

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

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

Pursuant to the Notice of Opportunity to Respond to Written Comments issued by the Commission on February 10, 2015, T-Mobile West LLC (“T-Mobile”) hereby submits the following response to comments on the revised draft rules.

I. INTRODUCTION

As T-Mobile stated in its February 6, 2015 comments¹, the Commission’s revised draft rules reflect a careful and thoughtful attention to the comments proffered by the parties prior to the release of the revised draft rules to date, both written and oral, and a desire to balance the interests of the stakeholders and the public. T-Mobile, therefore, limited its February 6, 2015 comments to only a few clarifications to the revised draft rules in order to ensure that the revised draft would not lead to unintended consequences. A number of other parties, namely Puget Sound Energy (“PSE”), Avista Corp. (“Avista”), and Pacific Power & Light Company (“Pacific”) (collectively “IOUs”), on the other hand, filed extensive comments regarding not only aspects of the rules that had been altered between the first and second drafts of the proposed rules, but also repeated numerous arguments made previously in the docket and included some new arguments regarding items that had not been changed between the first and second drafts of the proposed rules.

¹ See T-Mobile West LLC’s Comments on Revised Draft Rules, filed February 6, 2105 in docket U-140621.

While T-Mobile finds many of the amendments to the revised draft rules proposed by PSE, Avista, and Pacific objectionable, unwarranted, and unnecessary, T-Mobile's Response herein is limited to those items most critical to wireless attachers.

II. RESPONSE TO COMMENTS OF IOUs

Definition of "Attachment" – WAC 480-54-020(1)

The Commission should reject PSE's proposal to alter the definition of "Attachment" to, in essence, provide an owner unfettered discretion to deny any and all requests to attach an antenna to a facility. The ability of wireless carriers to make antenna attachments is critical to the deployment of wireless broadband services to consumers in the state of Washington.² The revised draft rules ensure that this important policy goal is advanced by clarifying that antenna attachments are expressly included within the definition of attachment. This is consistent with the Federal Communications Commission's rules.³

PSE's claims of safety concerns due to RF emissions run counter to the fact that PSE has numerous poles in the state of Washington with antenna attached, including T-Mobile antenna attachments. In the related context of local siting policies of wireless attachments (including on utility poles), the FCC has excluded from environmental assessment requirements antenna installations that meet the federal RF emission standards.⁴ This Commission should reject PSE's attempt to remove antenna attachments from the purview of the rules based on inflated RF emission concerns.

² *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, ¶¶ 2-3 (2011) (hereinafter "2011 FCC Pole Order") ("lack of reliable, timely, and affordable access to physical infrastructure—particularly to poles—is often a significant barrier to deploying wireline and wireless services.")

³ *See also Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd. 6777 ¶¶ 39-40 (1998) (hereinafter "1998 FCC Pole Order"), *aff'd*, *Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574 (DC Cir 2002).

⁴ *See In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, FCC 14-153, Appendix B, Section 1.1306 Note 4.

Nor would PSE's proposed edits to the rule require that an owner prove any particular safety concern in order to deny a request to attach an antenna. While PSE's proposed amendment to the definition of "Attachment" mentions RF concerns, as drafted, it provides an owner with carte blanche to deny an antenna attachment. As with all other types of attachments, the revised draft rules correctly specify the limited grounds for a denial of an attachment to any specific facility, namely, "insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering principles".⁵ The Commission should reject PSE's proposed amendment to the definition of "Attachment."

Definition of "Facility" or "Facilities" – WAC 480-54-020(6)

The Commission should reject PSE's proposed changes to the definition of "Facility" or "Facilities" in Revised Draft Rule 480-54-020(6). While PSE's comments indicate that it is concerned that the term "one or more" is confusing and should be deleted, PSE's redline also deletes the term "poles" from the definition. T-Mobile believes this is likely an unintended typographical error. Nevertheless, the amendment should be rejected as it is critical to include the term "poles" within the definition of "Facilities."

