

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

IN THE MATTER OF:  
RULEMAKING TO CONSIDER ADOPTION  
OF RULES TO IMPLEMENT RCW CH.  
80.54, RELATING TO ATTACHMENTS TO  
TRANSMISSION FACILITIES

DOCKET NO. UT-140621

INITIAL COMMENTS OF  
CENTURYLINK

1 CenturyLink hereby files its initial comments in this docket in which the Commission has opened a rulemaking to consider the adoption of rules to implement Chapter 80.54 RCW, relating to attachments to transmission facilities.<sup>1</sup>

**BACKGROUND**

2 On April 22, 2014, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to consider adoption of rules to implement Chapter 80.54 RCW, relating to attachments to transmission facilities.

3 Federal law requires the Federal Communications Commission (FCC) to regulate certain communications attachments made to utility poles, unless a state certifies that it regulates

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<sup>1</sup> Within the electric industry, there is a distinct difference between “transmission” and “distribution” facilities, with the former being much larger, and the latter being the everyday power or telephone pole. See, for example <https://www.dom.com/about/electric-transmission/comparison-of-transmission-and-distribution-lines.jsp>. CenturyLink is aware that the title of Chapter 80.54 RCW is “Attachments to Transmission Facilities”, but assumes and would like to clarify that “transmission” as used in this context actually addresses attachments to distribution facilities, and that the term “transmission” is being used in the more commonly understood way to mean facilities that support lines that carry electric power or telephone service, as opposed to the more technical definition which would limit the discussion to the large, high voltage facilities that transmit power between the generating facility and a substation.

such attachments.<sup>2</sup> The Washington legislature elected to assert jurisdiction over attachments to transmission facilities by enacting RCW ch. 80.54. The statute authorizes the Commission “to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities,”<sup>3</sup> and requires the Commission to adopt implementing rules, regulations, and procedures.<sup>4</sup>

4 PCIA – The Wireless Infrastructure Association (PCIA) filed a petition for rulemaking on January 6, 2014. In its rulemaking petition PCIA proposed that the Commission adopt the most recent set of FCC rules regulating pole attachments as they apply to wireless attachments (47 C.F.R. § 1.1401 through 1.1424). On February 25, 2014, the Commission entered Order 01 in Docket UT-140024, denying the petition of PCIA, but separately concluded that it would initiate its own, more comprehensive rulemaking proceeding.

5 In addition to rules that exist at the FCC, several states have adopted their own sets of rules. The Public Utility Commission of Utah has adopted rules. Utah Code Ann. § 54-4-13; Utah Admin. Code R746-345. The Public Utility Commission of Oregon (OPUC) has adopted rules governing pole and conduit attachments (OAR 860-028-0000 through 03100). The Commission has stated that it proposes to use the FCC and OPUC rules as the starting point for developing its own rules to govern attachments to transmission facilities in Washington.

### **HISTORY OF POLE ATTACHMENT RULES IN WASHINGTON**

6 The Commission first considered pole attachment rules in Docket No UT-970723, a petition by TCI Cablevision of Washington filed in 1997. Though the Commission had

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<sup>2</sup> 47 U.S.C. § 224(c).

<sup>3</sup> RCW 80.54.020.

<sup>4</sup> RCW 80.54.060.

determined to move forward and consider adoption of rules at that time, TCI (which by then had been acquired by AT&T) later filed to defer activity in that docket, pending activity at the FCC. The Commission granted the request and closed the docket on November 10, 1999, advising parties that another petition could be filed when they believed that the issues could productively be addressed at the state level.

- 7 Research and recollection indicate that no petition was filed until the PCIA petition in January of this year, though the Commission did address pole attachment rates in some of the early arbitrations under the Telecom Act, and in the subsequent generic cost proceedings.

