

**SB 5711 - S AMD 69**

By Senator Ericksen

1 Strike everything after the enacting clause and insert the  
2 following:

3 "PART ONE

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

6 (1)~~(a)~~ (i) No city or town may impose a franchise fee or any other  
7 fee or charge of whatever nature or description upon the light and  
8 power, or gas distribution businesses, as defined in RCW 82.16.010,  
9 or telephone business, as defined in RCW 82.16.010, or service  
10 provider, as defined in RCW 35.99.010, for use of the right-of-way,  
11 except:

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

13 ~~((b))~~ (ii) A fee may be charged to such businesses or service  
14 providers that recovers actual administrative expenses incurred by a  
15 city or town that are directly related to receiving and approving a  
16 permit, license, and franchise, to inspecting plans and construction,  
17 or to the preparation of a detailed statement pursuant to chapter  
18 43.21C RCW;

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

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

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

25 ~~((i))~~ (A) The placement of new structures in the right-of-way  
26 regardless of height, unless the new structure is the result of a  
27 mandated relocation in which case no charge will be imposed if the  
28 previous location was not charged. When the new structure is placed  
29 in the right-of-way for purposes of installing a small cell facility  
30 as defined in RCW 80.36.375(2), the site-specific charge imposed  
31 under this subsection is limited to the projected cost to the city or

1 town resulting from the installation. However, no additional fee may  
2 be imposed on a provider attaching wi-fi antennas or other antennas  
3 that are strung on their existing lines between privately or publicly  
4 owned utility poles regardless of location;

5 ((+ii)) (B) The placement of replacement structures when the  
6 replacement is necessary for the installation or attachment of  
7 wireless facilities, the replacement structure is higher than the  
8 replaced structure, and the overall height of the replacement  
9 structure and the wireless facility is more than sixty feet; or

10 ((+iii)) (C) The placement of personal wireless facilities on  
11 structures owned by the city or town located in the right-of-way.  
12 However, a site-specific charge shall not apply to the placement of  
13 personal wireless facilities on existing structures, unless the  
14 structure is owned by the city or town. When the personal wireless  
15 service facility is a small cell facility as defined in RCW  
16 80.36.375(2), there may not be a site-specific charge imposed under  
17 this subsection. However, the city or town may charge an attachment  
18 rate according to the provisions of sections 202 through 206 of this  
19 act.

20 (b) A city or town is not required to approve the use permit for  
21 the placement of a facility for personal wireless services that meets  
22 one of the criteria in this subsection absent such an agreement. If  
23 the parties are unable to agree on the amount of the charge, the  
24 service provider may submit the amount of the charge to binding  
25 arbitration by serving notice on the city or town. Within thirty days  
26 of receipt of the initial notice, each party shall furnish a list of  
27 acceptable arbitrators. The parties shall select an arbitrator;  
28 failing to agree on an arbitrator, each party shall select one  
29 arbitrator and the two arbitrators shall select a third arbitrator  
30 for an arbitration panel. The arbitrator or arbitrators shall  
31 determine the charge based on comparable siting agreements involving  
32 public land and rights-of-way. The arbitrator or arbitrators shall  
33 not decide any other disputed issues, including but not limited to  
34 size, location, and zoning requirements. Costs of the arbitration,  
35 including compensation for the arbitrator's services, must be borne  
36 equally by the parties participating in the arbitration and each  
37 party shall bear its own costs and expenses, including legal fees and  
38 witness expenses, in connection with the arbitration proceeding.

39 (2) Subsection (1) of this section does not prohibit franchise  
40 fees imposed on an electrical energy, natural gas, or telephone

1 business, by contract existing on April 20, 1982, with a city or  
2 town, for the duration of the contract, but the franchise fees shall  
3 be considered taxes for the purposes of the limitations established  
4 in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the  
5 costs allowable under subsection (1) of this section.

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

8 A city or town shall authorize the installation of small cell  
9 facilities or networks, as defined in RCW 80.36.375(2), on city or  
10 town-owned structures located outside of the right-of-way to the same  
11 extent as the city or town permits access to structures for other  
12 commercial projects or uses and may authorize the installations if  
13 the city or town has not previously permitted such access. The  
14 installations are subject to reasonable rates, terms, and conditions  
15 as provided in one or more agreements between the personal wireless  
16 service provider and the city or town. A city or town may not charge  
17 more for a small cell facility than the lesser of: (1) The amount  
18 charged for similar commercial projects or uses to occupy or use the  
19 same amount of space on similarly situated property; or (2) the  
20 projected cost to the city or town resulting from the installation.

