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HOUSE BILL 1921

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Morris, Smith, and Vick

Read first time 02/02/17. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to telecommunications services; amending RCW  
2 35.21.860, 35.99.020, 35.99.040, 35A.21.245, 80.36.630, 80.36.650,  
3 80.36.660, 80.36.670, 80.36.680, and 80.36.690; adding new sections  
4 to chapter 35.99 RCW; adding a new section to chapter 80.36 RCW;  
5 adding new sections to chapter 35.21 RCW; adding new sections to  
6 chapter 54.04 RCW; and repealing RCW 35.21.455, 54.04.045, 80.36.620,  
7 and 80.36.700.

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

9 **PART ONE**

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

12 (1)(a) No city or town may impose a franchise fee or any other  
13 fee or charge of whatever nature or description upon the light and  
14 power, or gas distribution businesses, as defined in RCW 82.16.010,  
15 or telephone business, as defined in RCW 82.16.010, or service  
16 provider, as defined in RCW 35.99.010, for use of the right-of-way,  
17 except:

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

19 ~~((b))~~ (ii) A fee may be charged to such businesses or service  
20 providers that recovers actual administrative expenses incurred by a

1 city or town that are directly related to receiving and approving a  
2 permit, license, and franchise, to inspecting plans and construction,  
3 or to the preparation of a detailed statement pursuant to chapter  
4 43.21C RCW;

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

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

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

11 ~~((i))~~ (A) The placement of new structures in the right-of-way  
12 regardless of height, unless the new structure is the result of a  
13 mandated relocation in which case no charge will be imposed if the  
14 previous location was not charged. When the new structure is placed  
15 in the right-of-way for purposes of installing a small cell facility  
16 as defined in RCW 80.36.375(2), the site-specific charge imposed  
17 under this subsection is limited to the lesser of: (I) The projected  
18 cost to the city or town resulting from the installation; or (II)  
19 five hundred dollars annually. However, no additional fee may be  
20 imposed by any person or government on wi-fi antennas that are strung  
21 between existing privately or publicly owned utility poles regardless  
22 of location;

23 ~~((ii))~~ (B) The placement of replacement structures when the  
24 replacement is necessary for the installation or attachment of  
25 wireless facilities, the replacement structure is higher than the  
26 replaced structure, and the overall height of the replacement  
27 structure and the wireless facility is more than sixty feet; or

28 ~~((iii))~~ (C) The placement of personal wireless facilities on  
29 structures owned by the city or town located in the right-of-way.  
30 However, a site-specific charge shall not apply to the placement of  
31 personal wireless facilities on existing structures, unless the  
32 structure is owned by the city or town. When the personal wireless  
33 service facility is a small cell facility as defined in RCW  
34 80.36.375(2), the site-specific charge imposed under this subsection  
35 is subject to the provisions of sections 202 through 206 of this act.

36 (b) A city or town is not required to approve the use permit for  
37 the placement of a facility for personal wireless services that meets  
38 one of the criteria in this subsection absent such an agreement. If  
39 the parties are unable to agree on the amount of the charge, the  
40 service provider may submit the amount of the charge to binding

1 arbitration by serving notice on the city or town. Within thirty days  
2 of receipt of the initial notice, each party shall furnish a list of  
3 acceptable arbitrators. The parties shall select an arbitrator;  
4 failing to agree on an arbitrator, each party shall select one  
5 arbitrator and the two arbitrators shall select a third arbitrator  
6 for an arbitration panel. The arbitrator or arbitrators shall  
7 determine the charge based on comparable siting agreements involving  
8 public land and rights-of-way. The arbitrator or arbitrators shall  
9 not decide any other disputed issues, including but not limited to  
10 size, location, and zoning requirements. Costs of the arbitration,  
11 including compensation for the arbitrator's services, must be borne  
12 equally by the parties participating in the arbitration and each  
13 party shall bear its own costs and expenses, including legal fees and  
14 witness expenses, in connection with the arbitration proceeding.

15 (2) Subsection (1) of this section does not prohibit franchise  
16 fees imposed on an electrical energy, natural gas, or telephone  
17 business, by contract existing on April 20, 1982, with a city or  
18 town, for the duration of the contract, but the franchise fees shall  
19 be considered taxes for the purposes of the limitations established  
20 in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the  
21 costs allowable under subsection (1) of this section.

