

SB 5711 - S AMD 68
By Senator Ericksen

PULLED 03/02/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART ONE

4 **Sec. 101.** RCW 35.21.860 and 2014 c 118 s 2 are each amended to
5 read as follows:

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

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

13 ~~((b))~~ (ii) A fee may be charged to such businesses or service
14 providers that recovers actual administrative expenses incurred by a
15 city or town that are directly related to receiving and approving a
16 permit, license, and franchise, to inspecting plans and construction,
17 or to the preparation of a detailed statement pursuant to chapter
18 43.21C RCW;

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

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

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

25 ~~((i))~~ (A) The placement of new structures in the right-of-way
26 regardless of height, unless the new structure is the result of a
27 mandated relocation in which case no charge will be imposed if the
28 previous location was not charged. When the new structure is placed
29 in the right-of-way for purposes of installing a small cell facility
30 as defined in RCW 80.36.375(2), the site-specific charge imposed
31 under this subsection is limited to the projected cost to the city or

1 town resulting from the installation. However, no additional fee may
2 be imposed on a provider attaching wi-fi antennas or other antennas
3 that are strung on their existing lines between privately or publicly
4 owned utility poles regardless of location;

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

10 ((+iii)) (C) The placement of personal wireless facilities on
11 structures owned by the city or town located in the right-of-way.
12 However, a site-specific charge shall not apply to the placement of
13 personal wireless facilities on existing structures, unless the
14 structure is owned by the city or town. When the personal wireless
15 service facility is a small cell facility as defined in RCW
16 80.36.375(2), there may not be a site-specific charge imposed under
17 this subsection. However, the city or town may charge an attachment
18 rate according to the provisions of sections 202 through 206 of this
19 act.

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

39 (2) Subsection (1) of this section does not prohibit franchise
40 fees imposed on an electrical energy, natural gas, or telephone

1 business, by contract existing on April 20, 1982, with a city or
2 town, for the duration of the contract, but the franchise fees shall
3 be considered taxes for the purposes of the limitations established
4 in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the
5 costs allowable under subsection (1) of this section.

6 NEW SECTION. **Sec. 102.** A new section is added to chapter 35.99
7 RCW to read as follows:

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

21 **Sec. 103.** RCW 35.99.020 and 2000 c 83 s 2 are each amended to
22 read as follows:

23 A city or town may grant, issue, or deny permits for the use of
24 the right-of-way by a service provider for installing, maintaining,
25 repairing, or removing facilities for telecommunications services or
26 cable television services pursuant to ordinances, consistent with
27 this chapter ((83, Laws of 2000)) provided that a city or town shall
28 allow a service provider to place small cell facilities and small
29 cell networks, as defined in RCW 80.36.375(2), in a city or town
30 right-of-way, whether attached to city or town-owned facilities or
31 attached to existing, new, or replacement poles owned by a service
32 provider or another entity, subject only to the conditions of
33 sections 105 and 107 of this act.

34 **Sec. 104.** RCW 35.99.030 and 2000 c 83 s 3 are each amended to
35 read as follows:

36 (1) Cities and towns may require a service provider to obtain a
37 master permit. A city or town may request, but not require, that a

1 service provider with an existing statewide grant to occupy the
2 right-of-way obtain a master permit for wireline facilities.

3 (a) The procedures for the approval of a master permit and the
4 requirements for a complete application for a master permit shall be
5 available in written form.

6 (b) Where a city or town requires a master permit, the city or
7 town shall act upon a complete application within one hundred twenty
8 days from the date a service provider files the complete application
9 for the master permit to use the right-of-way, except:

10 (i) With the agreement of the applicant; or

11 (ii) Where the master permit requires action of the legislative
12 body of the city or town and such action cannot reasonably be
13 obtained within the one hundred twenty day period.

14 (2) A city or town may require that a service provider obtain a
15 use permit. A city or town must act on a request for a use permit by
16 a service provider within thirty days of receipt of a completed
17 application, unless a service provider consents to a different time
18 period or the service provider has not obtained a master permit
19 requested by the city or town.

