

April 17, 2015

Via Web Portal

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

RE: RULEMAKING TO CONSIDER ADOPTION OF RULES TO IMPLEMENT RCW CH.
80.54, RELATING TO ATTACHMENTS TO TRANSMISSION FACILITIES
WUTC Docket No. U-140621

Dear Mr. King:

Enclosed for filing in the above docket are the Comments of Integra Telecom of Washington, and its affiliates.

Sincerely,



Kim K. Wagner

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Enclosure

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to Consider Adoption of Rules)	
to Implement RCW Ch. 80.54, Relating to)	DOCKET NO. U-140621
Attachments to Transmission Facilities,)	
Docket U-140621)	
.....)	

COMMENTS OF INTEGRA

Integra Telecom of Washington, Inc., on behalf of itself and its affiliates¹ (“Integra”), respectfully provides this response to the Commission’s request for comments on the *Third Revised Draft Rules* and Staff recommendations for implementing rules relating to attachments to transmission facilities.²

Background

Integra is a facilities-based competitive local exchange carrier (“CLEC”) providing communications services in Washington. Integra owns (directly or under indefeasible rights to use) and operates backbone fiber networks. Integra relies on attachments to transmission facilities and supports the Commission’s efforts to establish rules concerning attachments to these facilities. Integra has participated in the Commission efforts by attending the October 28, 2014 workshop and submitting comments in this rulemaking. Integra’s proposals in this rulemaking are an effort to enhance the ability to place attachments and to promote reasonable and predictable timeframes associated with attachments. By better facilitating the deployment of facilities within reasonable and predictable timeframes, the rules help foster a competitive market, where end user customers will benefit from new services at competitive prices.

¹ Integra affiliates operating in Washington are Integra Telecom of Washington, Inc., Electric Lightwave, LLC. Eschelon Telecom of Washington Inc., Advanced TelCom, Inc., , Shared Communications Services, Inc., Oregon Telecom Inc., United Communications, Inc., and World Communications Inc.

² NOTICE OF OPPORTUNITY TO COMMENT ON THIRD REVISED DRAFT RULES, U-140621, March 24, 2014.

Discussion

To the extent not incorporated into the current draft rules,³ Integra continues to support the changes outlined in its previously submitted comments.⁴ Today's comments respond to the definition of "Requester" 480-54-020(17), "Usable Space" 480-54-020(19) and the following issues raised by the Commission:

- (3) Whether the timelines in draft WAC 480-54-030 should be modified to apply to applications for attachment to up to 300 (rather than 100) poles on condition that the owner may complete any required pole replacement within a longer period of time than authorized for other make-ready work (and if so, a proposal for that longer period of time);
- (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;

Rule 480-54-020(17) Definition of Requester

The *Third Revised Draft Rules* introduced language limiting a potential attacher's ability to request information or a survey by requiring that the "Requester" have "an agreement with the owner." The Staff recommendations indicated that this change was a clarification rejecting Google's proposal, requesting that facility owners negotiate agreements prior to a requester having a franchise, license or other authorization.⁵ As outlined in Google's comments, the ability of a broadband service provider to effectively and efficiently enter a market could include the need to obtain information from a facility owner prior to establishing a final agreement.

Integra's concern is that the new proposed definition of "Requester" goes too far in limiting Requesters' ability to request attachments, and potentially delays the ability of a Requester to timely

³ THIRD DRAFT RULES GOVERNING ACCESS TO UTILITY POLES, DUCTS, AND CONDUITS, Docket U-140621, March 24, 2015.

⁴ Comments of Integra, Docket U-140621, October 8, 2014 and Comments of Integra, Docket U-140621, February 6, 2015.

