BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Adopting	)	DOCKET U-140621
	)	
Chapter 480-54 WAC	)	GENERAL ORDER R-582
	)	
Relating to Attachment to Transmission Facilities	)	ORDER ADOPTING RULES PERMANENTLY
	)	
. . . . .	)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 15-15-170, filed with the Code Reviser on July 22, 2015. The Commission has authority to take this action pursuant to RCW 80.01.040, RCW 80.04.160, RCW 80.54.020, and RCW 80.54.060.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).

3 **DATE OF ADOPTION:** The Commission adopts this rule to be effective on January 1, 2016.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission's responses to the comments reflecting the Commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement. This Order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES**: This Order adopts the following sections of the Washington Administrative Code:

Adopt	WAC 480-54-010	Purpose, interpretation, and application.
Adopt	WAC 480-54-020	Definitions.
Adopt	WAC 480-54-030	Duty to provide access; make-ready work; time-lines.
Adopt	WAC 480-54-040	Contractors for survey and make-ready work.
Adopt	WAC 480-54-050	Modification costs; notice; temporary stay.
Adopt	WAC 480-54-060	Rates.
Adopt	WAC 480-54-070	Complaint.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on April 22, 2014, at WSR # 14-09-087. The statement advised interested persons that the Commission was considering entering a rulemaking to implement RCW ch. 80.54, relating to attachments to transmission facilities. The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies, all regulated electric companies, the Commission's list of utility attorneys, and the Commission's list of telecommunications attorneys. The Commission posted the relevant rulemaking information on its website at www.utc.wa.gov/140621. Pursuant to the notice, the Commission received written comments on May 30, 2014, and convened a workshop for interested stakeholders on July 28, 2014.

8 On September 8, 2014, the Commission issued a notice soliciting written comments from stakeholders on draft rules by October 8, 2014, and convened a second workshop on October 28, 2014. On February 6, 2015, the Commission received a second round of comments from stakeholders regarding revised draft rules, and responses to the second comments on February 27, 2015.

9 On March 24, 2015, the Commission issued a notice soliciting written comments from stakeholders on a third revised draft rules with opening comments by April 17, 2015, and reply comments by May 1, 2015.

10 On May 27, 2015, the Commission issued a Small Business Economic Impact Statement (SBEIS) questionnaire requesting responses concerning the cost impact of the rules on utilities and licensees by June 17, 2015. The Commission received comments from the Broadband Communications Association of Washington (BCAW); PCIA – The Wireless Infrastructure Association and the HetNet Forum, a membership section of PCIA (collectively PCIA); Pacific Power & Light Company (Pacific Power); Avista Corporation d/b/a Avista Utilities (Avista); and Puget Sound Energy (PSE).

11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on July 22, 2015, at WSR # 15-15-170. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 15-15-170 at 9:30 a.m., Thursday, September 17, 2015, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission by August 24, 2015.

12 **WRITTEN COMMENTS:** The Commission received written comments in response to the WSR # 15-15-070 Notice from Frontier Communications Northwest Inc. (Frontier), Integra Telecom of Washington (Integra), Avista, BCAW, Pacific Power, AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively AT&T), PCIA, and PSE. Summaries of all written comments and the Commission's responses are contained in Appendix A, attached to, and made part of, this Order.

13 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on Thursday, September 17, 2015, before Chairman David W. Danner and Commissioner Ann E. Rendahl. The Commission heard comments from representatives of Pacific Power, PSE, PCIA, Avista, Frontier, AT&T, and BCAW. Most of those commenting emphasized points they raised in their prior written comments. Pacific Power, however, also advocated that the Commission revise staff's proposed modification of the language in proposed WAC 480-54-050(2) to delete "or owner's" in the last sentence so that an owner would not be solely responsible for the costs to move all occupants' attachments when general safety or operational requirements necessitated a change to the pole. PSE also requested that the Commission make any

rules it promulgates effective no sooner than January 1, 2016, to enable PSE to modify its processes and otherwise prepare to comply with the new rules.[1]

14 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Written and oral comments suggested changes to the proposed rules. The suggested changes and the Commission's reason for rejecting or accepting the suggested changes are included in Appendix A. The Commission expands on its explanation for its actions on four of those suggested changes in the following paragraphs.

15 **JURISDICTION:** Proposed WAC 480-54-020 defines an "owner" as "the utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments." A "utility," in turn, is "any electrical company or telecommunications company as defined in RCW 80.04.010." That statute defines a "telecommunications company" as any person or entity "owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public." "'Telecommunications' is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means." The definition of "owner," consistent with Washington law, includes all telecommunications service providers and investor-owned electric companies.

16 PCIA and AT&T request that the Commission exempt commercial mobile radio service (CMRS) companies from the definition of "owner" in the proposed rules, claiming that the Commission lacks jurisdiction to regulate attachments to wireless company facilities. Washington statutes do not support this claim. The definition of "telecommunications" in RCW 80.04.010 expressly includes transmission of information by radio, which is the service CMRS companies provide. As telecommunications providers, these companies are "utilities" and "owners" within the contemplation of RCW 80.54.010.

