

**U-140621 Pole Attachment Rules
Summary of Comments/Responses on Third Revised Draft Rules
May 27, 2015**

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
010	Purposes and Interpretation				ILECs: application is overly broad by including PUDs, municipalities, and cooperatives			Revise draft rule to clarify that the applicable entities are as defined in this Chapter.
020(1)	Definitions -- Attachments	Continue to exclude rights-of-way for reasons previously stated	Continue to exclude rights-of-way as burden on easements and not legally required		BCAW: Include rights-of-way			Revise draft to include rights-of-way as the statute requires but clarify rights-of-way do not include easements where owner does not have right to provide access to third parties.
020(2)	Definitions – Carrying Charge				ILECs: Limit to identified charges	AT&T: Limit to identified charges		Reject proposed change as unnecessary in light of interpretation of formulas in these rules consistent with FCC.
020(7)	Definitions – Facility/ Facilities	Delete “one or more” as confusing and misleading						Revise draft rule as proposed.
020(9)	Definitions – Licensee	Limit to telcos, CMRS, and cable	Limit to cable and telecom companies					Reject limitation to cable and telecom companies as more restrictive than the statute requires.

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020(10)	Definitions – Make-ready work	Remove pole replacement and give owner the option to replace; Allow owner to coordinate make-ready with other work on the pole; specify costs owner can recover	Do not include pole replacement	Do not include pole replacement	BCAW: Continue to require pole replacement			Continue to include pole replacement in make-ready but revise section 030(8) to allow for longer time period to complete pole replacement in circumstances beyond owner control. Reject other proposed changes as unnecessary or inconsistent with FCC cost recovery methodology.
020(10)	Definitions – Net cost of a bare pole	Agrees with ILEC and AT&T proposal			ILECs: Follow FCC approach when net pole cost is negative	AT&T: Follow FCC approach when net pole cost is negative		Revise draft rule to follow FCC approach.
020(12)	Definitions – Occupant	Include requirement that utility or licensee has entered into attachment agreement						Reject proposed change as unnecessary.
020(13)	Definitions – Occupied space				CenturyLink: delete limitation to situation where no or single innerduct is installed as unnecessary			Revise draft rule to accept proposed change.
020(14)	Definitions – Overlashing	Clarify						Reject proposed revision as redundant.

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020(15)	Definitions – Owner	No justification to exclude CMRS providers				Exclusion of CMRS facilities consistent with scope of RCW 80.54, federal preemption of state regulation of CMRS, and need to provide access only to monopoly utility facilities.		Revise rule to delete express exclusion of CMRS providers as more consistent with RCW 80.54 to the extent that such providers are included within the statutory definition of “utility.”
020(16)	Definitions – Pole	Eliminate implication owner is responsible to maintain attachments and that every pole has attachments; limit to poles with only distribution lines consistent with safety requirements	Limit to poles that <i>only</i> have distribution lines with a voltage rating at or below 34.5 kV		BCAW: reject PSE proposal as potentially allowing owner to pre-judge access decisions; reject Avista proposal as inconsistent with FCC rules	AT&T: reject PSE proposal as giving owner too much discretion; reject Avista proposal as inconsistent with FCC and Oregon and unnecessary under applicable safety codes		Reject proposed changes. The existing language is not reasonably susceptible to the interpretation that owners are responsible for occupants’ attachments. Including poles that carry both transmission and distribution lines is consistent with FCC rules and RCW 80.54. If requested attachments to such poles present legitimate safety risks, the owner should address that issue under section 030(1).
020(17)	Definitions – Requester		Retain as is to ensure sufficient terms and conditions for requests and attachment				Integra: delete requirement for attachment agreement prior to requesting access	Reject proposed change. Because an attachment agreement will include more terms and conditions than these rules, a requester should have such an agreement before the owner is required to process an application.

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020(19)	Definitions – Usable space	Disagrees with Integra proposal	Exclude separation space between electric and comm. lines; Disagrees with Integra proposal as an attempt to lower rates for attachments			AT&T: disagrees with Avista proposal as inconsistent with FCC methodology; agree with concept Integra raises but including here would improperly reduce attachment rate	Integra: Include cross arms to same extent owner uses them	Reject Avista proposal to exclude separation space as inconsistent with FCC methodology and treatment of separation space between other attachments. Reject Integra revision in favor of revising section 030(1) to incorporate this concept consistent with FCC orders. Usable space presumption would still apply to attachments using extension techniques.
030(1)	Duty to provide access; make-ready work; timelines	Substitute “requesters” for “utilities and licensees”; Pole replacement at owner option and scheduled on nondiscriminatory basis with other work; include rejection for lack of capacity consistent with federal law	Exclude pole replacement from make-ready work; time for pole replacement exceeds the make-ready timelines when consider permitting and other requirements		Utilities Telecom Council: requiring pole replacement contradicts federal law and exceeds FCC requirements; ILECs: disagrees with Avista that rule requires owner to replace pole for wireless convenience	Continue to require pole replacement but allow parties to negotiate longer timeframes; PCIA: requesters have priority under statutory right to attach		Revise draft to use “requester” rather than “utilities and licensees,” and to require use of space-saving attachment techniques to extent owner uses or allows same in communications space, but reject other proposed changes. New subsection (8)(b) allows for extended times to complete pole replacement, which is only included in make-ready to increase the capacity of the pole for additional attachments, not to make the pole taller to enhance wireless service area coverage as Avista fears. Requiring pole replacement is not inconsistent with state law, and the proposed rules depart from other FCC requirements in several instances where it makes sense to do so.

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030(2)	[Rates, terms, and conditions to be fair, just, reasonable, and sufficient]	Any challenge voids agreement to the extent that the owner made concessions to reach agreement; agrees with Avista proposed addition	Require inclusion of applicable safety and construction codes in attachment agreement terms and conditions		BCAW: Opposed to PSE proposal as undermining good faith negotiations	Challenge should not void agreement; AT&T: Avista proposal acceptable if include reasonableness		Reject proposed changes. The impact of modifying the challenged provisions in an agreement should be determined as part of the adjudication. A rule requirement is not necessary for owners to include applicable safety and construction codes in attachment agreement.
030(3)	[Application requirements]	Delete reasonableness restriction and specify remedies for unauthorized or nonconforming attachments	No double recovery with application fee because Avista does not recover these costs in FERC accounts used in FCC formula and even if it did, Avista would reduce the amount in the FERC accounts that it charged separately as an application fee		CenturyLink: clarify application fee cannot include costs included in carrying charge; require estimate of survey costs prior to charging; BCAW: Oppose PSE proposals as giving owners rights to impose unreasonable or improper charges and to predetermine fault and damages without proof or remedy; only charges related to application should be pre-construction surveys and inspections and make-ready engineering and performance	Verify no double recovery of costs included in both application fee and carrying charge	Integra: delete cost recovery language as unnecessary	Continue to include cost recovery language but revise draft rule to clarify no double recovery of costs incurred to process application, to specify applicable costs to be recovered separately, and to require estimate of survey costs. Reject proposal to remove reasonableness as unreasonable and proposal to specify remedies as beyond Commission authority, better addressed in section 070, or inappropriate.