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

23 A city or town may grant, issue, or deny permits for the use of  
24 the right-of-way by a service provider for installing, maintaining,  
25 repairing, or removing facilities for telecommunications services or  
26 cable television services pursuant to ordinances, consistent with  
27 this chapter ((83, Laws of 2000)) provided that a city or town shall  
28 allow a service provider to place small cell facilities and small  
29 cell networks, as defined in RCW 80.36.375(2), in a city or town  
30 right-of-way, whether attached to city or town-owned facilities or  
31 attached to existing, new, or replacement poles owned by a service  
32 provider or another entity, subject only to the conditions of  
33 sections 105 and 107 of this act.

34 **Sec. 104.** RCW 35.99.030 and 2000 c 83 s 3 are each amended to  
35 read as follows:

36 (1) Cities and towns may require a service provider to obtain a  
37 master permit. A city or town may request, but not require, that a

1 service provider with an existing statewide grant to occupy the  
2 right-of-way obtain a master permit for wireline facilities.

3 (a) The procedures for the approval of a master permit and the  
4 requirements for a complete application for a master permit shall be  
5 available in written form.

6 (b) Where a city or town requires a master permit, the city or  
7 town shall act upon a complete application within one hundred twenty  
8 days from the date a service provider files the complete application  
9 for the master permit to use the right-of-way, except:

10 (i) With the agreement of the applicant; or

11 (ii) Where the master permit requires action of the legislative  
12 body of the city or town and such action cannot reasonably be  
13 obtained within the one hundred twenty day period.

14 (2) A city or town may require that a service provider obtain a  
15 use permit. A city or town must act on a request for a use permit by  
16 a service provider within thirty days of receipt of a completed  
17 application, unless a service provider consents to a different time  
18 period or the service provider has not obtained a master permit  
19 requested by the city or town.

20 (a) For the purpose of this section, "act" means that the city  
21 makes the decision to grant, condition, or deny the use permit, which  
22 may be subject to administrative appeal, or notifies the applicant in  
23 writing of the amount of time that will be required to make the  
24 decision and the reasons for this time period.

25 (b) Requirements otherwise applicable to holders of master  
26 permits shall be deemed satisfied by a holder of a cable franchise in  
27 good standing.

28 (c) Where the master permit does not contain procedures to  
29 expedite approvals and the service provider requires action in less  
30 than thirty days, the service provider shall advise the city or town  
31 in writing of the reasons why a shortened time period is necessary  
32 and the time period within which action by the city or town is  
33 requested. The city or town shall reasonably cooperate to meet the  
34 request where practicable.

35 (d) A city or town may not deny a use permit to a service  
36 provider with an existing statewide grant to occupy the right-of-way  
37 for wireline facilities on the basis of failure to obtain a master  
38 permit.

39 (3) The reasons for a denial of a master permit shall be  
40 supported by substantial evidence contained in a written record. A

1 service provider adversely affected by the final action denying a  
2 master permit, or by an unreasonable failure to act on a master  
3 permit as set forth in subsection (1) of this section, may commence  
4 an action within thirty days to seek relief, which shall be limited  
5 to injunctive relief.

6 (4) A service provider adversely affected by the final action  
7 denying a use permit may commence an action within thirty days to  
8 seek relief, which shall be limited to injunctive relief. In any  
9 appeal of the final action denying a use permit, the standard for  
10 review and burden of proof shall be as set forth in RCW 36.70C.130.

11 (5) A city or town shall:

12 (a) In order to facilitate the scheduling and coordination of  
13 work in the right-of-way, provide as much advance notice as  
14 reasonable of plans to open the right-of-way to those service  
15 providers who are current users of the right-of-way or who have filed  
16 notice with the clerk of the city or town within the past twelve  
17 months of their intent to place facilities in the city or town. A  
18 city is not liable for damages for failure to provide this notice.  
19 Where the city has failed to provide notice of plans to open the  
20 right-of-way consistent with this subsection, a city may not deny a  
21 use permit to a service provider on the basis that the service  
22 provider failed to coordinate with another project.

23 (b) Have the authority to require that facilities are installed  
24 and maintained within the right-of-way in such a manner and at such  
25 points so as not to inconvenience the public use of the right-of-way  
26 or to adversely affect the public health, safety, and welfare.

27 (6) A service provider shall:

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

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

34 (c) Cooperate with the city or town in ensuring that facilities  
35 are installed, maintained, repaired, and removed within the  
36 right-of-way in such a manner and at such points so as not to  
37 inconvenience the public use of the right-of-way or to adversely  
38 affect the public health, safety, and welfare;

39 (d) Provide information and plans as reasonably necessary to  
40 enable a city or town to comply with subsection (5) of this section,

1 including, when notified by the city or town, the provision of  
2 advance planning information pursuant to the procedures established  
3 by the city or town;

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

7 (f) Construct, install, operate, and maintain its facilities at  
8 its expense; and

9 (g) Comply with applicable federal and state safety laws and  
10 standards.

