachment transactions will vary, depending on the contract and whether the co-op is tax exempt or taxable.
4. **Legal and Regulatory Issues.** A myriad of issues pertain to pole attachments—issues of property law, particularly easements, antitrust, contracts, taxes, bankruptcy, and liability. This section explores these issues, and provides insightful background information on FCC, Rural Utilities Service (RUS), and state regulation. Throughout, it discusses examples of recent litigation involving utilities and attachers. (“Poles” also include a cooperative’s ducts, conduits, and rights-of-way, and attaching entities include any provider of electric, telephone, cable TV, Internet, or similar services.)
5. **Sample License Agreement.** After a brief introduction and explanation of provisions and notation, this section presents a sample agreement that co-ops can readily adapt to their individual situations. The sample agreement is designed to cover standard types of pole attachments (it applies to distribution poles, not to conduits or transmission facilities). Its provisions are both protective of electric cooperative interests and reasonable. To the extent possible, it uses simple, straightforward language rather than needlessly complex legal and technical jargon.
6. **2003 Survey Results.** To give members some insight for benchmarking their own pole attachment experiences and practices, including rate setting, NRECA sponsored a confidential survey of distribution system members. This section summarizes the survey results, then presents the results as a “slide show” of bar graphs, pie charts, and other graphic devices, all with interpretive notes. (The survey was conducted by an independent research firm and the results are presented as aggregate data and ranges in order to preserve confidentiality and address antitrust concerns.)

The Pole Attachment Toolkit is the product of a team effort. NRECA staff from the Energy Policy, Government Relations, and Market Research departments, and the Cooperative Research Network, as well as members of the Transmission and Distribution Engineering Overhead Line subcommittee, worked with consultants and with staff members and attorneys of cooperatives to develop the document:

- The Washington, D.C., law firm of Keller and Heckman LLP developed the sample agreement and rate methodologies components.
- Tom Strait of the Washington Utility Group provided tax and accounting expertise.
- The statewide cooperative associations of Arkansas, Tennessee, and Virginia shared their legislative and member relations experiences.
- Members of the Overhead Line subcommittee of NRECA's Transmission and Distribution Engineering committee and the Electric Cooperative Bar Association, as well as individual NRECA members and RUS staff personnel, contributed their insight, comments, and suggestions for the Toolkit.

Members of NRECA who have questions about the Toolkit, or any of the issues raised in it, are invited to contact the NRECA staff members who contributed to the document. The contributors' phone numbers and e-mail addresses are listed in the sections they helped to prepare. In addition, our consultants offer an initial consultation to members, free of charge. The consultants' contact information is similarly listed in the sections they helped to prepare.

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### **Legal Notice**

NRECA has endeavored to provide in this Toolkit timely, accurate and helpful information to its members about the numerous legal, regulatory, financial, operational and other issues associated with pole attachments. However, NRECA does not make any warranty or representation, express or implied, with respect to the accuracy, completeness, or usefulness of the information contained in this document, nor does NRECA assume any liability with respect to the use of, or damages resulting from the use of, any information, methodology, or process provided in this document.

The information provided in the toolkit is not an exhaustive review of every issue, and is not tailored to specific state law or specific facts and circumstances. Therefore, NRECA strongly encourages its members to consult with qualified legal counsel and tax and accounting advisors about their system's specific legal, regulatory, tax, and accounting issues.



## POLE ATTACHMENT TOOLKIT

### *Rate Methodologies*

#### **Telecom Plus**

As explained in the ["FCC Formulas"](#) section, the current FCC telecom formula allocates one-third of the total annual unusable space costs exclusively to the utility pole owner, while the other two-thirds are allocated equally among all attachers, including the pole owner.

Congress provided no explanation for the mandatory allocation of one-third of the unusable space costs solely to the pole owner when it enacted the 1996 Telecommunications Act. What is suspected is that the formula eventually adopted by Congress was the result of a compromise between the House of Representatives and the Senate, each of which approved formulas containing markedly different allocation schemes for unusable space costs.

