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**SENATE BILL 5711**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Ericksen, Hobbs, Honeyford, and Palumbo

AN ACT Relating to telecommunications services; amending RCW 35.21.860, 35.99.020, 35.99.040, 35A.21.245, 80.36.630, 80.36.650, 80.36.660, 80.36.670, 80.36.680, and 80.36.690; adding new sections to chapter 35.99 RCW; adding a new section to chapter 80.36 RCW; adding new sections to chapter 35.21 RCW; adding new sections to chapter 54.04 RCW; and repealing RCW 35.21.455, 54.04.045, 80.36.620, and 80.36.700.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**PART ONE**

**Sec.**  RCW 35.21.860 and 2014 c 118 s 2 are each amended to read as follows:

(1)(a) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.16.010, or service provider, as defined in RCW 35.99.010, for use of the right‑of‑way, except:

((~~(a)~~)) (i) A tax authorized by RCW 35.21.865 may be imposed;

((~~(b)~~)) (ii) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;

((~~(c)~~)) (iii) Taxes permitted by state law on service providers;

((~~(d)~~)) (iv) Franchise requirements and fees for cable television services as allowed by federal law; and

((~~(e)~~)) (v) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

((~~(i)~~)) (A) The placement of new structures in the right‑of‑way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged. When the new structure is placed in the right-of-way for purposes of installing a small cell facility as defined in RCW 80.36.375(2), the site-specific charge imposed under this subsection is limited to the lesser of: (I) The projected cost to the city or town resulting from the installation; or (II) five hundred dollars annually. However, no additional fee may be imposed by any person or government on wi-fi antennas that are strung between existing privately or publicly owned utility poles regardless of location;

((~~(ii)~~)) (B) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

((~~(iii)~~)) (C) The placement of personal wireless facilities on structures owned by the city or town located in the right‑of‑way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town. When the personal wireless service facility is a small cell facility as defined in RCW 80.36.375(2), the site-specific charge imposed under this subsection is subject to the provisions of sections 202 through 206 of this act.

(b) A city or town is not required to approve the use permit for the placement of a facility for personal wireless services that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section.

(3) The definitions in section 201 of this act apply throughout this section.

NEW SECTION. **Sec.**  A new section is added to chapter 35.99 RCW to read as follows:

A city or town shall authorize the installation of small cell facilities or networks, as defined in RCW 80.36.375(2), on city or town-owned structures located outside of the right-of-way to the same extent as the city or town permits access to structures for other commercial projects or uses and may authorize the installations if the city or town has not previously permitted such access. The installations are subject to reasonable rates, terms, and conditions as provided in one or more agreements between the personal wireless service provider and the city or town. A city or town may not charge more for a small cell facility than the lesser of: (1) The amount charged for similar commercial projects or uses to occupy or use the same amount of space on similarly situated property; (2) the projected cost to the city or town resulting from the installation; or (3) five hundred dollars annually.

**Sec.**  RCW 35.99.020 and 2000 c 83 s 2 are each amended to read as follows:

A city or town may grant, issue, or deny permits for the use of the right‑of‑way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services pursuant to ordinances, consistent with this chapter ((~~83, Laws of 2000~~)) provided that a city or town shall allow a service provider to place small cell facilities and small cell networks, as defined in RCW 80.36.375(2), in a city or town right-of-way, whether attached to city or town-owned facilities or attached to existing, new, or replacement poles owned by a service provider or another entity, subject only to the conditions of section 104 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 35.99 RCW to read as follows:

(1) A city or town shall provide service providers with nondiscriminatory access for attachments of small cell facilities as defined in RCW 80.36.375(2) to or in any right-of-way facilities the city or town owns or controls, either directly or through a municipally owned utility. A city or town may only deny access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles. However, the city or town may not deny access to a pole based on insufficient capacity if the service provider is willing to compensate the city or town for the costs to replace the existing pole with a taller pole and otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment. The small cell attachments allowed under this subsection are subject to the rate established in section 106(5) of this act and other reasonable terms and conditions as provided in a master permit approved under this section. Any master permit approving the attachment of small cell facilities and networks as defined in RCW 80.36.375(2) on city or town-owned facilities must be consistent with sections 202 through 206 of this act. However, no right-of-way or other permit is required for wi-fi antennas that are suspended on messenger cables that are strung between existing privately or publicly owned poles regardless of location.

(2) A city or town shall provide service providers with nondiscriminatory access to the right-of-way to attach small cell facilities to existing facilities owned by any entity and to install new or replacement poles for purposes of attaching small cell facilities, subject to the rates established in RCW 35.21.860(1)(b) and other reasonable terms and conditions as provided in a master permit approved under this section. A city or town may only deny access to specific locations in the right-of-way on a nondiscriminatory basis for reasons of safety and generally applicable engineering principles. With the issuance of a use permit for each location, the city or town may limit the height of a new or replacement pole so that it does not exceed one hundred thirty percent of the average pole height in the vicinity, when the heights of poles within the same right-of-way and within one-half mile of the proposed pole location are averaged.

(3) A city or town must approve a master permit under this section within ninety days of a service provider's submittal of a complete application for such a permit. In addition to the applicable rate established in RCW 35.21.860, the master permit must provide for the future issuance of use permits anywhere within the city or town. No concealment, stealth, or aesthetic standards may be required through a master or use permit, except in locations in a designated historic district if similar utility improvements are subject to the same design standards.

(4) Once a master permit is approved under subsection (3) of this section, the city or town must issue a use permit for each small cell facility or network according to the same timeline and process as described in section 106 of this act.

(5) A city or town shall:

(a) In order to facilitate the scheduling and coordination of work in the right-of-way, provide as much advance notice as reasonable of plans to open the right-of-way to those service providers who are current users of the right-of-way or who have filed notice with the clerk of the city or town within the past twelve months of their intent to place facilities in the city or town. A city or town is not liable for damages for failure to provide this notice. Where the city or town has failed to provide notice of plans to open the right-of-way consistent with this subsection, a city or town may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another project.

(b) Have the authority to require that facilities are installed and maintained within the right-of-way in such a manner and at such points so as not to impede the public use of the right-of-way or to adversely affect the public health, safety, and welfare.

(6) A service provider shall:

(a) Obtain all permits required by the city or town for the installation, maintenance, repair, or removal of facilities in the right-of-way;

(b) Comply with applicable ordinances, construction codes, regulations, and standards subject to verification by the city or town of such compliance;

(c) Cooperate with the city or town in ensuring that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points so as not to impede the public use of the right-of-way or to adversely affect the public health, safety, and welfare;

(d) Provide information and plans as reasonably necessary to enable a city or town to comply with subsection (5) of this section including, when notified by the city or town, the provision of advance planning information pursuant to the procedures established by the city or town;

(e) Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way;

(f) Construct, install, operate, and maintain its facilities at its expense; and

(g) Comply with applicable federal and state safety laws and standards.

(7) Nothing in this section may be construed as:

(a) Creating a new duty upon cities or towns to be responsible for construction of facilities for service providers or to modify the right-of-way to accommodate these facilities;

(b) Creating, expanding, or extending any liability of a city or town to any third-party user of facilities or third-party beneficiary; or

(c) Limiting the right of a city or town to require an indemnification agreement as a condition of a service provider's facilities occupying the right-of-way.

