IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 91386-2

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation,

Petitioner,

v.

COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS,

Respondents.

REVISED STATEMENT OF ADDITIONAL AUTHORITY (RAP 10.8) BY PETITIONERS COMCAST OF WASHINGTON IV, INC., FALCON COMMUNITY VENTURES I, L.P. AND CENTURYTEL OF WASHINGTON, INC.

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Attorneys for Petitioners CenturyLink of Washington, Inc. (f/k/a CenturyTel of Washington, Inc.)

Pursuant to RAP 10.8, Petitioners Comcast of Washington, IV, Inc., Falcon Community Ventures, I., L.P. and CenturyTel of Washington, Inc. ("Petitioners") identify as additional authority the Washington Utilities and Transportation Commission's ("Commission") July 22, 2015, Notice of Proposed Rulemaking implementing Ch. 80.54 RCW, the statute that governs attachments to investor-owned utility poles. Appended hereto are (i) the Commission's CR-102 statement; (ii) the proposed rules (Chapter 480-54 WAC); and (iii) the Small Business Economic Impact Statement ("SBEIS").[1]

A statement of additional authorities "should identify the issue for which each authority is offered." RAP 10.8. Petitioners offer the Commission's proposed rule interpreting RCW 80.54.040 as the FCC Cable Rate formula (WAC 480-54-060(2)) as additional authority on the issues of: (i) the proper interpretation of RCW 54.04.045(3); (ii) whether preexisting pole attachment rate formulas should be relied upon in interpreting RCW 54.04.045(3); and (iii) whether "unusable" support and clearance space includes the "safety space." *See* Comcast/Charter Pet. at 7-8, 13 n.8, 15, 17; CenturyLink Pet. at 4, 14-16; 18. The portions of the

[1] This Revised Statement of Additional Authorities amends and supersedes Petitioners' July 28, 2015 Statement, which was rejected as containing argument in violation of RAP 10.8. Petitioners did not intend to offer argument, but sought only to comply with the obligation of RAP 10.8 to identify the issues to which the proffered authorities are relevant.

submitted authority most relevant to these issues are WAC 480-54-010(2); WAC 480-54-020 (definitions of "unusable" and "usable space"); WAC 480-54-060; and SBEIS, p.3 (*Rates*).

RESPECTFULLY SUBMITTED this 30th day of July, 2015.

Davis Wright Tremaine LLP
Attorneys for Comcast of Washington, IV, Inc. and Falcon Community Ventures, I., L.P.

By _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of July, 2015, he caused the foregoing document to be served upon the following in the manner indicated:

Donald S. Cohen — VIA MESSENGER
Stephanie L. Bloomfield
Gordon Thomas Honeywell LLP
600 University Street, Suite 2100
Seattle, WA 98101

Executed this 30th day of July 2015 at Seattle, Washington.

Eric M. Stahl

DWT 27467997v4 0108400-000022

APPENDIX

1. Washington Utilities and Transportation Commission CR-102 Notice of Proposed Rule Making

2. Chapter 480-54 WAC (Proposed)

3. Small Business Economic Impact Statement

APPENDIX 1

PROPOSED RULE MAKING

CR-102 (June 2012)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Washington Utilities and Transportation Commission

☒ **Preproposal Statement of Inquiry was filed as WSR** 14-09-087; **or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; **or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR** _____
☐ **Continuance of WSR** _____

Title of rule and other identifying information: (Describe Subject)

Chapter 480-54 WAC; Attachment to Transmission Facilities. Docket U-140621

Hearing location(s):
Commission Hearing Room 206
Second Floor, Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Date: September 17, 2015 Time: 9:30 a.m.

Submit written comments to:
Name: Washington Utilities and Transportation Commission
Address: 1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
e-mail records@utc.wa.gov. Please include: "Docket U-140621" in your comments.
fax (360) 586-1150 by (date) August 24, 2015

Assistance for persons with disabilities: Contact Debbie Aguilar by September 3, 2015
TTY (360) 586-8203 or (360) 664-1132

Date of intended adoption: September 17, 2015
(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Federal law requires the Federal Communications Commission (FCC) to regulate attachments to utility poles unless a state certifies that it regulates such attachments. The Washington legislature elected to assert jurisdiction over attachment to transmission facilities by enacting RCW ch. 80.54. The statue authorizes the Washington Utilities and Transportation Commission (Commission) "to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities," and requires the Commission to adopt implementing rules, regulations, and procedures.

