

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to Consider Adoption of Rules) DOCKET U-140621
to Implement RCW ch. 80.54, Relating to)
Attachments to Transmission Facilities,)
Docket U-140621)
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**COMMENTS OF THE BROADBAND COMMUNICATIONS ASSOCIATION
OF WASHINGTON**

The Broadband Communications Association of Washington (“BCAW”), on behalf of its member companies,¹ respectfully submits these Comments pursuant to the State of Washington Utilities and Transportation Commission’s (“Commission”) July 24, 2015 Notice of Opportunity to Submit Written Comments on Proposed Rules and Notice of Proposed Rule Adoption Hearing, in the Rulemaking to Consider Adoption of Rules to Implement RCW 80.54, Relating to Attachments to Transmission Facilities (hereinafter “Rules”). BCAW appreciates the Commission’s continued efforts to develop just and reasonable rules that “consider the interests of the subscribers of the services offered via . . . attachments, as well as the interests of the consumers of the utility services.”²

BCAW agrees with the Commission that after four rounds of comments and two stakeholder workshops, the “draft rules are sufficiently developed to publish them as proposed rules and proceed to the next phase of the rulemaking,”³ including the adoption hearing, but requests certain minor clarifications, as discussed below. These draft rules, which are modeled

¹ BCAW’s member companies include: Charter Communications, Comcast, Inland Networks, Sefnco Communications and Wave Broadband.

² 47 U.S.C. §224(c)(2)(B); *see also* RCW 80.54.020 (authorizing the Commission “to regulate in the public interest the rates, terms and conditions for attachments by licensees and utilities.”)

³ Small Business Impact Statement, Docket U-140621 (July 22, 2015).

after the widely-followed Federal Communications Commission’s (“FCC”) pole attachment rules, will provide attachers and utilities the certainty that has been long absent from pole attachment relationships (including in pole attachment agreement negotiations) in Washington. Establishing a detailed framework to govern the rates, terms and conditions of pole attachments—including a timeline for access, a specific rental rate formula and a definitive enforcement mechanism—will lead to reliable, timely and affordable access for deploying wireline and wireless services, while preserving the integrity and reliability of utility infrastructure.⁴

I. COMMENTS

WAC 480-54-050(1)-(2): Modification Costs

It is BCAW’s understanding, based on the Matrix and the Commission’s intent to follow FCC rules generally, that WAC 480-54-050(1)-(2) is meant to ensure that any party, including the pole owner, requesting or benefitting from a modification (whether necessary to create additional capacity or correct a noncompliant attachment) would pay for such modification and parties that do not benefit would bear no cost.⁵ Nevertheless, the current language in WAC 480-54-050(1)-(2) could be interpreted to hold an existing, compliant attacher (including an owner) responsible for modification costs it does not cause or benefit from; and the language is, in any case, unclear in certain respects.⁶

⁴ See, e.g., *Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, ¶7 (2011) (adopting rules that “balance the needs of communications companies to deploy vital network facilities with the needs of utility pole owners, including the need to protect safety of life and the reliability of their own critically important networks.”)

⁵ See, e.g., Commission Summary of Comments/Responses on Revised Draft Rules (*a.k.a.* “The Matrix”), dated March 13, 2015 (“Agree to . . . clarify owner and occupant not responsible for costs to move compliant existing attachments An occupant, including the owner, who benefits from a modification should be responsible for a proportional share of costs.”). See also 47 U.S.C. § 224(h)-(i) (requiring that the costs causer, including the pole owner, pays for modifications it causes); 47 C.F.R. § 1.1416 (same).

⁶ This lack of clarity may result from the definitions of “requester” and “occupant,” because neither definition includes “owner.”

In order to ensure the proper interpretation of WAC 480-54-050(1)-(2), consistent with Commission intent, BCAW requests that the Commission make the following clarifications (new language in italics, deleted language in brackets):

- (1) The cost of modifying a facility to create capacity for additional attachment, including but not limited to replacement of a pole, shall be borne by the requester *or owner*, and all existing occupants and owner that directly benefit from the modification. . . .
- (2) The costs of modifying a facility to bring an existing attachment into compliance with applicable safety requirements shall be borne by the occupant or owner that created the safety violations. . . . An occupant *or owner* with an existing conforming attachment to a facility shall not be required to bear any of the costs to rearrange or replace the occupant's *or owner's* attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for an additional attachment (*including an owner attachment*) or to accommodate modifications to the facility [or another occupant's existing attachment] *to bring [that] another occupant's or the owner's attachment into conformance with applicable safety requirements.*

II. CONCLUSION

BCAW appreciates the Commission's efforts to develop a just and reasonable set of pole attachment rules that facilitates access, ensures safety and reduces the potential for unnecessary disputes and looks forward to their adoption.

Respectfully submitted this 24th day of August 2015.

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