(8) Nothing in this section creates, modifies, expands, or diminishes a priority of use of the right-of-way by a service provider or other utility, either in relation to other service providers or in relation to other users of the right-of-way for other purposes.

**Sec.**  RCW 35.99.040 and 2000 c 83 s 4 are each amended to read as follows:

(1) A city or town shall not adopt or enforce regulations or ordinances specifically relating to use of the right‑of‑way by a service provider that:

(a) Impose requirements that regulate the services or business operations of the service provider, except where otherwise authorized in state or federal law;

(b) Conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities or with federal or state worker safety or public safety laws, rules, or regulations;

(c) Regulate the services provided based upon the content or kind of signals that are carried or are capable of being carried over the facilities, except where otherwise authorized in state or federal law; or

(d) Unreasonably deny the use of the right‑of‑way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services.

(2) Nothing in this chapter, including but not limited to the provisions of subsection (1)(d) of this section, limits the authority of a city or town to regulate the placement of facilities through its local zoning or police power, if the regulations do not otherwise:

(a) Prohibit the placement of all wireless or of all wireline facilities within the city or town;

(b) Prohibit the placement of all wireless or of all wireline facilities within city or town rights‑of‑way, unless the city or town is less than five square miles in size and has no commercial areas, in which case the city or town may make available land other than city or town rights‑of‑way for the placement of wireless facilities; ((~~or~~))

(c) Violate section 253 of the telecommunications act of 1996, P.L. 104-104 (110 Stat. 56); or

(d) Violate section 106 of this act regarding the installation of small cell facilities and small cell networks.

(3) This section does not amend, limit, repeal, or otherwise modify the authority of cities or towns to regulate cable television services pursuant to federal law, except that a cable television franchise may not prohibit a cable television company from providing wireless services.

NEW SECTION. **Sec.**  A new section is added to chapter 80.36 RCW to read as follows:

(1) Small cell facilities and small cell networks, as defined in RCW 80.36.375(2), are exempt from land use review.

(2)(a) Installation of small cell facilities and small cell networks exempt from land use review under subsection (1) of this section is subject only to issuance of:

(i) A building permit, if required to confirm compliance with chapter 19.27 RCW;

(ii) An encroachment permit, if required for construction in the right-of-way;

(iii) A use agreement, if located in a county right-of-way; or

(iv) A use permit issued under section 104 of this act if located in a city or town right-of-way.

(b) The city or county shall issue such permits, to the extent that they are applicable, together with associated approvals for installing fiber optic cables connecting the small cell facilities and any required make-ready work, no later than ninety days after the submission of a complete application for a small cell facility or network. The time period for issuance may be tolled within the first thirty days after the submission of an application if the city or county notifies the applicant that the application is incomplete, identifies all missing information, and specifies the code provision, ordinance, application instruction, or otherwise publicly stated procedure that requires the missing information to be submitted. The time period may also be extended by mutual agreement between the city or county and the applicant. Unless the time period is tolled or extended, if the city or county does not issue the associated permit or permits within ninety days after the submission of an application, the associated permit or permits are deemed issued.

(3) Applicants for small cell facilities exempt from land use review under subsection (1) of this section may not be required to submit information not required of other applicants.

(4)(a) A city or county: (i) May deny an application under this section only if the application does not meet applicable building or electrical codes or standards, provided these codes and standards are of general applicability; (ii) must document the specific code provisions or standards on which the denial is based; and (iii) must send the documentation to the applicant on or before the day the city or county denies an application.

(b) The applicant may cure the deficiencies identified by the city or county and resubmit the application within thirty days of the denial without paying an additional processing fee. The city or county shall approve or deny the revised application within thirty days after resubmittal.

(5) Applicants for small cell facility or network permits may not be required to pay a higher processing fee for the applications described in subsection (2) of this section than telecommunications services providers that are not personal wireless service providers. Notwithstanding RCW 35.21.860(1)(b), the total processing fees for any individual permit or approval, including any fees charged by third parties, may not exceed five hundred dollars.

(6) Notwithstanding anything to the contrary in this section, section 102 of this act, and RCW 35.21.860(1)(b), no application, permit, or fee is required for the following work involving small cell facilities: (a) Routine maintenance; (b) the replacement of small cell facilities with small cell facilities that are substantially similar in size, weight, and height, or smaller, and that have the same or less wind loading and structural loading; and (c) the installation, placement, maintenance operation, or replacement of small cell facilities that are suspended on cable or lines that are strung between existing utility poles in compliance with national safety codes.

**Sec.**  RCW 35A.21.245 and 2000 c 83 s 10 are each amended to read as follows:

Each code city is subject to the requirements and restrictions regarding facilities and rights-of-way under ((~~this~~)) RCW 35.21.860 and chapter 35.99 RCW.

**PART TWO**

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

The definitions in this section apply throughout sections 202 through 206 of this act and RCW 35.21.860 unless the context clearly requires otherwise.

(1) "Attachment" means any wire, cable, or antenna for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right-of-way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by the owners, where the installation has been made with the consent of the owners consistent with the provisions of this chapter.

(2) "Attachment agreement" means an agreement negotiated in good faith between an owner and a utility or licensee establishing the rates, terms, and conditions for attachments to the owner's facilities.

(3) "Carrying charge" means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments. Those costs are comprised of the owner's administrative, maintenance, and depreciation expenses and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.

(4) "Communications space" means the usable space on a pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the national electrical safety code.

(5) "Conduit" means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

(6) "Duct" means a single enclosed raceway for conductors, cable, or wire.

(7) "Facility" means a pole, duct, conduit, manhole or handhole, right-of-way, or similar structure on or in which attachments can be made. "Facilities" includes more than one facility.

(8) "Inner duct" means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

(9) "Licensee" includes any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways.

(10) "Locally regulated utility" means a city owning and operating an electric utility not subject to rate or service regulation by the utilities and transportation commission.

(11) "Make-ready work" means engineering or construction activities necessary to make a pole, duct, conduit, right-of-way, or other support equipment available for a new attachment, attachment modifications, or additional attachments. Such work may include rearrangement of existing attachments, installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole.

(12)(a) "Net cost of a bare pole" means: (i) The original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes if applicable associated with the pole investment, divided by (ii) the number of poles represented in the investment amount.

(b) When an owner owns poles jointly with another utility, the number of poles for purposes of calculating the net cost of a bare pole is the number of solely owned poles plus the product of the number of the jointly owned poles multiplied by the owner's ownership percentage in those poles. In the unusual situation in which net pole investment is zero or negative, the owner may use gross figures with appropriate net adjustments.

(13) "Occupant" means any licensee with an attachment to an owner's facility that the owner has granted the licensee the right to maintain.

(14) "Occupied space" means that portion of the facility used for attachment that is rendered unusable for any other attachment, which is presumed to be one foot on a pole and one-half of a duct in a duct or conduit.

(15) "Overlashing" means the tying of additional communications wires or cables to existing communications wires or cables attached to poles.