The proposed rules would implement chapter 80.54.RCW governing attachments to utility transmission facilities.

Reasons supporting proposal: See above

Statutory authority for adoption: RCW 80.01.040, RCW 80.04.160, RCW 80.54.020, and RCW 80.54.060.

Statute being implemented: RCW ch. 80.54

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE
July 22, 2015

NAME (type or print)
Steven V. King

SIGNATURE

TITLE
Executive Director and Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 22, 2015
TIME: 9:27 AM

WSR 15-15-170

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Washington Utilities and Transportation Commission

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Gregory J. Kopta	1300 S. Evergreen Park Drive SW, Olympia WA 98504	(360) 664-1355
Implementation....	Steven V. King	1300 S. Evergreen Park Drive SW, Olympia WA 98504	(360) 664-1115
Enforcement.....	Steven V. King	1300 S. Evergreen Park Drive SW, Olympia WA 98504	(360) 664-1115

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

☒ Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:
Name: Washington Utilities and Transportation Commission
Address: Records Center, Docket U-140621
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
phone (360) 664-1234
fax (360) 586-1150
e-mail records@utc.wa.gov

☐ No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:

phone ( ) _____
fax ( ) _____
e-mail _____

☒ No: Please explain: The Commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

APPENDIX 2

Chapter 480-54 WAC
ATTACHMENT TO TRANSMISSION FACILITIES

NEW SECTION

WAC 480-54-010 Purpose, interpretation, and application. (1) This chapter implements chapter 80.54 RCW "Attachment to Transmission Facilities."

(2) The commission will consider Federal Communications Commission orders promulgating and interpreting its pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions in this chapter.

(3) The rules in this chapter apply to all owners, occupants, and requesters as defined in this chapter without regard to whether those entities are otherwise subject to commission jurisdiction.

NEW SECTION

WAC 480-54-020 Definitions. **"Attachment"** means any wire, cable, or antenna for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right of way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more owners, where the installation has been made with the consent of the one or more owners consistent with the rules in this chapter.

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

"Carrying charge" means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments, including the owner's administrative, maintenance, and depreciation expenses, commission-authorized rate of return on investment, and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.

"Communications space" means the usable space on a pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code.

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

"Duct" means a single enclosed raceway for conductors, cable, or wire.

"Facility" means a pole, duct, conduit, manhole or handhole, right of way, or similar structure on or in which attachments can be made. "Facilities" refers to more than one facility.

"Inner duct" means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

"Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways.

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

"Net cost of a bare pole" means (a) the original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by (b) the number of poles represented in the investment amount. When an owner owns poles jointly with another utility, the number of poles for purposes of calculating the net cost of a bare pole is the number of solely owned poles plus the product of the number of the jointly owned poles multiplied by the owner's ownership percentage in those poles. In the unusual situation in which net pole investment is zero or negative, the owner may use gross figures with appropriate net adjustments.

"Occupant" means any utility or licensee with an attachment to an owner's facility that the owner has granted the utility or licensee the right to maintain.

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

"Overlashing" means the tying of additional communications wires or cables to existing communications wires or cables attached to poles.

"Owner" means the utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments.

"Pole" means an above-ground structure on which an owner maintains attachments, which is presumed to be thirty-seven and one-half feet in height. When the owner is an electrical company as defined in RCW 80.04.010, "pole" is limited to structures used to attach electric distribution lines.

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

"Right of way" is an owner's legal right to construct, install, or maintain facilities or related equipment in or on grounds or property belonging to another person. For purposes of this chapter, "right of way" includes only such legal rights that permit the owner to allow third parties access to those rights.

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

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

"Utility" means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized or owned by federal, state, or local government, or a subdivision of state or local government.

NEW SECTION

WAC 480-54-030 Duty to provide access; make-ready work; timelines. (1) An owner shall provide requesters with nondiscriminatory access for attachments to or in any facility the owner owns or controls, except that if the owner is an electrical company as defined in RCW 80.04.010, the owner is not obligated to provide access for attachment to its facilities by another electrical company. An owner may deny such access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles; provided that the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole or otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment including, but not limited to, using space- and cost-saving attachment techniques, such as boxing (installation of attachments on both sides of the pole at approximately the same height) or bracketing (installation of extension arms), to the extent that the owner uses, or allows occupants to use, such attachment techniques in the communications space of the owner's poles.