17 The wireless carriers point to RCW 80.36.370(6), which provides that the Commission shall not regulate "[r]adio communications services provided by a regulated telecommunications company, *except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company* the commission may regulate the radio communication service of that company." (Emphasis added.) PCIA and AT&T overlook that the Commission can regulate wireless carriers under certain circumstances. Although the Commission is not aware that those

[1] We address this request in paragraph 31 below.

circumstances currently exist, we are not willing to foreclose the possibility that they will arise in the future. More fundamentally, we question whether requiring a company to allow attachments to its utility facilities is regulation of that company's "service" within the contemplation of RCW 80.36.370(6).[2]

18 The Commission, however, does not intend to assert jurisdiction over CMRS providers by promulgating the proposed rules. We recognize that the Federal Communications Commission (FCC) has the primary responsibility to oversee the wireless industry, and we have no desire to challenge that agency's supremacy in this area. We also agree with PCIA and AT&T that the rules we are adopting were not developed with access to CMRS facilities in mind. Accordingly, we leave for another day and specific factual circumstances the issue of whether these rules could or should be construed to require access to wireless carrier facilities.

19 **POLE REPLACEMENT:** Proposed WAC 480-54-030(1) provides that utility pole owners may not deny a request for attachment to a pole due to lack of space if the requester is willing to pay all costs to replace the existing pole with a taller pole. Avista, Pacific Power, and PSE all object to this requirement. These companies concede that they currently undertake this work but contend that an obligation to do so exceeds the requirements in the FCC rules without sufficient evidentiary support, "would unreasonably diminish the ability of electric utility personnel to perform their primary obligation of providing safe and reliable electric service, and would result in communications attachments on electric utility poles taking precedence over electric utility operations."[3]

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[2] Nor are we persuaded that a policy justification exists for categorically relieving CMRS providers from the obligation to allow attachments to their facilities. PCIA suggests that the rationale for that obligation is to provide competitors with access to monopoly service providers' infrastructure, but RCW 80.54 is not so limited. The statutory definition of "utility" includes all telecommunications companies, incumbents and competitors alike. The legislature's concern thus was more with the exclusivity of a utility's *facilities* than the service it offers. No municipality wants a plethora of poles along, or a collection of conduit under, its streets. The statute is designed to minimize such infrastructure as well as to facilitate service availability from multiple providers. To the extent that a CMRS carrier has constructed facilities to which requesters seek access, we do not believe that the service the carrier provides, without more, is a reasonable basis for denying such access.

[3] Comments of Avista at 2 (Aug. 24, 2015); *accord* Comments of PSE at 2 (Aug. 24, 2015). Pacific Power states only that it supports these comments and shares the concerns they raise with mandatory capacity expansions. Comments of Pacific Power at 2 (Aug. 24, 2015).

20 Unlike federal law, RCW ch. 80.54 does not authorize a pole owner to deny access for lack of capacity on the pole. Washington law provides only that "[a]ll rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient."[4] It is the current practice of Avista, Pacific Power, and PSE to replace existing poles and thereby create additional capacity for attachment if a requester is willing to pay all costs of that replacement. We are not persuaded that it is unreasonable to require these pole owners to do what they are already doing.

21 Nor have the electric utilities presented any information demonstrating how mandating their current practice would diminish their ability to provide safe and reliable electric service. The Commission takes very seriously any threat to safety and reliability of utility service. Accordingly, proposed WAC 480-54-030(8) provides additional time for pole owners to replace a pole if they cannot do so within the time frames specified due to circumstances beyond the owner's control and in light of other system demands. Owners also may negotiate additional terms and conditions with requesters to be included in the attachment agreement the rules require. We find that this rule properly balances the needs of electric utility pole owners, attaching communications carriers, and the customers of all companies.

22 **OVERLASHING:** Proposed WAC 480-54-030(11) allows an occupant to attach or "overlash" an additional wire onto the occupant's existing attachment to a utility pole without filing an application with the pole owner under limited circumstances. Avista, Pacific Power, and PSE all oppose this allowance as an unwarranted departure from the FCC's rules. Avista focuses on safety concerns it alleges would result from overlashing without an application:

> Overlashing new communication cable to cable already in place creates additional wind and ice load on the poles along with low sag issues, and these are serious safety concerns to pole owners. Moreover, without sufficient oversight and approval, cables that are no longer used are typically left in place rather than removed. Overlashing proposals can be more difficult to analyze for safety concerns than applications for new pole contacts, and while communication companies engineer for their own

[4] RCW 80.54.020.

