

II. PCIA CONCERNS WITH THE DRAFT RULES

WAC 480-54-010(2) Purpose and Interpretation

3 The Draft Rules state that the Commission will “consider” FCC and federal court interpretation of those rules as persuasive authority in construing the comparable provision in this chapter. The Draft Rules do not contain “comparable provisions” of certain FCC rules that may be necessary for the Draft Rule’s rate formula in WAC 480-54-060 to operate without controversy, as discussed below. PCIA suggests adding the following sentence at the end of subsection (2): “Where indicated, these rules will incorporate FCC rules by reference.”

WAC 480-54-020 – Definitions

4 Subsection 2 defines “attachment”. This should be clarified so that it includes the equipment and facilities of all licensees including those of wireless services providers. Therefore, PCIA suggests that the definition of attachment be modified so that it “includes antennas and related equipment of Licensees or certified carriers.”

5 In subsections 13 and 14, the definitions of “unusable space” and “usable space” track with the FCC’s definition, but they do not state the presumed amount for each, which is 24 feet and 13.5 feet respectively, for each definition. These are rebuttable presumptions, but they provide useful benchmarks that can minimize disputes.

WAC 480-54-030

6 In Subsection 1, the Draft Rule states that a facility utility may deny access on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles. PCIA agrees that these should be the criteria for denial but urges the Commission to insert the language “on a pole-by-pole basis” into this sentence. This clarifies the intent that denial determinations may not be made on a blanket basis, but only on a pole-by-pole basis thus increasing the speed of deployment and concentrating on specific areas of controversy.

480-54-070 Complaint

7 Subsection 4 requires a complaint to be brought within six months from the date the parties execute a new pole attachment agreement. Sometimes the parties need more time to work out potential issues or problems that may not be readily apparent during the early term of a pole attachment agreement. Moreover, in some instances agreements are signed just prior to construction of new networks in order to meet customer commitments. However, it is nearly impossible to file a complaint against a utility while simultaneously attempting to partner with that utility for the construction of a new network; complaints must instead be filed once the networks are completely constructed. PCIA recommends that the proposed six-month term be replaced with language that states that a complaint may be brought no more than 18 months from the date of the execution of a pole attachment agreement.

8 PCIA appreciates the flexibility associated with following the Washington State complaint process, which is reflected in Draft Rule 480-54-070. However, Subsection 5 requires a complainant, who must bear the burden of proof, to include sufficient data or other factual information to support its allegations in the complaint. This may be very difficult to do if the parties are unable to get from the facility utility sufficient data to establish that its rates do not comply with Draft Rule 480-54-060.

9 For instance, the “carrying charge rate” is not defined in the rate formula. Components of the carrying charge may be subject to dispute between attaching and facility attachers and facility utilities. The FCC rules specify the data and information that must be included when there is a claim that the pole attachment rate, term or condition is unjust, unfair, unreasonable or insufficient. *See* 47 C.F.R. §1.1409(1) and (3). Adoption of the FCC’s pole attachment rate methodology makes sense but it is also important to prescribe the means to determine the

necessary components of that methodology. Therefore PCIA urges the Commission to add language to WAC 480-54-060 that requires the rates to be determined in accordance with 47 C.F.R. §1.409(1) and (3).

10 Finally, the Draft Rules leave out language proposed by PCIA regarding a pre-complaint certification process that requires the complainant to engage in good faith, executive level discussions with a respondent to resolve a pole attachment dispute prior to filing a complaint. PCIA members have found that this process frequently minimizes the need to file a complaint with the state regulatory commission. However, unless such a requirement appears in a rule, PCIA has had difficulty getting an informal executive level discussion and consequent resolution over pole attachment issues.

III. CONCLUSION

PCIA applauds the Commission's efforts to draft a set of rules that considers the needs of attachers and pole owners/facility utilities. PCIA supports their adoption, with the suggested changes or revisions discussed in these comments.

DATED this 8th day of October, 2014.

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SEA_DOCS:1163466.1

10/08/14

PCIA – THE WIRELESS
INFRASTRUCTURE ASSOCIATION
AND THE HETNET FORUM
COMMENTS ON DRAFT RULES TO
IMPLEMENT RCW CH. 80.54 -- 4

CERTIFICATE OF SERVICE

I, Darlyne De Mars, certify under penalty of perjury under the laws of the State of Washington that, on October 8, 2014, I caused to be served on the persons listed below in the manner shown:

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Dated at Seattle, Washington, this 8th day of October, 2014.

s/Darlyne De Mars