(2) All rates, terms, and conditions made, demanded, or received by any owner for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient and must be included in an attachment agreement with the licensee or utility. Parties may mutually agree on terms for attachment to or in facilities that differ from those in this chapter. In the event of disputes submitted for commission resolution, any party advocating rates, terms, or conditions that vary from the rules in this chapter bears the burden to prove those rates, terms, or conditions are fair, just, reasonable, and sufficient.

(3) Except for overlashing requests described in subsection (11) of this section, a requester must submit a written application to an owner to request access to its facilities. The owner may recover from the requester the reasonable costs the owner actually and reasonably

incurs to process the application, including the costs of inspecting the facilities identified in the application and preparing a preliminary estimate for any necessary make-ready work, to the extent these costs are not, and would not ordinarily be, included in the accounts used to calculate the attachment rates in WAC 480-54-060. The owner may survey the facilities identified in the application and may recover from the requester the costs the owner actually and reasonably incurs to conduct that survey. The owner must provide the requester with an estimate of those costs prior to conducting a survey. The owner must complete any such survey and respond in writing to requests for access to the facilities identified in the application within forty-five days from the date the owner receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner to identify and evaluate the facilities to or in which the requester seeks to attach.

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

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

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

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

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

(a) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than sixty days after the notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days.

(iii) State that any occupant with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.

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

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

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

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than ninety days after notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days.

(iii) State that any occupant with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.

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

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

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

(a) The time periods apply to all requests for access to up to three hundred poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(b) An owner shall negotiate in good faith the time periods for all requests for access to more than three hundred poles or 0.5 percent of the owner's poles in Washington, whichever is less.

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

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

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

(b) During performance of make-ready work if the owner discovers unanticipated circumstances that reasonably require additional time to complete the work. Upon discovery of the circumstances in (a) or (b) of this subsection, the owner must promptly notify, in writing, the requester and other affected occupants with existing attachments. The notice must include the reason for the extension and date by which the owner will complete the work. The owner may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake such work on a nondiscriminatory basis with the other work the owner undertakes on its facilities.

(9) If the owner determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the survey. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

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

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

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

If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

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

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

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

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

(b) A single occupant may not submit more than five notices or identify more than a total of one hundred poles for overlashing in any

ten business day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the ten business day period.

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

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

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

NEW SECTION

WAC 480-54-040 Contractors for survey and make-ready work. (1) An owner should make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work in the communications space on its poles in cases where the owner has failed to meet deadlines specified in WAC 480-54-030.

(2) If a requester hires a contractor for purposes specified in WAC 480-54-030, the requester must choose a contractor included on the owner's list of authorized contractors. If the owner does not maintain such a list, the requester may choose a contractor without the owner's approval of that choice.

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

(4) Subject to commission review in a complaint proceeding, the consulting representative of an owner may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole and on issues of safety, reliability, and generally applicable engineering principles.

NEW SECTION

WAC 480-54-050 Modification costs; notice; temporary stay. (1) The costs of modifying a facility to create capacity for additional attachment, including but not limited to replacement of a pole, shall be borne by the requester and all existing occupants and owner that directly benefit from the modification. Each such occupant or owner shall share the cost of the modification in proportion to the amount of new or additional usable space the occupant or owner occupies on or in the facility. An occupant or owner with an existing attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, that occupant or owner adds to its existing attachment or otherwise modifies its attachment. An occupant or owner with an existing attachment shall not be deemed to directly benefit from replacement of a pole if the occupant or owner only transfers its attachment to the new pole.

(2) The costs of modifying a facility to bring an existing attachment into compliance with applicable safety requirements shall be borne by the occupant or owner that created the safety violation. Such costs include, but are not necessarily limited to, the costs incurred by the owner or other occupants to modify the facility or conforming attachments. An occupant with an existing conforming attachment to a facility shall not be required to bear any of the costs to rearrange or replace the occupant's attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for an additional attachment or to accommodate modifications to the facility or another occupant's existing attachment made to bring that attachment into conformance with applicable safety requirements.

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

(4) A utility or licensee may file with the commission and serve on the owner a "petition for temporary stay" of utility action contained in a notice received pursuant to subsection (3) of this section within twenty days of receipt of such notice. The petition must be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer irreparable harm in the absence of the relief requested that outweighs any harm to the owner and its customers and that the petitioner will likely be successful on the merits of its dispute. The owner may file and serve an answer to the petition within seven days after the petition is filed unless the commission establishes a different deadline for an answer.

