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May 30, 2014

Via Email (records@utc.wa.gov)

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

Re: Docket No. U-140621
Rulemaking to Adopt Rules to Implement RCW Ch. 80.54

Dear Mr. King:

Enclosed for filing are comments by PCIA – The Wireless Infrastructure Association and the Hetnet Forum in the above-mentioned docket.

Please let me know should you have any questions.

Sincerely,

GARVEY SCHUBERT BARER

By Judith A. Endejan
Judith A. Endejan
yS

Enclosure

SEA_DOCS:1149525.1

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Rulemaking:	)	Docket No. U-140621
	)	
	)	**PCIA – THE WIRELESS**
To Adopt Rules to Implement RCW Ch. 80.54	)	**INFRASTRUCTURE ASSOCIATION**
	)	**AND THE HETNET FORUM**
	)	**COMMENTS ON PROPOSED RULES TO**
	)	**IMPLEMENT RCW CH. 80.54**
	)	

1 PCIA – The Wireless Infrastructure Association and the HetNet Forum, a membership section of PCIA ("PCIA"),[1] hereby submit to the Washington Utilities and Transportation Commission ("Commission") the following comments in response to the Commission's April 23, 2014 Notice of Rulemaking to Consider adoption of Rules to implement RCW Ch. 80.54, "Attachments to Transmission Facilities."

I. INTRODUCTION

2 Washington State retained the authority to regulate pole attachment rates, terms and conditions in 1979,[2] after Congress authorized the Federal Communications Commission ("FCC") to regulate them if states would not.[3] However, Washington State has not yet exercised that authority. In 1979, the Washington Legislature charged this Commission to adopt rules to

[1] PCIA is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate towers, rooftop wireless sites, and other communications network facilities for the provision of all types of wireless, telecommunications and broadcasting services. PCIA members are authorized to attach to utility poles in Washington under 47 U.S.C. §§ 224(a)(4), (b)(1) and RCW 80.54.010(1) and 80.54.020. PCIA and its members partner with communities across the nation to effect solutions for wireless broadband infrastructure deployment that are responsive to the unique sensitivities and concerns of each community. The HetNet Forum, formerly the DAS Forum, is a membership section of PCIA dedicated to the advancement of heterogeneous wireless networks.

[2] Laws of 1979, Ch. 33.

[3] Pole Attachment Act of 1978, Pub. L. No. 95-234, 92 Stat. 33 (1978).

implement its new pole attachment authority.[4] Both state and federal policies require pole attachment rules that will promote the deployment of broadband access and the new technologies that enable it, while providing a fair treatment for pole owners. The Notice in this docket called for comment on whether the Commission should adopt some or all of the FCC's rules or those adopted by the Public Utility Commission of Oregon ("OPUC") (OAR 860-028-000 through 03100). As explained herein, PCIA urges this Commission to adopt, for the most part, the FCC's rules adopted by the 2011 FCC Pole Attachment R&O ("Order"),[5] as modified to comport with existing Washington law. Some pro-competitive features of the Oregon rules could be incorporated. A proposed set of rules is attached.

3 The lack of rules to guide pole attachments has stymied the deployment of necessary telecommunications infrastructure in Washington. The Commission should act expeditiously to remove the current roadblocks to advanced broadband deployment by adopting pole attachment rules.

II. BACKGROUND

A. Commission is Required to Adopt Pole Attachment Regulations.

4 The Washington Legislature passed RCW Ch. 80.54 in 1979[6] after Congress adopted 47 U.S.C. § 224 in 1978.[7] The federal legislation provided the FCC with jurisdiction to regulate attachments by cable television providers to utility poles (both telephone and power pole

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[4] This authority does not extend to poles owned by locally regulated utilities, such as public utility districts, that are governed by RCW 54.04.045.

[5] *In the Matter of Implementation of Section 224 of the Act,* Report and Order and Order on Reconsideration, 26 FCC Rcd. 5230 (Apr. 7, 2011), *aff'd sub nom. Electric Power Service Corporation v. Federal Communications Commission,* 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013).

[6] Laws of 1979, Ch. 33.

[7] Pole Attachment Act of 1978, Pub. L. No. 95-234, 92 Stat. 33 (1978).

owners). The purpose of the 1978 legislation was to establish "a mechanism whereby unfair pole attachment practices may come under review and sanctions, and to minimize the effect of unjust or unreasonable pole attachment practices on the wider development of cable television service to the public."[8]

5 The 1978 legislation recognized that cable providers needed to attach to existing poles to provide service. Due to the local monopoly in utility ownership or control of the poles, cable communications providers were at a disadvantage when negotiating pole attachment agreements. Therefore, Congress concluded that regulation was appropriate to ensure that these agreements would contain rates, terms and conditions that would be just and reasonable. Congress created a two-tiered regulatory scheme whereby states could elect to regulate pole attachments. If, however, the states chose not to regulate, the FCC would resolve pole attachment disputes.

6 Washington elected to regulate pole attachments. RCW Ch. 80.54 was passed to give the Commission the authority to regulate pole attachments. Washington certified to the FCC that it regulates pole attachments.[9] By making this certification, Washington certified that:

> (2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,
>
> (3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

47 C.F.R. § 1.1414(a).

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[8] S. Rep. No. 580, S. Rep. 95-580 (1977) at *122.