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030(5)	[Contents of response to application]	Add “preliminary” to estimate; delete reasonableness restriction; allow for expiration of estimate			CenturyLink: require requester to pay for preparation of make-ready cost estimate even if rejected			Revise draft rule to allow for expiration of estimate, and reject other proposed changes. “Preliminary” is misleading when there is no “final” estimate, but clarify that estimate subject to true-up. Owners are only entitled to recover costs reasonably incurred.
030(6)(a)(ii) & (b)(ii)	[Deadline to complete make-ready work]	Owner can extend make-ready completion period without limitation; Owner absolved from compliance with these rules and service quality requirements because of make-ready obligations						Reject proposed changes. Extension of time period for pole replacement addressed in subsection (8). Timelines are the same as FCC rules, and PSE provides no support for departure from those timelines or any need to be exempt from service quality requirements to comply.
030(6)(a)(iii) & (b)(iii)	[Allowing existing occupants to modify attachments]	Also require compliance with applicable codes; extend make-ready deadline for existing occupant’s failure to comply			BCAW: limit and clarify occupant must have caused noncompliance with safety requirements; Oppose PSE proposal as seeking an end-run around timelines			Revise draft to include compliance only with safety requirements but reject other proposed changes. Proposed causation language would generate more disputes than it would resolve. Subsection (8)(c) addresses extension of make-ready deadlines, which would include these circumstances.

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030(6)(a) (iv) & (b)(iv)	[Owners right to additional time to complete make-ready work]	Remove 15 day limit on extension of time to complete make-ready when necessary for specified reasons and owner informs requester of number of additional days needed			BCAW: Oppose PSE proposal as seeking an end-run around timelines by pre-determining reasons for justified delays			Reject proposed changes. Subsection (8)(b) now addresses extension of deadlines for pole replacement, which is the basis of PSE's proposals.
030(7)	[Application of time periods]	Owner may treat requests from multiple requesters that owner receives within 90 days or requests that are extension of same project as one request; lower number of poles to less than 100 and allow negotiation of timelines for substantial number of replacements	No increase in number of poles included within a single request if pole replacement included in make-ready work.	No increase in number of poles included within a single request if pole replacement included in make-ready work; need more time for pole replacement	BCAW: Oppose PSE proposal as seeking an end-run around timelines by pre-determining reasons for justified delays	PCIA: increase number of poles to 300 with negotiation for longer when substantial number of pole replacements required	Integra: increase number of poles to 300 without changing intervals for pole replacement	Reject PSE proposed changes as inconsistent with FCC timelines and unnecessary because extensions for pole replacement now included in subsection (8)(b). With that revision to subsection (8)(b), revised draft rule to increase pole number to 300, as provided in FCC rules.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
030(8)	[Extending time periods for completing make-ready work]	Allow extension if make-ready work includes pole replacement; specify day-for-day extension for natural disasters; allow owner to balance with other work and need to obtain materials; time period starts when owner receives payment and requester complies with all other requirements; owner may file complaint if repeated noncompliance			BCAW: Oppose PSE proposals as seeking an end-run around timelines by pre-determining reasons for justified delays and granting owner right to predetermine fault and damages without proof or remedy			Revise draft to allow extension of deadlines if circumstances beyond owner control cause delay in pole replacement and to balance all demands for work required on poles, but reject other proposed changes. Subsection (5)(a) already allows owner to require prepayment of make-ready cost estimates, and draft WAC 480-54-070 addresses complaints. Staff proposes revision to delete the existing text in subsection (a) as unnecessary because requester is defined to require attachment agreement.
030(9)	[Using contractor to conduct survey]	Provide contact info for contractor to owner; Authorize owner to review and conduct spot checks or new survey at requester's expense			BCAW: Oppose PSE cost recovery proposal as giving owner rights to impose improper charges			Reject proposed changes. Notification of contractor identity and contact information now required in WAC 480-54-040. Owner inspection of contractor work should be part of make-ready work, which the rules do not attempt to itemize. Such an issue should be addressed in the attachment agreement.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
030(10)	[Using contractor to do make-ready work]	Clarify that requester is responsible for all costs related to use of contractor and for ensuring that contractor complies with applicable requirements; agrees with Avista proposal	Clarify that contractors may only work in comm. space		BCAW: Oppose PSE cost recovery proposal as giving owner rights to impose improper charges			Reject proposed changes. Stating that requesters are responsible for contractor costs is unnecessary because requesters already are responsible for the costs of make-ready work. Supervision of contractor work and liability issues should be addressed in attachment agreement. The clarification Avista requests is already included elsewhere in this subsection and thus is redundant and unnecessary.