11 (7) Nothing in this section shall be construed as:

12 (a) Creating a new duty upon (~~city [cities]~~) cities or towns to  
13 be responsible for construction of facilities for service providers  
14 or to modify the right-of-way to accommodate such facilities;

15 (b) Creating, expanding, or extending any liability of a city or  
16 town to any third-party user of facilities or third-party  
17 beneficiary; or

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

21 (8) Nothing in this section creates, modifies, expands, or  
22 diminishes a priority of use of the right-of-way by a service  
23 provider or other utility, either in relation to other service  
24 providers or in relation to other users of the right-of-way for other  
25 purposes.

26 (9) Small cell facilities and networks, as defined in RCW  
27 80.36.375(2), are exempt from this section.

28 NEW SECTION. Sec. 105. A new section is added to chapter 35.99  
29 RCW to read as follows:

30 (1) A city or town shall provide service providers with  
31 nondiscriminatory access for attachments of small cell facilities as  
32 defined in RCW 80.36.375(2) to or in any right-of-way facilities the  
33 city or town owns or controls, either directly or through a  
34 municipally owned utility. A city or town may only deny access to  
35 specific facilities on a nondiscriminatory basis where there is  
36 insufficient capacity or for reasons of safety, reliability, and  
37 generally applicable engineering principles. However, the city or  
38 town may not deny access to a pole based on insufficient capacity if  
39 the service provider is willing to compensate the city or town for

1 the costs to replace the existing pole with a taller pole and  
2 otherwise undertake make-ready work to increase the capacity of the  
3 pole to accommodate an additional attachment. The small cell  
4 attachments allowed under this subsection are subject to the rate  
5 established in RCW 35.21.800(1)(a)(v)(C) and sections 202 through 206  
6 of this act and other reasonable terms and conditions as provided in  
7 a small cell right-of-way agreement approved under this section. Any  
8 small cell right-of-way agreement approving the attachment of small  
9 cell facilities and networks as defined in RCW 80.36.375(2) on city  
10 or town-owned facilities must be consistent with sections 202 through  
11 206 of this act. However, no right-of-way or other permit is required  
12 for wi-fi antennas that are strung between existing privately or  
13 publicly owned utility poles regardless of location.

14 (2) A city or town shall provide service providers with  
15 nondiscriminatory access to the right-of-way to attach small cell  
16 facilities to existing facilities owned by any entity and to install  
17 new or replacement poles for purposes of attaching small cell  
18 facilities, subject to the rates established in RCW  
19 35.21.860(1)(a)(v) (A) through (C) and other reasonable terms and  
20 conditions as provided in a small cell right-of-way agreement  
21 approved under this section. A city or town may only deny access to  
22 specific locations in the right-of-way on a nondiscriminatory basis  
23 for reasons of safety and generally applicable engineering  
24 principles. With the issuance of a use permit for each location, the  
25 city or town may limit the height of a new or replacement pole so  
26 that it does not exceed one hundred thirty percent of the average  
27 pole height in the vicinity, when the heights of poles within the  
28 same right-of-way and within one-half mile of the proposed pole  
29 location are averaged.

30 (3) A city or town must approve a small cell right-of-way  
31 agreement under this section within ninety days of a service  
32 provider's submittal of a complete application for such a permit. In  
33 addition to the applicable rate established in RCW  
34 35.21.860(1)(a)(v), the small cell right-of-way agreement must  
35 provide for the future issuance of use permits anywhere within the  
36 city or town. No concealment, stealth, or aesthetic standards may be  
37 required through a small cell right-of-way agreement. However, such  
38 standards may be adopted by ordinance and on a nondiscriminatory  
39 basis required of all applicants by a city or town through a use  
40 permit to the extent permitted in subsection (4) of this section.

1 (4) Once a small cell right-of-way agreement is approved under  
2 subsection (3) of this section, the city or town must issue a use  
3 permit for each small cell facility or network according to the same  
4 timeline and process as described in section 107 of this act.

5 (5) A city or town shall:

6 (a) In order to facilitate the scheduling and coordination of  
7 work in the right-of-way, provide as much advance notice as  
8 reasonable of plans to open the right-of-way to those service  
9 providers who are current users of the right-of-way or who have filed  
10 notice with the clerk of the city or town within the past twelve  
11 months of their intent to place facilities in the city or town. A  
12 city or town is not liable for damages for failure to provide this  
13 notice. Where the city or town has failed to provide notice of plans  
14 to open the right-of-way consistent with this subsection, a city or  
15 town may not deny a use permit to a service provider on the basis  
16 that the service provider failed to coordinate with another project.