[9] 25 F.C.C.R. 5541 (2010) contains the most current list of states that have certified they would regulate pole attachments.

7 In 1979, the Washington Legislature directed the Commission to adopt rules and regulations governing pole attachments:

> **RCW 80.54.060 Adoption of Rules.**
>
> The commission shall adopt rules, regulations and procedures relative to the implementation of this chapter. (emphasis supplied)

8 To date, the Commission has not adopted rules to implement state regulation of pole attachments, as required by this legislation.

9 B. Federal Policy Has Long Promoted Pole Attachment Rules Advancing Technological Deployment.

In the thirty-four years since the passage of Laws of 1979, Ch. 33, much has transpired. Congress passed the Telecommunications Act of 1996 ("1996 Act") that directed the FCC to "encourage the deployment . . . of advanced telecommunications by removing barriers to infrastructure investment."[10]

10 Congress expanded the reach of Section 224 in the 1996 Act to promote infrastructure investment and competition in the 1996 Act. Among other things, Congress added "provider[s] of telecommunications services[s]" to the category of attachers entitled to pole attachments at just and reasonable rates, terms and conditions under Section 224. (47 U.S.C. §§ 224(a)(4),

11 (b)(1)).[11]

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[10] 47 U.S.C. § 1320(b) (Section 706). Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, §706, 110 Stat. 56, 153 (1996) (1996 Act), as amended in relevant part by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (BDIA), is now codified in title 47, Chapter 12 of the United States Code. *See* 47 U.S.C. §§ 1301, *et seq.*

[11] Due to the 1996 Act, Section 224 created two methodologies to determine the maximumrates for pole attachments – one to apply to pole attachments used by telecommunications carriers ("the telecom rate formula") and the other to pole attachments used "solely to provide cable service" ("the cable or CATV rate formula"). 47 U.S.C. §§ 224(e)(1)-(4). As the FCC implemented these statutory formulas, the telecom rate formula generally resulted in higher pole rental rates than the cable rate formula. 47 U.S.C. §§ 224(c)-(d).

More than a decade later, Congress directed the FCC to develop a National Broadband Plan that would ensure that every American has access to broadband services.[12] The FCC's National Broadband Plan ("Broadband Plan") found that the cost of deploying a broadband network depends on the costs that service providers incur to access poles and other infrastructure.[13] The Broadband Plan was a call to action for universal high-speed broadband service for all Americans to achieve wide-ranging social and economic benefits.

12 In the docket that led to the Order, the FCC undertook a comprehensive examination into pole attachment practices and rates. It received forty-six sets of opening comments and thirty-five sets of reply comments from interested parties, with about half coming from pole owners and half from attaching parties. The FCC created a thorough administrative record before issuing its Order in 2011 establishing new rules regarding pole attachments. The Order:

- Established a four-stage timeline for attachment to poles, with a maximum time frame of 148 days;
- Established criteria for rejection of an attachment due to capacity, safety, reliability or engineering concerns, which allows access for pole-top attachments;
- Established a new rate formula that produces essentially the same rate for telecom and cable providers;
- Clarified that wireless attachments are entitled to the same rate as attachments and indeed wireless providers are entitled to access utility poles;
- Allowed incumbent local exchange carriers ("ILECs") to file pole attachment complaints; and

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[12] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 6001(k)(2) (2009) (ARRA).

[13] OMNIBUS BROADBAND INITIATIVE, FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 1009 (2010), *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf ("NATIONAL BROADBAND PLAN" or "PLAN").

- Adopted measures to encourage negotiated resolution of pole attachment disputes.

13 Washington regulatory policies over the past thirty years have mirrored those at the federal level, favoring the promotion of competition and diversity in the supply of telecommunications markets.[14] This Commission has also taken steps to promote broadband deployment. For instance, when it approved the merger of Qwest Communications, Inc. and CenturyTel, Inc. the Commission imposed a key condition that the merged company spend $80 million for deployment of broadband infrastructure over five years. The Commission noted:

> It is increasingly clear that access to broadband services is vital to a community's economic and social fabric. Indeed, in a previous merger proceeding, we specifically recognized and took into account the fact that broadband service is rapidly becoming an essential service for Washington households and businesses.[15]

14 Thus, given the parallel state and federal policies and goals behind pole attachment regulation, it makes sense for this Commission to follow the federal lead and adopt corresponding rules that would support the deployment of broadband services in Washington.[16]

15 The FCC has created and analyzed a substantive record, based upon comments from multiple parties with divergent interests (pole owners and attachers) over many months. The FCC's rules were adopted to promote infrastructure investment by telecom providers by

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[14] RCW 80.360.300.

[15] Re *Qwest Communications International, Inc.*, 2011 WL. 927005 (Wash. U.T.C.) at *60.

[16] Connecticut has recently revised its pole rental formula to be consistent with the Order. *See Petition of Fiber Technologies Networks, L.L.C. for Authority Investigation of Rental Rates Charged to Telecommunications Pole Owners,* Docket No. 11-11-02, 2012 WL 4320126 (Conn. D.P.U.C.). Ohio is also considering the adoption of rules in line with the FCC's Order and/or to help promote the deployment of broadband services. *See* Case No. 13-0579-AU-ORD, *Adoption of Chapter 4901:1-3, Ohio Administrative Code, Concerning Access.*

removing key barriers these providers have faced, while providing fair cost-based rates for pole owners.