(5) An owner may file with the commission and serve on the occupant a petition for authority to remove the occupant's abandoned attachments. The petition must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must file an answer to the petition within twenty days after the petition is filed unless the commission estab-

lishes a different deadline for an answer. If the occupant does not file an answer or otherwise respond to the petition, the commission may authorize the owner to remove the attachments without further proceedings.

NEW SECTION

WAC 480-54-060 Rates. (1) A fair, just, reasonable, and sufficient rate for attachments to or in facilities shall assure the owner the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the owner attributable to that portion of the facility used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facility, and uses that remain available to the owner.

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

$$\textit{Maximum Rate} = \textit{Space Factor} \times \textit{Net Cost of a Bare Pole} \times \textit{Carrying Charge Rate}$$

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

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

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

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

simplified as:

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

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

WAC 480-54-070 Complaint. (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any owner in connection with attachments to its facilities are not fair, just, and reasonable, or by an owner that the rates

or charges are insufficient to yield a reasonable compensation for the attachment, the commission will determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and fix the same by final order entered within three hundred sixty days after the filing of the complaint. The commission will enter an initial order resolving a complaint filed in conformance with this rule within six months of the date the complaint is filed. The commission may extend this deadline for good cause. In determining and fixing the rates, terms, and conditions, the commission will consider the interest of the customers of the licensee or utility, as well as the interest of the customers of the owner. Except as provided in this rule, the commission's procedural rules, chapter 480-07 WAC, govern complaints filed pursuant to this rule.

(2) A utility or licensee may file a formal complaint pursuant to this rule 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 utility or 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.

(3) An owner may file a formal complaint pursuant to this rule if:

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

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

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

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

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

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

(5) A complaint authorized under this section must contain the following:

(a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the complaint and that the parties failed to resolve those issues despite those efforts; such negotiations must include the exchange of reasonably relevant information necessary to resolve the dispute including, but not limited to, the information required to calculate rates in compliance with WAC 480-54-060;

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

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

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

(6) The commission will issue a notice of prehearing conference within five business days after the complaint is filed. The party complained against must answer the complaint within ten business days from the date the commission serves the complaint. The answer must respond to each allegation in the complaint with sufficient data or other factual information and legal argument to support that response to the extent the respondent possesses such factual information.

(7) A licensee or utility has the burden to prove its right to attach to or in the owner's facilities and that any attachment requirement, term, or condition an owner imposes or seeks to impose that the licensee or utility challenges violates any provision of chapter 80.54 RCW, this chapter, or other applicable law. An owner bears the burden to prove that the attachment rates it charges or proposes to charge are fair, just, reasonable, and sufficient or that the owner's denial of access to its facilities is lawful and reasonable.

(8) If the commission determines that a rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged during the time the owner was charging the rate after the effective date of this rule.

(9) If the commission determines that an owner has unlawfully or unreasonably denied or delayed access to a facility, the commission may order the owner to provide access to that facility within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.

(10) Nothing in this section precludes an owner or occupant from bringing any other complaint that is otherwise authorized under applicable law.

APPENDIX 3

Small Business Economic Impact Statement (SBEIS)
Attachment to Transmission Facilities Rulemaking
Docket U-140621
July 22, 2015

I. Introduction

The Utilities and Transportation Commission (Commission) initiated a rulemaking in April 2014 in Docket U-140621 to consider rules to implement Chapter 80.54 of the Revised Code of Washington (RCW) establishing requirements for attachments to utility transmission facilities.

Over the past year, the Commission requested and received four sets of comments from stakeholders and held two stakeholder workshops. The draft rules are now sufficiently developed to publish them as proposed rules and proceed to the next phase of the rulemaking. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with Chapter 19.85 RCW, or explain why an SBEIS was not prepared. RCW 34.05.320(1)(k). The Commission has prepared this SBEIS in compliance with that requirement.

II. SBEIS Requirements

The Regulatory Fairness Act, codified in Chapter 19.85 RCW, provides that an agency must conduct an SBEIS "if the proposed rule will impose more than minor costs on businesses in an industry." RCW 19.85.030(1). "'Minor cost' means a cost per business that is less than three-tenths of one percent of annual revenue or income or one hundred dollars, whichever is greater, or one percent of annual payroll." RCW 19.85.020(2). An SBEIS is intended to assist agencies in evaluating the proposed rule's impact on small businesses. A business is categorized as "small" under the Regulatory Fairness Act if the business employs 50 or fewer employees. RCW 19.85.020(3).

Agencies must determine whether compliance with a proposed rule has a disproportionate economic impact on small businesses in the affected industry. RCW 19.85.040(1). Agencies must compare the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the rule using either the cost per employee, the cost per hour of labor, or the cost per $100 of sales revenue, as a basis for comparing costs. If they find such an impact, agencies must consider means to minimize the costs imposed on small businesses. RCW 19.85.030(2).

III. SBEIS Evaluation Procedure

The Commission has prepared an SBEIS for the proposed rules in Docket U-140621 to determine whether those rules would impose more than minor costs on the affected industries that disproportionately impact small businesses and, if so, to consider means to minimize costs to small businesses.

On May 27, 2015, the Commission mailed a notice to all stakeholders of the opportunity to respond to an SBEIS Questionnaire. The notice requested that the affected companies provide information concerning the cost impact of the latest draft rules. The Commission received economic impact comments from five stakeholders: Puget Sound Energy (PSE), Avista Corporation (Avista), Pacific Power & Light Company, PCIA-The Wireless Infrastructure Association and HetNet Forum, and the Broadband Communications Association of Washington. Only PSE and Avista attempted to quantify the economic impact of the proposed rules.

None of the five respondents to the SBEIS Questionnaire is a small business, purports to represent a small business, or provides data on the economic impact of the proposed rules on small businesses. The economic data PSE and Avista provided, moreover, demonstrates that the proposed rules will not impose more than minor costs on businesses in the utility industries the rules will affect.[1] Accordingly, no SBEIS is required. The Commission nevertheless has analyzed the data provided in light of the purpose of the rules and the cost of compliance asserted by the companies to ensure that the effect of the rulemaking is fair and does not impose an undue burden on affected companies.

IV. Rulemaking History

The Commission initiated this rulemaking in April 2014 by issuing a CR-101 Rulemaking Notice. The Commission has taken the following steps in pursuing this rulemaking:

- The Commission received comments on the CR-101 notice in May 2014 and conducted a workshop on July 28, 2014. The Commission evaluated those comments and the workshop discussion and prepared initial draft rules based, in part, on stakeholder input.

- The Commission issued a Notice of Opportunity to File Written Comments and a Notice of Workshop on September 8, 2014. The notice included a set of draft rules. The Commission received comments on the draft rules on October 8, 2014, and held a workshop for interested parties on October 28, 2014.

- After reviewing the comments and considering the workshop discussion, the Commission revised the draft rules and issued another Notice of Opportunity to File Written Comments on January 6, 2015. The notice included the second draft rules.

- The Commission received comments on the second draft rules in February 2015. After reviewing the comments, the Commission further revised the draft rules and issued

[1] PSE and Avista are the only commenters that attempt to quantify the economic impact of the proposed rules. PSE estimates that impact at between $1.5 million and $2.6 million per year, far less than the statutory standard of .003 percent of that company's total annual revenues which were more than $3 billion in 2014, while Avista's estimate is less than $1.4 million, which is only .002 percent of its 2014 total revenues of more than $677 million.

another Notice of Opportunity to File Written Comments on March 24, 2015. The notice included the third draft rules.

- The Commission received comments on the third draft rules in April and May 2015. The Commission evaluated those comments and made additional changes to the draft rules, which the Commission posted in this docket when it issued the SBEIS Questionnaire. The Commission is now ready to publish and circulate proposed rules in conjunction with filing a CR-102 with the Office of the Code Reviser.

V. Results of the SBEIS Analysis

The Commission considered the general financial impact of complying with the proposed rules throughout the rulemaking process in response to comments that various stakeholders submitted. PSE and Avista also responded to the SBEIS Questionnaire and attempted to quantify the cost impact of the proposed rules on each of those companies. That impact generally falls into three categories: (1) Rates – reduced revenues as a result of lower rates these facility owners will be able to charge for attachments and higher rates these companies will have to pay to attach to other owners' facilities; (2) Additional personnel needed to review and process applications for attachments, renegotiate attachment agreements, and respond to complaints filed with the Commission; and (3) Increased investment in poles to ensure sufficient inventory to timely respond to attachment requests.

