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April 25, 1997

Mr. Steve McLellan
Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

VIA OVERNIGHT MAIL

Re: In Re Petition For Rulemaking by TCI Cablevision of Washington, Inc. to
Adopt Rules, Regulations and Procedures Regarding Attachments to
Transmission Facilities

Dear Mr. McLellan:

Enclosed please find an original and 19 copies of a Petition For Rulemaking filed by TCI Cablevision of Washington, Inc. (TCI), petitioning this Commission to adopt rules, regulations, and procedures regarding attachments to transmission facilities. Please indicate on the copy enclosed your receipt of this petition, along with its docket number, and return it in the enclosed self-addressed, stamped envelope. Thank you for your consideration in this matter.

Best regards,

ATER WYNNE HEWITT DODSON & SKERRITT, LLP



Judith A. Endejan

JAE:ekm
Enclosures

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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Petition for Rulemaking)	
by TCI Cablevision of Washington,)	Docket No.
Inc. to Adopt Rules, Regulations)	
and Procedures Regarding Attachments)	Petition For Rulemaking
to Transmission Facilities)	
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TCI Cablevision of Washington, Inc., (hereinafter "TCI"), pursuant to RCW 34.05.330 and WAC 480-09-220, hereby petitions the Washington Utilities and Transportation Commission (hereinafter "Commission") to adopt rules, regulations, and procedures which implement RCW Chapter 80.50, Attachments To Transmission Facilities, with respect to establishing a specific ratemaking methodology for the determination of just and reasonable attachment rates. The text of the proposed new rule is set forth in Exhibit A. This rule will be included as a new rule within Chapter 480-120 WAC.

REASONS SUPPORTING PETITION

1. In 1978 Congress enacted the Pole Attachment Act, 47 USC § 224, which gave the Federal Communications Commission (hereinafter "FCC") the authority to regulate rates and terms of cable television pole attachments wherever states failed to impose such regulations themselves. The principle congressional purpose in enacting the Pole Attachment Act was to protect cable television companies from anti-competitive practices by utilities who would charge excessive pole attachment rates. Texas Utilities Electrical Company vs. FCC, 997 F. 2d 925 (CADC 1993). As a result of the Pole Attachment Act, the FCC established a specific ratemaking methodology for determining "just and reasonable" attachment rates,

ORIGINAL

1 which satisfies the statutory criteria of 47 USC § 224(d)(1). The current pole attachment
2 rate methodology is set forth at 2 FCC Rcd at 4402-03, Appendix A.¹

3
4 2. Under 47 USC § 224(c)(3)(A) states were authorized to regulate rates, terms
5 and conditions for pole attachments upon certification to the FCC that the states would
6 regulate pole rates and would issue and make effective rules and regulations implementing
7 the states' regulatory authority over pole attachments, including a specific methodology for
8 pole attachment rates.

9
10 3. Section 703 of the Telecommunications Act of 1996 expanded the scope of Section
11 224 to apply the pole attachment rate methodology to telecommunications carriers, in
12 addition to cable systems. See, new Section 47 USC § 224(d)(3). The FCC was directed by
13 Section 703 to prescribe regulations and rules to govern pole attachment charges for
14 telecommunications carriers by 1998. This FCC rulemaking has not yet been instituted.

15
16 4. The Washington State Legislature adopted Chapter 80.54 "Attachments to
17 Transmission Facilities" in 1979, shortly after the Pole Attachment Act of 1978. The
18 statutory criteria for "just and reasonable" rates contained in RCW 80.54.040 corresponds
19 with similar language contained in the Pole Attachment Act at 47 USC § 224(d)(1).
20 Furthermore, RCW 80.54.060 requires the Commission to "adopt rules, regulations and
21 procedures relative to the implementation of this chapter," just as Congress directed the FCC

22
23 ¹ On March 14, 1997, the FCC issued a Notice of Proposed Rule Making (NPRM) in CS Docket No. 97-
24 98 to consider amending the current pole attachment ratemaking methodology to address several issues raised by
25 a petition filed by Southwestern Bell Telephone Company and a whitepaper filed by a number of electric
26 utilities. The NPRM does not seek major modifications to the FCC's existing methodology but represents an
effort to adjust the methodology to deal with discrete issues such as the potential for negative net pole
investment due to the inclusion of the cost of pole removal in the depreciation account. While this methodology
may be further refined as a result of the FCC's recent NPRM in Docket No. 97-98, this Commission need not
wait for the completion of the federal rulemaking before instituting its own necessary state-specific rulemaking.

