

Docket U-140621
January 6, 2015

SECOND DRAFT RULES GOVERNING ACCESS TO UTILITY
POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

480-54-010 Purpose and Interpretation

- (1) This chapter implements RCW Ch. 80.54 “Attachment to Transmission Facilities.”
- (2) ~~To the extent that these rules contain provisions that are the same as Federal Communications Commission rules governing pole attachments, t~~The commission will consider Federal Communications Commission orders promulgating and interpreting its pole attachment rules and federal court decisions reviewing those rules and interpretations of those rules as persuasive authority in construing the ~~comparable~~ provisions in this chapter.

480-54-020 Definitions

- (1) ~~“Attacher” means any utility or licensee with an attachment to an owner facility utility’s pole, duct, or conduit, or right-of-way or that is granted the right to make such an attachment.~~
- (2) ~~“Attachment” means any wire, or cable, or antenna~~ for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any ~~telecommunications, electrical, cable television, or communications right-of-way,~~ duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more ~~owners~~utilities, where the installation has been made with the consent of the one or more ownersutilities consistent with these rules.
- (2) “Carrying charge” means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments, including the owner’s administrative, maintenance, and depreciation expenses, commission-authorized rate of return on investment, and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.
- (3) “Communications space” means the usable space on a utility pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code below the space used to attach electrical wires.

- (4) “Conduit” means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.
- (5) “Duct” means a single enclosed raceway for conductors, cable, or wire.
- (6) “Facility” or “Facilities” means one or more poles, ducts, conduits, ~~rights of way,~~ manholes or handholes, or similar ~~structures on or in which attachments can be made~~ facilities.
- (7) ~~“Facility utility” means the utility that owns or controls the facilities to or in which an attacher maintains or seeks to make attachments.~~
- ~~(8)~~ “Inner duct” means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.
- ~~(89)~~ “Licensee” means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways; ~~including a provider of telecommunications service, radio communications service company, as defined in RCW 80.04.010, any cable television service company or personal wireless services company.~~
- ~~(94)~~ “Make-ready work” means engineering or construction activities necessary to ~~make work~~ required to modify a pole, duct, conduit, or other support equipment available for a new attachment, attachment modifications, or ~~right of way to enable the facility to accommodate one or more~~ additional attachments. Such work may include rearrangement of existing attachments, installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole. Make-ready work costs are non-recurring costs and are not included in carrying charges.
- ~~(10)~~ “Net cost of a bare pole” means (a) the original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by (b) the number of poles represented in the investment amount.
- (11) “Occupant” means any utility or licensee with an attachment to an owner’s pole, duct, or conduit or that is granted the right to make such an attachment.
- ~~(12)~~ “Occupied space” means that portion of the pole, duct, or conduit used for attachment that is rendered unusable for any other attachment, which is presumed to be one foot on a pole and one half of a duct in a duct or conduit.
- ~~(13)~~ “Overlashing” means the tying of additional communications wires or cables to existing communications wires or cables attached to poles.
- ~~(14)~~ “Owner” means the utility that owns or controls the facilities to or in which an occupant maintains or seeks to make attachments.

- (152) “Pole” ~~or “utility pole”~~ means an above-ground structure on which an ~~owner-facility utility~~ maintains attachments. When the owner is an electrical company as defined in RCW 80.04.010, “pole” is limited to structures used to attach electric distribution lines.
- (16) “Requester” means a licensee or utility that applies to an owner to make attachments to or in the owner’s facilities.
- (173) “Unusable space” with respect to ~~utility~~ poles means the space on the pole below the usable space, including the amount required to set the depth of the pole. In the absence of measurements to the contrary, a pole is presumed to have 24 feet of unusable space.
- (184) “Usable space,” with respect to poles, means the space on a ~~utility~~-pole, including cross-arms and extensions, above the minimum grade level ~~thatwhich~~ can be used for the attachment of wires, cables, and associated equipment, and ~~thatwhich~~ includes space occupied by the ~~ownerfacility utility~~. In the absence of measurements to the contrary, a pole is presumed to have 13.5 feet of useable space. With respect to conduit, “usable space” means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and ~~thatwhich~~ includes capacity occupied by the ~~ownerfacility utility~~.
- (195) “Utility” means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government.

480-54-030 Duty to provide access; make-ready work; timelines

- (1) ~~An owner facility utility~~ shall provide other utilities or licensees with nondiscriminatory access for attachments to or in any pole, duct, ~~or conduit, or right of way~~ the ~~ownerfacility utility~~ owns or controls, except that if the owner is an electrical company as defined in RCW 80.04.010, the owner is not obligated to provide access for attachment to its facilities by another electrical company. ~~An owner facility utility~~ may deny such access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles; provided that in the case of poles, the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole or otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment.
- (2) All rates, terms, and conditions made, demanded, or received by any ~~ownerutility~~ for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient. Parties may mutually agree on terms for attachment to or in poles, ducts, ~~or conduits, or rights-of-way~~ that differ from those in this chapter. In the event of disputes submitted for commission resolution, any party advocating rates, terms, or conditions that vary from the rules in this chapter bears the burden to prove those rates, terms, or conditions are fair, just, reasonable, and sufficient.

