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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2533

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State of Washington

60th Legislature

2008 Regular Session

By House Appropriations (originally sponsored by Representatives McCoy, Chase, and Quall)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to attachments to utility poles of locally  
2 regulated utilities; amending RCW 54.04.045; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** It is the policy of the state to encourage  
6 the joint use of utility poles and to promote competition for the  
7 provision of telecommunications and information services. In order to  
8 achieve these two objectives, the legislature intends to establish a  
9 consistent formula for calculating pole attachment rates, which will  
10 ensure greater predictability and consistency in pole attachment rates  
11 statewide. The legislature further intends to continue working through  
12 issues related to pole attachments with interested parties in an open  
13 and collaborative process in order to minimize the potential for  
14 disputes going forward.

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

17 (1) As used in this section:

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

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

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

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

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

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

26 (a) One-half of the rate consists of the additional costs of  
27 procuring and maintaining pole attachments, but may not exceed the  
28 actual capital and operating expenses of the locally regulated utility  
29 attributable to that portion of the pole, duct, or conduit used for the  
30 pole attachment, including a share of the required support and  
31 clearance space, in proportion to the space used for the pole  
32 attachment, as compared to all other uses made of the subject  
33 facilities and uses that remain available to the owner or owners of the  
34 subject facilities; and

35 (b) One-half of the rate consists of the additional costs of  
36 procuring and maintaining pole attachments, but may not exceed the  
37 actual capital and operating expenses of the locally regulated utility

1 attributable to the share of the required support and clearance space,  
2 divided equally among all attachers, which sum is divided by the height  
3 of the pole.

4 (4) The locally regulated utility may establish a rate according to  
5 the calculation outlined in subsection (3) of this section or it may  
6 establish a rate according to the cable formula set forth by the  
7 federal communications commission by rule as it existed on the  
8 effective date of this section, or such subsequent date as may be  
9 provided by the federal communications commission by rule, consistent  
10 with the purposes of this section.

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

15 (a) The application is complete; or

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

18 (6) Within sixty days of an application being deemed complete, the  
19 locally regulated utility shall notify the applicant as to whether the  
20 application has been accepted for licensing or rejected. If the  
21 application is rejected, the locally regulated utility must provide  
22 reasons for the rejection. A request to attach may only be denied on  
23 a nondiscriminatory basis (a) where there is insufficient capacity; or  
24 (b) for reasons of safety, reliability, and generally applicable  
25 engineering purposes.

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

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