

**ATTACHMENT “B”**

**To**

**PSE’s April 17, 2015, Comments in Docket No U-140621**

**Docket U-140621**  
**April 17, 2015**

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

**REFLECTING**

PSE's SUGGESTED CHANGES TO THE MARCH 24, 2015, PROPOSED RULES  
THE "THIRD DRAFT RULES"

480-54-010 Purpose, 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, licensees, utilities 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 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) "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.

- (5) “Conduit” means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.
- (6) “Duct” means a single enclosed raceway for conductors, cable, or wire.
- (7) “Facility” ~~or “Facilities”~~ means ~~a one or more~~ poles, ducts, conduits, manholes or handholes, or similar structures on or in which attachments can be made. “Facilities” means one or more facility.
- (8) “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.
- (9) “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. A licensee is limited to providers of: telecommunications service, radio communications service as defined in RCW 80.04.010, cable television service and personal wireless services.
- (10) “Make-ready work” means engineering or construction activities necessary to make a pole, duct, conduit, 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.~~ The owner may agree to include the installation of additional support for the utility pole, or creation of additional capacity by means up to and including replacement of an existing pole with a taller pole in make-ready work on a case by case basis. The owner may include all costs of make-ready work, including, but not limited to, cost of working capital (providing the owner has agreed to replace an existing pole), liability insurance, engineering, overheads, permits, traffic control, materials, legal costs, taxes and supervision in the charges to the requester for make-ready work.
- (11) “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.
- (12) “Occupant” means any utility or licensee with an attachment to an owner’s pole, duct, or conduit that the owner has granted the utility or licensee the right to maintain through an attachment agreement.
- (13) “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.

- (14) “Overlashing” means the tying of additional communications wires or cables to existing communications wires or cables which are existing attachments to poles.
- (15) “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, attachment. The owner may contract with a third party to perform its obligations under WAC 480-54.
- (16) “Pole” means an above-ground structure on which an owner can allow maintains attachments through an attachment agreement, 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) “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 attachment agreement with the owner establishing the rates, terms, and conditions for attachments to the owner’s facilities.
- (18) “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) “Usable space,” with respect to poles, means the vertical space on a pole, 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) “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 requesters with nondiscriminatory access for attachments to or in any pole, duct, or conduit 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. Nondiscriminatory in the preceding and following sentences includes non-discrimination with other work the owner must do on the pole or work to provide new service or to maintain the owner’s system. 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 of~~ make-ready work to ~~increase the capacity of the pole to~~ accommodate an additional attachment. When the owner agrees to replace a pole in order to provide additional capacity or for reasons of safety or reliability such replacement shall be scheduled on a nondiscriminatory basis with all other work scheduled by the utility.

- (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 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. To the extent that a party has agreed to concessions to obtain an agreement, those concessions shall also be acted upon by the commission and the burden to prove that those concessions are not fair, just, reasonable, and sufficient are with the party advocating it made concessions.
- (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 actual~~ costs of and related to processing 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 that are necessary to conduct that survey. 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. If attachments are made prior to approval of the application or without submitting an application, that do not meet applicable rules or codes, or that differ from the attachments described on the application, the requester/occupant shall be responsible for all costs and damages related so such attachments, including but not limited to any loss of revenue, attachment removal costs and any legal costs incurred by the owner. If attachment are made without application or approval of the pole owner, or an attachment be made prior to approval of an application, the pole owner shall assume that the attachment has been in place for six (6) years and bill the occupant for that time period.
- (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 preliminary 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 reasonable~~ incurs in order 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 rejection of an estimate cancels 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) If an estimate is not accepted or rejected in accordance with subpart (a) above, ~~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 ~~or after 120 days the estimate shall expire 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. If the owner has agreed to replace a pole, the date set for completion shall be set on a nondiscriminatory basis with all other work scheduled by the owner, including other make-ready work. For good cause shown or mutual agreement, the owner may extend completion of the make-ready work ~~by an additional 15 days following notice to the requester.~~ The owner shall not be held responsible for violation of any rules (including, but not limited to, WAC 480-100-133 and 480-100-148) because of its responsibilities to complete make-ready work. Delays in other work caused by make-ready work shall be considered and excluded from any service quality or similar program ordered by the Commission.

(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 modification work. Any occupant with an existing attachment or unapproved attachment that does not comply with these rules, applicable codes, ordinances or laws for the occupant's attachment agreement with the owner must modify that attachment to bring it into compliance before the date set for completion of modification which is part of the make-ready work. The occupant or unapproved attachment owner shall be responsible for all costs incurred to

bring its attachment into compliance. Should an occupant fail to comply with the schedule for make-ready work, the schedule shall be extended by the same number of days the occupant fails to comply.

(iv) State that the owner may assert its right to ~~15~~ additional days to complete the make-ready work when such additional days are necessary in order to allow the make-ready work that includes pole replacement to be completed on a non-discriminatory basis, to obtain necessary materials or to allow the owner to respond to emergencies, storms or other natural disasters or outages. The owner shall inform the requester of the number of additional days needed as provided in WAC 480-100-108.

