

**U-140621 Pole Attachment Rules
Summary of Comments/Responses on Revised Draft Rules
March 13, 2015**

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
010	Purposes and Interpretation	Clarify to whom the rules apply	Establish presumption that rates, terms, and conditions in existing agreements are reasonable		BCAW: Expressly include rate formula in reference to federal rules			Clarify that rules apply to all owners, occupants, and requesters, regardless of whether they are otherwise subject to UTC jurisdiction but reject other proposed changes. The presumption Avista requests should be left to change of law provisions in existing agreements, and Commission reliance on the FCC rate formula as persuasive authority is included in the general statement without the need to specify it separately. Previous revisions to this rule made for greater clarity based on workshop discussion.
020(1)	Definitions -- Attachments	Antennas are different than wires or cable and owners should be able to condition or reject their attachment; oppose extending rights-of-way access to third parties as beyond owners authority	Remove phrase “where the installation has been made with the consent of the one or more owners consistent with these rules”; oppose adding rights-of-way as issue of property law	Oppose including rights-of-way as inconsistent with state law easement limitations	BCAW: Include rights-of-way; Avista’s concerns unfounded in light of latest draft language; CenturyLink: Oppose including rights-of-way, consistent with FCC limitation of its rules to poles; clarify rules apply only to communications attachments; Frontier: Oppose PSE revision as unnecessary	Include rights-of-way; Oppose PSE proposal on antennas as inconsistent with FCC rules and orders		Reject all proposed changes. Limitations on antenna attachment are inconsistent with FCC rules and are unwarranted. The language Avista seeks to delete is included in the statute. Although the statute includes a reference to rights-of-way, permitting third party access to easements implicates state property law, is beyond the scope of the FCC’s rules, and would unnecessarily complicate these rules with no demonstrable benefit. Previous revisions made in response to wireless commenters (including antennas), owners (removing rights of way), and BCAW (adding “consistent with these rules”).

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
020(2)	Definitions – Carrying Charge	Include overhead and compliance costs; oppose limiting to listed items for concern it would limit costs that owners can recover	Does not oppose limiting to listed items if clarify owner can recover other out-of-pocket costs incurred		Limit to identified charges; Frontier: Oppose PSE proposal as inconsistent with the definition of the term; BCAW: Oppose PSE proposals as inconsistent with FCC formula	AT&T: Agree should be limited to identified charges; PCIA: Oppose PSE proposal as inconsistent with FCC rules		Reject all proposed changes. The costs PSE proposes to include are recovered elsewhere, to the extent an owner is authorized to recover them. “Including” is a term of limitation, and interpreting this provision consistent with FCC rules will also limit the costs that are included to those listed. Definition added in prior revisions to draft rules in response to concerns of multiple parties at workshop.
020 (New)	Definitions – Coordinate	Define in terms of making attachments when others are already on pole.			CenturyLink: Oppose shifting obligation of coordination to requester from owner who is in better position	PCIA: Oppose as not required by FCC and unnecessarily increases requesters costs		Reject proposed change. “Coordinate” has a broader meaning than the proposed definition, which is also unnecessary.
020(6)	Definitions – Facility/ Facilities	Do not include poles and specify owned by owner				T-Mobile: Oppose PSE proposal as confusing and unnecessary		Reject proposed changes. Poles are facilities and should be included in the definition and specifying ownership by the owner is unnecessary in the context of the remainder of the rules.
020(8)	Definitions – Licensee	Limit to telcos, CMRS, and cable	Limit to cable and telecom companies		CenturyLink: clarify that pole attachment agreement required			Reject limitation to cable and telecom companies as more restrictive than the statute authorizes. Modify definition of “requester” to clarify that it must have an agreement with the facility owner, and include same revision to section 030(2). Previous revision to conform to statutory definition.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
020(9)	Definitions – Make-ready work	Remove pole replacement and specify recoverable costs	Clarify comm. contractor can only work in comm. space; don't include pole replacement	Do not include pole replacement	CenturyLink: Oppose removal of pole replacement from make-ready; make-ready should not be limited to work in the communications space; Frontier: Oppose PSE proposal as unnecessary; BCAW: Oppose removal of pole replacement; Oppose PSE cost recovery language as unnecessary or inappropriate	Oppose PSE cost recovery proposal as inconsistent with FCC rules; AT&T would state that all charges associated with make-ready must be direct, reasonable, actual, verifiable, non-discriminatory, and supported by detailed invoices; T-Mobile: Oppose removal of pole replacement as inconsistent with current practice and benefits to customers of both carriers		Reject proposed changes. Although not required by FCC rules, including pole replacement in make-ready is consistent with current practice and recognizes that attaching to an existing pole is often a company's only viable option. Make-ready may be required to any part of the pole, and limiting where contractors can work is already addressed in section 040. Cost recovery is also addressed elsewhere, and the rule should be modified to move all discussion of costs to section 030(5).

