BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to Consider Adoption of Rules to Implement RCW ch. 80.54, Relating to Attachments to Transmission Facilities, Docket U-140621	)))))))	DOCKET U-140621

COMMENTS OF THE BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON

The Broadband Communications Association of Washington ("BCAW") respectfully submits these Comments pursuant to the State of Washington Utilities and Transportation Commission's ("Commission") March 24, 2015 Notice of Opportunity to Comment on the Third Revised Draft Rules, relating to the implementation of RCW ch. 80.54 (hereinafter "Third Draft Rules").[1] BCAW appreciates the Commission's continued efforts to develop just and reasonable rules that "consider the interests of the subscribers of the services offered via . . . attachments, as well as the interests of the consumers of the utility services."[2]

I. COMMENTS

A. 480-54-020(1) (Definition of "Attachment," Rights-of-Way "Owned and Controlled by a Utility")

BCAW continues to be concerned by the Commission's exclusion of rights-of-way references from the rules, including in the definition of "Attachment." While BCAW is not arguing that the new access timeline (in WAC 480-54-030(6)) should necessarily apply to rights-of-way, the Commission should not completely abdicate its authority over access to utility rights

[1] As a preliminary matter, in response to the Commission's **Query No. 8**, BCAW does not believe that the FCC's Open Internet Decision has any impact on "the Commission's ability to adopt rules implementing RCW 80.54 or rules that vary from the FCC's own pole attachment rules." BCAW's responses to certain of the Commission's other queries are included in footnotes 12 and 15.

[2] 47 U.S.C. §224(c)(2)(B).

of way. The Commission is required by law to "adopt rules, regulations and procedures relative to the implementation" of Chapter 80.54.[3] That includes the regulation of "right[s] of way . . . *owned or controlled* . . . by one or more utilities."[4] As BCAW explained in its February 6, 2015 Comments, "if the Commission fails to make rules governing access to rights-of-way 'owned or controlled' by a utility, that would not only violate state law . . . but potentially force right-of-way access disputes to be adjudicated at the FCC because the Commission's complaint rules would not cover right-of-way issues."[5]

Indeed, the Commission is mistaken that access to "easements" owned and controlled by utilities "is beyond the scope of the FCC's rules."[6] Although the FCC decided not to apply its access *timeline* (47 C.F.R. § 1.1420) to "ducts, conduits, or rights-of-way," [7] the FCC emphasized in its 2011 Order that its general access rule (47 C.F.R. §§ 1.1403(b)-(a)) "continues to apply to all requests for access under section 224, independent of any application of the timeline."[8] Specifically, 47 C.F.R. § 1.1403(a) requires a utility to provide "nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it," except when there is insufficient capacity or for safety, reliability and generally applicable engineering purposes. Section 1.1403(b) specifies that "[i]f access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day." Moreover, to ensure that the FCC carries out its Congressional directive under section 224 to ensure nondiscriminatory

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[3] RCW 80.54.060.
[4] *Id*. 80.54.010(1) (defining "Attachment" to include utility "owned or controlled" rights-of-way (emphasis added). The federal Pole Attachment Act, 47 U.S.C. § 224, also includes "right-of-way owned or controlled by a utility," in the definition of "pole attachment." 47 U.S.C. § 224(a)(4).
[5] Comments of the Broadband Communications Association of Washington, Docket U-140621, p. 4 (filed WUTC Feb. 6, 2015); *see also id*. at n. 4 (explaining the FCC's process for certified states that have not asserted authority over access, including access to rights-of-way) (hereinafter "BCAW Feb. 6 Comments").
[6] Commission Summary of Comments/Responses on Revised Draft Rules, dated March 13, 2015 (discussing BCAW argument to include rights-of-way in the definition of "Attachment") (hereinafter "Matrix").
[7] *Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, ¶40 (2011).
[8] *Id*. at ¶48.

access to rights-of-way at just and reasonable rates, terms and conditions, the FCC's complaint procedures also apply to rights-of-way.[9]

It is also important to emphasize, that the "electric utilities' argument that including the term 'right-of-way' in these rules would require a pole owner to grant access to use 'rights-of-way and easements' that the pole owner does 'not have permission from the underlying landowner to grant' is misguided."[10] As BCAW previously explained:

> Including the term "right-of-way" in these rules, would not require a utility to grant access to property beyond the extent allowed by law. Rather, as the FCC clarified when confronted with these same arguments, "the access obligations of section 224(f) apply when, as a matter of state law, the utility *owns or controls* the right-of-way to the extent necessary to permit such access." Moreover, virtually every single pole attachment agreement in use today requires an attacher to obtain any rights necessary to access land that the utility itself has no right to grant, and indemnify the utility for the attacher's failure to do so.[11]

For these reasons, BCAW should follow the FCC approach, namely: regulate the rates, terms, and conditions of and access to rights-of-way (on a case-by-case basis), while excluding them from the timeline (just as the Commission intends for ducts and conduit). Although access to rights-of-way has not necessarily been an issue in Washington up until this point, excluding utility owned or controlled rights-of-way from these rules may invite utilities to start denying access on an arbitrary basis with impunity. BCAW has redlined the Third Draft Rules consistent with these Comments. *See* BCAW Third Draft Rules Redline, attached hereto as Exhibit A.

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[9] *See* 47 C.F.R. § 1.1404(i) (relating to the rates, terms and conditions for access to right-of-way); *id* at § 1.1404(m) (relating to access denials). The FCC's approach with regard to right-of-way issues is on a case-by-case basis. It did not adopt specific rules or a rate formula for rights-of-way. *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd 6777, ¶ 121 (1998). This Commission should take the same simplified approach.

[10] BCAW Feb. 6 Comments, p. 3.

[11] *Id.* (citing *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, ¶ 1179 (1996) (emphasis added) (hereinafter "*Local Competition Order*")). *See also Local Competition Order* at ¶ 1123 ("Pursuant to section 224(f)(1), a utility must grant . . . access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility. This directive seeks to ensure that no party can use its control of the enumerated facilities *and property* to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment. . . .") (Emphasis added).

