

October 8, 2014

Via Web Portal

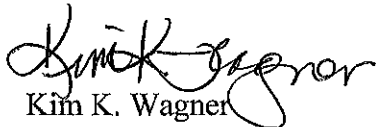
Steven V. King
Secretary and Executive Director
WA Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504

RE: RULEMAKING TO CONSIDER ADOPTION OF RULES TO IMPLEMENT RCW CH.
80.54, RELATING TO ATTACHMENTS TO TRANSMISSION FACILITIES
WUTC Docket No. U-140621

Dear Mr. King:

Enclosed for filing in the above docket are the Comments of Integra Telecom of Washington, and its affiliates.

Sincerely,



Kim K. Wagner

Legal & Regulatory Administrator

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Enclosure

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to Consider Adoption of Rules)	
to Implement RCW ch. 80.54, Relating to)	DOCKET NO. U-140621
Attachments to Transmission Facilities,)	
Docket U-140621)	
.....)	

COMMENTS OF INTEGRA

Integra Telecom of Washington, Inc., on behalf of itself and its affiliates¹ (“Integra”), respectfully provides these comments regarding the draft rules concerning attachments to transmission facilities.²

Background

Integra is a facilities-based competitive local exchange carrier (“CLEC”) providing communications services across 33 metropolitan areas in 11 states, including Washington. Integra owns (directly or under indefeasible rights to use) and operates backbone fiber networks. These backbone networks connect to our intercity, interstate data network for a combined 5,000 fiber-route-mile network in the Western United States. Integra relies upon attachments to transmission facilities in order to effectively and efficiently compete in the Washington market. Integra supports the Commission’s efforts to establish rules concerning attachments to these facilities.

¹ Integra affiliates operating in Washington are: Integra Telecom of Washington, Inc., Electric Lightwave, LLC., Eschelon Telecom of Washington Inc., Advanced TelCom, Inc., OCG Telecomm Limited, Shared Communications Services, Inc., Oregon Telecom Inc., and United Communications, Inc.

² Notice of Opportunity to File Written Comments, U-140621, September 8, 2014.

Discussion

Integra supports the facility attachment draft rules submitted September 8, 2014,³ but proposes the following changes and clarifications.

*Definition of Occupied space*⁴

Integra proposes the following clarification for the definition of Occupied space:

“Occupied space” means that portion of the pole, ~~duct, or conduit~~ used for attachments, which is presumed to be one foot.

The definition of occupied space applies only to poles, not to ducts and conduit. The definition appears only used in in the formula for calculating the space factor as used to determine the maximum pole attachment rate.⁵

*Definition of Usable space*⁶

Integra proposes the following clarification for the definition for Usable space:

“Usable space,” with respect to poles, means the space on a utility pole above the minimum grade level, including cross arms or extension arms, which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the facility utility. 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 which includes capacity occupied by the facility utility.

A facility utility⁷ should not be able to use the definition of usable space as a means by which it could deny access to poles or significantly increase the cost of the attachment by requiring unnecessary make ready work and/or pole replacement. In other states, Integra has experienced

³ Draft Rules Governing Access to Utility Poles, Ducts, Conduits, and Rights-of-Way, Docket U-140621, September 8, 2014 (“Draft Rules”).

⁴ Draft Rules, 480-54-020(11).

⁵ Draft Rules 480-54-060(2).

⁶ Draft Rules, 480-54-020(14).

⁷ Facility Utility is defined in Draft Rules 480-54-020(7).

facility utilities using a definition of usable space in a manner that prohibits the use of cross arms or extension arms as a means to charge Integra to replace the existing poles when replacement is not necessary. Defining usable space to include cross arms and extension arms may limit disputes regarding pole access.

Timeline for Response to Application⁸

The time for a facilities utility to respond to an application for access to its facilities is 45 days. Even though some site survey requests may take a full 45 days (or longer⁹) to complete, simpler requests could take significantly less than 45 days. A facility utility should respond to all requests as expeditiously as possible, regardless of the maximum allowable timeframes. Integra proposes including the expectation of an expeditious response to applications in the proposed rules. Integra proposes the following changes:

A utility or licensee must submit a written application to a facility utility to request access to its facilities. The facility utility must survey the facilities identified in the application and respond in writing to requests for access to those facilities as expeditiously as reasonable, but no longer than ~~within~~ 45 days from the date the facility utility 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 facility utility to survey the facilities to or in which the requester seeks to attach.

Timeline to Withdraw a Quote¹⁰

Once a facility utility has accepted an application, conducted a survey, and determined that access is available, the facility utility must provide an estimate of all make ready charges within 14 days.¹¹ The draft rules allow the facility utility to withdraw this estimate 14 days after it was

⁸ Draft Rules, 480-54-030(3).

⁹ See Draft Rules 480-54-030(8).

¹⁰ Draft Rules 480-54-030(5)(b).