Rates. PSE and Avista estimate that the formula the Commission proposes to adopt for setting attachment rates will result in a reduction in the rates these companies currently charge and in higher rates than they pay to attach to some other owners' poles. The Federal Communications Commission (FCC) developed the attachment rate formula the Commission proposes to adopt, which has withstood multiple legal challenges. The Commission finds that the formula is well-established, results in appropriate cost recovery, and is consistent with the criteria for a just and reasonable rate the legislature established in RCW 80.54.040. Rates calculated using this formula will be fair, just, reasonable, and sufficient, and any loss of revenue or increased payments that result from charging these rates are neither undue nor have a disproportionate impact.

Additional Personnel. PSE and Avista estimate that the proposed rules will require them to hire additional personnel to review and process attachment applications within the required time frames, renegotiate attachment agreements to incorporate the new requirements, and respond to complaints that may be filed with the Commission. The proposed rules, however, authorize facility owners to recover all of these costs through a nonrecurring fee charged to the requester if those costs are not included in the carrying charges that are part of the annual attachment rate. Thus the entities attaching to the facilities, not the owners, will incur those costs.

Increased Pole Inventory. PSE and Avista estimate that the proposed rules will result in these companies increasing their pole inventory either to enable them to timely respond to requesters

willing to pay for a taller pole to be able to attach or allow the company to promptly replace poles for its own need for increased space due to other entities' attachments to the pole. Again, the requester, not the owner, bears the entire cost of replacing a pole for the requester's benefit even though the owner also reaps the benefit of owning a new pole. To the extent that an owner must pay to replace a pole to accommodate the owner's own need for increased space, the owner is in no worse position than a requester who must pay for a new pole when the existing pole lacks sufficient capacity for additional attachments. These costs, therefore, neither are undue nor have a disproportionate impact.

VI. Proposed Rules that May Create Costs

The proposed rules are new, and each of them will create some compliance costs on all companies that own or attach to transmission facilities. The legislature, however, required the Commission to promulgate rules to implement the principles the legislature adopted in RCW 80.54, and the resulting costs are in keeping with that legislative mandate. The Commission's analysis of the issues raised in this rulemaking supports a determination that none of the proposed rules will disproportionately impact small businesses or any other stakeholders.

VII. Summary of Findings

The Commission has reviewed the information provided by the two companies that attempted to quantify the cost impact of the proposed rules in response to the SBEIS Questionnaire, as well as information they and other stakeholders submitted throughout the rulemaking process. The Commission finds that the proposed rule changes will not impose more than minor costs on the affected electric and telecommunications industries. The Commission also finds that even those minor costs will not disproportionately impact small businesses or any other stakeholders.

VIII. Mitigation

The proposed rules do not have a disproportionate economic impact on small businesses, and therefore the Commission did not need to consider any mitigation measures.

IX. Conclusion

Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry, in this case, electric and telecommunications companies, and whether any such costs disproportionately impact small businesses. Based on all information collected throughout the rulemaking process to date, the Commission has determined the proposed rules in WAC 480-54 are necessary and prudent to fulfill the agency's statutory responsibilities, the proposed rules will not impose more than minor costs to businesses, and those costs will not disproportionately impact small businesses.

OFFICE RECEPTIONIST, CLERK

To: Kruger, Christine
Cc: Stahl, Eric; tjoconnell@stoel.com
Subject: RE: PUD No. 2 of Pacific County v. Comcast of Washington IV, Inc., et al.; No. 91386-2

Rec'd 7/30/15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----
From: Kruger, Christine [mailto:ChristineKruger@DWT.COM]
Sent: Thursday, July 30, 2015 10:18 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Stahl, Eric; tjoconnell@stoel.com
Subject: PUD No. 2 of Pacific County v. Comcast of Washington IV, Inc., et al.; No. 91386-2

Please file the attached REVISED STATEMENT OF ADDITIONAL AUTHORITY (RAP 10.8) BY PETITIONERS COMCAST OF WASHINGTON IV, INC., FALCON COMMUNITY VENTURES I, L.P. AND CENTURYTEL OF WASHINGTON, INC. in the above-referenced matter. The following is the required information:

Case Name: PUD No. 2 of Pacific County v. Comcast of Washington IV, Inc., et al.
Case Number: 91386-2
Name, phone number, bar number and email address of the person filing the document:

Eric M. Stahl
206-757-8148
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If you have any questions, please do not hesitate to contact me at 206-757-8534.

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