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
020(10)	Definitions – Net cost of a bare pole	Include appurtenances; oppose specifying FERC and ARMIS as unnecessary and confusing	Oppose specifying FERC/ARMIS as unnecessary		Frontier: specify FERC/ARMIS accounts and include portion of jointly owned poles in pole count; BCAW: address PSE concern by including rebuttable presumption in FCC formula re: non-pole related appurtenances			Reject proposed changes except to modify this subsection to recognize that pole count should include a portion of jointly-owned poles. Specifying the disposition of appurtenances and identifying the FCC accounts adds unnecessary detail and complications when the commission will be looking to the FCC rules and orders for guidance on implementing the rate formula. Definition added to previous revised draft rules in response to multiple party concerns at workshop.
020(11)	Definitions – Occupant	Clarify definition						Reject proposed change. An occupant was not necessarily a requester, but the definition should be modified to be clearer.
020(12)	Definitions – Occupied space	Clarify and allow owner to authorize additional space on poles in six inch increments		Clarify that electric facilities and comm. facilities cannot be within same duct/conduit; authorize additional space on poles in six inch increments	BCAW: Oppose PSE and Pacific proposals as inconsistent with FCC rules	AT&T: Add “if no inner duct or only a single duct is installed”; Oppose PSE proposals as explained in prior comments		Add clarifying language AT&T recommends but reject other proposed changes. The presumptions of space occupied are rebuttable so there is no need to set a minimum amount of space or authorize incremental increases. The proximity of electrical and communications wires is a safety issue that can be addressed in section 030(1). Previous revisions made in response to AT&T comments.
020(13)	Definitions – Overlashing	Clarify		Clarify to exclude third party overlashing	BCAW: Oppose excluding third party overlashing as inconsistent with FCC rules			Reject proposed change. Whether a third party can overlash is addressed in section 030(11). Definition added to previous revised draft rules pursuant to workshop discussion.
020(14)	Definitions – Owner	Clarify				Clarify does not include CMRS provider		Accept proposed change to exempt CMRS providers but reject proposed clarification in favor of modifications consistent with revisions to definition of occupant.

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020(15)	Definitions – Pole	Clarify; oppose including poles with both transmission and distribution electric lines; agree with BCAW addition	Limit to poles that <i>only</i> have distribution lines with a voltage rating at or below 34.5 kV		BCAW: Include presumptive pole height of 37.5 feet; Oppose IOU proposals as inconsistent with FCC rules and unnecessary	PCIA: clarify includes poles with both transmission and distribution lines; AT&T: Oppose limitation to distribution only as inconsistent with FCC and Oregon rules		Accept addition of presumptive pole height but reject other proposed changes. Substituting “may accommodate” for “maintains” is too restrictive. Exempting poles that carry transmission as well as distribution lines is inconsistent with FCC rules. To the extent that attachment to such poses a legitimate safety issue, that issue should be addressed under section 030(1). Previous revisions made to conform to statute.
020(16)	Definitions – Requester		Oppose Google modification as overbroad and burdensome to companies with clear right to attach	Oppose Google modification as jeopardizing owner’s ability to meet timelines if requester lacks authority	CenturyLink: Oppose Google modification as a waste of resources to negotiate with a requester who does not yet have authority		Google: modify to allow any entity to request attachments	Reject proposed change but modify to require existing attachment agreement. Requesters should be limited to those entities with the right to construct attachments, both as a matter of authority to access to public way and pursuant to contract with the owner.