- (3) Except for overlapping requests as described in subsection (11) below, a utility or licensee must submit a written application to an owner-facility utility to request access to its facilities. The owner-facility utility must may survey the facilities identified in the application and recover the costs of that survey from the requester. The owner must complete any such survey and respond in writing to requests for access to these facilities identified in the application within 45 days from the date the owner-facility utility receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner-facility utility to identify and evaluate survey the facilities to or in which the requester seeks to attach.
- (4) If the owner-facility utility denies the request in an application for access, in whole or in part, the owner-facility utility's written response to the application must include an explanation of the reasons for the denial for each pole, duct, or conduit to which the owner is denying access. Such a response must include all relevant evidence and information supporting the denial.
- (5) To the extent that it grants the access requested in an application access, the owner-facility utility's written response must inform the requester attachee of the results of the review of the application, including but not necessarily limited to a notification that the facility utility has completed a survey of the facilities identified in the application. Within 14 days of providing its written response, the owner-facility utility must provide an estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate.
- (a) The requester must An attachee may accept or reject an estimate of charges to perform make-ready work and submit payment to the facility utility any time after within 30 days of receipt of the estimate but before the facility utility withdraws the estimate.
- (b) An owner-facility utility may withdraw an outstanding estimate of charges to perform make-ready work any time after beginning 30 14 days from the date after the owner-facility utility provides the estimate to the requester attachee if the requester has not accepted that estimate.
- (6) Upon receipt of payment of the estimated charges for make-ready work, For requests to attach to poles, the owner must facility utility shall determine the time period for completing the make-ready work and provide that information in a written notice to the requester and all known occupants entities with existing attachments on the poles facilities that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants as necessary.
- (a) For attachments in the communications space, the notice shall:
- (i) Specify where and what make-ready work will be performed.
- (ii) Set a date for completion of make-ready work that is no later than 60 days after the notice is sent (or 105 days in the case of larger orders, as described in

~~subsection (f) of this section~~). For good cause shown, the ownerfacility-utility may extend completion of the make-ready work by an additional 15 days.

(iii) State that any occupantentity with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work.

(iv) State that the ownerfacility-utility may assert its right to 15 additional days to complete the make-ready work.

(v) State that if make-ready work is not completed by the completion date set by the ownerfacility-utility (or 15 days later if the ownerfacility-utility has asserted its right to 15 additional days), the requester, after giving reasonable notice to the owner,attacher-requesting-access may hire an ~~authorized~~ contractor from the list of contractors the owner has authorized to work on its poles to complete the specified make-ready work within the communications space.

(vi) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than 90 days after notice is sent ~~(or 135 days in the case of larger orders, as described in subsection (f) of this section)~~. For good cause shown, the ownerutility may extend completion of the make-ready work by an additional 15 days.

(iii) State that any occupantentity with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work.

(iv) State that the ownerfacility-utility may assert its right to 15 additional days to complete the make-ready work.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(7) For the purpose of compliance with the time periods in this section:

(a) ~~A facility-utility shall apply t~~The time periodsline described in subsections (b) through (e) of this section apply to all requests for access to up to 3100 poles or 0.5 percent of the ownerfacility-utility's poles, ~~ducts, or conduits, or rights-of-way~~ in Washington, whichever is less ~~as applicable~~.

~~(b) — A facility utility may add 15 days to the survey period described in subsection (b) of this section to all requests for access to between 300 and 3000 poles or between 0.5 and five percent of the facility utility’s poles, ducts, conduits, or rights-of-way in Washington, whichever is less as applicable.~~

~~(c) — A facility utility may add 45 days to the make-ready work periods described in subsection (c) of this section to all requests for access to between 300 and 3000 poles or between 0.5 and five percent of the utility’s poles, ducts, conduits, or rights-of-way in Washington, whichever is less as applicable.~~

~~(be) An owner facility utility shall negotiate in good faith the time periods ~~sing for~~ all requests for access to more than ~~31000~~ poles or 0.5 percent of the ~~owner utility’s~~ poles, ducts, conduits, or rights-of-way in Washington, whichever is less as applicable.~~

~~(ce) An owner facility utility may treat multiple requests from a single requester ~~attache~~r as one request when the requests are filed within the same 30 day period. The applicable time period for completing the ~~optional~~required survey or required make-ready work begins on the date of the last request the ~~owner facility utility~~ receives from the ~~requester~~attacher within the 30 day period.~~

