

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF:

RULEMAKING TO CONSIDER ADOPTION OF
RULES TO IMPLEMENT WAC CH. 480.54,
RELATING TO RULES GOVERNING ACCESS
TO UTILITY POLES, DUCTS, CONDUITS, AND
RIGHTS-OF-WAY

DOCKET NO. UT-140621

REPLY COMMENTS OF
CENTURYLINK

I. INTRODUCTION

1 CenturyLink hereby files its reply comments in this docket in which the Washington Utilities and Transportation Commission (“Commission”) has opened a rulemaking to consider the adoption of rules to implement Chapter 480.54 WAC, relating to Rules Governing Access to Utility Poles, Ducts, Conduits, and Rights-of-Way.

II. COMMENTS ON DRAFT RULES

2 CenturyLink is pleased to see that the proposed rules generally parallel the FCC’s rules. There are a few clarifications/refinements we ask the Commission to make.

3 **WAC 480-54-010 Purpose and Interpretation:** Subsection (2) of this rule states that the FCC’s interpretations of parallel regulations will be persuasive, which CenturyLink supports. For further clarity CenturyLink recommends including cites to three of the FCC’s most recent and relevant orders in this subsection of the rule.

4 This is important because these FCC orders provide significant background and detail as to what the rules mean. For example, the formulas that are adopted in WAC 480-54-060 could be the subject of endless debate in terms of what is included in each of the three elements unless the FCC order that originally adopted that formula, which contains detailed advice on which Accounts are included in each element and how Usable Space is calculated, is referenced. The authorities that should be cited in this rule are:

In the Matter of Implementation of Section 224 of the Act, Report & Order, FCC 11-50, 26 FCC Rcd 5240 (2011)

Consolidated Partial Order on Reconciliation, FCC 01-170 (“FCC 01-170”), 16 FCC Rcd 12103 (2001).

In the Matter of Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, FCC 00-116, Adopted 3/29/2000, Released 4/3/2000

Code of Federal Regulations at Title 47, Part 1 - Practice and Procedure, Subpart J,

5 **WAC 480-54-020 Definitions:** CenturyLink seeks some clarification on the definition contained in (9) of “Licensee.” The definition first states that a Licensee is anyone other than a Utility, but then goes on to include telecommunications companies, which by definition in RCW 80.04.010, are Utilities. This is a bit confusing and CenturyLink is unclear why the definition is written the way it is, and whether there is any significance to excluding utilities generally, but then including telecommunications companies.

6 **WAC 480-54-030 and WAC 480-54-040:** Generally, these provisions parallel the FCC’s rules and CenturyLink supports them to the extent that they do so. However, these rules include references to “ducts, conduits and rights-of-way” in many instances where the FCC’s rules do not. These rules are thus much broader and create potential problems by imposing the timelines for responses to requests for occupancy of ducts,

conduits, and rights-of-way. See, for example, WAC 480-54-030(7), which includes ducts, conduits, and rights-of-way in the mandated time periods, where the parallel FCC rule does not. 47 C.F.R. §1.1420.

- 7 For a variety of sound reasons, the FCC explicitly clarified that the timelines for the survey period and the make-ready work periods excluded underground occupancy of ducts, conduits, and rights-of-way. To the best of CenturyLink’s knowledge, there is no request or need in this docket to extend aerial requirements to include underground plant in Washington.
- 8 CenturyLink believes that requests for access to ducts, conduits, and rights-of-way are potentially more complex and time-consuming, and should be left to individual negotiations – subject to a reasonableness test. CenturyLink has proposed changes to these rules to bring them back to the FCC’s requirements. (Redline attached.)
- 9 **Other specific recommendations:** Subsection (5)(b) allows the facility utility to withdraw a make-ready estimate after 14 days – CenturyLink proposes that this subsection should include language that does not allow the utility to withdraw the estimate if it has already been accepted. (Shown in attached redline.)
- 10 Subsection (9) includes self-help options for both the survey and for the make-ready effort. CenturyLink recommends that the requirements would be more clear if separated into two subsections, (9) and (10). (Shown in attached redline.)
- 11 **WAC 480-54-050 (5):** there is a typo in this subsection. There is a reference to “subsection (d)” that should instead be “subsection (4).”

- 12* **WAC 480-54-060 Rates:** CenturyLink agrees with the rate formulas shown in this rule. However, there is a provision in the FCC rules that allows the facility utility to calculate a rate based on the gross cost of a bare pole if the net cost is negative due to depreciation, etc. Citing to the FCC orders as requested in paragraph 4 above will address this concern.
- 13* **WAC 480-54-070 Complaint:** CenturyLink does not propose any modifications to this section, but wanted to raise an issue for discussion in the next workshop regarding subsection (4). CenturyLink believes that a six-month “sign and sue” provision as stated in the rule is sufficient, so long as that timeline does not preclude a later challenge to the unreasonable application of a provision once the affected party learns of it. So, for example, if there is an audit provision that is sought to be enforced in the third year of the contract, and one party claims that the application of the provision as sought by the other party is unreasonable, subsection (4) should not bar a complaint. The last sentence in (4) would seem to allow this, in which case CenturyLink does not have a concern, but wanted to raise the issue to seek clarification of the intent of the rule.
- 14* CenturyLink appreciates the work of the Commission Staff on this rulemaking, and encourages the Commission to make the modifications to the proposed rules as set forth in these comments.

III. CONCLUSION

15 CenturyLink looks forward to participating in the upcoming workshop, and may have additional comments at that time.

Submitted this 8th day of October 2014.

CENTURYLINK

/s/ Lisa A. Anderl

Lisa A. Anderl (WSBA # 13236)
Senior Associate General Counsel
1600 – 7th Ave., Room 1506
Seattle, WA 98191
lisa.anderl@centurylink.com