BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

COMCAST CABLE COMMUNICATIONS, INC., a Pennsylvania Corporation, Claimant, vs. PACIFICORP, dba UTAH POWER , an Oregon Corporation, Respondent.	)	**Docket No. 03-035-28**

SUR-REBUTTAL TESTIMONY

OF

MICHAEL T. HARRELSON, P.E.

IN RESPONSE TO THE JULY 26, 2004

PREPARED SUR-REBUTTAL TESTIMONY OF THOMAS V. JACKSON

COMCAST CABLE COMMUNICATIONS, LLC

August 6, 2004

Q: What is the purpose of the testimony you are submitting below?

A: The purpose of this testimony is to respond to Thomas Jackson's July 26, 2004 testimony submitted by PacifiCorp.

Q: Please summarize your responsive testimony.

A: Mr. Jackson and I obviously have different perspectives on the matters at issue in this case, but in moving beyond his fairly transparent efforts to discredit my testimony to focus on the supporting materials that Mr. Jackson has supplied with his testimony, two things are evident: (1) our opinions are not as conflicting as they might seem initially, and (2) the tools for resolving this dispute are present in the materials that Mr. Jackson and I have provided. Indeed, I believe that if the Commission were to adopt, or if the parties were to agree, to solutions like those set forth in the sample 1991 Georgia Power agreement attached to Mr. Jackson's testimony, then this dispute could be resolved quickly.

Q: What do you believe is the essential discrepancy between your opinion and Mr. Jackson's on the issues presented in this case?

A: The main difference is that I believe that power company practices are a major contributor to joint use problems while Mr. Jackson believes that all joint use problems are caused by cable television companies. While I believe that there needs to be a cooperative and dynamic approach to tackling joint use problems, Mr. Jackson believes

that cable is to be blamed and, therefore, cable should be punished. His view is that after cable is punished, and presumably humbled, only then can it be brought to heel and changed to better reflect the utilities' view of joint use. Mr. Jackson's testimony and supporting materials are also very interesting on the issues of permit applications (including permits for overlashing) and PacifiCorp's plans to impose fines for safety violations, which as I have previously testified, I believe would be unwise.

The issues in dispute here are: (1) whether the $250 unauthorized attachment penalty is reasonable, and (2) whether it is reasonable, or for that matter possible, to assume that Comcast has approximately 35,000 "unauthorized" attachments that have supposedly sprouted on PacifiCorp poles in the last four or five years.

As to Comcast's supposed attachment to 35,000 new poles since 1999, Mr. Jackson says only that—in his opinion—it could have happened. But he does not provide any support for this statement suggesting that it actually did happen. He says only that he has seen "a 20% increase in attachments in the number of poles found during a five-year period." I'm not sure I understand that statement entirely, but if he means that he has seen a cable system increase the number of poles that it is attached to by 20% in a five year period, I have too. What I have not seen—and more important, what Mr. Jackson has not testified that *he* has seen—is a fully developed cable system in urban and developed suburban areas experience a 20% increase in the number of attachments in a

five-year period. That is a critical point in assessing his testimony on the core issues here. Specifically, with respect to Utah, PacifiCorp claims that Comcast has attached to 35,000 new poles in the last several years. If you assume an industry standard estimate of 35 poles per mile, that would mean that Comcast had built 1,000 (35,000 ÷ 35) miles of new plant since PacifiCorp's supposed "base-line" audit was completed in 1999. That equates to 250 miles of new build per year. Stated simply, that does not reflect either the facts of this case or my experience. Indeed, I have confirmed with Comcast's Rodney Bell that new cable construction in the last four years does not come remotely close to PacifiCorp's claims. Thus, I believe that 35,000 is not a reliable number and should be rejected.

Q: What is your response to Mr. Jackson's opinion on the reasonableness of the $250 unauthorized attachment penalty?

A: He does not express an opinion on the amount, which is a little surprising given that, in my view, this is the biggest single issue in dispute. He does mention a $50 unauthorized attachment penalty. That $50 amount is included in the sample contract that he submitted. While I believe that a $50 penalty is still unreasonably high, the sample contract, and particularly Paragraph 7 related to unauthorized attachments, is a very good example of how the unauthorized attachment issue can be resolved.