(8) ~~An owner facility utility~~ may extend the time ~~periods~~limits specified in this section under the following circumstances:

(a) Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment; or

(b) During performance of make-ready work if the ~~owner facility utility~~ discovers unanticipated circumstances that reasonably require additional time to complete the work. Upon discovery of such circumstances, the ~~owner facility utility~~ must ~~promptly~~immediately notify, in writing, the ~~requester~~ing attacher and other affected ~~occupants~~entities with existing attachments. ~~The notice must, and shall~~ include the reason for the ~~extension~~additional time and date by which the ~~owner facility utility~~ will complete the work. The ~~owner facility utility~~ may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake such work on a nondiscriminatory basis.

(9) If the ~~owner facility utility~~ determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time ~~period~~frames established in this section, ~~an attache~~r requester seeking attachment in the communications space may hire ~~an authorized~~ contractor from the list of contractors the owner has authorized to work on its poles to complete the survey.

(10) If the ~~owner facility utility~~ does not complete any required make-ready work within the time ~~period~~frames established in this section, ~~an attache~~r requester seeking attachment in the communications space may hire ~~an authorized~~ contractor from the list of contractors the owner has authorized to work on its poles to complete the make-ready within the communications space:

- (a) Immediately, if the ownerfacility-utility has failed to assert its right to perform any necessary make-ready work by notifying the requester ~~requester~~ ~~attachee~~ that the owner ~~it~~ will undertake that work; or
- (b) After ~~15 days from~~ the end of the applicable time period authorized in this section if the ownerfacility-utility has asserted its right to perform make-ready work and has failed to timely complete that work.

(11) An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent, but the occupant must provide the owner with 10 days prior written notice. The notice must identify the affected poles and describe the additional communications wires or cables in sufficient detail to enable the owner to determine any impact of the overlashing on the poles or other occupants' attachments. The occupant may proceed with the overlashing described in the notice unless the owner provides a written response, within seven days of receiving the occupant's notice, prohibiting the overlashing as proposed. Any such denial must be based on the owner's reasonable judgment that the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The denial must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make-ready work that the owner has determined would be required prior to allowing the proposed overlashing. The parties must negotiate in good faith to resolve the issues raised in the owner's denial.

480-54-040 Contractors for survey and make-ready.

- (1) An owner facility utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work ~~in the communications space~~ on its utility poles in cases where the ownerfacility-utility has failed to meet deadlines specified in WAC 480-54-030.
- (2) If ~~an attachee requester~~ hires a contractor for purposes specified in WAC 480-54-030, the ~~requesterattachee~~ must choose a contractor included on the ownerfacility-utility's list of authorized contractors.
- (3) ~~An attachee requester~~ that hires a contractor for survey or make-ready work ~~must~~shall provide the ownerfacility-utility with prior written notice and a reasonable opportunity for an owner facility utility representative to accompany and consult with the authorized contractor and the ~~requesterattachee~~.
- (4) Subject to commission review in a complaint proceeding, the consulting representative of an ownerelectric facility utility may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole, ~~duct, conduit, or right-of-way~~ and on issues of safety, reliability, and generally applicable engineering principles.

480-54-050 Modification costs; notice; temporary stay.

- (1) The costs of modifying a pole, duct, ~~or conduit, or right of way~~ shall be borne by the requester all utilities and licensees that obtain access to the facility as a result of the modification and by all existingsuch occupantsestablishments that directly benefit from the modification. Each such occupantentity shall share ~~proportionately in~~ the cost of the modification in proportion to the amount of usable space the occupant occupies on or in the facility. A utility or licensee with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, that occupantentity adds to its existing attachment or modifies ~~that#s~~ attachment to conform to its attachment agreement with the owner.
- (2) A utility or licensee with a preexisting conforming attachment to a pole, duct, ~~or conduit, or right of way~~ shall not be required to bear any of the costs the owner incurs toef rearrangeing or replaceing ~~its the occupant's~~ attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for an additional attachment ~~or the modification of an existing attachment sought by the facility utility or attacher~~.
- ~~(3) If a utility or licensee makes an attachment to the facility after the completion of a modification, that entity shall share proportionately in the cost of the modification if it enabled the added attachment.~~
- (34) An owner facility utility shall provide an attaching utility or licensee ~~no less than 60 days with~~ written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the utility or licensee has attachments affected by such action. The owner must provide such notice as soon as practicable but no less than 60 days prior to taking the action described in the notice; Provided that the owner may provide notice less than 60 days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than 60 days in advance.
- (45) A utility or licensee may file with the commission and serve on the ~~ownerfacility utility~~ a "Petition for Temporary Stay" of utility action contained in a notice received pursuant to subsection (34) of this section within 2015 days of receipt of such notice. The petition must be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer irreparable harm in the absence of the relief requested that outweighs any harm to the ~~ownerfacility utility~~ and its customers and that the petitioner will likely be successful on the merits of its dispute. The ~~ownerfacility utility~~ may file and serve an answer to the petition within 7 days after the petition is filed unless the commission establishes a different deadline for an answer.
- (5) An owner may file with the commission and serve on the occupant a petition for authority to remove the occupant's abandoned attachments. The petition must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must file an answer to the petition within 20

