

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**WIRED OR WIRELESS, INC.,** ) **CASE NO. AVU-E-25-11**  
**Complainant,** )  
 )  
**vs.** ) **ORDER NO. 36979**  
 )  
**AVISTA CORPORATION,** )  
**Respondent.** )  
 )

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On July 17, 2025, Wired or Wireless, Inc. (“WOW”) filed a formal complaint with the Idaho Public Utilities Commission (“Commission”) against Avista Corporation (“Avista”) (collectively, the “Parties”). WOW alleged that Avista billed WOW for pole attachments located in the State of Idaho in violation of *Idaho Code* § 61-538, regulations and orders of the Commission, as well as federal laws and regulations (“Complaint”). Complaint at 1-2. WOW also claimed that Avista had violated WOW’s right to overlash another cable or wire to its existing cables and wires; and that the Company had failed to maintain accurate records by failing to conduct periodic pole audits. *Id.*

On August 28, 2025, Avista filed an Answer to the Complaint (“Answer”) denying WOW’s allegations. Answer at 1. Avista claimed the Parties’ Joint Use Master License Agreement (“JUMLA”) was terminated and that a lawsuit was filed in the Superior Court of Washington against WOW for breach of contract. *Id.* at 2. Avista believed that the issues presented in the Complaint should be heard by the Washington Superior Court and further argued that the Commission lacked jurisdiction over the matter under *Idaho Code* § 61-538. *Id.* at 4. Avista argued that if the Commission did have jurisdiction, it would derive from *Idaho Code* § 61-514, not *Idaho Code* § 61-538. *Id.* at 5. Avista requested the Commission deny WOW’s request for relief and dismiss the Complaint, allowing Avista to further pursue the breach of contract claims in the Washington Superior Court lawsuit. *Id.* 18-19.

On January 27, 2026, the Commission issued Final Order No. 36917 dismissing the Complaint, finding that it lacked jurisdiction to consider the issues raised under either *Idaho Code* § 61-538 or *Idaho Code* § 61-514, or the statutory authority to impose the penalties or grant the relief requested. Order No. 36917 at 11-12.

On February 27, 2026, WOW filed a Petition for Clarification of Order No. 36917 (“Petition”). WOW did not request reconsideration.

On February 24, 2026, Avista filed a Cross-Petition for Clarification and Reconsideration (collectively, “Cross-Petitions”).

On March 3, 2026, WOW filed an Answer to Avista’s Cross-Petitions (“Petition Answer”).

Based on our review of the record, the Commission now issues this Final Order denying WOW’s Petition and denying Avista’s Cross-Petitions.

### **WOW’S PETITION FOR CLARIFICATION**

WOW requested the Commission provide clarification on Order No. 36917. Petition at 1. Specifically, WOW requested clarification on:

1. Whether the Commission did or did not have authority over pole attachments, as defined in *Idaho Code* § 61-538, when provided by a utility to a telecommunications or broadband company until July 1, 2025;
2. Whether the Commission has or has not issued and made effective rules and regulations implementing the state’s regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state) as required by § 1.1405(b)(3) of the rules of the Federal Communications Commission (“FCC”), 47 C.F.R. § 1.1405(b)(3) or specifically addressing overlashing, as set forth in § 1.1416 of the FCC’s rules, 47 C.F.R. § 1.1416; and
3. Whether the Commission’s pending rulemaking proceeding, *House Bill 180A Re: Pole Attachments*, Case No. RUL-U-25-01, does or does not contain a specific methodology for determining “just and reasonable rates” for pole attachments or specifically address overlashing.

*Id.* at 1-2.

WOW asserted that the issues raised in the Complaint were going to be mediated by the FCC’s Rapid Broadband Assessment Team (“RBAT”), as of February 3, 2026. *Id.* at 2. Additionally, WOW stated that clarification from the Commission would assist the FCC in providing assistance where the Commission cannot. *Id.* at 3.

## **AVISTA’S CROSS-PETITION FOR CLARIFICATION AND RECONSIDERATION**

Avista requested that the Commission reject WOW’s Petition and instead, clarify that the Commission’s dismissal of the Complaint was based on its lack of jurisdiction over the contract dispute between the Parties. Cross-Petition at 1-2. Avista also requested that the Commission reconsider its determination that it lacked jurisdiction under *Idaho Code* § 61-514. *Id.* at 2.

Avista argued that the Commission’s specific jurisdiction over pole attachments is clear from the language of *Idaho Code* § 61-538 and that the Commission’s jurisdiction relies on a complaint procedure rather than the adoption of specific rate formulas. *Id.* at 3-4. Accordingly, Avista requested that the Commission deny WOW’s Petition and instead provide clarification that the dismissal was not because it lacked jurisdiction over all pole attachment cases, but because it lacked jurisdiction over a contract dispute which could be settled in district court. *Id.* at 4.

