

1600 **PURPOSE**

- 1600.1 This chapter shall implement the Commission’s regulatory authority over access to a public utility’s Facilities by another public utility or by any person, firm, copartnership, association, or corporation interested in the use of a public utility’s Facilities. This chapter shall also implement the Commission’s regulatory authority over access to a public utility’s poles, conduits, and rights-of-way by Cable Operators. This chapter also provides procedures for the processing of Applications regarding the use of such Facilities, and prompt processing of Complaints regarding the use of utility poles, conduits, or rights-of-way by Cable Operators, including the rates, terms, and conditions of such use, or petitions for temporary stay pertaining to removal of equipment or changes in rates.
- 1600.2 The Commission shall ensure that all Pole Attachment rates, terms and conditions prescribed in accordance with this chapter are just and reasonable, and shall regulate the matters described in this chapter in accordance with District of Columbia law, federal law, and to the extent applicable, Federal Communications Commission rules and regulations.

SOURCE: Final Rulemaking published at 31 DCR 6496 (December 21, 1984); as amended by Final Rulemaking published at 33 DCR 5667 (September 12, 1986); as amended by Final Rulemaking published at 66 DCR 14436 (November 1, 2019).

1601 APPLICATIONS

- 1601.1 Private negotiation of agreements regarding the use of a public utility's Facilities by another public utility or by any person, firm, copartnership, association, or corporation interested in the use of a public utility's Facilities is encouraged by the Commission. In case of failure to agree upon the use of a public utility's Facilities by another public utility or by any person, firm, copartnership, association, or corporation interested in the use of a public utility's Facilities, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation may file an Application with the Commission.
- 1601.2 Applications filed under this chapter shall be filed in accordance with and shall be governed by the procedures set forth in Chapter 1 (Public Service Commission Rules of Practice and Procedure) of this title, except as otherwise provided by this chapter.
- 1601.3 The Application shall specify the cause of the dispute. The Application shall be accompanied by a copy of the agreement for the use of the Facilities, if any, between the Applicant and the public utility.
- 1601.4 The Commission shall investigate the Application. If the Commission determines that public convenience and necessity require such use of the Facilities and that it would not result in irreparable injury to the owners or other user of the Facilities nor in any substantial detriment to the service to be rendered by the owners or other users of the Facilities, the Commission shall direct that use of the Facilities be permitted and prescribe the conditions and compensation for such joint use. This provision does not alter a Cable Operator's rights to access a utility's poles, conduits or rights-of-way upon just and reasonable rates, terms and conditions.
- 1601.5 With respect to any Application, the Commission shall take final action within three hundred and sixty (360) days after the filing of the Application.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6497 (December 21, 1984); as amended by Final Rulemaking published at 66 DCR 14436 (November 1, 2019).

1602 NOTICE OF REMOVAL AND PETITION FOR TEMPORARY STAY

1602.1 A public utility shall provide any person, firm, copartnership, association, or corporation using a public utility's Facilities no less than sixty (60) days written notice prior to the following:

- (a) Removal of any person, firm, copartnership, association, or corporation's equipment or termination of services to any person, firm, copartnership, association, or corporation's equipment located on the public utility Facilities; or
- (b) Changes in rates, terms, or conditions for the use of public utility Facilities.

1602.2 Any person, firm, copartnership, association, or corporation affected by the notice in Subsection 1602.1 may file a petition for temporary stay of the action in the notice within fifteen (15) days of the notice.

1602.3 A petition for temporary stay shall be governed by the procedures set forth in Chapter 1 of this title, except as otherwise provided by this chapter.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6497 (December 21, 1984); as amended by Final Rulemaking published at 66 DCR 14436 (November 1, 2019).

