



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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8/26/2016 3:17:36 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Public Service Commission**

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

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

CITE AUTHORITY **WV Code 24-2E-3**

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

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: 28912



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

AGENCY **Public Service Commission**

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

CITE AUTHORITY **WV Code 24-2E-3**

PRIMARY CONTACT

Ingrid Ferrell
201 Brooks Street
PO Box 812
Charleston, STATE ZIP

SECONDARY CONTACT

Richard Hitt
201 Brooks Street
PO Box 812
Charleston, STATE SECONDARY ZIP SECONDARY

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AGENCY Public Service Commission

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

RULE NAME Telephone Conduit Occupancy 37

CITE AUTHORITY WV Code 24-2E-3

AUTHORIZING STATUTE(S) CITATION

WV Code 24-2E-3, 24-1-7, 24-2-1 and 24-2-6

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD

Tuesday, June 07, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Publication of Notice of Comment Period and Hearing in 18 newspapers across the state; service of Commission Order upon all telecommunication carriers

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED

Thursday, July 21, 2016

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 10 -- LEGISLATIVE QUESTIONNAIRE (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 **WV Code 24-2E-3**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

Attached

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Friday, August 26, 2016

**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 10 -- LEGISLATIVE QUESTIONNAIRE (Page 3)

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

CITE AUTHORITY **WV Code 24-2E-3**

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. GIVE THE DATE UPON WHICH YOU FILED IN THE STATE REGISTER A NOTICE OF THE TIME AND PLACE OF A HEARING FOR THE TAKING OF EVIDENCE AND A GENERAL DESCRIPTION OF THE ISSUES TO BE DECIDED.

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 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)

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

CITE AUTHORITY **WV Code 24-2E-3**

DATE OF HEARING OR COMMENT PERIOD

Thursday, July 21, 2016

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS

None

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
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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 **WV Code 24-2E-3**

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

CITE AUTHORITY **WV Code 24-2E-3**

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 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 **WV Code 24-2E-3**

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

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 3)

AGENCY **Public Service Commission**

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

CITE AUTHORITY **WV Code 24-2E-3**

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

N/A

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

CITE AUTHORITY **WV Code 24-2E-3**

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.

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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 **WV Code 24-2E-3**

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

Some customers provide their own conduit (Customer-Provide Conduit) or other underground construction to facilitate their receipt of services from various providers. Later, those customers may wish to use their Customer-Provide Conduit or other underground construction to obtain service from a different provider or other services such as internet or cable television.

In the 2016 Regular Session of the Legislature, Senate Bill Number 678 was passed, which provides that a telephone public utility may not prohibit a customer from using Customer-Provided Conduit for purposes other than service provided by the telephone company. The new law is codified at W. Va. Code § 24-2E-3, and W. Va. Code § 24-2E-3(b) requires the Public Service Commission to promulgate rules to effectuate the purpose of the statute.

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 THE OCCUPANCY OF CUSTOMER-PROVIDED CONDUIT**

§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. -- _____, 2017.

1.4. Effective Date. -- _____, 2017.

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. "Apparatus" – The Conduit or Other Underground Construction (but not including the cable) that provides a cable pathway between the Service Provider network and the Customer.

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

2.3. "Conduit" – A structure containing one or more cables or one or more Ducts used to house and protect cables.

2.4. "Customer" -- Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., who purchases services from a Service Provider.

2.5. "Customer-Provided Conduit" – The Conduit either installed by, or on behalf of, a Customer at the Customer's expense on real property either owned, managed or administered by the Customer for purposes of installing wires and cable for the provision of services. The cable inside the Conduit remains under the ownership of the Service Provider until the point of entrance or service point as per the National Electrical Code (NEC).

2.6. "Duct" – A single enclosed race way placed inside a Conduit for conductors or cable.

2.7. "Intercept" – The physical components (including Conduit, Duct and fittings) required to insert a cable into an empty or occupied Conduit while maintaining the seal integrity at the Intercept installation point of the Conduit and physical protection of any installed cable.

2.8. "Other Underground Construction" – Manholes, vaults, Intercepts, universal access facilities, Ducts and any other part or appurtenance of a customer-provided system that is used to provide a cable pathway between the Service Provider network and the Customer.

2.9. "Service Provider" – A Customer, Telephone Public Utility, Telephone Company or any other entity that occupies, or desires to occupy, Conduit or Other Underground Construction that is used to provide services by a Telephone Public Utility and that has been provided at the Customer's expense.

2.10. “Telephone Company” or “Telephone Public Utility” -- Any provider of telecommunications or data services to the public under the jurisdiction of the Commission.

