



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Public Service Commission**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE No TITLE-SERIES **150-**

RULE NAME **Telephone Conduit Occupancy** **37**

CITE AUTHORITY **24-2E-3, 24-1-7, 24-2-1, 24-2-6**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Friday, July 15, 2016 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
**Ingrid Ferrell, Executive Secretary
PO Box 812
Charleston, WV 25323**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Ingrid M Ferrell -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 150-37



Rule Id: 10167



Document: 27560



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

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RULE NAME **Telephone Conduit Occupancy** **37**

CITE AUTHORITY **24-2E-3, 24-1-7, 24-2-1, 24-2-6**

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Some customers pay for conduit or other underground construction (collectively, customer-owned conduit) to facilitate their receipt of telephone service. Later, those customers may wish to use their customer-owned conduit to purchase telephone service from a different provider or other services such as internet or cable television. When new or different services are routed through customer-owned conduit, issues may arise regarding the continuation of existing services until new services are in place or technical matters regarding access to adjacent utility facilities, installation of the new facilities and removal of facilities that are no longer needed.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Public Service Commission**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **150-**

RULE NAME **Telephone Conduit Occupancy** **37**

CITE AUTHORITY **24-2E-3, 24-1-7, 24-2-1, 24-2-6**

PRIMARY CONTACT

Ingrid Ferrell
201 Brooks Street
P.O. Box 812
Charleston, STATE ZIP

SECONDARY CONTACT

Richard Hitt
201 Brooks Street
P.O.Box 812
Charleston, STATE SECONDARY ZIP SECONDARY

Ingrid M Ferrell -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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CITE AUTHORITY **24-2E-3, 24-1-7, 24-2-1, 24-2-6**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission already has regulatory authority relating to incumbent and competitive telephone service providers. These proposed rules are required to comply with recently enacted W. Va. Code Section 24-2E-3(b).

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY Public Service Commission

RULE TYPE Legislative AMENDMENT TO EXISTING RULE No TITLE-SERIES 150-

RULE NAME Telephone Conduit Occupancy 37

CITE AUTHORITY 24-2E-3, 24-1-7, 24-2-1, 24-2-6

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0.00	0.00	0.00
PERSONAL SERVICES	0.00	0.00	0.00
CURRENT EXPENSES	0.00	0.00	0.00
REPAIRS AND ALTERATIONS	0.00	0.00	0.00
ASSETS	0.00	0.00	0.00
OTHER	0.00	0.00	0.00
ESTIMATED TOTAL REVENUES	0.00	0.00	0.00

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Public Service Commission**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **150-**

RULE NAME **Telephone Conduit Occupancy** **37**

CITE AUTHORITY **24-2E-3, 24-1-7, 24-2-1, 24-2-6**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

N/A

Ingrid M Ferrell -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY **Public Service Commission**

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RULE NAME **Telephone Conduit Occupancy** **37**

CITE AUTHORITY **24-2E-3, 24-1-7, 24-2-1, 24-2-6**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Ingrid M Ferrell -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Public Service Commission**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE No TITLE-SERIES **150-**

RULE NAME **Telephone Conduit Occupancy** **37**

CITE AUTHORITY **24-2E-3, 24-1-7, 24-2-1, 24-2-6**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Some customers pay for conduit or other underground construction (collectively, customer-owned conduit) to facilitate their receipt of telephone service. Later, those customers may wish to use their customer-owned conduit to purchase telephone service from a different provider or other services such as internet or cable television. When new or different services are routed through customer-owned conduit, issues may arise regarding the continuation of existing services until new services are in place or technical matters regarding access to adjacent utility facilities, installation of the new facilities and removal of facilities that are no longer needed.

In the 2016 Regular Session of the Legislature, Senate Bill Number 678 was passed, which prohibits a telephone public utility from preventing a customer from using that customer-owned conduit for purposes other than services provided by the telephone company, so long as the customer and all occupants comply with the national electrical safety code and regulations to be promulgated by the Commission.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Ingrid M Ferrell -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 150-37



Rule Id: 10167



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TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 37
RULES GOVERNING TELEPHONE CONDUIT OCCUPANCY

§150-37-1. General.

