
SENATE BILL 5740

State of Washington 60th Legislature 2007 Regular Session

By Senators Kilmer, Poulsen, Stevens, Rasmussen, Regala and Delvin

Read first time 01/30/2007. Referred to Committee on Water, Energy & Telecommunications.

1 AN ACT Relating to regulating utility pole attachments; amending
2 RCW 54.04.045; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature has declared that the policy
5 of the state of Washington is to maintain and advance the efficiency
6 and availability of telecommunications services and to promote
7 diversity and competition among telecommunications services and product
8 providers. The legislature has found that telecommunications
9 facilities and services are essential to the economic well-being of
10 both rural and urban areas.

11 The legislature finds that public utility districts that own
12 utility poles and that are exempt from the pole attachment provisions
13 under chapter 80.54 RCW have sought to charge multiple attachment fees
14 on the same pole and have used attachment rates, terms, and conditions
15 that are inconsistent with the pole attachment provisions under chapter
16 80.54 RCW and federal communications commission regulations. The
17 legislature finds that these practices: (1) Are inconsistent with the
18 policy of the state; (2) do not advance the efficiency or availability
19 of telecommunications facilities in rural or urban areas; (3) do not

1 encourage the introduction of competition, making the use of these
2 essential facilities difficult for providers of telecommunications and
3 cable television services; and (4) result in excessive litigation
4 costs, the courts being the only recourse available to licensees who do
5 not agree to contract terms. Consequently, the regulation of rates,
6 terms, and conditions for pole attachments with public utility
7 districts is in the public interest. Furthermore, the joint use of
8 these facilities is in the public's interest because duplication of
9 these facilities by telecommunications or cable television service
10 providers would be uneconomical, unattractive, and contrary to the
11 public interest.

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

14 (1) As used in this section:

15 (a) "Attachment" means the affixation or installation of any wire,
16 cable, or other physical material capable of carrying electronic
17 impulses or light waves for the carrying of intelligence for
18 telecommunications or television, including((~~7~~)) but not limited to
19 cable, and any related device, apparatus, or auxiliary equipment upon
20 any pole, duct, conduit, manhole, or handhole, or other similar
21 facilities owned or controlled in whole or in part by one or more
22 locally regulated utilities where the installation has been made with
23 the necessary consent.

24 (b) "Licensee" means any person, firm, corporation, partnership,
25 company, association, joint stock association, or cooperatively
26 organized association, which is authorized to construct attachments
27 upon, along, under, or across the public ways.

28 (c) "Locally regulated utility" means a public utility district
29 ((~~not subject to rate or service regulation by the utilities and~~
30 ~~transportation commission~~)) created in chapter 54.08 RCW.

31 (c) "Nondiscriminatory" means that pole owners may not arbitrarily
32 differentiate among or between similar classes of ((~~persons~~)) licensees
33 approved for attachments.

34 (2) ((~~All~~)) (a) The utilities and transportation commission shall
35 adopt procedures necessary to hear and resolve licensee complaints
36 concerning the rates, terms, and conditions made, demanded, or received
37 by a locally regulated utility for attachments ((~~to its poles~~)) by

1 licensees. All rates, terms, and conditions made, demanded, or
2 received by any locally regulated utility for any attachment by a
3 licensee must be just, fair, reasonable, nondiscriminatory, and
4 sufficient. ((A locally regulated utility shall levy attachment space
5 rental rates that are uniform for the same class of service within the
6 locally regulated utility service area.))

7 (b) If the utilities and transportation commission finds, after a
8 hearing to address a licensee complaint, that the rates, terms, or
9 conditions demanded, exacted, charged, or collected by any locally
10 regulated utility in connection with attachments are unjust, unfair,
11 unreasonable, or that the rates or charges are insufficient to yield a
12 reasonable compensation for the attachments, the commission shall
13 determine and fix just, fair, reasonable, or sufficient rates, terms,
14 and conditions for the attachments to be observed and followed
15 thereafter by any locally regulated utility. In determining and fixing
16 the rates, terms, and conditions, the commission shall consider the
17 interest of the customers of the attaching licensee as well as the
18 interest of the customers of the locally regulated utility upon which
19 the attachment is made.

20 (c) A just, fair, and reasonable rate must be determined on a per
21 pole basis rather than a per attachment basis, and the rate must allow
22 a locally regulated utility to recover at least all of the additional
23 costs of procuring and maintaining pole attachments but no more than
24 the utility's actual capital and operating expenses, including just
25 compensation, attributable to that portion of the pole, duct, conduit,
26 manhole, handhole, or other similar facilities used for the pole
27 attachment, including a share of the required support and clearance
28 space in proportion to the space used for the pole attachment, as
29 compared to all other uses made of the subject facilities and uses that
30 remain available to the owner or owners of the subject facilities.

31 (3) Except as provided in subsection (2) of this section, nothing
32 in this section shall be construed or is intended to confer upon the
33 utilities and transportation commission any authority to exercise
34 jurisdiction over locally regulated utilities.

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