1 to prescribe regulations to carry out the provisions of Section 224. See, 47 USC §
2 224(b)(2). The State of Washington certified to the FCC that it would regulate pole
3 attachment rates and that it had issued and made effective rules and regulations implementing
4 its regulatory authority over pole attachments including a specific methodology for such
5 regulation. See, Public Notice (DA-92-201), February 21, 1992. The certification required
6 by the FCC requires a state to certify that it has adopted rules and regulations "including a
7 specific methodology" for pole attachment regulation or it will be rebuttably presumed that
8 the state is not regulating pole attachments. 47 CFR § 1.1414(a). However, the
9 Commission has never adopted any rules, regulations, or procedures as stated in the
10 certification provided to the FCC. Thus, this rulemaking is long overdue, as it is required
11 by Washington and federal law.
12
13

14 5. This Commission should adopt the pole attachment ratemaking methodology for
15 determining just and reasonable pole attachment rates as established by the FCC for several
16 reasons. The criteria for establishing just and reasonable rates contained in RCW 80.54.040
17 tracks with the language contained in the Pole Attachment Act, 47 USC § 224(d)(1). Just as
18 the Washington legislature patterned Ch. 80.54 after the Pole Attachment Act, this
19 Commission should look to the FCC for similar guidance. In addition, the pole attachment
20 ratemaking methodology was established by the FCC in 1979 and refined thereafter after
21 receipt of thorough, detailed comments by interested parties in several rulemakings. This
22 methodology has successfully withstood both administrative and judicial challenges.
23

24 Furthermore, the FCC methodology is a specific ratemaking methodology which
25 relies on public information for rate development, allowing for routine, consistent rate
26

1 development without creating cumbersome administrative processes. Use of the federal
2 methodology would necessitate a minimum of staff, paperwork and procedures, consistent
3 with fair and effective regulation. It would remove the need for special accounting measures
4 because most costs and expense items attributable to utility pole plant are well established
5 and publicly reported to various federal regulatory agencies. Prudent public policy suggests
6 that this Commission conserve its resources and promote regulatory consistency by adopting
7 the FCC's current pole attachment ratemaking methodology which has been determined and
8 tested at the federal level. Other states, such as Michigan, have adopted the FCC's
9 methodology for all attachments (video and telecommunications) in order to promote
10 competition. 1995 Act 216, MCL 44.2361(3).

13 6. Adoption of the rule attached to this Petition is necessary. First, this rule satisfies
14 the legislative mandate set forth in RCW 80.54.060 and the federal requirement in 47 CFR §
15 1.1414(a). Second, without a Commission-established methodology for determining just and
16 reasonable attachment rates, TCI and other new entrants to the telecommunications market
17 place may be subject to the assessment of excessive pole attachment rates by utilities.
18 Affected attaching companies need a consistent, administratively easy methodology to
19 determine if the pole attachment rates charged are just and reasonable. If they are not, filing
20 a complaint with this Commission may be appropriate. In turn, the Commission needs to
21 establish a consistent, uniform methodology against which to test attachment rates, which are
22 the subject of complaint. Therefore, the Commission needs to establish a procedure and
23 methodology for handling such complaints. Finally, a formula for determining just and
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25
26

1 reasonable rates is necessary to ensure the uniformity called for by RCW 80.54.070, which
2 requires that attachment rates be uniform for all licensees within a utility's service area.