20 (a) For the purpose of this section, "act" means that the city
21 makes the decision to grant, condition, or deny the use permit, which
22 may be subject to administrative appeal, or notifies the applicant in
23 writing of the amount of time that will be required to make the
24 decision and the reasons for this time period.

25 (b) Requirements otherwise applicable to holders of master
26 permits shall be deemed satisfied by a holder of a cable franchise in
27 good standing.

28 (c) Where the master permit does not contain procedures to
29 expedite approvals and the service provider requires action in less
30 than thirty days, the service provider shall advise the city or town
31 in writing of the reasons why a shortened time period is necessary
32 and the time period within which action by the city or town is
33 requested. The city or town shall reasonably cooperate to meet the
34 request where practicable.

35 (d) A city or town may not deny a use permit to a service
36 provider with an existing statewide grant to occupy the right-of-way
37 for wireline facilities on the basis of failure to obtain a master
38 permit.

39 (3) The reasons for a denial of a master permit shall be
40 supported by substantial evidence contained in a written record. A

1 service provider adversely affected by the final action denying a
2 master permit, or by an unreasonable failure to act on a master
3 permit as set forth in subsection (1) of this section, may commence
4 an action within thirty days to seek relief, which shall be limited
5 to injunctive relief.

6 (4) A service provider adversely affected by the final action
7 denying a use permit may commence an action within thirty days to
8 seek relief, which shall be limited to injunctive relief. In any
9 appeal of the final action denying a use permit, the standard for
10 review and burden of proof shall be as set forth in RCW 36.70C.130.

11 (5) A city or town shall:

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

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

27 (6) A service provider shall:

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

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

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

39 (d) Provide information and plans as reasonably necessary to
40 enable a city or town to comply with subsection (5) of this section,

1 including, when notified by the city or town, the provision of
2 advance planning information pursuant to the procedures established
3 by the city or town;

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

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

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

11 (7) Nothing in this section shall be construed as:

12 (a) Creating a new duty upon (~~city [cities]~~) cities or towns to
13 be responsible for construction of facilities for service providers
14 or to modify the right-of-way to accommodate such facilities;

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

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

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

26 (9) Small cell facilities and networks, as defined in RCW
27 80.36.375(2), are exempt from this section.

28 NEW SECTION. Sec. 105. A new section is added to chapter 35.99
29 RCW to read as follows:

30 (1) A city or town shall provide service providers with
31 nondiscriminatory access for attachments of small cell facilities as
32 defined in RCW 80.36.375(2) to or in any right-of-way facilities the
33 city or town owns or controls, either directly or through a
34 municipally owned utility. A city or town may only deny access to
35 specific facilities on a nondiscriminatory basis where there is
36 insufficient capacity or for reasons of safety, reliability, and
37 generally applicable engineering principles. However, the city or
38 town may not deny access to a pole based on insufficient capacity if
39 the service provider is willing to compensate the city or town for

1 the costs to replace the existing pole with a taller pole and
2 otherwise undertake make-ready work to increase the capacity of the
3 pole to accommodate an additional attachment. The small cell
4 attachments allowed under this subsection are subject to the rate
5 established in RCW 35.21.800(1)(a)(v)(C) and sections 202 through 206
6 of this act and other reasonable terms and conditions as provided in
7 a small cell right-of-way agreement approved under this section. Any
8 small cell right-of-way agreement approving the attachment of small
9 cell facilities and networks as defined in RCW 80.36.375(2) on city
10 or town-owned facilities must be consistent with sections 202 through
11 206 of this act. However, no right-of-way or other permit is required
12 for wi-fi antennas that are strung between existing privately or
13 publicly owned utility poles regardless of location.

14 (2) A city or town shall provide service providers with
15 nondiscriminatory access to the right-of-way to attach small cell
16 facilities to existing facilities owned by any entity and to install
17 new or replacement poles for purposes of attaching small cell
18 facilities, subject to the rates established in RCW
19 35.21.860(1)(a)(v) (A) through (C) and other reasonable terms and
20 conditions as provided in a small cell right-of-way agreement
21 approved under this section. A city or town may only deny access to
22 specific locations in the right-of-way on a nondiscriminatory basis
23 for reasons of safety and generally applicable engineering
24 principles. With the issuance of a use permit for each location, the
25 city or town may limit the height of a new or replacement pole so
26 that it does not exceed one hundred thirty percent of the average
27 pole height in the vicinity, when the heights of poles within the
28 same right-of-way and within one-half mile of the proposed pole
29 location are averaged.

