

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of)
COMCAST CABLE)
COMMUNICATIONS, INC., a)
Pennsylvania Corporation,)
)
Claimant,)
vs.)
)
PACIFICORP, dba UTAH POWER, an)
Oregon Corporation,)
)
Respondent.)
)

DOCKET NO. 03-035-28

ORDER ON MOTION
FOR IMMEDIATE RELIEF

ISSUED: April 30, 2004

By The Commission:

This matter arises from the parties' dispute concerning the terms and conditions by which Comcast Cable Communications (Comcast) attaches its wire and cable facilities to PacifiCorp's utility poles. Comcast's predecessor in interest, AT&T Cable Services, entered into a written agreement with PacifiCorp on December 20, 1999 (December 1999 Agreement), by which the parties' pole attachments were governed. In December, 2001, PacifiCorp notified Comcast that it was terminating the December 1999 Agreement, as of December 31, 2002, and desired to negotiate a replacement agreement prior to the end of 2002. Comcast did not object to PacifiCorp's termination of the December 1999 Agreement. The parties have not entered into a complete written replacement agreement, but, seemingly, have continued to follow the processing and attachment procedures contained in the December 1999 Agreement.

Near the end of 2002, PacifiCorp began an audit of its pole plant to identify attachments, compliance with pole attachment agreements and safety standards. As the audit proceeded, PacifiCorp discovered numerous attachments for which PacifiCorp had no record of authorization. Under its interpretation of the December 1999 Agreement, PacifiCorp began billing Comcast penalty amounts, past rental amounts for unauthorized attachments PacifiCorp attributes to Comcast, and additional sums. PacifiCorp also requested Comcast to remedy pole attachments which PacifiCorp claims do not comply with applicable safety standards. As its audit continues, PacifiCorp continues to bill for unauthorized attachments and ask for remedial action as additional unsafe attachments are identified. Comcast disputes PacifiCorp's claims of improper attachments and the amounts claimed. The parties entered into a letter agreement, dated September 8, 2003, in an effort to permit Comcast access to PacifiCorp's poles pending resolution of their dispute. Comcast sought Commission resolution of the dispute by filing a complaint with the Commission on October 31, 2003. Hearings for a Commission resolution of the complaint are set for August, 2004. Comcast paid some amounts invoiced by PacifiCorp, but appears to have refused to pay any additional invoices beginning in early 2004.

As Comcast continued to dispute the allegations of unauthorized pole attachments and the charges claimed, it appears that PacifiCorp became concerned about the number of the pole attachments for which it had no record and the magnitude of the mounting invoiced amount Comcast refused to pay. In early March, 2004, PacifiCorp informed Comcast that PacifiCorp would no longer process any pole attachment permit applications until Comcast paid PacifiCorp's outstanding claims. PacifiCorp's actions precipitated Comcast's March 23, 2004, Motion for Immediate Relief

and Declaratory Ruling (March 2004 Motion). In the March 2004 Motion, Comcast asks the Commission to 1. Direct PacifiCorp to continue processing permit applications until a final resolution is made; 2. Order PacifiCorp from imposing and billing for additional pole attachments which PacifiCorp claims are unauthorized; and 3. Declare that PacifiCorp's refusal to process permit applications unless Comcast pays past claims is an unlawful denial of access and an unjust and unreasonable term of attachment in violation of U.C. A. §54-4-13 and 47 U.S.C. §224. PacifiCorp's written response to the March 2004 Motion was filed April 5, 2004. The Commission held a hearing on the March 2004 Motion on April 6, 2004. At the hearing, Comcast appeared through John Davidson Thomas, Jerold G. Oldroyd and Michael D. Woods; PacifiCorp through Raymond Kowalski, Gary Sackett, and Geirt Hull; and the Division of Public Utilities through Patricia Schmid.

At the hearing, PacifiCorp argued that its refusal to process any further attachment permits, until Comcast pays the disputed claims, is a reasonable means to ensure compliance with the parties' pole attachment agreement, protect the integrity of PacifiCorp's utility plant and is not a denial of access. Comcast countered that there is no safety or structural/physical basis to prevent further attachments. Comcast stated that it installs its attachments in compliance with electrical safety standards; offending instances are the result of the equipments' exposure to the elements and the passage of time, and are comparable to similar results from PacifiCorp's own installations. PacifiCorp has not argued that Comcast's attachments are reflective of a systematic failure to comply with applicable safety standards. It appears that both parties are committed to ensure that future installations will comply with applicable safety standards.

PacifiCorp's counsel candidly conceded that the denial of access complaint is based on what "access" means. PacifiCorp argued that Comcast has access, as evidenced by Comcast's existing, extensive, attachments; and that PacifiCorp has no intention of preventing Comcast access to maintain that existing plant. It is clear, however, that PacifiCorp's actions to refuse further permit processing do not permit Comcast any access to further, additional installations or to upgrade its existing attachments. We disagree with PacifiCorp's position and conclude that Comcast may obtain access to PacifiCorp's utility poles as long as its installations are made in a safe manner. A full resolution of the parties' dispute is anticipated from the August proceedings. As we have already scheduled future proceedings to resolve the issues associated with the parties' dispute concerning their past attachment agreements' terms, including the proper penalties and past rental amounts for unauthorized attachments, and the terms and conditions for future attachments, we make no further disposition on the March 2004 Motion other than this order requiring PacifiCorp to continue to process Comcast's attachment permit applications and that both parties comply with the applicable safety standards as the attachments are made and maintained.

Wherefore, we enter this ORDER requiring that:

1. PacifiCorp will continue to process Comcast's attachment permit applications.
2. Comcast be permitted to install its attachments to PacifiCorp poles where such attachments can be made in a safe and appropriate manner.
3. All attachments will be made consistent with applicable safety standards.

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4. Both parties will share their information concerning unsafe attachments/installations and make reasonable efforts to correct unsafe installations in an orderly fashion.

DATED at Salt Lake City, Utah, this 30th day of April, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
GW#37888