

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**REPLY COMMENTS OF  
XO COMMUNICATIONS SERVICES LLC  
REGARDING THE COMMISSION'S THIRD DRAFT RULES**

XO Communications Services LLC ("XO") respectfully submits these Reply Comments pursuant to the Notice of Opportunity to File Written Comments issued by the Washington Utilities and Transportation Commission ("Commission") on March 24, 2015 in the above-referenced rulemaking.

**I. Introduction**

XO has submitted comments previously in this docket.<sup>1</sup> XO supports the Commission's continued efforts to adopt comprehensive attachment rules as reflected in the Third Draft Rules. XO also appreciates the Commission Summary of Comments/Responses on Revised Draft Rules, dated March 13, 2015, which sets forth in detail the reasoning underlying decisions to either accept or reject proposed modifications to the previous version of the draft rules.

XO supports the recommendations regarding the Third Draft Rules made in the comments filed on April 17, 2015, by The Broadband Communications Association of

---

<sup>1</sup> See "Comments of tw telecom of washington llc and XO Communications Services LLC," filed May 30, 2014; "Comments of tw telecom of washington llc and XO Communications Services LLC Regarding the Commission's Draft Rules Governing Access to Utility Poles, Ducts, Conduits and Rights-Of-Way," filed October 8, 2014; "Comments of XO Communications Services LLC Regarding the Commission's Revised Draft Rules," filed February 6, 2015; and "XO Communications Services LLC's Response to Comments Regarding Revised Draft Rules," filed February 27, 2015.

Washington (“BCAW”), Integra Telecom of Washington (“Integra”), PCIA –The Wireless Infrastructure Association and the HetNet Forum (“PCIA”), and AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (“AT&T”). XO also concurs in and supports the BCAW Comments filed contemporaneous herewith.

XO’s Reply Comments are, therefore, limited to one issue raised in the “Comments of Puget Sound Energy, Inc. On Third Draft Proposed Rules,” filed April 17, 2015 (“PSE Comments”) – an issue not expressly addressed in the BCAW comments, namely, PSE’s attempt to modify the formula for calculating fair, just and reasonable rates for attachments to ducts or conduits.

## II. Comments

### WAC 480-54-060(3) – Rate Formula for Ducts and Conduits

The PSE Comments recommend that the Commission amend draft rule WAC 480-54-060(3) to change the conduit usage presumption where there is no inner duct or only a single inner duct installed from  $\frac{1}{2}$  to 1.<sup>2</sup> The Commission should reject PSE’s proposed change to the rule for the reasons stated below.

At the outset, two important points must be taken into consideration. First, this draft rule is identical to the duct and conduit rate formula adopted by the Federal Communications Commission (“FCC”) and this Commission has made clear that it will consider as persuasive authority FCC orders promulgating and interpreting the rule.<sup>3</sup> Second, this draft rule is identical to the version included in the first draft rules issued on September 8, 2014. Nevertheless, PSE has proposed an amendment in comments filed April 17, 2015, over six months later. The Commission should not condone such tactics.

---

<sup>2</sup> PSE Comments at page 9, and Appendix B at page 14.

<sup>3</sup> See draft WAC 480-54-010(2).

In fact, the PSE Comments are not merely six months too late, but are instead 15 years too late. The same stale arguments regurgitated by PSE here were advanced by electric utility pole owners and expressly rejected by the FCC back in April 2000. In addressing and disposing of these arguments, the FCC stated:

93. We retain the rebuttable presumption adopted in *Multimedia Cablevision* that an attacher occupies one half of a duct, and no more. There we accepted the findings of the Massachusetts Department of Public Utilities that a cable system attachment occupies only one-half of a duct, does not preclude the use of the other half of the duct, and that, therefore, the cable system should not be charged for the use of the entire duct. The record supports the retention of this presumption.

94. Some electric utilities assert, however, that an electric supply cable cannot share a duct with a communications cable, and, therefore, from the electric utility point of view, the communications cable occupies the entire duct. Some of these utilities also point out that for certain electric supply cables, minimum spacing requirements do not permit a communications cable in an adjacent duct, and, therefore, from their point of view, the communications cable occupies the adjacent ducts as well. The situation is somewhat analogous to the safety space on a pole although it does involve a NESC prescribed exclusion zone around the electric supply cable. Electric utilities do not dispute that the capacity is usable, but argue that the full capacity of the duct is occupied by the communications cable because the electric utility is prevented from using that capacity by the NESC. Communications cables may, and often do, share a duct. The NESC requires that, where electric supply cables share a duct with communications cables, the cables be maintained by the utility. It cannot be said, therefore, that any given communications cable occupies a whole duct. If the electric supply cable excludes other cables from the duct it occupies, it is that electric supply cable that occupies the entire duct, not the communications cables it excludes. Similarly, if the electric supply cable cannot tolerate communications cables in adjacent ducts, then the electric utility's supply cable effectively occupies those adjacent ducts not the communications cable. Conversely, if the electric supply cable cannot be placed in a duct because the duct is partially occupied by a communications cable, the reason is that the duct contains less available capacity than the electric supply cable requires. The

capacity is available to other communications cables and is, therefore, not occupied.<sup>4</sup>

The Commission should follow the FCC's thoughtful reasoning and reject PSE's proposal for the same reasons here.

### III. Conclusion

For the foregoing reasons, XO recommends the Commission reject PSE's proposed amendment to draft WAC 480-54-060(3). XO further recommends that the Commission adopt the revisions to the Third Draft Rules recommended by BCAW, Integra, PCIA, and AT&T and reject the revisions proposed by PSE, Avista Corporation and Pacific Power & Light Company for the reasons stated in the BCAW comments filed concurrently. XO appreciates this opportunity to further comment in this proceeding.

Respectfully submitted this 1<sup>st</sup> day of May, 2015.

DAVIS WRIGHT TREMAINE LLP

By: /s/ Mark P. Trincherro  
MARK P. TRINCHERO, OSB #883221  
Email: [marktrincherro@dwt.com](mailto:marktrincherro@dwt.com)  
Telephone: 503-778-5318  
Facsimile: 503-778-5299

Attorneys for XO Communications Services LLC

---

<sup>4</sup> *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, ¶¶93-94 (2000).