This Commission has frequently turned to the FCC for guidance on issues like pole attachments, where the FCC's considerable expertise and resources obviate the need for the state to duplicate its efforts in resolving a similar issue.[17] Indeed there is nothing unique to pole attachments in Washington that would require divergence from the FCC's approach, because they promote the same policy goals. Both this Commission and the FCC recognize the urgency and critical need for increased broadband availability. Therefore, given the absence of Washington rules, and the urgent need to adopt ones that would remove a key infrastructure impediment to increased broadband deployment, the Commission should adhere to the FCC rules. These balance the need to promote expanded broadband availability with the need to provide a fair return to pole owners to assure continued infrastructure investment.

The rules the Commission adopts should contain the same features as the federal rules:

- They should clarify that wireless attachments are covered and are entitled to the same access, rates, terms and conditions as other attachments;
- They should clarify that wireless providers are entitled to access utility poles under the same conditions as other attachers;
- They should establish a single attachment rate, if possible, as in Oregon, or if they distinguish between cable and telecommunications providers they should mirror the FCC rules;
- They should establish clear, concise timelines, which are critical to ensure greater competition, higher quality service and lower prices;
- They should establish a clear, swift dispute resolution procedure when pole owners and attachers disagree.

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[17] *See, e.g., Re Covad Communications Company*, 2004 WL 3051999 *5 (Wash. U.T.C.); *Washington Utilities and Transportation Commission v. Northwest Bell Company et. al.*, 80 P.U.R. 4th 80, 1986 WL 215085 *91 (Wash. U.T.C.); *In re U.S. West Communications, Inc.*, 220 P.U.R. 4th 201, 2002 WL 1997945 *216.

C. Rules Must Be Adopted that Will Promote Deployment of Advanced Wireless Broadband Services in Washington and the Rules Should Clearly Cover Wireless Attachments.

17 Increasingly, access to the Internet is through wireless means. Analysts anticipate that global mobile data traffic will increase 850 percent between 2012 and 2017,[18] and that mobile Internet users will outnumber wireline users by 2015, when a majority of Americans will utilize a wireless device as their primary Internet access tool.[19] The amount of mobile data used on cellular networks in the United States increased by 56 percent from 2011 to 2012[20]. Additionally, data use by the biggest users grew by 7.5 percent from 2011 to 2012.[21]

18 In Washington, the percentage of persons living in wireless-only households more than doubled from 2007 to 2012.[22] In fact, more than 70 percent of all emergency calls each day are placed with a wireless device.[23] The increasing demand for wireless voice and broadband services requires the expansion and augmentation of infrastructure to deliver those services. The most efficient way to do this is to use existing facilities in the right-of-way, such as poles.

19 ———————————

[18] *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2012-2017*, CISCO SYSTEMS, INC., (Feb. 16, 2013), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html.

[19] Hayley Tsukayama, *IDC: Mobile Internet Users to Outnumber Wireless Users by 2015,* WASHINGTON POST, http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile-internet-users-to-outnumber-wireless-users-by-2015/2011/09/12/gIQAkZP7MK_blog.html?wprss=post-tech (last accessed December 5, 2011).

[20] iGR, GLOBAL MOBILE DATA TRAFFIC FORECAST, 2011-2016: UP, UP AND UP SOME MORE (2012).

[21] *Id.*

[22] *Compare* Stephen J. Blumberg, Ph.D., et al., *Wireless Substitution: State-level Estimates From the National Health Interview Survey, January 2007 – June 2010,* NATIONAL HEALTH STATISTICS REPORTS, Number 39, at Table 1 (April 20, 2011), http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf (citing 15.3 percent of adults aged 18 and over living in wireless-only households in Washington), *with* Stephen J. Blumberg, Ph.D., et al., *Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2012*, NATIONAL HEALTH STATISTICS REPORTS, Number 70, Table 1 (Dec. 18, 2013), http://www.cdc.gov/nchs/data/nhsr/nhsr070.pdf (reporting 39.4 percent of adults aged 18 and over living in wireless-only households in Washington).

[23] *See 911 Wireless Services Guide*, FCC, http://www.fcc.gov/guides/wireless-911-services (last visited May 28, 2014).

Distributed Antenna Systems ("DAS") and small cell networks are essential to meet the growing need and demand for broadband services. Antennas associated with DAS and small cell networks are installed in both the communications space on the utility pole and the pole top, depending on the propagation needs and/or availability of space on utility poles. DAS and small cell networks can deliver targeted services to specific locations where coverage is otherwise difficult to achieve or where there is a concentrated demand for wireless services.[24]

20 DAS networks are primarily comprised of a fiber backbone that delivers traffic to and from small nodes that are installed in the public rights-of-way. The nodes are comprised of antennas and associated electronic equipment that converts RF to optical signals (allowing traffic to be transported over the fiber network to a designated point where it is handed off and/or interconnected with the public switched network). DAS and fiber must be placed on utility poles to interconnect with communications providers' networks. Thus, pole attachments for the node equipment (e.g. antennas and electronics) and fiber backhaul are key to delivering the quality of

21 service that consumers expect and to ensuring public safety through the deployment of effective broadband services.