Specifically, on page 12, he states that the 1991 contract that he "developed" for Georgia Power contained a $50 unauthorized attachment charge and a back-rent component. Paragraph 7 of that agreement addresses this issue and does so in a way that is fair and reasonable, reflecting that field practices among joint users and the power company change over time. It is worth re-producing the entirety of Paragraph 7 of this agreement here.

> In the event that the number of poles to which Licensee has attached its facilities differs from the number shown in Licensor's records, the difference shall be prorated over the period since the last such accounting. If this results in an increase in the number of poles to which Licensee has attached for any year during such period, Licensee shall forthwith pay to Licensor the fees due for such poles for such years, and if it results in a decrease in the number of poles to which Licensee has attached for any year during such period, Licensor shall forthwith refund to Licensee the fees previously paid for such poles for such years or to the date of this Agreement, whichever is later.
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> Unauthorized pole attachments which exceed 3% of Licensee's total permits shall be billed at the rate of $50.00 per unauthorized pole attachment plus the appropriate pole attachment rental fee(s) for the preceding year(s). Attachments previously authorized by Licensor's local personnel; attachments to poles previously owned by other companies, or treated as owned by other companies, now owned by Licensor; attachments to in-line drop-in poles; and drop attachments to lift (or spot) poles shall not be treated as unauthorized pole attachments, but shall be subsequently added to Licensor's records for payment of pole rental fees. Licensee has the burden of persuasion that said pole attachments meet any of these criteria. Licensee shall have a period of six (6) months from the date of this contract to

> report to Licensor all attachments without payment of $50.00 per attachment plus attachment fees.

This provision is clearly worded to pro-rate the cable operator's attachment count over the period of years since the last count for pole rental purposes was conducted. The Licensee is accorded a 3% margin, plus a margin for all drop or lift poles (which typically serve only a single building, are used to keep clearances above roadways and yards, and are usually only contacted when there is a specific request for service). Only if the total count exceeds these numbers will the cable operator be assessed the $50 penalty. It is not entirely clear if the 3% margin is an annual margin, but if it were, it would compound to a 16% increase in five years, and that is without including the lift poles, which could be significant.

Finally, the 1991 Georgia Power agreement gives the cable operator a six-month amnesty period in which to report attachments without incurring the $50 fee. As I stated in my earlier testimony, the $50 penalty is unreasonably high. However, while I believe that a $50 penalty is still unreasonably high, and that a charge of a certain number of years of back rent more accurately reflects the industry standard, Mr. Jackson's Georgia Power agreement melds, to a large extent, the pole owners need to protect against unauthorized attachments with the reality of field operations. It clearly incorporates working field concepts ("attachments previously authorized by local personnel") into a

working agreement. It is starkly different from the "top-down" edicts that Mr. Jackson now advocates and that PacifiCorp is trying to defend.

Moreover, it absolutely neutralizes Mr. Jackson's testimony that authorizations occurring on the local level were violations of long-standing practices—whether Georgia Power's or PacifiCorp's. Rather, it specifically recognizes that "handshake deals" occur as a matter of course and accounts for that in the pole occupancy true up in sensible ways.

I am not aware of Georgia Power ever being embroiled in an unauthorized attachment dispute or litigation like what is at issue here. I believe that this is probably because of the provisions of Paragraph 7 of the 1991 Georgia Power agreement. Contrast the Georgia Power approach with the "top-down" scheme that PacifiCorp implemented and that Mr. Jackson attempts to defend where PacifiCorp: (1) canceled the agreement; (2) undertook massive inspections of Comcast plant; (3) sent out invoices for $250 within a few days of notifying Comcast that it was conducting its audit, and when there was no basis, contractual or otherwise for the $250 fee; and (4) shut down Comcast's operations until it paid millions in $250 penalty charges. I think that the fact that Mr. Jackson included this agreement with its very reasonable unauthorized attachment provision is significant and that much more progress could be made by analyzing and applying this attachment to his testimony, than by reviewing the testimony itself.

Q: Mr. Jackson takes some exception to your views on overlashing. Would you like to respond?

A: Yes. Overlashing, which, as I have explained before, is simply the placement of an additional communications cable (today the cable is usually fiber-optic cable) on a pre-existing attachment, is significant for a number of reasons here. First, and most important, is that the vast majority of Comcast's Utah upgrade has been accomplished using this long-accepted industry standard practice. That notwithstanding, PacifiCorp has required that in order to complete its upgrade, Comcast is required to file detailed application forms even if it is simply overlashing a cable to the existing attachment. As I stated before, the amount of load that the additional fiber places on the pole is small and usually insignificant compared to loads already in place. As to the new application form that PacifiCorp has recently introduced, the level of detail on this form far exceeds what is reasonable and Mr. Jackson has offered nothing to dispute that.