> circuitry, they historically fail to account for their own existing code violations and for safety impacts related to the new overlash construction.[5]

23 PSE also discusses safety, as well as liability issues, and contends that the proposed rules unreasonably favor pole occupants over owners:

> The arbitrary timelines in the proposed rules compromise a pole owner's ability to adequately assess the impacts of the overlashing on the safety and reliability of the electric system and adds additional risk to the safety of the communication workers installing the overlashing. In addition, requiring only a notice instead of an application to overlash additional wires or cables prioritizes attachers needs over pole owners and reduces a pole owners ability to maintain a safe and reliable system. Finally, the proposed rules fail to include any language addressing liability for damages caused by attacher overlashing. PSE proposes that the attacher be liable for all damages if the actual overlashing differs from the overlashing proposed in the occupant's notice or fails to meet applicable rules and codes.[6]

24 We note as an initial matter than proposed WAC 480-54-030(11) is more restrictive of overlashing than the FCC or current practice. The FCC has determined that an occupant is not required to obtain the owner's consent prior to overlashing, although the owner is entitled to notice.[7] Stakeholder comments in this docket indicate that occupants currently are overlashing without the owner's prior consent and with minimal notice. The proposed rule's limit on the number of poles subject to overlashing in a given time period, the requirements for the content and timing of notice, and the ability of owners to prohibit overlashing in advance are all new safeguards that the electric utilities would not have if we simply adopted the FCC rules, as PSE advocates. This provision thus provides far more benefit than detriment to those utilities.

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[5] Comments of Avista at 3.

[6] Comments of PSE at 3. Again, Pacific Power supports Avista's and PSE's comments and shares their concerns with overlashing. Comments of Pacific Power at 2.

[7] *In re Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12,103, 12,144-45 (May 25, 2001).

25 We nevertheless repeat that the Commission considers safety of the electrical system to be critically important. Avista, Pacific Power, and PSE have not demonstrated that proposed WAC 480-54-030(11) imperils that system. That rule requires an occupant to notify the pole owner 15 business days in advance of the size, weight per foot, and number of wires or cables to be overlashed and to provide a map of the proposed overlash route. The occupant may not notice overlashing of more than 100 poles within any 10 business day period. The owner has 10 business days to inspect the proposed route and provide a written response and explanation if the owner prohibits the noticed overlashing.[8] The electric utilities have provided no information to demonstrate that these requirements are insufficient to enable an owner to determine whether the limited overlashing the proposed rule authorizes would pose a significant safety risk.

26 Several of the stated concerns, moreover, arise from how the overlashing is actually done, including failure to remove unused cable, the safety of the communications workers doing the overlashing, and liability for damages caused by the overlashing. Requiring occupants to submit an application, as the electric companies propose, would not remedy any of these issues. Rather, owners can and should negotiate terms and conditions in their attachment agreements to address such concerns. BCAW stated at the adoption hearing that all attachment agreements of which it is aware include provisions that do just that.

27 We find that proposed WAC 480-54-030(11) strikes the appropriate balance between the interests of pole owners and occupants. We encourage all parties to work cooperatively to ensure that their operations do not impact negatively the safety of the electrical system, the other networks whose facilities are attached to utility poles, and the personnel who work on those poles.

28 **MODIFICATION COSTS.** Consistent with cost causation principles, the proposed rules provide in WAC 480-54-050(2) that occupants with an attachment that conforms to applicable safety and legal requirements do not bear any of the costs to modify the pole or their attachment to remedy another occupant's safety violation. In response to BCAW's written comments, the Commission modifies the proposed language to clarify

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[8] Although PSE characterizes these limitations as "arbitrary," we note that the proposed rule reflects Pacific Power's recommendation "limiting the number of poles identified for overlashing in a 10-day period to 100 poles and the number of notices submitted to no more than five." Pacific Power Comments at 1 (April 17, 2015). The Commission addressed PSE's and Avista's continued concerns with the time for review by extending that period in the proposed rule to 10 business (rather than calendar) days and lengthening the notice period to 15 business days.

that an owner similarly is not responsible for modification costs caused by another attaching entity.

29 At the adoption hearing, Pacific Power requested that the Commission further revise this provision to clarify that occupants should bear the costs to rearrange their attachments if the owner modifies the pole to conform to general safety requirements or as part of the owner's business operations. We agree that our intent was for each party with attachments on the pole to bear its own costs to rearrange those attachments to conform to generally applicable safety requirements, and we clarify the proposed rule accordingly. We do not agree, however, that occupants should pay to modify their attachments to accommodate measures the owner takes for its own benefit. Indeed, WAC 480-54-050(1) expressly provides to the contrary in the context of creating additional capacity on a pole. We thus do not accept this aspect of Pacific Power's proposal.