22 (3) The definitions in section 201 of this act apply throughout  
23 this section.

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

26 A city or town shall authorize the installation of small cell  
27 facilities or networks, as defined in RCW 80.36.375(2), on city or  
28 town-owned structures located outside of the right-of-way to the same  
29 extent as the city or town permits access to structures for other  
30 commercial projects or uses and may authorize the installations if  
31 the city or town has not previously permitted such access. The  
32 installations are subject to reasonable rates, terms, and conditions  
33 as provided in one or more agreements between the personal wireless  
34 service provider and the city or town. A city or town may not charge  
35 more for a small cell facility than the lesser of: (1) The amount  
36 charged for similar commercial projects or uses to occupy or use the  
37 same amount of space on similarly situated property; (2) the  
38 projected cost to the city or town resulting from the installation;  
39 or (3) five hundred dollars annually.

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

3       A city or town may grant, issue, or deny permits for the use of  
4 the right-of-way by a service provider for installing, maintaining,  
5 repairing, or removing facilities for telecommunications services or  
6 cable television services pursuant to ordinances, consistent with  
7 this chapter ((83, Laws of 2000)) provided that a city or town shall  
8 allow a service provider to place small cell facilities and small  
9 cell networks, as defined in RCW 80.36.375(2), in a city or town  
10 right-of-way, whether attached to city or town-owned facilities or  
11 attached to existing, new, or replacement poles owned by a service  
12 provider or another entity, subject only to the conditions of section  
13 104 of this act.

14       NEW SECTION. **Sec. 104.** A new section is added to chapter 35.99  
15 RCW to read as follows:

16       (1) A city or town shall provide service providers with  
17 nondiscriminatory access for attachments of small cell facilities as  
18 defined in RCW 80.36.375(2) to or in any right-of-way facilities the  
19 city or town owns or controls, either directly or through a  
20 municipally owned utility. A city or town may only deny access to  
21 specific facilities on a nondiscriminatory basis where there is  
22 insufficient capacity or for reasons of safety, reliability, and  
23 generally applicable engineering principles. However, the city or  
24 town may not deny access to a pole based on insufficient capacity if  
25 the service provider is willing to compensate the city or town for  
26 the costs to replace the existing pole with a taller pole and  
27 otherwise undertake make-ready work to increase the capacity of the  
28 pole to accommodate an additional attachment. The small cell  
29 attachments allowed under this subsection are subject to the rate  
30 established in section 106(5) of this act and other reasonable terms  
31 and conditions as provided in a master permit approved under this  
32 section. Any master permit approving the attachment of small cell  
33 facilities and networks as defined in RCW 80.36.375(2) on city or  
34 town-owned facilities must be consistent with sections 202 through  
35 206 of this act. However, no right-of-way or other permit is required  
36 for wi-fi antennas that are suspended on messenger cables that are  
37 strung between existing privately or publicly owned poles regardless  
38 of location.

1 (2) A city or town shall provide service providers with  
2 nondiscriminatory access to the right-of-way to attach small cell  
3 facilities to existing facilities owned by any entity and to install  
4 new or replacement poles for purposes of attaching small cell  
5 facilities, subject to the rates established in RCW 35.21.860(1)(b)  
6 and other reasonable terms and conditions as provided in a master  
7 permit approved under this section. A city or town may only deny  
8 access to specific locations in the right-of-way on a  
9 nondiscriminatory basis for reasons of safety and generally  
10 applicable engineering principles. With the issuance of a use permit  
11 for each location, the city or town may limit the height of a new or  
12 replacement pole so that it does not exceed one hundred thirty  
13 percent of the average pole height in the vicinity, when the heights  
14 of poles within the same right-of-way and within one-half mile of the  
15 proposed pole location are averaged.

16 (3) A city or town must approve a master permit under this  
17 section within ninety days of a service provider's submittal of a  
18 complete application for such a permit. In addition to the applicable  
19 rate established in RCW 35.21.860, the master permit must provide for  
20 the future issuance of use permits anywhere within the city or town.  
21 No concealment, stealth, or aesthetic standards may be required  
22 through a master or use permit, except in locations in a designated  
23 historic district if similar utility improvements are subject to the  
24 same design standards.