(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 or if the make-ready work includes pole replacement, 90 days later if the owner has asserted its right to 90 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, following notice to the owner.

(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. If the owner has agreed to replace a pole, the date set for completion shall be set on a nondiscriminatory basis with all other work scheduled by the owner, including other make-ready work. For good cause shown or mutual agreement, the owner may extend completion of the make-ready work by an additional 15 days following notice to the requester. The owner shall not be held responsible for violation of any rules (including, but not limited to, WAC 480-100-133 and 480-100-148) because of its responsibilities to complete make-ready work. Delays in other work caused by make-ready work shall be considered and excluded from any service quality or similar program ordered by the Commission.

(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 modification work. Any occupant with an existing attachment or unapproved attachment that does not comply with these rules, applicable codes,

ordinances or laws for the occupant's attachment agreement with the owner must modify that attachment to bring it into compliance before the date set for completion of modification which is part of the make-ready work. The occupant or unapproved attachment owner shall be responsible for all costs incurred to bring its attachment into compliance. Should an occupant fail to comply with the schedule for make-ready work, the schedule shall be extended by the same number of days the occupant fails to comply.

(iv) State that the owner may assert its right to ~~15~~-additional days to complete the make-ready work -when such additional days are necessary in order to allow the make-ready work that includes pole replacement to be completed on a non-discriminatory basis, to obtain necessary materials or to allow the owner to respond to emergencies, storms or other natural disasters or outages. The owner shall inform the requester of the number of additional days needed as provided in WAC 480-100-108.

(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 ~~multiple~~~~single~~ requesters as one request when the requests are filed within the same ~~930~~ day period or are extensions of the same project. If the combined requests represent requests to access more than 100 poles (b) above applies. 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 ~~930~~ 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 or occupant discovers unanticipated circumstances or the make-ready work includes pole replacement(s) 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. ~~However, the owner or occupant~~ may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake ~~make-readysuch~~ work on a nondiscriminatory basis.

(c) Time periods shall be extended by the number of days that the owner or occupant reasonably needs to respond to a natural disaster and by the time reasonably necessary so that all time periods are applied on a nondiscriminatory basis with all other work performed by the owner.

(d) Where the owner has agreed to a pole replacement, time periods shall be consistent with the time periods required for all other work performed by the owner and shall allow sufficient time to obtain materials.

(e) Time periods shall not start until the owner has received payment for all amounts due and the requester has complied with all requests to relocate or remove an attachment.

(f) In the event of repeated failure on the part of an attaching entity or licensee to abide by the terms of these rules or agreements negotiated with owners, an owner may file a complaint with the Commission and the failure to comply with these rules shall be prima facie evidence of failure to comply.

- (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 and immediately provide the owner of the contractor's name and contact information. The owner may review the survey and if necessary complete spot checks or a new survey if spot checks indicate the need for a new survey following notice to the requester and within 30 days. The costs incurred by the owner for review, spot checks or a new survey shall be reimbursed by the requester in accordance with the attachment agreement.
- (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 and immediately provide the owner of the contractor's name and contact information.

(c) If the requester hires a contractor to perform the survey or the make-ready work within the communication area, the requester shall be responsible for all costs of such survey or work including costs due to accidents and the owner's legal costs related to the contractors work or accident or injury to the contractor's employees or any member of the public. The requester is responsible to insure that the contractor does not work above the communications area and complies with all work rules, permits and standard practices.

(11) Except for existing slack spans or where the poles include electrical circuits energized at 34.5 kV or greater, An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent under the following circumstances:

(a) The occupant must provide the owner with 10 days prior written notice. The notice must identify no more than 30 affected poles and describe the additional communications wires, cables, or other equipment to be overlashed so that the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice must include, but not necessarily be limited to, the following information:

(i) The size, weight per foot, and number of wires, cables, conductors, or other equipment to be overlashed; and

(ii) Maps of the proposed overlash route and pole numbers, if available.

(b) An owner may treat multiple overlashing notices from a single occupant as one notice when the notices are filed within the same 10 day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the 10 day period.

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

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

been refused must follow the application process and timelines for attachments unless pole replacement is the cause of the refusal, then The parties must negotiate in good faith to resolve the issues raised in the owner's refusal.

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

(f) Should an occupant's actual overlashing differ from the overlashing described in the notice or not be in accordance with applicable rules and codes, the occupant shall be liable for all damages resulting from the overlashing, including, but not no limited to, repairs, loss of revenue and legal costs, and the owner may remove the overlashing at the occupant's expense. An owner cannot be found in violation of WAC 480-100-148 due to an overlashing.