30 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should adopt the rules as proposed in the CR-102 at WSR # 15-15-170 with the changes below as described more fully above and in Appendix A:

WAC 480-54-020	Definition of "carrying charge" – delete ", including" and replace with ". These costs are comprised of" (Frontier).
WAC 480-54-030(1)	Second sentence – delete "pole or otherwise" and replace with "pole and otherwise" (Pacific Power).[9]
WAC 480-54-050(1)	Third sentence – insert "within 60 days" before "after receiving notification" (Pacific Power).
WAC 480-54-050(2)	First sentence – add "that necessitated the modification" at the end of the sentence. Third sentence – Insert "or owner" after "An occupant"; Insert "or owner's" after "the occupant's";

[9] The substitution of "and" for "or" clarifies the Commission's intent that the requester must pay all make-ready costs associated with making more attachment space available on the pole and should not be construed to condition such payment on the existence of both pole replacement and other make-ready work.

Delete "as a result of creating capacity for a requester's attachment or";

Delete "or another occupant's existing attachment made";

Delete "bring that attachment" and replace with "bring another occupant's or owner's attachment";

Add "to remedy a safety violation caused by another occupant or owner" at the end of the sentence;

Add a fourth sentence that states, "The owner and each occupant shall bear their own costs to modify their existing attachments if required to comply with applicable safety requirements if an owner or occupant did not create a safety violation that necessitated the modification." (BCAW and Pacific Power).

WAC 480-54-060(3) Formulas:

Insert a division line between the number "1" and "Number of Ducts" on the lines below;

Insert a division line between "1 Duct" and "Number of Inner Ducts on the lines below;

Insert a division line between "Net Conduit Investment" and "System Duct Length (ft./m.)" on the lines below (corrects typographical errors).

31 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-54-010, WAC 480-54-020, WAC 480-54-030, WAC 480-54-040, WAC 480-54-050, WAC 480-54-060, and WAC 480-54-070 should be adopted to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission. Pursuant to RCW 34.05.380(2), we generally adopt rules to become effective on the thirty-first day after filing with the Code Reviser. PSE, however, states that it and other affected stakeholders would be better able to modify their existing processes and procedures to comply with the rules if they are not effective until the beginning of next year. We agree, and accordingly, we adopt the rules listed in this paragraph to take effect on **January 1, 2016**.

ORDER

32 **THE COMMISSION ORDERS:**

33 The Commission adopts WAC 480-54-010, WAC 480-54-020, WAC 480-54-030, WAC 480-54-040, WAC 480-54-050, WAC 480-54-060, and WAC 480-54-070 to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission, to take effect on January 1, 2016.

34 This Order and the rule set out below, after being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, October 21, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Appendix A

(Comment Summary Matrix)

U-140621 Pole Attachment Rules
Summary of Comments on Proposed Rules
September 17, 2015

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Staff Recommendation
020(2)	Definitions – Carrying Charge				Frontier: clarify and avoid disputes by substituting "which are limited to" for "including"		Clarify that carrying charges are comprised of the listed items consistent with the FCC's long-standing practice.
020(15)	Definitions – Owner					AT&T and PCIA: reinsert express exemption of commercial mobile radio service companies because the Commission lacks jurisdiction to regulate attachments to their facilities	Do not make the suggested change. The definition mirrors the language in the statute. If an entity requests access to a CMRS provider's facilities, the Commission can address the jurisdictional question at that time.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Staff Recommendation
030(1)	Duty to provide access; make-ready work; timelines	Remove pole replacement requirement as beyond FCC requirements, unsupported by evidence, and improperly prioritizing needs of attachers over other PSE customers; timelines to process applications and conduce make-ready work are arbitrary, do not allow sufficient time for owner evaluation, and will result in increased number of complaints to the Commission	Delete requirement to replace existing poles with taller poles as inconsistent with FCC and other state rules and diminishing ability of electric utilities to provide safe and reliable electric service	Joins Avista and PSE in opposing mandatory capacity expansion; substitute "and" for "or" in last sentence to clarify that a requester must pay all costs incurred to increase pole capacity for attachment			Adopt Pacific Power proposal to use "and" rather than "or" but clarify in the adoption order that the owner need not incur both costs to recover either of them. Do not make other proposed changes. The specific timelines are the same as the timelines in the FCC rules, which PSE proposes the Commission adopt. The pole replacement requirement reflects current industry practice, and the rules provide the pole owners with longer times to complete pole replacements to accommodate issues beyond the owner's control. The electric utilities have provided no evidence to demonstrate that this practice will have any detrimental impact on their ability to provide safe and reliable electric service. Owners can include language in their attachment agreements to address these concerns if necessary, or they may seek a waiver of this requirement if a legitimate and demonstrable issue arises.

