



October 8, 2014

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Steven King
Executive Director and Secretary
Utilities & Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

**Re: Rulemaking to Consider Adoption of Rules to Implement RCW 80.54,
Relating to Attachments to Transmission Facilities, Docket U-140621**

Dear Mr. King:

The following are comments of Google Inc. provided in response to the Initial Draft Rules issued in connection with the rulemaking proceeding referenced above.

Respectfully submitted,

A handwritten signature in cursive script that reads "Megan Anne Stull".

Megan Anne Stull
Counsel
Google Inc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to Consider Adoption of Rules to Implement Was. Rev. Code § 80.54, Relating to Attachments to Transmission Facilities

Docket U-140621

COMMENTS OF GOOGLE INC.

Google Inc. (“Google”) commends the Commission for acting to adopt rules implementing Section 80.54 of the Revised Code of Washington. The Initial Draft Rules¹ provide a solid foundation for Commission action, containing a number of provisions to accelerate broadband infrastructure deployment throughout the State. The rules, however, could enhance broadband deployment even more effectively. In particular, the Initial Draft Rules should be clearer that *all* broadband providers have access rights to facilities including poles, ducts, and conduits. Additional details on the terms of accessing existing infrastructure also would enhance the rules’ effectiveness. Providing certainty regarding technology-neutral access to infrastructure will promote the goal of “increasing broadband access and use across Washington in a manner that makes [the] state well-positioned for a 21st century digitally-driven economy.”²

¹ *Draft Rules Governing Access to Utility Poles, Ducts, Conduits, and Rights-of-Way*, Docket No. U-140621 (Sept. 8, 2014) (“*Initial Draft Rules*”), available at <http://www.utc.wa.gov/docs/Pages/PoleAttachmentRulemakingU140621.aspx>.

² Washington State Broadband Office (“WSBO”), *Creating Opportunities for Washington: A Report on Broadband in Washington State*, at 17, available at <http://www.commerce.wa.gov/Programs/Infrastructure/Broadband/Pages/AnnualReport.aspx> (last visited Oct. 7, 2014).

I. ACCESS TO INFRASTRUCTURE AT REASONABLE AND PREDICTABLE RATES AND TERMS PROMOTES BROADBAND DEPLOYMENT AND RELATED BENEFITS.

Access to broadband increases educational opportunities, leads to greater civic engagement, improves health care, and enhances quality of life.³ Recognizing these benefits, the Washington State Legislature has adopted policies targeted at accelerating network deployment and increasing competition among broadband providers.⁴ Likewise, this Commission has acknowledged the essential role played by broadband for Washington households and businesses “as a means to expeditiously communicate, obtain access to information and applications, and to conduct transactions, among other activities.”⁵

Building broadband networks hinges upon ready access to infrastructure on reasonable terms and rates. According to the Federal Communications Commission, failure to obtain “reliable, timely, and affordable access to physical infrastructure,” especially utility poles, serves as a “significant barrier to deploying wireline and wireless services.”⁶ Gaining permits or leasing rights to existing infrastructure and rights of way can total 20 percent of the entire cost of a fiber-optic network build.⁷ Unreasonably high pricing for “make-ready, a very slow or uncertain schedule, or, in the worst case, a

³ See, e.g., Wash. Rev. Code § 43.330.400, notes (2013).

⁴ *Id.*

⁵ See *In the Matter of the Joint Application of Verizon Commc'ns Inc. and Frontier Commc'ns Corp. For an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc.*, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, 2010 Wash. UTC LEXIS 337, *150 (2010).

⁶ See *In the Matter of 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 ¶ 3 (2011).

