

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UT-140024
	)	
PCIA – THE WIRELESS	)	ORDER 01
INFRASTRUCTURE ASSOCIATION,	)	
	)	ORDER DENYING PETITION IN
To Adopt Rules to Implement RCW	)	FAVOR OF COMMISSION-
RCW Ch. 80.54	)	INITIATED RULEMAKING
.....		

**BACKGROUND**

- 1 On January 6, 2014, PCIA – The Wireless Infrastructure Association (PCIA) filed a petition with the Washington Utilities and Transportation Commission (Commission) to initiate a rulemaking to adopt rules to implement RCW Ch. 80.54 governing attachments to transmission facilities (PCIA Petition).
  
- 2 PCIA states that the Washington legislature enacted RCW Ch. 80.54 in 1979 to authorize the Commission to regulate attachments to utility poles, but the Commission has not promulgated rules to implement that authority. Observing that the statute was originally intended to facilitate development of cable television service, PCIA states that communications services have rapidly evolved in the last 34 years. The Federal Communications Commission (FCC), recognizing this evolution, has adopted and revised its own rules during those years – most recently in October 2011 – to foster deployment of both wireline and wireless broadband services in states that have chosen not to regulate pole attachments.<sup>1</sup>
  
- 3 PCIA contends that because the Commission has not adopted rules to regulate the pole attachment practices of regulated utilities, “telecommunications providers have faced arbitrary, exorbitant rates, and denials of access to necessary infrastructure. This has discouraged investment by the very providers that are needed to address Washington’s current and future telecommunications needs, but who choose to deploy infrastructure in states that follow the FCC’s rules.”<sup>2</sup> PCIA urges the Commission to “act expeditiously to rectify this situation and remove the current

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<sup>1</sup> PCIA Petition ¶¶ 4-12.

<sup>2</sup> *Id.* ¶ 22.

roadblocks to advanced broadband deployment”<sup>3</sup> by adopting the latest FCC rules, particularly the new rule governing rates for pole attachments.<sup>4</sup>

## DISCUSSION

4 Within 60 days after receiving a petition for rulemaking, the Commission either must

(a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rulemaking proceedings in accordance with RCW 34.05.320.

5 We share the desire to facilitate telecommunications and advanced broadband service deployment in Washington and agree that RCW Ch. 80.54 contemplates that the Commission will promulgate rules. We nevertheless deny the PCIA Petition in favor of initiating a more comprehensive rulemaking that will better enable the Commission to consider the views of all industry stakeholders.

6 PCIA proposes that the Commission adopt the FCC rules governing pole attachments, but the PCIA Petition includes only the FCC’s most recent additions and revisions to its previously promulgated rules.<sup>5</sup> These new rules address PCIA’s specific concerns, but they are not – and are not intended to be – stand-alone rules governing all aspects of pole attachments. The FCC rules, moreover, derive from the federal statute, not RCW Ch. 80.54. PCIA also proposes the Commission adopt this subset of FCC rules verbatim from the code of federal regulations (CFR), including CFR numbering and multiple internal cross-references to federal statutes and other FCC rules.

7 The Commission may conclude that some or all of the substance of these FCC rules should be incorporated into the Washington Administrative Code, but we do not have that option at this point. To initiate rulemaking proceedings in response to the PCIA Petition, RCW 34.05.320 requires that the Commission formally propose the rules in that petition as the agency’s own and schedule a hearing on the adoption of those rules. We decline to take that action in light of the proposed rules’ limitations and

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<sup>3</sup> *Id.* ¶ 3.

<sup>4</sup> *Id.* ¶¶ 23-27.

<sup>5</sup> *See id.* ¶ 12 and Exh. A.

find that the Commission should develop a more complete record, including input from stakeholders and interested persons, before proposing any rules to implement RCW Ch. 80.54.

- 8 Accordingly, the Commission denies the PCIA Petition but will initiate a rulemaking in a separate docket to develop rules to implement RCW Ch. 80.54.

**ORDER**

**THE COMMISSION ORDERS:**

- 9 (1) The Petition of PCIA – The Wireless Infrastructure Association for a rulemaking to adopt rules to implement RCW Ch. 80.54 is DENIED.
- 10 (2) The Commission will initiate a rulemaking to implement RCW Ch. 80.54 in a separate proceeding.

DATED at Olympia, Washington, and effective February 25, 2014.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner