§ 1.1420 Timeline for access to utility poles.

(a) The term “attachment” means any attachment by a cable television service provider to a pole, conduit, duct, or right-of-way that is not directly benefitting the utility. A modification to an existing attachment is deemed to directly benefit from a modification if, after receiving notification of such modification as provided in subpart J of this part, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

(b) All attaching entities attached to the pole shall be counted for purposes of apportioning the cost of unusable space.

(c) Utilities may use the following rebuttable presumptive averages when calculating the number of attaching entities with respect to the formula referenced in §1.1409(e)(2): For non-urbanized service areas (under 50,000 population), a presumptive average number of attaching entities of three (3). For urbanized service areas (50,000 or higher population), a presumptive average number of attaching entities of five (5). If any part of the utility’s service area within the state has a designation of urbanized (50,000 or higher population) by the Bureau of Census, United States Department of Commerce, then all of that service area shall be designated as urbanized for purposes of determining the presumptive average number of attaching entities.

(d) A utility may establish its own presumptive average number of attaching entities for its urbanized and non-urbanized service area as follows:

(1) Each utility shall, upon request, provide all attaching entities and all entities seeking access the methodology and information upon which the utilities presumptive average number of attaching is based.

(2) Each utility is required to exercise good faith in establishing and updating its presumptive average number of attaching entities.

(3) The presumptive average number of attaching entities may be challenged by an attaching entity by submitting information demonstrating why the utility’s presumptive average is incorrect. The attaching entity shall submit what it believes should be the presumptive average and the methodology used. Where a complete inspection is impractical, a statistically sound survey may be submitted.

(4) Upon successful challenge of the existing presumptive average number of attaching entities, the resulting data determined shall be used by the utility as the presumptive number of attaching entities within the rate formula.

EFFECTIVE DATE NOTE: At 63 FR 12026, Mar. 12, 1998, § 1.1417 was added. The section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.1418 Use of presumptions in calculating the space factor.

With respect to the formulas referenced in §1.1409(e)(1) and §1.1409(e)(2), the space occupied by an attachment is presumed to be one (1) foot. The amount of usable space is presumed to be 13.5 feet. The amount of unusable space is presumed to be 24 feet. The pole height is presumed to be 37.5 feet. These presumptions may be rebutted by either party.

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