

§711. Joint use of equipment

1. Joint use permitted. The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, after a hearing had upon its own motion or upon complaint of a joint use entity affected, it finds the following:

A. That public convenience and necessity require a joint use entity to provide nondiscriminatory access to any poles, ducts, conduits or rights-of-way owned or controlled by another joint use entity; [PL 2017, c. 199, §1 (AMD).]

B. That joint use will not result in irreparable injury to the owner or other users of the poles, ducts, conduits or rights-of-way or in any substantial detriment to the service; [PL 2017, c. 199, §1 (AMD).]

C. That the joint use entities have failed to agree upon the use or the terms and conditions or compensation for the use; and [PL 2017, c. 199, §1 (AMD).]

D. That the joint use entity seeking access to the poles, ducts, conduits or rights-of-way owned or controlled by another joint use entity has the technical and financial capabilities to fulfill its obligations related to such joint use. [PL 2017, c. 199, §1 (NEW).]
[PL 2017, c. 199, §1 (AMD).]

2. Liability of user. If joint use is ordered, the joint use entity to whom the use is permitted is liable to the owner or other users of the poles, ducts, conduits or rights-of-way for damage that may result from its use to the property of the owner or other users.
[PL 2017, c. 199, §1 (AMD).]

3. Interests of customers. Any actions taken or orders issued by the commission under this section must take into account the interests of the customers of the affected joint use entities.
[PL 2017, c. 199, §1 (AMD).]

4. Rules. The commission shall adopt rules governing the resolution of pole attachment disputes and the rates, terms and conditions of joint use. The rules must promote competition, further the state broadband policy set forth in section 9202-A and ensure safe, nondiscriminatory access on just and reasonable terms. The rules must also include a process for ensuring that a new joint use entity seeking access to the poles, ducts, conduits or rights-of-way of another joint use entity meets the requirements of subsection 1, paragraph D. In establishing rates, the commission shall consider various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission as codified in 47 Code of Federal Regulations, Part 1, Subpart J, as amended. Rules adopted or amended pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2017, c. 199, §1 (AMD).]

5. Dark fiber provider.
[PL 2017, c. 199, §1 (RP).]

6. Limited jurisdiction. A joint use entity not otherwise subject to the jurisdiction of the commission is subject to commission jurisdiction only for the limited purpose of matters relating to the use of the poles, conduits, ducts or rights-of-way in accordance with this section.
[PL 2017, c. 199, §1 (NEW).]

7. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Information service provider" means a provider of information service as that term is defined in 47 United States Code, Section 153(24). [PL 2017, c. 199, §1 (NEW).]

B. "Joint use entity" means a public utility, voice service provider, dark fiber provider, wholesale or retail competitive local exchange carrier, cable television system, unlit fiber provider,

telecommunications service provider or information service provider. [PL 2017, c. 199, §1 (NEW).]

C. "Telecommunications service provider" means a provider of telecommunications service as that term is defined in 47 United States Code, Section 153(53). [PL 2017, c. 199, §1 (NEW).]

D. "Unlit fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications. [PL 2017, c. 199, §1 (NEW).]

E. "Unlit fiber provider" means a provider of unlit fiber. [PL 2017, c. 199, §1 (NEW).]
[PL 2017, c. 199, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1991, c. 708, §1 (AMD). PL 2009, c. 612, §4 (AMD). PL 2011, c. 623, Pt. B, §4 (AMD). PL 2017, c. 199, §1 (AMD).

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