

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to Consider Adoption of Rules     )  
to Implement RCW ch. 80.54, Relating to     )  
Attachments to Transmission Facilities,     ) **Docket U-140621**  
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**COMMENTS OF ZAYO GROUP, LLC**

In response to the notice of opportunity to file written comments filed by the Washington Utilities and Transportation Commission on April 23, 2014, Zayo Group, LLC (“Zayo”) hereby submits the following comments.

All pleadings, correspondence, and other communications concerning this docket should be sent to the following addresses:

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## COMMENTS OF ZAYO

Zayo Group, LLC (“Zayo”) respectfully submits these comments (“Comments”) to the Utilities and Transportation Commission (“UTC”) regarding the above-referenced Docket. Zayo is commenting in support of the UTC adopting RCW ch. 80.54 (the “Proposed Rules”).

Zayo is a telecommunications company registered by the State of Washington as a Competitive Telecommunications Company. Zayo is a provider of bandwidth infrastructure solutions, offering telecommunications services to carrier and enterprise customers over a fiber-optic network in metropolitan markets from coast-to-coast, including throughout Washington. Additional information is available on our website ([www.zayo.com](http://www.zayo.com)). In Washington, Zayo currently is attached to more than 7500 utility poles (including privately-owned, municipally-owned and public utility district poles) through organic (new fiber construction) and inorganic (acquisition) growth. When building a business case for whether to enter into or expand further within a given market, Zayo’s primary considerations are (i) the predictability of the application and make ready processes with relevant utilities and (ii) the cost of installing and maintaining the new network. Therefore, Zayo submits these Comments in support of the UTC regulating access to utility poles and attachment rates, as proposed.

### **The Proposed Rules Serves the Public Interest**

The importance of increasing the public’s access to advanced telecommunications services is a driving force among policymakers nationwide at all governmental levels. In its 2011 Order, the Federal Communications Commission (“FCC”) acknowledged its mandate to encourage the deployment of these services to all Americans.<sup>1</sup> The Commission noted that “the record here demonstrates that pole rental rates play a significant role in the deployment and availability” of broadband infrastructure.<sup>2</sup> By way of the 2011 Order, the Commission sought to remove disincentives to the telecommunications industry’s investment in such infrastructure to ensure that the public has access to service at affordable prices. Twenty one (21) States had already considered these issues and enacted regulations consistent with the Commission’s objectives.<sup>3</sup> The public policy objectives advanced by such regulations are broadly categorized as (i) availability and (ii) affordability.

**Availability.** Communities need advanced broadband infrastructure in order to thrive in today’s environment. The examples are numerous, but to name a few of the constituencies that depend on such advancement: businesses seeking greater efficiency; consumers making purchases and conducting financial transactions on online; hospitals and educational institutions needing to connect to share data; municipalities requiring more bandwidth to connect traffic lights, police and fire stations; and students preparing to enter the workforce in a connected world. The recent growth of mobile usage of the Internet has placed even greater burden on networks already bandwidth-constrained. In the largest urban centers, these expanding markets may provide sufficient incentive for industry investment. However, it is often the exurban and rural areas that are left behind due to lack of population density, and the expense inherent in executing underground installation in remote areas. The Proposed Rules regulating access timelines and rationalizing pole attachment rates will directly encourage broadband

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<sup>1</sup> *Id.* at page 1.

<sup>2</sup> *Id.* at page 77.

<sup>3</sup> *Id.* at page 132 (listing States that were able to opt-out of FCC regulation by certifying that they had enacted regulations implementing their regulatory authority over pole attachments).

deployment since utility poles are often already located in these areas. Thus, large swaths of the public will benefit from the Proposed Rules in the form of new advanced broadband services.

Affordability. The cost of deployment and maintenance is a paramount consideration any industry participant makes when considering a network expansion. More predictable (i.e., less risky) installation and reduced ongoing maintenance costs enable more market participants to enter a particular market. Increased competition drives down cost to end users. Additionally, even in markets where investment incentives remain strong despite high costs, those costs are often passed through to consumers in the form of higher service charges. Further, lower cost allows telecoms to bring services to market more quickly. Therefore, a defined timeline for attachment and reduced pole attachment costs ultimately will lower prices to consumers through competition and reduced pass-through costs.

### **The Proposed Rules Promote Economic Development**

The Proposed Rules will introduce significant competition into many markets within Washington, and increased competition promotes the economic development interests of the State. First, regulation of access and rationalization of rates will incentivize telecommunications companies to enter into and/or expand within Washington markets. Cost is a substantial barrier to entry into a telecommunications market. Any reduction in the risk and cost of installation and maintenance of the network increases the economic incentive to invest in a community. Second, regulation normalizes rates (and therefore costs) across industry competitors, removing barriers for new entrants. While regulation is not always the answer when certain market participants enjoy a competitive advantage, the FCC has noted that experience with private contract negotiations have highlighted a need for a more detailed framework around rates.<sup>4</sup> Putting new entrants on a level playing field with legacy carriers is a key to fostering robust competition. A telecommunications market with robust competition among carriers brings many benefits to the business community, including innovation, an expanded array of service offerings and lower consumer costs.

Access to advanced broadband infrastructure services at affordable prices has become critical to an ever-growing number of businesses across the country. Communities that pursue policies promoting affordable access to such services are more attractive to new and growing companies, and especially heavy bandwidth users in the financial, health care, education and technology-based industries. Forward looking communities across the nation are working to bring in advanced infrastructure (including increased broadband capacity) to foster growing technology-driven business and unleash job growth, broaden the tax base and ensure a competitive edge for today and the future. The Proposed Rules are a vastly important step in this process for all Washington communities.

### **Regulation of Does Not Materially Deter Investment by Pole Owners**

Zayo acknowledges that any regulation of access and rates must balance the foregoing benefits along with legitimate utility industry concerns. The utility industry commonly argues that reduced rates will create a disincentive to the deployment of new utility poles. Zayo finds these arguments unpersuasive. First, broadband build out tends to follow growth in population and economic activity. Therefore, in most instances, the utilities will have incentives to expand their systems completely independent of considerations related to pole attachment rates.

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<sup>4</sup> *FCC Order No. 11-50 (2011)*, page 3 (“...the Commission’s experience during the past 15 years has revealed the need to establish a more detailed framework to govern the rates...”).

Second, utilities may argue that rate reduction adversely affects them financially, but in reality these changes do not materially impact utility bottom lines. The core business of utilities is to provide utility service to their customers. Leasing pole space to telecoms serves merely as a proxy for cost recoupment, and will remain so after reduced rates are implemented. Therefore, adopting reduced telecom rates will not materially impact utility companies financially.

Third, regulated rates do not equate to unreasonably low rates. The Proposed Rules regulate pole attachment rates on the same compensatory basis as the FCC promulgated under the 2011 Order.<sup>5</sup> Under the UTC's approach, pole attachment fees are designed to allow a utility to recover costs associated with the telecom company's attachments, which are administrative in nature and exclusive of capital costs.<sup>6</sup> The utility recovers capital costs through reasonable make-ready fees imposed upfront.

### **Conclusion**

The Proposed Rules meet the basic and well-accepted principles of encouraging rapid and comprehensive broadband build-out. The Proposed Rules advance the public interest and the economic development of Washington without materially impacting the interests of the pole owners. For the reasons set forth in these Comments, Zayo respectfully urges the UTC implement the Proposed Rules. Doing so will promote critical public policy and economic interests in Washington for the benefit of constituents, businesses and consumers.

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<sup>5</sup> *Id.* at 82.

<sup>6</sup> *Id.*