(16) "Owner" means the locally regulated utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments.

(17) "Pole" means an aboveground structure on which an owner maintains attachments, which is presumed to be thirty-seven and one-half feet in height. When the owner is a locally regulated utility, "pole" is limited to structures used to attach electric distribution lines.

(18) "Requester" means a licensee or utility that applies to an owner to make attachments to or in the owner's facilities and that has an agreement with the owner establishing the rates, terms, and conditions for attachments to the owner's facilities.

(19) "Right-of-way" is an owner's legal right to construct, install, or maintain facilities or related equipment in or on grounds or property belonging to another person. For the purposes of sections 202 through 206 of this act, "right-of-way" includes only the legal rights that permit the owner to allow third parties access to those rights.

(20) "Unusable space," with respect to poles, means the space on the pole below the usable space, including the amount required to set the depth of the pole. In the absence of measurements to the contrary, a pole is presumed to have twenty-four feet of unusable space.

(21) "Usable space," with respect to poles, means the vertical space on a pole above the minimum grade level that can be used for the attachment of wires, cables, and associated equipment, and that includes space occupied by the owner. In the absence of measurements to the contrary, a pole is presumed to have thirteen and one-half feet of usable space. With respect to conduit, "usable space" means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and that includes capacity occupied by the owner.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

(1) An owner shall provide requesters with nondiscriminatory access for attachments to or in any facility the owner owns or controls. An owner may deny access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles. However, the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole and otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment including, but not limited to, using space and cost-saving attachment techniques such as: Boxing; installation of attachments on both sides of the pole at approximately the same height; or bracketing or installation of extension arms, to the extent that the owner uses, or allows occupants to use, such attachment techniques in the communications space of the owner's poles.

(2) All rates, terms, and conditions made, demanded, or received by any owner for any attachment by a licensee must be fair and reasonable and must be included in an attachment agreement with the licensee. Parties may mutually agree on terms for attachment to or in facilities that differ from those in this chapter.

(3) Except for overlashing requests described in subsection (11) of this section, a requester must submit a written application to an owner to request access to its facilities. The owner may recover from the requester the reasonable costs the owner actually and reasonably incurs to process the application, including the costs of inspecting the facilities identified in the application and preparing a preliminary estimate for any necessary make-ready work, to the extent these costs are not, and would not ordinarily be, included in the accounts used to calculate the attachment rates set forth in this chapter. The owner may survey the facilities identified in the application and may recover from the requester the costs the owner actually and reasonably incurs to conduct that survey. The owner must provide the requester with an estimate of those costs prior to conducting a survey. The owner must complete such a survey and respond in writing to requests for access to the facilities identified in the application within forty-five days from the date the owner receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner to identify and evaluate the facilities to or in which the requester seeks to attach.

(4) If the owner denies the request in an application for access, in whole or in part, the owner's written response to the application must include an explanation of the reasons for the denial for each facility to which the owner is denying access. Such a response must include all relevant information supporting the denial.

(5) To the extent that it grants the access requested in an application, the owner's written response must inform the requester of the results of the review of the application. Within fourteen days of providing its written response, the owner must provide an estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate. Make-ready work costs are nonrecurring costs that are not included in carrying charges and must be costs that the owner actually and reasonably incurs to provide the requester with access to the facility.

(a) The requester must accept or reject an estimate of charges to perform make-ready work within thirty days of receipt of the estimate. The owner may require the requester to pay all estimated charges to perform make-ready work as part of acceptance of the estimate or before the owner undertakes the make-ready work subject to true-up to the reasonable costs the owner actually incurs to undertake the work.

(b) An owner may withdraw an outstanding estimate of charges to perform make-ready work any time after thirty days from the date the owner provides the estimate to the requester if the requester has not accepted or rejected that estimate. An owner also may establish a date no earlier than thirty days from the date the owner provides the estimate to the requester after which the estimate expires without further action by the owner.

(6) For requests to attach to poles, the owner must determine the time period for completing the make-ready work and provide that information in a written notice to the requester and all known occupants with existing attachments on the poles that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants, as necessary.

(a) For attachments in the communications space, the notice must:

(i) Specify where and what make-ready work will be performed;

(ii) Set a date for completion of make-ready work that is no later than sixty days after the notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days;

(iii) State that any occupant with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant is responsible for all costs incurred to bring its attachment into compliance;

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work;

(v) State that if make-ready work is not completed by the completion date set by the owner, or fifteen days later if the owner has asserted its right to fifteen additional days, the owner and the requester may negotiate an extension of the completion date or the requester, after giving reasonable notice to the owner, may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the specified make-ready work within the communications space. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization;

(vi) State the name, telephone number, and email address of a person to contact for more information about the make-ready work.

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice must:

(i) Specify where and what make-ready work will be performed;

(ii) Set a date for completion of make-ready work that is no later than ninety days after notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days;

(iii) State that any occupant with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant is responsible for all costs incurred to bring its attachment into compliance;

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work.

(v) State the name, telephone number, and email address of a person to contact for more information about the make-ready work.

(7) For the purpose of compliance with the time periods in this section:

(a) The time periods apply to all requests for access to up to three hundred poles or one-half of one percent of the owner's poles in Washington, whichever is less.

(b) An owner shall negotiate in good faith the time periods for all requests for access to more than three hundred poles or one-half of one percent of the owner's poles in Washington, whichever is less.

(c) An owner may treat multiple requests from a single requester as one request when the requests are filed within the same thirty-day period. The applicable time period for completing the optional survey or required make-ready work begins on the date of the last request the owner receives from the requester within the thirty-day period.

(8)(a) An owner may extend the time periods specified in this section under the following circumstances:

(i) For replacing existing poles to the extent that circumstances beyond the owner's control including, but not necessarily limited to, local government permitting, landowner approval, or adverse weather conditions, require additional time to complete the work; or

(ii) During performance of make-ready work if the owner discovers unanticipated circumstances that reasonably require additional time to complete the work.

(b) Upon discovery of the circumstances in (a)(i) or (ii) of this subsection, the owner must promptly notify, in writing, the requester and other affected occupants with existing attachments. The notice must include the reason for the extension and date by which the owner will complete the work. The owner may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake the work on a nondiscriminatory basis with the other work the owner undertakes on its facilities.

(9) If the owner determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the survey. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(10)(a) If the owner does not complete any required make-ready work within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the make-ready work within the communications space:

(i) Immediately, if the owner declines to exercise its right to perform any necessary make-ready work by notifying the requester that the owner will not undertake that work; or

(ii) After the end of the applicable time period authorized in this section, if the owner has asserted its right to perform make-ready work and has failed to timely complete that work.

(b) If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(11) An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent under the following circumstances:

(a) The occupant must provide the owner with written notice fifteen business days prior to undertaking the overlashing. The notice must identify no more than one hundred affected poles and describe the additional communications wires or cables to be overlashed so that the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice period does not begin until the owner receives a complete written notice that includes the following information:

(i) The size, weight per foot, and number of wires or cables to be overlashed; and

(ii) Maps of the proposed overlash route, including pole numbers if available.