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

21 (6) A service provider shall:

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

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

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

33 (d) Provide information and plans as reasonably necessary to  
34 enable a city or town to comply with subsection (5) of this section  
35 including, when notified by the city or town, the provision of  
36 advance planning information pursuant to the procedures established  
37 by the city or town;

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



1 (f) Construct, install, operate, and maintain its facilities at  
2 its expense; and

3 (g) Comply with applicable federal and state safety laws and  
4 standards.

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

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

9 (b) Creating, expanding, or extending any liability of a city or  
10 town to any third-party user of facilities or third-party  
11 beneficiary; or

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

15 (8) Nothing in this section creates, modifies, expands, or  
16 diminishes a priority of use of the right-of-way by a service  
17 provider or other utility, either in relation to other service  
18 providers or in relation to other users of the right-of-way for other  
19 purposes.

20 (9) In the event a city or town denies the granting of a small  
21 cell right-of-way agreement to a provider, the reasons for the denial  
22 must be supported by substantial evidence contained in a written  
23 record. A service provider adversely affected by the final action  
24 denying a small cell right-of-way agreement, or by an unreasonable  
25 failure to act on a small cell right-of-way agreement as set forth in  
26 subsection (3) of this section, may commence an action within thirty  
27 days to seek relief, which is limited to injunctive relief.

28 (10) A service provider adversely affected by a final action  
29 denying a use permit may commence an action within thirty days to  
30 seek relief, which is limited to injunctive relief. In any appeal of  
31 the final action denying a use permit, the standard for review and  
32 burden of proof is as set forth in RCW 36.70C.130.

33 **Sec. 106.** RCW 35.99.040 and 2000 c 83 s 4 are each amended to  
34 read as follows:

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

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

4 (b) Conflict with federal or state laws, rules, or regulations  
5 that specifically apply to the design, construction, and operation of  
6 facilities or with federal or state worker safety or public safety  
7 laws, rules, or regulations;

8 (c) Regulate the services provided based upon the content or kind  
9 of signals that are carried or are capable of being carried over the  
10 facilities, except where otherwise authorized in state or federal  
11 law; or

12 (d) Unreasonably deny the use of the right-of-way by a service  
13 provider for installing, maintaining, repairing, or removing  
14 facilities for telecommunications services or cable television  
15 services.

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

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

22 (b) Prohibit the placement of all wireless or of all wireline  
23 facilities within city or town rights-of-way, unless the city or town  
24 is less than five square miles in size and has no commercial areas,  
25 in which case the city or town may make available land other than  
26 city or town rights-of-way for the placement of wireless facilities;  
27 ((~~or~~))

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

30 (d) Violate section 107 of this act regarding the installation of  
31 small cell facilities and small cell networks.

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

37 NEW SECTION. Sec. 107. A new section is added to chapter 80.36  
38 RCW to read as follows:

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

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

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

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

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

11 (iv) A use permit issued under section 103 of this act if located  
12 in a city or town right-of-way.

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

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

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

1 (b) The applicant may cure the deficiencies identified by the  
2 city or county and resubmit the application within thirty days of the  
3 denial without paying an additional processing fee. The city or  
4 county shall approve or deny the revised application within thirty  
5 days after resubmittal.

6 (5)(a) The city or county may charge an application fee for small  
7 cell facility or network permits, provided that the fee is limited to  
8 the actual, direct, and reasonable costs incurred by the city or  
9 county in granting or processing the permit. Further, the application  
10 fee may not include any direct payment or reimbursement of third-  
11 party charges or fees.

12 (b) In any controversy concerning the appropriateness of the  
13 application fee charged, the city or county has the burden of proving  
14 the application fee is reasonably related to the actual, direct, and  
15 reasonable costs incurred by the city or county to process the permit  
16 application and does not include any third-party rates or fees.

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

28 **Sec. 108.** RCW 35A.21.245 and 2000 c 83 s 10 are each amended to  
29 read as follows:

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

33 **PART TWO**

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

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

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

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

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

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

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

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

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

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

39 (9) "Licensee" includes any person, firm, corporation,  
40 partnership, company, association, joint stock association, or

1 cooperatively organized association, other than a utility, that is  
2 authorized to construct attachments upon, along, under, or across the  
3 public ways.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) If the owner denies the request in an application for access,  
38 in whole or in part, the owner's written response to the application  
39 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. 203.** A new section is added to chapter 35.21  
21 RCW to read as follows:

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

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

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

38 (4) Subject to the review under section 206 of this act, the  
39 consulting representative of an owner may make final determinations,

1 on a nondiscriminatory basis, on the attachment capacity of any pole  
2 and on issues of safety, reliability, and generally applicable  
3 engineering principles.