⁷ Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 109 (Mar. 17, 2010), available at <http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (“*National Broadband Plan*”).

refusal to allow attachment” are “‘show-stopper’ problem[s]” that can delay or halt network deployment.⁸

Ensuring that all broadband providers are treated fairly and equally also maximizes use of existing infrastructure in the public rights of way. Without access rights, new competitors may need to install duplicative pole infrastructure or to excavate streets to lay fiber underground. This would result in unnecessary harm to community aesthetics, citizen inconvenience, and public safety concerns related to construction. It also would contradict the WSBO’s promotion of “multi-purpose public projects” to reduce the need for duplicative deployment of infrastructure.⁹ Per WSBO, “[c]osts are reduced and efficiency is improved” by promoting sharing of infrastructure resources.¹⁰

Market forces do not guarantee that all broadband providers can purchase access to existing infrastructure on reasonable terms and rates; new entrants can be barred or impeded as a result.¹¹ Indeed, limited or delayed access to infrastructure have contributed to uncertainties about the timing of Google Fiber’s rollout in various markets. Easily understandable rules extending attachment rights to all broadband

⁸ See CTCNet, *Gigabit Communities: Technical Strategies for Facilitating Public or Private Broadband Construction in Your Community*, at 45 (2014), available at <http://www.ctcnet.us/wp-content/uploads/2014/01/GigabitCommunities.pdf>.

⁹ WSBO, *Broadband in Washington: 2012 Annual Report*, 5 (2013), available at <http://www.commerce.wa.gov/Documents/Broadband-2012-Report-FINAL.pdf>.

¹⁰ *Id.*

¹¹ See, e.g., *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, ¶ 68 (2010) (explaining that “incumbent LECs are usually in direct competition with at least one of the new attachers’ services, and the incumbent LEC may have strong incentives to frustrate and delay attachment”); *In the Matter of Amendment of Commission’s Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Order on Partial Reconsideration, 16 FCC Rcd 12103, ¶ 13 (2001) (disagreeing with utilities’ arguments that the “market for pole attachments is fully competitive” and that “utilities now lack any incentive to discriminate against attaching entities”).

providers would have facilitated more predictable and rapid deployment, to the benefit of consumers.

II. THE COMMISSION SHOULD CLARIFY THAT ALL BROADBAND PROVIDERS HAVE ACCESS TO INFRASTRUCTURE AT REASONABLE AND PREDICTABLE RATES AND TERMS.

The Commission's Initial Draft Rules provide a solid starting point for facilitating necessary access to infrastructure. Missing from the Initial Draft Rules, however, is straightforward language conferring upon *all* broadband providers the rights to attach to or utilize existing infrastructure. This problem could be alleviated by implementing simple changes to the Definitions Section of the rules. The current draft definitions of "attachment" and "licensee" lend themselves to multiple interpretations, not all of which will include the full complement of broadband providers. The definition of "attachment" in proposed Section 480-54-020 should encompass broadband offerings not currently classified as "telecommunications," for instance by substituting for that term, the first time it appears, the phrase "communications service."¹² Likewise, the definition of "licensee" in proposed Section 480-54-020 should be broadened to include providers of broadband services; again, changing the word "telecommunications" in this definition to "communications" would be an easy way to effectuate that modification.¹³

The approach that Google is urging the Commission to take is closer to that found in the Oregon Administrative Rules. There, "[a]ny entity requiring pole attachments to serve customers" is "allowed to use utility poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities jointly, as much as practicable."¹⁴

¹² *Initial Draft Rules* § 480-54-020(2).

¹³ *Id.* § 480-54-020(9).

¹⁴ See Ore. Admin. Rules § 860-028-0060(1).

Use of plain language like that present in the Oregon regulations, or the edits suggested above, will make clear to facility utilities and users alike that all entities needing access to deploy broadband networks may obtain it.

At a bare minimum, all wireline broadband technologies should receive the same treatment. Broadband providers such as Google Fiber attach to poles and run their cables in conduit in the same manner as traditional cable and telecommunications providers that clearly are covered by the Initial Draft Rules. Extending access rights evenly across all wireline broadband providers therefore would not present additional implementation issues, nor any novel pole-loading or safety concerns. By contrast, failure to afford clear access rights to those broadband providers that fall outside of traditional cable or telecommunications provider definitions could delay deployment of advanced technologies in Washington.

