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Submitted February 14, 2005

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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COMCAST CABLE	)	
COMMUNICATIONS, INC., a	)	
Pennsylvania Corporation,	)	<b>Docket No. 03-035-28</b>
	)	
Claimant,	)	<b>PACIFICORP'S REPLY TO</b>
v.	)	<b>COMCAST'S OPPOSITION TO</b>
	)	<b>PACIFICORP'S COMPLIANCE</b>
PACIFICORP, dba UTAH POWER , an	)	<b>FILING</b>
Oregon Corporation,	)	
	)	
Respondent.	)	

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On January 20, 2005, in accordance with ordering paragraph 2 of the Commission's December 21, 2004, Order in the captioned case, PacifiCorp submitted its

Compliance Filing Concerning “Leased Poles.” On February 4, 2005, Comcast submitted a pleading entitled “Opposition to PacifiCorp’s Request for Rehearing and Opposition to PacifiCorp’s Compliance Filing.” By this filing, PacifiCorp replies to the portion of Comcast’s filing in which it addresses PacifiCorp’s report on the leased-pole issue.<sup>1</sup>

## **INTRODUCTION**

Comcast’s objections to PacifiCorp’s Compliance Filing are based on three erroneous and conflicting assertions. Comcast first advocates an inquiry limited in scope to whether or not a misidentified pole was counted during the 1997/1998 Audit.<sup>2</sup> It then erroneously concludes that PacifiCorp “created a list of mislabeled foreign-owned poles for which it charged penalties instead of creating a list of previously mislabeled PacifiCorp-owned poles for which it charged penalties.”<sup>3</sup> Finally, Comcast misreads PacifiCorp’s filing to state that PacifiCorp found only eight instances of misidentified poles as a result of its analysis.<sup>4</sup> Comcast’s objections are based on an incomplete and inaccurate reading of both the Commission’s Order and PacifiCorp’s filing. Despite Comcast’s confusing (and confused) Opposition, PacifiCorp has fully complied with the Commission’s Order on this issue.

### **A. Appropriate Scope of Inquiry**

The appropriate methodology pursuant to the Commission’s Order was not simply to determine whether or not a “mislabeled leased pole” was “captured” during the

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<sup>1</sup> PacifiCorp filed its Reply to the portions of Comcast’s Opposition relating to the Request for Rehearing on February 8, 2005.

<sup>2</sup> Opposition at 11.

<sup>3</sup> Opposition at 12.

<sup>4</sup> Opposition at 11.

1997/1998 Audit. Rather, the appropriate methodology was first to identify those PacifiCorp-owned poles that were potentially misidentified as foreign-owned poles prior to the 2002/2003 Audit *and then* to determine whether Comcast was charged for unauthorized attachments on those poles. In its Compliance Filing, PacifiCorp identified over 14,000 instances of potentially mislabeled poles. However, PacifiCorp's careful analysis determined that only eight Comcast attachments on such poles actually were invoiced to Comcast as unauthorized attachments. Pursuant to the Commission's Order, Comcast is entitled only to a credit for misidentified poles that led to Comcast being invoiced for unauthorized attachments on such poles, not a credit for every pole not properly identified during the 1997/1998 Audit regardless of whether that pole even supports a Comcast attachment that was invoiced as unauthorized.

**B. Information Gathered By PacifiCorp's Analysis**

Comcast's assertion regarding the nature of the data reported by PacifiCorp is simply incorrect. Consistent with the Commission's Order and the unsolicited Osmose proposal, PacifiCorp's Compliance Filing defined a potentially misidentified leased pole as a pole that was listed as leased (or foreign-owned) in Fastgate, but that supports no facilities owned by any pole-owning entity other than PacifiCorp.<sup>5</sup> Based on such characteristics, the inference is that such poles are actually PacifiCorp-owned poles and not foreign-owned.<sup>6</sup>

**C. Methodology and Results of PacifiCorp's Analysis**

Contrary to Comcast's Opposition, PacifiCorp never claimed that it found only eight instances of misidentified leased poles. Rather, PacifiCorp's Compliance Filing

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<sup>5</sup> Compliance Filing at 2.

<sup>6</sup> *Id.*

explained Osmose's belief that it had discovered over 14,000 potentially mislabeled poles. Prior to contacting PacifiCorp about potentially misidentified leased poles, Osmose passed by 7,000 such poles without collecting any joint-use information. While some or all of the 7,000 poles may have been misidentified, those poles are irrelevant to the present inquiry because Comcast was not billed for any unauthorized attachments for those 7,000 plus poles.<sup>7</sup> Once Osmose contacted PacifiCorp and informed it about finding potentially misidentified leased poles, PacifiCorp instructed the Osmose fielders to begin collecting joint-use information on such poles. Thus, the analysis presented by PacifiCorp in its Compliance Filing was based on the joint-use information collected by Osmose on all poles in Utah, excluding the 7,000 poles for which no information was collected and as to which no unauthorized attachments were invoiced.<sup>8</sup>

PacifiCorp performed the analysis described in its Compliance Filing by querying its FastGate and JTU databases. Comcast's concern that JTU would contain no record of misidentified poles<sup>9</sup> is unfounded and incorrect. As explained, PacifiCorp's Fastgate database, in addition to other information, contains records for leased poles, including the potentially misidentified leased poles

Of the poles inventoried by Osmose, PacifiCorp determined that 7,843 poles fell into the category of potentially misidentified leased poles. PacifiCorp then determined that Comcast was attached to 156 poles that were potentially misidentified as leased poles. Of the 156 potentially misidentified leased poles supporting a Comcast

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<sup>7</sup> Compliance Filing at 3.

<sup>8</sup> *Id.*

<sup>9</sup> Opposition at 12.

attachment, only 8 poles were associated with invoices to Comcast for unauthorized attachments.

### **CONCLUSION**

For the foregoing reasons, PacifiCorp requests that the Commission accept the information contained in its January 20, 2005, Compliance Filing as full satisfaction of paragraph 2 of the Commission's December 20, 2004, Report and Order.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of February 2005.

PACIFICORP

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of February, 2005, a true and correct copy of **PacifiCorp's Reply to Comcast's Opposition to PacifiCorp's Compliance** Filing was sent via e-mail and mailed, postage prepaid to:

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