2.11. “Universal Access Point (UAP)” -- An access point located at the terminus of the installed Customer-Provided Conduit or Other Underground Construction installed by the Customer or Service Provider to serve as an entry point for multiple Service Providers into the Customer-Provided Conduit.

§150-37-3. Telephone Conduit Occupancy.

3.1. Prohibition and Ownership.

a. A Telephone Public Utility may not prohibit, either by contract or service tariff, a Customer who has provided Conduit or Other Underground Construction provided at the Customer’s expense from using the Conduit or Other Underground Construction for purposes other than services provided by the Telephone Company. A Customer who provides the Conduit or Other Underground Construction is the owner of that Apparatus.

b. A Telephone Public Utility shall not be permitted to exercise management, oversight or administrative authority relative to access, occupancy or utilization of Customer-Provided Conduit or Other Underground Construction.

c. A Telephone Public Utility shall not be permitted to reserve space within Customer-Provided Conduit or Other Underground Construction.

d. Unoccupied Duct space owned by the Customer within Customer-Provided Conduit or Other Underground Construction is presumed available for use by all Telephone Public Utilities or Service Providers with the consent of the Customer.

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 Electrical Code, the Manual of Construction Procedures (The Blue Book), the rules and regulations of the Occupational Safety and Health Administration 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.

c. When the use of Customer-Provided Conduit or Other Underground Construction requires the involvement of more than one Service Provider, a Telephone Public Utility shall cooperate with and give its approval, when necessary, for access by other Service Providers. The only acceptable basis for disagreement by a Telephone Public Utility shall be that the proposed joint use (i) will pose a clear and imminent threat to existing facilities or (ii) would constitute a violation of any of the standards, practices, rules and orders which which compliance is required by these rules.

§150-37-4. General Practices.

4.1. Coordination of activities of multiple Service Providers.

When multiple Service Providers are involved, the coordination of their activities should be guided by Rule 3.1, Rule 3.2 and the general practices of the industry, which include but are not limited to:

a. Reasonable advance notice shall be provided to affected parties of work in the Customer-Provided Conduit or Other Underground Construction.

b. After the effective date of these rules, new Intercepts are permitted only in instances when the affected parties agree and where it is not feasible to access the Customer-Provided Conduit or Other Underground Construction at the UAP. The only acceptable basis for disagreement by a Service Provider shall be that the proposed Intercept (i) will pose an imminent threat to the existing facilities or (ii) would constitute a violation of any of the standards, practices, rules and orders with which compliance is required by these rules.

c. The design of the new Intercept shall follow generic engineering drawings as agreed to by the Customer and will be provided to the affected parties.

d. Customer-Provided Conduit or Other Underground Construction shall have a Universal Access Point to facilitate the Customer's receipt of service from multiple Service Providers. The UAP shall permit ready access by each user to the Conduit system, and shall minimize interference with, and avoid danger to, other Service Provider facilities. It is desirable that the UAP be provided at the time of the initial installation of the Conduit.

e. Installation of a Universal Access Point shall provide access for multiple Service Providers to the Customer-Provided Conduit or Other Underground Construction and shall:

(i) provide adequate working space to avoid interference with, or damage to, existing installed cables or the Conduit,

(ii) maintain seal integrity of the Conduit system, and

(iii) be agreed to by the Customer.

f. It is desirable in the future that the UAP be supplied and installed by the Customer as part of the general installation of the Customer-Provided Conduit or Other Underground Construction. Thereafter, all Service Providers shall enter the Customer-Provided Conduit or Other Underground Construction through the UAP, which shall:

(i) permit ready access by each user to the capacity in the Customer-Provided Conduit or Other Underground Construction and

(ii) minimize interference with, and avoid danger to, other Service Provider facilities.

g. Whenever feasible, telecommunications or other Service Provider facilities owned or belonging to the same entity shall be installed and maintained within the same Duct within Customer-Provided Conduit or Other Underground Construction, considering the need to separate different cable types and materials.

h. Companies should reasonably allow shared cable installations in Ducts where Duct access is restricted by available capacity.

i. When needed to provide necessary capacity, unused cables in Customer-Provided Conduit or Other Underground Construction should be extracted in a reasonably expeditious manner at no cost to the Customer.

j. Initial and subsequent installations into new Customer-Provided Conduit or Other Underground Construction should use separate Ducts when feasible.

k. Upon request by the Customer, a Telephone Public Utility or other Service Providers shall examine and report the status of their existing entrance paths into Customer-Provided Conduit or Other Underground Construction in a reasonably expeditious manner.

l. Whenever technically feasible, a Telephone Public Utility or other Service Provider shall consolidate or minimize entrance points into the Customer-Provided Conduit or Other Underground Construction.

m. A Service Provider should not bill another Service Provider for access to or occupancy of Customer-Provided Conduit or Other Underground Construction.