



Frontier Communications Northwest Inc.

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October 8, 2014

Via Web Portal

Mr. Steven King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P. O. Box 47250
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Subject: **Frontier Communications NW Inc. Comments on Initial Draft Rules
Governing Access to Utility Poles, Ducts, Conduits and Rights-of-Way**

Dear Mr. King,

Please see the attached comments of Frontier Communications Northwest Inc. regarding the initial draft rules in Docket No. U-140621.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Gipson".

Carl Gipson
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BEFORE

THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rulemaking to)
Consider Adoption of Rules to)
Implement RCW ch. 80.54 Relating) Docket No. U-140621
to Attachments to Transmission)
Facilities.)

**COMMENTS OF FRONTIER COMMUNICATIONS NORTHWEST INC. TO INITIAL
DRAFT RULES GOVERNING ACCESS TO UTILITY POLES, DUCTS, CONDUITS
AND RIGHTS-OF-WAY**

I. Introduction

In general, Frontier Communications Northwest Inc. (“Frontier”) supports the Commission’s initial draft rules governing access to utility poles, ducts, conduits, and rights-of-way. However, it believes that certain provisions can be clarified or expanded in a manner that will help to avoid future disputes concerning the rules’ meaning and scope. To that end, Frontier provides the following proposed revisions to and comments to the specific draft provisions identified below.

II. 480-54-020 Definitions

Frontier offers revisions to the definitions of “communications space,” “net cost of a bare pole,” “occupied space,” “pole” or “utility pole,” and “unusable space” to make the terms more explicit and, when applicable, consistent with their meaning under the Federal Pole Attachment Act and the Federal Communications Commission’s pole attachment rules. Frontier also offers a proposed definition for the term “carrying charge” as it believes the lack of such a definition will result in confusion over what cost factors should be utilized when calculating the charge.

- (xx) “Carrying charge” means the annual costs incurred by the facility utility in owning and maintaining poles or conduits. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner’s data from the most recent calendar year and that are publicly available to the greatest extent possible:
- (a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.
- (b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.
- (c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.
- (d) Taxes are total operating taxes, including, but not limited to, current, deferred, and “in lieu of” taxes, as a percent of net investment in total plant.
- (e) The cost of money is calculated is equal to the rate of return on investment authorized by the Commission in the facility utility’s most recent rate or cost proceeding. If the facility utility does not have an authorized rate of return on investment, the cost of money is presumed to equal 11.25%.
- (3) “Communications space” means ~~the usable space on~~ that portion of a utility pole typically used for the placement of communications conductors beginning below the ~~space used to attach electrical wires~~ communications worker safety zone and ending at the lowest point on the pole to which horizontal conductors may be safely attached.
- (xx) “Net cost of a bare pole” means the depreciated original installed cost of an average bare pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare pole is 40 feet and the ratio of bare pole to total pole for an electric facility utility is 85 percent and 95 percent for a telecommunications facility utility.
- (11) “Occupied space” means that portion of the pole, duct, or conduit used for the attacher’s attachments, which. On a pole, the occupied space is presumed to be one foot.
- (12) “Pole” or “utility pole” means ~~an above-ground structure on which a facility utility maintains attachments~~ any pole that is owned by a facility utility and that carries distribution lines.
- (13) “Unusable space,” with respect to utility poles, means the space on the pole below the usable space, including the amount required to set the depth of the pole. There is a rebuttable presumption that the unusable space on a pole is twenty-four feet, which

includes the six feet of the pole below ground and the eighteen feet of the pole measured from the ground up.

III. 480-54-030 Duty to provide access; make-ready work; timelines

Frontier proposes two minor revisions to paragraphs (4) and (5)(b) of this provision. In paragraph (4), Frontier recommends deleting the requirement that a facility utility include “all relevant evidence” when denying a request for access. The term “all relevant evidence” could be read to include actual physical evidence, such as the pole itself. Frontier believes that simply providing “all relevant information” relating to the denial of access is sufficient.

In paragraph (5)(b), Frontier recommends adding the phrase “if the attacher has not accepted” to the beginning of this provision. This additional language will make clear that a facility utility can only withdraw its estimate after 14 days if the attacher has not yet responded.

IV. 480-54-040 Contractors for survey and make-ready

In paragraph (4) of this provision, Frontier recommends deleting the word “electric” before the phrase “facility utility.” Frontier believes that the consulting representative of any pole-owning utility, whether an electric or telecommunications utility, should have the ability to make a final determination of a pole, conduit, or duct’s attachment capacity.

V. 480-54-070 Complaint

As currently drafted, the Commission would only have 180 days to consider a complaint before jurisdiction would revert back to the Federal Communications Commission under 47 C.F.R. § 1.1414(e). Frontier, therefore, offers a proposed revision below that will extend the Commission’s time for considering a complaint to 360 days, which is the maximum possible length of time for a certified state to consider a pole attachment complaint under 47 C.F.R. § 1.1414(e). In addition, it is not clear whether the complaint provisions cover existing

attachments or just attachments made after the effective date of the new rules. Frontier offers an additional proposed revision to address this issue as well.

- (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any facility utility in connection with attachments to its facilities are not fair, just, and reasonable, or by a facility utility that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, the Commission shall consider the interest of the customers of the attacher, as well as the interest of the customers of the facility utility. The Commission will issue its determination on any complaint filed under this chapter within 360 days of the complaint's filing.

- (4) From the effective date forward, the requirements of this chapter apply to both attachments existing as of the effective date and attachments made subsequent to the effective date. For an attachment agreement existing as of the effective date of this chapter, any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement must be brought within six months from the effective date or from the date the parties have reached impasse in their attempts to renegotiate any rate, term, or condition that is alleged to be unlawful or unreasonable. The execution of an attachment agreement subsequent to the effective date of this chapter does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that such challenge is brought within six months from the date the parties executed the agreement. Nothing in this section precludes a facility utility or attacher from bringing any other complaint that is otherwise authorized under applicable law.

VI. Conclusion

Frontier appreciates the Commission's efforts establish uniform and consistent rules governing the rates, terms, and conditions for pole attachments.