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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 **Sec. 1.** RCW 54.04.045 and 1996 c 32 s 5 are each amended to read  
6 as follows:

7 (1) As used in this section:

8 (a) "Attachment" means the affixation or installation of any wire,  
9 cable, or other physical material capable of carrying electronic  
10 impulses or light waves for the carrying of intelligence for  
11 telecommunications, information services as defined in 47 U.S.C. Sec.  
12 153(20), or television, including, but not limited to ~~((cable, and))~~  
13 any or all related devices, apparatuses, or auxiliary equipment, within  
14 the licensee's allocated space, and facilities or equipment related to  
15 such attachments required to ensure that the attachments meet safety or  
16 engineering requirements, including but not limited to risers, guys, or  
17 anchors, upon any pole owned or controlled in whole or in part by one  
18 or more locally regulated utilities where the installation has been  
19 made with the necessary consent.

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

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

8           ~~((e))~~ (d) "Nondiscriminatory" means that pole owners may not  
9 ~~((arbitrarily))~~ differentiate without good cause among or between  
10 similar classes of ~~((persons))~~ licensees approved for attachments.

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

18           ~~(3) Nothing in)~~ A just and reasonable rate must ensure the locally  
19 regulated utility the recovery of not less than all the additional  
20 costs of procuring and maintaining pole attachments nor more than the  
21 actual capital and operating expenses, including just compensation, of  
22 the locally regulated utility attributable to that portion of the pole,  
23 duct, or conduit used for the pole attachment, including a share of the  
24 required support and clearance space, in proportion to the space used  
25 for the pole attachment, as compared to all other uses made of the  
26 subject facilities and uses that remain available to the owner or  
27 owners of the subject facilities.

28           (3) Except in extraordinary circumstances, a locally regulated  
29 utility must respond to a licensee's request to attach within forty-  
30 five days. A request to attach may only be denied on a  
31 nondiscriminatory basis (a) where there is insufficient capacity and  
32 (b) for reasons of safety, reliability, and generally applicable  
33 engineering purposes.

34           (4) Any dispute between the locally regulated utility and a  
35 licensee, including but not limited to disputes over a specific request  
36 to attach or over any rate, term, or condition sought by the locally  
37 regulated utility or a licensee for attachments, must first be  
38 presented to the governing board of the locally regulated utility for

1 resolution. If the dispute is not resolved by or before the governing  
2 board of the locally regulated utility within forty-five days from the  
3 date the dispute is presented to the governing board, either the  
4 licensee or the locally regulated utility may initiate a proceeding in  
5 the superior court for Thurston county or the county containing the  
6 headquarters of the locally regulated utility.

7 (5) In any review proceedings under this section the superior court  
8 shall:

9 (a) Conduct an independent examination of the rates, terms, and  
10 conditions made, demanded, or received by the locally regulated utility  
11 to determine whether those rates, terms, and conditions seek to impose  
12 a just and reasonable rate; and

13 (b) Review whether the rates, terms, and conditions made, demanded,  
14 or received by the locally regulated utility further the public  
15 interest by affirmatively promoting the joint use of poles and the  
16 development of competition for the provision of telecommunications and  
17 information services.

18 (6) If the superior court concludes by a preponderance of the  
19 evidence that the rates, terms, and conditions made, demanded, or  
20 received by the locally regulated utility exceed a just and reasonable  
21 rate, or that those rates, terms, and conditions do not further the  
22 public interest, the court shall order that the locally regulated  
23 utility enter into an agreement on such terms that the court determines  
24 are just, fair, reasonable, nondiscriminatory, and sufficient.

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

28 NEW SECTION. Sec. 2. If specific funding for the purposes of this  
29 act, referencing this act by bill or chapter number, is not provided by  
30 June 30, 2008, in the omnibus appropriations act, this act is null and  
31 void.

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