Q: But Mr. Jackson disputes your characterization of overlashing, correct?

A: Yes he does, but all he says is that overlashing involves more than just one new cable and can involve the placement of additional equipment. He then cites an example of where a lashing machine damaged some of the plastic sheathing around a large bundle of communications cable, which does not indicate a serious safety problem. That's it. Just as the principal issue of how (or how not) to address unauthorized attachments is better left to reviewing the materials attached to Mr. Jackson's testimony rather than the

testimony itself, so too is the question of overlashing better resolved. Paragraph 6 of the 1991 Georgia Power agreement attached to Mr. Jackson's testimony expressly exempts the cable operator from filing new permits for overlashing for communications conductor bundles 6 inches or smaller in diameter. By contrast, PacifiCorp requires an excessively detailed application regardless of the size of the bundle. Evaluating that application against the Georgia Power agreement that Mr. Jackson endorses reveals the unnecessary complexity of PacifiCorp's procedures.

Q: What about storm loading?

A: Mr. Jackson makes reference to 1992's Hurricane Andrew in support of his view that permits are necessary for pole attachments. I have never disputed that permits should be required for attachments; Mr. Jackson mischaracterizes my testimony by claiming otherwise.

However, Hurricane Andrew was a Class 5 hurricane with tornadoes. Buildings, trees, motor vehicles and other structures were blown into poles, power lines and joint use facilities. Aerial plant of every type was badly damaged or destroyed. The National Electrical Safety Code (NESC) does not require that plant design and construction withstand such extremely rare storm conditions, nor does it have such requirements for trees and tree limbs potentially brought down by snow and ice in places like Utah. In

any case, neither Hurricane Andrew, nor anything else, supports the extravagant and excessive new permit application form that PacifiCorp is seeking to impose.

Q: You stated that you believe that Mr. Jackson has mischaracterized your testimony and your work at Georgia Power. Why do you believe he has done so?

A: I believe that he has done so to obscure the essential points on which I have expressed an opinion, which are that (1) the $250 fee is unreasonable; (2) PacifiCorp's estimate that Comcast has approximately 35,000 "unauthorized" attachments is not realistic or credible; (3) PacifiCorp's approach to permitting is unreasonable; and (4) PacifiCorp's posturing to compel Comcast to pay untold additional millions of dollars in plant clean-up expenses and fines for supposed safety violations is unreasonable.

Q: Can you please give some examples of these mischaracterizations?

A: The best place to start is at the beginning, where Mr. Jackson attempts to portray an artificially constricted view of my prior jobs with Georgia Power. In his opinion, I was to robotically implement joint use policies handed down from corporate headquarters as if aerial plant and joint use occurred in a vacuum and there were no localized functions, processes and personnel. Presumably, Mr. Jackson also feels that all those in a similar position should have done the same.

On page 1, Mr. Jackson states that he "worked under and eventually oversaw the joint use practices at Georgia power which Mr. Harrelson claims to have implemented." A similar mischaracterization appears on page 3 lines 15-21, and in Mr. Jackson's implication on pages 4 and 5 that I conducted Georgia Power joint use functions on a handshake basis and in disregard of the company's policies. In fact, I never testified that I implemented these procedures. What I did was learn both the formal and informal policies and procedures that were in place before I arrived and then manage the engineering department consistent with instructions and expectations of the managers that I reported to. The fact that Paragraph 7 of the 1991 Georgia Power agreement specifically accounts for "[a]ttachments previously authorized by Licensor's location personnel" both confirms that reasonable and necessary informal arrangements occurred and undercuts Mr. Jackson's implications that I was not properly performing my job.

Q: Mr. Jackson states that it is ironic that Comcast managed to find "a witness who allowed cable companies at the district level to violate…clear joint use policies and contractual obligations, exactly as Comcast claims that it has managed to do with PacifiCorp's policies and obligations." How do you respond?

