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May 1, 2015

Mr. Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Rulemaking Relating to Attachments to Transmission Facilities, Docket No. U-140621

Dear Mr. King:

The Utilities Telecom Council hereby files the following letter to advise the Washington Commission in connection with the above-referenced proceeding that the Federal Communications Commission (“FCC”) does not require utilities to replace poles for an attaching entity that is willing to pay for the costs of replacing the pole. However, the draft rules that are currently being considered in the Washington Commission proceeding propose to require utilities to do precisely what the Federal Communications Commission has declined to do itself, as described more fully below.

This proposed rule would significantly expand pole attachment regulations. By requiring utilities to replace poles in order to expand capacity to accommodate pole attachments, it would contradict the Federal statutory authority under the Pole Attachment Act, which allows utilities to deny a request for pole attachments for reasons of “insufficient capacity” as well as other reasons.¹ This statutory provision was also the basis for a federal court decision which overturned an FCC decision that would have required utilities to expand capacity in order to accommodate pole attachments.² In fact, the FCC recently declined to adopt exactly the same rule that the Washington Commission is currently considering adopting.³ In that FCC decision, the Commission explained that such a requirement would be “out of scope” and that there is “no basis upon which to reconsider (or clarify) a utility's obligation to perform pole change-outs, and there is no record foundation for making the clarification sought by the Cable Providers.”⁴

The Utilities Telecom Council respectfully submits this information for the record in this proceeding. We believe that this information is relevant because the proposed rules state that “the Commission will consider Federal Communications Commission orders promulgating and interpreting its

¹ See 47 U.S.C. §224(f)(2).

² *Southern Co. v. FCC*, 293 F.3d 1338, 1346 (2002).

³ Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, *Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240 at ¶226 (2011), *aff'd sub nom. American Elec. Power Service Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *pet. for cert. filed*, 81 USLW 3673 (May 24, 2013).

⁴ *Id.*

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pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions of this chapter.”⁵ Therefore, consistent with FCC and federal court precedent, the Utilities Telecom Council respectfully requests that the Washington Commission reject the proposed rule that would require utilities to replace poles upon request by an attaching entity that offers to pay for the costs of the pole replacement.

Thank you for your help in this matter. If there are any questions concerning this matter, please let me know.

Respectfully,

A handwritten signature in cursive script that reads "Brett Kilbourne".

Brett Kilbourne

⁵ “Second Draft Rules Governing Access to Utility Poles, Ducts, Conduits and Rights of Way”, Washington Utilities and Transportation Commission, U-140621.