

Gerit Hull
Counsel
PACIFICORP
825 NE Multnomah, Suite 1700
Portland, OR 97232
Telephone: (503) 813-6559

Gary G. Sackett (USB 2841)
JONES WALDO HOLBROOK & McDONOUGH, PC
170 So. Main Street, Suite 1500
Salt Lake City, UT 84101-1644
Telephone: (801) 534-7336

Charles A. Zdebski
Raymond A. Kowalski
Allison D. Rule
TROUTMAN SANDERS LLP
401 9th Street, N.W., Suite 1000
Washington, D.C. 20004-2134
Telephone: (202) 274-2950

Attorneys for PacifiCorp, dba Utah Power

Submitted April 20, 2005

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

COMCAST CABLE)	
COMMUNICATIONS, INC., a)	
Pennsylvania Corporation,)	Docket No. 03-035-28
)	
Claimant,)	
vs.)	PACIFICORP'S PETITION FOR
)	CERTIFICATION OF REFUND
PACIFICORP, dba UTAH POWER, an)	
Oregon Corporation,)	
)	
Respondent.)	

Respondent, PacifiCorp, by and through undersigned counsel and pursuant to the Commission's December 21, 2004, Report and Order and its February 10, 2005, Order of

Clarification, submits this Petition for Certification of Refund in the captioned proceeding.

INTRODUCTION

In its March 21, 2005, submission, Comcast asserts that it has provided proof of authorization for attachments to 7,596 of PacifiCorp's poles. Based on this assertion, it requests a refund of the \$60.00 unauthorized attachment charge for each pole, totaling \$455,760.00.¹ In support of its claims of authorization, Comcast created a spreadsheet referencing "Exhibit A" forms and corresponding permit maps that were previously provided in discovery, but not offered into evidence during the hearing of this matter.

An "Exhibit A" is a permit application used by PacifiCorp's predecessor, Utah Power and Light, during the 1970s and 1980s. To be considered fully executed, an Exhibit A form must contain signatures of authorized personnel of both the attaching entity and Utah Power and Light. On every Exhibit A, each applicant was required to list a particular map, by map number, identifying the area where the applicant planned to make its attachments. Such particularized corresponding permit maps accompanied the Exhibit A applications submitted by attaching entities. In addition, Utah Power and Light required that the accompanying permitting maps contain detailed sketches or diagrams delineating the particular poles on each map for which an applicant was requesting permission to attach.² Indeed, many of the maps provided by Comcast that corresponded

¹ Comcast does not seek a refund of back rent, as it does not dispute that it has not paid rental charges for attachments to these poles.

² See Exhibit 1 to Initial Testimony of Gary Goldstein.

to individual Exhibit A's contain markings indicating where Comcast's predecessors had planned to attach.

Putting aside the fact that Comcast did not come forward with any new evidence of authorization, but simply rehashed discovery materials it chose not to analyze until now, PacifiCorp carefully analyzed the spreadsheet, permit maps and Exhibit A's provided by Comcast and compared that data to its own records. Comcast appears to have demonstrated authorization to the extent required by the Commission's February 10th Order for most of the 7,596 poles listed in Comcast's spreadsheet, but PacifiCorp's analysis reveals that 2,295 poles were incorrectly included on the spreadsheet. PacifiCorp disputes Comcast's claim that PacifiCorp owes a refund for unauthorized attachments associated with those poles and seeks Commission certification of PacifiCorp's refund obligation to Comcast based on the remaining 5,301 poles.

I. Claimed Authorization for Drop Poles

Of the 7,596 poles for which Comcast now seeks a refund, 1,048 of the poles are characterized as "drop poles." Comcast's refund request as to these poles, however, does not comply with the evidentiary standard set forth in the Commission's February 10, 2005, Order of Clarification.

In that Order, the Commission specifically stated:

We expect that any information Comcast submits to PacifiCorp will be supported by a detailed analysis of its records resulting in identification, along with supporting documentation, of specific poles containing authorized attachments heretofore identified by PacifiCorp as unauthorized. We do not expect Comcast to merely continue its general claims of authorization or to attempt to shift the burden to PacifiCorp, nor would we be inclined to find such action reasonable.

Comcast failed to provide any “supporting documentation” demonstrating authorization for the drop poles identified in its spreadsheet. Comcast admits that none of the drop poles for which it seeks a refund are found on the permitting maps it provided.³ In addition to Comcast’s admitted inability to plot the drop poles on the permitting maps, Comcast failed to offer any other proof of authorization for these poles.

Comcast simply claims that no authorization was required to attach to these drop poles. Comcast’s own expert witness, however, admitted at the hearing that the 1999 Agreement obligated Comcast to seek authorization for attachments to drop poles.⁴ Further, the terms of the 1996 Agreement with Comcast’s predecessor, Insight Communications Company, are virtually identical to the 1999 Agreement and also require authorization for attachments to drop poles.⁵ There is no proof or indication that the attachments to drop poles for which Comcast now seeks a refund were made prior to either the 1996 or 1999 Agreements. Rather, the only justification for Comcast’s request is its unsupported, and incorrect, statement that permits were not required for drop poles “until recently.” This statement is not supported by any record evidence submitted in this case and does not comport with the standard set forth in the Commission’s February 10, 2005, Order of Clarification.

