



***DISCLAIMER:** This document is intended to be a tool for education and information. It offers a list and summary of applicable state legislation that Next Century Cities is aware of. This document is not intended to provide legal advice, or to be a legal analysis or a comprehensive list of all relevant statutes. We offer these links and information for illustration and reference purposes only, as a starting point for analysis by interested parties. We note also that practice in the field can sometimes differ from the language of a statute.*

## **Background**

Utility poles have become one of the great battlegrounds in the effort to expand next-generation internet network infrastructure deployment. Pole access determines whether a new provider is able to easily and cost effectively bring broadband infrastructure to a community. This in turn plays a significant role in the level of competition, and the services available to local businesses and residents. However, gaining access to these poles is often a long, difficult, and expensive process, making the barrier to entry incredibly high.

A significant portion of utility poles are not owned by municipal governments, but rather by electric utilities or telecommunications companies. When a new provider enters the market, they must contact the owner of each utility pole to which they would like to attach. Each company with pre-existing wires or attachments on the pole must then be asked to perform “make ready” work. For a pole to be made ready, the owner of each attached wire must separately visit the pole and, if necessary, move its wire to create space for the new provider. Poles must be modified before a new provider can attach its wires if they lack the necessary space for the wires. No new attachments can be made until all incumbents have deemed the pole ready—a process that can take upwards of [nine months](#), and can create recurring traffic obstructions for vehicles and pedestrians as multiple companies must each send a truck to every pole. Furthermore, if delays occur during the make-ready process — even if they are the fault of the existing wire owners — all additional costs must be paid by the new attacher. Unfortunately, incumbent businesses sometimes delay or deny pole access to new providers for as long as possible, which severely delays new providers’ attempts to build out their networks.

## **One Touch Make Ready**

To combat these delays, a small number of cities have taken the initiative to reform the make ready process with [One Touch Make Ready](#) (OTMR) legislation. OTMR allows a single

contractor or pool of contractors to do all the necessary make ready work that can be done without cutting, splicing, or discontinuation of service. This speeds up the make ready process by eliminating the need to wait months for each incumbent's individual contractor to visit the pole. The contractors involved must be approved by the pole owner, any companies with attachments, and the new provider.

Advocates of OTMR argue that the current regulations in most states cause needless delays, and that OTMR policies are necessary to facilitate new fiber deployment. Speeding up the pole attachment process eliminates one of the most obstructionist barriers to entry, thus encouraging competition and lowering prices for businesses and residents. Opponents, however, say that these policies do not do enough to take established business practices into account. Each company has its own process and trusted affiliates who are trained to handle its wires, though these contractors may perform the same work for multiple firms. Unions have also expressed discontent with OTMR policies, as it is unclear what their members' role would be under such a system.

In some cases the municipal utility has created OTMR policies, such as [CPS Energy](#) in San Antonio, Texas, while in cities such as [Nashville, Tennessee](#) and [Louisville, Kentucky](#) the local government passed city-wide OTMR ordinances. However, they face opposition from some of the biggest providers in the market, including AT&T and Comcast, who have filed suits challenging the cities' authority to enact OTMR. However, in a [filing](#) in the Louisville case, the Federal Communications Commission's General Counsel stated that OTMR is generally consistent with federal policy.

[CPS Energy](#) in San Antonio, Texas implemented its OTMR plan in August, 2016. New providers looking to attach to CPS' poles must select a contractor to perform make ready work from a pre-approved list, and once completed the incumbent providers have 15 days to inspect the work.

## **Next Century Cities and Support for Our Members**

This question of authority is a significant issue because state policies on pole attachments are complex and often differ widely. This may leave many local leaders to wonder how they might improve the local make-ready process. To help our members understand this issue, Next Century Cities has created this in-depth guide to pole authority by state and provided additional resources to support local leaders.

## **States Deferring to the Federal Communications**

### **Commission's Authority**

There is no one universal rule governing pole attachments. The Federal Communications Commission (FCC) controls attachments and regulations in 29 states, but the other 21 states and the District of Columbia have each implemented their own regulations.