020(18)	Definitions – Usable space	Limit to vertical space and authorize only owner to measure	Do not include cross-arms and extension arms; agree with CenturyLink that owner should be able to reserve space in ducts and on poles	Clarify that electric facilities and comm. facilities cannot be in same duct/conduit; Make presumed measurement rebuttable	CenturyLink: clarify does not include duct capacity reserved for maintenance or emergency use; Frontier: Oppose PSE proposal to authorize only owners to measure as unnecessary and unsupported; BCAW: Oppose PSE proposals as unsupported, unnecessary, and inconsistent with FCC rules	AT&T: Support limitation to vertical space but oppose remainder of PSE proposal as part of make-ready, not usable space		Accept limitation to vertical space without cross-arms but reject other proposed changes. The amount of useable space is rebuttable by both the owner and requester, not just the owner. To the extent that safety is an issue, this should be addressed pursuant to section 030(1). Owner should not be authorized to reserve space at the expense of a company that seeks to make use of that space for attachment unless such reservation is required for safety, reliability, or generally applicable engineering principles, which again is addressed in section 030(1). Previous revision made in response to Integra and BCAW comments.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
020(19)	Definitions – Utility	Clarify						Reject proposed change. This definition is the same as RCW 80.54.010(3).
030(1)	Duty to provide access; make-ready work; timelines	Specify non-utility electrical companies cannot attach; Pole replacement at owner option and scheduled on nondiscriminatory basis with other work; oppose Google timeline for pole replacement and XO addition as undefined and too restrictive for owners	Make-ready should not include replacing pole to increase attachment capacity; oppose XO modification as forcing owner to expand duct capacity; remove ducts and conduits from rules	Clarify that pole replacement is not make-ready work; Oppose Google proposal as improperly giving requester control over utility maintenance	BCAW: Oppose all PSE proposals for entire section as untimely and inconsistent with FCC rules	Oppose PSE proposals as overbroad and inconsistent with FCC rules and effective deployment of wireless infrastructure	Google: establish timeline to replace pole if owner denies request for lack of capacity; XO: clarify no denial of conduit occupancy for lack of space if additional capacity can reasonably be made available	Reject proposed changes except elimination of redundancy. Non-utilities are included in the definition of “electrical companies” in RCW 80.04.010(12). The term “non-discriminatory” is broader than PSE proposes and includes non-discrimination with other work the owner must do on the pole. Pole replacement should be included in make-ready work as discussed in section 020(9). The timelines in subsection (6) are a reasonable comprise and already contemplate the possibility of pole replacement. The requirement of using reasonable effort and expense to make conduit space available is already included in the definition of “usable space” in section 010(18). Previous revisions made to conform to statute and in response to workshop discussion.
030(2)	[Rates, terms, and conditions to be fair, just, reasonable, and sufficient]	Require dispute over rates, terms, or conditions to be submitted before executing agreement			Frontier: Oppose PSE proposal as inconsistent with 070(4)	AT&T: Oppose PSE proposal as inconsistent with FCC rules		Reject proposed changes as inconsistent with FCC rules and section 070(4). Add requirement for attachment agreement (as CenturyLink proposed in section 020(8)).

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
030(3)	[Application requirements]	Owner processes applications with other work; Specify recovery of application and related costs; Requester liable for costs, damages, and penalties for unauthorized or premature attachment			Frontier: Oppose PSE cost recovery language as unnecessary and improper	AT&T: Oppose inclusion of reference to rule on applications for electric service as inapplicable; oppose cost recovery language as explained in definition of make-ready		Reject proposed changes but clarify owner may recover costs it reasonably incurs to process application and conduct a survey. Requests for attachments are not applications for electric service under WAC 480-100-108 and should not be treated as such. The costs PSE proposes to recover are too broad, and such costs and method of payment do not need to be specified in the rule. Violations of these rules or agreements should be addressed in a complaint proceeding. Commission cannot authorize damages or delegate its authority to impose penalties for such violations. Previous revisions made in response to workshop discussion.
030(4)	[Explanation for any denial of application]	Requester must pay costs to prepare explanation of denial of application			Frontier: Oppose PSE cost recovery language as unnecessary and improper	AT&T: Oppose PSE cost recovery language as explained in definition of make-ready		Reject proposed changes. The owner needs to explain any denial of an application, and its costs to do so should be included in the recovery of the costs to process an application. Previous revisions made in response to workshop discussion.