25 (4) Once a master permit is approved under subsection (3) of this  
26 section, the city or town must issue a use permit for each small cell  
27 facility or network according to the same timeline and process as  
28 described in section 106 of this act.

29 (5) A city or town shall:

30 (a) In order to facilitate the scheduling and coordination of  
31 work in the right-of-way, provide as much advance notice as  
32 reasonable of plans to open the right-of-way to those service  
33 providers who are current users of the right-of-way or who have filed  
34 notice with the clerk of the city or town within the past twelve  
35 months of their intent to place facilities in the city or town. A  
36 city or town is not liable for damages for failure to provide this  
37 notice. Where the city or town has failed to provide notice of plans  
38 to open the right-of-way consistent with this subsection, a city or  
39 town may not deny a use permit to a service provider on the basis  
40 that the service provider failed to coordinate with another project.

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

5 (6) A service provider shall:

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

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

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

17 (d) Provide information and plans as reasonably necessary to  
18 enable a city or town to comply with subsection (5) of this section  
19 including, when notified by the city or town, the provision of  
20 advance planning information pursuant to the procedures established  
21 by the city or town;

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

25 (f) Construct, install, operate, and maintain its facilities at  
26 its expense; and

27 (g) Comply with applicable federal and state safety laws and  
28 standards.

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

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

33 (b) Creating, expanding, or extending any liability of a city or  
34 town to any third-party user of facilities or third-party  
35 beneficiary; or

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

39 (8) Nothing in this section creates, modifies, expands, or  
40 diminishes a priority of use of the right-of-way by a service

1 provider or other utility, either in relation to other service  
2 providers or in relation to other users of the right-of-way for other  
3 purposes.

4 **Sec. 105.** RCW 35.99.040 and 2000 c 83 s 4 are each amended to  
5 read as follows:

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

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

12 (b) Conflict with federal or state laws, rules, or regulations  
13 that specifically apply to the design, construction, and operation of  
14 facilities or with federal or state worker safety or public safety  
15 laws, rules, or regulations;

16 (c) Regulate the services provided based upon the content or kind  
17 of signals that are carried or are capable of being carried over the  
18 facilities, except where otherwise authorized in state or federal  
19 law; or

20 (d) Unreasonably deny the use of the right-of-way by a service  
21 provider for installing, maintaining, repairing, or removing  
22 facilities for telecommunications services or cable television  
23 services.

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

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

30 (b) Prohibit the placement of all wireless or of all wireline  
31 facilities within city or town rights-of-way, unless the city or town  
32 is less than five square miles in size and has no commercial areas,  
33 in which case the city or town may make available land other than  
34 city or town rights-of-way for the placement of wireless facilities;  
35 (~~or~~)

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

38 (d) Violate section 106 of this act regarding the installation of  
39 small cell facilities and small cell networks.

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

6 NEW SECTION. Sec. 106. A new section is added to chapter 80.36  
7 RCW to read as follows:

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

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

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

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

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

18 (iv) A use permit issued under section 104 of this act if located  
19 in a city or town right-of-way.

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

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



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

8 (b) The applicant may cure the deficiencies identified by the  
9 city or county and resubmit the application within thirty days of the  
10 denial without paying an additional processing fee. The city or  
11 county shall approve or deny the revised application within thirty  
12 days after resubmittal.

13 (5) Applicants for small cell facility or network permits may not  
14 be required to pay a higher processing fee for the applications  
15 described in subsection (2) of this section than telecommunications  
16 services providers that are not personal wireless service providers.  
17 Notwithstanding RCW 35.21.860(1)(b), the total processing fees for  
18 any individual permit or approval, including any fees charged by  
19 third parties, may not exceed five hundred dollars.

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

31 **Sec. 107.** RCW 35A.21.245 and 2000 c 83 s 10 are each amended to  
32 read as follows:

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

36 **PART TWO**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (19) "Right-of-way" is an owner's legal right to construct,  
14 install, or maintain facilities or related equipment in or on grounds  
15 or property belonging to another person. For the purposes of sections  
16 202 through 206 of this act, "right-of-way" includes only the legal  
17 rights that permit the owner to allow third parties access to those  
18 rights.

