

OVERVIEW: FICTAP’s draft “Pole Attachments Act of 2012” and Pole Attachment Fee formula.

The draft for the “Pole Attachments Act of 2012” was developed after a thorough review of the relevant foreign legislation and jurisprudence and with considerable inputs from the FICTAP board and other industry stakeholders. It was written in such a way that would best address the various industry concerns and within a just and reasonable framework. The primary benefits of the proposed law are as follows:

1. Nondiscriminatory Access – pole owners are required to grant cable TV operators access to their poles
2. Option to secure own poles – in case none are available, allows cable TV operators to secure their own
3. NTC as regulatory body – provides a venue to resolve disputes like the # of poles for which fees are due
4. Penalty for violation – provides a deterrent against abuses and faster rectification for the same
5. Just and reasonable pole attachment fee – more affordable fee based on a just and reasonable formula

With regards to the pole attachment fee and its formula, the following table summarizes its finer points and compares it with the prevalent pre-existing pole attachment fees:

	Annual Fee	Formula	Justification	Comments
Meralco	Php 300	Undisclosed	Undisclosed	Arbitrary (no formula) & Exorbitant (2.78x Coop. fee)
AboitizPower	Php 250	Undisclosed	Undisclosed	Arbitrary (no formula) & Exorbitant (2.32x Coop. fee)
Some Cooperatives	Php 108	Undisclosed	Undisclosed	Assuming legal interest of 12%, proves that Php 96.43 is enough to cover the annual costs due to pole attachment considering that no bus. enterprise would charge less than what it spends.
FICTAP’s Proposed Pole Attachment Fee/Formula	Php 112	$= (AME) + (PP)$ where: AME = Additional Maintenance Expense, due to pole attachment PP = Pole Premium $= (Php 100) + (12\%)$ $= (Php 100) + (Php 12)$ $= Php 112$	- AME is based on just compensation which reimburses the pole owner for what he spends. Presumed to be Php 100 as derived from the Coop. fee. The use of a presumption is based on the FCC formula/practice. - PP is 12% based on legal interest, which is a fair rate.	Just and reasonable and at the same time affordable. - Just because there are legal justifications and reasonable because the pole owner is assured of a premium which, for the protection of the cable TV operator, is pegged at 12%. - Fair considering that in case the actual AME is less or more than the disputable presumption of Php 100, the aggrieved party may dispute the same so long as it can prove the true amount.