B. 480-54-030(3) (Application Processing Fees)

BCAW is also very concerned with the Commission's proposal to allow utilities to charge "the reasonable costs the owner actually and reasonably incurs to process applications," in addition to a fully allocated rental rate, survey and make-ready charges. Administrative expenses (*e.g.*, employee salaries, etc.) associated with processing applications are rolled up into the administrative FERC Accounts that factor into the rental rate and double-recovery would occur if such expenses were allocated again as a direct charge (*i.e.,* as an application processing fee).[12] While, the FCC allows pole owners to recover "out-of-pocket expenses attributable to pole attachments . . . [specifically] pre-construction, survey, engineering, make-ready and change-out costs,"[13] in addition to a fully allocated rate, "[a] rate based on fully allocated costs . . . by definition[] encompasses all pole related costs and additional charges are not appropriate."[14]

A review of just some of the thirteen separate *Administrative* FERC Accounts that factor into the administrative carrying charge component is illustrative.[15] FERC Account 920

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[12] *See, e.g., Central Lincoln People's Util. Dist. v. Verizon Northwest, Inc.*, Docket UM 1087, Order, at 15 (OPUC Jan. 19, 2005) ("The salaries of the people involved with 'joint use issues' or pole maintenance and operation must be calculated and allocated as part of the carrying charge. Similarly, to the extent application fees do not relate to 'special inspections or preconstruction, make ready, change out, and rearrangement work,' application fees may not be recovered, and administrative charges related to processing new attachments should be allocated with the carrying charge."), *available at* http://apps.puc.state.or.us/orders/2005ords/05-042.pdf; *see also Rulemaking to Amend and Adopt Rules in OAR 860, Divisions 024 and 028, Regarding Pole Attachment Use and Safety (AR 506)*, Order, Permanent Rules Adopted, at 13 (Oregon PUC 2007) (citing FCC case law for the proposition that "[a] utility would doubly recover if it were allowed to receive a proportionate share of these expenses based on the fully-allocated costs formula and additional amounts for administrative expenses") (internal citation omitted) (hereinafter "2007 Oregon Pole Order.")

[13] *Texas Cable & Telecomm Ass'n v. Entergy Services, Inc.*, 14 FCC Rcd 9138, ¶ 5 (1999) (hereinafter "*Texas Cable v. Entergy*").

[14] *Id*. at ¶ 10. In other words, in response to Commission **Query No. 7** there are no costs "the pole owner incurs in connection with attachments" that the pole owner does not recover through (a) the fully allocated rate; or (b) preconstruction, survey, engineering, make-ready and change-out charges.

[15] "Through the annual rate derived by the Commission's formula, an attacher pays a portion of the total plant administrative costs incurred by the utility." *Cable Television Ass'n of Georgia v. Georgia Power Co*., 18 FCC Rcd 16333, ¶ 18 (2003). The FCC formula includes the following administrative FERC Accounts: 920-931 and 935, attached hereto as Exhibit B. Please note: these accounts relate solely to the administrative carrying charge. Additional FERC Accounts factor into the maintenance, depreciation and tax carrying charges, as well as the capital costs associated with the net pole costs. For ILEC poles, ARMIS Accounts essentially mirror the FERC Accounts that factor into the FCC formula.

(Administrative and general salaries), for example, includes utility employee salaries, wages and bonuses. FERC Account 921 (Office supplies and expenses) includes "office supplies and expenses incurred in connection with the general administration of the utility's operations," and covers items such as "meals, traveling and incidental expenses." FERC Account 923 (Outside services employed) includes "the fees and expenses of professional consultants," including items such as "fees, pay and expenses of accountants and auditors, actuaries and appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc." FERC Account 926 (Employees pensions and benefits) includes "pensions paid to or on behalf of retired employees, or accruals to provide for pensions . . . and payments for employee accident, sickness, hospital, and death benefits, or insurance therefor. . . ." (Even the expenses incurred by each electric utility associated with this proceeding are allocated to each attacher in the annual rent rate. *See* FERC Account 928 (Regulatory commission expenses)).

The FCC also forbids pole owners from disaggregating the FERC/ARMIS Accounts that factor into the rental rate and charging certain portions as a direct charge and allocating other portions with the rent.[16] The FCC also prohibits utilities from allocating costs from FERC Accounts that *do not* roll up into the carrying charges and allocating a percentage of those expenses to each attacher as a direct charge (*e.g.*, as an application processing fee or other type of administrative fee). The FERC Accounts that factor into the fully allocated rental formula are

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In response to the Commission's **Query No. 6**, utilities have no discretion on which types of costs roll up into certain FERC or ARMIS Accounts, including the ones used to calculate pole attachment rates. The costs that are included in those accounts are proscribed by law. *See, e.g.*, Exhibit B hereto.

[16] *See Texas Cable v. Entergy*, at ¶ 14 ("As discussed above, a rate based on fully allocated costs encompasses all pole related costs. That costs included in such a rate are borne by all users is expected. Entergy has not made a persuasive argument that the annual rate it would charge together with these fees would be significantly less than one based upon fully allocated costs, or that recovering these costs through direct reimbursement rather than through the annual fee is preferable."); *see also* 2007 Oregon Pole Order, p. 13 (rejecting application fees and stating that "[t]he FCC has struck down attempts to have the best of both worlds, that is, a nearly fully allocated rate and additional recurring costs added to that rate") (citing *Texas Cable v. Entergy*).

the only FERC Accounts the FCC considers to have "a sufficient nexus to the operating expenses and actual capital costs of the utility attributable to the pole or conduit attachment."[17]

In sum, allowing pole owners to charge application processing fees on top of a fully allocated rate and incremental (*i.e.*, out of pocket) non-recurring costs will lead to double-recovery. Therefore, the Commission should expressly prohibit the collection of such fees and remove the new language from proposed rule 480-54-030(3).

C. 480-54-030(11) (Overlashing)

BCAW appreciates the inclusion of an expedited overlash process that provides cable companies the flexibility needed to serve customers in a timely and competitive (with pole-owning ILECs) manner, while ensuring compliant pole plant, consistent with longstanding FCC precedent. To provide some comfort to the electric utilities relating to unpermitted overlashing, BCAW made several compromises in its last set of comments. Most significantly, BCAW agreed to limit the number of poles in a particular overlash notice to 30 or fewer, as requested by PSE.[18] Nevertheless, in its Third Draft Rules, the Commission not only included BCAW's compromise language, it added other language that will undermine the very purpose of allowing critical customer-oriented overlashing to proceed without going through a full-blown permit process, if retained.