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

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

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

37 (3) An owner shall provide an occupant with written notice prior  
38 to removal of, termination of service to, or modification of (other  
39 than routine maintenance or modification in response to emergencies)

1 any facilities on or in which the occupant has attachments affected  
2 by such action. The owner must provide the notice as soon as  
3 practicable but no less than sixty days prior to taking the action  
4 described in the notice. However, the owner may provide notice less  
5 than sixty days in advance if a governmental entity or landowner  
6 other than the owner requires the action described in the notice and  
7 did not notify the owner of that requirement more than sixty days in  
8 advance.

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

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

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

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

29 
$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

32 
$$\text{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

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

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

simplified as:

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

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;

(b) Another 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.



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

6 (4) Within thirty days of receipt of the initial notice, each  
7 party shall furnish a list of acceptable arbitrators. The parties  
8 shall select an arbitrator; failing to agree on an arbitrator, each  
9 party shall select one arbitrator and the two arbitrators shall  
10 select a third arbitrator for an arbitration panel.

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

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

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

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

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

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

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

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

1 (7) The arbiter will issue a notice of prehearing conference  
2 within five business days after the arbitration panel is seated. The  
3 party complained against must answer the complaint within ten  
4 business days from the date the arbiter serves the complaint. The  
5 answer must respond to each allegation in the complaint with  
6 sufficient data or other factual information and legal argument to  
7 support that response to the extent the respondent possesses such  
8 factual information.

9 (8)(a) A licensee has the burden to prove its right to attach to  
10 or in the owner's facilities and that any attachment requirement,  
11 term, or condition an owner imposes or seeks to impose that the  
12 licensee challenges violates any provision of sections 202 through  
13 205 of this act or other applicable law.

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

18 (9) If the arbiter determines that a rate, term, or condition  
19 complained of is not in compliance with sections 202 through 205 of  
20 this act, the arbiter shall prescribe a rate, term, or condition that  
21 is in compliance with sections 202 through 205 of this act. The  
22 arbiter shall require the inclusion of that rate, term, or condition  
23 in an attachment agreement, and to the extent authorized by  
24 applicable law, shall order a refund or payment of the difference  
25 between any rate required by section 205 of this act and the rate  
26 that was previously charged during the time the owner was charging  
27 the rate after the effective date of this section.

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

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

37 (12) If the arbiter finds that the rates, terms, or conditions  
38 demanded, exacted, charged, or collected by any owner in connection  
39 with attachments to its facilities do not comply with sections 202  
40 through 205 of this act as applicable, the arbiter shall establish

1 rates, terms, and conditions consistent with the requirements of  
2 sections 202 through 205 of this act, thereafter to be observed and  
3 in force and fix the same by final order entered within sixty days  
4 after the submission of the issues for arbitration. The arbiter may  
5 extend this deadline for good cause.

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

8 The definitions in this section apply throughout sections 208  
9 through 212 of this act unless the context clearly requires  
10 otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (13) "Occupant" means any licensee with an attachment to an  
36 owner's facility that the owner has granted the licensee the right to  
37 maintain.

38 (14) "Occupied space" means that portion of the facility used for  
39 attachment that is rendered unusable for any other attachment, which

1 is presumed to be one foot on a pole and one-half of a duct in a duct  
2 or conduit.

3 (15) "Overlashing" means the tying of additional communications  
4 wires or cables to existing communications wires or cables attached  
5 to poles.

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

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

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

18 (19) "Right-of-way" is an owner's legal right to construct,  
19 install, or maintain facilities or related equipment in or on grounds  
20 or property belonging to another person. For the purposes of sections  
21 208 through 212 of this act, "right-of-way" includes only the legal  
22 rights that permit the owner to allow third parties access to those  
23 rights.

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

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

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

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

8        (2) If a requester hires a contractor for purposes of performing  
9 surveys and make-ready work pursuant to this chapter, the requester  
10 must choose a contractor included on the owner's list of authorized  
11 contractors. If the owner does not maintain such a list, the  
12 requester may choose a contractor without the owner's approval of  
13 that choice.

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

19        (4) Subject to the review under section 212 of this act, the  
20 consulting representative of an owner may make final determinations,  
21 on a nondiscriminatory basis, on the attachment capacity of any pole  
22 and on issues of safety, reliability, and generally applicable  
23 engineering principles.

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

26        (1) An owner shall provide requesters with nondiscriminatory  
27 access for attachments to or in any facility the owner owns or  
28 controls. An owner may deny access to specific facilities on a  
29 nondiscriminatory basis where there is insufficient capacity or for  
30 reasons of safety, reliability, and generally applicable engineering  
31 principles. However, the owner may not deny access to a pole based on  
32 insufficient capacity if the requester is willing to compensate the  
33 owner for the costs to replace the existing pole with a taller pole  
34 and otherwise undertake make-ready work to increase the capacity of  
35 the pole to accommodate an additional attachment including, but not  
36 limited to, using space and cost-saving attachment techniques such  
37 as: Boxing; installation of attachments on both sides of the pole at  
38 approximately the same height; or bracketing or installation of  
39 extension arms, to the extent that the owner uses, or allows

1 occupants to use, such attachment techniques in the communications  
2 space of the owner's poles.