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

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

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

37 (1) An owner shall provide requesters with nondiscriminatory  
38 access for attachments to or in any facility the owner owns or  
39 controls. An owner may deny access to specific facilities on a

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

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

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

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

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

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

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

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

35 (a) For attachments in the communications space, the notice must:  
36 (i) Specify where and what make-ready work will be performed;  
37 (ii) Set a date for completion of make-ready work that is no  
38 later than sixty days after the notice is sent. For good cause shown,  
39 the owner may extend completion of the make-ready work by an  
40 additional fifteen days;

1 (iii) State that any occupant with an existing attachment may  
2 modify that attachment consistent with the specified make-ready work  
3 before the date set for completion of that work. Any occupant with an  
4 existing attachment that does not comply with applicable safety  
5 requirements must modify that attachment to bring it into compliance  
6 before the date set for completion of the make-ready work. The  
7 occupant is responsible for all costs incurred to bring its  
8 attachment into compliance;

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

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

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

23 (b) For wireless antennas or other attachments on poles in the  
24 space above 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 ninety days after 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 the 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 the name, telephone number, and email address of a  
2 person to contact for more information about the make-ready work.

3 (7) For the purpose of compliance with the time periods in this  
4 section:

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

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

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

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

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

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

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

33 (9) If the owner determines that a survey is necessary for  
34 responding to a request for attachment to poles and fails to complete  
35 a survey of the facilities specified in the application within the  
36 time periods established in this section, a requester seeking  
37 attachment in the communications space may negotiate an extension of  
38 the completion date with the owner or may hire a contractor from the  
39 list of contractors the owner has authorized to work on its poles to  
40 complete the survey. If the owner does not maintain a list of



1 authorized contractors, the requester may choose a contractor without  
2 the owner's authorization.

3 (10)(a) If the owner does not complete any required make-ready  
4 work within the time periods established in this section, a requester  
5 seeking attachment in the communications space may negotiate an  
6 extension of the completion date with the owner or may hire a  
7 contractor from the list of contractors the owner has authorized to  
8 work on its poles to complete the make-ready work within the  
9 communications space:

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

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

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

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

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

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

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

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

1 (c) The occupant may proceed with the overlashing described in  
2 the notice unless the owner provides a written response, within ten  
3 business days of receiving the occupant's notice, prohibiting the  
4 overlashing as proposed. The owner may recover from the requester the  
5 costs the owner actually and reasonably incurs to inspect the  
6 facilities identified in the notice and to prepare any written  
7 response. The occupant must correct any safety violations caused by  
8 its existing attachments before overlashing additional wires or  
9 cables on those attachments.

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

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

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

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

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

37 (3) A requester that hires a contractor for a survey or  
38 make-ready work must provide the owner with prior written notice  
39 identifying and providing the contact information for the contractor

1 and must provide a reasonable opportunity for an owner representative  
2 to accompany and consult with the contractor and the requester.

3 (4) Subject to the review under section 206 of this act, the  
4 consulting representative of an owner may make final determinations,  
5 on a nondiscriminatory basis, on the attachment capacity of any pole  
6 and on issues of safety, reliability, and generally applicable  
7 engineering principles.

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

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

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

1 if an owner or occupant did not create a safety violation that  
2 necessitated the modification.

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

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

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

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

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

34 
$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$
  
35  
36

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

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

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

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

simplified as:

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

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. 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;

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

3 (c) The owner disputes the rates, terms, or conditions in an  
4 attachment agreement, the occupant's performance under the agreement,  
5 or the occupant's obligations under the agreement or other applicable  
6 law.

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

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

17 (5) The execution of an attachment agreement does not preclude  
18 any challenge to the lawfulness or reasonableness of the rates,  
19 terms, or conditions in that agreement, provided that one of the  
20 following circumstances exists:

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

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

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

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

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

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

7 (d) A copy of the attachment agreement, if any, between the  
8 parties.

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

17 (8)(a) A licensee has the burden to prove its right to attach to  
18 or in the owner's facilities and that any attachment requirement,  
19 term, or condition an owner imposes or seeks to impose that the  
20 licensee challenges violates any provision of sections 202 through  
21 205 of this act or other applicable law.

