



Cynthia Manheim
General Attorney

16331 NE 72nd Way
Redmond, WA 98052

T: 425-580-8112
F: 425-580-8333
cindy.manheim@att.com

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Via Web Portal

Steven King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket U-140621

Enclosed for filing are the Responses to the Notice of Opportunity to Comment on Third Revised Draft Rules by AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively "AT&T") in the above mentioned docket.

Sincerely,

Cynthia Manheim by Doc with permission

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**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

COMMENTS OF AT&T

AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively “AT&T”) respectfully submit comments in responses to the Washington Utilities and Transportation Commission (“WUTC”) Notice of Opportunity to Comment on Third Revised Draft Rules issued on March 24, 2015 (“Third Draft Rules”).

I. INTRODUCTION

AT&T appreciates the significant time and effort Commission Staff has expended to craft pole attachment rules in Washington. Staff has clearly spent considerable resources seeking input from all parties and considering that input in the Third Draft Rules. AT&T also appreciates Staff’s thoughtful analysis and explanation in the Comment Matrix of its position on previously submitted comments. With the exception of a few minor changes suggested below, AT&T believes the Third Draft Rules are a workable and balanced approach to pole attachments in Washington.

II. Comments on Specific Questions:

AT&T provides the following comments on the specific questions posed by the Commission that are most relevant to its operations in Washington.

- (1) The safety risks posed by attachments to poles on which both electric transmission lines and electric distribution lines are attached, including but not**

limited to the provisions of the National Electric Safety Code or other industry standard guidelines that identify and quantify those risks and whether poles used *primarily* for electric distribution lines pose the same risks;

Although there are increased safety risks associated with higher voltage lines, such as transmission lines, these risks have already been effectively mitigated by established safety standards such as the separation distances specified in the National Electric Safety Code (“NESC”) and the minimum worker approach distances established by the Occupational Safety and Health Administration (OSHA). In fact, AT&T already has telecommunications facilities on structures that support transmission lines in Washington.

The NESC sets forth specific clearance requirements between electric conductors and communications equipment on the same support structure. The NESC rules are established based on the amount of voltage present in the electric lines. For example, Table 238-1 in the NESC, requires 40 inches separation when the voltage of supply lines is between 0 and 8.7 kV (8,700 volts) (although this can be reduced to 30 inches in some situations), whereas lines with voltage levels greater than 8.7kV require separation distance increases of 0.4 inches per kV.

Further, workers trained to work in the vicinity of electric supply lines are trained to observe the approach distances established by OSHA.¹ These approach distances identify the minimum amount of separation that workers must observe when working in the vicinity of electric supply lines, absent any specific safety measures taken by the workers, such as wearing insulating gloves. In addition, Washington has specific requirements for telecommunications workers working in the proximity of electric supply lines. WAC §296-

¹ See 29 CFR 1910.268
(https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9867)

32-(10)(a) requires employers to ensure employees do not approach or take any conductive object closer than certain specified limits based on the voltage of the overhead lines.

(4) The fees that owners currently charge to process and respond to applications for attachments to poles, ducts, or conduits and the types of costs on which those charges are based;

In Washington, AT&T pays at least one utility a substantial application fee. AT&T does not know the types of costs on which the fee is based.

As a general matter, the FCC pole attachment rules do not provide for an application fee, *per se*, but the FCC rules acknowledge that an owner may receive reimbursements for non-recurring costs.² If an application fee or other charge is assessed and a corresponding reduction is not taken from the inputs to the carrying charge, there would be a double recovery, as the application expense would also be recovered in the annual attachment rate.

(5) The fees that owners currently charge to undertake make-ready work and the types of costs on which those charges are based;

AT&T does not oppose charges for engineering or construction work directly attributable to making the pole ready for attachment or for replacing a pole; however, these costs should not otherwise be included in the pole attachment rental rate. Further, the make-ready charges should reflect actual and verifiable costs.

(6) The rates that owners currently charge occupants for attachment to the owners' poles, ducts, or conduits, and the types of costs included in the ARMIS or FERC accounts used to calculate attachment rates in compliance with the Federal Communications Commission (FCC) formula;

The FCC has specified the ARMIS accounts for local exchange carrier (“LEC”) poles and the FERC accounts for electric poles in FCC 01-170, appendix D-1 and D-2,

² Under the FCC pole attachment rules an application fee could be charged so long as such reimbursements are identified. See 47 CFR 1.1404(g)(1)(xii) and (h)(1)(ix). The implication of the FCC rules is that reimbursements for non-recurring costs should not be included in recurring attachment rates.

respectively.³ The types of cost included in those accounts can be found in the respective FCC and FERC accounting rules (47 C.F.R. 32 and 18 C.F.R Part 101, respectively).

