

E2SHB 2533 - S COMM AMD

By Committee on Water, Energy & Telecommunications

ADOPTED 03/06/2008

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

3 "NEW SECTION. **Sec. 1.** It is the policy of the state to encourage
4 the joint use of utility poles, to promote competition for the
5 provision of telecommunications and information services, and to
6 recognize the value of the infrastructure of locally regulated
7 utilities. To achieve these objectives, the legislature intends to
8 establish a consistent cost-based formula for calculating pole
9 attachment rates, which will ensure greater predictability and
10 consistency in pole attachment rates statewide, as well as ensure that
11 locally regulated utility customers do not subsidize licensees. The
12 legislature further intends to continue working through issues related
13 to pole attachments with interested parties in an open and
14 collaborative process in order to minimize the potential for disputes
15 going forward.

16 **Sec. 2.** RCW 54.04.045 and 1996 c 32 s 5 are each amended to read
17 as follows:

18 (1) As used in this section:

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

27 (b) "Licensee" means any person, firm, corporation, partnership,
28 company, association, joint stock association, or cooperatively

1 organized association, which is authorized to construct attachments
2 upon, along, under, or across public ways.

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

6 ~~((+e))~~ (d) "Nondiscriminatory" means that pole owners may not
7 arbitrarily differentiate among or between similar classes of
8 ~~((persons))~~ licensees approved for attachments.

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

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

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

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

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

36 (4) For the purpose of establishing a rate under subsection (3)(a)
37 of this section, the locally regulated utility may establish a rate
38 according to the calculation set forth in subsection (3)(a) of this

1 section or it may establish a rate according to the cable formula set
2 forth by the federal communications commission by rule as it existed on
3 the effective date of this section, or such subsequent date as may be
4 provided by the federal communications commission by rule, consistent
5 with the purposes of this section.

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

10 (a) The application is complete; or

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

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

24 (7) Nothing in this section shall be construed or is intended to
25 confer upon the utilities and transportation commission any authority
26 to exercise jurisdiction over locally regulated utilities."

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27 On page 1, line 2 of the title, after "utilities;" strike the
28 remainder of the title and insert "amending RCW 54.04.045; and creating
29 a new section."

EFFECT: Clarifies that pole attachment rates are to be cost-based.

Clarifies the method and technical components for calculating pole attachment rates.

Allows for locally regulated utilities to extend the timeframe for review of complete applications based upon extraordinary circumstances and the approval of the applicant.

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