Despite the fact that DAS and small cell networks are essential links in a holistic strategy to achieve universal broadband deployment goals, deployment is often stifled by utility pole owners who deny access and impose unjust rates for network attachments. One of the largest obstacles to DAS and small cell deployment today is the lack of access to utility poles, in the communication space and pole tops, at equitable rates. PCIA member companies' access to pole

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[24] In addition to the 2011 Order, the FCC has taken further steps to remove impediments to deployment of facilities, such as DAS and small cells, in its September 2013 *Notice of Proposed Rulemaking* in WT Docket Nos. 13-328 and 13-32 and WC Docket No. 11-59. The FCC will examine, for instance, expediting environmental reviews, exempting pre-construction environmental notification requirements and other issues unresolved by prior decisions, with the goal of reducing, where appropriate, the cost and delay associated with the deployment of newer wireless infrastructure.

tops and communication space is restricted in Washington. Where attachment rights are granted, the utilities' rates are unreasonable.[25] Individually, any of these problems could stall or kill one wireless project, but cumulatively they frustrate efforts to meet the demands of broadband users in Washington. They also provide incentives to carriers to deploy broadband infrastructure in other states that follow the FCC's rules, rather than in Washington.

22 The Commission can solve these problems by ensuring that wireless providers are included in its new pole attachment rules to unleash investment for critical broadband services in Washington.

D. The Rate for Pole Attachments Should Be the Cable Rate Formula.

23 The standards for pole attachment rates under 47 U.S.C. § 224(b)(1), RCW 80.54.040 and ORS 757.276; OAR 860-028-0070(8) are the same: the rates must be "just and reasonable." Both state and federal statutes determine that this standard is met if a rate falls above a lower bound (roughly, incremental costs) and below an upper bound (roughly, fully allocated costs).

RCW 80.54.040 states:

> A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities.

47 C.F.R. § 1.1409 (c) states:

> For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole

[25] For example, one attaching party in Washington has been charged an annual rate of $1,200 per attachment by one electric Investor owned Utility ("IOU") for an antenna 24 inches in length. In contrast, the same party pays an annual rate of $30.28 for the same antenna installation in a state subject to FCC-determined rates. In addition, another Washington State electric IOU has a blanket prohibition on pole top attachments.

> attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.[26]

The FCC rules establish that just and reasonable rates can be produced by both the cable and telecom formulae. Because the FCC was required by the 1996 Act to develop two different formulae it did so, and then in 2011 changed the telecom formula so it effectively produces the same rate as the cable formula.[27] This Commission is not required to establish two different formulae. Indeed, RCW 80.54.040 specifies that a singular "rate" be developed. PCIA favors the adoption of a single rate for attachments if the rate used is the cable rate. This will simplify the Commission's regulation of poles and enhance regulatory certainty. The OPUC chose that path when it adopted a single formula for determining attachment rates based upon the FCC's cable rate methodology. OAR 860-028-0110(2). Thus, adopting this formula for Washington would be consistent with both federal and Oregon law. The FCC and OPUC reached fully informed conclusions on the same issue that this Commission must resolve, namely the formula for "just and reasonable" pole attachment rates and there is no Washington-specific reason to not follow their lead. The Commission should select a single cable rate formula.

With respect to the cost components for the rate, PCIA recommends adoption of the FCC's definitions and cost components in 47 C.F.R. §§ 1.1402 and 1.4041.1404(g) and (h), as modified by applicable Washington rules. These differ little from those in the Oregon rules and they provide more certainty. For instance, the FCC rules presume usable space is 13.5 feet and

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[26] The Washington rules will also apply to ducts and conduits. RCW 80.54.040.

[27] The new FCC rules define "cost" so that the telecom rate would recover the same portion of pole costs as the cable rate.

unusable space is presumed to be 24 feet on a presumed pole height of 37.5 feet, whereas the Oregon rule is silent on unusable space and less precise on usable space.

E. Other Features of the FCC's Rules that Should be Adopted.

a. Timelines

Deployment of communications infrastructure should not be delayed by lengthy timelines associated with applying and attaching to poles. If timelines for deployment are too long, prospective broadband customers will buy from an existing provider, and new providers will simply not enter Washington. The FCC requires pole owners to grant or deny access to a pole within "45 days of the request for access." 47 C.F.R. § 1.1403(b). If there is a problem with a submitted application the pole owner should promptly notify the attaching party of any deficiencies within that forty-five day period. Approval should be automatic after forty-five days unless the application is denied for substantive reasons. A pole owner cannot discriminate and can deny an application only "where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes." 47 C.F.R. § 1.1403(a). The Order establishes a maximum timeline of 148 days for four stages: survey (45 days); estimate (14 days); attacher acceptance (14 days) and make-ready (60-75 days). The Oregon rules give pole owners fifteen days to inform the attacher of deficiencies in an application and 45 days from receipt of a "completed" application to approve or deny and gives the pole owner 45 days within which to perform make-ready work. OAR 860-028-0100. PCIA views the additional 15 day period in the Oregon rules as unnecessary and would extend the initial stage from 45 days to 60 days. Further, the Oregon rules do not define the bases for denial of an application, so PCIA endorses the FCC rules on timelines over the Oregon rules. While PCIA members would appreciate the consistency these timelines can provide, it urges this Commission to consider whether these are necessary for Washington and whether shorter timelines could be adopted.