First, allowing a pole owner to request *unlimited* information in an overlash request will invite pole owners (who are opposed to unpermitted overlashing) to abuse and delay the process without consequence. In order to prevent this type of abuse and establish a reasonable process that is less onerous and time-consuming than the regular permit process, the phrase— "but not

[17] *In the Matter of Amendment of Rules and Policies Governing Pole Attachments; In the Matter of Implementation of Section 703(e) of The Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12130, ¶ 119 (rel. May 25, 2001) (hereinafter "May 2001 FCC Order").
[18] *See* BCAW Feb. 27 Comments, p. 15.

necessarily be limited to"—in 480-54-030(11)(a)—must be deleted so that an attacher is not forced to meet unreasonable demands, such as providing information that it does not or cannot obtain (that is only within the pole owner's possession, such as the weight and load of pre-existing utility equipment) or is otherwise irrelevant to the overlash request. The information specified in 480-54-030(11)(a)(i)-(ii) is sufficient for a pole owner to evaluate an overlash notice.

Second, the language "[t]he 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" in subsection (c) is equally if not more problematic. While BCAW does not believe this was the Commission's intent, this new language does not specify that the "pre-existing violations of required separation" must have been *caused* by the attacher seeking to overlash. In addition, the term "other requirements applicable to its existing attachments" in the same subsection is so broad that a pole owner could force an attacher to comply with unreasonable requirements that are completely unrelated to safety, such as paying disputed fees, as a condition of overlashing. Moreover, there is no need to distinguish between violations of separation requirements and other safety violations.

To ensure that any unintended consequences do not occur, BCAW suggests the following edits (new language in italics, deletions in brackets): "The occupant must correct any pre-existing *safety* violations *it caused* [of required separation of its existing attachments from other attachments or other requirements applicable to its existing attachments] before overlashing additional wires, cables, or equipment on those attachments.[19]

[19] The same problems exists with the newly added language in WAC 480-54-030(6)(a)(iii) and (b)(iii). Those sections require "[a]ny occupant with an existing attachment that does not comply with these rules or the occupant's attachment agreement with the owner [to] modify that attachment to bring it into compliance before the date set for completion of make-ready work." That language must be revised to clarify that safety violations are the subject of these provisions and that an occupant is not required to fix safety violations it did not cause. *See* BCAW Third Draft Rules Redline.

D. 480-54-050(1)-(2) (Modification Costs)

Although BCAW understands from the Matrix that the Commission intends to follow FCC rules with regard to modification costs, (*i.e.*, that the cost-causer, including the pole owner, pays) the newly added language in 480-54-050(1)-(2) fails to do so.[20] That is because the definition of "occupant," does not appear to include the "owner" of the pole. As a result, under the current proposal, the owner is not required to pay any modification costs it causes or benefits from under sections 480-54-050(1) or (2). That oversight must be corrected. *See* BCAW Third Draft Rules Redline (edits to subsection (1)).

It is also unclear what the Commission intends with the language "into compliance with these rules," in relation to modification costs in subsection (2). BCAW is not aware of any proposed rules that would implicate this subsection. Therefore, the Commission should either clarify which rules it is referring to or remove that language. Similarly, the language in subsection (2) that refers to compliance with "an attachment" agreement is also unclear and overbroad. If the Commission is referring to safety requirements contained in a pole attachment agreement, it should so specify.

Finally, the language in the first and last sentences of subsection (2), *i.e.*, "created by that attachment," can be interpreted to mean "but for" the existence of that attachment, there would be no violation (*i.e.*, a pole owner would not have created a safety violation, vis-à-vis its proximity to the licensee's attachment below it, if the licensee had not been attached). Therefore, the language in subsection (2) must include clear causation language. Finally, it is unclear for whom the additional capacity is being created or who is causing the modification in the latter part of this subsection.

[20] *See, e.g.*, Matrix, p. 14 (stating that "[a]n occupant, including the owner, who benefits from the modification should be responsible for a proportional share of the costs.").

To resolve all of these issues, BCAW suggests the following revisions to subsection (2) (new language in italics, deletions in brackets):

> The costs of modifying a pole, duct, or conduit to bring an existing attachment into compliance with [these rules] *the safety requirements in* an attachment agreement or to remedy a*ny other* safety violation [created by that attachment] shall be borne by the occupant *or owner* who [se attachment is noncompliant or] created the safety violation. . . . An occupant *or owner* with an existing conforming attachment . . . shall not be required to bear any of the costs to rearrange or replace *its* [the occupant's] attachment if such rearrangement or replacement is necessitated solely as a result of creating additional capacity for an*other party's* [additional] attachment or to accommodate modification to the facility *necessitated by another party* [or another existing attachment made] to bring that *party's* attachment into conformance with [these rules] *the safety requirements in* [or] *its* [an] attachment agreement or to remedy a*ny other* safety violation created by that *party* [attachment].

E. 480-54-070(6) (Burden of Proof)

BCAW appreciates the Commission's continued efforts to clarify proposed rule 480-54-070(6), but believes it could benefit from some additional minor tweaks. First, it is unclear what the Commission intends by the language "a licensee or a utility has the burden to *prove its right to attach* . . . ." If the Commission means that the licensee or [attaching] utility has the burden to prove that it is a jurisdictional "licensee" under the rules, it should so state. Otherwise pole owners may claim that a licensee must prove its right to *access* an owner's facilities, even if it is a jurisdictional licensee. Moreover, the placement of the phrase "[e]xcept as provided in WAC 480-54-030(2)," immediately prior to the "right to attach" language confuses the issue further because that section makes no reference to jurisdictional requirements. Similarly, WAC 480-54-030(2) makes no reference to access issues. Therefore, the phrase "[e]xcept as provided in WAC 480-54-030(2)," should be disconnected from the issue of access denials in the second sentence of 480-54-070(6). Furthermore, the phrase "attachment requirement" is unnecessary and confusing, as "terms and conditions" are the equivalent of "requirements" in pole attachment

parlance. Last, a licensee would bear the burden to prove that a rate that is otherwise consistent with the formula in these rules, is not just, fair, reasonable and sufficient.

BCAW suggests the following edits, consistent with these Comments (new language in italics, deletions in brackets):

> [Except as provided in WAC 480-54-030(2),] *A* licensee or utility has the burden to prove its *jurisdictional* right to attach to or in the owner's poles, ducts, [or] conduits *or rights-of-way;* and, *e*xcept *as provided in WAC 480-54-030(2), a licensee or utility has the burden to prove* that any [attachment requirement,] *rate,* term, or condition an owner imposes or seeks to impose that the licensee or utility challenges violates any provision of RCW 80.54, this Chapter, or other applicable law. [Except as provided in WAC 480-54-030(2),]*An owner bears the burden to prove that the owner's denial of access to its facilities is lawful and reasonable; and, except as provided in WAC 480-54-030(2),* an owner bears the burden to prove that the attachment rates it charges or proposes to charge are fair, just, reasonable and sufficient [or that the owner's denial of access to its facilities is lawful and reasonable].

