

further developed with additional information. PCIA will address those questions in Section III of its comments. Before doing so, PCIA will respond to several changes made in the Third Draft that are of concern to the organization.

II. COMMENTS ON SPECIFIC RULES CHANGES

1. Some Rule Changes Will Impede Promotion of Broadband Deployment

3 As discussed in PCIA's previous comments, the proposed Washington pole attachment rules mostly follow those adopted by the Federal Communications Commission ("FCC"), which PCIA supports. Both sets of rules share dual purposes of promoting expeditious broadband deployment while ensuring that pole owners receive fair compensation for their facilities used to achieve this purpose. This Commission has frequently noted that "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."² As explained below, the Third Draft Rules, in certain sections, will not further that goal of promoting broadband infrastructure investment by telecom providers but will impede the broadband deployment that is so urgently needed.

2. WAC 480-54-030(7): Pole Limitations

4 The Third Draft, in WAC 480-54-030(7), retains the 100 pole limit subject to the timelines in 480-54-030(3) – (6). This is contrary to the FCC's rules that apply the timelines to 300 pole orders per application. The Staff's recommendations recognize this difference but justifies it on the rationale that Washington's rules will include pole replacements within the

² *Re Qwest Communications International Inc.*, 2011 WL 927005 (Wash. U.T.C.) at *60.

make-ready work that owners will be required to perform. The Staff's recommendations state "the timelines here are a reasonable compromise consistent with discussions at the Workshop." First, PCIA submits that there is no basis upon which to conclude that a 300 pole order cannot be completed in the 60 to 90-day make-ready time periods in WAC 480-54-030(6), particularly when that rule allows for an additional 15-day extension of those time limits. In the experience of PCIA members, some pole replacements can be completed well within a 60-day time frame, and pole replacements should not serve as the reason for drastically reducing the pole order limit from 300 poles to 100 poles. If an order requires a significant number of pole replacements, PCIA recognizes that longer time periods can be negotiated.

5 More importantly, the Commission's 100 pole limit will significantly slow down the deployment of necessary network infrastructure. By way of illustration, a typical DAS or Small Cell project includes 3 to 10 miles of fiber, averaging 45 to 50 poles per mile. The impact of WAC 480-54-030(7) will be to limit the applicable timelines to only 100 poles (approximately two fiber miles). As a result, a pole owner need only complete make-ready work on 100 poles every 60 to 90 days. Thus, only two miles of network will be deployed in that time period. It could potentially take the same service provider three times the amount of time to deploy a network in Washington than it would to deploy an identical network in an FCC state. Such a delay does not align with the Commission's goal to expedite broadband deployment.

6 PCIA urges the Commission to reconsider the 100 pole limit and to increase it to the FCC's 300 pole standard. If the Commission is concerned about timelines and pole replacement, the Commission should allow parties to negotiate longer timeframes when a substantial number of pole replacements is required.

3. **WAC 480-54-030(3) Cost Recovery**

7 The Commission inserted language that allows pole owners to recover reasonable costs the owner actually incurs to process an application including survey costs. PCIA does not object to reasonable, verifiable recovery of costs but questions whether such costs are already recovered in administrative charges. PCIA requests the Commission to verify that owners will not duplicate recovery of administrative costs associated with processing pole attachment applications.

4. **WAC 480-54-070: Dispute Resolution**

8 PCIA has a number of concerns with the provisions in this rule regarding the dispute resolution process. First, the rule gives the Commission 360 days within which to resolve a pole attachment complaint. Because a key policy of this rulemaking is to promote deployment of advanced telecommunications services, this 360-day clock does not promote the prompt resolution of disputes. PCIA urges the Commission to exercise its option to expedite the resolution schedule. For instance, a pole attachment complaint could follow a schedule that resolves the complaint *as soon as possible* but no later than within six months of filing.

9 Furthermore, the Staff retained the sign and sue provisions in WAC 480-54-070(4) but conditioned that right on the parties' awareness of a dispute at the time they executed an agreement. The rule also provides that any complaint must be brought within six months from the agreement execution date. The Staff's recommendation states that it retained this rule to "minimize gamesmanship of negotiation process." PCIA respectfully submits that its members have neither participated in nor experienced such gamesmanship. Rather, in their experience they have discovered that disputes arise out of matters unknown at the time of contract execution and sometimes after six months from that date, as the parties work through the actual pole

deployment. Therefore, PCIA again requests that the Commission remove this limitation on carriers' rights to sue after entering into a pole attachment agreement.

10 Finally, PCIA questions the burden of proof established in WAC 480-54-070(6). The first sentence of the statute states that a licensee or utility must bear the burden of proving that an attachment denial violates any privilege of RCW 80.54, this Chapter or other applicable law, while pole owners will only bear the burden of proving that their rates are fair, just, reasonable and sufficient when challenged.