For instance, any rule establishing timelines should set maximum limits but require pole owners to approve an application and complete make-ready work in a shorter period of time, if possible. The burden should be on the utility to justify the time it takes or the utility will always wait the prescribed time before acting on an application. Further, perhaps alternate timelines should be established to account for the number of poles at issue. For instance, an application for two poles should not take the same processing and make-ready time as for 150 poles.

b. Access

As the FCC did in the Order, Washington's rules should clarify that they apply to wireless facilities and that any attaching entity has access to pole tops, as the FCC did in the Order. Installation on the top of a pole provides a substantially greater radiofrequency footprint than installations in the lower communications space, and is often necessary to satisfy seamless network design requirements. Further, with this larger radiofrequency footprint, fewer attachments are required to provide the same amount of coverage. Likewise, pole owners should not be able to categorically exclude wireless facilities from the communication space on the pole. The Washington rules should prevent pole owners from creating specific construction standards that could unfairly exclude pole-top attachments. The basis for the attachments to the pole should be based on independent engineering standards. Under the FCC Order, if a utility determines that it wants to deny a pole-top attachment, it must detail reasons that relate to that specific pole. The Commission should adopt the FCC pole top framework in its new rules.

c. Dispute Resolution

PCIA supports the FCC's approach to dispute resolution, which requires disputing parties to engage in "executive level" discussions prior to filing a complaint. 47 C.F.R. § 1.1404(k). In addition, the Commission should establish tight deadlines for resolving any formal complaint filed should executive level discussions fail. While there is no reason to modify existing Commission procedure regarding complaints that are resolved in adjudicative proceedings, a

separate rule for pole attachment disputes should be considered to specify what the complainant need allege if denied access and what the respondent must prove. Because a key policy of this rulemaking is to promote deployment of advanced telecommunications services, it would be counterproductive to establish dispute resolution rules that encourage delays. As such, once a complaint is filed, an answer should be required within 30 days and a prehearing conference set within 14 days for the purpose of establishing as schedule that resolves the complaint with six months of filing.

IV. CONCLUSION

PCIA respectfully requests that this Commission adopt pole rules as set forth in Exhibit A hereto.

DATED this 30th day of May, 2014.

GARVEY SCHUBERT BARER

By _____
Judith A. Endejan, WSBA #11016
Attorneys for Petitioner
PCIA – The Wireless Infrastructure Association

EXHIBIT A

PROPOSED RULES

480-54-010 Purpose[1]

(1) This chapter implements RCW Ch. 80.54 "Attachment to Transmission Facilities."

(2) All rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient.[2]

(3) This chapter is intended to provide provisions to accomplish the goal of subsection (2) when the parties cannot agree on the terms of an attachment contract.

(4) Parties may mutually agree on terms that differ from those in this Chapter. In the event of disputes submitted for Commission resolution, the Commission will deem the terms and conditions specified in this Chapter as presumptively reasonable. If a dispute is submitted to the Commission for resolution, the burden of proof is on any party advocating a deviation from the rules in this Chapter to show the deviation is just, fair and reasonable and sufficient.[3]

480-54-010 Definitions

(1) "Attachment" means any wire or cable for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right-of-way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more utilities, where the installation has been made with the consent of the one or more utilities.[4]

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, which is authorized to construct attachments upon, along, under, or across the public ways, **including any radio communications service company, as defined in RCW 80.04.010, any cable television service company or personal wireless services company.**

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[1] The numbering ties to RCW Ch. 80.54.

[2] Source: RCW 80.54.020

[3] Source: OAR 860-028-0050.

[4] Source for subsections (1)-(3): RCW 80.54.010.

(3) "Utility" means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government.

(4) "Occupied space" means that portion of the pole, duct, or conduit used for attachment,[5] which is presumed to be one foot.[6]

(5) "Usable space." With respect to poles, the term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the utility. With respect to conduit, the term *usable space* means capacity within a conduit system which is available, or which 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 utility.[7] The amount of usable space is presumed to be 13.5 feet.[8]

(6) The term *complaint* means a filing by a cable television service company operator, a cable television service company association, a utility, an association of utilities, a telecommunications company, or an association of telecommunications companies, radio communications service company or personal wireless services company alleging that it has been denied access to a utility pole, duct, conduit, or right-of-way in violation of this subpart and/or that a rate, term, or condition for a pole attachment is not fair, just, reasonable and sufficient. It also means a filing by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that a rate, term, or condition for a pole attachment is not fair, just, reasonable and sufficient.

(7) The term *complainant* means a cable television service company operator, a cable television service company association, a utility, an association of utilities, a telecommunications company, an association of telecommunications companies, a radio communications service company, a personal wireless services company, an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers who files a complaint.

(8) The term *respondent* means the party against whom a complaint is filed.

