

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 APRIL 17,
2015 COMMENTS ON DRAFT
RULES

I. INTRODUCTION

1 CenturyLink hereby files its third set of comments in this docket in which the Washington Utilities and Transportation Commission (“Commission”) has opened a rulemaking to consider the adoption of rules to implement RCW Chapter 80.54, relating to attachments to transmission facilities. CenturyLink offers comments and responses to a number of the proposed edits to the draft rules, and to the Commission’s questions.

II. COMMENTS ON DRAFT RULES

2 **WAC 480-54-010(3)** adds a “clarification” that the rules apply to all owners, occupants and requesters, regardless of whether they are otherwise subject to Commission jurisdiction. CenturyLink appreciates the intent to clarify the rules, but the new (3) is overly broad – in fact the rules do not apply to a large number of pole owners which include the PUDs, municipalities, and cooperatives. Those entities, as owners, are not necessarily bound by the standards set forth in the proposed rules, but do benefit from the rules when they are attaching to investor-owned utility poles. CenturyLink understands that the Commission has jurisdiction over parties to the pole attachment agreement, and

over those parties who seek to enforce the rules, even if those entities are not regulated under RCW Title 80, but (3) seems to overstate the reach of the rules.

3 **WAC 480-54-020(13)** defines “occupied space” and adds language recommended by AT&T indicating that the definition is limited to situations in which “no inner duct or only a single inner duct is installed”. CenturyLink does not believe that this additional language is necessary. Thus, CenturyLink recommends deleting the added language.

4 **WAC 480-54-030(3)** contains new language in response to PSE’s comments making it explicit that the pole owner may recover the costs necessary to process the application. CenturyLink believes that the FCC formulae used to calculate the pole rates do not allow cost recovery for processing applications in the carrying charge components of the formulae. No party should double recover those costs. The language should be clarified to state that any fees associated with application costs should be non-recurring costs that are not included in carrying charges, much like make-ready work costs as described in (5) of this rule.

5 Also in this subsection of the rule is a statement that the owner may recover survey costs from the requester. CenturyLink does not object to this language, but believes that the rules should be amended to require the owner to give the requestor an estimate of the survey cost for approval before starting the survey. It has been CenturyLink’s experience that some pole owners use expensive Professional Engineers to perform these surveys and the costs can be prohibitively high.

6 **WAC 480-54-030(5)(a)**. This subsection now contains language clarifying that the owner may require payment of make-ready costs either as a part of the acceptance of the

estimate or prior to undertaking the work. CenturyLink recommends additional language which would require the requestor to pay for the costs of preparing the make-ready estimate even if the requestor decides not to go forward with the work. Otherwise the owner will have prepared a cost estimate for make-ready work and might not be able to recover the cost of preparing the estimate. It may be that these costs would be permitted as part of an application fee, similar to the note in the matrix addressing the costs for preparing a denial of an application under (4), but that is not clear from the language.

- 7 **WAC 480-54-030(11)**. This subsection of the rule addresses overlashing. CenturyLink does not believe that any of the added language is necessary, except that CenturyLink does not oppose the new subsection (e) which limits third party overlashing. CenturyLink does not believe that the number of poles to be overlashed should be limited, since the entity will only be overlashing its own facilities and third party overlashing has been limited. If a limitation is imposed on the number of poles in each notice, CenturyLink is opposed to limiting each overlash notice to 30 poles. The number should be at least as large as allowed in an initial application, which allows up to 100 poles. These limitations are inconsistent with the FCC's rules, and hamper the rapid and efficient deployment of facilities.
- 8 **WAC 480-54-030(11)(a) & (a)(i)** CenturyLink does not believe that the overlashing provisions should contain a reference to "other equipment" being overlashed. Only cables and wires are overlashed to existing attachments. In addition, CenturyLink recommends deleting **WAC 480-54-030(11)(b)** as this additional time could extend the notice for some overlashing to 19 days and the time the owner has to send the prohibition under subsection (c) to 16 days. Again, these additional restrictions simply burden and

delay the deployment of facilities and disproportionately burden the overlying carrier, who is already lawfully in place on the poles.

- 9 **WAC 480-54-060.** With regard to this rule governing rates, CenturyLink is concerned with the Staff comment on page 16 of the matrix that “[s]pecifically, an owner should not be permitted both to fully depreciate its poles and continue to charge occupants for the costs of those poles.” To the extent that the Commission intends to adopt the FCC formulae, this comment is inconsistent with the FCC’s orders on how to calculate rates under some circumstances.
- 10 The FCC specifically allows pole depreciation to exceed the cost of a pole to accommodate for cost of removal and salvage. In its 01-170 Order¹ the FCC discussed this issue and it developed and ordered an appropriate alternative “Gross” plant pole rental rate formula to address and accommodate the proper calculation of pole attachment rates. In acknowledging that this condition could exist for some companies and that its “net pole plant” pole attachment rate formula would become unworkable, the FCC determined and adopted the use of an alternative pole attachment rate calculation formula (e.g. a “gross plant formula” for use when a company’s “net pole plant” values become negative).
- 11 The alternative rate formula employs the allowed depreciation rate, divides other carrying charges components by “gross plant” rather than “net plant” and, it computes a “negative” ROR carrying charge component to accommodate the negative net plant situation. CenturyLink strongly advocates for the Commission to adopt the FCC’s

¹ See FCC Consolidation Partial Order on Reconsideration 01-170, at ¶¶ 30-31 and 39-42 (May 25, 2001).

alternative rental rate formula, which employs “gross” *plant* rather than “net” *plant* values for use, if and when a company’s net plant becomes negative in order to allow the company to properly calculate its pole attachment rates.