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

26 (9) If the arbiter determines that a rate, term, or condition  
27 complained of is not in compliance with sections 202 through 205 of  
28 this act, the arbiter shall prescribe a rate, term, or condition that  
29 is in compliance with sections 202 through 205 of this act. The  
30 arbiter shall require the inclusion of that rate, term, or condition  
31 in an attachment agreement, and to the extent authorized by  
32 applicable law, shall order a refund or payment of the difference  
33 between any rate required by section 205 of this act and the rate  
34 that was previously charged during the time the owner was charging  
35 the rate after the effective date of this section.

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

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

5 (12) If the arbiter finds that the rates, terms, or conditions  
6 demanded, exacted, charged, or collected by any owner in connection  
7 with attachments to its facilities do not comply with sections 202  
8 through 205 of this act as applicable, the arbiter shall establish  
9 rates, terms, and conditions consistent with the requirements of  
10 sections 202 through 205 of this act, thereafter to be observed and  
11 in force and fix the same by final order entered within sixty days  
12 after the submission of the issues for arbitration. The arbiter may  
13 extend this deadline for good cause.

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

16 The definitions in this section apply throughout sections 208  
17 through 212 of this act unless the context clearly requires  
18 otherwise.

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

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

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



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

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

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

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

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

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

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

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

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

37 (b) When an owner owns poles jointly with another utility, the  
38 number of poles for purposes of calculating the net cost of a bare  
39 pole is the number of solely owned poles plus the product of the  
40 number of the jointly owned poles multiplied by the owner's ownership

1 percentage in those poles. In the unusual situation in which net pole  
2 investment is zero or negative, the owner may use gross figures with  
3 appropriate net adjustments.

4 (13) "Occupant" means any licensee with an attachment to an  
5 owner's facility that the owner has granted the licensee the right to  
6 maintain.

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

11 (15) "Overlashing" means the tying of additional communications  
12 wires or cables to existing communications wires or cables attached  
13 to poles.

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

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

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

26 (19) "Right-of-way" is an owner's legal right to construct,  
27 install, or maintain facilities or related equipment in or on grounds  
28 or property belonging to another person. For the purposes of sections  
29 208 through 212 of this act, "right-of-way" includes only the legal  
30 rights that permit the owner to allow third parties access to those  
31 rights.

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

37 (21) "Usable space," with respect to poles, means the vertical  
38 space on a pole above the minimum grade level that can be used for  
39 the attachment of wires, cables, and associated equipment, and that  
40 includes space occupied by the owner. In the absence of measurements

1 to the contrary, a pole is presumed to have thirteen and one-half  
2 feet of usable space. With respect to conduit, "usable space" means  
3 capacity within a conduit that is available or that could, with  
4 reasonable effort and expense, be made available, for the purpose of  
5 installing wires, cable, and associated equipment for  
6 telecommunications or cable services, and that includes capacity  
7 occupied by the owner.

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

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

15 (2) If a requester hires a contractor for purposes of performing  
16 surveys and make-ready work pursuant to this chapter, the requester  
17 must choose a contractor included on the owner's list of authorized  
18 contractors. If the owner does not maintain such a list, the  
19 requester may choose a contractor without the owner's approval of  
20 that choice.

21 (3) A requester that hires a contractor for a survey or make-  
22 ready work must provide the owner with prior written notice  
23 identifying and providing the contact information for the contractor  
24 and must provide a reasonable opportunity for an owner representative  
25 to accompany and consult with the contractor and the requester.

26 (4) Subject to the review under section 212 of this act, the  
27 consulting representative of an owner may make final determinations,  
28 on a nondiscriminatory basis, on the attachment capacity of any pole  
29 and on issues of safety, reliability, and generally applicable  
30 engineering principles.

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

33 (1) An owner shall provide requesters with nondiscriminatory  
34 access for attachments to or in any facility the owner owns or  
35 controls. An owner may deny access to specific facilities on a  
36 nondiscriminatory basis where there is insufficient capacity or for  
37 reasons of safety, reliability, and generally applicable engineering  
38 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 or utility. Parties may mutually agree on terms for  
15 attachment to or in facilities that differ from those in this  
16 chapter.