(b) A single occupant may not submit more than five notices or identify more than a total of one hundred poles for overlashing in any ten business day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the ten business day period.

(c) The occupant may proceed with the overlashing described in the notice unless the owner provides a written response, within ten business days of receiving the occupant's notice, prohibiting the overlashing as proposed. The owner may recover from the requester the costs the owner actually and reasonably incurs to inspect the facilities identified in the notice and to prepare any written response. The occupant must correct any safety violations caused by its existing attachments before overlashing additional wires or cables on those attachments.

(d) The owner may refuse to permit the overlashing described in the notice only if, in the owner's reasonable judgment, the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The refusal must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make-ready work that the owner has determined would be required prior to allowing the proposed overlashing. The parties must negotiate in good faith to resolve the issues raised in the owner's refusal.

(e) A licensee's wires or cables may not be overlashed on another occupant's attachments without the owner's consent and unless the licensee has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing on the attachments of other occupants.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

(1) An owner should make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work in the communications space on its poles in cases where the owner has failed to meet deadlines specified in sections 202 through 206 of this act.

(2) If a requester hires a contractor for purposes of performing surveys and make-ready work pursuant to this chapter, the requester must choose a contractor included on the owner's list of authorized contractors. If the owner does not maintain such a list, the requester may choose a contractor without the owner's approval of that choice.

(3) A requester that hires a contractor for a survey or make-ready work must provide the owner with prior written notice identifying and providing the contact information for the contractor and must provide a reasonable opportunity for an owner representative to accompany and consult with the contractor and the requester.

(4) Subject to the review under section 206 of this act, the consulting representative of an owner may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole and on issues of safety, reliability, and generally applicable engineering principles.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

(1) The costs of modifying a facility to create capacity for additional attachment, including but not limited to replacement of a pole, must be borne by the requester and all existing occupants and owners that directly benefit from the modification. Each occupant or owner shall share the cost of the modification in proportion to the amount of new or additional usable space the occupant or owner occupies on or in the facility. An occupant or owner with an existing attachment to the modified facility is deemed to directly benefit from a modification if, within sixty days after receiving notification of such a modification, that occupant or owner adds to its existing attachment or otherwise modifies its attachment. An occupant or owner with an existing attachment may not be deemed to directly benefit from replacement of a pole if the occupant or owner only transfers its attachment to the new pole.

(2) The costs of modifying a facility to bring an existing attachment into compliance with applicable safety requirements must be borne by the occupant or owner that created the safety violation that necessitated the modification. These costs include, but are not necessarily limited to, the costs incurred by the owner or other occupants to modify the facility or conforming attachments. An occupant or owner with an existing conforming attachment to a facility is not required to bear any of the costs to rearrange or replace the occupant's or owner's attachment if such a rearrangement or replacement is necessitated solely to accommodate modifications to the facility to bring another occupant's or owner's attachment into conformance with applicable safety requirements to remedy a safety violation caused by another occupant or owner. The owner and each occupant must bear their own costs to modify their existing attachments if required to comply with applicable safety requirements if an owner or occupant did not create a safety violation that necessitated the modification.

(3) An owner shall provide an occupant with written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the occupant has attachments affected by such action. The owner must provide the notice as soon as practicable but no less than sixty days prior to taking the action described in the notice. However, the owner may provide notice less than sixty days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than sixty days in advance.

(4) An owner may require the occupant to remove the occupant's abandoned attachments. The owner must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must respond to the owner within twenty days after the notice has been delivered to the occupant. If the occupant does not answer or otherwise respond to the owner, the owner may remove the attachments without further notice.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

(1) A fair and reasonable rate for attachments to or in facilities must assure the owner the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the owner attributable to that portion of the facility used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facility, and uses that remain available to the owner.

(2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to poles:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| *Maximum Rate* | = | *Space Factor* | x | *Net Cost of**a Bare Pole* | x | *Carrying**Charge Rate* |

|  |  |  |
| --- | --- | --- |
| *Where Space Factor* | = | Occupied Space |
|  |  | Total Usable Space |

(3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to ducts or conduits:

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| *Maximum**Rate per**Linear ft./m.* | = | [ | 1 | x | 1 Duct | ] | x | [ |   Number  | x | Net Conduit Investment | ] | x | *Carrying**Charge**Rate* |
|  |  |  | Number ofDucts |  | Number ofInner Ducts |  |  |  | of Ducts |  | System Duct Length (ft./m.) |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| (Percentage of Conduit Capacity) |  | (Net Linear Cost of a Conduit) |

simplified as:

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | *Maximum**Rate per**Linear ft./m.* | = | [ | 1 Duct | ] | x | [ | *Net* Conduit Investment | ] | x | *Carrying**Charge**Rate* |  |
|  |  |  |  | *No.* of Inner Ducts |  |  |  | System Duct Length (ft./m.) |  |  |  |  |

If no inner duct or only a single inner duct is installed, the fraction "1 Duct divided by the Number of Inner Ducts" is presumed to be 1/2.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

(1) A licensee may submit disputes to binding arbitration by serving notice on the owner if:

(a) An owner has denied access to its facilities;

(b) An owner fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The licensee disputes the rates, terms, or conditions in an attachment agreement, the owner's performance under the agreement, or the owner's obligations under the agreement or other applicable law.

(2) An owner may submit disputes to binding arbitration by serving notice on the licensee if:

(a) Another licensee is unlawfully making or maintaining attachments to or in the owner's facilities;

(b) Another licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The owner disputes the rates, terms, or conditions in an attachment agreement, the occupant's performance under the agreement, or the occupant's obligations under the agreement or other applicable law.

(3) Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(4) Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel.

(5) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that one of the following circumstances exists:

(a) The parties made good faith efforts to negotiate the disputed rates, terms, or conditions prior to executing the agreement but were unable to resolve the dispute despite those efforts, and such a challenge is brought within six months from the agreement execution date; or

(b) The party challenging the rate, term, or condition was reasonably unaware of the other party's interpretation of that rate, term, or condition when the agreement was executed.

(6) A submission to binding arbitration authorized under this section must contain the following:

(a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the submission and that the parties failed to resolve those issues despite those efforts; such negotiations must include the exchange of reasonably relevant information necessary to resolve the dispute including, but not limited to, the information required to calculate rates in compliance with sections 202 through 206 of this act;

(b) Identification of all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law;

(c) Sufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and

(d) A copy of the attachment agreement, if any, between the parties.

(7) The arbiter will issue a notice of prehearing conference within five business days after the arbitration panel is seated. The party complained against must answer the complaint within ten business days from the date the arbiter serves the complaint. The answer must respond to each allegation in the complaint with sufficient data or other factual information and legal argument to support that response to the extent the respondent possesses such factual information.

(8)(a) A licensee has the burden to prove its right to attach to or in the owner's facilities and that any attachment requirement, term, or condition an owner imposes or seeks to impose that the licensee challenges violates any provision of sections 202 through 205 of this act or other applicable law.

(b) An owner bears the burden to prove that the attachment rates it charges or proposes to charge are in compliance with sections 202 through 205 of this act or that the owner's denial of access to its facilities is lawful under section 202 of this act.

