

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to Consider Adoption of)
Rules to Implement RCW ch. 80.54,) **Docket U-140621**
Relating to Attachments to Transmission)
Facilities.)
_____)

T-MOBILE WEST LLC’S COMMENTS ON REVISED DRAFT RULES

Pursuant to the Notice of Opportunity To File Written Comments, issued by the Commission on January 6, 2015, T-Mobile West LLC (“T-Mobile”) hereby submits the following comments. All pleadings, correspondence, and other communications concerning this docket should be sent to the following addresses:

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I. INTRODUCTION

T-Mobile is a commercial mobile radio service (“CMRS”) provider with its own network facilities deployed throughout its Federal Communications Commission (“FCC”) licensed areas in the state of Washington to provide service to its subscribers. In deploying its extensive wireless network, T-Mobile has attached its facilities to poles, and other facilities, owned by electric utilities and incumbent telephone companies. The efficiencies gained and additional network signal penetration and capacity that such attachments provide are critical to T-Mobile’s continued ability to provide high-quality wireless voice and broadband services to its customers.

T-Mobile, therefore, commends the Commission and its Staff for its efforts to draft a comprehensive set of rules to implement the pole attachment provisions of Revised Washington Code (“RCW”) Chapter 80.54. The Commission’s revised draft rules reflect a careful and thoughtful attention to the comments proffered by the parties to date, both written and oral, and a desire to balance the interests of the stakeholders and the public. T-Mobile’s comments are, therefore, limited to only a few clarifications to the draft rules to avoid unintended consequences.

II. COMMENTS

WAC 480-54-020(14) – Definition of “Owner”

Given the revisions in the second draft of the Commission’s proposed rules to the definition of “Licensee” in WAC 480-54-020(9) and the replacement of the term “Facility utility” with the term “Owner” in WAC 480-54-020(14), the broad definition of “Pole” in WAC 480-54-020(15) could be misconstrued to include CMRS cell towers. Under the rules as drafted, a CMRS provider would be considered a utility (i.e., a telecommunications company as defined in RCW 80.04.010) rather than a Licensee. Arguably, the draft definition of “Owner” would include a CMRS provider to the extent it is a “utility that owns or controls the facilities to which an occupant maintains or seeks to make attachments.” At WAC 480-54-020(6), the draft rules define the term “Facilities” to include “poles”. The definition of “Pole” in the draft rules includes “an above-ground structure on which an owner maintains attachments.” CMRS cell towers are above-ground structures on which the owner maintains “attachments” as that term is broadly defined in the draft rules at WAC 480-54-020(1).

To T-Mobile’s knowledge, no party has ever claimed that CMRS cell towers are subject to RCW Chapter 80.54; and no party has asserted any such position in this docket. Nor could the Commission, by rule, expand the scope of RCW Chapter 80.54. Accordingly, T-Mobile

recommends the Commission revise the draft rules to eliminate any possibility that a party could construe the language in the manner described above and, thereby, avoid undue confusion and potential disputes. T-Mobile recommends the following revision to the draft definition of “Owner”:

- (14) “Owner” means the utility, excluding Commercial Mobile Radio Service providers as that term is defined under federal law, that owns or controls the facilities to or in which an occupant maintains or seeks to make attachments.

WAC 480-54-070(1) Deadline for Entry of Commission Order

T-Mobile commends the Commission for placing a timeframe for itself to act on attachment complaints in draft rule WAC 480-54-070(1). A timeframe of no greater than 360 days is a reasonable period of time for the Commission to consider and render a determination in a complaint proceeding related to disputed attachment rates, terms or conditions. However, in the case of a complaint that alleges an owner has unlawfully denied access to its poles, ducts, conduits, or rights of way, an order entered 360 day after the filing of the complaint would, in most cases, not provide timely relief. Denials of access impact the ability of the requesting Licensee or Utility to timely deploy attachments needed to provide service to its customers. In today’s competitive communications environment, failure to timely deploy attachments can hamper a provider’s ability to bring the advantages of enhanced communications capabilities to the citizens of Washington. Accordingly, T-Mobile recommends the following revision to WAC 480-54-070(1):

- (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 owner in connection with attachments to its facilities are not fair, just, and reasonable, or by an owner 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 fix the same by order entered within 360 days after the filing of the complaint; provided however, the Commission will expedite consideration of and entry of orders

regarding complaints alleging that an owner has denied access to its poles, ducts, conduits, or rights of way. In determining and fixing the rates, terms, and conditions, the commission will consider the interest of the customers of the licensee or utility, as well as the interest of the customers of the owner.

WAC 480-54-070 – “Sign and Sue” Rule

T-Mobile applauds the Commission’s continued support for an inclusion of the so called “sign and sue” rule in the draft rules. However, the inclusion in the revised rules of a requirement that the parties “were aware of the dispute at the time they executed the agreement”, is problematic for a number of reasons and should be deleted. First, the rule does not take into account situations where a challenged provision was not unjust and unreasonable on its face, but only as later applied, and the attacher could not reasonably have anticipated the unreasonable application. In addition, this requirement will likely lead to the parties making “blanket” objections to all of the rates, terms and conditions in an agreement prior to signing. Finally, the requirement will likely complicate and prolong the Commission’s adjudication of complaint proceedings because, as a threshold matter, the Commission would be required to review the parties’ negotiating history to determine whether the attacher provided the owner with sufficient notice of its objections to disputed contract terms during negotiations. For all of these same reasons, that FCC rejected a proposal to add a notice provision to its “sign and sue” rule.¹

Deletion of “Right of Way” from Draft Rules

As noted in the comments of PCIA – The Wireless Infrastructure Association and the HetNet Forum (“PCIA”) and the Broadband Communications Association of Washington (“BCAW”), T-Mobile is also concerned with the Commission’s removal of “right of way” from the second draft rules. T-Mobile requests that the Commission restore the term throughout the rules for the reasons expressed by PCIA and BCWA.

¹ See *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, ¶¶ 119-125 (2011).