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

38 (4) If the owner denies the request in an application for access,  
39 in whole or in part, the owner's written response to the application  
40 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. 210.** A new section is added to chapter 54.04  
21 RCW to read as follows:

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

36 (2) The costs of modifying a facility to bring an existing  
37 attachment into compliance with applicable safety requirements must  
38 be borne by the occupant or owner that created the safety violation  
39 that necessitated the modification. These costs include, but are not

1 necessarily limited to, the costs incurred by the owner or other  
2 occupants to modify the facility or conforming attachments. An  
3 occupant or owner with an existing conforming attachment to a  
4 facility is not required to bear any of the costs to rearrange or  
5 replace the occupant's or owner's attachment if the rearrangement or  
6 replacement is necessitated solely to accommodate modifications to  
7 the facility to bring another occupant's or owner's attachment into  
8 conformance with applicable safety requirements to remedy a safety  
9 violation caused by another occupant or owner. The owner and each  
10 occupant must bear their own costs to modify their existing  
11 attachments if required to comply with applicable safety requirements  
12 if an owner or occupant did not create a safety violation that  
13 necessitated the modification.

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

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

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

34 (1) A fair and reasonable rate for attachments to or in  
35 facilities must assure the owner the recovery of not less than all  
36 the additional costs of procuring and maintaining the attachments,  
37 nor more than the actual capital and operating expenses, including  
38 just compensation, of the owner attributable to that portion of the  
39 facility used for the attachments, including a share of the required

1 support and clearance space, in proportion to the space used for the  
 2 attachment, as compared to all other uses made of the facility, and  
 3 uses that remain available to the owner.

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

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

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

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

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

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

21 simplified as:

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

28 If no inner duct or only a single inner duct is installed, the  
 29 fraction "1 Duct divided by the Number of Inner Ducts" is presumed to  
 30 be 1/2.

31 NEW SECTION. **Sec. 212.** A new section is added to chapter 54.04  
 32 RCW to read as follows:

33 (1) A licensee may submit disputes to binding arbitration by  
 34 serving notice on the owner if:

35 (a) An owner has denied access to its facilities;

1 (b) An owner fails to negotiate in good faith the rates, terms,  
2 and conditions of an attachment agreement; or

3 (c) The licensee disputes the rates, terms, or conditions in an  
4 attachment agreement, the owner's performance under the agreement, or  
5 the owner's obligations under the agreement or other applicable law.

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

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

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

12 (c) The owner disputes the rates, terms, or conditions in an  
13 attachment agreement, the occupant's performance under the agreement,  
14 or the occupant's obligations under the agreement or other applicable  
15 law.

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

21 (4) Within thirty days of receipt of the initial notice, each  
22 party shall furnish a list of acceptable arbitrators. The parties  
23 shall select an arbitrator; failing to agree on an arbitrator, each  
24 party shall select one arbitrator and the two arbitrators shall  
25 select a third arbitrator for an arbitration panel.

26 (5) The execution of an attachment agreement does not preclude  
27 any challenge to the lawfulness or reasonableness of the rates,  
28 terms, or conditions in that agreement, provided that one of the  
29 following circumstances exists:

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

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

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

1 (a) A statement, including specific facts, demonstrating that the  
2 complainant engaged or reasonably attempted to engage in good faith,  
3 executive-level negotiations to resolve the disputed issues raised in  
4 the submission and that the parties failed to resolve those issues  
5 despite those efforts; such negotiations must include the exchange of  
6 reasonably relevant information necessary to resolve the dispute  
7 including, but not limited to, the information required to calculate  
8 rates in compliance with sections 208 through 212 of this act;

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

12 (c) Sufficient data or other factual information and legal  
13 argument to support the allegations to the extent that the  
14 complainant possesses such factual information; and

15 (d) A copy of the attachment agreement, if any, between the  
16 parties.

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

25 (8)(a) A licensee has the burden to prove its right to attach to  
26 or in the owner's facilities and that any attachment requirement,  
27 term, or condition an owner imposes or seeks to impose that the  
28 licensee challenges violates any provision of sections 208 through  
29 212 of this act or other applicable law.