(9) If the arbiter determines that a rate, term, or condition complained of is not in compliance with sections 202 through 205 of this act, the arbiter shall prescribe a rate, term, or condition that is in compliance with sections 202 through 205 of this act. The arbiter shall require the inclusion of that rate, term, or condition in an attachment agreement, and to the extent authorized by applicable law, shall order a refund or payment of the difference between any rate required by section 205 of this act and the rate that was previously charged during the time the owner was charging the rate after the effective date of this section.

(10) If the arbiter determines that an owner has unlawfully or unreasonably denied or delayed access to a facility, the arbiter shall order the owner to provide access to that facility within a reasonable time frame and on rates, terms, and conditions that are in compliance with sections 202 through 205 of this act.

(11) Nothing in this section precludes an owner or occupant from bringing any other complaint not related to the rates, terms, and conditions of attachment and that is otherwise authorized under applicable law.

(12) If the arbiter finds that the rates, terms, or conditions demanded, exacted, charged, or collected by any owner in connection with attachments to its facilities do not comply with sections 202 through 205 of this act as applicable, the arbiter shall establish rates, terms, and conditions consistent with the requirements of sections 202 through 205 of this act, thereafter to be observed and in force and fix the same by final order entered within sixty days after the submission of the issues for arbitration. The arbiter may extend this deadline for good cause.

NEW SECTION. **Sec.**  A new section is added to chapter 54.04 RCW to read as follows:

The definitions in this section apply throughout sections 208 through 212 of this act unless the context clearly requires otherwise.

(1) "Attachment" means any wire, cable, or antenna for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right-of-way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by the owners, where the installation has been made with the consent of the owners consistent with the provisions of this chapter.

(2) "Attachment agreement" means an agreement negotiated in good faith between an owner and a utility or licensee establishing the rates, terms, and conditions for attachments to the owner's facilities.

(3) "Carrying charge" means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments. Those costs are comprised of the owner's administrative, maintenance, and depreciation expenses, and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.

(4) "Communications space" means the usable space on a pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the national electrical safety code.

(5) "Conduit" means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

(6) "Duct" means a single enclosed raceway for conductors, cable, or wire.

(7) "Facility" means a pole, duct, conduit, manhole or handhole, right-of-way, or similar structure on or in which attachments can be made. "Facilities" includes more than one facility.

(8) "Inner duct" means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

(9) "Licensee" includes any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways.

(10) "Locally regulated utility" means a public utility district owning and operating an electric utility not subject to rate or service regulation by the utilities and transportation commission.

(11) "Make-ready work" means engineering or construction activities necessary to make a pole, duct, conduit, right-of-way, or other support equipment available for a new attachment, attachment modifications, or additional attachments. Such work may include rearrangement of existing attachments, installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole.

(12)(a) "Net cost of a bare pole" means: (i) The original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes if applicable associated with the pole investment, divided by (ii) the number of poles represented in the investment amount.

(b) When an owner owns poles jointly with another utility, the number of poles for purposes of calculating the net cost of a bare pole is the number of solely owned poles plus the product of the number of the jointly owned poles multiplied by the owner's ownership percentage in those poles. In the unusual situation in which net pole investment is zero or negative, the owner may use gross figures with appropriate net adjustments.

(13) "Occupant" means any licensee with an attachment to an owner's facility that the owner has granted the licensee the right to maintain.

(14) "Occupied space" means that portion of the facility used for attachment that is rendered unusable for any other attachment, which is presumed to be one foot on a pole and one-half of a duct in a duct or conduit.

(15) "Overlashing" means the tying of additional communications wires or cables to existing communications wires or cables attached to poles.

(16) "Owner" means the locally regulated utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments.

(17) "Pole" means an aboveground structure on which an owner maintains attachments, which is presumed to be thirty-seven and one-half feet in height. When the owner is a locally regulated utility, "pole" is limited to structures used to attach electric distribution lines.

(18) "Requester" means a licensee or utility that applies to an owner to make attachments to or in the owner's facilities and that has an agreement with the owner establishing the rates, terms, and conditions for attachments to the owner's facilities.

(19) "Right-of-way" is an owner's legal right to construct, install, or maintain facilities or related equipment in or on grounds or property belonging to another person. For the purposes of sections 208 through 212 of this act, "right-of-way" includes only the legal rights that permit the owner to allow third parties access to those rights.

(20) "Unusable space," with respect to poles, means the space on the pole below the usable space, including the amount required to set the depth of the pole. In the absence of measurements to the contrary, a pole is presumed to have twenty-four feet of unusable space.

(21) "Usable space," with respect to poles, means the vertical space on a pole above the minimum grade level that can be used for the attachment of wires, cables, and associated equipment, and that includes space occupied by the owner. In the absence of measurements to the contrary, a pole is presumed to have thirteen and one-half feet of usable space. With respect to conduit, "usable space" means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and that includes capacity occupied by the owner.

NEW SECTION. **Sec.**  A new section is added to chapter 54.04 RCW to read as follows:

(1) An owner should make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work in the communications space on its poles in cases where the owner has failed to meet deadlines specified in sections 208 through 212 of this act.

(2) If a requester hires a contractor for purposes of performing surveys and make-ready work pursuant to this chapter, the requester must choose a contractor included on the owner's list of authorized contractors. If the owner does not maintain such a list, the requester may choose a contractor without the owner's approval of that choice.

(3) A requester that hires a contractor for a survey or make-ready work must provide the owner with prior written notice identifying and providing the contact information for the contractor and must provide a reasonable opportunity for an owner representative to accompany and consult with the contractor and the requester.

(4) Subject to the review under section 212 of this act, the consulting representative of an owner may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole and on issues of safety, reliability, and generally applicable engineering principles.

NEW SECTION. **Sec.**  A new section is added to chapter 54.04 RCW to read as follows:

(1) An owner shall provide requesters with nondiscriminatory access for attachments to or in any facility the owner owns or controls. An owner may deny access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles. However, the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole and otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment including, but not limited to, using space and cost-saving attachment techniques such as: Boxing; installation of attachments on both sides of the pole at approximately the same height; or bracketing or installation of extension arms, to the extent that the owner uses, or allows occupants to use, such attachment techniques in the communications space of the owner's poles.

(2) All rates, terms, and conditions made, demanded, or received by any owner for any attachment by a licensee must be fair and reasonable and must be included in an attachment agreement with the licensee or utility. Parties may mutually agree on terms for attachment to or in facilities that differ from those in this chapter.

(3) Except for overlashing requests described in subsection (11) of this section, a requester must submit a written application to an owner to request access to its facilities. The owner may recover from the requester the reasonable costs the owner actually and reasonably incurs to process the application, including the costs of inspecting the facilities identified in the application and preparing a preliminary estimate for any necessary make-ready work, to the extent these costs are not, and would not ordinarily be, included in the accounts used to calculate the attachment rates set forth in this chapter. The owner may survey the facilities identified in the application and may recover from the requester the costs the owner actually and reasonably incurs to conduct that survey. The owner must provide the requester with an estimate of those costs prior to conducting a survey. The owner must complete such a survey and respond in writing to requests for access to the facilities identified in the application within forty-five days from the date the owner receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner to identify and evaluate the facilities to or in which the requester seeks to attach.