030(5)	[Contents of response to application]	Give owners 30 days to estimate make-ready costs and requester 14 days to accept and pay all costs; Provide for expiration of estimate		Allow flexible timing for presenting requester with final costs for preparing the estimate.	Frontier: Oppose PSE cost recovery language as unnecessary and improper	AT&T: Oppose changes to timeline as inconsistent with FCC rules; oppose PSE cost recovery language as explained in definition of make-ready		Modify (5)(b) to authorize owner to require payment of make-ready cost estimates as part of acceptance but reject other proposed changes. Recovery of application costs are addressed in subsection (3). The proposed changes to the timeline are inconsistent with FCC rules. The owner should proactively withdraw the estimate, rather than establishing an expiration date. Previous revisions based on workshop discussion.

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030(6)	[Notice of make-ready work]	Owner requests time period for make-ready from each occupant and recovers cost from applicant	Allow requester to waive notice to existing occupants; reinstate requirement to pay make-ready costs in advance			AT&T: Oppose PSE proposal for exemption from certain electric rules as inapplicable; Oppose PSE cost recovery language as explained in definition of make-ready		Reject proposed changes. The owner should determine the time period for completing the make-ready work, including any consultation required with existing occupants. The costs the owner incurs should be included in the make-ready work estimate. The benefitted party may waive a rule without an express provision permitting such waiver. Authorizing the owner to require pre-payment of make-ready work costs is included in subsection (5)(a). Previous revisions based on workshop discussion.
030(6)(a)(ii) & (b)(ii)	[Deadline to complete make-ready work]	Owner can extend make-ready completion period without limitation; Owner absolved from compliance with these rules and service quality requirements because of make-ready obligations						Reject proposed changes. The existing rule language addresses any need to extend time period for pole replacement, and the requirement for nondiscrimination is addressed in subsection (1). PSE provides no support for any need to be exempt from service quality requirements to comply with these rules. Previous revisions based on workshop discussion.
030(6)(a)(iii) & (b)(iii)	[Allowing existing occupants to modify attachments]	Owner can require occupant to modify attachment subject to owner removing the attachment without liability and at occupant's expense						Accept concept of proposed changes but use different language to specify modifications required to non-compliant existing attachments.

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030(6)(a)(iv) & (b)(iv)	[Owners right to additional time to complete make-ready work]	Remove 15 day limit on extension of time to complete make-ready when necessary for specified reasons and owner informs requester of number of additional days needed						Reject proposed changes. The time frame in the rule derives from FCC rules, and PSE has provided no support for giving owners the ability to impose an open-ended extension of the deadline.
030(6)(a)(v)	[Using contractor for make-ready work]		Oppose Google's proposal as heavy-handed; if no list of approved contractors, allow requester to select its own but clarify requester, not owner, is responsible for contractor actions	Clarify that make-ready work may be required in electric, as well as comm. space			Google: allow requester to hire a contractor immediately	Revise language to address circumstances when owner has no list of pre-approved contractors, but reject other proposed change. Owners should have the right to undertake make-ready on their own facilities before a requester can engage a contractor to do that work. Make-ready work by definition is not limited to work in the communications space so there is no need to state that in this section. Liability issues should be addressed in the attachment agreement between the owner and the requester. Previous revisions made in response to workshop discussion.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
030(7)	[Application of time periods]	Owner may treat multiple requests owner receives within 90 days or as extension of same project treated as one request; oppose increasing number of poles if pole replacement included	Oppose more stringent timelines (but could accept 300 if pole replacement not included in make-ready); suspension should be okay in cases of emergency or severe storms	Oppose increasing number of poles as claims of hardship unsupported by facts – in particular DAS installation by its nature is time-consuming and complex, requiring negotiations to establish timelines		PCIA: increase number of poles in requests subject to timelines from 100 to 300	Google & Integra: restore timelines for requests to attach to larger number of poles; Integra alternative, increase number of poles to 300	Reject proposed changes. Combining requests received within 30 days is reasonable and consistent with FCC rules. 100 pole limit on timelines is lower than FCC rules but those rules do not include pole replacement. The timelines here are a reasonable compromise consistent with discussions at the workshop. Suspension of those timelines for emergencies or severe storms is a force majeure issue that should be addressed in the attachment agreement. Previous revisions made in response to workshop discussion.