The House approved a formula that would have allocated 100% of the unusable space costs among all attachers (including the utility pole owner), so that the utility pole owner would not have to shoulder one-third of those costs by itself. (See H.R. Conf. Rep. No. 104-458, at 206 (1996).) Usable space costs, on the other hand, would have been allocated to the attacher on the basis of the percentage of the usable space used by the attacher (presumed to be 1/13.5, or 7.4%). (See the same House conference report.) The Senate approved a bill that would have allocated the unusable costs in the same manner as usable costs are currently allocated (i.e., on the basis of the percentage of the usable space used by the attacher, which is presumed to be 1/13.5, or 7.4%). (See S. Rep. No. 104-23, at 87-88 (1995).) An apparent compromise was reached in the House-Senate conference, resulting in the enacted formula, which allocates two-thirds of the unusable space costs among all attachers, and allocates the remaining one-third solely to the utility pole owner. (See 47 U.S.C. § 224(e)(2).) No explanation was provided in the Conference Report for this apparent compromise. (See H.R. Conf. Rep. No. 104-458, at 207 (1996).)

#### **DEFENSE OF THE HOUSE-APPROVED (TELECOM-PLUS) FORMULA**

The House-approved formula was reasonable on its face, because it is premised on the belief that all of the attachers to the pole benefit equally from the unusable space portion of the pole. (See H.R. Conf. Rep. No. 104-458, at 206 (1996).) Assuming that all parties benefit equally, the allocation of 100% of unusable space costs among all attachers would be fair.

Cable and telecom attachers would likely disagree that all parties benefit equally from the unusable space portion of the pole. They may argue that, were they to construct their own stand-alone poles, they would not need poles that were so long, so closely spaced and so strong. Their argument therefore would be that the electric utility pole owner benefits more than the attachers from the unusable space portion of the pole because the pole owner is the only entity that needs such strong, tall, and closely spaced poles.

This argument, however, ignores three important facts.

1. The electric utility distribution system typically is the only distribution system that exists. Unless the attacher wishes to build its own separate distribution system, it must avail itself of the existing electric distribution system. On that one existing distribution system, a certain percentage of each pole is rendered unusable because of structural and safety code requirements. This unusable space is required in order to enable the utility to construct the pole in the first place and, in turn, for all entities to attach to the pole. As a consequence, any attacher affixing equipment to that distribution line benefits as much as the utility and any other attacher from the unusable space, and, thus, it can be argued, should pay its fair share.
2. Even by paying its fair share of a more expensive distribution line, each attacher still pays less than the alternative of building another independent distribution system. Arguably then, utilities effectively are subsidizing attachers by paying for a disproportionate percentage of the unusable space. Attachers receive a "free ride" relative to the costs they would incur in constructing a stand-alone distribution system. On the other hand, cable and telecom attachers might argue that the electric utility would incur the costs associated with its distribution system regardless of any attachments and the utility should therefore only charge the attacher its incremental cost.
3. An argument exists that the FCC's telecom formula already unjustly favors attachers; that is, the FCC's telecom rate formula assigns too many costs to the usable space on the pole, and allocates those costs inequitably. It therefore makes little sense to allocate such costs by dividing the space occupied (1 foot, presumed) by the amount of space that might one day be used for attachments (13.5 feet, presumed). Instead, those costs could be allocated by dividing the space occupied by the amount of space actually used for attachments. In addition, costs associated with the 40 inches of safety space could be assigned to the unusable space portion of the pole, not the usable space portion. If these changes were implemented, they would result in fewer costs being assigned to the usable space portion of the pole, and more costs being assigned to the unusable space. Moreover, the percentage of usable space costs allocated to each attacher would be higher. However, cable and telecom attachers may counterargue that the electric utility's distribution system is a monopoly and the utility could charge unjust and/or unreasonable rates if unregulated.

Even though the House-approved version appears to have produced a more favorable rate to the electric utility, the Senate version was not as generous—thus, the need for a compromise. The cable and telecom attachers may argue that the Senate version (described above) had more merit. Regardless, an electric cooperative must be in a position to support its methodology and resulting rates should the rates be challenged.

#### **CALCULATING THE TELECOM-PLUS FORMULA**

The only difference between the telecom-plus calculation and the current FCC telecom rate is that 100% of the unusable space costs is allocated equally among all attachers, instead of just two-thirds. The telecom-plus rate, although not adopted by Congress or sanctioned by the FCC, represents what many utilities would consider a more equitable allocation of costs. The formula for calculating the telecom-plus rate is as follows:

$$\text{Maximum rate (telecom-plus)} = \frac{\text{attacher responsibility percentage}}{\text{percentage}} \times \text{net cost of a bare pole} \times \text{carrying charge rate}$$

$$\text{Telecom-plus responsibility percentage} = \frac{\text{space occupied} + \left( \frac{\text{unusable space}}{\text{no. of attaching entities}} \right)}{\text{pole height}}$$