(4) If the owner denies the request in an application for access, in whole or in part, the owner's written response to the application must include an explanation of the reasons for the denial for each facility to which the owner is denying access. Such a response must include all relevant information supporting the denial.

(5) To the extent that it grants the access requested in an application, the owner's written response must inform the requester of the results of the review of the application. Within fourteen days of providing its written response, the owner must provide an estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate. Make-ready work costs are nonrecurring costs that are not included in carrying charges and must be costs that the owner actually and reasonably incurs to provide the requester with access to the facility.

(a) The requester must accept or reject an estimate of charges to perform make-ready work within thirty days of receipt of the estimate. The owner may require the requester to pay all estimated charges to perform make-ready work as part of acceptance of the estimate or before the owner undertakes the make-ready work subject to true-up to the reasonable costs the owner actually incurs to undertake the work.

(b) An owner may withdraw an outstanding estimate of charges to perform make-ready work any time after thirty days from the date the owner provides the estimate to the requester if the requester has not accepted or rejected that estimate. An owner also may establish a date no earlier than thirty days from the date the owner provides the estimate to the requester after which the estimate expires without further action by the owner.

(6) For requests to attach to poles, the owner must determine the time period for completing the make-ready work and provide that information in a written notice to the requester and all known occupants with existing attachments on the poles that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants, as necessary.

(a) For attachments in the communications space, the notice must:

(i) Specify where and what make-ready work will be performed;

(ii) Set a date for completion of make-ready work that is no later than sixty days after the notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days;

(iii) State that any occupant with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant is responsible for all costs incurred to bring its attachment into compliance;

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work;

(v) State that if make-ready work is not completed by the completion date set by the owner, or fifteen days later if the owner has asserted its right to fifteen additional days, the owner and the requester may negotiate an extension of the completion date or the requester, after giving reasonable notice to the owner, may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the specified make-ready work within the communications space. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization;

(vi) State the name, telephone number, and email address of a person to contact for more information about the make-ready work.

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice must:

(i) Specify where and what make-ready work will be performed;

(ii) Set a date for completion of make-ready work that is no later than ninety days after notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days;

(iii) State that any occupant with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant is responsible for all costs incurred to bring its attachment into compliance;

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work.

(v) State the name, telephone number, and email address of a person to contact for more information about the make-ready work.

(7) For the purpose of compliance with the time periods in this section:

(a) The time periods apply to all requests for access to up to three hundred poles or one-half of one percent of the owner's poles in Washington, whichever is less.

(b) An owner shall negotiate in good faith the time periods for all requests for access to more than three hundred poles or one-half of one percent of the owner's poles in Washington, whichever is less.

(c) An owner may treat multiple requests from a single requester as one request when the requests are filed within the same thirty-day period. The applicable time period for completing the optional survey or required make-ready work begins on the date of the last request the owner receives from the requester within the thirty-day period.

(8)(a) An owner may extend the time periods specified in this section under the following circumstances:

(i) For replacing existing poles to the extent that circumstances beyond the owner's control including, but not necessarily limited to, local government permitting, landowner approval, or adverse weather conditions, require additional time to complete the work; or

(ii) During performance of make-ready work if the owner discovers unanticipated circumstances that reasonably require additional time to complete the work.

(b) Upon discovery of the circumstances in (a)(i) or (ii) of this subsection, the owner must promptly notify, in writing, the requester and other affected occupants with existing attachments. The notice must include the reason for the extension and date by which the owner will complete the work. The owner may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake the work on a nondiscriminatory basis with the other work the owner undertakes on its facilities.

(9) If the owner determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the survey. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(10)(a) If the owner does not complete any required make-ready work within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the make-ready work within the communications space:

(i) Immediately, if the owner declines to exercise its right to perform any necessary make-ready work by notifying the requester that the owner will not undertake that work; or

(ii) After the end of the applicable time period authorized in this section, if the owner has asserted its right to perform make-ready work and has failed to timely complete that work.

(b) If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(11) An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent under the following circumstances:

(a) The occupant must provide the owner with written notice fifteen business days prior to undertaking the overlashing. The notice must identify no more than one hundred affected poles and describe the additional communications wires or cables to be overlashed so that the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice period does not begin until the owner receives a complete written notice that includes the following information:

(i) The size, weight per foot, and number of wires or cables to be overlashed; and

(ii) Maps of the proposed overlash route, including pole numbers if available.

(b) A single occupant may not submit more than five notices or identify more than a total of one hundred poles for overlashing in any ten business day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the ten business day period.

(c) The occupant may proceed with the overlashing described in the notice unless the owner provides a written response, within ten business days of receiving the occupant's notice, prohibiting the overlashing as proposed. The owner may recover from the requester the costs the owner actually and reasonably incurs to inspect the facilities identified in the notice and to prepare any written response. The occupant must correct any safety violations caused by its existing attachments before overlashing additional wires or cables on those attachments.

(d) The owner may refuse to permit the overlashing described in the notice only if, in the owner's reasonable judgment, the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The refusal must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make-ready work that the owner has determined would be required prior to allowing the proposed overlashing. The parties must negotiate in good faith to resolve the issues raised in the owner's refusal.

(e) A licensee's wires or cables may not be overlashed on another occupant's attachments without the owner's consent and unless the licensee has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing on the attachments of other occupants.

NEW SECTION. **Sec.**  A new section is added to chapter 54.04 RCW to read as follows:

(1) The costs of modifying a facility to create capacity for additional attachment, including but not limited to replacement of a pole, must be borne by the requester and all existing occupants and owners that directly benefit from the modification. Each occupant or owner must share the cost of the modification in proportion to the amount of new or additional usable space the occupant or owner occupies on or in the facility. An occupant or owner with an existing attachment to the modified facility is deemed to directly benefit from a modification if, within sixty days after receiving notification of such a modification, that occupant or owner adds to its existing attachment or otherwise modifies its attachment. An occupant or owner with an existing attachment may not be deemed to directly benefit from replacement of a pole if the occupant or owner only transfers its attachment to the new pole.

(2) The costs of modifying a facility to bring an existing attachment into compliance with applicable safety requirements must be borne by the occupant or owner that created the safety violation that necessitated the modification. These costs include, but are not necessarily limited to, the costs incurred by the owner or other occupants to modify the facility or conforming attachments. An occupant or owner with an existing conforming attachment to a facility is not required to bear any of the costs to rearrange or replace the occupant's or owner's attachment if the rearrangement or replacement is necessitated solely to accommodate modifications to the facility to bring another occupant's or owner's attachment into conformance with applicable safety requirements to remedy a safety violation caused by another occupant or owner. The owner and each occupant must bear their own costs to modify their existing attachments if required to comply with applicable safety requirements if an owner or occupant did not create a safety violation that necessitated the modification.

(3) An owner shall provide an occupant with written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the occupant has attachments affected by such an action. The owner must provide the notice as soon as practicable but no less than sixty days prior to taking the action described in the notice. However, the owner may provide notice less than sixty days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than sixty days in advance.