(9) The term *conduit* means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

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[5] Source: RCW 80.54.040.

[6] Source: 47 C.F.R. § 1.1418.

[7] Source: 47 C.F.R. § 1.1402(c).

[8] Source: 47 C.F.R. § 1.1418.

(10) The term *conduit* system means a collection of one or more conduits together with their supporting infrastructure.

(11) The term *duct* means a single enclosed raceway for conductors, cable and/or wire.

(12) With respect to poles, the term *unusable space* means the space on a utility pole below the usable space, including the amount required to set the depth of the pole. The amount of unusable space is presumed to be 24 feet.[9]

(13) The term *inner-duct* means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

(14) **The term *cable television service company* means the provider** of one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.[10]

(15) **The term *related device, apparatus, or auxiliary equipment*,** means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services, cable television services, **radio communications services or personal wireless services i**ncluding but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, appliances , **transmitters** necessary or incidental to the distribution and use **of the foregoing services**.[11]

(16) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.[12]

480-54-020 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice

(a) A utility shall provide a utility or licensee with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this obligation, a utility may deny a utility or licensee access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

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[9] Source: 47 C.F.R. § 1.1418.

[10] Source: RCW 35.99.010 (modification in Bold)

[11] Source: RCW 35.99.010 (modification in Bold)

[12] Source: RCW 35.99.010 (unmodified)

(b) Requests for access to a utility's poles, ducts, conduits or rights-of-way by a utility or licensee must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(c) A utility shall provide a utility or licensee no less than 60 days written notice prior to:

(1) Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the utility's or licensee's pole attachment agreement;

(2) Any increase in pole attachment rates; or

(3) Any modification of facilities other than routine maintenance or modification in response to emergencies.

(d) A utility or licensee may file with the Commission a "Petition for Temporary Stay" of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of service, a copy of the notice, and certification of service. The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed.[13]

480-54-030 Complaint

(a) Pursuant to RCW 80.04.110, 81.04.110 and 80.54.030, a complainant may file a formal complaint if denied access to a pole or poles or where a pole attachment agreement contains rates, terms or conditions which are unjust, unfair or unreasonable. A utility pole owner may file a formal complaint if the rates or charges are insufficient to yield a reasonable compensation for the attachment. The execution of a pole attachment agreement does not preclude any challenge to the lawfulness of its rates, terms and conditions. Any complaint, response and reply shall comply with WAC 480-07-370 and WAC 480-07-150.[14]

(b) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the complainant and the utility. If there is no present pole attachment agreement, the complaint shall contain:

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

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[13] Source: 47 C.F.R. §1.1403(a)-(d).

[14] Source: RCW 80.04.110, 81.04.110 and 80.50.030; WAC 480-07-150; 370.

(2) A statement that the complainant currently has attachments on the poles, ducts, conduits, or rights-of-way.

(c) The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust, unfair, unreasonable or insufficient...

(d) The complaint shall specify all information and argument relied upon.

(e) For attachments to poles, the complaint shall provide data and information in support of any claim that the pole attachment rate, term or condition is unjust, unfair, unreasonable or insufficient.

(1) The data and information shall include, where applicable:

(i) The gross investment by the utility for pole lines;

(ii) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(iii) The depreciation reserve from the gross pole line investment;

(iv) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(v) The total number of poles:

(A) Owned; and

(B) Controlled or used by the utility. If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole or the number of equivalent poles owned by the subject utility;

(vi) The total number of poles which are the subject of the complaint;

(vii) The number of poles included in paragraph (e)(1)(vi) of this section that are controlled or used by the utility through lease between the utility and other owner(s), and the annual amounts paid by the utility for such rental;

(viii) The number of poles included in paragraph (e)(1)(vi) of this section that are owned by the utility and that are leased to other users by the utility, and the annual amounts paid to the utility for such rental;

(ix) The annual carrying charges attributable to the cost of owning a pole. The utility shall submit these charges separately for each of the following categories: Depreciation, rate of return, taxes, maintenance, and administrative. These charges may be expressed as a percentage of the net pole investment. With its pleading, the utility shall file a copy of the latest decision of the Commission that

determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section that specifically determines the treatment and amount of accumulated deferred taxes;

(x) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the Commission which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the Commission;

(xi) The average amount of usable space per pole for those poles used for pole attachments (13.5 feet may be in lieu of actual measurement, but may be rebutted);

(xii) The average amount of unusable space per pole for those poles used for pole attachments (a 24 foot presumption may be used in lieu of actual measurement, but the presumption may be rebutted); and

(xiii) Reimbursements received from a utility or licensee for non-recurring costs.

(2) Data and information should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with the Commission or federal agencies. Calculations made in connection with these figures should be provided to the complainant. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not fair, just, reasonable and sufficient.

(f) With respect to attachments within a duct or conduit system, where the complaint requires review of the associated rate, the complaint shall provide supporting data and information.

(1) The data and information shall include, where applicable:

(i) The gross investment by the utility for conduit;

(ii) The accumulated depreciation from the gross conduit investment;

(iii) The system duct length or system conduit length and the method used to determine it;

(iv) The length of the conduit subject to the complaint;

(v) The number of ducts in the conduit subject to the complaint;

(vi) The number of inner-ducts in the duct occupied, if any. If there are no inner-ducts, the attachment is presumed to occupy one-half duct.