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. The cost of developing such a list, training contractors and inspecting their work to insure that their work does not compromise the safety or reliability of the electric distribution system, shall be included in the cost of pole attachments in accordance with 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 and immediately provide the owner of the contractor's name and contact information. The requester shall be responsible for all costs of the contractor and if improvements to the pole are made, must compensate the owner for federal income taxes based on the fair market value of any improvements. The requester shall be responsible for all legal costs of the owner resulting from the performance or nonperformance of the work done by the contractor or accidents, up to and including deaths caused as a result of the contractor's actions or inactions.
- (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 contractor and the requester. The owner shall bill the requester for all costs related to an owner representative accompanying and consulting with the authorized contractor and requester in accordance with WAC 480-54-030.
- (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 to create capacity for additional attachment, including but not limited to replacement of a pole, shall be borne by the requester and all existing occupants that directly benefit from the modification. Each such occupant shall share the cost of the modification in proportion to the amount of new or additional usable space the occupant occupies on or in the facility. An occupant with an existing attachment to the modified facility shall be deemed to directly benefit from a modification if, within 30 days after receiving notification of such modification, that occupant adds to its existing attachment or otherwise modifies that attachment. An occupant with an existing attachment shall not be deemed to directly benefit from replacement of a pole if the occupant only transfers 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 applicable codes or regulations with these rules or an attachment agreement or to remedy a safety violation created by that attachment shall be borne by the occupant whose 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 who is not the requester, with an existing conforming attachment to a pole, duct, or conduit shall not be required to bear any of the costs to rearrange or replace the occupant's attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for an additional attachment or to accommodate modifications to the facility or another existing attachment made to bring that attachment into conformance with these rules or an attachment agreement or to remedy a safety violation created by that attachment.
- (3) An owner shall provide an occupant 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 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; provided 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. The occupant is obligated to remove or modify its attachment, as appropriate, based on the notice, within ten (10) days of the date of the action stated in the notice.
- (4) A utility or licensee may file with the commission and serve on the owner, the public and interested parties -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. This subsection does not apply when the pole owner is removing its poles, without

replacement, in which case the utility or licensee may negotiate with the owner to acquire the poles or install their own poles.

- (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. If an owner is authorized to remove attachments, it may do so without incurring any liability (including, but not limited, liability for damages and loss of revenue) to the occupant or any other party and may include all costs reasonably related to -removal in the rate for pole attachments as provided in the attachment agreement. If costs of liability self-insurance or liability insurance premiums increase due to attachments that have not been transferred, the pole owner may include such costs in the pole attachment rate in accordance with the attachment agreement.
- (6) An owner, upon replacing a pole that has attachments may require that the occupants remove or transfer their attachments to the new pole within 30 days. The owner, upon installation of a new pole may abandon the old pole, upon notice to the occupants and all costs and responsibilities related to the old pole will pass to the occupants. Should an occupant fail to remove or transfer their attachments to the new pole within 90 days and the owner has not notified the occupants it has abandoned the old pole, the attachment will be considered abandoned and the owner may either file with the commission for authority to remove the abandoned attachment in accordance with subsection (5) above, or refuse any future attachments to the occupant(s). If the occupant(s) refuse to pay the costs of removal all attachments of the occupant shall be classified as abandoned.
- (7) Each occupant shall make available and keep up-to-date a reasonable sufficient list of contractors it authorizes to perform work on it attachments which the owner can call upon if the occupant fails to remove or transfer attachments. If the occupant fails to maintain such a list the owner may choose any contractor to perform the work on such attachments.

480-54-060 Rates

- (1) A fair, just, reasonable, and sufficient rate for attachments to or in poles, ducts, or conduits 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 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:

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

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

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

$$\begin{aligned} \text{Maximum Rate per Linear ft./m.} &= \left[ \frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[ \text{No. of Ducts} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate} \\ &\quad \text{(Percentage of Conduit Capacity)} \qquad \qquad \qquad \text{(Net Linear Cost of a Conduit)} \end{aligned}$$

simplified as:

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

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 unless the duct cannot be used by the duct owner in which case it shall be presumed to be 1.

(4) All costs incurred by pole owners resulting from Chapter 480-54 WAC, including, but not limited to costs of applications, notices, tracking, accounting, information technology applications, legal costs, losses, and all other costs that are not paid by an occupant or requester shall be included the application fee or charges for make-ready work.

(5) Should an occupant overlash without submitting a notice, or overlash following denial of a notice by the pole owner, or install an attachment without the pole owner’s permission, the pole owner may recover all costs, including, but not limited to, review, pole replacement, legal costs and documentation. With an unauthorized attachment the presumption shall be that the attachment has been in place for 6 years and the pole owner may bill the authorized or unauthorized occupant for 6 years of attachment.

- (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, without a valid basis following receipt of a complete application, 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 licensee or utility has the burden to prove its right to attach to or in the owner's poles, ducts, or conduits and that any attachment requirement, term, or condition an owner imposes or seeks to impose that the licensee or utility challenges 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 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.

(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, after the effective date of this rule, that the owner was charging the rate ~~after the effective date of this rule~~ but not prior to the date of the complaint.

(8) If the commission determines that access to a pole, duct, or conduit 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.

#### 480-54-080 Implementation of Chapter 480-54

(1) Owners shall take the necessary actions to fully implement these rules within twenty-four months of the effective date of this rule.