#### **ADVANTAGES AND DISADVANTAGES OF USING THE TELECOM-PLUS FORMULA**

Unregulated electric co-ops should consider the following advantages to using the telecom-plus formula to calculate pole attachment rates:

- It allocates more costs to attachers, because it is based on the reasonable assumption that all attachers benefit equally from the unusable space portion of the pole.
- It results in a considerably higher pole attachment rental rate than either the FCC cable-only or FCC telecom rate.
- It produces a cost-based rate and, therefore, satisfies the federal tax law requirement that cooperatives operate on a cost basis.
- It has an air of legitimacy because it was proposed by the U.S. House of Representatives, and because it follows all FCC guidelines except for the allocation of unusable space.

Unregulated electric co-ops should consider the following disadvantages to using the telecom-plus formula to calculate pole attachment rates:

- Although it was proposed by the House of Representatives, it was never enacted by the full Congress.
- It incorporates FCC guidelines (except for the allocation of unusable space), and some of those guidelines appear to be disadvantageous to utility pole owners.
- The telecom-plus rate formula has not been sanctioned by the FCC and may not be readily embraced by state or federal regulators.

[Back to top](#)



October 21, 2008

**EX PARTE NOTICE**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RE: *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, RM-11293, RM-11303

Dear Ms. Dortch:

In its November 20, 2007, Notice of Proposed Rulemaking in the above-referenced docket,<sup>1</sup> the Commission, in accordance with the mandates of Section 706 of the 1996 Act, tentatively concluded that it should promote national broadband deployment through the adoption of a uniform rate specifically for broadband-related pole attachments.<sup>2</sup> Under existing rules, the rates that pole owners charge attachers cover all attachments, whether or not they are used for broadband, and those rates tend to be dramatically different for different broadband providers. The present structure thus distorts competition in broadband services, and it does so, moreover, by forcing some broadband providers to pay excessive pole attachment rates.<sup>3</sup> That structure is thus contrary to the mandate of section 706, and it is imperative that the Commission address this problem. AT&T and Verizon applaud the Commission's initiative to address this problem.

In the NPRM, the Commission tentatively concluded that, due to the critical need to create even-handed treatment and incentives for broadband deployment, adoption of a uniform rate for all pole attachments capable of supporting broadband Internet access service is warranted. Thus, the Commission tentatively concluded, all categories of providers should pay the *same pole attachment rate for all attachments used for broadband service*.<sup>4</sup> AT&T and Verizon set forth below a proposed uniform broadband rate formula that achieves the

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<sup>1</sup> *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, RM-11293, RM-11303, Notice of Proposed Rulemaking (Rel. November 20, 2007) (NPRM).

<sup>2</sup> See NPRM at ¶ 36.

<sup>3</sup> See, generally, Time Warner Telecom, Inc.'s White Paper on Pole Attachment Rates filed in Petition of the United States Telecom Association for Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures, RM-11293, and Petition for Rulemaking of Fibertech Networks, LLC, RM-11303 at pp. 3-9 (January 16, 2007).

<sup>4</sup> See NPRM at ¶ 36. Thus, attachments used exclusively for non-broadband service, e.g., cable-only service, or cable + telecom-only service, would not be covered under the uniform broadband rate concept.

Commission's goals of competitive parity and a single uniform rate for broadband capable attachments. Specifically, this proposal would result in a just and reasonable uniform rate for all pole attachments capable of supporting broadband Internet access service, thereby eliminating the regulatory disparities that currently distort competition for broadband services. Moreover, it would do so in a way that would result in just and reasonable rates, as required by Section 224, and that would afford adequate compensation to pole owners. The AT&T and Verizon proposal also would provide the benefit of greater simplicity than present formulas under Section 224 and the Commission's rules.

## **I. The New Formula.**

### **A. Section 1.1409(e)(2) of the Rules.**

The starting point for the formula is familiar: the existing Section 224 formula for telecommunications carriers, established in Section 1.1409(e)(2) of the Commission's rules.<sup>5</sup> All of the essential elements of the structure of that formula are present, though there are some adjustments to the assumptions for those values. Thus, this is a formula with which all attachers (and the Commission) already have general experience, and the adjustments – as will be detailed – will simplify the application. Three essential elements, however, are unchanged: (1) the use of net pole investment;<sup>6</sup> (2) carrying charges; and (3) pole heights.<sup>7</sup> These elements provide the foundation for the annual recovery by pole owners of their poles' costs.