30 (3) A city or town must approve a small cell right-of-way
31 agreement under this section within ninety days of a service
32 provider's submittal of a complete application for such a permit. In
33 addition to the applicable rate established in RCW
34 35.21.860(1)(a)(v), the small cell right-of-way agreement must
35 provide for the future issuance of use permits anywhere within the
36 city or town. No concealment, stealth, or aesthetic standards may be
37 required through a small cell right-of-way agreement. However, such
38 standards may be adopted by ordinance and on a nondiscriminatory
39 basis required of all applicants by a city or town through a use
40 permit to the extent permitted in subsection (4) of this section.

1 (4) Once a small cell right-of-way agreement is approved under
2 subsection (3) of this section, the city or town must issue a use
3 permit for each small cell facility or network according to the same
4 timeline and process as described in section 107 of this act.

5 (5) A city or town shall:

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

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

21 (6) A service provider shall:

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

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

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

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

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

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

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

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

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

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

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

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

20 (9) In the event a city or town denies the granting of a small
21 cell right-of-way agreement to a provider, the reasons for the denial
22 must be supported by substantial evidence contained in a written
23 record. A service provider adversely affected by the final action
24 denying a small cell right-of-way agreement, or by an unreasonable
25 failure to act on a small cell right-of-way agreement as set forth in
26 subsection (3) of this section, may commence an action within thirty
27 days to seek relief, which is limited to injunctive relief.

28 (10) A service provider adversely affected by a final action
29 denying a use permit may commence an action within thirty days to
30 seek relief, which is limited to injunctive relief. In any appeal of
31 the final action denying a use permit, the standard for review and
32 burden of proof is as set forth in RCW 36.70C.130.

33 **Sec. 106.** RCW 35.99.040 and 2000 c 83 s 4 are each amended to
34 read as follows:

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

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

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

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

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

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

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

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

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

30 (d) Violate section 107 of this act regarding the installation of
31 small cell facilities and small cell networks.

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

37 NEW SECTION. Sec. 107. A new section is added to chapter 80.36
38 RCW to read as follows:

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

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

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

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

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

11 (iv) A use permit issued under section 103 of this act if located
12 in a city or town right-of-way.

13 (b) The city or county shall issue such permits, to the extent
14 that they are applicable, as well as any necessary related approvals,
15 to the extent requested, for installing fiber optic cables connecting
16 the small cell facilities and any required make-ready work, no later
17 than ninety days after the submission of a complete application for a
18 small cell facility or network. The time period for issuance may be
19 tolled within the first thirty days after the submission of an
20 application if the city or county notifies the applicant that the
21 application is incomplete, identifies all missing information, and
22 specifies the code provision, ordinance, application instruction, or
23 otherwise publicly stated procedure that requires the missing
24 information to be submitted. The time period may also be extended by
25 mutual agreement between the city or county and the applicant. Unless
26 the time period is tolled or extended, if the city or county does not
27 issue the associated permit or permits within ninety days after the
28 submission of an application, the associated permit or permits are
29 deemed issued.

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

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

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

6 (5)(a) The city or county may charge an application fee for small
7 cell facility or network permits, provided that the fee is limited to
8 the actual, direct, and reasonable costs incurred by the city or
9 county in granting or processing the permit. Further, the application
10 fee may not include any direct payment or reimbursement of third-
11 party charges or fees.

12 (b) In any controversy concerning the appropriateness of the
13 application fee charged, the city or county has the burden of proving
14 the application fee is reasonably related to the actual, direct, and
15 reasonable costs incurred by the city or county to process the permit
16 application and does not include any third-party rates or fees.