030(8)	[Extending time periods for completing make-ready work]	Eliminate notice of need to extend make-ready completion; allow extension for natural disaster; time period does not start until owner receives full payment; owner may hold processing application if requester has a history of repeated failure to comply with these rules or agreements until requester is in compliance						Reject proposed changes. The existing rule is consistent with FCC requirements and is a reasonable compromise. The owner should be required to provide notice to the requester and should not be authorized to unilaterally extend the time to complete the work to some unspecified date. Non-discrimination is addressed in subsection (1). Suspension of timelines for natural disaster is a force majeure issue that should be addressed in the attachment agreement. Pre-payment of estimated make-ready costs is now covered in subsection (5)(a). Remedies for violations of the rules or agreement should be handled through the agreement or section 070. WAC 480-100-108 is inapplicable to these rules. Previous revisions made for clarity.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
030(9)	[Using contractor to conduct survey]	Authorize owner to review and conduct spot checks or new survey at requester's expense			Frontier: Oppose PSE cost recovery language as unnecessary and improper			Address lack of owner list of authorized contractors but reject proposed changes. The adequacy of a contractor survey is an issue that is part of the application process required in subsection (3), which also addresses recovering the costs of that process. Previous revisions made in response to workshop discussion.
030(10)	[Using contractor to do make-ready work]	Require each licensee to submit list of contractors for owner approval; Requester is responsible for all costs and for supervising contractor work; If contractor finds insufficient separation from electrical facilities, must stop work and notify owner	Requester, not owner, is responsible for contractor actions or inactions; If owner does not have a list of approved contractors, allow requester to engage its own	Do not limit to make-ready in the communications space; limit owner's responsibility to its own make-ready work	Frontier: Oppose PSE cost recovery language as unnecessary and improper			Address lack of owner list of authorized contractors but reject other proposed changes. Owner, not licensees, should be responsible for maintaining a list of approved contractors. Stating that requesters are responsible for contractor costs is unnecessary because requesters already are responsible for the costs of make-ready work. Supervision, liability, and discovery of non-compliant attachment issues should be addressed in attachment agreement. The owner should retain responsibility for any make-ready work required in the electric space.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
030(11)	Overlashing	Limit facilities and number of poles to be overlashed; Prohibit third party overlashing; Require fee to cover owner's costs to review, evaluate, and respond to notice; allow owner to establish policies to restrict size and weight of overlashed facilities; Require occupant to reimburse owner for costs of preparing response and any negotiations; make occupant legally liable for damages resulting from improper overlashing; Absolve owners of liability for compliance with WAC 480-100-148 Service responsibility due to overlashing; oppose BCAW proposal as shifting costs to owners	Require same application process to overlashing as to new attachments; Alternatively, require 15 day notice with all detail needed to evaluate, limit size and weight of facilities that can be overlashed and number of poles within 30 day period with only notice, and require existing violations to be remedied prior to overlashing; No third party lashing without agreement with owner; Existing occupant liable if it overlashes third party's facilities; Oppose no notice – FCC has not addressed this issue	Limit overlashing with only notice to first-time overlashing with 48 count or smaller fiber or coaxial cable on up to 100 poles; occupant must correct any noncompliant attachments at the time of overlashing; third party overlashing prohibited	CenturyLink: Oppose submitting application for overlashing as burdensome and time-consuming; Frontier: Oppose PSE cost recovery language as unnecessary and improper; BCAW: Require responsible party to pay for any make-ready work required to correct non-compliant attachments; Oppose IOU proposals with following compromises: (1) limit each overlash notice to 30 poles, (2) include weight per foot and number of conductors in notice, (3) include map of proposed route and number of poles in notice, and (4) correct pre-existing violations of the overlashing occupant at the time of overlashing		Google: do not require prior notice for overlashing; alternatively, allow exemption when notice is impractical	Accept BCAW compromises and limit third party overlashing but reject other proposed changes. Third party overlashing should be permitted only with owner consent and by a third party that has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing to other occupant's wires. Owner is entitled to notice of overlashing, but an application is unnecessary in specified circumstances. Limits on type, size, and weight of overlashed wires or equipment should be determined on a case-by-case basis. Costs of reviewing and responding to notice should be included in pole maintenance expenses included in the carrying charge. Issues of inadequate notice or liability for violations should be addressed in an attachment agreement. The rule does not implicate WAC 480-100-148. Costs of other occupants bringing their attachments into compliance is addressed in subsection (6). This subsection added to prior revised rules in response to workshop discussion.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