- 12 The use of the “gross plant” formula resolves the erroneous pole attachment rate result that would be created if one were to attempt to divide by a “0” or a negative net plant number as the positive “net pole plant” formula would require. If one does not provide for the use of the “gross” formula when “net pole plant” is zero or negative the pole attachment rate calculation cannot be properly performed. The Commission should explicitly note that this alternative calculation is permitted under Washington rules, as it is under FCC rules.

III. RESPONSES TO COMMISSION QUESTIONS

- 13 The Commission also sought comments or information on additional specific questions, to which CenturyLink provides the following responses:
- 14 **Question (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;
- 15 **CenturyLink Response:** CenturyLink believes that all poles with power on them pose similar risks.
- 16 **Question (2)** The amount of time required to replace a pole (based on actual replacement data, rather than estimates);
- 17 **CenturyLink Response:** CenturyLink does not collect actual data for pole replacements. Each pole replacement is unique and there are too many variables to permit any approach other than using a case-specific basis. For this reason CenturyLink

advocates that the Owner and Occupant mutually agree on a longer time period for make-ready work for pole replacements than what is specified in the rules.

18 Variables that influence the amount of time to replace a pole include:

- Time to apply for and receive city/county work permits – each city/county will have their own time frames to process permits.
- Time to have facility locates performed.
- Availability of material – is a pole of the correct height/class readily available?
- Availability of crew – CenturyLink’s contract crews often cover a whole state. When will they be available to work in the area that needs a pole replacement?
- Availability of pole removal/placement equipment – CenturyLink’s contract crews often cover a whole state. When will the equipment needed to replace a pole be available to work in the area that needs a pole replacement?
- Time to receive payment from Licensee/Utility for make-ready Work – If make-ready Costs are required to be paid up-front, how long does it take a Licensee to process payment to the pole owner?
- The number of poles to be replaced at any one time.

19 **Question (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);

20 **CenturyLink Response:** CenturyLink does not support modifying the timelines or the number of poles that can be requested in an application. The response to Question 2 outlined above illustrates that each pole replacement scenario may be different, and as such it is not reasonable to attempt to create a single timeline to cover all the possibilities. CenturyLink advocates that the Owner and Occupant mutually agree on a longer time period for make-ready work for pole replacements.

- 21 **Question (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;
- 22 **CenturyLink Response:** CenturyLink has various pole attachment agreements with both power companies and CLECs. The legacy ILEC companies have different structures for attachment agreements.
- 23 The fees also vary – legacy Qwest’s pole attachment rates in its interconnection agreements with CLECs are based on the FCC formula for the pole rental rate, and include non-recurring charges for the recovery of various nonrecurring costs incurred in the application process. Those non-recurring rates, including, for example, non-recurring charges for pole inquiries, innerduct inquiries, ROW inquiries, field verification, and certain document preparation, were established by Commission order in the TELRIC cost dockets.
- 24 For legacy CenturyTel, current Joint Use Agreements with power companies, whether investor-owned-utilities, PUDs, cooperatives, or municipal-owned, in Washington were entered into years ago and generally do not contain provisions for application fees.
- 25 **Question (5)** The fees that owners currently charge to undertake make-ready work and the types of costs on which those charges are based;
- 26 **CenturyLink Response:** The make-ready charges are assessed on an individual case basis, due to the variable and case-specific nature of the charges. Essentially, they are charges associated with engineering and physical work to move facilities around on a pole or otherwise get the pole ready for an additional attachment. As previously noted, this work may include replacing the existing pole with a taller pole.
- 27 **Question (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;

28 **CenturyLink Response:** The rates charged by CenturyLink are calculated in accordance with the FCC formulae. In order to fully understand the types of costs (pole investment, accumulated depreciation, deferred taxes, depreciation, maintenance, tax and administrative expenses), and the specific FCC Part 32 Uniform System of Accounts (USOA) or FERC accounts employed in the rate calculations it is necessary to reference the FCC's pole attachment orders² themselves, since a more in depth discussion of the accounts and includable costs is found only in the narrative discussion in the body of the orders. For example, the FCC may allow costs from a particular USOA account, but then clarify in its narrative discussion that only a particular subset of costs in that account may properly be included (e.g. pole plant subsequently reduced for amounts related to crossarms and non-pole-related items etc.). The various appendices to these FCC Orders also delineate the useable accounts comprised in the various formulae to be employed by telecommunications and electric companies.

29 **Question (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;

30 **CenturyLink Response:** CenturyLink believes that there are administrative or overhead type costs that are not recoverable in specific pole attachment rates, including sometimes significant costs associated with contract negotiations, dispute resolution, and advocacy in various judicial and administrative proceedings.

² See FCC 00-160 *In the Matter of Amendment of Rules and Policies Governing Pole Attachments* CS Docket No. 97-98, REPORT AND ORDER, Adopted March 29, 2000, Released: April 3, 2000, and FCC 01-170, *In the Matter of Amendment to Rules and Policies Governing Pole Attachment*; In the matter of Implementation of Section 703(c) of the Telecommunications Act of 1996, CS Docket No. 97-98 and CS Docket No. 97-151, CONSOLIDATED PARTIAL ORDER ON RECONSIDERATION, Adopted: May 22, 2001, Released May 25, 2001.

- 31 **Question (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.
- 32 **CenturyLink Response:** CenturyLink does not believe that the cited decision impacts the Commission’s authority to adopt rules in this proceeding, or to vary from the FCC rules. Though as noted, CenturyLink supports the use of the FCC rate formulae without variance.
- 33 CenturyLink appreciates the continued work of the Commission Staff on this rulemaking, and encourages the Commission to make the modifications to the proposed rules as set forth in these comments.

Submitted this 17th day of April 2015.

CENTURYLINK

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