



May 30, 2014

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Steven King
Executive Director and Secretary
Utilities & Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

**Re: Rulemaking to Consider Adoption of Rules to Implement RCW 80.54,
Relating to Attachments to Transmission Facilities, Docket U-140621**

Dear Mr. King:

The following are comments of Google Inc. provided in response to Notice CR-101
(Preproposal Statement of Inquiry) in connection with the rulemaking proceeding referenced above.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Step Selmer".

Stephanie Selmer
Associate Counsel
Google Inc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to Consider Adoption of Rules to Implement Was. Rev. Code § 80.54, Relating to Attachments to Transmission Facilities

Docket U-140621

COMMENTS OF GOOGLE INC.

Google Inc. supports the Commission's adoption of rules to implement section 80.54 of the Revised Code of Washington, to expand access to poles and other utility infrastructure ("Implementing Rules").¹ The Commission has proposed to use as a starting point rules adopted by the Federal Communications Commission ("FCC") and the Oregon Public Utilities Commission ("OPUC"). Google agrees that elements of the FCC and OPUC rules provide an appropriate model. Specifically, the FCC has established detailed rates and procedures that have been tested thoroughly, both in practice and in enforcement, and are well-known and understood by infrastructure owners as well as infrastructure users.² The federal rules, however, provide rights only to traditional cable television and telecommunications providers, and thus fail to promote the deployment of broadband services by providers using different business plans and technologies.³ The OPUC's rules fill this gap by providing technology-neutral access rights to *all* wired and wireless broadband providers.⁴

¹ The Commission is authorized to adopt Implementing Rules under Wash. Rev. Code §§ 80.01.040, 80.04.160, 80.54.020, and 80.54.060 (2013), *available at* <http://apps.leg.wa.gov/rcwl/>.

² See 47 C.F.R. §§ 1.1401 through 1.1424.

³ See 47 C.F.R. § 1.1403(a).

⁴ Or. Admin. R. 860-028-0000 *et seq.* (2014), *available at* <http://arcweb.sos.state.or.us/pages/rules/access/numerically.html>.

Google encourages the Commission to adopt Implementing Rules that ensure all cable, telecommunications, and broadband providers have access to utility infrastructure at reasonable rates and terms. Establishing such rights is consistent with Washington State's ambitious broadband goals and would help avoid delays in deploying the infrastructure that is needed to achieve them.

Finally, the Commission should consider additional measures to promote efficient use of infrastructure, including joint-use requirements, designation of a single pole administrator, and ensuring that attachment space is added during routine pole replacements.

I. DISCUSSION

A. Rules Affording Nondiscriminatory Access to Utility Infrastructure Will Further the State's Broadband Goals

The Washington State Legislature recognizes that “the deployment and adoption of high-speed internet services and technology advancements enhance economic development and public safety for the state's communities.”⁵ Broadband deployment leads to “improved health care, access to consumer and legal services, increased educational and civic participation opportunities, and a better quality of life for the state's residents.”⁶ In acknowledgment of these benefits, the Legislature has declared that improvements to broadband deployment and adoption are critical and has declared support for policies aimed at increasing broadband availability and promoting competition among broadband providers.⁷

⁵ Wash. Rev. Code § 43.330.400 (2013) notes, *available at* <http://apps.leg.wa.gov/rcw/>.

⁶ *Id.*

⁷ *See id.*

Reducing barriers to network deployment is essential to broadband availability. Building broadband networks is the “great infrastructure challenge of the early 21st century.”⁸ As the FCC has observed, inability to gain “reliable, timely, and affordable access to physical infrastructure—particularly utility poles—is often a significant barrier to deploying wireline and wireless services.”⁹ In its *National Broadband Plan*, the FCC estimated that the expense of obtaining infrastructure permits and leasing pole attachment rights and access to rights of way can total 20 percent of the entire cost of a fiber-optic network.¹⁰ Access to existing infrastructure in public rights of way thus expedites broadband deployment, while infrastructure owners’ delays in providing access, or unreasonable rates or conditions for access, can bring deployment to a halt. Adding fiber or other wires to existing poles, ducts, or conduit, rather than installing still more poles or excavating streets to lay fiber underground, also minimizes aesthetic and environmental impacts, as well as noise, inconvenience, and public safety concerns from construction.¹¹

The Washington State Broadband Office (“WSBO”) recently recommended that the State “pursue all appropriate opportunities to eliminate regulatory and other barriers to private investment to support Washington’s future as a leader in the digital economy

⁸ FCC, *Connecting America: The National Broadband Plan*, Mar. 16, 2010, at XI (“*National Broadband Plan*”), available at <http://www.broadband.gov/plan/> (last visited May 14, 2014).