### **B. Adjustments to Certain Elements.**

There are certain changes to the following elements that appear in Section 1.1409(e)(2):

1. *Allocation of unusable space.* In the Section 1.1409(e)(2) formula, the attaching entities' financial responsibilities are limited to a portion of two-thirds of the unusable space. The pole owner is assigned a portion of that two-thirds, and also the costs of the remaining one-third of unusable space. Under the AT&T and Verizon proposal, the costs associated with

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<sup>5</sup> See 47 C.F.R. § 1.1409(e)(2). Indeed, much of the structure and assumptions of the formula is similar to Dominion Virginia Power's proposal in these proceedings. See Decl. of M. Roberts, Attached to Comments of Ameren Services Company and Virginia Electric and Power Company (Dominion Power) at ¶¶ 12-15.

<sup>6</sup> Where net pole investment is zero, or negative, the formula should "us[e] gross figures rather than net figures, with the exception of the rate of return element of the carrying charges. . . ." *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, and *Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-151, Consolidated Partial Order on Reconsideration, FCC 01-170, at ¶¶ 35, 39 (2001) (*Consolidated Partial Recon. Order*).

<sup>7</sup> It is generally understood that poles average 37.5' in height. See Decl. of V. Mahanger MacPhee, Attached to Comments of AT&T, March 7, 2008. See also *Implementation of Section 703(e) of the Telecommunications Act of 1996*, and *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Report and Order, FCC 98-20, at ¶ 22 (1998). The assumptions in this proposal on pole heights remain unchanged from the existing telecommunications formula.

unusable space would be divided equally among all attachers and the pole owner.

2. *The presumed number of attachers.* Under existing formulae, there are two presumptions regarding the number of attachers. For poles in urban areas, five attachers are presumed (including the pole owner). In rural areas, the presumption is three (including the pole owner).<sup>8</sup> This formula, on the other hand, presumes four attachers (including the pole owner) in all areas.<sup>9</sup>
3. *The presumed amount of usable space by attachers.* The Section 1.1409(e)(2) formula presumes the use of one foot of space by attachers on poles. This assumption continues in this proposal, and is extended to include all attachers.<sup>10</sup>

### C. The Result.

The formula that results from these changes is as follows:

$$\text{Max Rate/pole} = \frac{\text{Occupied Space} + \text{Equivalent Share of Unusable Space}}{\text{Pole Height}} \times \text{Net Pole Investment} \times \text{Carrying Charge Rate}$$

The resulting rates achieved through the use of the AT&T and Verizon formula effectuate the language and spirit of the Commission's tentative conclusions in the NPRM, as outlined above, and responsibly promote the Commission's Section 706-based objectives. Application of the formula will produce a uniform rate for broadband-capable pole attachments that is demonstrably equitable, and reasonably approximates the normative results envisioned by the Commission in

<sup>8</sup> See, e.g., *Consolidated Partial Order on Reconsideration*, FCC 01-170, at ¶¶ 71-72.

<sup>9</sup> The record before the Commission establishes that the 1.1409(e)(2) presumptions do not reflect present pole attachment reality. In fact, the record evidence shows that, on average, there are between 2-3 attachers per pole (not including the pole owner). See, e.g., Comments of American Electric Power Service Corporation, *et al.*, at pp. 19-28 (March 7, 2008); Comments of Alabama Power *et al.*, at pp. 20-22 (March 7, 2008); and Comments of the Edison Electric Institute and the Utilities Telecom Council at 45-47 (March 7, 2008). The present formula's presumption, thus, more accurately reflects the actual number of pole attachers than the present telecommunications Section 1.1409(e)(2) formula.

<sup>10</sup> See, e.g., *Implementation of Section 703(e) of the Telecommunications Act of 1996, and Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Report and Order, FCC 98-20, at ¶ 86 (1998) (presumptive one foot of usable space for cable attachers affirmed and applied "to attachments by telecommunications carriers generally" as an "expeditious and equitable method for determining reasonable rates"). Moreover, including ILECs within the 1' standard is justifiable on two principal grounds: (1) some of the space attributed to ILECs under decades-old, legacy joint use agreements has since been used to accommodate attachments by CLECs and cable providers; and (2) modern technology, used by all broadband providers, has greater capacity than the legacy technology in use when the joint use agreements were negotiated and may require less space for attachments.

the NPRM. And, perhaps more importantly, it eliminates a source of competitive distortion in the broadband market.

