

BEFORE

THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rulemaking to)
Consider Adoption of Rules to)
Implement RCW ch. 80.54 Relating) Docket No. U-140621
to Attachments to Transmission)
Facilities.)

**COMMENTS OF FRONTIER COMMUNICATIONS NORTHWEST INC. TO THIRD
DRAFT RULES GOVERNING ACCESS TO UTILITY POLES, DUCTS, CONDUITS
AND RIGHTS-OF-WAY**

I. Introduction

Frontier Communications Northwest Inc. (“Frontier”) appreciates this opportunity to respond to various questions proffered by the Commission and to comment on the Commission’s third draft rules governing access to utility poles, ducts, conduits, and rights-of-way. In response to the Commission’s inquiries, Frontier states that the Commission retains the authority to draft pole attachment regulations in accordance with 47 U.S.C. § 224(c) and that Frontier currently recovers the expenses it incurs because of third-party attachments on its poles. As to the draft rules, Frontier reiterates its recommendation that the definition of “carrying charge” be clarified so as to avoid possible disputes concerning the cost factors that may be included, and it proposes that the provisions on overlashing be revised to make them consistent with the definition of “overlashing.”

II. The FCC’s Open Internet decision places no limits on the Commission’s authority to regulate pole attachment rates, terms, and conditions.

The Commission has asked about “[t]he extent, if any, to which the FCC’s Open Internet decision ... affects the Commission’s ability to adopt rules implementing RCW 80.54 or rules

that vary from the FCC’s own pole attachment rules.”¹ Simply put, the FCC’s decision has no affect the Commission’s ability to adopt rules implementing RCW 80.54.

The FCC expressly recognized in its Open Internet decision that “Section 224 of the [Federal Communications] Act governs the [Federal Communications] Commission’s regulation of pole attachments.”² And Section 224(c)(1) specifically states that the FCC has no jurisdiction over pole attachments in any State that regulates such matters: “Nothing in this section shall be construed to apply or to give the [Federal Communications] Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way ... for pole attachments in any case where such matters are regulated by a State.”³

In order to be considered to regulate pole attachment rates, terms, and conditions, Sections 224(c)(2) and (3) require that a State: (a) certify to the FCC that (i) the State regulates the rate terms and conditions for pole attachments and (ii) in so doing, it can and does consider the interests of the subscribers of the services offered via the attachments and the interests of the pole-owning utility’s consumers; and (b) issue and make effective rules and regulations implementing the State’s regulatory authority over pole attachments.⁴ Here, Washington has previously made the required certification to the FCC, and these proposed rules would implement the State’s regulatory authority over pole attachments.

The FCC’s Open Internet decision does not, and cannot, limit or restrict these statutory provisions.

¹ *In the Matter of the Rulemaking to Consider Adoption of Rules to Implement RCW ch. 80.54 Relating to Attachments to Transmission Facilities*, Docket No. U-140621, Notice of Opportunity to Comment on Third Revised Draft Rules (“Notice to Comment”), pp. 2-3 (March 24, 2015).

² *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, ¶ 278 (March 12, 2015).

³ 47 U.S.C. § 224(c)(1).

⁴ 47 U.S.C. §§ 224(c)(2) and (3).

III. Frontier currently recovers the expenses it incurs due to third-party attachments on its poles.

The Commission has also asked a series [of](#) questions relating to the ability of pole owners to recover the costs they incur because of third-party attachments on their poles through application fees, payments for make-ready work, and annual pole attachment rental rates.⁵ In response to the Commission's inquiries, and as explained in more detail below, Frontier states that it currently recovers these costs from the third-parties who have placed attachments on its poles.

Pole Replacements- Frontier does not have any concrete data on the average time that it takes one of its crews to place a new pole and remove an old one. However, Frontier frequently utilizes a vendor to perform pole change outs, and that vendor charges us a rate that is equivalent to 2.7 labor hours (1.35 hours for each laborer on a two-person crew) to place a new pole of any size and a rate equivalent to 1.36 labor hours (48 minutes for each laborer) to remove a pole. To the extent Frontier must replace a pole because of a pole attachment request, the party that is making the attachment will reimburse Frontier for these expenses.