480-54-030(11)	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
	Overlashing	Exclude slack spans and poles with transmission lines; allow refusal if notice is incomplete or lacks sufficient information; If refused, requester must go through application process and timelines; impose liability for noncompliant overlashing; owner not in violation of WAC 480-100-148 because of overlashing; timeline for owner review too short; do not delete “but not necessarily limited to” because no evidence of abuse; agrees with Avista comments; agree that number of notices should be limited to five but total poles should be fewer than 100	Require occupants to file attachment application for overlashing; continue to require safety violations to be remedied prior to overlashing without requiring determination of who caused the violation	Limit number of poles identified for overlashing in a 10 day period to 100 and number of notices to no more than five in that period	ILECs: Limit to wires and cables; CenturyLink: language added to prior draft rules unnecessary; if limit number of poles, should be at least 100; delete subsection (b) as unnecessarily extending time to review; BCAW: delete “but not necessarily limited to”; clarify only safety violations caused by occupant overlashing must be corrected; Oppose PSE proposals as granting owners right to impose improper charges and predetermine fault and damages without proof or remedy; willing to limit to total of 100 poles in a 30 day period but no limit on notices; willing to reimburse owner for actual and reasonable costs incurred			Revise draft to adopt Pacific Power proposal and provide additional time to review larger number of poles; require complete notice to start timeline; limit overlashing to wires and cables; allow cost recovery for inspection of facilities and preparation of any written response; and accept BCAW proposed revisions. Reject all other proposed changes. Overlashing must comply with all safety requirements, and there is no basis for categorically excluding poles with slack spans or transmission lines. Requiring requester to go through application process is not necessary and to do so after a refusal is wasteful and provides improper incentive for owner to refuse all overlashing notices. Noncompliance with overlashing and all other rule requirements should be addressed through the compliant process or attachment agreement negotiations. The rule does not implicate WAC 480-100-148. Other language added to prior draft appropriate reflects prior accepted comments and associated revisions.

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040	Contractors for survey and make-ready	Requester must identify and provide contract info for contractor; requester responsible for all costs owner incurs with respect to contractors, including federal taxes on FMV of improvements, legal costs, compiling list of approved contractors, inspecting contractor work, and consulting with contractor and requester	Clarify that contractors may only work in the comm. space		BCAW: Oppose PSE cost recovery proposals as giving owner rights to impose improper charges			Revise draft to require notification of contractor identity and contact information and to clarify in subsection (1) that contractors only may work in the communications space, but reject all other proposed changes. Cost recovery for make-ready work is addressed in section 030, and PSE's proposal for cost recovery is overbroad, beyond the Commission's authority to grant, and inconsistent with FCC rules. The additional clarification Avista requests in subsection (3) is unnecessary. Staff proposes to make owner maintenance of a contractor list a suggestion rather than requirement consistent with providing the requester the option of using its own contractor if the owner does not maintain such a list.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
050	Modification costs; notice; temporary stay	Specify time period within which benefit must accrue; substitute “applicable codes or regulations” for “these rules”; clarify responsible occupant is not the requester; require conformance within 10 days; provide public notice of petition for temporary stay; subsection (4) inapplicable to pole removal without replacement; no liability to owner if authorized to remove attachments	Safety is of paramount importance and correcting violations should not be hampered because of disputes over causation – occupant with out of compliance attachment should bear cost of correction and thereafter prove causation		BCAW: include the owner among those who must share modification costs if they benefit; specify rules and attachment provisions to which compliance obligation applies; clarify causation language	AT&T: specify compliance modification required in subsection (2) is to non-compliant attachment		Revise draft rule to accept proposed time limit for benefit and BCAW and AT&T proposals and comparable PSE proposal with some modification, and reject other proposed changes. Any time limit on benefit or removal of attachments after notice should not be established in the rule but should be included in an attachment agreement or determined through negotiation and adjudication, if necessary. Public notice of petition for temporary stay is not necessary. Subsection (4) does and should apply to pole removal without replacement. Liability for owner removal of attachments should be addressed in attachment agreement or in Commission order authorizing owner removal.
050 (PSE 6)	[Transfer of attachments]	Owner may require occupants to move attachments to new pole within 30 days; attachments not transferred within 90 days considered abandoned						Reject proposed changes. Terms and conditions for transferring attachments to new poles should be addressed in attachment agreements.