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

28 **Sec. 108.** RCW 35A.21.245 and 2000 c 83 s 10 are each amended to
29 read as follows:

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

33 **PART TWO**

34 NEW SECTION. **Sec. 201.** A new section is added to chapter 35.21
35 RCW to read as follows:

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

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

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

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

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

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

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

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

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

39 (9) "Licensee" includes any person, firm, corporation,
40 partnership, company, association, joint stock association, or

1 cooperatively organized association, other than a utility, that is
2 authorized to construct attachments upon, along, under, or across the
3 public ways.

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

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

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

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

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

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

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

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

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

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

10 (19) "Right-of-way" is an owner's legal right to construct,
11 install, or maintain facilities or related equipment in or on grounds
12 or property belonging to another person. For the purposes of sections
13 202 through 206 of this act, "right-of-way" includes only the legal
14 rights that permit the owner to allow third parties access to those
15 rights.

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

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

32 NEW SECTION. **Sec. 202.** A new section is added to chapter 35.21
33 RCW to read as follows:

34 (1) An owner shall provide requesters with nondiscriminatory
35 access for attachments to or in any facility the owner owns or
36 controls. An owner may deny access to specific facilities on a
37 nondiscriminatory basis where there is insufficient capacity or for
38 reasons of safety, reliability, and generally applicable engineering
39 principles. However, the owner may not deny access to a pole based on

1 insufficient capacity if the requester is willing to compensate the
2 owner for the costs to replace the existing pole with a taller pole
3 and otherwise undertake make-ready work to increase the capacity of
4 the pole to accommodate an additional attachment including, but not
5 limited to, using space and cost-saving attachment techniques such
6 as: Boxing; installation of attachments on both sides of the pole at
7 approximately the same height; or bracketing or installation of
8 extension arms, to the extent that the owner uses, or allows
9 occupants to use, such attachment techniques in the communications
10 space of the owner's poles.

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

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

37 (4) If the owner denies the request in an application for access,
38 in whole or in part, the owner's written response to the application
39 must include an explanation of the reasons for the denial for each

1 facility to which the owner is denying access. Such a response must
2 include all relevant information supporting the denial.

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

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

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

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

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

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

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

38 (iii) State that any occupant with an existing attachment may
39 modify that attachment consistent with the specified make-ready work
40 before the date set for completion of that work. Any occupant with an

1 existing attachment that does not comply with applicable safety
2 requirements must modify that attachment to bring it into compliance
3 before the date set for completion of the make-ready work. The
4 occupant is responsible for all costs incurred to bring its
5 attachment into compliance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (10)(a) If the owner does not complete any required make-ready
40 work within the time periods established in this section, a requester

1 seeking attachment in the communications space may negotiate an
2 extension of the completion date with the owner or may hire a
3 contractor from the list of contractors the owner has authorized to
4 work on its poles to complete the make-ready work within the
5 communications space:

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

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

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

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

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

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

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

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

37 (c) The occupant may proceed with the overlashing described in
38 the notice unless the owner provides a written response, within ten
39 business days of receiving the occupant's notice, prohibiting the
40 overlashing as proposed. The owner may recover from the requester the

1 costs the owner actually and reasonably incurs to inspect the
2 facilities identified in the notice and to prepare any written
3 response. The occupant must correct any safety violations caused by
4 its existing attachments before overlashing additional wires or
5 cables on those attachments.

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

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

20 NEW SECTION. **Sec. 203.** A new section is added to chapter 35.21
21 RCW to read as follows:

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

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

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

38 (4) Subject to the review under section 206 of this act, the
39 consulting representative of an owner may make final determinations,

1 on a nondiscriminatory basis, on the attachment capacity of any pole
2 and on issues of safety, reliability, and generally applicable
3 engineering principles.

4 NEW SECTION. **Sec. 204.** A new section is added to chapter 35.21
5 RCW to read as follows:

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

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

37 (3) An owner shall provide an occupant with written notice prior
38 to removal of, termination of service to, or modification of (other
39 than routine maintenance or modification in response to emergencies)

1 any facilities on or in which the occupant has attachments affected
2 by such action. The owner must provide the notice as soon as
3 practicable but no less than sixty days prior to taking the action
4 described in the notice. However, the owner may provide notice less
5 than sixty days in advance if a governmental entity or landowner
6 other than the owner requires the action described in the notice and
7 did not notify the owner of that requirement more than sixty days in
8 advance.

