

**BEFORE**

**THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

|                                    |   |                     |
|------------------------------------|---|---------------------|
| In the Matter of the Rulemaking to | ) |                     |
| Consider Adoption of Rules to      | ) |                     |
| Implement RCW ch. 80.54 Relating   | ) | Docket No. U-140621 |
| to Attachments to Transmission     | ) |                     |
| Facilities.                        | ) |                     |

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**COMMENTS OF FRONTIER COMMUNICATIONS NORTHWEST INC. TO SECOND  
DRAFT RULES GOVERNING ACCESS TO UTILITY POLES, DUCTS, CONDUITS  
AND RIGHTS-OF-WAY**

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**I. Introduction**

Frontier Communications Northwest Inc. (“Frontier”) generally believes that the Commission’s second draft rules governing access to utility poles, ducts, conduits, and rights-of-way represent an improvement over the initial draft. But there remain certain provisions can be further clarified so as to avoid future disputes concerning the rules’ meaning and scope. To that end, Frontier provides the following proposed revisions to and comments to the specific draft provisions identified below.

**II. 480-54-020 Definitions**

Frontier appreciates the revisions and additions that the Commission has already made to the definitions section. However, it proposes additional revision to the definitions of “carrying charge” and “net cost of a bare pole” to avoid potential disputes about the manner in which those items are calculated.

With respect to the definition of “carrying charge,” Frontier believes that the word “including” before the list of items that make up the carrying should be changed to “which are limited to.” As currently drafted, an owner could argue that the rules allow it to include

additional costs beyond specifically identified as part of its carrying charge. As revised, the definition would be as follows:

- (2) “Carrying charge” means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments, including which are limited to 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.

Frontier proposes two changes the definition of “net cost of a bare pole.” First, Frontier recommends identifying the appropriate accounts that are part of these accounts. Second, Frontier proposes adding a sentence to clarify how an owner that has both solely owned poles and poles that it owns jointly with another entity tabulates its total number of poles:

- (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, as set forth in FERC Account 364 for electrical companies and ARMIS Account 2411 for telecommunications companies, 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. When an owner has solely owned poles and poles it owns jointly with another utility, its number of poles equals the number of its solely owned poles plus the product of the number of its jointly owned pole times its ownership percentage in those poles.

### **III. 480-54-070 Complaint**

Frontier believes that the Commission’s proposed rules are still unclear on whether the complaint provisions cover existing attachment agreements or just agreements made after the effective date of the new rules. In addition, Frontier believes that the requirement for “executive-level negotiations” will lead to unnecessary fights about who qualifies as an “executive” under the rules. Frontier, therefore, offers the following revisions to address these issues:

- (4) From the effective date forward, the requirements of this chapter apply to both attachments existing as of the effective date and attachments made subsequent to the effective date. For an attachment agreement existing as of the effective date of this

chapter, any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement must be brought within six months from the date the parties reach impasse in their attempts to renegotiate any rate, term, or condition that is alleged to be unlawful or unreasonable. Any remedies for successful challenge to an existing attachment shall relate back to the effective date of this chapter. The execution of an attachment agreement subsequent to the effective date of this chapter 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 date the parties executed the agreement. Nothing in this section precludes an owner or occupant 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 their efforts.

#### **IV. Conclusion**

Once again, Frontier appreciates the Commission's efforts establish uniform and consistent rules governing the rates, terms, and conditions for pole attachments.

February 6, 2015

Respectfully submitted,

**FRONTIER COMMUNICATIONS NORTHWEST INC.**



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Jack Phillips