III. ADDITIONAL GUIDANCE ON INFRASTRUCTURE USAGE PROCESSES WOULD FACILITATE BROADBAND EXPANSION.

The Initial Draft Rules should be modified to include additional details on the terms of access to existing infrastructure. By anticipating potential areas of disagreement or discussion between facility utilities and users that could slow the process of obtaining access, inclusion of these provisions would further advance the objective of accelerating broadband network deployment throughout Washington:

- **Definition of “Make-Ready Work.”** Section 480-54-020(10) of the Initial Draft Rules should provide a more robust definition of “make-ready work.” For example, in an agreement between Google Fiber and the City of Provo, Utah, the definition of make-ready work includes “engineering, inspection, design, planning, construction, or other work reasonably necessary for the installation of” attachments, including “work related to transfers, rearrangements, and replacements of existing” poles and equipment, “the addition of new [p]oles or

[e]quipment, and the rearrangement of third party pole attachments.”¹⁵ Such specificity will allow all parties to be clear as to when facilities are ready for use.

- **Use of Authorized Contractors During Make-Ready.** Section 480-54-030(3) should allow prospective attachers to have make-ready engineering performed by a contractor authorized by the facility utility.¹⁶ This will allow for timely completion of the work by a fully trusted third party, without having to wait for the utility itself to do the job. Following completion of make-ready engineering by the facility utility’s approved contractor, the facility utility should be provided with 15 days to review applications for attachments.
- **Attachment Immediately After Completion of Make-Ready.** To avoid any doubt, Sections 480-54-030(6)(a)(ii) and (6)(b)(ii) of the Initial Draft Rules should state expressly that an attacher may begin attaching infrastructure upon completion of make-ready work.
- **First In, First Out for Application Requests.** Section 480-54-030(7)(e) of the Initial Draft Rules could lead to major delays for attachers. A full 30 days could pass before the shot-clock for beginning surveys or required make-ready work would even begin to run. Not only would this waiting period unnecessarily delay the benefits of network deployment, but also it provides an opportunity for facility utilities to drag their feet in processing applications to retain an edge over potential attachers offering services that compete with their own. A system of first-in and first-out review of applications, with the clock starting upon submission of an application, is more logical and would diminish the likelihood of these negative results.
- **Guidance Regarding Service Drops.** To further avoid uncertainty and expedite service delivery to users, the Commission’s rules should provide guidance on service drop installation. Oregon Administrative Rule 860-028-0020(27),¹⁷ for example, defines “service drop” as a “connection from distribution facilities to the building or structure being served.” Oregon Administrative Rule 860-028-0120(3)(a)¹⁸ explains that service drops can be installed without a permit, so long as a permit is sought shortly after installation, and the attachment is installed in compliance with a contract with the facility utility and with safety rules. These Oregon rules provide an appropriate model for additions to the Initial Draft Rules.

¹⁵ Pole Attachment and Conduit Occupancy Agreement § 101(p), available at <http://www.provo.org/home/showdocument?id=2306>.

¹⁶ Doing so would be consistent with the recommendation of the Federal Communications Commission in the *National Broadband Plan*, which urged allowing “prospective attachers to use independent, utility-approved and certified contractors to perform all engineering assessments and communications make-ready work, as well as independent surveys, under the joint direction and supervision of the pole owner and the new attacher.” See *National Broadband Plan* at 111.

¹⁷ See Ore. Admin. Rules § 860-028-0020(27).

¹⁸ *Id.* § 860-028-0120(3)(a).

In addition to the specific changes listed above, Google urges the Commission to examine the timeframes prescribed throughout the Initial Draft Rules and to seize opportunities to expedite the attachment process. The faster networks can be deployed, the faster consumers will benefit from new service offerings and enhanced competition.

IV. CONCLUSION

The Commission should revise the definitions of “attachment” and “licensee” in Section 480-54-020 of the Initial Draft Rules, or otherwise ensure that all facilities-based broadband providers can gain access to existing utility infrastructure at reasonable and predictable rates and terms. The Commission also should revise the Initial Draft Rules to speed the process of obtaining access to infrastructure. Taking these actions would promote policy objectives supported by the Legislature and the WSBO, including increased broadband deployment, competition, and consumer choice.

Respectfully submitted,



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