(4) An owner may require the occupant to remove the occupant's abandoned attachments. The owner must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must respond to the owner within twenty days after the notice has been delivered to the occupant. If the occupant does not answer or otherwise respond to the owner, the owner may remove the attachments without further notice.

NEW SECTION. **Sec.**  A new section is added to chapter 54.04 RCW to read as follows:

(1) A fair and reasonable rate for attachments to or in facilities must assure the owner the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the owner attributable to that portion of the facility used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facility, and uses that remain available to the owner.

(2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to poles:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| *Maximum Rate* | = | *Space Factor* | x | *Net Cost of**a Bare Pole* | x | *Carrying**Charge Rate* |

|  |  |  |
| --- | --- | --- |
| *Where Space Factor* | = | Occupied Space |
|  |  | Total Usable Space |

(3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to ducts or conduits:

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| *Maximum**Rate per**Linear ft./m.* | = | [ | 1 | x | 1 Duct | ] | x | [ |   Number  | x | Net Conduit Investment | ] | x | *Carrying**Charge**Rate* |
|  |  |  | Number ofDucts |  | Number ofInner Ducts |  |  |  | of Ducts |  | System Duct Length (ft./m.) |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| (Percentage of Conduit Capacity) |  | (Net Linear Cost of a Conduit) |

simplified as:

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | *Maximum**Rate per**Linear ft./m.* | = | [ | 1 Duct | ] | x | [ | *Net* Conduit Investment | ] | x | *Carrying**Charge**Rate* |  |
|  |  |  |  | *No.* of Inner Ducts |  |  |  | System Duct Length (ft./m.) |  |  |  |  |

If no inner duct or only a single inner duct is installed, the fraction "1 Duct divided by the Number of Inner Ducts" is presumed to be 1/2.

NEW SECTION. **Sec.**  A new section is added to chapter 54.04 RCW to read as follows:

(1) A licensee may submit disputes to binding arbitration by serving notice on the owner if:

(a) An owner has denied access to its facilities;

(b) An owner fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The licensee disputes the rates, terms, or conditions in an attachment agreement, the owner's performance under the agreement, or the owner's obligations under the agreement or other applicable law.

(2) An owner may submit disputes to binding arbitration by serving notice on the licensee if:

(a) Another licensee is unlawfully making or maintaining attachments to or in the owner's facilities;

(b) Another licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or

(c) The owner disputes the rates, terms, or conditions in an attachment agreement, the occupant's performance under the agreement, or the occupant's obligations under the agreement or other applicable law.

(3) Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(4) Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel.

(5) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that one of the following circumstances exists:

(a) The parties made good faith efforts to negotiate the disputed rates, terms, or conditions prior to executing the agreement but were unable to resolve the dispute despite those efforts, and such a challenge is brought within six months from the agreement execution date; or

(b) The party challenging the rate, term, or condition was reasonably unaware of the other party's interpretation of that rate, term, or condition when the agreement was executed.

(6) A submission to binding arbitration authorized under this section must contain the following:

(a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the submission and that the parties failed to resolve those issues despite those efforts; such negotiations must include the exchange of reasonably relevant information necessary to resolve the dispute including, but not limited to, the information required to calculate rates in compliance with sections 208 through 212 of this act;

(b) Identification of all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law;

(c) Sufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and

(d) A copy of the attachment agreement, if any, between the parties.

(7) The arbiter will issue a notice of prehearing conference within five business days after the arbitration panel is seated. The party complained against must answer the complaint within ten business days from the date the arbiter serves the complaint. The answer must respond to each allegation in the complaint with sufficient data or other factual information and legal argument to support that response to the extent the respondent possesses such factual information.

(8)(a) A licensee has the burden to prove its right to attach to or in the owner's facilities and that any attachment requirement, term, or condition an owner imposes or seeks to impose that the licensee challenges violates any provision of sections 208 through 212 of this act or other applicable law.

(b) An owner bears the burden to prove that the attachment rates it charges or proposes to charge are in compliance with sections 208 through 212 of this act or that the owner's denial of access to its facilities is lawful under section 209 of this act.

(9) If the arbiter determines that a rate, term, or condition complained of is not in compliance with sections 208 through 212 of this act, the arbiter shall prescribe a rate, term, or condition that is in compliance with sections 208 through 212 of this act. The arbiter shall require the inclusion of that rate, term, or condition in an attachment agreement, and to the extent authorized by applicable law, shall order a refund or payment of the difference between any rate required by section 211 of this act and the rate that was previously charged during the time the owner was charging the rate after the effective date of this section.

(10) If the arbiter determines that an owner has unlawfully or unreasonably denied or delayed access to a facility, the arbiter shall order the owner to provide access to that facility within a reasonable time frame and on rates, terms, and conditions that are in compliance with sections 208 through 212 of this act.

(11) Nothing in this section precludes an owner or occupant from bringing any other complaint not related to the rates, terms, and conditions of attachment and that is otherwise authorized under applicable law.

(12) If the arbiter finds that the rates, terms, or conditions demanded, exacted, charged, or collected by any owner in connection with attachments to its facilities do not comply with sections 208 through 212 of this act as applicable, the arbiter shall establish rates, terms, and conditions consistent with the requirements of sections 208 through 212 of this act, thereafter to be observed and in force and fix the same by final order entered within sixty days after the submission of the issues for arbitration. The arbiter may extend this deadline for good cause.

**PART THREE**

**Sec.**  RCW 80.36.630 and 2013 2nd sp.s. c 8 s 202 are each amended to read as follows:

((~~(1)~~)) The definitions in this section apply throughout this section, RCW 80.36.610, and ((~~RCW~~)) 80.36.650 through 80.36.690 ((~~and 80.36.610~~)), unless the context clearly requires otherwise.

((~~(a)~~)) (1) "Basic residential service" means those services set out in 47 C.F.R. Sec. 54.101(a) ((~~(2011)~~)), as it existed on the effective date of this section, and mandatory extended area service approved by the commission.

((~~(b)~~)) (2) "Basic telecommunications services" means the following services:

((~~(i)~~)) (a) Single-party service;

((~~(ii)~~)) (b) Voice grade access to the public switched network;

((~~(iii)~~)) (c) Support for local usage;

((~~(iv)~~)) (d) Dual tone multifrequency signaling (touch-tone);

((~~(v)~~)) (e) Access to emergency services (911);

((~~(vi)~~)) (f) Access to operator services;

((~~(vii)~~)) (g) Access to interexchange services;

((~~(viii)~~)) (h) Access to directory assistance; and

((~~(ix)~~)) (i) Toll limitation services.

((~~(c)~~)) (3) "Communications provider" means a provider of communications services ((~~that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers~~)) including local exchange carriers whether providing service by traditional or voice over internet protocols or a combination thereof.

((~~(d)~~)) (4) "Communications services" includes telecommunications services and information services and ((~~any combination thereof~~)) broadband access services.

((~~(e)~~)) (5) "Incumbent local exchange carrier" has the same meaning as set forth in 47 U.S.C. Sec. 251(h) as it existed on the effective date of this section.