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Staff Recommendation
030(11)	Overlashing	Delete this subsection and rely on FCC rules as more appropriately balancing safety with needs of attachers; alternatively, adopt revisions PSE previously proposed	Delete this subsection and require overlashing projects be submitted as applications to enable owners to evaluate safety and reliability impacts on poles	Joins Avista and PSE in opposing allowing overlashing without an application			Do not make proposed changes. Overlashing without an application is available only for adding communications wires on existing attachments to a small number of poles, and the electric utilities provided no evidence that such overlashing poses any legitimate safety or reliability concerns. The notice requirements provide pole owners with adequate time to inspect the proposed route for the overlashing, consistent with, or more lenient than, the time Pacific Power suggested in prior written comments.
050	Modification costs; notice; temporary stay			Limit time in which owner or occupant has cost responsibility for benefits from modifications to 60 days; Require occupants to transfer their attachments to a new pole at their cost; clarify subsection (2) that a conforming occupant bears no cost to rearrange its attachment if required solely as a result of creating capacity to comply with safety requirements	BCAW: modify language to clarify the intent that an existing compliant attacher (including an owner) is not responsible for modification costs it does not cause or benefit from		Make most of the proposed changes to address commenters' concerns. Staff removed the limitation on timing for cost responsibility in response to concerns about the lack of owners' ability to track such intervals but believes such a limitation is appropriate. Staff agrees that subsection (2) is specific to rearrangements of attachments to address safety issues and that the language concerning space for an additional attachment should be deleted. On the other hand, the requester is responsible for all costs of replacing an existing pole with a taller one, and thus the requester – not the owner or occupants – should bear the cost to transfer attachments to the new pole. Accordingly, Staff recommends that the Commission not revise the proposed rule as Pacific Power suggests on this issue. With respect to BCAW's proposed changes, Staff's intent is also to ensure that neither the owner nor other occupants on the pole are responsible for costs they do not cause or benefit from, and some minor revisions would clarify that intent.

480-54	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Staff Recommendation
070	Complaint	Keep burden of proof with the complainant or rely on existing rules regarding complaints	Authorize owners to apply sanctions comparable to those authorized in Oregon against occupants with unauthorized or noncompliant attachments				Do not make proposed change. The proposed rules properly shift the burden of proof only to the entity denying a right or seeking to deviate from the rules. The Commission cannot, and should not, delegate its authority to penalize entities for violating Commission rules. The absence of sanctions in the rules, however, does not preclude parties from negotiating to include such terms in attachment agreements.

Appendix B

[Chapter 480-54 WAC RULES]

Chapter 480-54 WAC
ATTACHMENT TO TRANSMISSION FACILITIES

NEW SECTION

WAC 480-54-010 Purpose, interpretation, and application. (1) This chapter implements chapter 80.54 RCW "Attachment to Transmission Facilities."

(2) The commission will consider Federal Communications Commission orders promulgating and interpreting its pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions in this chapter.

(3) The rules in this chapter apply to all owners, occupants, and requesters as defined in this chapter without regard to whether those entities are otherwise subject to commission jurisdiction.

NEW SECTION

WAC 480-54-020 Definitions. **"Attachment"** means any wire, cable, or antenna for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right of way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more owners, where the installation has been made with the consent of the one or more owners consistent with the rules in this chapter.

"Attachment agreement" means an agreement negotiated in good faith between an owner and a utility or licensee establishing the rates, terms, and conditions for attachments to the owner's facilities.

"Carrying charge" means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments. Those costs are comprised of 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.

"Communications space" means the usable space on a pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code.

"Conduit" means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

"Duct" means a single enclosed raceway for conductors, cable, or wire.

"Facility" means a pole, duct, conduit, manhole or handhole, right of way, or similar structure on or in which attachments can be made. "Facilities" refers to more than one facility.

"Inner duct" means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

"Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways.

"Make-ready work" means engineering or construction activities necessary to make a pole, duct, conduit, right of way, or other support equipment available for a new attachment, attachment modifications, or additional attachments. Such work may include rearrangement of existing attachments, installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole.

"Net cost of a bare pole" means (a) the original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by (b) the number of poles represented in the investment amount. When an owner owns poles jointly with another utility, the number of poles for purposes of calculating the net cost of a bare pole is the number of solely owned poles plus the product of the number of the jointly owned poles multiplied by the owner's ownership percentage in those poles. In the unusual situation in which net pole investment is zero or negative, the owner may use gross figures with appropriate net adjustments.

"Occupant" means any utility or licensee with an attachment to an owner's facility that the owner has granted the utility or licensee the right to maintain.

"Occupied space" means that portion of the facility used for attachment that is rendered unusable for any other attachment, which is presumed to be one foot on a pole and one half of a duct in a duct or conduit.

"Overlashing" means the tying of additional communications wires or cables to existing communications wires or cables attached to poles.

"Owner" means the utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments.

"Pole" means an above-ground structure on which an owner maintains attachments, which is presumed to be thirty-seven and one-half feet in height. When the owner is an electrical company as defined in RCW 80.04.010, "pole" is limited to structures used to attach electric distribution lines.

"Requester" means a licensee or utility that applies to an owner to make attachments to or in the owner's facilities and that has an agreement with the owner establishing the rates, terms, and conditions for attachments to the owner's facilities.

