

RCW 54.04.045 Locally regulated utilities—Attachments to poles—Rates—Contracting. (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, which is authorized to construct attachments upon, along, under, or across public ways.

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

(d) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of licensees approved for attachments.

(2) All rates, terms, and conditions made, demanded, or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory, and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) A just and reasonable rate must be calculated as follows:

(a) One component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities and uses that remain available to the owner or owners of the subject facilities;

(b) The other component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to the share, expressed in feet, of the required support and clearance space, divided equally among the locally regulated utility and all attaching licensees, in addition to the space used for the pole attachment, which sum is divided by the height of the pole; and

(c) The just and reasonable rate shall be computed by adding one-half of the rate component resulting from (a) of this subsection to one-half of the rate component resulting from (b) of this subsection.

(4) For the purpose of establishing a rate under subsection (3)(a) of this section, the locally regulated utility may establish a rate according to the calculation set forth in subsection (3)(a) of this section or it may establish a rate according to the cable formula set forth by the federal communications commission by rule as it existed on June 12, 2008, or such subsequent date as may be provided by the federal communications commission by rule, consistent with the purposes of this section.

(5) Except in extraordinary circumstances, a locally regulated utility must respond to a licensee's application to enter into a new pole attachment contract or renew an existing pole attachment contract within forty-five days of receipt, stating either:

(a) The application is complete; or

(b) The application is incomplete, including a statement of what information is needed to make the application complete.

(6) Within sixty days of an application being deemed complete, the locally regulated utility shall notify the applicant as to whether the application has been accepted for licensing or rejected. In extraordinary circumstances, and with the approval of the applicant, the locally regulated utility may extend the sixty-day timeline under this subsection. If the application is rejected, the locally regulated utility must provide reasons for the rejection. A request to attach may only be denied on a nondiscriminatory basis (a) where there is insufficient capacity; or (b) for reasons of safety, reliability, or the inability to meet generally applicable engineering standards and practices.

(7) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [2008 c 197 § 2; 1996 c 32 § 5.]

Intent—2008 c 197: "It is the policy of the state to encourage the joint use of utility poles, to promote competition for the provision of telecommunications and information services, and to recognize the value of the infrastructure of locally regulated utilities. To achieve these objectives, the legislature intends to establish a consistent cost-based formula for calculating pole attachment rates, which will ensure greater predictability and consistency in pole attachment rates statewide, as well as ensure that locally regulated utility customers do not subsidize licensees. The legislature further intends to continue working through issues related to pole attachments with interested parties in an open and collaborative process in order to minimize the potential for disputes going forward." [2008 c 197 § 1.]