¹¹ Draft Rules 480-54-030(5).

provided to the requesting utility. The 14-day period is too short. Integra's experience is that a customer, dependent upon delivery of facilities from a utility, will often not decide whether to continue with the project within 14 days. Integra considers 90 days a more reasonable time for an estimate to be available before it is withdrawn. This will provide both the requesting utility and its customer the time it may need to decide whether to go ahead with the project. In addition, a 90-day period is the time used by CenturyLink in its interconnection agreements for this same issue.¹² Further, it is unlikely that there would be any material change to the facilities over a 90-day period that would invalidate the existing estimate. Integra proposes the following changes:

A facility utility may withdraw an outstanding estimate of charges to perform make-ready work beginning ~~14~~ 90 days after the facility utility provides the estimate to the attacher.

Extension of Timeline for Make Ready Work¹³

The draft rules allow a facility utility to extend the make ready work timeline by 15 days. This extension should be limited to the scenarios described in the rules regarding large orders,¹⁴ disputes over rates and unanticipated circumstances.¹⁵ Integra proposes the following clarification to 480-54-030(6)(a)(iv):

State that the facility utility may assert its right, pursuant to 480-54-030(7) and 480-54-030(8), to 15 additional days to complete the make-ready work.

¹² See CenturyLink Negotiation Template, §10.8.2.4.3, July 1, 2014.

¹³ Draft Rules 480-54-030(6)(a)(iv).

¹⁴ Draft Rules 480-54-030(7).

¹⁵ Draft Rules 480-54-030(8).

Multiple Requests¹⁶

The draft rules allow a facility utility to treat multiple requests from a single attacher within a 30-day period as a single request. Integra proposes deleting this section entirely.

~~A facility utility may treat multiple requests from an attacher as one request when the requests are filed within the same 30 day period. The applicable time period for completing the required survey or make ready work begins on the date of the last request the facility utility receives from the attacher within the 30 day period.~~

This rule results in a delay in a request for facilities in the event a requesting utility places multiple requests within a 30-day period. There is no reason to allow for this delay. A requesting carrier can gain no advantage by submitting multiple requests, but may be required to do so based upon opportunities to serve its customers. There is no reason that an additional, separate request should result in a delay of an unrelated earlier request. Therefore, Integra recommends this provision be removed from the rules.

Use of Authorized Contractor¹⁷

In the event a facility utility fails to complete its survey or make ready work within the required time frames the proposed rules provide the opportunity for the requesting utility to hire an authorized contractor to complete the work. The Draft Rules require the requesting utility to wait 15 days beyond the prescribed intervals before it hires an authorized contractor.¹⁸ This effectively extends the prescribed intervals by 15 days, which is unnecessary. A requesting utility has no incentive to hire an authorized contractor in cases where work is proceeding and likely to be complete in the near term, even if it is not within the specified interval. However, on the other hand, there is no reason to require a requesting utility to delay its ability to hire an authorized contractor by

¹⁶ Draft Rules 480-54-030(7)(e).

¹⁷ Draft Rules 480-54-030(9).

¹⁸ Draft Rules 480-54-030(9)(b).

15 days in instances where the facility utility is not meeting its obligation and it is in the requesting utilities interest to move forward expeditiously. Integra proposes the following change to the Draft Rule to eliminate the 15-day waiting period:

After ~~15 days from~~ the end of the applicable time period authorized in this section if the facility utility has asserted its right to perform make-ready work and has failed to timely complete that work.

*Notice of Removal, Termination or Modifications*¹⁹

A facility utility is required to provide attaching utilities at least 60-days written notice prior to removal, termination, or modification to facilities that impact the attaching utilities. An attaching utility then has 15 days to request a stay of the changes. Both of these intervals place unnecessary pressure on attaching utilities and their end user customers in the event of changes to facilities. Replacing removed or terminated facilities can be a long and difficult task taking up to six months or more. Therefore, a facility utility needs to provide notice of removal, termination or modifications as soon as it is known, but not less than 60 days. Integra proposed the following change to 480-54-050(4):

~~A~~ As soon as practicable after it is aware, but no less than 60 days, a facility utility shall provide an attaching utility or licensee ~~no less than 60 days~~ 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 utility or licensee has attachments.

Attaching utilities should receive at least three weeks to respond to a notice to remove, terminate or modify facilities. An attaching utilities response requires declarations, affidavits and legal arguments to demonstrate irreparable harm in the absence of relief. This is not a light undertaking and the attaching utility should be allowed additional time to file its petition. It is in the attaching utilities' interest to file as quickly as possible in order to maximize the time

¹⁹ Draft Rules 480-54-050(4) and 480-54-050(5).

available to it to make alternative arrangements, should they be necessary. However, it is also in the attaching utilities' interest to provide a sufficient and compelling petition and 15 calendar days may not always be sufficient to do so. Integra proposes the following changes to 480-54-050(5):

A utility or licensee may file with the commission and serve on the facility utility a "Petition for Temporary Stay" of utility action contained in a notice received pursuant to subsection (d) of this section within ~~15~~ 21 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 facility utility and its customers and that the petitioner will likely be successful on the merits of its dispute. The facility utility may file and serve an answer to the petition within 7 days after the petition is filed unless the commission establishes a different deadline for an answer.

Conclusion

Integra appreciates the opportunity to provide feedback on the Draft Rules and overall supports the implementation of these rules. Integra proposes the changes and clarifications outlined above.

RESPECTFULLY SUBMITTED,



Dated: October 8, 2014.

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