3
4 ASSESSMENT OF ECONOMIC VALUES

5 The procompetition policies of this state, and those at the federal level (as
6 demonstrated by the Telecommunications Act of 1996), mandate that the charges assessed by
7 incumbent utilities be just and reasonable. Charging excessive rates for attachments to
8 essential facilities violates these procompetitive policies. Incumbent utilities should be
9 limited to charges for attachments which are just and reasonable, not excessive. In order to
10 promote competition and protect against the negative economic impact which excessive
11 attachment rates would produce, it is critical for this Commission to ensure that precise
12 criteria for determining just and reasonable rates be set forth.

13
14 For purposes of complying with WAC 480-09-220(2), the economic values which
15 would be affected by the proposed rule are fundamental to the assurance of a fair competitive
16 environment in Washington state. These necessary rules will promote the establishment of
17 just and reasonable pole attachment rates, thereby ensuring that incumbent utilities do not
18 overcharge for rates instrumental to the establishment of a fully competitive
19 telecommunications environment in Washington.

20
21 Respectfully submitted this 28th day of April, 1997.

22 ATER WYNNE HEWITT DODSON & SKERRITT, LLP

23 By: Judith A. Endejan

24 Judith A. Endejan

25 WSBA# 11016

26 Attorney for Petitioner, TCI Cablevision of Washington, Inc.

**EXHIBIT A
PROPOSED RULE
ATTACHMENT TO TRANSMISSION FACILITIES**

1. This Rule is intended to implement RCW Chapter 80.54 relating to attachments to transmission facilities.
2. The generally applicable formula for calculating the maximum attachment rate consists of three components:

i	ii	iii
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$$\text{Maximum Rate} = \frac{\text{Space Occupied by the Attachment}}{\text{Total Usable Space}} \times (\text{Net Cost of Bare Pole}) \times (\text{Carrying Charges})$$

- a) For component i the space occupied by an attachment is one foot of usable space per pole. The total usable space is 13.5 feet, which may be rebutted with clear and convincing evidence of a different measurement.
- b) For component ii, the net cost of a base pole shall be determined as follows:

$$\text{Net Cost of a Bare Pole} = \frac{\text{"Factor"} \times \text{Net Pole Investment}}{\text{Number of Poles}}$$

Utilities shall use a "factor" of 0.85 for electric utilities and 0.95 for telephone utilities.

- c) For component iii, carrying charges for telephone utilities shall be calculated as follows:

$$\text{Total Carrying Charge Expense} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

$$\text{Administrative Expense} = \frac{\text{Total Administrative and General (Accounts 6710+6720+6411 Rental Expense Poles)}}{\text{Gross Plant investment - Accum. Depreciation, Account 3100 - Accum. Deferred Taxes, Plant}}$$

$$\text{Maintenance Expense} = \frac{\text{Account 6411 - Rental Expense Poles}}{\text{Net Pole Investment}}$$

$$\text{Depreciation Expense for Gross Pole} = \text{Depreciation Rate} \times \frac{\text{Gross Pole Investment}}{\text{Net Pole Investment}}$$

$$\text{Tax Carrying Charge Expense} = \frac{\text{Operating Taxes, Account 7200}}{\text{Gross Plant investment - Accum. Depreciation, Account 3100- Accum. Deferred Taxes, Plant}}$$

$$\text{Return Carrying Charge Expense} = \text{Applicable Rate of Return set by the Washington Utilities and Transportation Commission}$$

$$\text{Gross Plant Investment} = \text{Account 2001}$$

$$\text{Gross Pole Investment} = \text{Account 2411}$$

$$\text{Net Pole} = \text{Account 2411 - Accum. Depreciation, Pole - Accum. Deferred Income Taxes, Poles}$$

d) For component ..., carrying charges for electric utilities shall be calculated as follows:

Total Carrying Charge Expense = Administrative + Maintenance + Depreciation + Taxes + Return

