

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF:

RULEMAKING TO CONSIDER ADOPTION OF
RULES TO IMPLEMENT RCW CH. 80.54,
RELATING TO ATTACHMENTS TO
TRANSMISSION FACILITIES

DOCKET NO. UT-140621

**CENTURYLINK'S REPLY
COMMENTS**

I. INTRODUCTION

- 1* CenturyLink hereby submits these reply comments to the comments submitted on February 6, 2015 by various other parties in this docket regarding the rulemaking to consider the adoption of rules to implement RCW Chapter 80.54, relating to attachments to transmission facilities.
- 2* Many of the comments reflect only one point of view – as either a pole owner (Avista, Pacific Power, Puget Sound Energy), or as a potential or actual attacher (Google, various CLECs, etc.). CenturyLink is in both camps, owning a large number of poles in the state as well as attaching to a large number of poles owned by others.
- 3* Thus, CenturyLink has tried to balance the competing interests and incentives of both sides, to support rules that are fair to pole owners and to licensees. CenturyLink believes that the most recent set of proposed rules had largely achieved that balance, and thus CenturyLink's February 6 comments merely sought clarification on two issues.

4 Other parties have commented extensively, in many cases making recommendations that should have been submitted at the start of the proceeding, and otherwise recommending changes that are generally inconsistent with a balanced approach, and/or which have already been considered and rejected. CenturyLink believes that the rules should generally be adopted as written in the most recent draft, with a few clarifications or recommendations set forth below and in its February 6 comments.

II. GENERAL COMMENTS

5 CenturyLink supports the draft rules' deletion of the reference to rights-of-way in various subsections, consistent with its prior comments. CenturyLink opposes the recommendation of T-Mobile that the references to rights-of-way throughout the rules be restored. Eliminating the reference is consistent with the FCC's rules, which only govern poles.

6 CenturyLink opposes Google's recommendation that pole owners be required to negotiate agreements before the licensee even has authority to place its facilities from the relevant state or municipal authority. Google states that it does not want lack of authorization to provide service or place facilities to hold them back from the agreement/application process. However, this requirement would potentially be a big waste of resources for pole owners. CenturyLink does not want to spend a lot of time working with Google on an Agreement or Application that they are not going to use because they did not receive the authorization to build their system, or simply because that particular geographic area didn't make the short list.

7 The change in the definition of "Licensee" in WAC 480-54-020(8) allows for any entity to attach to a pole. CenturyLink believes that in order to preserve the scarce resource that is the available space on a pole, the Commission should clarify that the permitted attachments under the rule are communications attachments. Other uses, such as solar panels, street lights, etc., should be at the pole-owner's discretion.

8 As CenturyLink read through the rules most recently, it appears that a clarification to the definition of “Licensee” might be beneficial with regard to the need for a pole attachment agreement prior to any request for attachments. The rules seem to generally contemplate that the owner can require a pole attachment agreement, but that concept seems to be more implied than expressed. As the Commission is undoubtedly aware, a pole attachment agreement will be more detailed and specific than these rules, and will more clearly spell out the relationship between the parties. An agreement is a reasonable prerequisite before an entity has the right to submit a request for space. Thus, CenturyLink recommends that the Commission clarify that “Licensee” is limited to those who have a pole attachment agreement with the Owner.

9 PSE and others make a number of suggestions that would distance these rules from the FCC’s rules. CenturyLink is generally opposed to these changes, including the following points:

III. MAKE READY WORK

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- a.* The definition of make-ready work should include pole replacements. CenturyLink agrees that a pole replacement might require more time than what is provided for in the rules, but it should nevertheless be included in make-ready, perhaps with an exception to the timelines. Along this same line, CenturyLink believes strongly that the pole owner should be required, as stated in the draft rules, to replace an existing pole with a taller pole to provide capacity for attachments. The replacement will be paid for by the attacher, and there is thus no harm to the pole owner from this requirement. Without this requirement pole-owners would have an unwarranted basis to deny attachments. Make ready requirements including the replacement of a pole are consistent with the FCC’s rules.

- b.* Make ready work should not be limited to the communication space – as noted above, make ready should include replacing a pole if necessary, and may also include other required work outside the communication space, such as the addition of anchors or grounds.
- c.* PSE does not want to coordinate make-ready work among existing attachers. This is an interesting issue, as it is CenturyLink’s view that the pole owner has the agreements with the existing attachers and is therefore in a much better position to coordinate the make-ready work, not the attacher. However, this is one area where the FCC has reached a different conclusion, and the FCC rules require the attacher to do the coordination. CenturyLink believes that the Washington rules have a better rationale behind them, but is familiar with working in environments with requirements that go both ways.

IV. OVERLASHING

- 11* CenturyLink opposes any requirement to submit an application for overlashing. This is burdensome and time consuming when the overlashed facilities have the same owner and are in the same space as the original attachment. CenturyLink believes it would be reasonable to place limits on third party overlashing, but otherwise opposes any additional requirements. The FCC’s rules allow overlashing without an application.

V. SIGN AND SUE

- 12* CenturyLink has carefully considered the sign and sue limitations. As an attacher, CenturyLink agrees that it would be expedient to simply sign whatever agreement is presented, get the attachments on the poles and sue later. However, as a pole owner, this presents an unacceptable level of risk and uncertainty. On balance, CenturyLink believes that the rules as written strike the right balance – they encourage negotiations, allow

parties to know if an agreement is being signed under protest, and as to what terms, and place a reasonable time limitation on disputes.

VI. OTHER

- 13 CenturyLink continues to oppose sanctions such as those in the Oregon rules, which are not contained in the FCC's rules.
- 14 WAC 480-54-060. PSE's comments on this section state that these pole rules give attachers a premium service over their electric customers. Thus, PSE would add fees for every task they perform in relation to pole attachments including application fees, survey fees, notification fees, report fees, even asking that if an attacher's modifications upgrade a pole, the attacher be responsible for PSE's increased taxes on that pole. This is wholly inconsistent with the FCC's rules and with the concept of calculating a pole attachment rate to cover these costs for the pole owner. CenturyLink is opposed to all the costs and liabilities recommended in PSE's comments.

VII. CONCLUSION

- 15 CenturyLink recommends that the Commission proceed to adopt the pole attachment rules as most recently proposed, with the minor clarifications set forth here and in CenturyLink's February 6 comments.

Submitted this 27th day of February, 2015.

CENTURYLINK

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