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

34 (9) If the arbiter determines that a rate, term, or condition  
35 complained of is not in compliance with sections 208 through 212 of  
36 this act, the arbiter shall prescribe a rate, term, or condition that  
37 is in compliance with sections 208 through 212 of this act. The  
38 arbiter shall require the inclusion of that rate, term, or condition  
39 in an attachment agreement, and to the extent authorized by  
40 applicable law, shall order a refund or payment of the difference

1 between any rate required by section 211 of this act and the rate  
2 that was previously charged during the time the owner was charging  
3 the rate after the effective date of this section.

4 (10) If the arbiter determines that an owner has unlawfully or  
5 unreasonably denied or delayed access to a facility, the arbiter  
6 shall order the owner to provide access to that facility within a  
7 reasonable time frame and on rates, terms, and conditions that are in  
8 compliance with sections 208 through 212 of this act.

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

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

### 22 PART THREE

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

25 ~~((1))~~ The definitions in this section apply throughout this  
26 section, RCW 80.36.610, and ~~((RCW))~~ 80.36.650 through 80.36.690 ~~((and~~  
27 ~~80.36.610))~~, unless the context clearly requires otherwise.

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

32 ~~((b))~~ (2) "Basic telecommunications services" means the  
33 following services:

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

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

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

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

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

1       ~~((vi))~~ (f) Access to operator services;  
2       ~~((vii))~~ (g) Access to interexchange services;  
3       ~~((viii))~~ (h) Access to directory assistance; and  
4       ~~((ix))~~ (i) Toll limitation services.

5       ~~((e))~~ (3) "Communications provider" means a provider of  
6 communications services ~~((that assigns a working telephone number to~~  
7 ~~a final consumer for intrastate wireline or wireless communications~~  
8 ~~services or interconnected voice over internet protocol service, and~~  
9 ~~includes local exchange carriers)) including local exchange carriers~~  
10 ~~whether providing service by traditional or voice over internet~~  
11 ~~protocols or a combination thereof.~~

12       ~~((d))~~ (4) "Communications services" includes telecommunications  
13 services and information services and ~~((any combination thereof))~~  
14 broadband access services.

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

18       ~~((f))~~ (6) "Incumbent public network" means the network  
19 established by incumbent local exchange carriers for the delivery of  
20 communications services to customers that is used by communications  
21 providers for origination or termination of communications services  
22 by or to customers.

23       ~~((g)) "Interconnected voice over internet protocol service" means~~  
24 ~~an interconnected voice over internet protocol service that: (a)~~  
25 ~~[(i)] Enables real time, two-way voice communications; (b) [(ii)]~~  
26 ~~requires a broadband connection from the user's location; (c) [(iii)]~~  
27 ~~requires internet protocol compatible customer premises equipment;~~  
28 ~~and (d) [(iv)] permits users generally to receive calls that~~  
29 ~~originate on the public network and to terminate calls to the public~~  
30 ~~network.~~

31       ~~((h))~~ (7) "Program" means the state universal communications  
32 services program created in RCW 80.36.650.

33       ~~((i))~~ (8) "Telecommunications" has the same meaning as defined  
34 in 47 U.S.C. Sec. 153~~((43))~~ as it existed on the effective date of  
35 this section.

36       ~~((j))~~ (9) "Telecommunications act of 1996" means the  
37 telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

38       ~~((k)) "Working telephone number" means a north American numbering~~  
39 ~~plan telephone number, or successor dialing protocol, that is~~

1 ~~developed for use in placing calls to or from the public network,~~  
2 ~~that enables a consumer to make or receive calls.~~

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

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

6 (1) A state universal communications services program is  
7 established. The program is established to protect public safety and  
8 welfare under the authority of the state to regulate  
9 telecommunications under Article XII, section 19 of the state  
10 Constitution. The purpose of the program is to support continued  
11 provision of ~~((basic telecommunications))~~ communications services  
12 ~~((under rates, terms, and conditions established by the commission~~  
13 ~~during the time over which incumbent communications providers in the~~  
14 ~~state are adapting to changes in federal universal service fund and~~  
15 ~~intercarrier compensation support))~~ in Washington.

