

# HOUSE BILL REPORT

## HB 1932

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### As Reported By House Committee On:

Energy & Utilities

**Title:** An act relating to the delivery of telecommunications services.

**Brief Description:** Delivering telecommunications services.

**Sponsors:** Representatives Mielke, Patterson, Casada and Appelwick.

### Brief History:

#### Committee Activity:

Energy & Utilities: 2/24/95, 2/28/95 [DPS].

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## HOUSE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Kessler, Ranking Minority Member; Kremen, Assistant Ranking Minority Member; Chandler; Huff; Mielke; Mitchell and Patterson.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Mastin.

**Staff:** Margaret Allen (786-7110).

**Background:** Pole attachments are attachments by a cable system or a utility to a pole, duct, conduit, right of way, manhole, or similar facility owned or controlled, in whole or in part, by at least one utility. Examples of attachments include wire, cable, and related equipment.

### FEDERAL AND STATE LAW

Federal law authorizes the Federal Communications Commission (FCC) to regulate the rates, terms, and conditions for pole attachments by cable systems unless a state has adopted its own program for regulating such pole attachments. The law requires a state regulating cable system pole attachments to consider the interests of subscribers to cable television services and consumers of utility services.

In 1979, the Legislature enacted legislation authorizing the Washington Utilities and Transportation Commission (WUTC) to regulate, in the public interest, the rates, terms, and conditions for pole attachments. All rates, terms, and conditions must be "just, fair, reasonable and sufficient." However, the legislation, like the federal statute, applies only to poles, ducts, conduits, rights of way, manholes, and similar facilities owned or controlled by investor-owned utilities. Such utilities are defined to include electrical and telecommunications companies.

While the WUTC regulates investor-owned utilities, it has no regulatory authority over publicly-owned utilities such as public utility districts (PUDs) and municipal utilities, or rural electric cooperatives.

### **JOINT OWNERSHIP OF POLES**

Snohomish County PUD No. 1 (District) owns several thousand poles throughout Snohomish County to which the District has attached its plant for transmitting and distributing electricity. GTE, an investor-owned local exchange company, jointly owns and has attached its telecommunications plant to numerous of those poles.

According to the District, under a joint ownership agreement, the District and GTE are entitled to different portions of each pole. The District typically is allocated the top part, GTE is allocated a lower portion, and the District is authorized to control the portion between the upper and lower portions, including a "buffer zone." According to the District, the District leases space in the mid and top portions of the poles to cable television companies.

In October 1994, the District issued a Request for Proposals for Telecommunications Transmission Routes (RFP). Under the terms of the RFP, proposals are to constitute a bid for an exclusive route along specific District electric transmission and distribution lines, for exclusive use of poles, easements, and rights of way for attaching telecommunications transmission cable.

### **COMPLAINT**

After the District issued the RFP, the Washington State Cable Communications Association, two telecommunications companies, and a cable television company filed a complaint with the WUTC against GTE and the District. The complaint alleges, among other things, GTE and the District have set unreasonable rates and conditions for pole attachments, and that the District is attempting to regulate intrastate telecommunications services, which are within the WUTC's jurisdiction.

The District then filed a motion asking the WUTC to dismiss the District from the action on the grounds the WUTC lacks jurisdiction over the District.

The WUTC has not decided whether to grant the District's motion.

**Summary of Substitute Bill:** PUDs serving counties with populations of at least 500,000 are prohibited from imposing less favorable terms and conditions for use of a utility pole, or a right of way, on one telecommunications company than the terms and conditions imposed on other such companies or cable systems for similar uses at the same location. The prohibition applies regardless of differences between companies in service areas, kinds of services provided, or ownership or co-ownership of poles.

PUDs serving counties with populations of at least 500,000 also may not impose restrictions on the use of utility poles or rights of way when those restrictions have the purpose of inhibiting competition among providers of telecommunications services.

The WUTC may regulate the rates, terms, and conditions for attachments to poles owned by such a PUD if a telecommunications company provides service within the PUD's service area.

**Substitute Bill Compared to Original Bill:** The original bill applies to all PUDs regardless of county size, and gives the WUTC jurisdiction over attachments to poles owned by governmental or cooperatively organized entities. The substitute bill omits legislative findings and makes technical clarifications and corrections.

**Appropriation:** None.

**Fiscal Note:** Requested on February 20, 1995.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Snohomish PUD has put out a bid for exclusive use of poles. As managing partner for a family-owned cable business, I am concerned that we may be thrown off the poles if someone else gets exclusive use of the poles. The PUD wants to do this for aesthetics. Cable companies plan to expand into the local exchange process. Snohomish PUD is issuing an RFP for exclusive use and only allowing cable companies to put up line for one-way video/audio communication within the service area. This protects existing providers of two-way communication. The intent of this bill is to deal with PUDs, not municipal power systems.

**Testimony Against:** Snohomish PUD is not interested in regulating telecommunications. The real issue is that everyone wants to expand. Snohomish PUD has situations where eight organizations want pole space where there is room for only one. The PUD can't physically accommodate everyone who wants space. There

is increasing pressure to add wires to poles making them heavier and heavier. New, heavy duty poles are very expensive.

**Testified:** (Pro) Patrick Davis, Lake TV Cable; Ron Main, Washington State Cable Association; and William Lawson, TCI Cablevision. (Con) Don Hale and Brian White, Snohomish County PUD; Michael McInnes, Clallam County PUD; and Aaron Jones, Washington Rural Electric Coop Association.