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Via Web Portal

Steven King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
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Re: Docket U-140621

Enclosed for filing are the Reply Comments to the Notice of Opportunity to Comment on Third Revised Draft Rules by AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively "AT&T") in the above mentioned docket.

Sincerely,

/s/ _____
Cynthia Manheim
General Attorney

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

REPLY COMMENTS OF AT&T

AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively “AT&T”) respectfully submit comments in response to the Washington Utilities and Transportation Commission (“WUTC”) Notice of Opportunity to Comment on Third Revised Draft Rules issued on March 24, 2015 (“Third Draft Rules”).

I. INTRODUCTION:

AT&T appreciates this additional opportunity to provide clarification and respond to the issues raised by various parties in response to the Commission’s Third Draft Rules governing access to poles, ducts, conduits and rights-of-way. The Commission is to be commended for its in-depth analysis of the issues and well-reasoned rules.

II. COMMENTS ON SPECIFIC RULES:

A. Definitions – WAC 480-54-020:

1. Carrying Charge:

To avoid future disputes and conflicts, AT&T supports Frontier’s suggested change to the definition of carrying charge.¹ Alternatively, the clarifying language in Staff’s Comments Matrix could be included in the Final Order as follows, “[i]ncluding’ is a term of

¹ Frontier Comments p. 4-5.

limitation, and interpreting this provision consistent with FCC rules will also limit the costs that are included to those listed.”²

2. Usable Space:

Integra suggests amending the definition of “Usable Space” by removing “vertical” and inserting a clarification that extension technology (e.g. boxing, cross arms, extension arms...) may be used.³ While AT&T agrees with Integra that the attacher should be able to use the same space-saving and cost-saving techniques utilized by pole owners, AT&T does not support the change to the definition of “Usable Space” as usable space is used in the calculation for determining the recurring pole attachment rate.⁴ If cross arms, for example, were used to determine the usable space on a pole, this would significantly increase the amount of usable space and reduce the recurring pole attachment rate.

Avista suggests revising this rule to deviate from the FCC’s presumed usable space allocation of 13.5 feet, so that the “safety space” between communication and electric facilities is treated as unusable space.⁵ This would have the effect of spreading the costs of the safety space among the pole owner and the attaching entity.⁶ This means that the attaching entity is paying a higher per foot rate to attach to the pole. AT&T objects to Avista’s revision as it is inconsistent with the FCC rules. The FCC rejected similar requests by electric utilities to remove the safety space from the 13.5 fee of usable space.⁷ The FCC found that the safety space “is usable and used by the electric utilities” because the “electric

² Comment Matrix (March 13, 2015), p. 2.

³ Integra Comments, Docket No. U-140621 (April 17, 2015), p.3-4

⁴ WAC 480-54-060(2)

⁵ Avista, p. 22-23

⁶ *Amendment of Rule and Policies Governing Pole Attachments*, CS Docket No. 97-98, FCC 00-116, *Report and Order*, (rel. April 3, 2000), para. 20.

⁷ *Id.*, para. 20-22.

supply cable precludes other attachments from occupying the safety space, which would otherwise be usable space.”⁸ The FCC has continued to include the safety space in usable space despite requests from the electric utilities to reconsider this decision.⁹

3. Owner:

AT&T objects to PSE’s suggestion to delete “other than commercial mobile radio service company” from the definition of owner.¹⁰ While PSE suggests this deletion, it does not provide any rationale. As explained previously by AT&T the phrase that PSE suggests deleting is needed to clarify that a commercial mobile radio service provider cannot be considered an owner.¹¹ T-Mobile further explained that the Commission by rules cannot expand the scope of RCW 80.54 to include commercial mobile radio towers.¹²

4. Pole:

AT&T objects to PSE’s suggestion to delete “maintains” and instead insert “can allow” attachments.¹³ While AT&T does not object to substituting another word for “maintains”, “can allow” arguably gives the pole owner broad discretion to determine who can attach to its poles. Staff already rejected substituting “may accommodate” for “maintains” as being too restrictive.

Avista argues that the pole attachment rules should only apply to distribution and not transmission facilities due to safety and reliability concerns. Avista alleges that the safety

⁸ Id., para. 22.

⁹ See *Amendment of Commission’s Rules and Policies Governing Pole Attachments, Implementation of Section 703(e) of the Telecommunications Act of 1996*, FCC 01-170, *Consolidated Partial Order on Reconsideration* (rel. May 25, 2001) (“*Consolidated Order*”).

¹⁰ PSE, p. 10.

¹¹ Comments of AT&T, Docket U-140621 (February 6, 2015), p. 2-3.

¹² T-Mobile West LLC’s Comments on Revised Draft Rules, Docket U-140621 (February 6, 2015), p. 2-3.

¹³ PSE, p. 10

risks for communications workers are compounded when voltages are increased.¹⁴ As AT&T explained in its comments, the increased safety risk of working near higher voltage lines has already been mitigated by industry established safety standards.¹⁵ Avista also alleges that transmission pole replacements cannot meet the make-ready timelines because outage coordination is a complex process.¹⁶ AT&T does not oppose allowing parties to negotiate reasonable timelines for the replacement of transmission poles that also carry distribution lines.

As AT&T has previously noted, the FCC pole attachment rules apply to poles that carry electric transmission and distribution lines.¹⁷ This means that in at least thirty states for which the FCC regulates, the pole attachment rules apply to poles that carry transmission and distribution lines. In addition, Oregon's pole attachment rules also apply to poles that carry transmission and distribution lines.¹⁸ To encourage the further deployment of broadband in Washington, the Commission should enact rules that mirror the FCC in this area.

B. Duty to Provide Access; Make-Ready Work; Timelines

1. 480-54-030(1):

It appears that the electric companies' main concern regarding pole replacements is the timeline in which to complete make-ready work. Avista asserts that the make-ready deadlines should only be modified to include 300 poles if the requirement to replace poles on demand is eliminated.¹⁹ Pacific Power states that "even at a threshold of 100 poles, owners

¹⁴ Avista Comments, Docket No. U-140621 (April 17, 2015), p. 3-4.

¹⁵ AT&T Comments, Docket No. U-140621 (April 17, 2015), p. 2-3.

¹⁶ Avista, p. 3-4.

¹⁷ AT&T Responses to Second Written Comments, Docket No. U-140621 (February 27, 2015), p. 6-7.

¹⁸ Oregon Order No. 07-137, p.7 (April 10, 2007)

¹⁹ Avista, p.7-8

need longer periods of time than included in the draft rules for any required pole replacements.”²⁰ AT&T agrees with PCIA that if the concern about pole replacement is the make-ready timelines, the Commission should allow parties to negotiate longer timeframes if a significant number of poles require replacement.²¹

PSE states a number of concerns regarding make-ready, many of which were previously addressed. First, PSE argues that make-ready work should not be given a preference, but instead should be scheduled in the normal course of business of the pole owner.²² It is not clear whether PSE means all make-ready work or only new pole replacement. As stated above, if the concern is that a project is going to require a large number of pole replacements, the timelines for completion of replacement can be negotiated among the parties. Other make-ready work, however, should be completed on the FCC schedule as adopted by the Commission.

Second, PSE argues that the increase in the number of pole replacements will require increased working capital, the cost of which should be paid by the occupant(s).²³ AT&T does not agree with PSE’s assertion that including pole replacements in make-ready work will increase working capital requirements. Indeed, the current Draft Rules provide in WAC 480-54-030(5)(a) that, “the owner may require the requester to pay all estimated charges to perform make-ready work...before the owner undertakes the make-ready work.” Arguably, there is no need for additional working capital under such circumstances because the requester is providing the necessary capital.

²⁰ Pacific Power, p. 2-3

²¹ PCIA Comments on Third Revised Draft Rules to Implement RCW Ch. 80.54, Docket No. U-140621 (April 17, 2015), p. 3.

²² PSE, p. 8.

²³ Id.

2. 480-54-030(2)

AT&T objects to PSE's suggestion that a complaint over an agreement has the effect of voiding the agreement.²⁴

Avista suggests adding a new sentence to WAC 480-54-030(2) that states, "Licensees and utilities must also comply with applicable safety codes and the owner's construction, engineering and design standards."²⁵ AT&T also places an emphasis on the safety of its workers and facilities and, as a pole owner in other states, includes in its agreements a requirement that the attacher complies with applicable safety codes and industry standards referenced in the agreement. AT&T, however, suggests adding "reasonable" in front of "owner's" to ensure that an owner's construction, engineering and design standards do not in effect deny lawful access to poles.

III. POLE OWNERS ARE FULLY COMPENSATED FOR ATTACHMENTS

As AT&T has stated in previous comments, the pole owner is able to recover all appropriate costs in connection with attachments to its poles, ducts or conduits through application fees, make-ready charges or recurring attachment rates calculated consistent with the FCC rules.²⁶ As noted by Integra, the FCC has recognized that the attachment rate and the make-ready fees together do not subsidize third-party pole attachers because these rates recover more than the costs caused by attachers.²⁷

AT&T firmly believes that pole attachment charges should not result in a subsidy – either from attachers to pole owners or from pole owners to attachers. The FCC has

²⁴ PSE, p. 11-12

²⁵ Avista, p. 8-9

²⁶ Comments of AT&T, Docket U-140621 (April 17, 2015), p. 4.

²⁷ Integra Comments, Docket No. U-140621 (April 17, 2015), p.6.

addressed this issue, and concluded that its approach, which includes reimbursement of make-ready charges and recurring pole attachment rate, does not result in a subsidy:

Specifically, the FCC has stated,

Under economic and legal principles, a given service is not subsidized by other services if the rate for the service produces revenues that cover all of the costs caused by the service...The given service (e.g., access to poles) does not subsidize other services (e.g., electric service) if its rates produce revenues that cover the incremental costs of providing the service.²⁸

Avista includes a number of theoretical costs that it may incur as a result of having communication or cable companies attach to its poles.²⁹ AT&T believes most, if not all, of these costs are already included in the annual recurring pole attachment rates. For example, the need to add new poles because Avista cannot reclaim space on the pole that is being used by a communication company³⁰ and Avista's decision to install taller and stouter poles³¹ represent investments in FERC account 364 – Poles, Towers and Fixtures whose costs are recovered in the calculation to determine the recurring pole rental rate. Further, items such as removing abandoned attachments and attacher-related field inspections may be recovered through the maintenance element of the annual carrying charge to the extent these expenses are legitimately charged to FERC Account 593 – Maintenance of Overhead Lines or to Administrative and General expense accounts.