II. CONCLUSION

BCAW appreciates the Commission's continuing efforts to develop a just and reasonable set of pole attachment rules that facilitates access, ensures safety and reduces the potential for unnecessary disputes.

Dated this 17th day of April, 2015.

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EXHIBIT A

Docket U-140621
March 24, 2015

THIRD DRAFT RULES GOVERNING ACCESS TO UTILITY POLES, DUCTS, AND CONDUITS~~, AND RIGHTS-OF-WAY~~

BCAW Third Draft Rules Redline (April 17, 2015)

480-54-010 Purpose~~, and i~~Interpretation, and application

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

(2) The commission will consider Federal Communications Commission orders promulgating and interpreting its pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions in this chapter.

(3) The rules in this chapter apply to all owners, occupants, and requesters without regard to whether those entities are otherwise subject to commission jurisdiction.

480-54-020 Definitions

(1) "Attachment" means any wire, cable, ,or antenna 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 owners, where the installation has been made with the consent of the one or more owners consistent with these rules.

(2) "Attachment agreement" means an agreement negotiated in good faith between an owner and a utility or licensee establishing the rates, terms, and conditions for attachments to the owner's facilities.

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

(4~~3~~) "Communications space" means the usable space on a pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code.

(54) "Conduit" means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

(65) "Duct" means a single enclosed raceway for conductors, cable, or wire.

(76) "Facility" or "Facilities" means one or more poles, ducts, conduits, right-of-way, manholes or handholes, or similar structures on or in which attachments can be made.

(87) "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.

(98) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways.

(109) "Make-ready work" means engineering or construction activities necessary to make a pole, duct, conduit, right-of-way, or other support equipment available for a new attachment, attachment modifications, or additional attachments. Such work may include rearrangement of existing attachments, installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole. ~~Make-ready work costs are non-recurring costs and are not included in carrying charges.~~

(110) "Net cost of a bare pole" means (a) the original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by (b) the number of poles represented in the investment amount. When an owner owns poles jointly with another utility, the number of poles for purposes of calculating the net cost of a bare pole is the number of solely-owned poles plus the product of the number of the jointly-owned poles multiplied by the owner's ownership percentage in those poles.

(121) "Occupant" means any utility or licensee with an attachment to an owner's pole, duct, or conduit or right-of-way ~~or~~ that the owner~~is~~ has granted the utility or licensee the right to maintain~~make such an attachment~~.

(132) "Occupied space" means that portion of the pole, duct, or conduit used for attachment that is rendered unusable for any other attachment, which is presumed to be one foot on a pole and one half of a duct in a duct or conduit if no inner duct or only a single duct is installed.

(143) "Overlashing" means the tying of additional communications wires or cables to existing communications wires or cables attached to poles.

(154) "Owner" means the utility other than a commercial mobile radio service company that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments.

(16~~5~~) "Pole" means an above-ground structure on which an owner maintains attachments, which is presumed to be 37.5 feet in height. When the owner is an electrical company as defined in RCW 80.04.010, "pole" is limited to structures used to attach electric distribution lines.

(17~~6~~) "Requester" means a licensee or utility that applies to an owner to make attachments to or in the owner's facilities and that has an agreement with the owner establishing the rates, terms, and conditions for attachments to the owner's facilities.

(18~~7~~) "Unusable space" with respect to poles means the space on the pole below the usable space, including the amount required to set the depth of the pole. In the absence of measurements to the contrary, a pole is presumed to have 24 feet of unusable space.

(19~~8~~) "Usable space," with respect to poles, means the vertical space on a pole~~, including cross-arms and extensions,~~ above the minimum grade level that can be used for the attachment of wires, cables, and associated equipment, and that includes space occupied by the owner. In the absence of measurements to the contrary, a pole is presumed to have 13.5 feet of useable space. With respect to conduit, "usable space" means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and that includes capacity occupied by the owner.

(20~~19~~) "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.

480-54-030 Duty to provide access; make-ready work; timelines

(1) An owner shall provide other utilities or licensees with nondiscriminatory access for attachments to or in any pole, duct, ~~or~~ conduit or right-of-way the owner owns or controls, except that if the owner is an electrical company as defined in RCW 80.04.010, the owner is not obligated to provide access for attachment to its facilities by another electrical company. An owner may deny such access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles; provided that ~~in the case of poles,~~ the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole or otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment.

(2) All rates, terms, and conditions made, demanded, or received by any owner for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient and must be included in an attachment agreement with the licensee or utility. Parties may mutually agree on terms for attachment to or in poles, ducts, ~~or~~ conduits or rights-of-way that differ from those in this chapter. 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 those rates, terms, or conditions are fair, just, reasonable, and sufficient.

(3) Except for overlashing requests as described in subsection (11) below, a utility or licensee must submit a written application to an owner to request access to its facilities. ~~The owner may recover from the requester the reasonable costs the owner actually and reasonably incurs to process the application.~~ The owner may survey the facilities identified in the application and may recover from the requester the costs the owner actually and reasonably incurs to conduct ~~of~~ that survey ~~from the requester~~. The owner must complete any such survey and respond in writing to requests for access to the facilities identified in the application within 45 days from the date the owner receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner to identify and evaluate the facilities to or in which the requester seeks to attach.

(4) If the owner denies the request in an application for access, in whole or in part, the owner's written response to the application must include an explanation of the reasons for the denial for each pole, duct, or conduit to which the owner is denying access. Such a response must include all relevant information supporting the denial.

(5) To the extent that it grants the access requested in an application, the owner's written response must inform the requester of the results of the review of the application. Within 14 days of providing its written response, the owner must provide an estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate. Make-ready work costs are non-recurring costs that are not included in carrying charges and must be costs that the owner actually and reasonably incurs to provide the requester with access to the facility.

(a) The requester must accept or reject an estimate of charges to perform make-ready work within 30 days of receipt of the estimate. The owner may require the requester to pay all estimated charges to perform make-ready work as part of acceptance of the estimate or before the owner undertakes the make-ready work.