3 (2) All rates, terms, and conditions made, demanded, or received  
4 by any owner for any attachment by a licensee must be fair and  
5 reasonable and must be included in an attachment agreement with the  
6 licensee or utility. Parties may mutually agree on terms for  
7 attachment to or in facilities that differ from those in this  
8 chapter.

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

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

35 (5) To the extent that it grants the access requested in an  
36 application, the owner's written response must inform the requester  
37 of the results of the review of the application. Within fourteen days  
38 of providing its written response, the owner must provide an estimate  
39 of charges to perform all necessary make-ready work, including the  
40 costs of completing the estimate. Make-ready work costs are

1 nonrecurring costs that are not included in carrying charges and must  
2 be costs that the owner actually and reasonably incurs to provide the  
3 requester with access to the facility.

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

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

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

24 (a) For attachments in 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 sixty days after the 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 that 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 that if make-ready work is not completed by the  
2 completion date set by the owner, or fifteen days later if the owner  
3 has asserted its right to fifteen additional days, the owner and the  
4 requester may negotiate an extension of the completion date or the  
5 requester, after giving reasonable notice to the owner, may hire a  
6 contractor from the list of contractors the owner has authorized to  
7 work on its poles to complete the specified make-ready work within  
8 the communications space. If the owner does not maintain a list of  
9 authorized contractors, the requester may choose a contractor without  
10 the owner's authorization;

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

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

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

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

20 (iii) State that any occupant with an existing attachment may  
21 modify the attachment consistent with the specified make-ready work  
22 before the date set for completion of that work. Any occupant with an  
23 existing attachment that does not comply with applicable safety  
24 requirements must modify that attachment to bring it into compliance  
25 before the date set for completion of the make-ready work. The  
26 occupant is responsible for all costs incurred to bring its  
27 attachment into compliance;

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

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

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

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

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

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

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

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

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

15 (b) Upon discovery of the circumstances in (a)(i) or (ii) of this  
16 subsection, the owner must promptly notify, in writing, the requester  
17 and other affected occupants with existing attachments. The notice  
18 must include the reason for the extension and date by which the owner  
19 will complete the work. The owner may not extend completion of make-  
20 ready work for a period any longer than reasonably necessary and  
21 shall undertake the work on a nondiscriminatory basis with the other  
22 work the owner undertakes on its facilities.

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

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

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

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

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

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

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

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

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

26 (b) A single occupant may not submit more than five notices or  
27 identify more than a total of one hundred poles for overlashing in  
28 any ten business day period. The applicable time period for  
29 responding to multiple notices begins on the date of the last notice  
30 the owner receives from the occupant within the ten business day  
31 period.

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

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

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

15 NEW SECTION. **Sec. 210.** A new section is added to chapter 54.04  
16 RCW to read as follows:

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

31 (2) The costs of modifying a facility to bring an existing  
32 attachment into compliance with applicable safety requirements must  
33 be borne by the occupant or owner that created the safety violation  
34 that necessitated the modification. These costs include, but are not  
35 necessarily limited to, the costs incurred by the owner or other  
36 occupants to modify the facility or conforming attachments. An  
37 occupant or owner with an existing conforming attachment to a  
38 facility is not required to bear any of the costs to rearrange or  
39 replace the occupant's or owner's attachment if the rearrangement or

1 replacement is necessitated solely to accommodate modifications to  
2 the facility to bring another occupant's or owner's attachment into  
3 conformance with applicable safety requirements to remedy a safety  
4 violation caused by another occupant or owner. The owner and each  
5 occupant must bear their own costs to modify their existing  
6 attachments if required to comply with applicable safety requirements  
7 if an owner or occupant did not create a safety violation that  
8 necessitated the modification.

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

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

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

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

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

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

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

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

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

simplified as:

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

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. 212.** A new section is added to chapter 54.04 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.

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

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

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

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

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

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

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

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

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

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

35 (a) A statement, including specific facts, demonstrating that the  
36 complainant engaged or reasonably attempted to engage in good faith,  
37 executive-level negotiations to resolve the disputed issues raised in  
38 the submission and that the parties failed to resolve those issues  
39 despite those efforts; such negotiations must include the exchange of  
40 reasonably relevant information necessary to resolve the dispute

1 including, but not limited to, the information required to calculate  
2 rates in compliance with sections 208 through 212 of this act;

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

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

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

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

19 (8)(a) A licensee has the burden to prove its right to attach to  
20 or in the owner's facilities and that any attachment requirement,  
21 term, or condition an owner imposes or seeks to impose that the  
22 licensee challenges violates any provision of sections 208 through  
23 212 of this act or other applicable law.