The FCC currently regulates all activity related to utility pole attachments in 30 states, listed below:

Alabama

Arizona

Colorado

Florida

Georgia

Hawaii

Indiana

Iowa

Kansas

Maryland

Minnesota

Mississippi

Missouri

Montana

Nebraska

Nevada

New Mexico

North Carolina

North Dakota

Oklahoma

Pennsylvania

Rhode Island

South Carolina

South Dakota

Tennessee

Texas

Virginia

West Virginia

Wisconsin

Wyoming

These states are subject to the regulations issued by the FCC under the authority granted by [Section 224](#) of the Telecommunications Act, which attempts to streamline the pole attachment process in order to more quickly deploy broadband infrastructure while ensuring that pole owners are fairly compensated for their property. Section 224 states the following:

- The FCC shall regulate all rates, terms, and conditions of new attachments to utility poles in order to ensure that all rates, terms, and conditions are reasonable and just, and will hear and resolve any complaints by new attaching entities.
- Any incumbent owner of a utility pole must allow non-discriminatory access to the pole, and may only deny a request from a new provider to access the pole if there are engineering, space, or safety limitations to adding new wire attachments.
- If the incumbent owner of a pole decides to modify or alter the pole, he/she must first provide written notification of intent to any provider with an attachment on the pole.
- An incumbent provider with wire attachments on a pole will not bear any of the financial responsibility of rearranging or replacing the wires as a result of a new provider attaching to the pole.

In 2011, the FCC issued a [Report and Order](#) that expanded on these requirements by creating rules for both wired and wireless providers. Under these rules:

- The timeline for a new pole attachment may take no longer than 148 days, with 45 days for a pre-construction survey, 14 days for an estimate of costs to make the pole ready for the attachment, 14 days for an attaching entity to accept and pay the estimate, and 60-75 days for the make-ready process. In cases where more than 300 poles or 0.5 percent of an incumbent's total poles are included in the request for access, an additional 15 days for the survey and 45 days for the make-ready process are allowed.
- If an incumbent pole owner denies a request for attachment, it must explain why it denied the request, and how its reasoning relates to "capacity, safety, reliability, or engineering concerns."
- A new provider may challenge the lawfulness of the terms of an executed pole attachment agreement when the provider claims he/she was coerced to accept the specific terms in order to gain access to the pole.

In August 2018, the FCC adopted [updated OTMR policies](#) that reformed the federal framework governing pole attachments. The ruling went into effect in May 2019, and:

- Allows new attachers to elect an OTMR process for simple make-ready wireline attachments in the “communications space” on a pole.
- Establishes safeguards in the OTMR process to promote coordination among the parties and ensure that new attachers perform work safely and reliably.
- Retains a multi-party process for other new attachments where safety and reliability risks are greater, while making some modifications to speed deployment.
- Codifies the FCC’s existing precedent that permits attachers to “overlash” existing wires without first seeking the utility’s approval while allowing the utility to request reasonable advance notice of overlash.
- Declares in no uncertain terms that states and localities are prohibited from imposing moratoria on broadband buildouts.

## **States Choosing to Exercise Their Own Authority**

Under the Reverse Preemption Provision of Section 224, any state that certifies to the FCC that it has written and executed effective rules and regulations regarding the rates, terms, and conditions of pole attachment agreements may exercise the authority to regulate those agreements within the state. Importantly, the FCC [recently wrote](#) that any state which has opted out of the FCC’s authority has the ability to allow OTMR policies.

To date, 20 states and the District of Columbia have opted out of the FCC’s jurisdiction, and each has implemented its own pole attachment regulations. The complete list of states, and information about their policies can be found below.

Alaska

Delaware

Arkansas

District of Columbia

California

Idaho

Connecticut

Illinois

Kentucky

New York

Louisiana

Ohio

Maine

Oregon

Massachusetts

Utah

Michigan

Vermont

New Hampshire

Washington

New Jersey

## **Alaska**

A new provider must compensate a pole owner for any modifications or adjustments to a pole and for an annual amount calculated by “multiplying the percentage of total usable space on a pole occupied by the attaching utility’s facilities times the total annual cost of the jointly used pole.”

The Regulatory Commission of Alaska will only assert its authority, absent any unusual circumstances, in cases where new providers and pole owners disagree on the terms of a joint use agreement, or if the Commission has reason to believe the utilities are acting outside the scope of the law (set forth in [AS 42.05](#)).

## **Arkansas**

Arkansas Public Service Commission (APSC) regulations require that 19 percent of total annual pole cost be allocated to the attaching entity if there are two or more attaching entities, and 38 percent of total annual pole cost if there are two or less attaching entities.

Attaching entities are required to obtain a permit prior to overflashing.

Any complaints made against the owner of a pole or the pole attachment process must be filed using APSC’s internal reporting procedures.