1.1. Scope. -- These rules are promulgated to effectuate W. Va Code §24-2E-3.

1.2. Authority. -- W. Va. Code §§24-2E-3, 24-1-7, 24-2-1 and 24-2-6.

1.3. Filing Date. -- _____, 2016.

1.4. Effective Date. -- _____, 2016.

1.5. Sunset date. This rule will sunset five years after the effective date, unless otherwise extended pursuant to W. Va. Code §29A-3-19.

§150-37-2. Definitions.

2.1. "Conduit" -- A tube structure containing one or more ducts or inner-ducts used to house cables.

2.2. "Commission" -- The Public Service Commission of West Virginia.

2.3. "Customer" -- Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., who purchases telecommunications services from a telephone company.

2.4. "Inner-ducts" -- A duct contained within another duct.

2.5. "Intercept" -- A cable inserted into conduit between conduit end points.

2.6. "Service Provider" -- A customer, telephone public utility, telephone company or any other entity that occupies, or desires to occupy, conduit or underground construction that provides service by a telephone public utility and that has been provided at the customer's expense.

2.7. "Telephone Company" or "Telephone Public Utility" -- Any provider of telecommunications services to the public under the jurisdiction of the Commission.

§150-37-3. Telephone Conduit Occupancy.

3.1. Prohibition and Ownership.

A telephone public utility may not prohibit, either by contract or service tariff, a customer who has provided conduit or other underground construction at the customer's expense from using the conduit or other underground construction for purposes other than the services provided by the telephone company. A customer who provides the conduit or underground construction is the owner of that apparatus.

3.2. Compliance with Standards, Practices, Rules and Orders.

a. A customer and all occupants of conduit or other underground apparatus shall comply with the rules, regulations and orders of the Commission, the National Electrical Safety Code, the National Electric Code, the Manual of Construction Procedures, the rules and regulations of the Occupational Safety and Health Act and any other lawful and applicable laws, rules, regulations and orders.

b. No customer, telephone public utility, telephone company or other occupant of any conduit or other underground apparatus may prohibit, prevent or interfere with the compliance of any person with its obligations under the rules, regulations and orders of this Commission, including without limitation any obligation as a carrier of last resort.

§150-37-4. Best Practices.

4.1. Coordination of activities of multiple service providers.

The use of customer-owned conduit may require the involvement of more than one service provider. When multiple service providers are involved, the coordination of their activities should be guided by the best practices of the industry, as set forth below:

- a. Intercepts should be allowed and standardized with the use of conduit saddles.
- b. Pedestal placements should allow ready access of conduits and ducts.
- c. Legacy non-standard intercept installation should be maintained as is unless damage to facilities as a direct result of these installations is proven imminent or the conduit owner requests changes to the insertion methodology.
- d. Companies should reasonably allow shared cable installations in common ducts where duct access is restricted by available capacity.
- e. Dead cables that consume capacity in customer-owned conduit should be extracted in a reasonably expeditious manner.
- f. The physical access paths into buildings should be considered to determine whether plant assets may be consolidated and ensure that scarce access capacities are efficiently used.
- g. Initial and subsequent installations into new customer-owned conduit should use inner-ducts when feasible.
- h. Customer-owned conduit should have a common access point to facilitate the customer's receipt of service from multiple providers. The common access may be provided in various ways, including
 - (i) Placement of a pull box that may be shared by multiple service providers.
 - (a) When possible, the pull box should be placed by the customer contractor when the customer-owned conduit is installed.

(b) A pull box also may be placed by the initial installing provider.

(ii) Installation of a conduit Y fitting with conduit stubbed up such that multiple service providers can access the customer-owned conduit on the open stub.

i. A service provider should not bill another service provider for access to or occupancy of customer-owned conduit.

j. A transition demark between riser poles and entry points into customer-owned conduit is not necessary.