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

28 (9) If the arbiter determines that a rate, term, or condition  
29 complained of is not in compliance with sections 208 through 212 of  
30 this act, the arbiter shall prescribe a rate, term, or condition that  
31 is in compliance with sections 208 through 212 of this act. The  
32 arbiter shall require the inclusion of that rate, term, or condition  
33 in an attachment agreement, and to the extent authorized by  
34 applicable law, shall order a refund or payment of the difference  
35 between any rate required by section 211 of this act and the rate  
36 that was previously charged during the time the owner was charging  
37 the rate after the effective date of this section.

38 (10) If the arbiter determines that an owner has unlawfully or  
39 unreasonably denied or delayed access to a facility, the arbiter  
40 shall order the owner to provide access to that facility within a



1 reasonable time frame and on rates, terms, and conditions that are in  
2 compliance with sections 208 through 212 of this act.

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

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

16 **PART THREE**

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

19 ~~((1))~~ The definitions in this section apply throughout this  
20 section, RCW 80.36.610, and ~~((RCW))~~ 80.36.650 through 80.36.690 ~~((and~~  
21 ~~80.36.610))~~, unless the context clearly requires otherwise.

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

26 ~~((b))~~ (2) "Basic telecommunications services" means the  
27 following services:

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

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

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

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

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

33 ~~((vi))~~ (f) Access to operator services;

34 ~~((vii))~~ (g) Access to interexchange services;

35 ~~((viii))~~ (h) Access to directory assistance; and

36 ~~((ix))~~ (i) Toll limitation services.

37 ~~((e))~~ (3) "Communications provider" means a provider of  
38 communications services ~~((that assigns a working telephone number to~~

1 ~~a final consumer for intrastate wireline or wireless communications~~  
2 ~~services or interconnected voice over internet protocol service, and~~  
3 ~~includes local exchange carriers)) including local exchange carriers~~  
4 ~~whether providing service by traditional or voice over internet~~  
5 ~~protocols or a combination thereof.~~

6 ((~~d~~)) (4) "Communications services" includes telecommunications  
7 services and information services and any combination thereof.

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

11 ((~~f~~)) (6) "Incumbent public network" means the network  
12 established by incumbent local exchange carriers for the delivery of  
13 communications services to customers that is used by communications  
14 providers for origination or termination of communications services  
15 by or to customers.

16 ((~~g~~)) (7) "Interconnected voice over internet protocol service"  
17 means an interconnected voice over internet protocol service that:  
18 (a) ((~~i~~)) Enables real-time, two-way voice communications; (b)  
19 ((~~ii~~)) requires a broadband connection from the user's location;  
20 (c) ((~~iii~~)) requires internet protocol-compatible customer  
21 premises equipment; and (d) ((~~iv~~)) permits users generally to  
22 receive calls that originate on the public network and to terminate  
23 calls to the public network.

24 ((~~h~~)) (8) "Program" means the state universal communications  
25 services program created in RCW 80.36.650.

26 ((~~i~~)) (9) "Telecommunications" has the same meaning as defined  
27 in 47 U.S.C. Sec. 153((~~43~~)) as it existed on the effective date of  
28 this section.

29 ((~~j~~)) (10) "Telecommunications act of 1996" means the  
30 telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

31 ((~~k~~) "~~Working telephone number~~" means a north American numbering  
32 plan telephone number, or successor dialing protocol, that is  
33 developed for use in placing calls to or from the public network,  
34 that enables a consumer to make or receive calls.

35 (~~2~~) ~~This section expires July 1, 2020.)~~

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

38 (1) A state universal communications services program is  
39 established. The program is established to protect public safety and

1 welfare under the authority of the state to regulate  
2 telecommunications under Article XII, section 19 of the state  
3 Constitution. The purpose of the program is to support continued  
4 provision of basic telecommunications services under rates, terms,  
5 and conditions established by the commission during the time over  
6 which incumbent communications providers in the state are adapting to  
7 changes in federal universal service fund and intercarrier  
8 compensation support.

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

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

25 (a) The communications provider is: (i) An incumbent local  
26 exchange carrier serving fewer than forty thousand access lines in  
27 the state; or (ii) a radio communications service company providing  
28 wireless two-way voice communications service to less than the  
29 equivalent of forty thousand access lines in the state. For purposes  
30 of determining the access line threshold in this subsection, the  
31 access lines or equivalents of all affiliates must be counted as a  
32 single threshold, if the lines or equivalents are located in  
33 Washington;

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

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

1 (4)(a) Distributions to eligible communications providers are  
2 based on a benchmark established by the commission. The benchmark is  
3 the rate the commission determines to be a reasonable amount  
4 customers should pay for basic residential service provided over the  
5 incumbent public network. However, if an incumbent local exchange  
6 carrier is charging rates above the benchmark for the basic  
7 residential service, that provider may not seek distributions from  
8 the fund for the purpose of reducing those rates to the benchmark.