(vii) The annual carrying charges attributable to the cost of owning conduit. These charges may be expressed as a percentage of the net linear cost of a conduit. With its pleading, the utility shall file a copy of the latest decision of the Commission which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(viii) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the Commission which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the Commission; and

(ix) Reimbursements received by utilities from the utility or licensee for non-recurring costs.

(2) Data and information should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with the Commission or federal agencies. Calculations made in connection with these figures should be provided to the complainant. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not fair, just, reasonable and sufficient.

(g) With respect to rights-of-way, the complaint shall provide data and information in support of Claim. The data and information shall include, where applicable, equivalent information as specified in paragraph (e) of this section.

(h) If any of the information and data required in paragraphs (d), (e) and (f) of this section is not provided to the complainant by the utility upon reasonable request, the complainant shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a complainant shall be dismissed where the utility has failed to provide the information required under paragraphs (d), (e) and (f) of this section, as applicable, after such reasonable request. A utility must supply a complainant the information required in paragraph (d), (e) and (f) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to the Commission or federal agencies, within 30 days of the request by the complainant. The complainant, in turn, shall submit these pages with its complaint. If the utility did not supply these pages to the complainant in response to the information request, the utility shall supply this information in its response to the complaint.

(i) The complaint shall include a certification that the complainant has, in good faith, engaged or attempted to engage in executive-level discussions with the respondent to resolve the pole attachment dispute. Executive-level discussions are discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the company they represent regarding the subject matter of the discussions.

Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter to the respondent outlining the allegations that form the basis of the complaint it anticipated filing with the Commission, inviting a response within a reasonable period of time, and offering to hold executive-level discussions regarding the dispute. A refusal by a respondent to engage in the discussions contemplated by this rule shall constitute an unreasonable practice under RCW 80.54.030.

(j) Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(k) In a case where a complainant claims that it has been denied access to a pole, duct, conduit or right-of-way despite a request made pursuant to section WAC 480-54-020(b), the complaint shall include the data and information necessary to support the Claim, including:

(1) The reasons given for the denial of access to the utility's poles, ducts, conduits, or rights-of-way;

(2) The basis for the complainant's claim that the denial of access is unlawful;

(3) The remedy sought by the complainant;

(4) A copy of the written request to the utility for access to its poles, ducts, conduits, or rights-of-way; and

(5) A copy of the utility's response to the written request including all information given by the utility to support its denial of access. A complaint alleging unlawful denial of access will not be dismissed if the complainant is unable to obtain a utility's written response, or if the utility denies the complainant any other information needed to establish a prima facie case.[15]

480-54-040 Commission Consideration of Complaint

(a) Whenever the Commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any utility in connection with attachments are unjust, unreasonable, or that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the just, reasonable, or sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, 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.

[15] 47 C.F.R. §1.1404.

(b) A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities.[16]

(c) The following formula for determining a fair, just, reasonable and sufficient rate shall apply to attachments to poles:[17]

$$\textit{Maximum Rate} = \textit{Space Factor} \times \textit{Net Cost of a Bare Pole} \times \textit{Carrying Charge Rate}$$

$$\textit{Where Space Factor} = \frac{\text{Space Occupied by Attachment}}{\textit{Total} \text{ Usable Space}}$$

(d) The following formula shall apply to attachments to conduit:

$$\textit{Maximum Rate per Linear ft./m.} = \left[\frac{1}{\textit{Number} \text{ of Ducts}} \times \frac{1 \text{ Duct}}{\textit{No.} \text{ of Inner Ducts}}\right] \times \left[\textit{No.} \text{ of Ducts} \times \frac{\textit{Net} \text{ Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right] \times \textit{Carrying Charge Rate}$$

(Percentage of Conduit Capacity) (Net Linear Cost of a Conduit)

simplified as:

$$\textit{Maximum Rate Per Linear ft./m.} = \left[\frac{1 \text{ Duct}}{\textit{No.} \text{ of Inner Ducts}}\right] \times \left[\frac{\textit{Net} \text{ Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right] \times \textit{Carrying Charge Rate}$$

If no inner-duct is installed the fraction, "1 Duct divided by the No. of Inner-Ducts" is presumed to be 1 / 2.[18]

(e) The complainant shall have the burden of establishing a prima facie case that the rate, term or condition violates any provision of RCW Ch. 80.54 or this Chapter. If a utility challenges a proposed rate as insufficient under RCW 80.54.040, or if the complaint involves a denial of access, the utility bears the burden of proof.[19]

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[16] RCW 80.54.030, .040.

[17] Source: 47 C.F.R. §1.1409(c).

[18] Source: 47 C.F.R. §1.1409(e)(3).

[19] Source: 47 C.F.R. §1.1409(b).