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

16 NEW SECTION. **Sec. 205.** A new section is added to chapter 35.21
17 RCW to read as follows:

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

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

29
$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

32
$$\text{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

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

$$\begin{array}{l}
 \text{Maximum} \\
 \text{Rate per} = \left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{Number of Inner Ducts}} \right] \times \left[\frac{\text{Number}}{\text{of Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate} \\
 \text{Linear ft./m.}
 \end{array}$$

(Percentage of Conduit Capacity) (Net Linear Cost of a Conduit)

simplified as:

$$\begin{array}{l}
 \text{Maximum} \\
 \text{Rate per} = \left[\frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate} \\
 \text{Linear ft./m.}
 \end{array}$$

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. 206.** 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.

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

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

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

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

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

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

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

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

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

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

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

9 (8)(a) A licensee has the burden to prove its right to attach to
10 or in the owner's facilities and that any attachment requirement,
11 term, or condition an owner imposes or seeks to impose that the
12 licensee challenges violates any provision of sections 202 through
13 205 of this act or other applicable law.

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

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

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

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

37 (12) If the arbiter finds that the rates, terms, or conditions
38 demanded, exacted, charged, or collected by any owner in connection
39 with attachments to its facilities do not comply with sections 202
40 through 205 of this act as applicable, the arbiter shall establish

1 rates, terms, and conditions consistent with the requirements of
2 sections 202 through 205 of this act, thereafter to be observed and
3 in force and fix the same by final order entered within sixty days
4 after the submission of the issues for arbitration. The arbiter may
5 extend this deadline for good cause.

6 NEW SECTION. **Sec. 207.** A new section is added to chapter 54.04
7 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (14) "Occupied space" means that portion of the facility used for
39 attachment that is rendered unusable for any other attachment, which

1 is presumed to be one foot on a pole and one-half of a duct in a duct
2 or conduit.

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

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

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

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

18 (19) "Right-of-way" is an owner's legal right to construct,
19 install, or maintain facilities or related equipment in or on grounds
20 or property belonging to another person. For the purposes of sections
21 208 through 212 of this act, "right-of-way" includes only the legal
22 rights that permit the owner to allow third parties access to those
23 rights.

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

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

1 NEW SECTION. **Sec. 208.** A new section is added to chapter 54.04
2 RCW to read as follows:

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

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

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

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

24 NEW SECTION. **Sec. 209.** A new section is added to chapter 54.04
25 RCW to read as follows:

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

1 occupants to use, such attachment techniques in the communications
2 space of the owner's poles.

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

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

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

35 (5) To the extent that it grants the access requested in an
36 application, the owner's written response must inform the requester
37 of the results of the review of the application. Within fourteen days
38 of providing its written response, the owner must provide an estimate
39 of charges to perform all necessary make-ready work, including the
40 costs of completing the estimate. Make-ready work costs are

1 nonrecurring costs that are not included in carrying charges and must
2 be costs that the owner actually and reasonably incurs to provide the
3 requester with access to the facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 NEW SECTION. **Sec. 210.** A new section is added to chapter 54.04
16 RCW to read as follows:

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

31 (2) The costs of modifying a facility to bring an existing
32 attachment into compliance with applicable safety requirements must
33 be borne by the occupant or owner that created the safety violation
34 that necessitated the modification. These costs include, but are not
35 necessarily limited to, the costs incurred by the owner or other
36 occupants to modify the facility or conforming attachments. An
37 occupant or owner with an existing conforming attachment to a
38 facility is not required to bear any of the costs to rearrange or
39 replace the occupant's or owner's attachment if the rearrangement or

1 replacement is necessitated solely to accommodate modifications to
2 the facility to bring another occupant's or owner's attachment into
3 conformance with applicable safety requirements to remedy a safety
4 violation caused by another occupant or owner. The owner and each
5 occupant must bear their own costs to modify their existing
6 attachments if required to comply with applicable safety requirements
7 if an owner or occupant did not create a safety violation that
8 necessitated the modification.