Additionally, Avista requested that the Commission reconsider its finding that it lacked jurisdiction under *Idaho Code* § 61-514. *Id.* at 5. Avista argued that the Commission’s determination that WOW was not a “utility” as defined under *Idaho Code* § 61-514 was incorrect. *Id.* Evidence was provided that WOW’s tariff sheets supply additional information describing WOW as offering circuit-switched telecommunications, giving the Commission jurisdiction under *Idaho Code* § 61-514 in 2023-2024. *Id.* Avista requested that the Commission provide a determination that its use of the “old telecommunications” rate for pole attachments was reasonable to calculate the annual pole attachment fees, or, in the alternative, clarify that the Commission does not have jurisdiction under *Idaho Code* § 61-514 because the issues presented were an issue of contract interpretation that is better suited for state court. *Id.* at 6.

### **WOW’S ANSWER TO AVISTA’S CROSS-PETITIONS**

WOW asserted that the February 24, 2026, Cross-Petitions filed by Avista were procedurally defective and should be dismissed by the Commission. Petition Answer at 1.

WOW argued that after the Commission issued Order No. 36917 on January 27, 2026, dismissing the Complaint, any petition for reconsideration was required to be filed within 21 days

pursuant to *Idaho Code* § 61-626(1) and Commission Rule 323.<sup>1</sup> *Id.* at 2. WOW believed that Avista did not file a timely petition for reconsideration. *Id.* Instead, it styled its filing as a “cross-petition for reconsideration,” despite the absence of any pending petition for reconsideration to which WOW could respond. *Id.* Under the Commission’s Rule of Procedure 323, IDAPA 31.01.01.323, and controlling authority, including *Eagle Water Co. v. Idaho PUC*, cross-petitions are limited to issues raised in an existing petition for reconsideration. *Id.* at 2-3. WOW believed that because it filed a timely petition for clarification, not reconsideration, Avista’s filing constituted an untimely and procedurally improper attempt to collaterally attack a final order. *Id.* at 3.

WOW further argued that Avista’s attempt to characterize its pleading as a “cross-petition for clarification” was likewise unsupported by the Commission’s rules. *Id.* Rule of Procedure 325, IDAPA 31.01.0.325, permits petitions for clarification but does not authorize cross-petitions for clarification, nor does it toll the deadline for reconsideration. *Id.* WOW believed that any request for clarification was required to be filed within the same 21-day period applicable to petitions for reconsideration. *Id.* at 3-4. WOW argued that Avista’s failure to act within that timeframe rendered its filing untimely. *Id.* at 4.

On the merits, WOW maintained that jurisdiction over its pole attachment disputes for 2023-2024 lay with the FCC, not the Commission, because Idaho law did not grant the Commission authority over telecommunications pole attachments during the relevant period. *Id.* at 6-7. WOW stated that it was seeking relief through the FCC’s enforcement mechanisms, including the RBAT process, under Section 224 of the Communications Act. *Id.* at 6. WOW contended that Avista’s attachment rates exceeded those permitted under FCC regulations and that Avista’s overlashing policies violated 47 C.F.R. § 1.1416, which prohibited utilities from requiring prior approval or charging fees for certain overlashing activities. *Id.* at 7. The FCC possesses authority to reduce unlawful rates, impose forfeitures, and enforce compliance, as recognized in *FCC v. Florida Power Corp.* and *Cavalier Telephone, LLC v. Virginia Electric & Power Co.* *Id.* WOW also rejected Avista’s reliance on the FCC’s former telecom rate formula, noting that the

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<sup>1</sup> Rule of Procedure 323, IDAPA 31.01.01.323, provides the ordering language required in final orders, which includes language describing the deadline to file a petition for reconsideration. The rules of procedure for filing a petition or cross-petition for reconsideration are provided under Rule of Procedure 331, IDAPA 31.01.01.331.

FCC's 2011 Order had concluded that the revised formula appropriately balanced broadband deployment incentives and utility cost recovery. *Id.* at 8.

Finally, WOW asserted that Order No. 36917 correctly determined that the Commission lacked jurisdiction under *Idaho Code* §§ 61-538 and 61-514. *Id.* at 8-9. The Commission had concluded that *Idaho Code* § 61-514 applied only to public utilities and to access disputes where no agreement existed, not to contractual billing disputes such as those presented by WOW, which was not a public utility. *Id.* at 9. Accordingly, WOW maintained that Avista's Cross-Petition was both procedurally improper and substantively without merit and should be dismissed in its entirety. *Id.*

### **COMMISSION FINDINGS AND DECISION**

The Commission has authority to adjudicate complaints alleging acts or omissions by public utilities that violate the law or Commission order or rule. *Idaho Code* §§ 61-612, -618. The Commission addresses informal and formal complaints through the process outlined in its administrative rules and does not provide preferential treatment to any party participating in the process. IDAPA 31.01.01.054 and .057.02.

Having reviewed the filings and the record in this matter, the Commission issues this Order denying WOW's Petition and denying Avista's Cross-Petitions.