(b) An owner may withdraw an outstanding estimate of charges to perform make-ready work any time after 30 days from the date the owner provides the estimate to the requester if the requester has not accepted that estimate.

(6) For requests to attach to poles, the owner must determine the time period for completing the make-ready work and provide that information in a written notice to the requester and all known occupants with existing attachments on the poles that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants as necessary.

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

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

(ii) Set a date for completion of make-ready work that is no later than 60 days after the notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional 15 days.

(iii) State that any occupant with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that it caused to be out of compliance with applicable safety requirements ~~does not comply with these rules or the occupant's attachment agreement with the owner~~ must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.[21]

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

(v) State that if make-ready work is not completed by the completion date set by the owner (or 15 days later if the owner has asserted its right to 15 additional days), the requester, after giving reasonable notice to the owner, may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the specified make-ready work within the communications space. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

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

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice shall:

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

(ii) Set a date for completion of make-ready work that is no later than 90 days after notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional 15 days.

(iii) State that any occupant with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that it caused to be out of compliance with applicable safety requirements ~~does not comply with these rules or the occupant's attachment agreement with the owner~~ must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.[22]

[21] *See* n. 19, BCAW Comments.
[22] *See id*.

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

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

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

(a) The time periods apply to all requests for access to up to 100 poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(b) An owner shall negotiate in good faith the time periods for all requests for access to more than 100 poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(c) An owner may treat multiple requests from a single requester as one request when the requests are filed within the same 30 day period. The applicable time period for completing the optional survey or required make-ready work begins on the date of the last request the owner receives from the requester within the 30 day period.

(8) An owner may extend the time periods specified in this section under the following circumstances:

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

(b) During performance of make-ready work if the owner discovers unanticipated circumstances that reasonably require additional time to complete the work. Upon discovery of such circumstances, the owner must promptly notify, in writing, the requester and other affected occupants with existing attachments. The notice must include the reason for the extension and date by which the owner will complete the work. The owner may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake such work on a nondiscriminatory basis.

(9) If the owner determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periods established in this section, a requester seeking attachment in the communications space may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the survey. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(10) If the owner does not complete any required make-ready work within the time periods established in this section, a requester seeking attachment in the communications space may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the make-ready within the communications space:

(a) Immediately, if the owner has failed to assert its right to perform any necessary make-ready work by notifying the requester that the owner will undertake that work; or

(b) After the end of the applicable time period authorized in this section if the owner has asserted its right to perform make-ready work and has failed to timely complete that work.

If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(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) T~~, but t~~he occupant must provide the owner with 10 days prior written notice. The notice must identify no more than 30~~the~~ affected poles and describe the additional communications wires~~, or~~ cables, or other equipment to be overlashed so that ~~in sufficient detail to enable~~ the owner can~~to~~ 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, 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 safety violations it caused ~~of required separation of its existing attachments from other attachments or other requirements applicable to its existing attachments~~ before overlashing additional wires, cables, or equipment on those attachments.

(d) ~~Any such denial must be based on t~~The owner may refuse to permit the overlashing described in the notice only if, in the owner's reasonable judgment~~, that~~ the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The refusal~~denial~~ 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~~denial~~.

(e) A utility's or licensee's wires, 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.

480-54-040 Contractors for survey and make-ready.

(1) An owner shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work on its poles in cases where the owner has failed to meet deadlines specified in WAC 480-54-030.

(2) If a requester hires a contractor for purposes specified in WAC 480-54-030, the requester must choose a contractor included on the owner's list of authorized contractors. If the owner does not maintain such a list, the requester may choose a contractor without the owner's approval of that choice.

(3) A requester that hires a contractor for survey or make-ready work must provide the owner with prior written notice and a reasonable opportunity for an owner representative to accompany and consult with the ~~authorized~~ contractor and the requester.

(4) Subject to commission review in a complaint proceeding, the consulting representative of an owner may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole and on issues of safety, reliability, and generally applicable engineering principles.

480-54-050 Modification costs; notice; temporary stay.

(1) The costs of modifying a pole, duct, ~~or~~ conduit or right-of-way to create capacity for an additional attachment, including but not limited to replacement of a pole, shall be borne by the requester and all existing occupants and any owner that directly benefit from the modification. Each such occupant or owner shall share the cost of the modification in proportion to the amount of new or additional usable space the occupant or owner occupies on or in the facility. An occupant ~~utility or licensee~~ or owner with an ~~pre~~existing attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, that occupant or owner adds to its existing attachment or otherwise modifies its ~~that~~ attachment ~~to conform to its attachment agreement with the owner~~. An occupant or owner with an existing attachment shall not be deemed to directly benefit from replacement of a pole if the occupant or owner only transfers its ~~that same~~ attachment to the new pole.

(2) The costs of modifying a pole, duct, or conduit to bring an existing attachment into compliance with ~~these rules~~ the safety requirements ~~or~~ in an attachment agreement or to remedy any other safety violation ~~created by that attachment~~ shall be borne by the occupant or owner who ~~se attachment is non-compliant or~~ created the safety violation.

Such costs include, but are not necessarily limited to, the costs incurred by the owner or other occupants to modify the facility or conforming attachments. An occupant or owner ~~utility or licensee~~ with an ~~pre~~existing conforming attachment to a pole, duct, or conduit shall not be required to bear any of the costs ~~the owner incurs~~ to rearrange or replace its~~the occupant's~~ attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for another party's ~~additional~~ attachment or to accommodate modifications to the facility necessitated by another party ~~or another existing attachment made~~ to bring that party's attachment into conformance with ~~these rules or~~ the safety requirements in its ~~an~~ attachment agreement or to remedy any other safety violation created by that party~~attachment~~.

(3) An owner shall provide an occupant~~attaching utility or licensee~~ with written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the occupant~~utility or licensee~~ has attachments affected by such action. The owner must provide such notice as soon as practicable but no less than 60 days prior to taking the action described in the notice; p~~P~~rovided that the owner may provide notice less than 60 days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than 60 days in advance.

(4) A utility or licensee may file with the commission and serve on the owner a "Petition for Temporary Stay" of utility action contained in a notice received pursuant to subsection (3) of this section within 20 days of receipt of such notice. The petition must be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer irreparable harm in the absence of the relief requested that outweighs any harm to the owner and its customers and that the petitioner will likely be successful on the merits of its dispute. The owner may file and serve an answer to the petition within 7 days after the petition is filed unless the commission establishes a different deadline for an answer.