11 PCIA submits that WAC 480-54-070(6) is unnecessary, or should be revised to reference the last sentence of WAC 480-54-030(2) that states "in the event of disputes submitted for Commission resolution any party advocating rates, terms or conditions that vary from the rules in this Chapter bears the burden to prove that these rates, terms or conditions are fair, just, reasonable and sufficient." The foregoing sentence best states the applicable burden of proof in any pole attachment dispute proceeding.

12 PCIA will now address the specific questions in the March 24, 2015 Notice:

III. COMMISSION QUESTIONS

1. Safety Risks

13 Telecommunications carriers should have regulated access to poles that may contain both transmission and electric distribution lines, if necessary for deployment. PCIA submits that no additional safety risks would occur from this regulated access as all pole attachments must comply with the safety requirements in the National Electronic Safety Code. Attachers should have access to a facility that may carry both transmission and distribution lines, if appropriate.

2. Pole Replacement Timeline

14 In the experience of PCIA members, pole replacements in connection with pole attachment orders can be accomplished within a 30 to 60-day time period. The actual

replacement of a pole generally takes only a few hours, although additional time may be needed to transfer lines and facilities on the existing pole. Most utilities are able to complete a reasonable number of pole replacements in less than 60 days in connection with a pole attachment request, and PCIA members are willing to negotiate longer timeframes if a substantial number of poles need replacement.

3. Should Timelines Apply to Applications for Attachment to Up to 300 Poles?

15 *See* PCIA’s previous discussion in Section II above. In PCIA’s experience, owners have been able to complete required pole attachments within the requisite time period. Here, the rule allows for between 75 and 105 days within which to complete make-ready work. Absence evidence to the contrary, there is no reason to believe that an owner cannot accomplish the required pole replacements within these time periods.

4. Pole Attachment Fees

16 In the experience of one PCIA member, Puget Sound Energy charges \$1,000 per application.

5. Make-ready Fees

17 Make-ready costs vary based upon actual expense and experience, and PCIA can only provide anecdotal samples to respond to this request for make-ready costs. In one example, a PCIA member paid \$15,000 for make-ready work on 7 poles to accommodate fiber attachments. In a second example, the same member paid an additional \$5,800 for a single pole to accommodate a node/antenna.

6. Pole Attachment Rates

18 Again, PCIA members can only provide anecdotal information. One of its members in Washington was charged an annual rate of \$1,200 per attachment by one owner 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 rates.

19 With respect to the type of costs that should be used to calculate attachment rates, the Commission should require, in the pole attachment rate calculation formulas, the use of specific regulatory accounts maintained by electric owners that identify the actual costs incurred by the utilities for the poles, ducts, conduits and rights-of-way that are the subject of the attachment.³

7. Costs Owners Cannot Recover

20 PCIA members are not aware of any costs that an owner cannot recover through either an application fee, make-ready work charge or attachment rate.

8. Does the Commission's Open Internet Decision Affect These Rules?

21 In PCIA's view, the FCC's Open Internet decision has no impact on this Commission's ability to establish pole attachment rules. In 47 U.S.C. § 224 Congress provided the FCC with jurisdiction to regulate attachments by providers of telecommunications service to utility poles and created a two-tiered regulatory scheme whereby states could elect to regulate pole attachments, which are inherently local in nature. Washington elected to regulate pole attachments by passing RCW Ch. 80.54. That statute gave this Commission the authority to regulate pole attachments, and the state certified to the FCC that it regulates pole attachments.⁴ The Legislature also mandated that the Commission adopt rules and regulations governing pole attachments in RCW 80.54.060. Nothing in the FCC's Open Internet Order preempts the grant of local jurisdiction over pole attachments.

³ See *In the Matter of Amendment of Commissions Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 2001 6.

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

IV. CONCLUSION

22 This rulemaking process has come down a long road. The latest rules go a long way towards achieving the key policy goal of advancing the deployment of broadband communications in Washington. Some concerns remain as discussed herein, and PCIA hopes that the Commission will address them. Now, however, PCIA urges the Commission to move forward expeditiously to complete this rulemaking and allow the benefits of these new rules to flow to Washington citizens. PCIA applauds the Commission's efforts to draft a set of rules that considers the needs of attachers and pole owners/facility utilities. PCIA supports the adoption of these rules, with the suggested changes or revisions discussed in these comments.

DATED this 17th day of April, 2015.

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CERTIFICATE OF SERVICE

I, Darlyne De Mars, certify under penalty of perjury under the laws of the State of Washington that, on April 17, 2015, I caused to be served on the persons listed below in the manner shown:

PCIA – THE WIRELESS INFRASTRUCTURE ASSOCIATION AND THE HETNET FORUM’S COMMENTS ON THIRD REVISED DRAFT RULES TO IMPLEMENT RCW CH. 80.54.

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Dated at Seattle, Washington, this 17th day of April, 2015.

s/Darlyne De Mars