days after the petition is filed unless the commission establishes a different deadline for an answer. If the occupant does not file an answer or otherwise respond to the petition, the commission may authorize the owner to remove the attachments without further proceedings.

480-54-060 Rates

- (1) A fair, just, reasonable, and sufficient rate for attachments to or in poles, ducts, or conduits, ~~or rights of way~~ shall assure the owner~~utility~~ the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the owner~~utility~~ attributable to that portion of the pole, duct, or conduit, ~~or right of way~~ used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facilities, and uses which remain available to the owner ~~or owners of the facilities~~.
- (2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to utility poles:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

- (3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to utility ducts or conduits:

$$\begin{aligned} \text{Maximum Rate per Linear ft./m.} &= \left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\text{No. of Ducts} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate} \\ &\quad \text{(Percentage of Conduit Capacity)} \qquad \qquad \qquad \text{(Net Linear Cost of a Conduit)} \end{aligned}$$

simplified as:

$$\text{Maximum Rate Per Linear ft./m.} = \left[\frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate}$$

If no inner duct or only a single inner duct is installed, the fraction, “1 Duct divided by the No. of Inner Ducts” is presumed to be 1 / 2.

480-54-070 Complaint

- (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any ownerfacility utility in connection with attachments to its facilities are not fair, just, and reasonable, or by an owner facility utility that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission ~~will~~ determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and ~~shall~~ fix the same by order entered within 360 days after the filing of the complaint. In determining and fixing the rates, terms, and conditions, the ~~c~~Commission ~~will~~ consider the interest of the customers of the licensee or utilityattacher, as well as the interest of the customers of the ownerfacility utility.
- (2) A utility or licensee may file a formal complaint if:
 - (~~a~~1) An owner facility utility has denied access to its poles, ducts, or conduits, ~~or~~ ~~rights of way~~;
 - (~~b~~2) An owner facility utility fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (~~c~~3) The utility or licensee disputes the rates, terms, or conditions in an attachment agreement, the facility utilityowner's performance under the agreement, or the facility utilityowner's obligations under the agreement or other applicable law.
- (3) An owner facility utility may file a formal complaint if:
 - (~~a~~1) Another utility or licensee is unlawfully making attachments to or in the facility utilityowner's poles, ducts, or conduits, ~~or~~ ~~rights of way~~;
 - (~~b~~2) Another utility or licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (~~c~~3) The ownerfacility utility disputes the rates, terms, or conditions in an attachment agreement, the occupantattacher's performance under the agreement, or the occupantattacher's obligations under the agreement or other applicable law.
- (4) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that the parties were aware of the dispute at the time they executed the agreement and such challenge is brought within six months from the agreement execution date ~~the parties executed the agreement~~. Nothing in this section precludes an owner facility utility or occupantattacher from bringing any other complaint that is otherwise authorized under applicable law.

- (5) A complaint authorized under this section must contain the following:
- (a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the complaint and that the parties failed to resolve those issues despite those efforts.
 - (b) Identification of~~identify~~ all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law~~;~~
 - (c) ~~and shall include s~~Sufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and.~~The complaint also must include a~~
 - (d) A copy of the attachment agreement, if any, between the parties.
- (6) Except as provided in WAC 480-54-030(2), a licensee or utility~~An attachee~~ has the burden to prove its right to attach to or in the ~~facility utility~~owner's poles, ducts, or conduits, ~~or rights of way~~ and that any rate, term, or condition the licensee or utility~~attachee~~ challenges is not fair, just, and reasonable or otherwise violates any provision of RCW Ch. 80.54, this Chapter, or other applicable law. Except as provided in WAC 480-54-030(2), an owner~~A facility utility~~ bears the burden to prove that attachment rates are insufficient or that the owner~~facility utility~~'s denial of access to its facilities is lawful and reasonable.
- (7) If the commission determines that the rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged during the time the owner was charging the rate after the effective date of this rule.
- (8) If the commission determines that access to a pole, duct, or conduit, ~~or right of way~~ has been unlawfully or unreasonably denied or delayed, the commission may order the owner~~facility utility~~ to provide access to that facility within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.