⁹ See *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, ¶ 3 (2011).

¹⁰ See *National Broadband Plan* at 109. See also Fiber To The Home Council, *State and Local Government Role in Facilitating Access to Poles, Ducts, and Conduits in Public Rights-of-Way*, Aug. 2013, at 1, available at <http://www.ftthcouncil.org/p/cm/ld/fid=33> (noting that while a new fiber optic network utilizing existing poles is estimated to “cost in the range of \$2 to \$4 per linear foot,” installing duplicate pole infrastructure can cost “ten times as much”) (last visited May 14, 2014).

¹¹ In the context of municipal infrastructure, the Legislature made it ‘the policy of the state to encourage the joint use of utility poles.’ Wash. Rev. Code § 54.04.045 (2013) notes, available at <http://apps.leg.wa.gov/rcw/>. The same reasoning applies to privately owned infrastructure.

and a broadband champion.”¹² The WSBO specifically called for implementing policies that reduce the need for duplication of public projects (for instance by promoting sharing of conduits) and streamline government permitting.¹³ Establishing Implementing Rules with reasonable rates and terms based on the FCC model, and thereby making the broadband deployment process more predictable for all parties, is the type of policy the WSBO envisioned.

B. Rules that Exclude New Business Plans and Technologies Would Undermine Washington State’s Broadband Goals

Google has experienced first-hand the difficulty of building a broadband network without infrastructure access rights at reasonable rates and terms. Google is not a cable television or telecommunications provider that enjoys infrastructure access rights under the federal scheme (and state laws that track it). As a result, Google’s residential gigabit Internet service, known as Google Fiber, has faced uncertainties about the timing of its rollout due to lack of—or delayed access to—utility poles at reasonable rates and terms. Obtaining pole attachment rights significantly slowed Google Fiber’s deployments in both Kansas City and Austin, and continues to hamper Google Fiber’s ability to build in potential new markets. Some incumbents have declined to even begin pole attachment negotiations with Google Fiber, and one of these came to the table only after many months of effort by Google Fiber.

There is no policy basis for treating wireline broadband providers that are not also cable television or telecommunications providers differently from those traditional operators. Broadband providers such as Google Fiber attach to poles, and run their

¹² WSBO, *Broadband in Washington: 2012 Annual Report* at 5, available at <http://www.commerce.wa.gov/Programs/Infrastructure/Broadband/Pages/AnnualReport.aspx> (last visited May 14, 2014).

¹³ *Id.*

cables through conduit, in the same manner as traditional cable television and telecommunications providers. Thus, extending access rights to such new providers presents no additional implementation issues, nor any different pole-loading concerns or other safety issues.

Adoption of Implementing Rules that provide infrastructure access rights for all broadband providers, on a nondiscriminatory basis, will advance significant public benefits including promoting broadband competition and choice. On the other hand, without the ability to obtain access at reasonable rates and terms, broadband providers face a tilted playing field that could result in delayed deployment of advanced technologies as well as unsightly and disruptive duplication of existing utility infrastructure.

C. The Commission Should Consider Additional Measures To Promote Efficient Use of Infrastructure

The Commission's rules should further ensure that public rights-of-way are being used efficiently. Requiring joint use of available utility infrastructure would avoid the need for installation of duplicative poles or additional trenching to place wires underground, thus lessening inconvenience from needless additional construction as well as adverse effects on community aesthetics. The Commission also should consider encouraging streamlined management of utility poles through designation of a single administrator, which would provide prospective attachers a centralized point of contact for coordinating deployments that require access to poles owned by different entities. Finally, requiring pole owners to add additional space for attachments when engaging in routine pole replacement would facilitate network deployments by reducing make-ready delays and costs.

II. CONCLUSION

The Commission should adopt technology-neutral Implementing Rules that afford all facilities-based broadband providers access to utility infrastructure at reasonable rates and terms, incorporating features of both the FCC and OPUC rules. This, and other measures to promote efficient use of public rights-of-way, would accelerate deployment of broadband networks and promote competition and consumer choice, which would further policies of the Legislature and implement recommendations of the WSBO. Eliminating uncertainty over infrastructure access would help fulfill the goal of “increasing broadband access and use across Washington in a manner that makes [the] state well-positioned for a 21st century digitally-driven economy.”¹⁴

Respectfully submitted,



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¹⁴ WSBO, *Creating Opportunities for Washington: A Report on Broadband in Washington State*, at 17, available at <http://www.commerce.wa.gov/Programs/Infrastructure/Broadband/Pages/AnnualReport.aspx> (last visited May 14, 2014).