A request for access must be approved or denied within 45 days if it includes 300 poles or less, and within 60 days if it includes between 301 and 3,000 poles. The request may only be rejected on a nondiscriminatory basis where there is “insufficient capacity and for reasons of safety, reliability and generally applicable engineering standards.”

While a pole owner may reserve space on poles for the future provision of its “core utility service,” it must allow new providers to attach to the space until such space is needed.

## California

The California Public Utilities Code gives the California Public Utilities Commission the authority to allow public utilities to access all utility poles, and requires investor-owned utilities and incumbent providers to provide telecommunications and cable TV providers with access to their poles.

All public utilities must grant each other access to their utility poles, and must set rates, terms, and conditions for access.

Municipalities are not covered by Mandatory Access rules, but may attach facilities to utility poles through private contracts as either joint owners or renters.

## Connecticut

The law governing the Connecticut Public Utilities Regulatory Authority (CPURA) (the pole attachment authority in the state) guarantees all state departments and municipalities the right to use space on all utility poles within the municipal Rights-of-Way without payment regardless of who owns the pole.

In 2013 the statute was amended to say that these entities could access the poles “for any use,” which opened the door to municipal fiber attachments.

However, lack of clarity has led to several roadblocks to access, and the Office of Consumer Counsel (which includes the State Broadband Office) have [petitioned](#) the CPURA to clarify the rules governing municipal pole access.

Two electric distribution companies serve as the Single Pole Administrator (SPA) to which all pole attachers must report their intent to attach wires to a pole [in the hopes](#) that this will result in “lower costs, improved turnaround times and less red tape with

respect to restoring lines on poles, regardless of which entity owns any given pole.” The SPA can act as a backstop to approve make ready work where it is not done by the attacher; however, this has not reduced the need for a OTMR policy in Connecticut.

## **Delaware**

Delaware’s Public Service Commission (DPSC) has the exclusive original regulatory authority over all public utilities, and their rates, property rights, equipment, facilities, service territories, and franchises. The DPSC regulates the rates, terms, and conditions of all pole attachments, except when the attachment is made by a governmental agency acting on behalf of the public’s health, safety, or welfare.

The DPSC considers the interests of all subscribers as well as the interests of the consumer of the public utility service when determining rates, terms, and conditions.

When it is in the public interest, the DPSC may alter its supervision and regulation of some public utility products or services if doing so will promote and sustain adequate service at reasonable rates. Alternatives to supervision include, but are not limited to: “incentive regulation, earnings sharing, categorization of services for the purposes of pricing, price caps, price indexing, ranges of authorized returns and different returns for different services.”

## **District of Columbia**

The location and wire-holding structures are not a vested interest, and all removal or modification of poles and structures is paid by the pole owner if the District determines that the public would be benefited by the modification or removal.

The Public Service Commission of the District of Columbia ensures that all rates, terms, and conditions are just and reasonable, and any utility company or service provider that enters into a pole attachment agreement must submit to the DC Commission’s review and approval of placement and rates.

Attachments are only rearranged if the rearrangement will not negatively affect the present or future needs of the utility.

## Idaho

The Idaho Legislature concluded that pole owners have proven through the course of conduct that they are willing and able to make space available on their poles for new attaching entities without government interference.

If a public utility and a telecommunications service provider are unable to agree upon rates, terms, or conditions for a pole attachment, then the Idaho Public Utilities Commission will establish those rates, terms and conditions and the cost of providing the space needed for attachments. In determining the costs, the Commission will consider the operating expenses and the interest of customers.

## Illinois

Illinois law gives local government entities the authority to regulate all utility poles.

Local units of government shall “allow the holder to install, construct, operate, maintain, and remove a cable service, video service, or telecommunications network within a public right-of-way and shall provide the holder with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way on the same terms applicable to other cable service or video service providers or cable operators in its jurisdiction.”

If a holder of a State authorization seeks a permit to install, construct, operate, maintain, or remove a telecommunication service network within a public right-of-way, the permit will be granted after 45 unless the local unit of government takes action.

A local unit of government may not discriminate when accepting or denying pole attachment requests, although it may impose reasonable terms.

Local government units may impose permit fees on incumbent cable operators if the fees are equal to or less than the actual, direct costs incurred by the government for issuing the relevant permit.

If any make-ready expenses are incurred, the attaching entity who contracted the expenses must reimburse the local unit of government within 30 days at the same rates as others have paid for similar work.

## **Kentucky**

While the Kentucky Public Service Commission has state authority, it is generally up to the owners of a pole — a municipal electric utility or the [Kentucky Power Company](#), for example — to set their own regulations and rules regarding attachments.