16 (2) Under the program, eligible communications providers may  
17 receive distributions from the universal communications services  
18 account created in RCW 80.36.690 in exchange for the affirmative  
19 agreement to provide continued services under the rates, terms, and  
20 conditions established by the commission under this chapter for the  
21 period covered by the distribution. The commission must implement and  
22 administer the program under terms and conditions established in RCW  
23 80.36.630 through 80.36.690. Expenditures for the program may not  
24 exceed five million dollars per fiscal year; provided, however, that  
25 if less than five million dollars is expended in any fiscal year, the  
26 unexpended portion must be carried over to subsequent fiscal years  
27 and, unless fully expended, must be available for program  
28 expenditures in such subsequent fiscal years in addition to the five  
29 million dollars allotted for each of those subsequent fiscal years.

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

32 (a) The communications provider is: (i) An incumbent local  
33 exchange carrier serving fewer than forty thousand access lines in  
34 the state; or (ii) a radio communications service company providing  
35 wireless two-way voice communications service to less than the  
36 equivalent of forty thousand access lines in the state. For purposes  
37 of determining the access line threshold in this subsection, the  
38 access lines or equivalents of all affiliates must be counted as a



1 single threshold, if the lines or equivalents are located in  
2 Washington;

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

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

10 (4)(a) Distributions to eligible communications providers are  
11 based on a benchmark established by the commission. The benchmark is  
12 the rate the commission determines to be a reasonable amount  
13 customers should pay for basic residential service provided over the  
14 incumbent public network. However, if an incumbent local exchange  
15 carrier is charging rates above the benchmark for the basic  
16 residential service, that provider may not seek distributions from  
17 the fund for the purpose of reducing those rates to the benchmark.

18 (b) To receive a distribution under the program, an eligible  
19 communications provider must affirmatively consent to continue  
20 providing communications services to its customers under rates,  
21 terms, and conditions established by the commission pursuant to this  
22 chapter for the period covered by the distribution.

23 (5) The program is funded from amounts deposited by the  
24 legislature in the universal communications services account  
25 established in RCW 80.36.690. The commission must operate the program  
26 within amounts appropriated for this purpose and deposited in the  
27 account.

28 (6) The commission must periodically review the accounts and  
29 records of any communications provider that receives distributions  
30 under the program to ensure compliance with the program and monitor  
31 the providers' use of the funds.

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

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

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

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

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

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

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

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

14       ~~((d))~~ (4) Readoption, amendment, or repeal of any existing  
15 rules adopted pursuant to RCW 80.36.610 ~~((and 80.36.620))~~ as  
16 necessary to be consistent with RCW 80.36.610, and 80.36.630 through  
17 80.36.690 ~~((and 80.36.610)).~~

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

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

21       (1) In addition to any other penalties prescribed by law, the  
22 commission may impose penalties for failure to make or delays in  
23 making or filing any reports required by the commission for  
24 administration of the program. In addition, the commission may  
25 recover amounts determined to have been improperly distributed under  
26 RCW 80.36.650. For the purposes of this section, the provisions of  
27 RCW 80.04.380 through 80.04.405, inclusive, apply to all companies  
28 that receive support from the universal communications services  
29 account created in RCW 80.36.690.

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

33       (3) Any amounts recovered under this section must be deposited in  
34 the universal communications services account created in RCW  
35 80.36.690.

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

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

1       (~~(1)~~) The commission may delegate to the commission secretary  
2 or other staff the authority to resolve disputes and make other  
3 administrative decisions necessary to the administration and  
4 supervision of the program consistent with the relevant statutes and  
5 commission rules.

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

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

9       (~~(1)~~) The universal communications services account is created  
10 in the custody of the state treasurer. Revenues to the account  
11 consist of moneys deposited in the account by the legislature and any  
12 penalties or other recoveries received pursuant to RCW 80.36.670.  
13 Expenditures from the account may be used only for the purposes of  
14 the universal communications services program established in RCW  
15 80.36.650. Only the secretary of the commission or the secretary's  
16 designee may authorize expenditures from the account. The account is  
17 subject to allotment procedures under chapter 43.88 RCW, but an  
18 appropriation is not required for expenditures.

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

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

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

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

26       (3) RCW 80.36.620 (Universal service program—Rules) and 1998 c  
27 337 s 3; and

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

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