"Right of way" is an owner's legal right to construct, install, or maintain facilities or related equipment in or on grounds or property belonging to another person. For purposes of this chapter, "right of way" includes only such legal rights that permit the owner to allow third parties access to those rights.

"Unusable space," with respect to poles, means the space on the pole below the usable space, including the amount required to set the depth of the pole. In the absence of measurements to the contrary, a pole is presumed to have twenty-four feet of unusable space.

"Usable space," with respect to poles, means the vertical space on a pole above the minimum grade level that can be used for the attachment of wires, cables, and associated equipment, and that includes space occupied by the owner. In the absence of measurements to the contrary, a pole is presumed to have thirteen and one-half feet of usable space. With respect to conduit, "usable space" means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and that includes capacity occupied by the owner.

"Utility" means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized or owned by federal, state, or local government, or a subdivision of state or local government.

NEW SECTION

WAC 480-54-030 Duty to provide access; make-ready work; timelines. (1) An owner shall provide requesters with nondiscriminatory access for attachments to or in any facility the owner owns or controls, except that if the owner is an electrical company as defined in RCW 80.04.010, the owner is not obligated to provide access for attachment to its facilities by another electrical company. An owner may deny such access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles; provided that the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole and otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment including, but not limited to, using space- and cost-saving attachment techniques, such as boxing (installation of attachments on both sides of the pole at approximately the same height) or bracketing (installation of extension arms), to the extent that the owner uses, or allows occupants to use, such attachment techniques in the communications space of the owner's poles.

(2) All rates, terms, and conditions made, demanded, or received by any owner for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient and must be included in an attachment agreement with the licensee or utility. Parties may mutually agree on terms for attachment to or in facilities that differ from those in this chapter. In the event of disputes submitted for commission resolution, any party advocating rates, terms, or conditions that vary from the rules in this chapter bears the burden to prove those rates, terms, or conditions are fair, just, reasonable, and sufficient.

(3) Except for overlashing requests described in subsection (11) of this section, a requester must submit a written application to an owner to request access to its facilities. The owner may recover from the requester the reasonable costs the owner actually and reasonably

incurs to process the application, including the costs of inspecting the facilities identified in the application and preparing a preliminary estimate for any necessary make-ready work, to the extent these costs are not, and would not ordinarily be, included in the accounts used to calculate the attachment rates in WAC 480-54-060. The owner may survey the facilities identified in the application and may recover from the requester the costs the owner actually and reasonably incurs to conduct that survey. The owner must provide the requester with an estimate of those costs prior to conducting a survey. The owner must complete any such survey and respond in writing to requests for access to the facilities identified in the application within forty-five days from the date the owner receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner to identify and evaluate the facilities to or in which the requester seeks to attach.

(4) If the owner denies the request in an application for access, in whole or in part, the owner's written response to the application must include an explanation of the reasons for the denial for each facility to which the owner is denying access. Such a response must include all relevant information supporting the denial.

(5) To the extent that it grants the access requested in an application, the owner's written response must inform the requester of the results of the review of the application. Within fourteen days of providing its written response, the owner must provide an estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate. Make-ready work costs are nonrecurring costs that are not included in carrying charges and must be costs that the owner actually and reasonably incurs to provide the requester with access to the facility.

(a) The requester must accept or reject an estimate of charges to perform make-ready work within thirty days of receipt of the estimate. The owner may require the requester to pay all estimated charges to perform make-ready work as part of acceptance of the estimate or before the owner undertakes the make-ready work subject to true-up to the reasonable costs the owner actually incurs to undertake the work.

(b) An owner may withdraw an outstanding estimate of charges to perform make-ready work any time after thirty days from the date the owner provides the estimate to the requester if the requester has not accepted or rejected that estimate. An owner also may establish a date no earlier than thirty days from the date the owner provides the estimate to the requester after which the estimate expires without further action by the owner.

(6) For requests to attach to poles, the owner must determine the time period for completing the make-ready work and provide that information in a written notice to the requester and all known occupants with existing attachments on the poles that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants, as necessary.

(a) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than sixty days after the notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days.

(iii) State that any occupant with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work.

(v) State that if make-ready work is not completed by the completion date set by the owner (or fifteen days later if the owner has asserted its right to fifteen additional days), the owner and the requester may negotiate an extension of the completion date or the requester, after giving reasonable notice to the owner, may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the specified make-ready work within the communications space. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(vi) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than ninety days after notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days.

(iii) State that any occupant with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(7) For the purpose of compliance with the time periods in this section:

(a) The time periods apply to all requests for access to up to three hundred poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(b) An owner shall negotiate in good faith the time periods for all requests for access to more than three hundred poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(c) An owner may treat multiple requests from a single requester as one request when the requests are filed within the same thirty-day period. The applicable time period for completing the optional survey or required make-ready work begins on the date of the last request the owner receives from the requester within the thirty-day period.