(5) An owner may file with the commission and serve on the occupant a petition for authority to remove the occupant's abandoned attachments. The petition must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must file an answer to the petition within 20 days after the petition is filed unless the commission establishes a different deadline for an answer. If the occupant does not file an answer or otherwise respond to the petition, the commission may authorize the owner to remove the attachments without further proceedings.

(1) A fair, just, reasonable, and sufficient rate for attachments to or in poles, ducts, ~~or~~ conduits, or rights-of-way shall assure the owner the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the owner attributable to that portion of the pole, duct, ~~or~~ conduit or right-of-way used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facilities, and uses which remain available to the owner.

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

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

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

(3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to ducts or conduits:

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

(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 or only a single inner duct is installed, the fraction, "1 Duct divided by the No. of Inner Ducts" is presumed to be 1 / 2.

480-54-070 Complaint

(1) 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 owner in connection with attachments to its facilities are not fair, just, and reasonable, or by an owner that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission will determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and fix the same by order entered within 360 days after the filing of the complaint. In determining and fixing the rates, terms, and conditions, the commission will consider

the interest of the customers of the licensee or utility, as well as the interest of the customers of the owner.

(2) A utility or licensee may file a formal complaint if:

(a) An owner has denied access to its poles, ducts, or conduits;

(b) An owner fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The utility or licensee disputes the rates, terms, or conditions in an attachment agreement, the owner's performance under the agreement, or the owner's obligations under the agreement or other applicable law.

(3) An owner may file a formal complaint if:

(a) Another utility or licensee is unlawfully making attachments to or in the owner's poles, ducts, or conduits;

(b) Another utility or licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The owner disputes the rates, terms, or conditions in an attachment agreement, the occupant's performance under the agreement, or the occupant's obligations under the agreement or other applicable law.

(4) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that the parties were aware of the dispute at the time they executed the agreement and such challenge is brought within six months from the agreement execution date. Nothing in this section precludes an owner or occupant from bringing any other complaint that is otherwise authorized under applicable law.

(5) A complaint authorized under this section must contain the following:

(a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the complaint and that the parties failed to resolve those issues despite those efforts. Such negotiations must include the exchange of reasonably relevant information necessary to resolve the dispute, including but not limited to the information required to calculate rates in compliance with WAC 480-54-060.

(b) Identification of all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law;

(c) Sufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and

(d) A copy of the attachment agreement, if any, between the parties.

(6) ~~Except as provided in WAC 480-54-030(2), a~~ A licensee or utility has the burden to prove its jurisdictional right to attach to or in the owner's poles, ducts, ~~or~~ conduits or rights-of-way; and, except as provided in WAC 480-54-030(2), a licensee or utility has the burden to prove that any rate, ~~attachment requirement~~rate, term, or condition an owner imposes or seeks to impose that the licensee or utility challenges ~~is not fair, just, and reasonable or otherwise~~ violates any provision of RCW Ch. 80.54, this Chapter, or other applicable law. ~~Except as provided in WAC 480-54-030(2),~~*An owner bears the burden to prove that the owner's denial of access to its facilities is lawful and reasonable; and, except as provided in WAC 480-54-030(2),* an owner bears the burden to prove that the attachment rates it charges or proposes to charge are fair, just, reasonable, and ~~in~~sufficient ~~or that the owner's denial of access to its facilities is lawful and reasonable~~.

(7) If the commission determines that the rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged during the time the owner was charging the rate after the effective date of this rule.

(8) If the commission determines that access to a pole, duct, ~~or~~ conduit or right-of-way has been unlawfully or unreasonably denied or delayed, the commission may order the owner to provide access to that facility within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.

EXHIBIT B

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

AUTHORITY: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352, 7651-7651o.

SOURCE: Order 218, 25 FR 5014, June 7, 1960, unless otherwise noted.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting part 101, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.*fdsys.gov*.

EFFECTIVE DATE NOTE: At 58 FR 18004-18006, Apr. 7, 1993, part 101 was amended by redesignating Definitions 30 through 38 as 31 through 39 and adding new Definition 30; adding paragraph 21 under the General Instructions; adding Accounts 158.1, 158.2. 182.3, and 254 under Balance Sheet Accounts; adding Accounts 407.3, 407.4, 411.8, and 411.9 under Income Accounts; and adding Account 509 under Operation and Maintenance Expense Accounts. The added text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

NOTE: Order 141, 12 FR 8503, Dec. 19, 1947, provides in part as follows:

Prescribing a system of accounts for public utilities and licensees under the Federal Power Act. The Federal Power Commission acting pursuant to authority granted by the Federal Power Act, particularly sections 301(a), 304(a), and 309, and paragraph (13) of section 3, section 4(b) thereof, and finding such action necessary and appropriate for carrying out the provisions of said act, hereby adopts the accompanying system of accounts entitled "Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act," and the rules and regulations contained therein; and *It is hereby ordered:*

(a) That said system of accounts and said rules and regulations contained therein be and the same are hereby prescribed and promulgated as the system of accounts and rules and regulations of the Commission to be kept and observed by public utilities subject to the jurisdiction of the Commission and by licensees holding licenses issued by the Commission, to the extent and in the manner set forth therein;

(b) That said system of accounts and rules and regulations therein contained shall, as to all public utilities now subject to the jurisdiction of the Commission and as to all present licensees, become effective on January 1, 1937, and as to public utilities and licensees which may hereafter become subject to the jurisdiction of the Commission, they shall become effective as of the date when such public utility becomes subject to the jurisdiction of the Commission or on the effective date of the license;

(c) That a copy of said system of accounts and rules and regulation contained therein be forthwith served upon each public utility subject to the jurisdiction of the Commission, and each licensee or permittee holding a license or permit from the Commission.

This system of accounts supersedes the system of accounts prescribed for licensees under the Federal Water Power Act; and Order No. 13, entered November 20, 1922, prescribing said system of accounts, was rescinded effective January 1, 1937.

Applicability of system of accounts. This system of accounts is applicable in principle to all licensees subject to the Commission's accounting requirements under the Federal Power Act, and to all public utilities subject to the provisions of the Federal Power Act. The Commission reserves the right, however, under the provisions of section 301(a) of the Federal Power Act to classify such licensees and public utilities and to prescribe a system of classification of accounts to be kept by and which will be convenient for and meet the requirements of each class.

This system of accounts is applicable to public utilities, as defined in this part, and to licensees engaged in the generation and sale of electric energy for ultimate distribution to the public.