In addition, PSE proposes adding the phrase "that are owned by the owner." Given the definition of "Owner" in the revised draft rules, this amendment is unnecessary. More importantly, the proposed amendment to the definition could create confusion regarding jointly owned facilities (e.g., poles jointly owned by electric and telephone companies). Accordingly, T-Mobile recommends the Commission reject the proposed amendment.

⁵ See Revised Draft Rule 480-54-030(1).

Replacement Poles: “Duty to provide access” WAC 480-54-030(1);

Definition of “Make-ready work” WAC 480-54-020(9); Related Provisions

PSE’s comments frame its proposal to remove provisions from the revised draft rules regarding replacement poles as a concern with make-ready timelines.⁶ However, PSE’s proposed revisions are far more sweeping with respect to pole replacements than just the make-ready timelines. In fact, the fundamental amendment PSE proposes in this regard would revise draft rule 480-54-030(1), regarding an owner’s duty to provide nondiscriminatory access for attachments.

In its revised draft rules, the Commission made clear that an owner may not deny a request to attach to a pole on the basis of 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 additional attachments.”⁷ This clarification is critical, especially for wireless carriers, who often request pole replacement when making pole-top attachments. It is standard practice for wireless carriers to fully compensate the owner for these pole replacements as part of the cost of make-ready work. PSE acknowledges that this is its current practice, stating “PSE does not refuse replacement of a pole to provide additional capacity to support an attachment.” However, PSE’s proposed amendment to Revised Draft Rule 480-54-030(1) would render denials of attachments in such situations entirely at the discretion of the owner, thereby thwarting the Commission’s attempt to both codify existing practice and promote timely and efficient communications network deployment. The Commission should reject PSE’s proposed amendment to Revised Draft Rule 480-54-030(1).

⁶ See Comments of Puget Sound Energy, Inc. on Proposed Rules, dated February 6, 2015 (“PSE Comments”), p. 6.

⁷ See Revised Draft Rule 480-54-030(1).

The Commission should similarly reject PSE's proposal to remove pole replacements from the definition of make-ready work in Revised Draft Rule 480-54-020(9). PSE bemoans the possibility that attachment-related pole replacements might lead to "the possibility of third party work driving the scheduling of PSE construction activities to the detriment of service to new and existing customers."⁸ However, this concern is belied by the fact that PSE has, by its own admission, been replacing poles upon request from attachers willing to pay for such replacements with no detrimental impact to PSE's ability to provide service to its electric customers. The Commission should not be dissuaded from its pro-deployment approach based on purely speculative and unsubstantiated claims of possible future harm to electric customers.

In fact, the approach taken by the Commission in the revised draft rules benefits electric utility customers because these customers get the benefits of new poles paid for by attachers instead of having to pay for replacement poles in electric rates. The revised draft rules are also consistent with the Commission's statutory obligation to consider the interests of the customers of the attachers with the interests of the customers of the owners. RCW 80.54.030 provides in pertinent part that:

In determining and fixing the rates, terms, and conditions [of attachments], the commission shall consider the interest of the customers of the attaching utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made.

The revised draft rules benefit both sets of customers. The interests of the customers of the attaching licensees and utilities are advanced by the fact that facilities used to provide communications services to these customers are deployed in an efficient and timely manner. The interests of customers of the utility upon which the attachment is made are advanced by the fact that the cost of replacement poles is shifted from these customers to a third party. Accordingly,

⁸ PSE Comments, p. 10.

the Commission should reject PSE's proposed amendment to both Revised Draft Rule 480-54-030(1) and 480-54-020(9).

PSE's proposal to remove replacement poles from these two revised draft rules is reflected in numerous proposed amendments to other revised draft rules, including: 480-54-030(6)(a)(ii), 480-54-030(6)(b)(ii), 480-54-030(6)(b)(iv), and proposed new 480-54-030(8)(d). The Commission should reject all of these additional PSE-proposed amendments for the reasons stated above.

In their comments, both Pacific and Avista proposed similar amendments to the proposed rules. The Commission should reject these proposed amendments for the reasons stated above.

III. CONCLUSION

For the foregoing reasons, T-Mobile recommends the Commission reject the amendments to the revised draft rules proposed by the IOUs.

Respectfully submitted this 27th day of February, 2015.

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