(8) An owner may extend the time periods specified in this section under the following circumstances:

(a) For replacing existing poles to the extent that circumstances beyond the owner's control including, but not necessarily limited to, local government permitting, landowner approval, or adverse weather conditions, require additional time to complete the work; or

(b) During performance of make-ready work if the owner discovers unanticipated circumstances that reasonably require additional time to complete the work. Upon discovery of the circumstances in (a) or (b) of this subsection, the owner must promptly notify, in writing, the requester and other affected occupants with existing attachments. The notice must include the reason for the extension and date by which the owner will complete the work. The owner may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake such work on a nondiscriminatory basis with the other work the owner undertakes on its facilities.

(9) If the owner determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the survey. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(10) If the owner does not complete any required make-ready work within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the make-ready work within the communications space:

(a) Immediately, if the owner declines to exercise its right to perform any necessary make-ready work by notifying the requester that the owner will not undertake that work; or

(b) After the end of the applicable time period authorized in this section if the owner has asserted its right to perform make-ready work and has failed to timely complete that work.

If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(11) An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent under the following circumstances:

(a) The occupant must provide the owner with written notice fifteen business days prior to undertaking the overlashing. The notice must identify no more than one hundred affected poles and describe the additional communications wires or cables to be overlashed so that the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice period does not begin until the owner receives a complete written notice that includes the following information:

(i) The size, weight per foot, and number of wires or cables to be overlashed; and

(ii) Maps of the proposed overlash route, including pole numbers if available.

(b) A single occupant may not submit more than five notices or identify more than a total of one hundred poles for overlashing in any

ten business day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the ten business day period.

(c) The occupant may proceed with the overlashing described in the notice unless the owner provides a written response, within ten business days of receiving the occupant's notice, prohibiting the overlashing as proposed. The owner may recover from the requester the costs the owner actually and reasonably incurs to inspect the facilities identified in the notice and to prepare any written response. The occupant must correct any safety violations caused by its existing attachments before overlashing additional wires or cables on those attachments.

(d) The owner may refuse to permit the overlashing described in the notice only if, in the owner's reasonable judgment, the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The refusal must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make-ready work that the owner has determined would be required prior to allowing the proposed overlashing. The parties must negotiate in good faith to resolve the issues raised in the owner's refusal.

(e) A utility's or licensee's wires or cables may not be overlashed on another occupant's attachments without the owner's consent and unless the utility or licensee has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing on the attachments of other occupants.

NEW SECTION

WAC 480-54-040 Contractors for survey and make-ready work. (1) An owner should make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work in the communications space on its poles in cases where the owner has failed to meet deadlines specified in WAC 480-54-030.

(2) If a requester hires a contractor for purposes specified in WAC 480-54-030, the requester must choose a contractor included on the owner's list of authorized contractors. If the owner does not maintain such a list, the requester may choose a contractor without the owner's approval of that choice.

(3) A requester that hires a contractor for survey or make-ready work must provide the owner with prior written notice identifying and providing the contact information for the contractor and must provide a reasonable opportunity for an owner representative to accompany and consult with the contractor and the requester.

(4) Subject to commission review in a complaint proceeding, the consulting representative of an owner may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole and on issues of safety, reliability, and generally applicable engineering principles.

NEW SECTION

WAC 480-54-050 Modification costs; notice; temporary stay. (1) The costs 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 and all existing occupants and owner that directly benefit from the modification. Each such occupant or owner shall share the cost of the modification in proportion to the amount of new or additional usable space the occupant or owner occupies on or in the facility. An occupant or owner with an existing attachment to the modified facility shall be deemed to directly benefit from a modification if, within sixty days after receiving notification of such modification, that occupant or owner adds to its existing attachment or otherwise modifies its attachment. An occupant or owner with an existing attachment shall not be deemed to directly benefit from replacement of a pole if the occupant or owner only transfers its attachment to the new pole.

(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 violation that necessitated the modification. Such costs include, but are not necessarily limited to, the costs incurred by the owner or other occupants to modify the facility or conforming attachments. 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 to accommodate modifications to the facility to bring another occupant's or owner's attachment into conformance with applicable safety requirements to remedy a safety violation caused by another occupant or owner. The owner and each occupant shall bear their own costs to modify their existing attachments if required to comply with applicable safety requirements if an owner or occupant did not create a safety violation that necessitated the modification.

(3) An owner shall provide an occupant with written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the occupant has attachments affected by such action. The owner must provide such notice as soon as practicable but no less than sixty days prior to taking the action described in the notice; provided that the owner may provide notice less than sixty days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than sixty days in advance.

(4) A utility or licensee may file with the commission and serve on the owner a "petition for temporary stay" of utility action contained in a notice received pursuant to subsection (3) of this section within twenty days of receipt of such notice. The petition must be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer irreparable harm in the absence of the relief requested that outweighs any harm to the owner and its customers and that the petitioner will likely be successful on the merits of its dispute. The owner may file and serve an answer to the petition within seven days after the petition is filed unless the commission establishes a different deadline for an answer.