Pacific Power also provides a list of costs that it states “have not been explicitly considered for direct cost recovery in the Draft rules.”³² Pacific Power states that the

²⁸ *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, FCC 11-50, (rel. April 7, 2011), para. 184.

²⁹ Avista, p.23-26

³⁰ Avista, p. 23-24

³¹ Avista, p. 24-25

³² Pacific Power, p. 4.

Company's costs for administering pole attachments and performing joint use related inspections are not included in the costs to calculate the rental rate. AT&T does not understand the basis for this statement. As discussed above, these costs should be recovered under the carrying charge's administrative and/or maintenance elements.

PSE argues that the requirements imposed by the Third Draft Rules will reduce the economic benefit to electric ratepayers from the existing pole attachment program.³³ This may be the case, but only because PSE has been charging exorbitant rates for wireless attachments. Although PSE states in its comments that it "charges all attaching entities according to the FCC Cable Rate formula",³⁴ this has not been AT&T's experience for wireless attachments.

As AT&T discussed in its April 17, 2014 comments, pole owners are able to recover all appropriate costs in connection with attachments to its poles through application fees, make-ready charges, and the recurring pole attachment rates calculated consistent with the FCC rules. Although there have been challenges to the FCC's rates, the U.S. Supreme Court has determined that the FCC's cable rate formula provides pole owners with adequate compensation and thus does not result in an unconstitutional taking.³⁵ PSE has included a laundry list of items that it claims the Draft rules do not specifically provide for recovery of the cost from the cost causer³⁶ and implies that this means PSE is not being "sufficiently" compensated. AT&T will not attempt to answer every PSE claim, but instead notes a few general items. First, to the extent that PSE has costs that are allegedly not covered, these

³³ PSE, p. 1.

³⁴ PSE, Attachment A, p. 2.

³⁵ AT&T Comments (April 17, 2015), p. 4.

³⁶ PSE, Attachment A, p. 3-6.

items can be negotiated through the pole attachment agreements that are required by the proposed regulations. The types of unrecovered nonrecurring costs may vary by pole owner and do not need to be addressed or standardized in this docket where the main focus should be on recurring pole attachment rates. Second, the FCC's recurring pole attachment rental rate formula already includes expenses unrelated to pole attachments in some accounts.

Specifically, the FCC has stated:

Our inclusion of unrelated expenses in certain accounts and our exclusion of possible minor expenses in other accounts provides a balanced overall allocation of costs while avoiding a prolonged and contentious ratemaking process.³⁷

Further, Frontier states that it does not charge a separate application fee because it recovers the expenses associated with processing such requests through the administrative cost component of the carrying charge utilized when calculating Frontier's pole attachment rates.³⁸ AT&T does not understand why Frontier can recover such costs, yet the electric companies allege they cannot recover expenses for pole attachments.

IV. DELAYED IMPLEMENTATION:

It appears that some parties are doing whatever they can to delay the implementation of these rules. For example, PSE is now requesting another proposed draft of the rules be released with another round of written comments.³⁹ There have been three revisions of draft rules already released by Staff and numerous rounds of comments. Earlier in this proceeding, PSE only submitted minimal comments.⁴⁰ Another round of comments is not

³⁷ *Consolidated Order*, para. 64.

³⁸ Frontier Comment to Third Draft, Docket No. U-140621 (April 17, 2015), p. 3.

³⁹ PSE, p. 21

⁴⁰ PSE May 30, 2014 comments (4 pages); October 8, 2014 (4 pages)

needed “to allow pole owners [to] achieve such fairness and balance.”⁴¹ There have been ample rounds of comments to ensure that the rules are fair and balanced.

PSE also suggests adding a new rule (480-54-080) that would delay the implementation of these rules for twenty-four months from the effective date. This is unfounded and should be seen for what it is, a further delay tactic. PSE on the one hand states that it has “accommodated all attachment requests in the past in a timely manner”⁴² but then argues that these rules create such a significant change such that a 24-month delay is required. It is certainly telling PSE after numerous rounds of comments is only now bringing up the need for such a long implementation period.

V. CONCLUSION:

AT&T appreciates the Commission’s considerable effort and careful consideration of proposals to establish fair and reasonable pole attachment rules to encourage continued deployment of wireless infrastructure in the state and urges adoption of rules without further delay.

Submitted this 1st day of May, 2015

/s/

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⁴¹ PSE Comments, p. 21.

⁴² PSE Comments, p. 21