Application Fees- Frontier does not charge a separate application fee to process pole attachment or conduit occupancy requests. Instead, Frontier recovers the expenses associated with processing such requests through the administrative cost component of the carrying charge utilized when calculating Frontier's pole attachment rate.

Make-Ready Fees- Frontier may charge an upfront engineering fee at the time of an attachment request is made when it is necessary for an engineer to perform a pre-attachment inspection of the poles at issue. This fee is computed by multiplying the fully loaded hourly rate for an engineer times the number of hours reasonably required by each engineer to inspect the

⁵ Notice to Comment, p. 2.

poles or conduit at issue. Subsequent to the inspection, Frontier will perform a true up and issue an additional invoice or a refund based upon the actual costs it incurred in performing the inspection.

If the inspection establishes that make-ready work is required, then Frontier will issue the attacher with a good faith estimate of the costs to perform such work and require that the attacher pay the estimated costs in advance. Once the make-ready work is complete, Frontier performs another true up based upon its actual costs and either issues an additional invoice or refund to the attacher.

Frontier's Rate Calculations- Frontier has attached as Exhibit A its most recent pole attachment rate calculations for cable television systems and telecommunications providers. These rate calculations are based upon Frontier's year end 2013 ARMIS data.

Unrecovered Costs - As explained above, Frontier does not have any unrecovered costs from third-party attachers due to pole attachment applications, make-ready work, or pole rental rates.

IV. Frontier again asks that the Commission clarify the definition of "carrying charge."

With respect to the definition of "carrying charge" in the proposed WAC 480-54-020(3), Frontier reiterates its recommendation that that the word "including" before the list of items that make up the carrying be replaced "which are limited to." As currently drafted, Frontier believes that electric utilities will almost certainly seek to include additional costs beyond those specifically identified in this definition as part of their carrying charges, which will lead to additional disputes coming before the Commission. As revised, the definition would be as follows:

- (3) "Carrying charge" means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments, ~~including~~ which are limited to the

owner's administrative, maintenance, and depreciation expenses, commission-authorized rate of return on investment, and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.

V. Frontier proposes revisions to the overlashing provision to make them consistent with the definition of "overlashing."

As currently drafted, the overlashing provisions in proposed WAC 480-54-030(11) conflict with the definition of "overlashing" in proposed WAC 480-54-020(14). Under the definition, "overlashing" only means the tying of additional wires and cables "to existing communications wires or cables attached to poles." But the provisions in WAC 480-54-030(11) would also allow the tying of cables to "other equipment." Given this conflict, and the uncertainty of what "other equipment" might be overlashed, Frontier proposed the following revisions to WAC 480-54-030(11):

- (11) An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent under the following circumstances:
 - (a) The occupant must provide the owner with 10 days prior written notice. The notice must identify no more than 30 affected poles and describe the additional communications wires, or cables, ~~or other equipment~~ to be overlashed so that the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice must include, but not necessarily be limited to, the following information:
 - (i) The size, weight per foot, and number of wires or; cables, ~~conductors, or other equipment~~ to be overlashed; and
 - (ii) Maps of the proposed overlash route and pole numbers, if available.
 - (b) An owner may treat multiple overlashing notices from a single occupant as one notice when the notices are filed within the same 10 day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the 10 day period.

(c) The occupant may proceed with the overlashing described in the notice unless the owner provides a written response, within seven days of receiving the occupant's notice, prohibiting the overlashing as proposed. The occupant must correct any pre-existing violations of required separation of its existing attachments from other attachments or other requirements applicable to its existing attachments before overlashing additional wires or; cables, ~~or equipment~~ on those attachments.

(d) The owner may refuse to permit the overlashing described in the notice only if, in the owner's reasonable judgment, the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The refusal must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make-ready work that the owner has determined would be required prior to allowing the proposed overlashing. The parties must negotiate in good faith to resolve the issues raised in the owner's refusal.

(e) A utility's or licensee's wires or; cables, ~~or equipment~~ may not be overlashed on another occupant's attachments without the owner's consent and unless the utility or licensee has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing on the attachments of other occupants.

VI. Conclusion

Frontier reiterates its appreciation of the Commission's efforts to establish uniform and consistent rules governing the rates, terms, and conditions for pole attachments.

Respectfully submitted,

FRONTIER COMMUNICATIONS NORTHWEST INC.



Cathy Dahlquist~~Jack Phillips~~