A: Mr. Jackson states that I let cable companies and other joint users have their way on Georgia Power poles without regard to the company's policies, practices or plant safety. He tries to paint me, as PacifiCorp has attempted to paint Comcast, as a rogue. That is not true. As I have stated, I, as well as my colleagues in similar positions throughout

Georgia Power at the time, conducted joint use consistent with the contracts, corporate policies and field practices. If I approached my work as he implies, it is hard to see how I could have held a job at Georgia Power for 27 years and grown my own consulting business for the last 12 years to a point where electric companies, engineering groups, communications companies and others seek my counsel on a variety of outside plant issues in various circumstances.

In any case, there are many past and present joint use managers who have had similar, if not identical, experiences to those I have had and who know how the process works. Rather than pursue a cooperative, incremental approach to updating these practices, PacifiCorp sought to collect a windfall profits. Despite the fact that John Cordova and Corey Fitz Gerald have essentially admitted that PacifiCorp's district level practices were loose to non-existent—far looser than Georgia Power's were, Mr. Jackson tries to portray me as the only person alive who would testify that actual utility practices deviate from the way certain corporate managers would like them to be.

Q: Mr. Jackson goes to some length to state that cable companies engage in sloppy construction practices because they hire contractors to perform this work. How do you respond to that contention?

A: Mr. Jackson's testimony assumes that cable companies do not care about plant or worker safety. My experience has been that they do. No responsible person wants to

see injuries to the contractors or the public. Similarly, no joint user, whether a telephone, cable or power company wants a pole to fail or wires to fall down. Additionally, electric companies use contractors too. Under Mr. Jackson's logic that would mean that electric companies do not care about plant safety either. I also note that he says absolutely nothing about what Comcast's practices in Utah were or are, but relies only on impressions from his past experience with cable.

Q: Do you agree with Mr. Jackson's assertion on page 10, lines 18-21 that pole applications are necessary to "provide a pole owner a mechanism to ensure that it is being fairly compensated…[and for] ensuring the safety, integrity and reliability of a utility's pole plant?"

A: Yes, I do. The parties should sit down and develop a reasonable and effective application process. In addition to ensuring that the electric utility has the information that it reasonably needs, there should also be procedures to ensure that the electric utility notifies the communication companies when it needs to build down into the communications space, and to ensure that the electric company is not creating safety violations on the poles.

Q: Earlier you indicated that the solution to this dispute does not lie in blaming Comcast. Is that correct?

A: Yes it is. There are process problems, operational problems and NESC-related problems which affect all parties on the pole. In prior rounds of testimony, I provided some photographs of electric plant violations created solely by the power company. But if a riser is installed too low, or a drip loop is left too slack (or loops down below the communications conductor) and the utility does not tell the communications company about these situations, how can responsibility be credibly assigned to that company? My point is that eventually PacifiCorp must get past the finger-pointing and get down to actual solutions.

Q: At page 12, line 19 Mr. Jackson is asked the following question: "Q: Mr. Harrelson indicates that the enforcement of permitting and safety requirements generates feelings of mistrust and hostility between pole owners and third party attachers. Do you agree with this position?" Mr. Jackson then testifies that he does not agree with that position. Do you have a response?

A: That question is an irresponsible and ridiculous misrepresentation of my testimony and my views of joint use. I have testified that there must be permitting procedures and there must be safety requirements. There must also be equal enforcement of these procedures. I have not testified that PacifiCorp should not have such procedures, I simply testified that PacifiCorp's $250 penalty, its threat to impose penalties for NESC violations, and its attempts (as outlined in my prior testimony) to assign reams of safety violations to Comcast, without basis, generates hostility. Millions of dollars of

"unauthorized" attachment penalties, freezing Comcast's upgrade, posturing for untold millions in possible fines for safety violations, as well as charges to clear those violations, seem counterproductive to me. Reasonable requirements like those I have already testified to, and like those contained in the Georgia Power agreement that PacifiCorp has attached to Mr. Jackson's testimony provide problem solving tools and promote productive relationships that I believe are critical to making joint use function smoothly.

Q: Do you have any final thoughts?

A: Yes, I believe very strongly that Comcast and PacifiCorp can work out their differences, but not under the present circumstances. I believe, as I have said before, that we need to start with a clean slate and that past unauthorized attachment penalties need to be deleted. Once this work is done, and once the parties agree upon the number of current attachments—which would be the real baseline going forward—some kind of a charge for unauthorized attachments could be warranted.

Q: Does that conclude your testimony?

A: Yes.