(5) An owner may file with the commission and serve on the occupant a petition for authority to remove the occupant's abandoned attachments. The petition must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must file an answer to the petition within twenty days after the petition is filed unless the commission establishes a different deadline for an answer. If the occupant does not file an answer or otherwise respond to the petition, the commission may authorize the owner to remove the attachments without further proceedings.

NEW SECTION

WAC 480-54-060 Rates. (1) A fair, just, reasonable, and sufficient rate for attachments to or in facilities shall assure the owner the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the owner attributable to that portion of the facility used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facility, and uses that remain available to the owner.

(2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to poles:

$$\textit{Maximum Rate} = \textit{Space Factor} \times \textit{Net Cost of a Bare Pole} \times \textit{Carrying Charge Rate}$$

$$\textit{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

(3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to ducts or conduits:

$$\textit{Maximum Rate per Linear ft./m.} = \left[\frac{1}{\text{Number of Ducts}} \times \frac{1\text{ Duct}}{\text{Number of Inner Ducts}}\right] \times \left[\frac{\text{Number}}{\text{of Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right] \times \textit{Carrying Charge Rate}$$

(Percentage of Conduit Capacity) (Net Linear Cost of a Conduit)

simplified as:

$$\textit{Maximum Rate per Linear ft./m.} = \left[\frac{1\text{ Duct}}{\textit{No.}\text{ of Inner Ducts}}\right] \times \left[\frac{\textit{Net}\text{ Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right] \times \textit{Carrying Charge Rate}$$

If no inner duct or only a single inner duct is installed, the fraction "1 Duct divided by the Number of Inner Ducts" is presumed to be 1/2.

NEW SECTION

WAC 480-54-070 Complaint. (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any owner in connection with attachments to its facilities are not fair, just, and reasonable, or by an owner that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission will determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and fix the same by final order entered within three hundred sixty days after the filing of the complaint. The commission will enter an initial order resolving a complaint filed in conformance with this rule within six months of the date the complaint is filed. The commission may extend this deadline for good cause. In determining and fixing the rates, terms, and conditions, the commission will consider the interest of the customers of the licensee or utility, as well as the interest of the customers of the owner. Except as provided in this rule, the commission's procedural rules, chapter 480-07 WAC, govern complaints filed pursuant to this rule.

(2) A utility or licensee may file a formal complaint pursuant to this rule if:

(a) An owner has denied access to its facilities;

(b) An owner fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The utility or licensee disputes the rates, terms, or conditions in an attachment agreement, the owner's performance under the agreement, or the owner's obligations under the agreement or other applicable law.

(3) An owner may file a formal complaint pursuant to this rule if:

(a) Another utility or licensee is unlawfully making or maintaining attachments to or in the owner's facilities;

(b) Another utility or licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The owner disputes the rates, terms, or conditions in an attachment agreement, the occupant's performance under the agreement, or the occupant's obligations under the agreement or other applicable law.

(4) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that one of the following circumstances exists:

(a) The parties made good faith efforts to negotiate the disputed rates, terms, or conditions prior to executing the agreement but were unable to resolve the dispute despite those efforts, and such challenge is brought within six months from the agreement execution date; or

(b) The party challenging the rate, term, or condition was reasonably unaware of the other party's interpretation of that rate, term, or condition when the agreement was executed.

(5) A complaint authorized under this section must contain the following:

(a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in

the complaint and that the parties failed to resolve those issues despite those efforts; such negotiations must include the exchange of reasonably relevant information necessary to resolve the dispute including, but not limited to, the information required to calculate rates in compliance with WAC 480-54-060;

(b) Identification of all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law;

(c) Sufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and

(d) A copy of the attachment agreement, if any, between the parties.

(6) The commission will issue a notice of prehearing conference within five business days after the complaint is filed. The party complained against must answer the complaint within ten business days from the date the commission serves the complaint. The answer must respond to each allegation in the complaint with sufficient data or other factual information and legal argument to support that response to the extent the respondent possesses such factual information.

(7) A licensee or utility has the burden to prove its right to attach to or in the owner's facilities and that any attachment requirement, term, or condition an owner imposes or seeks to impose that the licensee or utility challenges violates any provision of chapter 80.54 RCW, this chapter, or other applicable law. An owner bears the burden to prove that the attachment rates it charges or proposes to charge are fair, just, reasonable, and sufficient or that the owner's denial of access to its facilities is lawful and reasonable.

(8) If the commission determines that a rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged during the time the owner was charging the rate after the effective date of this rule.

(9) If the commission determines that an owner has unlawfully or unreasonably denied or delayed access to a facility, the commission may order the owner to provide access to that facility within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.

(10) Nothing in this section precludes an owner or occupant from bringing any other complaint that is otherwise authorized under applicable law.