

BEFORE

THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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|------------------------------------|---|---------------------|
| In the Matter of the Rulemaking to |) | |
| Consider Adoption of Rules to |) | |
| Implement RCW ch. 80.54 Relating |) | Docket No. U-140621 |
| to Attachments to Transmission |) | |
| Facilities. |) | |

**COMMENTS OF FRONTIER COMMUNICATIONS NORTHWEST INC. TO
PROPOSED RULES GOVERNING ACCESS TO UTILITY POLES, DUCTS,
CONDUITS AND RIGHTS-OF-WAY**

I. Introduction

Frontier Communications Northwest Inc. (“Frontier”) appreciates the work the Commission has performed in developing its proposed rules governing access to utility poles, ducts, conduits, and rights-of-way. These rules substantially address Frontier’s previously expressed concerns regarding certain ambiguities or inconsistencies that appeared in earlier drafts. Nevertheless, Frontier remains concerned that the currently proposed definition of “carrying charge” will result in unnecessary disputes concerning the specific cost factors that may be included in that charge.

II. Frontier again asks that the Commission revise the definition of “carrying charge.”

Frontier respectfully repeats its request that the Commission revise the definition of “carrying charge” in the proposed WAC 480-54-020 so that the word “including” before the list of items that make up the carrying is replaced “which are limited to.” In previously rejecting this request, the Commission has stated: “‘Including’ is a term of limitation, and interpreting this

provision consistent with FCC rules will also limit the costs that are included to those that are listed.”¹

But the word “including” is not one of limitation. Instead, it means “tak[ing] in or compris[ing] as a *part* of a whole or group.”² For example, if a restaurant advertises that an entire meal, including dessert, only cost \$10.00, the meal is not limited to dessert. Dessert is simply a component of the meal, which could also consist of numerous additional items, such as an appetizer, a main course, and a beverage. Likewise, the current definition of “carrying charge” only states that it “includ[es] the owner’s administrative, maintenance, and depreciation expenses, commission-authorized rate of return on investment, and applicable taxes.” The term places no limitation on the ability of a pole-owning utility to argue that additional items should be captured in the charge. Based upon this wording, Frontier anticipates electric utilities will claim that at least some of the additional cost items they have previously identified in these proceedings as “unrecovered” can and should be included as part of the carrying charge.

Finally, Frontier appreciates the Commission’s stated intention to interpret this term consistent with FCC rules, but it notes that those rules are not binding on the Commission. Proposed WAC 480-54-010(2) states that the FCC’s orders interpreting its pole attachments rules will only be considered “as persuasive authority.” This wording will allow electric utilities to argue that the term “carrying charge” should include additional cost items not covered under the FCC’s definition of the term.

¹ *In the Matter of the Rulemaking to Consider Adoption of Rules to Implement RCW ch. 80.54 Relating to Attachments to Transmission Facilities*, Docket No. U-140621, Summary of Comments/Responses on Revised Draft Rules, p. 2 (March 13, 2015); *see also* Summary of Comments/Responses on Third Revised Draft Rules (May 27, 2015), p. 1.

² <http://www.merriam-webster.com/dictionary/include> (emphasis added).

In light of the above, Frontier renews its request that the definition of “carrying charge” be revised as follows:

- (3) “Carrying charge” means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments, including which are limited to the owner’s administrative, maintenance, and depreciation expenses, commission-authorized rate of return on investment, and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.

III. Conclusion

Once again, Frontier appreciates of the Commission’s efforts to establish uniform and consistent rules governing the rates, terms, and conditions for pole attachments.

Respectfully submitted,

FRONTIER COMMUNICATIONS NORTHWEST INC.



Cathy Dahlquist