

**Agenda Date:** August 27, 1997

**Item Number:** 2D

## CONCISE EXPLANATORY STATEMENT

**Docket:** UT-970723  
Petition for Rulemaking  
Proposed adoption of the Federal Communications Commission  
methodology on transmission facilities.

**Company Name:** Telecommunications - General

**Staff:** Rebecca Beaton, Telecommunications Consultant  
David Griffith, Telecommunications Engineer  
Bob Williamson, Telecommunications Engineer

### Recommendation:

Direct the Secretary to file the CR-101 (Preproposal Statement of Intent for Rulemaking) with the Code Reviser in Docket UT-970723.

### Discussion:

TCI Cablevision of Washington, Inc., (TCI) petitioned the Commission, in Docket UT-970723, to adopt rules, regulations, and procedures regarding attachments to transmission facilities. TCI requests that the Commission establish a specific rate making methodology for determination of just and reasonable attachment rates for the utility industry. TCI proposes a new rule be initiated within Chapter WAC 480-120.

The Commission has the authority to adopt such rules, but has never done so. There are at least two reasons why it should do so at this time.

First, as competition begins to develop in the telecommunications industry, there will be an increasing number of requests to attach wires or cables to existing transmission facilities. The lack of a consistent, administratively-easy methodology to determine if the pole attachment rates charged are just and reasonable will result in recourse to the Commission complaint procedure established by RCW 80.54.030, and the development of guidelines on a case by case basis. That process likely would burden Commission resources, be frustrating to the industries, and hinder the development of competition.

Second, the lack of rules creates uncertainty as to whether Washington regulates pole attachment rates, terms, and conditions sufficiently to preempt FCC regulation of these matters. Pole attachment rates, terms, and conditions are subject to both federal and state regulation. In 1978, Congress enacted the Pole Attachment Act, 47 U.S.C. § 224, which gave the Federal Communications Commission authority to regulate rates and terms of cable pole attachments. Section 703 of the Telecommunications Act of 1996 expanded the scope of Section 224 to include telecommunications carriers. 47 U.S.C. § 224 provides that FCC authority to regulate pole attachment rates, terms and conditions is preempted when a state regulates those matters. It further provides that a state shall not be considered to regulate

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those matters unless the state has made effective rules and regulations implementing the state's regulatory authority over pole attachments.

The Washington State Legislature adopted Chapter 80.54 "Attachments to Transmission Facilities" in 1979, shortly after the Pole Attachment Act of 1978. Chapter 80.54 authorizes the Commission to regulate the rates, terms, and conditions for attachments by licensees or utilities to poles, ducts, conduits, and other transmission facilities. The term "attachment [to transmission facilities] in the state statute has the same definition as "pole attachment" in the federal act -- any attachment to a pole, duct, conduit, or right-of-way owned or controlled by a utility. Chapter 80.54 is partially self-implementing, in that it provides for a complaint and hearing procedure before the Commission for determining rates, terms and conditions. However, RCW 80.54.060 also expressly requires the Commission to adopt rules, regulations and procedures relative to the implementation of the chapter.

The Commission has certified to the FCC that Washington has issued and made effective rules and regulations implementing its regulatory authority over pole attachments, including a specific methodology for such regulation. However, that is only partly true. While Chapter 80.54 RCW provides for Commission regulation, it does not set out a specific ratemaking methodology, and the Commission has never adopted rules, regulations and procedures relative to the implementation of the chapter.

Adoption of rules implementing Chapter 80.54 RCW, including a specific ratemaking methodology, would carry out the mandate of RCW 80.54.060 and clearly remove the regulation of pole attachments from FCC jurisdiction.

TCI recommends that the Commission adopt, for all attachments, the pole attachment ratemaking methodology established by the FCC for cable pole attachments. While the FCC rule methodology presently applies only to cable attachments, the 1996 Telecommunications Act directed the FCC to prescribe pole attachment rules for attachments by all telecommunications providers. The FCC methodology for pole attachment rates has been adopted by thirty-one states, and those states consider the methodology consistent and fair. The FCC methodology has withstood administrative and judicial challenges since 1979. The FCC methodology is a specific ratemaking methodology which relies on public information for rate development, allowing for routine, consistent rate development without burdensome administrative processes. It would remove the need for special accounting measures. A uniform rate methodology, as established by the FCC, would assist in the promotion of a competitive telecommunications environment in the state.

Staff proposes that the Commission initiate a rulemaking to consider adoption of the FCC rule methodology. We recommend that the Commission consider adopting the FCC rule methodology for all attachments. We note that in 1995 Michigan adopted the FCC's methodology for all attachments, including video and telecommunications, specifically to promote competition.

Scope of Proposed Rules

Commission Staff (Staff) would recommend the Commission consider rulemaking to address the rate methodology for pole attachments, and the Commission file a Preproposal for Statement of Inquiry (CR 101) with the Code Reviser. The notice would invite parties to explore development of rules to address pole attachment rates and practices in the competitive telecommunications environment in Washington State. Telecommunications companies currently abide by the FCC requirements at the federal level and it is believed imposition at the state level is not inconsistent with current company practices.

Need for Rule

Staff believes there is no alternative other than a rule making to achieve the objective.

Recommendation:

Staff, therefore, recommends the Commission file the Preproposal Statement (CR 101) with the Code Reviser.

Attachment

**PREPROPOSAL STATEMENT OF INQUIRY  
(RCW 34.05.310)**

**CR-101 (7/10/97)**

Do NOT use for expedited repeal or adoption

**Agency: WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Subject of possible rule making:**

Establishing a rule for rates for attachments to transmission facilities. Create a methodology for determination of just and reasonable attachment rates in the utility industry. Docket No. UT-970723.

**(a) Statutes authorizing the agency to adopt rules on this subject:**  
RCW 80.54.060 and 80.01.040.

**(b) Reasons why rules on this subject may be needed and what they might accomplish:**

Competition in the state utility market has instigated the need to establish an efficient and effective methodology to create fair, consistent and effective rates for attachments to transmission facilities. The lack of a prescribed methodology creates uncertainty and unpredictability, resulting in recourse to Commission complaint procedures. This is burdensome to the Commission and to the affected companies, and an impediment to the development of competition. The lack of rules also creates uncertainty as to whether Washington regulates pole attachment rates sufficiently to preempt Federal Communications Commission regulation of the subject. The adoption of rules implementing Chapter 80.54 RCW will eliminate these problems. It also will comply with the Commission's mandate under 80.54.060 to adopt rules, regulations and procedures relative to the implementation of Chapter 80.54.

**(c) Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:**

The Commission is not aware of any other federal or state agency that regulates this subject in Washington State. The FCC regulates cable television attachments and will be adopting rules regulating all telecommunications attachments, but is preempted from regulating attachments when a state regulates them. The FCC has identified Washington as a state in which rates, terms and conditions of attachments are regulated at the state level. The Commission intention is to adopt the same methodology as established in the FCC rules.

**(d) Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

Workshop type meetings with regulated utilities, interested parties and consumer representatives in which information and views are exchanged in an effort to reach consensus on the issues.

**(e) How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:**

(List names, addresses, telephone, fax numbers of persons to contact describe meetings, other exchanges of information, etc.)

All utility companies and interested persons listed with the Commission Records Center will be notified of the proposed rule process.

It is envisioned that there will be at least one meeting scheduled to discuss the proposed rulemaking with industry representatives in 1997. All persons filing comments will be notified of the dates of the meetings. After evaluating comments of interested persons, the Commission will determine whether additional public input is appropriate, and establish procedural requirements at that time.

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