480-54-050 Remedies

If the Commission determines that the rate, term, or condition complained of is not fair, just, reasonable and sufficient, it may prescribe a rate, term, or condition that is fair, just, reasonable and sufficient and may:

(a) If the Commission determines that the rate, term, or condition complained of is not fair, just, reasonable and/or sufficient, it may prescribe a rate, term, or condition that is fair, just, reasonable and/or sufficient and may:

(1) Terminate the unfair, unjust, unreasonable and/or insufficient rate, term, or condition;

(2) Substitute in the pole attachment agreement the fair, just, reasonable and/or sufficient rate, term, or condition established by the Commission;

(3) Order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unfair, unjust, unreasonable and/or insufficient rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, plus interest, consistent with the applicable statute of limitations; and

(b) If the Commission determines that access to a pole, duct, conduit, or right-of-way has been unlawfully denied or delayed, it may order that access be permitted within a specified time frame and in accordance with specified rates, terms, and conditions.

(c) Order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unfair, unjust, unreasonable and/or insufficient rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission from the date that the complaint, as acceptable, was filed, plus interest.

§ 480-54-060 Timeline for access to utility poles.

(a) The term "attachment" means any attachment by a cable television service company operator, a cable television service company association, a utility, an association of utilities, a telecommunications company, or an association of telecommunications companies, radio communications service company or personal wireless services company to a pole owned or controlled by a utility. Any company providing an "attachment" is an "attacher".

(b) All time limits in this subsection are to be calculated according to WAC 480-07-130.

(c) Survey. A utility shall respond as described in WAC 480-54-020(b) to an attacher within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days, in the case of larger orders as described in paragraph (g) of this section). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides

the utility with the information necessary under its procedures to begin to survey the poles.

(d) Estimate. Where a request for access is not denied, a utility shall present to an attacher an estimate of charges to perform all necessary make-ready work within 14 days of providing the response required by WAC 480-54-060, or in the case where a prospective attacher's contractor has performed a survey, within 14 days of receipt by the utility of such survey.

(1) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented;

(2) An attacher may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

(e) Make-ready. Upon receipt of payment specified in paragraph (d)(2) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(1) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 60 days after notification is sent (or 105 days in the case of larger orders, as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility may assert its right to 15 additional days to complete make-ready.

(v) State that if make-ready is not completed by the completion date set by the utility (or, if the utility has asserted its 15-day right of control, 15 days later), the attacher requesting access may complete the specified make-ready.

(vi) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(2) For wireless attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility may assert its right to 15 additional days to complete make-ready.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(f) For wireless attachments above the communications space, a utility shall ensure that make-ready is completed by the date set by the utility in paragraph (e)(2)(ii) of this section (or, if the utility has asserted its 15-day right of control, 15 days later).

(g) For the purpose of compliance with the time periods in this section:

(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.

(2) A utility may add 15 days to the survey period described in paragraph (c) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(3) A utility may add 45 days to the make-ready periods described in paragraph (e) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(4) A utility shall negotiate in good faith the timing of all requests for pole attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single cable operator or telecommunications carrier as one request when the requests are filed within 30 days of one another.

(h) A utility may deviate from the time limits specified in this section:

(1) Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

(2) During performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the attacher requesting attachment and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

(i) If a utility fails to respond as specified in paragraph (c) of this section, an attacher requesting attachment in the communications space may, as specified in WAC 480-54-070 hire a contractor to complete a survey. If make-ready is not complete by the date specified in paragraph (e)(1)(ii) of this section, an attacher attachment in the communications space may hire a contractor to complete the make-ready:

(1) Immediately, if the utility has failed to assert its right to perform remaining make-ready work by notifying the requesting attacher that it will do so; or

(2) After 15 days if the utility has asserted its right to perform make-ready by the date specified in paragraph (e)(1)(ii) of this section and has failed to complete make-ready.

WAC 480-54-070 Contractors for survey and make-ready.

(a) A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready in the communications space on its utility poles in cases where the utility has failed to meet deadlines specified in WAC 480-54-060.

(b) If an attacher hires a contractor for purposes specified in WAC 480-54-060, it shall choose from among a utility's list of authorized contractors.

(c) An attacher that hires a contractor for survey or make-ready work shall provide a utility with a reasonable opportunity for a utility representative to accompany and consult with the authorized contractor and the attachers.

(d) The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

WAC 480-54-080 Complaints by incumbent local exchange carriers.

Complaints by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that a rate, term, or condition for a pole attachment is not fair, just, reasonable and sufficient shall follow the same complaint procedures specified for other pole attachment complaints in this part, as relevant. In complaint proceedings where an incumbent local exchange carrier (or an association of incumbent local exchange carriers) claims that it is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251 (a)(5)) or a cable television service company for purposes of obtaining comparable rates, terms or conditions, the incumbent local exchange carrier shall bear the burden of demonstrating that it is similarly situated by reference to any relevant evidence, including pole attachment agreements. If a respondent declines or refuses to provide a complainant with access to agreements or other information upon reasonable request, the complainant may seek to obtain such access through discovery. Confidential information contained in any documents produced may be subject to the terms of an appropriate protective order.

WAC 480-54-090 Enforcement.

(a) If the respondent fails to obey any order imposed under this chapter, the Commission on its own motion or by motion of the complainant may order the respondent to show cause why it should not cease and desist from violating the Commission's order.

(b) The Commission may issue such other orders and so conduct its proceedings as will best promote the proper dispatch of business and the ends of justice.

WAC 480-54-100 Imputation of rates; modification costs.

(a) A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(b) The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.