⁵ COMMENTS OF GOOGLE INC. ON SECOND DRAFT RULES, Docket U-140621, February 6, 2015. Section III THE RULES SHOULD FACILITATE NEW ENTRANTS' ACCESS TO INFRASTRUCTURE, Page 5.

place facilities. The FCC’s 2011 *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, Report and Order and Order on Reconsideration (2011 Pole Attachment Order)* supports a definition that **does not** restrict the ability to request access by requiring an attachment agreement prior to a request. The FCC concluded:

We reject the argument that surveys should not commence before an initial pole agreement or “master agreement” has been executed. The Commission has never required completion of a master agreement to be a precondition of a request for access, and we reaffirm that utilities may not defer the 45-day response requirement until a master agreement has been completed.⁶

Integra supports the definition of “Requester” as written in the *Second Draft Rules*⁷:

“Requester” means a licensee or utility that applies to an owner to make attachments to or in the owner’s facilities.

This definition requires that a requester have authority to make a request (i.e. is “a licensee or utility”), but recognizes that a requester may need survey information from the facility owner prior to having a master agreement in place.

Rule 480-54-020(19) Definition of Usable space

In its October 8, 2014 comments, Integra proposed the following definition of “Usable space”:

“Usable space,” with respect to poles, means the space on a utility pole above the minimum grade level, including cross arms or extension arms, which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the facility utility. With respect to conduit, “usable space” means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and which includes capacity occupied by the facility utility.

The *Third Revised Draft Rules* removes “including cross arms or extension arms” from the definition of usable space. Integra’s proposal to include extension technology (e.g. cross arms, extension arms) in the definition of usable space was an effort to address issues it has experienced in

⁶ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, Report and Order and Order on Reconsideration*, WC Docket No. 07-245, GN Docket No. 09-51 (2011) ¶ 46.

⁷ SECOND DRAFT RULES GOVERNING ACCESS TO UTILITY POLES, DUCTS, AND CONDUITS, Docket U-140621, January 6, 2015.

other states where facility owners prohibit an attacher from using extension technology that the facility owner is actively using. This type of arbitrary prohibition on extension technology can lead to increased cost associated with replacing the existing poles, when replacement is not necessary.

The FCC's *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (2010 Pole Attachment Order and Further Notice)* clarified an attacher's ability to use the same space-saving and cost-saving techniques that pole owners use, such as placing attachments on both sides of a pole (cross arms, extension arms).⁸ The FCC reiterated this requirement in its *2011 Pole Attachment Order* by stating, "We clarify that a utility may not simply prohibit an attacher from using boxing, bracketing, or any other attachment technique on a going forward basis where the utility, at the time of an attacher's request, employs such techniques itself."⁹

Integra continues to support including clarification on the use of extension technology in the Washington rules. Integra proposes the following:

"Usable space," with respect to poles, means the ~~vertical~~ space on a pole above the minimum grade level that can be used for the attachment of wires, cables, and associated equipment, and that includes space occupied by the owner and includes extension technology (e.g. boxing, cross arms, extension arms...), to the extent the owner currently employs such cost and space saving techniques itself. In the absence of measurements to the contrary, a pole is presumed to have 13.5 feet of useable space. With respect to conduit, "usable space" means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and that includes capacity occupied by the owner.

⁸ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-245, GN Docket No. 09-51 (2010) ¶ 8 "We conclude that the nondiscriminatory access obligation established by section 224(f) (1) of the Act requires a utility to allow cable operators and telecommunications carriers to use the same pole attachment techniques that the utility itself uses."

⁹ 2011 Pole Attachment Order, ¶227.

Timelines in Draft WAC 480-54-030(7)

The Commission sought comments on whether the timelines in draft WAC 480-54-030 should be modified to apply to applications for attachments up to 300 (rather than 100) poles on the condition that the owner may complete any required pole replacement within a longer period of time than authorized, for make-ready work. Integra supports modifying the threshold from 100 to 300 poles, but Integra does not see a need to carve out a longer timeline for pole replacements.

