

54-4-13 Joint use of properties by utilities -- Adjustment of costs -- Cable television easement rights.

- (1) Whenever the commission shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over or under any street or highway, belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.
- (2) Whenever a public utility including its successors, assigns, lessees, licensees and agents, is granted a right-of-way easement to construct, operate, maintain or remove utility facilities, electric power and other facilities as it may require upon, over, under and across land or upon, over, under and across a dedicated public utility strip, and such public utility has also entered into a pole attachment contract with a cable television company which has been granted a franchise by a city, county, municipal or other public authority including the right to use the wires, conduits, cables, or poles of such public utility, and providing for the attachment or installation of wires, cables, and other equipment of a cable television company, to certain poles or in certain conduits of such public utility under controlled conditions designed to ensure the continued safe operation of the utilities service and facilities without any additional burden on the grantor's property then, and in that event, the cable television company, has the right to share in and enjoy the use of the right-of-way easement, subject to the terms and conditions provided in the pole attachment contract, and the right-of-way easement or interest granted the public utility is apportionable to the cable television company under the following limitations or conditions:
 - (a) Consent is secured from the private property owner where the easement is located except this requirement shall not apply in the case of a dedicated public utility strip.
 - (b) The Public Service Commission determines that under the terms and conditions of the pole attachment contract the use of the utilities facilities by the cable television company will not interfere with the primary utility function or render its facilities unsafe, and that the contract is in the public interest.
 - (c) The right-of-way easement is not restricted to the sole use of the public utility; provided, that such restriction shall not apply in any easement granted for the use of a dedicated public utility strip.
 - (d) The use contemplated by the cable television company is the same or similar to that granted the public utility and that such use will not impose an additional burden upon the servient tenement.
 - (e) The use of the easement by the cable television company will not cause irreparable injury or damage to the grantor's property.

Amended by Chapter 117, 1973 General Session