

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Rulemaking:) Docket No. U-140621
)
) **PCIA – THE WIRELESS**
To Adopt Rules to Implement RCW Ch. 80.54) **INFRASTRUCTURE ASSOCIATION**
) **AND THE HETNET FORUM**
) **COMMENTS ON SECOND DRAFT**
) **RULES TO IMPLEMENT RCW CH. 80.54**
)

PCIA – The Wireless Infrastructure Association and the HetNet Forum, a membership section of PCIA (together “PCIA”),¹ hereby submits to the Washington Utilities and Transportation Commission (“Commission”) the following comments on the Second Draft Rules Governing Access to Utility Poles, Ducts, Conduits, and Rights-of-Way (“Second Draft”), released January 6, 2015.

I. INTRODUCTION

PCIA appreciates the effort devoted by the Commission to modify its First Draft Rules (“First Draft”) Governing Access to Utility Poles, Ducts, Conduits, and Rights-of-Way to address concerns raised by PCIA in its previously submitted written comments and comments made at the October 28, 2014 workshop. PCIA remains fully supportive of the Commission’s

¹ PCIA – The Wireless Infrastructure Association is the principal organization representing the companies that build, design, own and manage telecommunications facilities throughout the world. Its over 200 members include carriers, infrastructure providers, and professional services firms.

The HetNet Forum, formerly The DAS Forum, is dedicated to the advancement of heterogeneous networks. HetNets provide increased network coverage, capacity and quality through the use of a variety of infrastructure and technology, enabling seamless voice and data communications. The HetNet Forum is a membership section of PCIA – The Wireless Infrastructure Association. PCIA members are authorized to attach to utility poles in Washington under 47 U.S.C. §§ 224A(4), (b)(1) and RCW 80.54.010(1) and 80.54.020.

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approach to pole attachments, as further refined in the Second Draft. However, PCIA has several concerns with the Second Draft .

II. PCIA CONCERNS WITH SECOND DRAFT

1. Deletion of right-of-way from all rules.

The Second Draft deleted all reference to the term “right-of-way.” PCIA is puzzled by this deletion because the term appears in RCW 80.54.010(1), which defines “attachment” and specifically includes “communications right-of-way” as a permissible place for “attachment.” The Second Draft rules should be consistent with this statute.

3. WAC480-54-020(15).

PCIA appreciates the clarification the Commission made regarding attachment to electric distribution lines. However, some facilities may bear a combination of distribution and transmission lines and this type of facility should be eligible for attachment purposes. Further clarification may be necessary so that electric pole owners will not refuse attachments to mixed facilities.

4. WAC480-54-010(7).

Throughout this subsection, the Commission reduced the number of poles subject to the applicable time requests from 300 to 100 poles. This reduction will have a serious negative operational impact on deployment. According to PCIA members’ experience, parties deploying equipment would face delays that will be significantly longer than under the FCC’s rules. In its 2011 Order, the FCC deemed 300 poles or attachments to 0.5% of a utility’s in-state poles, whichever was less, was appropriate.² The FCC found that the setting of a numerical cap was a

² FCC Order at ¶ 18.

fair approach and one that is easy to understand and administer.³ Further, the FCC rejected claims to cap timelines based on “less administrable and more subjective proposals, such as capping timeline orders based on the size of a utility’s workforce or the complexity of a request.”⁴ The FCC was similarly not persuaded by those commenters who disputed the assumption that the size of an order correlates to how long it will take to complete the order.⁵ The rules are intended to provide a baseline for time-frames by which carriers may forecast their ability to deploy network facilities in Washington, yet it is unclear whether the timelines contained in the proposed rules will ever kick in because nearly every telecommunications project includes requests to attach to more than 100 poles. By way of illustration, a typical DAS or Small Cell project includes 3 to 10 miles of fiber, averaging 45 to 50 poles per mile. Thus, by reducing the number of poles subject to a 30-day review, the Commission would essentially be requiring nearly every carrier to negotiate time frames for pole access. PCIA urges the Commission to restore the number of poles from 100 to 300. This would be consistent with the FCC’s direction and it would remove a detriment to promoting accelerated broadband posed.

5. WAC 480-54-070(4).

In its comments on the First Draft, PCIA advocated for an 18-month period within which to file a complaint after an agreement is signed. In the Second Draft the Commission retained the six-month period from the First Draft. PCIA recommends that this be increased to at least 12 months from the date of the execution of a pole attachment agreement. The Parties need to work with pole owners cooperatively to achieve network deployment within customer-driven time

³ 2011 Order at ¶ 66.

⁴ 2011 Order at ¶ 66.

⁵ 2011 Order at ¶ 66.

frames. It is counterproductive to file a complaint against an owner during this process. Further, potential issues or problems may not be readily apparent during the first period of a pole attachment agreement. A 12-month time period is more reasonable to preserve all parties' rights. PCIA also suggests deletion of the language of the requirement that parties must be aware of a dispute at the time they execute the agreement. Sometimes parties are not aware and this new language renders a sign-and-sue provision ineffective.

6. WAC 480-54-070(6).

The burden of proof language in this section needs to be reconciled with the burden of proof language in WAC 480-54-030(2). The latter provision places the burden on the party advocating rates, terms or conditions that vary from the rules in this chapter. Thus, an owner may advocate rates, terms and conditions that impose rates not set according to WAC 40-54-060 and the owner would have to bear the burden. WAC 480-54-070(6) places this burden on a licensee or utility.

III. CONCLUSION

PCIA applauds the Commission's efforts to draft a set of rules that considers the needs of attachers and pole owners/facility utilities. PCIA supports their adoption, with modifications to address PICA's concerns as expressed herein.

DATED this 6th day of February, 2015.

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Certificate of Service

I, Darlyne De Mars, certify under penalty of perjury under the laws of the State of Washington that, on February 6, 2015, I caused to be served on the persons listed below in the manner shown:

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Dated at Seattle, Washington, this 6th day of February, 2015.

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