The Kentucky Legislature recognizes the [essential nature of telecommunications services](#), the need for competition, and the importance of streamlined regulation to incentivize market entry.

## **Louisiana**

Municipalities may each establish their own process for issuing construction permits and utility pole attachment agreements. Once these processes are in place, municipalities may oversee the installation, construction, and maintenance of utility pole networks.

Municipalities must provide open, comparable, nondiscriminatory, and competitively neutral access to utility poles in the public rights of way.

## **Maine**

The Maine Public Utilities Commission (MPUC) has the authority to regulate just and reasonable rates, terms, and conditions regarding all utility pole attachments. The MPUC may resolve any disputes between public utilities and non-public utilities that seek to attach wires to utility poles.

When reviewing applications for access to utility poles, the ME Commission shall consider the interest of subscribers of telecommunication services, subscribers of other incumbent attaching entities, and consumers of public utility services.

## **Massachusetts**

The Massachusetts Department of Telecommunications and Energy (MDTE) has the authority to justly and reasonably regulate the rates, terms, and conditions of all utility

pole attachments, and in doing so must consider the interests of subscribers to telecommunications and utility services.

Any person, firm, corporation, or municipal lighting plant that owns, controls, or shares ownership of utility poles must provide nondiscriminatory access to wireless providers who wish to attach wires to the poles.

If there is inadequate capacity, safety, or engineering concerns, the request may be denied. If the request is denied due to a lack of capacity on the poles, the capacity may be expanded with replacement or relocation of existing wires at the new attaching entity's expense.

## **Michigan**

The Michigan Public Service Commission (MPSC) has the jurisdiction and authority to enforce all federal telecommunications laws, rules, and orders and to arbitrate and enforce all utility pole attachment agreements.

If a telecommunications provider is the owner of a utility pole, it must establish just and reasonable rates, terms, and conditions for attachments by other telecommunications providers.

If the new attaching entity is a public utility that provides regulated telecommunications services, the public utility must establish just and reasonable rates, terms, and conditions for attachments.

Rates are considered just and reasonable if they assure the incumbent owner "recovery of not less than the additional costs of providing the attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the attachment, by the sum of the operating expenses and actual capital costs of the provider attributable to the entire pole, duct, or right-of-way."

## **New Hampshire**

The owners of a pole must provide nondiscriminatory access to new attaching entities except in cases when there is insufficient capacity on the pole, there are safety or engineering concerns, or when the pole owner does not possess the authority to allow the attachment.

Pole owners must allow or deny access within 45 days of receiving a request for access. If access is denied, the pole owner must give specific evidence and information supporting its denial in writing.

For make-ready work to commence, estimates must be provided by the pole owner to the attaching entity and prepayments must be made. Make-ready work must be completed within 150 days after the prepayments are delivered. If the request for access concerns 10 poles or less and no pole replacements, make-ready work must be completed within 45 days of pre-payment.

## **New Jersey**

Attaching entities must get the consent of the governing body of the municipality in which the pole is located before attaching, or replacing, any wires unless both the pole owner and pole attaching entity have a lawful right to maintain the poles independently.

Attaching entities must notify a licensed municipal code official of the municipality in which the pole is located at least 24 hours before any construction takes place to attach or replace any wire.

## **New York**

The New York Public Service Commission (NYPSC) prescribes just and reasonable rates, terms, and conditions for all attachments to utility poles.

These rates are calculated based on the percentage of total usable space on a pole that will be occupied by a new attaching entity.

NYPSC has general supervision of all telecommunication lines and has the power to examine them in order to be informed of their condition, capitalization, franchises, and the manner in which all lines are leased, operated, and managed.

## **Ohio**

All pole owning telecommunication companies and incumbent local exchange carriers must permit the attachment of any new wires, cables, facilities, or apparatus to its poles with just and reasonable terms, conditions, and payment.

All new attaching entities must obtain necessary public or private authorization to construct and maintain attachments prior to attaching wires, cables, or facilities. Pole owning telecommunication companies must file tariffs with Ohio Public Utilities Commission (OPUC) containing the charges, terms, and conditions established for attachments.

OPUC has the authority to regulate the just and reasonableness of all charges, terms, and conditions pole owners and attachers are required to pay.

The OPUC will investigate and resolve any controversy between pole owners and attaching entities.

## Oregon

The Public Utility Commission of Oregon has the authority to regulate the fair and reasonable rates, terms, and conditions for attachments by licensees to poles or other facilities of public and telecommunication utilities.