#### **COMMENTS ON THE NEED FOR RULES**

- 8 CenturyLink does not believe it is necessary to adopt rules beyond the provisions that are set forth in the RCW. The existing statute, RCW 80.54, provides a sufficient set of ground rules for pole attachments in the state. The relationships of pole owners and pole attachers have been successfully governed up to this point by private agreements in accordance with existing state law, or by the terms and conditions of negotiated or arbitrated interconnection agreements governed pursuant to the terms of the federal Telecommunications Act of 1996.
- 9 Evidence that rules are not necessary is apparent from the simple fact that parties have been successful in reaching agreements without more comprehensive rules, and that parties have not brought disputes to the Commission for resolution. In short, if there are no disputes requiring resolution, the Commission should question whether additional rules are necessary, or if they would only serve to complicate what appears largely to be a working process in the State.

10 As noted above, the most recent docket considering this issue was opened 17 years ago and closed 15 years ago. Parties have successfully navigated pole attachment issues without the need for a set of rules during that time. Nevertheless, CenturyLink recognizes that some parties in this docket will advocate for the adoption of rules, and that the Commission itself may wish to adopt rules. If the Commission does consider adopting rules, CenturyLink has the following comments.

### **THE RULES SHOULD NOT SUPPLANT PRIVATE AGREEMENTS**

11 If the Commission does adopt rules governing the regulation of rates, terms and conditions of attachment, CenturyLink recommends that those rules should clearly state that they apply only in situations in which parties are unable to reach private, voluntarily-negotiated agreements. As noted above, CenturyLink's history with pole attachments is that the relationships are governed by privately negotiated agreements, (or, in many cases, agreements that are arbitrated by the Commission under the Telecommunications Act of 1996, but which generally contain agreed-upon terms and conditions for pole attachments). The Commission's rules should preserve the ability of parties to negotiate suitable, voluntary arrangements, and should not arbitrarily favor one party over another, which would clearly create an incentive for parties to refuse to negotiate and default to the rules.

12 Existing agreements should be preserved for the duration of the agreements, and if willing parties negotiate terms and conditions different from the presumptions contained in the rules, those agreements should be respected and not affected by the rules.

### **THE RULES, IF ADOPTED, SHOULD MIRROR THE FCC RULES**

13 One factor that is important for all parties is that there be a degree of regulatory certainty, consistency, and predictability under any new rules. If the Commission does decide to

adopt rules, CenturyLink believes that adopting the FCC rules would be the best course of action to ensure consistency of regulation across multiple jurisdictions, as well as to provide some certainty and predictability as to results if disputes arise.

- 14 The FCC has a long history of interpreting and applying its rules, which could provide valuable guidance to the Commission and parties under new Washington rules. In addition, it is easier for companies that operate in multiple jurisdictions, such as CenturyLink, to be governed by a consistent set of rules rather than a patchwork of different regulations on the same topic.
- 15 The FCC's Rules, found at 47 C.F.R. §1.1401 *et seq.*, are far more comprehensive regarding pole attachment issues than any of the various states that have regulated in this area. Further, the FCC's rules are supported by an extensive series of orders and case law, which collectively has reached the vast majority of major and minor issues in the area of pole attachments for decades. Pole owners and attaching entities alike are very familiar with the FCC's rules and know how to comport themselves accordingly. Accordingly, the Commission should consider the entire body of FCC jurisprudence as *persuasive authority* both in any written rules it decides to implement and in its adjudication of disputes thereunder.

#### **THE RULES SHOULD CONTAIN TIMELINES FOR RESOLUTION OF DISPUTES**

- 16 Finally, if the Commission does adopt rules, CenturyLink believes that it would be beneficial to all parties if the Commission would adopt an expedited dispute resolution process. The Commission is well-positioned to ensure that disputes are heard and resolved quickly, and could set up a timeline for resolution of issues that ensured due process, while also promising that the dispute would not drag on.

17 WAC 480-07-650, which governs petitions for enforcement of interconnection agreements, could serve as a model for the process of resolving pole attachment disputes. It contains all the necessary requirements for filing a petition and answer, conducting a proceeding, and provides for an expedited decision on the issues (within 90 days). Of course the parties could agree to a longer schedule as well, but establishing this framework would add certainty to the process, with parties getting the assurance that issues would not remain unresolved for too long.

### CONCLUSION

18 CenturyLink looks forward to participating in the upcoming workshop, and may have additional comments at that time.

Submitted this \_\_\_\_\_ day of May, 2014.

CENTURYLINK

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