

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**COMMENTS OF
XO COMMUNICATIONS SERVICES LLC
REGARDING THE COMMISSION’S REVISED DRAFT RULES**

XO Communications Services LLC (“XO”) respectfully submit these Comments pursuant to the Notice of Opportunity to File Written Comments issued by the Washington Utilities and Transportation Commission’s (“Commission”) on January 6, 2015 in the above-referenced rulemaking.

I. Introduction

XO submitted comments previously in this docket¹ in which its interest in this proceeding was described and will not be repeated here. XO supports the Commission’s continued efforts to adopt comprehensive attachment rules designed to ensure that the efficiencies gained by allowing competitive local exchange carriers (“CLECs”) such as XO, and other attachers, to share in the use of what are often bottleneck facilities. XO commends the Commission and its Staff on the substantial effort and thoughtful process that has gone into the creation of the revised draft rules, dated January 6, 2015 (“Revised Draft Rules”). XO has reviewed and supports the positions and proposed amendments to the Revised Draft Rules set forth in the

¹ See “Comments of tw telecom of washington llc and XO Communications Services LLC”, filed May 30, 2014 in docket U-140621; and Comments of tw telecom of washington llc and XO Communications Services LLC Regarding the Commission’s Draft Rules Governing Access to Utility Poles, Ducts, Conduits and Rights-Of-Way,” filed October 8, 2014 in docket U-140621.

contemporaneously-filed comments of: PCIA –The Wireless Infrastructure Association and the HetNet Forum (“PCIA”), the Broadband Communications Association of Washington (“BCAW”), AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (“AT&T”) and T-Mobile West LLC (“T-Mobile”).² XO confines its comments herein to issues not otherwise addressed by these other parties.

II. Comments

WAC 480-54-030(1) – Duty to Provide Access to Conduit

Most of the items of concern that XO identified in reviewing the Revised Draft Rules have been addressed in the contemporaneously-filed comments of the parties listed above. There is, therefore, only one issue that XO will address in these comments, namely, WAC 480-54-030(1), regarding an owner’s duty to provide access to its facilities and rights of way. As revised, this subsection of the Revised Draft Rules now includes a provision clarifying that an owner may not deny access to poles based on insufficient capacity if the requester is willing to compensate the owner for either replacing a pole or otherwise undertake work to increase the capacity on the pole to accommodate the attachment. XO supports this addition. However, XO is concerned that owners may regard this specific rule regarding poles to, by negative implication, suggest that access to conduits may be denied on the basis of insufficient capacity, without exception. This, of course, is not the case.

XO notes with approval that the definition of “Usable space” in Revised Draft Rule WAC 480-54-020(18) makes clear that “[w]ith 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

² Regarding the proposed revisions to draft rule WAC 480-54-070(6), XO supports the language proposed by BCAW.

telecommunications or cable services, and that includes capacity occupied by the owner.”

(Emphasis added). Correspondingly, an owner cannot deny access to conduit where, with reasonable effort and expense, capacity can be made available in such conduit. In order to remove any doubt that access cannot be denied in these circumstances, XO recommends the Revised Draft Rule be modified as follows:

- (1) An owner shall provide other utilities or licensees with nondiscriminatory access for attachments to or in any pole, duct, or conduit, or right-of-way the owner 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 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, and further provided that in the case of conduit, the owner may not deny access to conduit based on insufficient capacity if, with reasonable effort and expense, capacity in such conduit can be made available.

With this change, owners and attachers will have greater clarity regarding the limited circumstances under which access to conduit may be lawfully denied.

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III. Conclusion

For the foregoing reasons, XO recommends the Commission further revise the Revised Draft Rules as set forth above and that the Commission also further revise the Revised Draft Rules consistent with the recommendations set forth in the contemporaneously filed comments of BCAW, PCIA, AT&T and T-Mobile. XO appreciates this opportunity to further comment in this proceeding and looks forward to participating in any further process the Commission deems appropriate in this docket.

Respectfully submitted this 6th day of February, 2015.

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