This system of accounts shall also apply to agencies of the United States engaged in the generation and sale of electric energy for ultimate distribution to the public, so far as may be practicable, in accordance with applicable statutes.

In accordance with the requirements of section 3 of the Act (49 Stat. 839; 16 U.S.C. 796(13)), the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission", is published and promulgated as a part of the accounting rules and regulations of the Commission, and a copy thereof appears as part 103 of this chapter. Irrespective of any rules and regulations contained in this system of accounts, the cost of original projects licensed under the Act, and also the cost of additions thereto and betterments thereof, shall be determined under the rules and principles as defined and interpreted in said classification of the Interstate Commerce Commission so far as applicable.

CROSS REFERENCES: For application of uniform system of accounts to Class C and D public utilities and licensees, see part 104 of this chapter. For statements and reports, see part 141 of this chapter.

920 Administrative and general salaries.

A. This account shall include the compensation (salaries, bonuses, and other consideration for services, but not including directors' fees) of officers, executives, and other employees of the utility properly chargeable to utility operations and not chargeable directly to a particular operating function.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

921 Office supplies and expenses.

A. This account shall include office supplies and expenses incurred in connection with the general administration of the utility's operations which are assignable to specific administrative or general departments and are not specifically provided for in other accounts. This includes the expenses of the various administrative and general departments, the salaries and wages of which are includible in account 920.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

NOTE: Office expenses which are clearly applicable to any group of operating expenses other than the administrative and general group shall be included in the appropriate account in such group. Further, general expenses which apply to the utility as a whole rather than to a particular administrative function shall be included in account 930.2, Miscellaneous General Expenses.

ITEMS

1. Automobile service, including charges through clearing account.

2. Bank messenger and service charges.

3. Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax services, etc.

4. Building service expenses for customer accounts, sales, and administrative and general purposes.

5. Communication service expenses.

6. Cost of individual items of office equipment used by general departments which are of small value or short life.

7. Membership fees and dues in trade, technical, and professional associations paid by a utility for employees. (Company memberships are includible in account 930.2.)

8. Office supplies and expenses.

9. Payment of court costs, witness fees and other expenses of legal department.

10. Postage, printing and stationery.

11. Meals, traveling and incidental expenses.

922 Administrative expenses transferred—Credit.

This account shall be credited with administrative expenses recorded in accounts 920 and 921 which are transferred to construction costs or to nonutility accounts. (See electric plant instruction 4.)

923 Outside services employed.

A. This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operating function or to other accounts. It shall include also the pay and expenses

of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered as an employee of the utility.

B. This account shall be so maintained as to permit ready summarization according to the nature of service and the person furnishing the same.

ITEMS

1. Fees, pay and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc.

2. Supervision fees and expenses paid under contracts for general management services.

NOTE: Do not include inspection and brokerage fees and commissions chargeable to other accounts or fees and expenses in connection with security issues which are includible in the expenses of issuing securities.

924 Property insurance.

A. This account shall include the cost of insurance or reserve accruals to protect the utility against losses and damages to owned or leased property used in its utility operations. It shall include also the cost of labor and related supplies and expenses incurred in property insurance activities.

B. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

C. Records shall be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies shall be credited to the accounts to which the insurance premiums were charged.

ITEMS

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to account 228.1, Accumulated Provision for Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

NOTE A: The cost of insurance or reserve accruals capitalized shall be charged to construction either directly or by transfer to construction work orders from this account.

NOTE B: The cost of insurance or reserve accruals for the following classes of property shall be charged as indicated.

(1) Materials and supplies and stores equipment, to account 163, Stores Expense Undistributed (store expenses in the case of Nonmajor utilities), or appropriate materials account.

(2) For Major Utilities, transportation and other general equipment to appropriate clearing accounts that may be maintained. For Nonmajor utilities, transportation and garage equipment, to account 933, Transportation Expenses.

(3) Electric plant leased to others, to account 413, Expenses of Electric Plant Leased to Others.

(4) Nonutility property, to the appropriate nonutility income account.

(5) Merchandise and jobbing property, to Account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

NOTE C (MAJOR ONLY): The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in property insurance work may be included in accounts 920 and 921, as appropriate.

925 Injuries and damages.

A. This account shall include the cost of insurance or reserve accruals to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims. For Major utilities, it shall also include the cost of labor and related supplies and expenses incurred in injuries and damages activities.

B. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries and damages and insurance dividends or refunds shall be credited to this account.

ITEMS

1. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to account 228.2, Accumulated Provision for Injuries and Damages, for similar protection.

2. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

3. Fees and expenses of claim investigators.

4. Payment of awards to claimants for court costs and attorneys' services.

5. Medical and hospital service and expenses for employees as the result of occupational injuries, or resulting from claims of others.

6. Compensation payments under workmen's compensation laws.

7. Compensation paid while incapacitated as the result of occupational injuries. (See Note A.)

8. Cost of safety, accident prevention and similar educational activities.

NOTE A: Payments to or in behalf of employees for accident or death benefits, hospital expenses, medical supplies or for salaries while incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, shall be charged to account 926, Employee Pensions and Benefits. (See also Note B of account 926.)

NOTE B: The cost of injuries and damages or reserve accruals capitalized shall be charged to construction directly or by transfer to construction work orders from this account.

NOTE C: Exclude herefrom the time and expenses of employees (except those engaged in injuries and damages activities) spent in attendance at safety and accident prevention educational meetings, if occurring during the regular work period.

NOTE D: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in injuries and damages activities may be included in accounts 920 and 921, as appropriate.

926 Employee pensions and benefits.

A. This account shall include pensions paid to or on behalf of retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for this purpose, when the utility has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes, and payments for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses

incurred in medical, educational or recreational activities for the benefit of employees, and administrative expenses in connection with employee pensions and benefits.

B. The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

C. There shall be credited to this account the portion of pensions and benefits expenses which is applicable to nonutility operations or which is charged to construction unless such amounts are distributed directly to the accounts involved and are not included herein in the first instance.

D. For Major utilities, records in support of this account shall be so kept that the total pensions expense, the total benefits expense, the administrative expenses included herein, and the amounts of pensions and benefits expenses transferred to construction or other accounts will be readily available.

ITEMS

1. Payment of pensions under a nonaccrual or nonfunded basis.

2. Accruals for or payments to pension funds or to insurance companies for pension purposes.

3. Group and life insurance premiums (credit dividends received).

4. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

5. Payments for accident, sickness, hospital, and death benefits or insurance.

6. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, or in excess of statutory awards.

