

RCW 47.04.045 Wireless service facilities—Right-of-way leases—

Rules. (1) For the purposes of this section:

(a) "Right-of-way" means all state-owned land within a state highway corridor.

(b) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, or person that owns, operates, or manages any personal wireless service facility. "Service provider" includes a service provider's contractors, subcontractors, and legal successors.

(2) The department shall establish a process for issuing a lease for the use of the right-of-way by a service provider and shall require that telecommunications equipment be colocated on the same structure whenever practicable. Consistent with federal highway administration approval, the lease must include the right of direct ingress and egress from the highway for construction and maintenance of the personal wireless service facility during nonpeak hours if public safety is not adversely affected. Direct ingress and egress may be allowed at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods. The lease may specify an indirect ingress and egress to the facility if it is reasonable and available for the particular location.

(3) The cost of the lease must be limited to the fair market value of the portion of the right-of-way being used by the service provider and the direct administrative expenses incurred by the department in processing the lease application.

If the department and the service provider are unable to agree on the cost of the lease, the service provider may submit the cost of the lease to binding arbitration by serving written notice on the department. Within thirty days of receiving the notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or panel shall determine the cost of the lease based on comparable siting agreements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(4) The department shall act on an application for a lease within sixty days of receiving a completed application, unless a service provider consents to a different time period.

(5) The reasons for a denial of a lease application must be supported by substantial evidence contained in a written record.

(6) The department may adopt rules to implement this section.

(7) All lease money paid to the department under this section shall be deposited in the motor vehicle fund created in RCW 46.68.070. [2003 c 244 § 5.]