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050 (Avista 6)			Add section to provide default remedies available to owners for violations					Reject proposed changes. Such remedies should be negotiated in attachment agreements or determined in an adjudication.
050 (PSE 7)	Owner work on attachments	Occupants required to maintain list of authorized contractors owner can use to remove attachments if occupant fails to do so, otherwise owner can choose a contractor to do that work						Reject proposed change. Specifics of removing abandoned attachments should be negotiated in attachment agreement or included in Commission order authorizing owner to undertake the removal.
060	Rates	Revise presumption of space used in duct to one for cases where owner cannot share duct	Reject CenturyLink proposed revision as allowing some owners to eat their cake and have it too		CenturyLink: allow owner to calculate rate based on gross cost of bare pole if net cost is negative due to depreciation, etc., as FCC permits			Reject PSE proposed revision as inconsistent with FCC rate formula. Section 020(11) revised to permit use of gross cost of bare pole to extent authorized by the FCC.
060(3)	[Conduit rate formula]	Revise presumption to reflect that electric facilities and comm. facilities cannot be within same duct/conduit					XO: Disagrees with PSE proposal as inconsistent with FCC formula	Reject proposed change. The FCC considered and rejected the same arguments, and the Commission should adhere to the FCC's determination on this issue.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
060 (PSE 4)	[Additional costs]	Include all costs owner incurs resulting from these rules			Frontier: Recovers all costs it incurs as an owner through FCC methodology and so can other owners	This and other PSE cost recovery proposals unnecessary because owners recover all costs through FCC methodologies		Reject proposed change. Cost recovery is addressed throughout these rules, and the rate formulas in this section are not a catch-all for costs that may or may not have been included.
480-54-060 (PSE 5)	[Cost recovery for unauthorized overloading]	Owner may recover all costs incurred due to unauthorized overloading with presumption the overloading has been in place for six years						Reject proposed change. Remedies for violations of overloading or other requirements should be addressed in attachment agreements or the complaint procedures in section 070.
070	Complaint	Tie to WAC 480-07-370 Pleadings; limit complaints against owner for denial of access to cases where owner had no valid basis following receipt of completed application; limit rate relief to time after rules in effect and the date the complaint was filed	Continue to require awareness of issue to ensure negotiations take place; BCAW proposal to revise burden of proof too limiting and should be rejected		BCAW: further clarify burden of proof	Do not require that parties were aware of dispute when agreement executed; PCIA: require resolution of dispute within six months; delete burden of proof allocation as unnecessary		Revise draft rule to cross-reference procedural rules; clarify burden of proof allocation; add procedural requirements to enable entry of an initial order within six months; and clarify sign and sue language to require that parties attempted to negotiate disputed term or that party challenging term was reasonably unaware of the other party's interpretation when agreement executed. Reject other proposed changes. Proposed limitation on owner's denial of access is too limited, and any limitation on when a revised rate is effective should be left for determination in the commission order.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Google/CLECs	Staff Recommendation
080	Implementation (PSE)	Delay effect date of rules for 24 months after adoption to give owners time to comply.				Further delay in implementing rules unwarranted		Reject proposed rule. The rules the Commission has proposed are largely consistent with FCC requirements, which in most cases have been in place for several years. PSE has not demonstrated that the work it alleges it must undertake to comply with the rules will be necessary or will be as extensive as PSE contends.