New attachments to a pre-existing pole must receive authorization and execute a contract with the pole owner prior to attaching wires, cables, or facilities to the pole.

Pole owners may accept or deny requests for attachment.

Penalties for unauthorized attachments include, but are not limited to per-pole penalties, and the law provides for notice requirements, and a joint use forum for resolving disputes.

## Utah

The Public Service Commission of Utah (PSCU) has the authority to regulate the rates, terms, and conditions by which a pole owner may permit attachments to its poles.

The pole attaching entity and the pole owner must enter into a standard or Commission-approved contract in order for a legal relationship to be established. All applications filed by a potential attaching entity within one calendar month are counted as a single application when calculating the time to complete make-ready work.

For applications of up to 20 poles, the pole owner must either approve or reject the application within 45 days. For applications representing more than 20 poles, but less than 0.5 percent of the pole owner's poles in Utah or 300 poles, whichever is lower, an owner must approve or reject the application within 60 days. For applications representing a greater number of poles, but less than 5 percent of the pole owner's poles in Utah or 3,000 poles, whichever is lower, applications must be accepted or rejected within 90 days. For applications for more than 5% of an owner's poles or 3,000 poles, the timeline for acceptance or rejection must be negotiated in good faith. The owner must inform the attaching entity of the timeline for make-ready estimates within 20 days of the application.

If the application is accepted, a complete make-ready estimate must be provided explaining what must be done, the cost of the work, and an estimate on how long it will take to complete. This estimated time may not be longer than 120 days after an initial deposit payment for the work has been submitted.

A pole owner must allow nondiscriminatory access to its poles at just and reasonable rates. If the owner rejects any application for attachment it must state the specific reasons for doing so in writing.

The PSCUT has the authority to resolve any issues between a pole owner and an attaching entity.

## **Vermont**

Each pole owner, or joint owners, must file a pole attachment tariff with the Vermont Public Service Board (VPSB) that includes rates, terms, and conditions governing attachment to poles.

Pole owners must calculate a single pole rental rate and include that in its pole attachment tariff.

All owners must provide attaching entities with nondiscriminatory access to poles, support structures, and right-of-ways. A pole owner may not favor itself over any other attaching entity, or deny access based on a reservation of space for the owner's use.

A pole owner may, however, favor itself when it has a need for space on a pole in order to provide its core service, or if it has a development plan that shows a need

for additional attachments to the poles within three years.

A pole owner may not favor itself for more than three years in any ten year period.

Make-ready survey work on fewer than 0.5% of a company's poles or attachments must be completed within 60 days. Survey work on 0.5% or more but less than 3% of a company's poles or attachments must be completed within 90 days. For 3% or more of a company's poles or attachments, make-ready survey work must be negotiated in good faith between owners and attaching entities.

Make-ready work on fewer than 0.5% of a company's poles or attachments must be completed within 120 days of authorization and payment. Work on 0.5% or more but less than 3% of a company's poles or attachments must be completed within 180 days of authorization and payment. For 3% or more of a company's poles, the time frame for make-ready work to be completed must be negotiated in good faith between owners and attaching entities.

## Washington

All rates, terms, and conditions made or received by a pole owner for attachments to its poles must be just, reasonable, nondiscriminatory, and sufficient.

Attachment space rental rates must be uniform for the same class of service within the same service area

Excluding extraordinary circumstances, a pole owner must respond to applications for attachment within 45 days of initial receipt. Within 60 days of an application being deemed complete, the pole owner must notify the applicant as to whether the application was accepted or rejected.

An application for attachment may only be denied on a nondiscriminatory basis when there is insufficient capacity or there are safety or engineering concerns.

The joint use of utility poles is encouraged in order to promote competition for the provision of telecommunications and information services. To meet these ends, "the legislature intends to establish a consistent cost-based formula for calculating pole attachment rates, which will ensure greater predictability and consistency in pole attachment rates statewide, as well as ensure that locally regulated utility customers do not subsidize licensees."

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<sup>i</sup> See Fiber to the Home Council's [white paper](#) on One Touch Make Ready at page 10.

<sup>ii</sup> For more information on the history of pole attachments, please see Baller Herbst Law Group primer here:

<http://www.baller.com/wp-content/uploads/BallerHerbstPracticalPrimerPoleAttachments.pdf>

<sup>iii</sup> For more information on Mandatory Access rules, and CA pole attachment regulation, visit the California Public Utilities Commission's "[A Brief Introduction to Utility Poles.](#)"