9 (b) To receive a distribution under the program, an eligible  
10 communications provider must affirmatively consent to continue  
11 providing communications services to its customers under rates,  
12 terms, and conditions established by the commission pursuant to this  
13 chapter for the period covered by the distribution.

14 (5) The program is funded from amounts deposited by the  
15 legislature in the universal communications services account  
16 established in RCW 80.36.690. The commission must operate the program  
17 within amounts appropriated for this purpose and deposited in the  
18 account.

19 (6) The commission must periodically review the accounts and  
20 records of any communications provider that receives distributions  
21 under the program to ensure compliance with the program and monitor  
22 the providers' use of the funds.

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

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

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

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

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

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

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

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

5       ~~((d))~~ (4) Readoption, amendment, or repeal of any existing  
6 rules adopted pursuant to RCW 80.36.610 ~~((and 80.36.620))~~ as  
7 necessary to be consistent with RCW 80.36.610, and 80.36.630 through  
8 80.36.690 ~~((and 80.36.610))~~.

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

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

12       (1) In addition to any other penalties prescribed by law, the  
13 commission may impose penalties for failure to make or delays in  
14 making or filing any reports required by the commission for  
15 administration of the program. In addition, the commission may  
16 recover amounts determined to have been improperly distributed under  
17 RCW 80.36.650. For the purposes of this section, the provisions of  
18 RCW 80.04.380 through 80.04.405, inclusive, apply to all companies  
19 that receive support from the universal communications services  
20 account created in RCW 80.36.690.

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

24       (3) Any amounts recovered under this section must be deposited in  
25 the universal communications services account created in RCW  
26 80.36.690.

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

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

30       ~~((1))~~ The commission may delegate to the commission secretary  
31 or other staff the authority to resolve disputes and make other  
32 administrative decisions necessary to the administration and  
33 supervision of the program consistent with the relevant statutes and  
34 commission rules.

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

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

1       (~~(1)~~) The universal communications services account is created  
2 in the custody of the state treasurer. Revenues to the account  
3 consist of moneys deposited in the account by the legislature and any  
4 penalties or other recoveries received pursuant to RCW 80.36.670.  
5 Expenditures from the account may be used only for the purposes of  
6 the universal communications services program established in RCW  
7 80.36.650. Only the secretary of the commission or the secretary's  
8 designee may authorize expenditures from the account. The account is  
9 subject to allotment procedures under chapter 43.88 RCW, but an  
10 appropriation is not required for expenditures.

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

12       NEW SECTION.   **Sec. 307.** (1) Nothing in sections 201 through 212  
13 of this act is intended to affect or otherwise determine any  
14 previously decided or ongoing litigation related to the subject  
15 matter of sections 101 through 108 of this act.

16       (2) Sections 201 through 212 of this act apply prospectively only  
17 and not retroactively. Sections 201 through 212 of this act apply  
18 only to causes of action that arise (if change is substantive) or  
19 that are commenced (if change is procedural) on or after the  
20 effective date of this section.

21       NEW SECTION.   **Sec. 308.** The following acts or parts of acts are  
22 each repealed:

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

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

27       (3) RCW 80.36.620 (Universal service program—Rules) and 1998 c  
28 337 s 3; and

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

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By Senator Ericksen

31       On page 1, line 1 of the title, after "services;" strike the  
32 remainder of the title and insert "amending RCW 35.21.860, 35.99.020,

1 35.99.030, 35.99.040, 35A.21.245, 80.36.630, 80.36.650, 80.36.660,  
2 80.36.670, 80.36.680, and 80.36.690; adding new sections to chapter  
3 35.99 RCW; adding a new section to chapter 80.36 RCW; adding new  
4 sections to chapter 35.21 RCW; adding new sections to chapter 54.04  
5 RCW; creating a new section; and repealing RCW 35.21.455, 54.04.045,  
6 80.36.620, and 80.36.700."

EFFECT: Revises the site specific charge for placing a new structure in the right-of-way and on city-owned structures outside of the right-of-way to the projected cost to the city or town for installation.

Clarifies right-of-way agreement, not a master permit, for attachment of small cell facilities.

Provides injunctive relief to providers adversely affected when a city or town denies, or through an unreasonable failure to act on, a small cell facilities right-of-way agreement.

Provides injunctive relief to providers adversely affected when denied a use permit.

Adds a prospective effect clause.

--- END ---