



SERVICE DATE

DEC 15 1997

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 753-6423 • TTY (360) 586-8203

December 15, 1997

RE: Notice of Preproposal Statement of Inquiry (CR-101)  
Docket No. UT-970723

TO ALL INTERESTED PERSONS:

On April 28, 1997, TCI Cablevision of Washington, Inc., filed a petition to Adopt Rules, Regulations and Procedures Regarding Attachments to Transmission Facilities. On August 27, 1997, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Code Reviser, noticing its intention to explore the need to address, through rulemaking, adoption of a methodology for determination of just and reasonable rates for attachments to transmission facilities. The rulemaking has been assigned Commission Docket No. UT-970723.

The CR-101 invited comments, with a November 10, 1997 deadline. The Commission received written comments from seven commenters. On December 3, 1997, the Commission held a workshop to discuss the process and issues with industry participants. Sixteen persons attended the workshop.

At the workshop, participants discussed various aspects of the CR-101's statement of reasons for rulemaking on this subject and its description of what would be accomplished by a rule. The participants sought clarification from the Commission on the subject matter and the scope of a possible rule on these subjects. Participants also requested a summary of the seven sets of comments that had been filed.

The Commission offers the following clarification on the nature and scope of the potential rulemaking. The rulemaking, as presently envisioned, is intended to address the current lack of prescribed rate methodology for attachments to transmission facilities; to confirm the Commission has jurisdiction over attachment rates and is not preempted by the Federal Communications Commission (FCC); and to relieve the burden of uncertainty in rate methodology when contractual negotiations between parties are unsuccessful.

Attached to this letter is a brief summary of the seven sets of comments already filed.



The Commission invites interested persons to file additional comments. The Commission asks commenters to focus on aspects of the workshop discussion not contemplated nor addressed in their earlier comments, to respond to the TCI "White paper" filed with the Commission on December 3, 1997, and to distinguish those portions of their earlier comments which may not be relevant given the above discussion.

The comments also may address whether the rulemaking presently is appropriately structured in its breadth and reach. The comments should also include responses to the following questions:

1. What is each party's preference regarding the FCC formula?
2. Is there a cost basis for the FCC's formula, other than the policy reason?
3. Should Washington adopt revisions to the proposed methodology on an ongoing basis to mirror the FCC?
4. Should any established methodology be second to private contract negotiations?
5. Should the transition rate for CLECs and cable companies mirror the FCC's contemplated five year period (ending in 2006), or should there be a "flash cut" to the ILEC rate?
6. Does GTENW propose the same cost methodology in Washington that it proposes in other states?

The Commission asks commenters to provide an original and 15 copies of their comments, and also to provide comments electronically on a 3 1/2 inch, high density, floppy disk, in WordPerfect version 5.1, 6.0, or 6.1 for IBM-compatible computers, labeled with the name and type of software used.

The Commission asks commenters to serve copies of their comments on other Interested Persons. This will help the participants better prepare for the next workshop, and should reduce the amount of time we will need to spend in the workshops. A list of Interested Persons is enclosed.

**The deadline for additional comments is JANUARY 15, 1998.** Comments should be submitted to: Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250, Phone 360-664-1174 (FAX: 360-586-1150).

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Another workshop with interested persons is contemplated in February 1998. We will notify interested persons of the date by Commission letter.

Questions regarding this rulemaking docket may be addressed to Rebecca Beaton, at 360-664-1287.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve McLellan", written in a cursive style.

STEVE McLELLAN  
Secretary

Attachment

# POLE ATTACHMENT RULE/TCI PETITION

Docket No. UT-970723

December 3, 1997

Filed Comment Notes for Workshop discussion

Summary of CR-101 Comments filed November 10, 1997 by:

1. NEXTLINK
2. U S WEST
3. WITA
4. PUGET SOUND ENERGY
5. GTE NORTHWEST
6. PACIFICORP
7. WASHINGTON WATER POWER

## SUMMARY

### 1. NEXTLINK

Agrees the Commission should adopt the FCC methodology and reserves specific comment for later. Preference: contract with rule methodology as opt.

### 2. U S WEST

Notes the FCC Proposed Rule on Pole Attachments that was dated March 14, 1997 with USWC consistent with comments filed in the FCC NPRM:

Favors retention of FCC's current rate formula with the caveat that favors private contracts for the basis of pole rental arrangements and suggests modification to eliminate the use of a negative value for the net cost of a bare pole.

USWC argues depreciation reserve accumulation exceeds gross pole investment in five states, in three others, the net cost of a bare pole is near zero and expected to turn negative. Not yet a problem in Washington, but possible.

USWC suggests adding the two issues to the Commission rulemaking.

USWC confirms preference for private contract and rule methodology as final option.

### 3. WITA

WITA's primary concern is that care should be taken to determine the effect of the FCC methodology on the cost of providing service in Washington.

\*Multiple pole contracts within the same sheath and should these be considered one contact of more than one.

\*Forced move and whether the owner of the pole has authority to require companies on the pole to pay for the costs of a move at the option of the owner of the pole.

\*Treatment of competitors on the same pole. Can the owner force a competitor of the pole and what noticed is required and who pays the cost of the move.

\*Confirms that contract is primary preference between parties.

#### 4. Puget Sound Energy

PSE urges the Commission to take action to preempt FCC pole jurisdiction. Rulemaking is timely and necessary.

Rate Issue: RCW 80.54.040 specifies a band with rates and is defined at the lower end by incremental costs and upper end by fully allocated costs. PSE urges guidance in establishing parameters for states and defining elements that comprise upper and lower bounds.

Contracts should be determined just and reasonable.

Access to poles, ducts, conduits should be addressed in this proceeding and guidance on how the competing demands for access are resolved.

#### 5. GTE

GTE requests a rate formula be developed to serve as last resort when private negotiations fail to establish rates.

Intervention by the Commission only when negotiating parties are unable to agree to an arrangement.

Recommends: \*Private negotiation as primary.

\*Rate formula's should apply equally to telcom and other utilities irrespective of nature of attaching party.

\*No difference in rate for CATV and Telcom providers.

\*Rates should be set using an investment basis equal to TELRIC , or as interim valuation-Gross Book as an alternative.

\*Adopt the FCC current formula as rebuttable pricing but allow adjustments for company and state specific studies as alternative.

\*Adopted rates, rules and procedures effective upon a UTC order.

#### 6. PACIFICORP

\*PacifiCorp urges scope of proceeding be clarified to include not only transmission facilities but distribution facilities, ducts, conduits.

\*Regulations should address rental rate determination for attachments to facilities that are not distribution facilities.

\*The Commission should address whether WA property law permits CATV and Telco carriers access to private rights of way possessed by electric utilities, and whether access is "taking".

\*PacifiCorp suggests the Commission should include allocating costs associated with space other than usable space to attaching entities. (cite 222(e)(2)).

PacifiCorp prefers private contract negotiation as primary before rule methodology is considered.

## 7. WASHINGTON WATER POWER

WWP requests clarification of word transmission and suggests this reference facilities supporting voltage over 60kV only.

WWP supports adoption of a formula to cover attachment of CATV, telephone cable and telecom (fiber) cable to distribution poles, transmission poles, distribution ducts and transmission ducts.

WWP suggests rulemaking wait until after the FCC has ordered any revisions to the existing federal pole attachment methodology.

END