#### **WOW's Petition**

WOW seeks clarification on three issues. First, WOW asks whether the Commission lacked authority over pole attachments, as defined by *Idaho Code* § 61-538, when provided by a utility to a telecommunications or broadband company prior to July 1, 2025. This issue was expressly addressed in Order No. 36917. Order No. 36917 explains:

. . . *Idaho Code* § 61-538 authorizes the Commission to assist in fixing rates, terms, or conditions for pole attachments when the relevant parties are unable to reach agreement. Prior to July 1, 2025, the statute applied only to disputes between a public utility and a cable television company. Effective July 1, 2025, the Idaho Legislature amended the statute to include disputes involving a provider of telecommunication services or broadband. Order No. 36917 at 11.

Because Order No. 36917 clearly states the Commission's authority both before and after the statutory amendment, further clarification is unnecessary.

Second and third, WOW requests clarification regarding whether the Commission has issued rules implementing the State's regulatory authority over pole attachments, including any methodology for determining just and reasonable rates, and whether the Commission's pending rulemaking proceeding addresses such methodology or overreaching. These requests do not seek clarification of Order No. 36917, but instead request an advisory opinion concerning the Commission's broader regulatory framework and an ongoing rulemaking proceeding.

Order No. 36917 resolved the jurisdictional issues presented in the Complaint based on the record in this case. WOW's additional questions extend beyond the scope of that Order and seek clarification outside the issues addressed in this matter. The Commission declines to issue advisory opinions or to address matters properly considered in separate proceedings. Accordingly, WOW's second and third requests are denied as beyond the scope of Order No. 36917.

### **Avista's Cross-Petitions**

#### ***Clarification***

Avista requests the Commission clarify that its dismissal of the Complaint was not based on a lack of jurisdiction over all pole attachment matters, but rather on the absence of jurisdiction to resolve a contract dispute. This was set forth in Order No. 36917.

In Order No. 36917, the Commission explained:

Under the amended version of *Idaho Code* § 61-538, the Commission's role is also limited and inapplicable in the context WOW suggests. The statute permits Commission involvement only when parties are unable to agree on rates or terms during the formation of a new pole attachment agreement. Here, the Parties successfully negotiated and executed the JUMLA in 2009, establishing mutually agreed upon rates and terms. The Complaint does not seek to establish new rates or terms but instead asks the Commission to interpret and enforce an existing agreement and to adjudicate alleged contractual breaches. *Idaho Code* § 61-538 does not permit the Commission to review, interpret, or enforce existing contracts where a meeting of the minds has occurred. As affirmed by the Supreme Court of Idaho, the interpretation and enforcement of contractual rights are matters that generally fall within the jurisdiction of the courts, not the Commission. Order No. 36917 at 11-12.

Order No. 36917 also states:

The Commission finds that *Idaho Code* § 61-514 is not applicable to the issues raised in the Complaint. The statute is intended to address circumstances involving access to facilities where no agreement exists, not to settle disputes arising from the interpretation of existing contracts, including billing disputes or alleged breaches

of contract. The record reflects that the parties have an existing agreement governing joint use of facilities. Order No. 36917 at 12.

Because the Order already articulates the basis for the Commission's decision, the requested clarification would merely restate existing findings and is therefore denied.

***Reconsideration***

In reviewing the filings in this matter, we determine that Avista's Cross-Petition for Reconsideration is untimely. Under the Commission's Rules of Procedure, a petition for reconsideration must be filed within 21 days of the service date of a final order. Final Order No. 36917 was issued on January 27, 2026, making Avista's Cross Petition for Reconsideration filed on February 24, 2026, untimely.

The filing of WOW's Petition for Clarification does not toll or extend the deadline for seeking reconsideration. Nor does the rule permitting cross-petitions for reconsideration apply here, as that provision is triggered only by a timely petition for reconsideration, not a petition for clarification. Accordingly, Avista's Cross-Petition for Reconsideration is procedurally barred.

Even if the request were timely, the Commission would deny reconsideration on the merits. Avista argues that the Commission should revisit its determination regarding jurisdiction under *Idaho Code* § 61-514. However, Final Order No. 36917 addressed this issue and concluded that the statute does not apply because the dispute arises from the interpretation and alleged breach of an existing contract. This was the primary basis for the Commission's determination that it lacked jurisdiction under *Idaho Code* § 61-514.

Any additional argument regarding whether WOW qualifies as a "public utility" would not alter that conclusion. Even if WOW were considered a public utility, the Commission would still lack jurisdiction to adjudicate contractual disputes governed by an existing agreement. Therefore, reconsideration is not warranted.

**ORDER**

IT IS HEREBY ORDERED that WOW's Petition for Clarification is denied.

IT IS FURTHER ORDERED that Avista's Cross-Petitions for Clarification and Reconsideration are denied.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7)

days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 23<sup>rd</sup> day of March, 2026.

  
EDWARD LODGE, PRESIDENT

  
JOHN R. HAMMOND JR., COMMISSIONER

  
DAYN HARDIE, COMMISSIONER

ATTEST:

  
Monica Barrios-Sanchez  
Commission Secretary

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