- (7) The types of costs, if any, that an owner incurs in connection with attachments to its poles, ducts, or conduits that the owner cannot recover through an application fee, make-ready work charge, or attachment rate calculated and charged consistent with the FCC rules; and**

AT&T believes that the pole owner is able to recover all appropriate costs in connection with attachments to its poles, ducts or conduits through application fee, make-ready charges or attachment rates calculated consistent with the FCC rules. Although there have been challenges to the FCC's rates, the U.S. Supreme Court has found that the cable rate formula adopted by the FCC provides pole owners with adequate compensation, and thus does not result in an unconstitutional "taking."⁴

- (8) The extent, if any, to which the FCC's Open Internet decision, In re Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order (March 12, 2015), affects the Commission's ability to adopt rules implementing RCW 80.54 or rules that vary from the FCC's own pole attachment rules.**

The FCC's Open Internet decision has no impact on the ability of the Commission to adopt rules implementing RCW 80.54 for wireless attachments to utility poles.

III. Comments on Third Revised Draft Rules

A. Definitions: WAC 480-54-020

³ In the Matter of Amendment of Rules and Policies Governing Pole Attachments, Implementation of Section 703(e) of the Telecommunications Act of 1996, Consolidated Partial Order on Reconsideration, FCC 01-170, 16 FCC Rcd 12103 (rel. May 25, 2001).

⁴ *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987); see *Alabama Cable Telecomm. Ass'n v. Alabama Power Co.*, Application for Review, File No. PA 00-003, Order, 16 FCC Rcd 12209 (2001) (*Alabama Cable Order*), review denied sub. nom. *Alabama Power Co. v. FCC*, 311 F.3d 1357 (11th Cir. 2002), cert. denied, *Alabama Power Co. v. FCC*, 540 U.S. 937 (2003).

In its February 6, 2015 comments, CenturyLink discussed the provision in the FCC's rate formula that allows a pole owner to calculate a rate based on the gross cost of a bare pole if the net cost is negative due to depreciation.⁵ In the Comment Matrix, Staff appears to reject this suggestion stating that "an owner should not be permitted both to fully depreciate its poles and continue to charge occupants of the costs of those poles."⁶ The FCC has specifically addressed the instance in which the net investment in a bare pole is negative and recognized that even if the pole is fully depreciated the owner does not avoid general administrative costs or taxes which are also part of the pole attachment rental rate. AT&T, therefore, recommends that the following be added to the end of the definition of "carrying charge":

...except when net pole investment is negative and then the procedures outlined by the FCC in FCC 01-170 , paragraphs 40 to 42 shall govern.

B. Modification Costs; notice; temporary stay – 480-54-050(2)

AT&T suggests the underlined language be added to this rule to ensure clarity.

The costs of modifying a pole, duct, or conduit to bring an existing attachment into compliance with these rules or an attachment agreement or to remedy a safety violation created by that attachment shall be borne by the occupant whose attachment is non-compliant or created the safety violation. Such costs include, but are not necessarily limited to, the costs incurred by the owner or other occupants to modify the facility or conforming attachments. An occupant with an existing conforming attachment to a pole, duct, or conduit shall not be required to bear any of the costs to rearrange or replace the occupant's attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for an additional attachment or to accommodate modifications to the facility or another existing attachment made to bring ~~that~~ the non-compliant attachment into conformance with these rules or an attachment agreement or to remedy a safety violation created by ~~that~~ the non-compliant attachment.

⁵ Third Set of Comments of CenturyLink (Feb. 6, 2015), p. 2.

⁶ Comment Matrix, p. 16.

C. Complaint – WAC 480-54-070(4)

AT&T continues to urge the Commission to delete from this rule the phrase “*the parties were aware of the dispute at the time they executed the agreement.*” AT&T will not reiterate all of the arguments in its February 6, 2015 filing, but will note that the FCC found that such a requirement poses a significant risk of unduly delaying the negotiation process and adding unnecessary complexity to the adjudication of pole attachment disputes.⁷ It will likely also lead to attachers making blanket objections to terms to avoid waiving any right to later object. For these reasons, AT&T requests that the phrase be deleted.

IV. Conclusion:

AT&T appreciates the Commission’s considerable effort and careful consideration of proposals to establish fair and reasonable pole attachment rules to encourage continued deployment of wireless infrastructure in the state.

Submitted this 17th day of April, 2015

Cynthia Manheim by Doc with permission

By: Cynthia Manheim, WSBA# 26524
Representing AT&T Corp., New Cingular Wireless PCS,
LLC, and Teleport Communications America, Inc.
PO Box 97061
16331 NE 72nd Way
Redmond, WA 98073-9761
Telephone: (425) 580-8112
Facsimile: (425) 580-8652
Email: cindy.manheim@att.com

⁷ Implementation of Section 224 of the Act, A National Broadband Plan for Our Future, WC Dkt No. 07-245, GN Dkt No. 09-51, FCC 11-50, Report and Order on Reconsideration, (rel. April 7, 2011), para. 120.