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

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

27 NEW SECTION. **Sec. 211.** A new section is added to chapter 54.04
28 RCW to read as follows:

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

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

$$\begin{aligned} & \text{Maximum} = \text{Space} \times \text{Net Cost of} \times \text{Carrying} \\ & \text{Rate} \quad \text{Factor} \quad \text{a Bare Pole} \quad \text{Charge} \\ & \quad \quad \quad \quad \quad \quad \quad \quad \quad \quad \quad \quad \text{Rate} \end{aligned}$$

$$\text{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

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

$$\begin{aligned} & \text{Maximum} \quad \quad \quad \text{Carrying} \\ & \text{Rate per} = \left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{Number of Inner Ducts}} \right] \times \left[\frac{\text{Number}}{\text{of Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Charge} \\ & \text{Linear ft./m.} \quad \quad \quad \text{Rate} \\ & \quad \quad \quad \text{(Percentage of Conduit Capacity)} \quad \text{(Net Linear Cost of a Conduit)} \end{aligned}$$

simplified as:

$$\begin{aligned} & \text{Maximum} \quad \quad \quad \text{Carrying} \\ & \text{Rate per} = \left[\frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Charge} \\ & \text{Linear ft./m.} \quad \quad \quad \text{Rate} \end{aligned}$$

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. 212. 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.

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

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

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

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

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

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

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

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

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

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

35 (a) A statement, including specific facts, demonstrating that the
36 complainant engaged or reasonably attempted to engage in good faith,
37 executive-level negotiations to resolve the disputed issues raised in
38 the submission and that the parties failed to resolve those issues
39 despite those efforts; such negotiations must include the exchange of
40 reasonably relevant information necessary to resolve the dispute

1 including, but not limited to, the information required to calculate
2 rates in compliance with sections 208 through 212 of this act;

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

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

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

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

19 (8)(a) A licensee has the burden to prove its right to attach to
20 or in the owner's facilities and that any attachment requirement,
21 term, or condition an owner imposes or seeks to impose that the
22 licensee challenges violates any provision of sections 208 through
23 212 of this act or other applicable law.

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

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

38 (10) If the arbiter determines that an owner has unlawfully or
39 unreasonably denied or delayed access to a facility, the arbiter
40 shall order the owner to provide access to that facility within a

1 reasonable time frame and on rates, terms, and conditions that are in
2 compliance with sections 208 through 212 of this act.

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

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

16 **PART THREE**

17 **Sec. 301.** RCW 80.36.630 and 2013 2nd sp.s. c 8 s 202 are each
18 amended to read as follows:

19 ~~((1))~~ The definitions in this section apply throughout this
20 section, RCW 80.36.610, and ~~((RCW))~~ 80.36.650 through 80.36.690 ~~((and~~
21 ~~80.36.610))~~, unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

37 ~~((e))~~ (3) "Communications provider" means a provider of
38 communications services ~~((that assigns a working telephone number to~~

1 ~~a final consumer for intrastate wireline or wireless communications~~
2 ~~services or interconnected voice over internet protocol service, and~~
3 ~~includes local exchange carriers)) including local exchange carriers~~
4 ~~whether providing service by traditional or voice over internet~~
5 ~~protocols or a combination thereof.~~

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

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

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

16 ((~~g~~)) (7) "Interconnected voice over internet protocol service"
17 means an interconnected voice over internet protocol service that:
18 (a) ((~~i~~)) Enables real-time, two-way voice communications; (b)
19 ((~~ii~~)) requires a broadband connection from the user's location;
20 (c) ((~~iii~~)) requires internet protocol-compatible customer
21 premises equipment; and (d) ((~~iv~~)) permits users generally to
22 receive calls that originate on the public network and to terminate
23 calls to the public network.

24 ((~~h~~)) (8) "Program" means the state universal communications
25 services program created in RCW 80.36.650.

26 ((~~i~~)) (9) "Telecommunications" has the same meaning as defined
27 in 47 U.S.C. Sec. 153((~~43~~)) as it existed on the effective date of
28 this section.