040	Contractors for survey and make-ready	Requester responsible for all costs owner incurs with respect to contractors, including federal taxes on FMV of improvements, legal costs, compiling list of approved contractors, inspecting contractor work, and consulting with contractor and requester	Notice and opportunity to consult should apply to any contractor, not just those on an approved list.	Require prior written notice of requester's selection of contractor rather than owner maintaining list of approved contractors	Frontier: Oppose PSE cost recovery language as unnecessary and improper; BCAW: Oppose all PSE proposals as untimely and inconsistent with FCC rules			Address circumstances when owner fails to maintain a list of approved contractors and agree that notice and opportunity to consult applies to all contractors. Reject other proposed changes. Cost recovery is addressed in section 030, and PSE's proposal for cost recovery is overbroad, beyond the Commission's authority to grant, and inconsistent with FCC rules. Requiring owner approval of contractor in lieu of a maintaining a list of pre-approved contractors would result in unnecessary delays. Previous revisions made in response to workshop discussion.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
050	Modification costs; notice; temporary stay	Delete obligation of existing occupant to pay for modification; owner to recover costs of all accounting, tracking, billing, switching, de-energizing lines, determining cost allocations, and any other costs associated with modification; reference procedural rules for petitions; nonpayment of attachment fees for 90 days or longer shows abandonment; owner absolved of all liability for removing attachments and owner entitled to recover the costs of liability insurance; agree with BCAW revisions except right-of-way; oppose Google addition as shifting costs to owners	Allocate costs of modification based on amount of new space occupied; oppose proposals to make owner pay for any modifications resulting from request to attach; allow owner to reserve space and not be liable for displacing occupants to reclaim that space; require occupants to pay to transfer their facilities to a new pole; owner not responsible for costs incurred to fix safety violations "but for" attachments	Only requester and existing occupants correcting nonconforming attachments share costs; costs shared in proportion to number of occupants that benefit; delete subsection (2) as redundant; owner not financially responsible for abandoned attachments; Oppose Google proposal as giving preference to third parties over utility customers	Frontier: Oppose PSE cost recovery language as unnecessary and improper; BCAW: clarify not to require existing occupant to pay for any costs to rearrange attachments to accommodate another occupant or requester; Not opposed to allocating modification costs based on amount of new space occupied; Opposed to PSE and Pacific proposals as overbroad, redundant, unnecessary, and inconsistent with FCC rules and liability provisions in most pole attachment agreements		Google: add requirement for owner to pay for repairs or replacement if lack of space due to pole damage	Agree to allocate costs of modification based on amount of new space occupied, to clarify owner and occupant not responsible for costs to move compliant existing attachments, and to make some minor language changes. Reject other proposed changes. An occupant, including the owner, who benefits from a modification should be responsible for a proportional share of the costs. Cost recovery is part of make-ready and is addressed in section 030. A reference to procedural rule governing petitions is unnecessary. Nonpayment of attachment fees for 90 days or longer is not a reasonable indicator of abandonment without more facts. Issues of liability and requirements for transferring attachments to new poles should be addressed in attachment agreements. Previous revisions made in response to workshop discussion.

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050 (PSE 6)	[Transfer of attachments]	Owner may require occupants to move attachments to new pole within 30 days; attachments not transferred within 90 days considered abandoned						Reject proposed changes. Terms and conditions for transferring attachments to new poles should be addressed in attachment agreements.
050 (PSE 7)	Owner work on attachments	Owner may not work on attachments unless it has qualified personnel and authorization from occupant						Reject proposed change. The extent to which an owner may work on other occupants' attachments should be addressed in attachment agreements.