Administrative Expense = $\frac{\text{Total Administrative and General Expenses}}{\text{Gross Plant Investment - Depreciation Reserve - Accumulated Deferred (Electric Plant)***} \quad \text{(Electric Plant)} \quad \text{Income Taxes (Electric Plant)*}}$

Maintenance Expense = $\frac{\text{A/C 593 Investment in A/Cs 364 + 365 + 369} \quad \text{- Depreciation in A/Cs 364 + 365 + 369} \quad \text{- Accumulated Deferred Income Taxes Related to A/Cs 364 + 365 + 369*}}$

Depreciation Expense = $\text{Depreciation Rate For Gross Pole} \times \frac{\text{Gross Pole Investment}}{\text{Net Pole Investment*}}$

Normalized Taxes (Expressed As A Percentage of Net Plant Investment) = $\frac{\text{A/C (408.1 + 409.1 + 410.1 + 411.4) - 411.1}}{\text{Gross Plant - Depreciation Reserve - Deferred Income Taxes*}}$

Rate of Return = Applicable Rate of Return set forth by the Washington Utilities and Transportation Commission
= Annual Carrying Cost

* In the calculations using FERC Form No. 1 data, treat deferred taxes as a rate base deduction.

** For purposes of these calculations Net Pole Investment equals Gross Pole Investment minus the Depreciation Reserve Related to Poles minus Accumulated Deferred Incomes taxes Related to Poles.

*** For companies which have multiple operations, such as gas, electric and/or nuclear power, calculate the administrative expenses component, utilizing only the investment relating to electric operations. However, in the computation of the taxes component, the total gross plant investment of all of the company's operations is utilized. The taxes paid by the utility generally relate to its entire operations.

3. The utilities assessing rates shall derive cost and expense components from information reported to federal regulatory agencies on a state specific basis. Such cost and expense data shall be derived from the following sources:

TELECOMMUNICATIONS

FCC ARMIS REPORT

Accounts (Updated to Part 32)

Administrative & general expense

Account 6710, Executive and planning

Account 6720, General and administrative

Maintenance expense

Account 6411, Poles expense, exclusive of rents

Taxes

Account 7210, Operating investment tax credits - net

Account 7220, Operating Federal income taxes

Account 7230, Operating and local income taxes

Account 7240, Operating other taxes

Account 7250, Provision for deferred income taxes - net

Overall Rate of Return (Last Rate Case)

Rate Case

Number of Poles

Report 4308
(Table S1)

ENERGY
FERC Form No. 1

Electric Form 1

Gross Investment in Total Plant in Service	Page 200
Accumulated Prov. for Deprec.	Page 200
Accumulated Deferred Taxes Acct. 282, 190	Page 275
Gross Investment in 364	Page 207
Gross Investment in 365	Page 207
Gross Investment in 369	Page 207
Administrative Expense 920-931	Page 323
Administrative Expense 935	Page 323
Pole Maintenance Expense 593	Page 322
Depreciation Rate for Poles	Utility or WUTC records
Taxes 408.1	Page 114
Taxes 409.1 Federal	Page 114
Taxes 409.1 Other	Page 114
Taxes 410.1	Page 114
Taxes 411.1 Cr.	Page 114
Taxes 411.4	Page 114
(Account 7200, Operating taxes summarizes accounts)	
Overall Rate of Return (Last Rate Case)	Rate Case
Number of Poles	Utility CPR

4. Upon request, parties who attach to the transmission facilities covered by RCW Chapter 80.544 and this rule must be provided with all information, which a utility relies upon in determining its pole attachment rates, and all information necessary to calculate pole attachment rates pursuant to the methodology established by this Rule. The attaching party may request such information from the utility assessing pole attachment rates prior to institution of a complaint pursuant to sub (5) of this Rule.
5. Parties who attach to the transmission facilities covered by RCW Chapter 80.544 and this rule may bring a complaint pursuant to RCW 80.04.110 for any failure by a utility to charge a transmission facility attachment rate, term, or condition that is not just and reasonable.