In its February 6, 2015 comments, Integra requested that the Commission reject the changes made to WAC 480-54-030 (7) (a), as they related to the threshold (i.e. 100 poles vs 300 poles) used to determine whether extended timeframes apply. Integra indicated that extended timeframes, and timeframes that vary by state, disrupt the predictably carriers need when expanding networks to serve end user customers, and encouraged the Commission to adopt rules consistent with the FCC rules.¹⁰

The *Third Revised Draft Rules* WAC 480-54-030 (6) (a) (ii) already provide the facility owner with the ability to extend the make-ready interval (60 days) by an additional 15 days, “[f]or good cause shown,” for a total of 75 days. As proposed, WAC 480-54-030(8) (b) also allows an owner to extend the timeline for an additional undefined amount of time if the, “owner discovers unanticipated circumstances that reasonably require additional time to complete the work.” If the facility owner does not meet the extended timeline, the remedy is to allow attachers the right to hire an independent and authorized contractor to complete the work. Therefore, there is no need for a condition that provides an owner with a longer period for pole replacements.

The FCC’s *2011 Pole Attachment Order* supports Integra’s position. The FCC sought comments in the *2010 Pole Attachment Order and Further Notice* as to, “whether requests for access to a particularly large number of poles should be excepted from our timeline, or subject to an

¹⁰ CFR 47 §1.1420 (g) (1) Timeline for access to utility poles. (1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

alternative timeline.”¹¹ Based on the record gathered, the FCC’s *2011 Pole Attachment Order* set the threshold for extending the timelines at 300 poles or 0.5 percent of the utility’s total poles.¹² The FCC was, “...not persuaded by those commenters who dispute the assumption that the size of an order correlates to how long it will take to complete the order.”

Based on the above reasons, Integra requests the following changes to WAC 480-54-030:

- (7) For the purpose of compliance with the time periods in this section:
 - (a) The time periods apply to all requests for access to up to 300 ~~400~~ poles or 0.5 percent of the owner’s poles in Washington, whichever is less.
 - (b) An owner shall negotiate in good faith the time periods for all requests for access to more than 300 ~~400~~ poles or 0.5 percent of the owner’s poles in Washington, whichever is less.

Fees Owners Currently Charge

Integra believes the update to the *Third Revised Draft Rules* allowing a facility owner to recover the costs it incurs to process applications¹³ is unnecessary. It is Integra’s understanding that a facility owner’s administrative costs are already recovered in the Carrying Charge that is part of the FCC’s rate formula. In its *2011 Pole Attachment Order*,¹⁴ the FCC stated:

...we find that the lower-bound telecom rate and the make-ready fees together do not subsidize third-party pole attachers because these rates recover more than the costs caused by attachers. Specifically, these rates recover all the capital costs caused by attachers, and an amount of maintenance and administrative costs that exceeds the amount caused by attachers. Moreover, the pole owner benefits from the extra capacity it obtains for free in the make-ready process, in addition to recovering an amount greater than the costs caused by the attachers.

For this reason, Integra requests that the Commission reject the introduction of incremental cost recovery. Integra specifically recommends the change below for Rule 480-54-030 (3):

¹¹ *2010 Pole Attachment Order and Further Notice* WC Docket No. 07-245, GN Docket No. 09-51 (2010) ¶47

¹² *2011 Pole Attachment Order* WC Docket No. 07-245, GN Docket No. 09-51 (2011) ¶¶63-67

¹³ *Third Draft Rules* WAC 480-54-030 (3)

¹⁴ *2011 Pole Attachment Order* WC Docket No. 07-245, GN Docket No. 09-51 (2011) at ¶195

Except for overlapping requests as described in subsection (11) below, a utility or licensee must submit a written application to an owner to request access to its facilities. ~~The owner may recover from the requester the reasonable costs the owner actually and reasonably incurs to process the application.~~ The owner may survey the facilities identified in the application and may, if there is no agreement between the parties, recover from the requester the costs the owner actually and reasonably incurs to conduct that survey. The owner must complete any such survey and respond in writing to requests for access to the facilities identified in the application within 45 days from the date the owner receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner to identify and evaluate the facilities to or in which the requester seeks to attach.

Conclusion

Integra appreciates the opportunity to provide feedback on the Draft Rules and generally supports the implementation of these rules. Integra proposes the changes and clarifications outlined above. Implementation of clear, predictable, just, and reasonable rules for attachments should ultimately increase competition and service offerings for consumers in Washington.

RESPECTFULLY SUBMITTED,



Dated: April 17, 2015.

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