29 ((~~j~~)) (10) "Telecommunications act of 1996" means the
30 telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

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

35 (~~2~~) ~~This section expires July 1, 2020.)~~

36 **Sec. 302.** RCW 80.36.650 and 2016 c 145 s 1 are each amended to
37 read as follows:

38 (1) A state universal communications services program is
39 established. The program is established to protect public safety and

1 welfare under the authority of the state to regulate
2 telecommunications under Article XII, section 19 of the state
3 Constitution. The purpose of the program is to support continued
4 provision of basic telecommunications services under rates, terms,
5 and conditions established by the commission during the time over
6 which incumbent communications providers in the state are adapting to
7 changes in federal universal service fund and intercarrier
8 compensation support.

9 (2) Under the program, eligible communications providers may
10 receive distributions from the universal communications services
11 account created in RCW 80.36.690 in exchange for the affirmative
12 agreement to provide continued services under the rates, terms, and
13 conditions established by the commission under this chapter for the
14 period covered by the distribution. The commission must implement and
15 administer the program under terms and conditions established in RCW
16 80.36.630 through 80.36.690. Expenditures for the program may not
17 exceed five million dollars per fiscal year; provided, however, that
18 if less than five million dollars is expended in any fiscal year, the
19 unexpended portion must be carried over to subsequent fiscal years
20 and, unless fully expended, must be available for program
21 expenditures in such subsequent fiscal years in addition to the five
22 million dollars allotted for each of those subsequent fiscal years.

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 303.** RCW 80.36.660 and 2013 2nd sp.s. c 8 s 204 are each
31 amended to read as follows:

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

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

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

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

5 ~~((d))~~ (4) Readoption, amendment, or repeal of any existing
6 rules adopted pursuant to RCW 80.36.610 ~~((and 80.36.620))~~ as
7 necessary to be consistent with RCW 80.36.610, and 80.36.630 through
8 80.36.690 ~~((and 80.36.610))~~.

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

10 **Sec. 304.** RCW 80.36.670 and 2013 2nd sp.s. c 8 s 205 are each
11 amended to read as follows:

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

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

24 (3) Any amounts recovered under this section must be deposited in
25 the universal communications services account created in RCW
26 80.36.690.

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

28 **Sec. 305.** RCW 80.36.680 and 2013 2nd sp.s. c 8 s 206 are each
29 amended to read as follows:

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

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

36 **Sec. 306.** RCW 80.36.690 and 2013 2nd sp.s. c 8 s 208 are each
37 amended to read as follows:

1 (~~(1)~~) The universal communications services account is created
2 in the custody of the state treasurer. Revenues to the account
3 consist of moneys deposited in the account by the legislature and any
4 penalties or other recoveries received pursuant to RCW 80.36.670.
5 Expenditures from the account may be used only for the purposes of
6 the universal communications services program established in RCW
7 80.36.650. Only the secretary of the commission or the secretary's
8 designee may authorize expenditures from the account. The account is
9 subject to allotment procedures under chapter 43.88 RCW, but an
10 appropriation is not required for expenditures.

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

12 NEW SECTION. **Sec. 307.** The following acts or parts of acts are
13 each repealed:

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

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

18 (3) RCW 80.36.620 (Universal service program—Rules) and 1998 c
19 337 s 3; and

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

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22 On page 1, line 1 of the title, after "services;" strike the
23 remainder of the title and insert "amending RCW 35.21.860, 35.99.020,
24 35.99.030, 35.99.040, 35A.21.245, 80.36.630, 80.36.650, 80.36.660,
25 80.36.670, 80.36.680, and 80.36.690; adding new sections to chapter
26 35.99 RCW; adding a new section to chapter 80.36 RCW; adding new
27 sections to chapter 35.21 RCW; adding new sections to chapter 54.04
28 RCW; and repealing RCW 35.21.455, 54.04.045, 80.36.620, and
29 80.36.700."

EFFECT: Revises the site specific charge for placing a new structure in the right-of-way and on city-owned structures outside of the right-of-way to the projected cost to the city or town for installation.

Clarifies right-of-way agreement, not a master permit, for attachment of small cell facilities.

Provides injunctive relief to providers adversely affected when a city or town denies, or through an unreasonable failure to act on, a small cell facilities right-of-way agreement.

Provides injunctive relief to providers adversely affected when denied a use permit.

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