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060	Rates		Delete rates for conduit occupancy; alternatively permit existing rates to stay in effect for five years with CPI-based increases thereafter; oppose CenturyLink proposal to use gross cost of bare pole due to “super-depreciation” but could allow some fraction of gross pole costs		CenturyLink: allow owner to calculate rate based on gross cost of bare pole if net cost is negative due to depreciation, etc.; CenturyLink & Frontier: Oppose all PSE cost recovery and liabilities language as inconsistent with FCC rules			Reject proposed changes. The rules address access to ducts and conduits and should include rates based on the FCC formula. Parties can agree to different rates but should not be compelled to accept an existing rate established before these rules became effective. In general, variations from this formula should be based on FCC rules and established on a case-by-case basis. Specifically, an owner should not be permitted both to fully depreciate its poles and continue to charge occupants for the costs of those poles.
480-54-060 (PSE 4)	[Additional costs]	Include all costs owner incurs resulting from these rules						Reject proposed change. Cost recovery is addressed throughout these rules, and the rate formulas in this section are not a catch-all for costs that may or may not have been included.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
480-54-060 (PSE 5)	[Cost recovery for unauthorized overlashing]	Owner may recover all costs incurred due to unauthorized overlashing with presumption the overlashing has been in place for six years						Reject proposed change. Remedies for violations of overlashing or other requirements should be addressed in attachment agreements or the complaint procedures in section 070.
060 (PSE 6)	[Larger space for pole attachments]	Pole attachment deemed minimum of one foot but parties may agree actual attachment occupies more space						Reject proposed change. Consistent with FCC rules, these rules adopt a rebuttable presumption that attachments occupy one foot of space on a pole. Rebutting that presumption, including the rate impacts, is a matter of fact that should be addressed on a case-by-case basis.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
070	Complaint	Tie to WAC 480-07-370 Pleadings; Apply rate effect of decision beginning on date complaint filed; oppose changes to sign and sue and time to file complaint as these requirements provide incentive to negotiate; special complaint rules unnecessary for occupants in light of existing procedural options; oppose AT&T addition as unnecessary	Require challenges to existing agreements to be brought within six months; Any refunds should date back no further than the date complaint filed; Allow owners to impose monetary sanctions for unauthorized attachments and violations of NESC and existing contracts; oppose other modifications in favor of keeping existing language and giving Commission discretion	Oppose sign and sue provision as inconsistent with basic tenets of contract law, but if retained, oppose proposals to weaken safeguards contained in proposed rule; Oppose including expedite requirement in rule in favor of giving Commission discretion to control schedule; Oppose retroactive application of rules as inconsistent with contract law and regulatory requirements	Frontier: clarify application to existing agreements; delete "executive level" from negotiation requirement; BCAW: Require owner to provide rate calculations in response to request; clarify burden of proof; Oppose PSE and Avista proposals as nonsensical and inconsistent with current FCC rules; CenturyLink: Oppose changes to sign and sue provision because existing language strikes the right balance; opposes authorizing owners to impose sanctions	Expedite decision on complaints alleging denial of access; do not require parties to be aware of dispute upon execution of agreement; allow 18 months to bring complaint; clarify burden of proof; AT&T: add subsection that other remedies are not precluded; Oppose Avista proposal to limit refunds as inconsistent with FCC rules; Support Frontier proposal for six month limit for complaints challenging existing agreements		Require exchange of information as part of negotiations preceding filing complaint and clarify burden of proof. Reject other proposed changes. Complaint procedures in this rule are unique to attachment disputes, so cross-reference to procedural rules is misleading. Limiting rate impact of decision to date complaint was filed is inconsistent with FCC rules and Washington law. Impacts of these rules on, and challenges to, agreements predating the rules should be governed by change of law provisions in those agreements. Commission lacks authority to delegate penalty authority to private party, which would be bad policy even if lawful. Sign and sue provision is generally consistent with FCC rules and helps to equalize bargaining power. FCC does not require notice of dispute prior to execution for sign and sue, but that requirement minimizes gamesmanship of negotiation process. Six month limit on sign and sue helps to endure prompt resolution of outstanding disputes. Executive level discussions maximize likelihood parties will settle disputes short of litigation. Commission should have discretion to determine whether to expedite decision on a case-by-case basis. The Commission always retains the ability to fashion appropriate remedies so clarifying that the remedies in subsections (7) and (8) are not exclusive is unnecessary. Previous revisions made in responses to workshop discussion.