**1603 RULES GOVERNING POLE ATTACHMENT DISPUTES
BETWEEN PUBLIC UTILITIES AND CABLE
OPERATORS**

- 1603.1 Cable Operators may also file Complaints or petitions for temporary stay regarding the use of existing utility poles, ducts, conduits or rights-of-way located in the District of Columbia. Petitions for temporary stay shall be governed by the provisions of D.C. Official Code § 34-1253.03, and Sections 1601 and 1602. Complaints shall be filed in accordance with Chapter 1 of this title as such procedures pertain to processing of formal complaints, except as otherwise provided by this chapter.
- 1603.2 In a case where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of the term or condition requires review of the associated rate, the Complaint shall provide data and information in support of the claim. The data and information shall include, where applicable, the following information:
- (a) The depreciated installed cost of poles in the District of Columbia;
 - (b) The total number of poles owned and controlled or used by the public utility;
 - (c) The total number of poles which are the subject of the Complaint;
 - (d) The number of poles included in paragraph (c) of this section that are owned by the public utility and that are leased to other users by the public utility, and the annual share of pole costs allocated to the users (including the Complainant), together with the methodology for such allocation; and
 - (e) The annual carrying charges for the poles owned and controlled or used by the public utility.
- 1603.3 With respect to the data required by § 1603.2, this data and information shall be based upon the cost methodology, prescribed by the Commission. Data shall be derived from Form M, ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). Calculations made in connection with these figures shall be provided to the Applicant.
- 1603.4 Where the attachments to the data required by § 1603.2 involve ducts, conduits, or rights-of-way, in whole or in part, appropriate and equivalent data and information shall be filed.

- 1603.5 If any of the information required in § 1603.2 is not provided to the Cable Operator by the public utility upon reasonable request, the Cable Operator shall include a statement indicating the steps taken to obtain the information from the public utility, including the dates of all requests. No Complaint filed by a Cable Operator shall be dismissed where the public utility has failed to provide the information in § 1603.2 after a reasonable request.
- 1603.6 The Complaint shall include a brief summary of all steps taken to resolve the pole attachment dispute prior to filing.
- 1603.7 In its consideration of the Complaint, answer, and other filings, the Commission may take notice of any information contained in publicly available documents made by the parties to the dispute and may accept, subject to rebuttal, studies that have been conducted.
- 1603.8 In making any determination under this Section, the Commission shall consider the interests of both cable service subscribers and public utility consumers.
- 1603.9 With respect to any Complaint, the Commission shall take final action within three hundred and sixty (360) days after the filing of the Complaint.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6499 (December 21, 1984); as amended by Final Rulemaking published at 66 DCR 14436 (November 1, 2019).

1604 REMEDIES

1604.1 If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may take any of the following actions:

- (a) Terminate the unjust and unreasonable rate, term, or condition in the Pole Attachment agreement; or
- (b) Direct the substitution of in the Pole Attachment agreement the just and reasonable rate, term, or condition established by the Commission.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6499 (December 21, 1984); as amended by Final Rulemaking published at 66 DCR 14436 (November 1, 2019).

1605 WAIVER

1605.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6500 (December 21, 1984); as amended by Final Rulemaking published at 66 DCR 14436 (November 1, 2019). Final Rulemaking published at 67 DCR 011091 (September 18, 2020).

1699 DEFINITIONS

1699.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Applicant – a public utility or any person, firm, copartnership, association, or corporation who files an Application.

Application – a filing by either a public utility or any person, firm, copartnership, association, or corporation interested in the use of a public utility's Facilities.

Cable Operator – a person or group of persons: (A) who provides cable service over a cable system or over an open video system and directly or through one or more affiliates owns a significant interest in such cable system or open video system; or (B) who controls or is responsible for, through any arrangement, the management and operation of a cable system or open video system.

Commission – the Public Service Commission of the District of Columbia.

Complaint – a filing by either a Cable Operator or a public utility alleging that it has been denied access to a public utility's poles, ducts, conduits or rights-of-way, or that a rate, term, or condition.

Facilities – tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment.

Pole Attachment – any attachment by a Cable Operator to a pole, duct, conduit, or right-of-way owned or controlled by a public utility.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6501 (December 21, 1984); as amended by Final Rulemaking published at 66 DCR 14436 (November 1, 2019).