7. Expenses in connection with educational and recreational activities for the benefit of employees.

NOTE A: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in accounts 920 and 921, as appropriate.

NOTE B: Salaries paid to employees during periods of nonoccupational sickness may be charged to the appropriate labor account rather than to employee benefits.

927 Franchise requirements.

A. This account shall include payments to municipal or other governmental authorities, and the cost of materials, supplies and services furnished such authorities without reimbursement in compliance with franchise, ordinance, or similar requirements; provided, however, that the utility may charge to this account at regular tariff rates, instead of cost, utility service furnished without charge under provisions of franchises.

B. When no direct outlay is involved, concurrent credit for such charges shall be made to account 929, Duplicate Charges—Credit.

C. The account shall be maintained so as to readily reflect the amounts of cash outlays, utility service supplied without charge, and other items furnished without charge.

NOTE A: Franchise taxes shall not be charged to this account but to account 408.1, Taxes Other Than Income Taxes, Utility Operating Income.

NOTE B: Any amount paid as initial consideration for a franchise running for more than one year shall be charged to account 302, Franchises and Consents.

928 Regulatory commission expenses.

A. This account shall include all expenses (except pay of regular employees only incidentally engaged in such work) properly includible in utility operating expenses, incurred by the utility in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party, including payments made to a regulatory commission for fees assessed against the utility for pay and expenses of such commission, its officers, agents, and employees, and also including payments made to the United States for the administration of the Federal Power Act.

B. Amounts of regulatory commission expenses which by approval or direction of the Commission are to be spread over future periods shall be charged to account 186, Miscellaneous Deferred Debits, and amortized by charges to this account.

C. The utility shall be prepared to show the cost of each formal case.

ITEMS

1. Salaries, fees, retainers, and expenses of counsel, solicitors, attorneys, accountants, engineers, clerks, attendants, witnesses, and others engaged in the prosecution of, or defense against petitions or complaints presented to regulatory bodies, or in the valuation of property owned or used by the utility in connection with such cases.

2. Office supplies and expenses, payments to public service or other regulatory commissions, stationery and printing, traveling expenses, and other expenses incurred directly in connection with formal cases before regulatory commissions.

NOTE A: Exclude from this account and include in other appropriate operating expense accounts, expenses incurred in the improvement of service, additional inspection, or rendering reports, which are made necessary by the rules and regulations, or orders, of regulatory bodies.

NOTE B: Do not include in this account amounts includible in account 302, Franchises and Consents, account 181, Unamortized Debt Expense, or account 214, Capital Stock Expense.

929 Duplicate charges—Credit.

This account shall include concurrent credits for charges which may be made to operating expenses or to other accounts for the use of utility service from its own supply. Include, also, offsetting credits for any other charges made to operating expenses for which there is no direct money outlay.

930.1 General advertising expenses.

This account shall include the cost of labor, materials used, and expenses incurred in advertising and related activities, the cost of which by their content and purpose are not provided for elsewhere.

ITEMS

Labor:

1. Supervision.

2. Preparing advertising material for newspapers, periodicals, billboards, etc., and preparing or conducting motion pictures, radio and television programs.

3. Preparing booklets, bulletins, etc., used in direct mail advertising.

4. Preparing window and other displays.

5. Clerical and stenographic work.

6. Investigating and employing advertising agencies, selecting media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses:

7. Advertising in newspapers, periodicals, billboards, radio, etc.

8. Advertising matter such as posters, bulletins, booklets, and related items.

9. Fees and expenses of advertising agencies and commercial artists.

10. Postage and direct mail advertising.

11. Printing of booklets, dodgers, bulletins, etc.

12. Supplies and expenses in preparing advertising materials.

13. Office supplies and expenses.

NOTE A: Properly includible in this account is the cost of advertising activities on a local or national basis of a good will or institutional nature, which is primarily designed to improve the image of the utility or the industry, including advertisements which inform the public concerning matters affecting the company's operations, such as, the cost of providing service, the company's efforts to improve the quality of service, the company's efforts to improve and protect the environment, etc. Entries relating to advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of the advertising message shall be readily available.

NOTE B: Exclude from this account and include in account 426,4, Expenditures for Certain Civic, Political and Related Activities, expenses for advertising activities, which are designed to solicit public support or the support of public officials in matters of a political nature.

930.2 Miscellaneous general expenses.

This account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.

ITEMS

Labor:

1. Miscellaneous labor not elsewhere provided for.

Expenses:

2. Industry association dues for company memberships.

3. Contributions for conventions and meetings of the industry.

4. For Major utilities, research, development, and demonstration expenses not charged to other operation and maintenance expense accounts on a functional basis.

5. Communication service not chargeable to other accounts.

6. Trustee, registrar, and transfer agent fees and expenses.

7. Stockholders meeting expenses.

8. Dividend and other financial notices.

9. Printing and mailing dividend checks.

10. Directors' fees and expenses.

11. Publishing and distributing annual reports to stockholders.

12. Public notices of financial, operating and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property. For Nonmajor utilities, transportation and garage equipment, to account 933, Transportation Expenses.

931 Rents.

This account shall include rents properly includible in utility operating expenses for the property of others used, occupied, or operated in connection with the customer accounts, customer service and informational, sales, and general and administrative functions of the utility. (See operating expense instruction 3.)

935 Maintenance of general plant.

A. This account shall include the cost assignable to customer accounts, sales and administrative and general functions of labor, materials used and expenses incurred in the maintenance of property, the book cost of which is includible in account 390, Structures and Improvements, account 391, Office Furniture and Equipment, account 397, Communication Equipment, and account 398 Miscellaneous Equipment. For Nonmajor utilities, include also other general equipment accounts (not including transportation equipment). (See operating expense instruction 2.)

B. Maintenance expenses on office furniture and equipment used elsewhere than in general, commercial and sales offices shall be charged to the following accounts:

Steam Power Generation, Account 514.

Nuclear Power Generation, Account 532 (Major only).

Hydraulic Power Generation, Account 545.

Other Power Generation, Account 554.

Transmission, Account 573.

Distribution, Account 598.

Merchandise and Jobbing, Account 416.

Garages, Shops, etc., Appropriate clearing account, if used.

NOTE: Maintenance of plant included in other general equipment accounts shall be included herein unless charged to clearing