## II. Legal Authority.

The Commission has ample authority to adopt this proposal as a mechanism to promote broadband deployment.<sup>11</sup> First, as the Commission has observed, Section 706 directs the Commission to “promote the deployment of broadband infrastructure.”<sup>12</sup> It is appropriate, thus, for the Commission to “separate out those pole attachments that are used to offer broadband Internet access service” and prescribe a competitively neutral rate structure for those attachments, which is accomplished in this proposal. Second, as explained in Verizon and AT&T’s Comments,<sup>13</sup> Section 224(b)(1) makes plain that “the Commission shall regulate the rates, terms, and conditions *for pole attachments* to provide that such rates, terms, and conditions are just and reasonable”<sup>14</sup>; and (2) Section 224(a)(4) expressly defines the term “pole attachment” as “*any attachment by a . . . provider of telecommunications service* to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”<sup>15</sup> There is no dispute that ILECs are providers of telecommunications services when they offer telecommunications services to the public for a fee.<sup>16</sup> Thus, Section 224 provides the Commission the authority to adopt a new rate formula to ensure just and reasonable rates for broadband attachments by all broadband providers.

Moreover, the Supreme Court has recognized the legitimacy of such an approach and the authority of the Commission to pursue it. In *NCTA v. Gulf Power Co.*, the Court specifically acknowledged the Commission’s authority to establish pole attachment rates that it deems appropriate for the promotion of broadband deployment, including the removal of barriers to infrastructure investment. *See NCTA v. Gulf Power Co.*, 534 U.S. 327, 339 (2002). Disparate rates for broadband-capable pole attachments, which necessarily skew competition and chill

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<sup>11</sup> The implementation of an order adopting this proposal, of course, would implicate existing joint use and licensing agreements. The D.C. Circuit has held that Section 224 of the Act gives the Commission the power to prospectively release parties from contractual arrangements relating to pole attachments so that the parties may conform those arrangements to Commission rules implementing Section 224. *See Monongahela Power Co. et al. v. Federal Communications Comm’n*, 655 F.2d 1254, 1256-57 (1981). Indeed, the Commission has previously exercised that authority. Accordingly, and consistent with its authority under Section 224, the Commission should require parties prospectively to conform their agreements to any new rate standards it adopts in this proceeding.

<sup>12</sup> NPRM at ¶ 36.

<sup>13</sup> *See* Comments of Verizon at 6-10 ; Comments of AT&T at 25-33.

<sup>14</sup> 47 U.S.C. § 224(b)(1) (emphasis added).

<sup>15</sup> *Id.* § 224(a)(4) (emphasis added).

<sup>16</sup> *See id.* § 153(46) (“The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”). *See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶¶ 992-993 (1996) (recognizing that ILECs are providers of telecommunications service) , *modified by*, 11 FCC Rcd 13,042 (1996), *aff’d in part, vacated in part by sub nom. Competitive Telecomms. Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997).

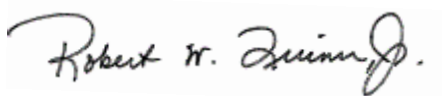
broadband investment, is exactly the kind of regulatory barrier that should be removed in order to promote the unfettered broadband investment and buildout that Congress sought through the passage of Section 706 of the Act, and that the Supreme Court has recognized as legitimate.

This proposal is fully consistent with Section 224. As the Supreme Court noted in *NCTA*, Section 224's cable and telecom attachment formulas are not the "exclusive rates" applicable to pole attachments. Rather, they "are simply subsets of – but not limitations upon" – the Commission's authority to "prescribe just and reasonable rates . . . without necessary reliance upon a specific statutory formula devised by Congress." *NCTA*, 534 U.S. at 335-36. The uniform broadband-capable pole attachment rate produced by this proposal, thus, not only satisfies the Commission's Section 706 mandate, but does so in a way that is fully consistent with the Section 224's "just and reasonable rate" requirements.<sup>17</sup>

Respectfully submitted,



Susanne A. Guyer  
Verizon  
Senior Vice President  
Federal Regulatory Affairs



Robert W. Quinn, Jr.  
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<sup>17</sup> A harmonious construction of two statutory provisions, particularly within the same Act, is preferred of course, unless the Legislature expresses a clear intent to the contrary. *See, e.g., Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-265, Memorandum Opinion and Order on Reconsideration and First Report and Order, 10 FCC Rcd 3105, 3125, ¶ 38 ("more compelling rule of statutory construction" requires that interpretation of language in one section of a statute be construed harmoniously with other provisions in the same statute.)