((~~(f)~~)) (6) "Incumbent public network" means the network established by incumbent local exchange carriers for the delivery of communications services to customers that is used by communications providers for origination or termination of communications services by or to customers.

((~~(g) "Interconnected voice over internet protocol service" means an interconnected voice over internet protocol service that: (a) [(i)] Enables real-time, two-way voice communications; (b) [(ii)] requires a broadband connection from the user's location; (c) [(iii)] requires internet protocol-compatible customer premises equipment; and (d) [(iv)] permits users generally to receive calls that originate on the public network and to terminate calls to the public network.~~

~~(h)~~)) (7) "Program" means the state universal communications services program created in RCW 80.36.650.

((~~(i)~~)) (8) "Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153((~~(43)~~)) as it existed on the effective date of this section.

((~~(j)~~)) (9) "Telecommunications act of 1996" means the telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

((~~(k) "Working telephone number" means a north American numbering plan telephone number, or successor dialing protocol, that is developed for use in placing calls to or from the public network, that enables a consumer to make or receive calls.~~

~~(2) This section expires July 1, 2020.~~))

**Sec.**  RCW 80.36.650 and 2016 c 145 s 1 are each amended to read as follows:

(1) A state universal communications services program is established. The program is established to protect public safety and welfare under the authority of the state to regulate telecommunications under Article XII, section 19 of the state Constitution. The purpose of the program is to support continued provision of ((~~basic telecommunications~~)) communications services ((~~under rates, terms, and conditions established by the commission during the time over which incumbent communications providers in the state are adapting to changes in federal universal service fund and intercarrier compensation support~~)) in Washington.

(2) Under the program, eligible communications providers may receive distributions from the universal communications services account created in RCW 80.36.690 in exchange for the affirmative agreement to provide continued services under the rates, terms, and conditions established by the commission under this chapter for the period covered by the distribution. The commission must implement and administer the program under terms and conditions established in RCW 80.36.630 through 80.36.690. Expenditures for the program may not exceed five million dollars per fiscal year; provided, however, that if less than five million dollars is expended in any fiscal year, the unexpended portion must be carried over to subsequent fiscal years and, unless fully expended, must be available for program expenditures in such subsequent fiscal years in addition to the five million dollars allotted for each of those subsequent fiscal years.

(3) A communications provider is eligible to receive distributions from the account if:

(a) The communications provider is: (i) An incumbent local exchange carrier serving fewer than forty thousand access lines in the state; or (ii) a radio communications service company providing wireless two-way voice communications service to less than the equivalent of forty thousand access lines in the state. For purposes of determining the access line threshold in this subsection, the access lines or equivalents of all affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington;

(b) The customers of the communications provider are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark; and

(c) The communications provider meets any other requirements established by the commission pertaining to the provision of communications services, including basic telecommunications services.

(4)(a) Distributions to eligible communications providers are based on a benchmark established by the commission. The benchmark is the rate the commission determines to be a reasonable amount customers should pay for basic residential service provided over the incumbent public network. However, if an incumbent local exchange carrier is charging rates above the benchmark for the basic residential service, that provider may not seek distributions from the fund for the purpose of reducing those rates to the benchmark.

(b) To receive a distribution under the program, an eligible communications provider must affirmatively consent to continue providing communications services to its customers under rates, terms, and conditions established by the commission pursuant to this chapter for the period covered by the distribution.

(5) The program is funded from amounts deposited by the legislature in the universal communications services account established in RCW 80.36.690. The commission must operate the program within amounts appropriated for this purpose and deposited in the account.

(6) The commission must periodically review the accounts and records of any communications provider that receives distributions under the program to ensure compliance with the program and monitor the providers' use of the funds.

(7) The commission must establish an advisory board, consisting of a reasonable balance of representatives from different types of communications providers and consumers, to advise the commission on any rules and policies governing the operation of the program.

((~~(8) The program terminates on June 30, 2019, and no distributions may be made after that date.~~

~~(9) This section expires July 1, 2020.~~))

**Sec.**  RCW 80.36.660 and 2013 2nd sp.s. c 8 s 204 are each amended to read as follows:

((~~(1)~~)) To implement the program, the commission must adopt rules for the following purposes:

((~~(a)~~)) (1) Operation of the program, including criteria for: Eligibility for distributions; use of the funds; identification of any reports or data that must be filed with the commission, including, but not limited to, how a communication provider used the distributed funds; and the communications provider's infrastructure;

((~~(b)~~)) (2) Operation of the universal communications services account established in RCW 80.36.690;

((~~(c)~~)) (3) Establishment of the benchmark used to calculate distributions; and

((~~(d)~~)) (4) Readoption, amendment, or repeal of any existing rules adopted pursuant to RCW 80.36.610 ((~~and 80.36.620~~)) as necessary to be consistent with RCW 80.36.610, and 80.36.630 through 80.36.690 ((~~and 80.36.610~~)).

((~~(2) This section expires July 1, 2020.~~))

**Sec.**  RCW 80.36.670 and 2013 2nd sp.s. c 8 s 205 are each amended to read as follows:

(1) In addition to any other penalties prescribed by law, the commission may impose penalties for failure to make or delays in making or filing any reports required by the commission for administration of the program. In addition, the commission may recover amounts determined to have been improperly distributed under RCW 80.36.650. For the purposes of this section, the provisions of RCW 80.04.380 through 80.04.405, inclusive, apply to all companies that receive support from the universal communications services account created in RCW 80.36.690.

(2) Any action taken under this section must be taken only after providing the affected communications provider with notice and an opportunity for a hearing, unless otherwise provided by law.

(3) Any amounts recovered under this section must be deposited in the universal communications services account created in RCW 80.36.690.

((~~(4) This section expires July 1, 2020.~~))

**Sec.**  RCW 80.36.680 and 2013 2nd sp.s. c 8 s 206 are each amended to read as follows:

((~~(1)~~)) The commission may delegate to the commission secretary or other staff the authority to resolve disputes and make other administrative decisions necessary to the administration and supervision of the program consistent with the relevant statutes and commission rules.

((~~(2) This section expires July 1, 2020.~~))

**Sec.**  RCW 80.36.690 and 2013 2nd sp.s. c 8 s 208 are each amended to read as follows:

((~~(1)~~)) The universal communications services account is created in the custody of the state treasurer. Revenues to the account consist of moneys deposited in the account by the legislature and any penalties or other recoveries received pursuant to RCW 80.36.670. Expenditures from the account may be used only for the purposes of the universal communications services program established in RCW 80.36.650. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

((~~(2) This section expires July 1, 2020.~~))

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 35.21.455 (Locally regulated utilities—Attachments to poles) and 1996 c 32 s 3;

(2)RCW 54.04.045 (Locally regulated utilities—Attachments to poles—Rates—Contracting) and 2008 c 197 s 2 & 1996 c 32 s 5;

(3)RCW 80.36.620 (Universal service program—Rules) and 1998 c 337 s 3; and

(4)RCW 80.36.700 (State universal communications services program—Program expiration and 2013 2nd sp.s. c 8 s 211.

**--- END ---**