II. Remaining Poles

After excluding the unauthorized drop poles from the refund evaluation, PacifiCorp conducted a pole-by-pole analysis of the remaining 6,548 poles listed on

³ Comcast’s Proof of Pole Attachment Authorization at 4.

⁴ Transcript of Hearing at 501-02.

⁵ See Exhibit 1 to Rebuttal Testimony of Gary Goldstein.

Comcast's spreadsheet. Of these poles, 5,301 appear to correspond to the permitting maps and Exhibit A's provided by Comcast during discovery. With regard to the remaining 1,247 poles, however, PacifiCorp's analysis demonstrates that adequate proof of authorization has not been provided by Comcast.

A. Methodology

In conducting its analysis, PacifiCorp first identified all discovery materials submitted by Comcast in 2004 that matched the Bates number listed on Comcast's spreadsheet submitted on March 21, 2005. Next, PacifiCorp printed a map from OMS, its mapping database of record, for the geographic area that encompasses the pole numbers listed on the Comcast spreadsheet and pertaining to the referenced Bates numbers. Once PacifiCorp completed its analysis, it implemented quality-control procedures to confirm the results.

PacifiCorp compared the pole locations on the current PacifiCorp maps with the pole locations on the maps provided by Comcast to determine if the individual poles listed on the Comcast spreadsheet existed at the time that Comcast originally submitted its Exhibit A and corresponding maps to Utah Power and Light.

During its analysis, PacifiCorp also identified and noted any information on the maps provided by Comcast indicating that either Comcast did not request or did not receive permission to attach to particular poles, as required in the "Exhibit A" process. Examples of such notations include handwritten comments on the maps such as, "Comcast to bury," "Omit," "Delete" and other notations, such as the highlighting of an "As Built" map indicating the locations of poles where Comcast actually attached. Because each Exhibit A required that the accompanying maps describe and delineate

where Comcast wished to attach, poles containing exclusionary notations or poles not highlighted on Comcast's build plan were not permitted pursuant to the accompanying Exhibit A.

Despite the requirement contained in the Exhibit A that an attacher provide corresponding sketches delineating the poles for which it was seeking authorization, some of the maps provided by Comcast are clean copies of Utah Power and Light maps or Comcast's predecessor's maps without any notations. While these maps do not meet the requirements specified in the Exhibit A's, PacifiCorp nevertheless chose to consider all the attachments to poles found on the unmarked maps to be authorized, as opposed to finding none of the attachments to unmarked poles to be authorized.

B. Results

After considering all of the individual poles listed on Comcast's spreadsheet, PacifiCorp identified on a pole-by-pole basis (1) every pole for which PacifiCorp concedes Comcast appears to have demonstrated authorization to the extent required by the Commission's February 10th Order (a "permitted pole"); (2) every "non-permitted pole"; (3) every pole not located in the geographic area covered by the maps provided by Comcast; and (4) every pole where PacifiCorp was not reasonably able to determine authorization. PacifiCorp determined that Comcast's spreadsheet identified 5,301 permitted poles, 746 non-permitted poles, 406 poles not located in the same geographic areas covered by Comcast's maps, and 95 poles that were inconclusive as to authorization. Included with this Petition as Attachment 1 is a spreadsheet created by PacifiCorp identifying, on a pole-by-pole basis, each of the 1,247 poles for which

PacifiCorp found a lack of authorization and the reasoning supporting its conclusion for each pole.⁶

For the 5,301 poles characterized as permitted and coded as “P” on PacifiCorp’s spreadsheet, PacifiCorp was able to determine that the pole number and location on current PacifiCorp mapping records reasonably matched a pole location on the maps submitted by Comcast. Additionally, with regard to these poles, there were no notes or other indications that Comcast did not intend to attach to these poles.

PacifiCorp characterized 746 poles as non-permitted (“N”) for one of several reasons. As discussed above, some maps delineating Comcast’s permitted attachments contained notations indicating that Comcast either did not request or did not receive authorization to attach to particular poles. Therefore, the accompanying Exhibit A cannot be used as proof of authorization for such poles. In other instances, Comcast submitted an Exhibit A corresponding to an “as-built” map. “As-built” maps contain highlighting indicating where Comcast lines were built. PacifiCorp labeled poles not included on the indicated route as non-permitted.

In addition, PacifiCorp found instances where a particular pole cited on Comcast’s spreadsheet did not exist at the time Comcast submitted its Exhibit A. These poles would be in the same general geographic area provided by Comcast, but were placed subsequent to the time Comcast sought a permit. In other words, a permit granted for a particular geographic area in 1979 would not grant authorization to attach to any pole in that area in 1994. Finally, PacifiCorp concluded that Exhibit A’s that lacked a

⁶ As, explained on the attached spreadsheet, PacifiCorp assigned a code (P, X, N or I) to correspond with its determination for each pole.

signature from a Utah Power and Light employee or Exhibit A's that were not accompanied by a permitting map did not establish authorization for poles. Also, there were instances where newer poles were added in-line with older construction (so-called "interset poles") since the date of a particular Exhibit A. Comcast did not present evidence that it had obtained authorization to attach to these interset poles. PacifiCorp coded all these poles as "N" on its spreadsheet for "non-permitted poles."

PacifiCorp determined that 406 poles were not in the same geographic area covered by the map referenced by Comcast in its spreadsheet. PacifiCorp coded these poles as "X."

The 95 poles for which PacifiCorp was unable to make a determination of authorization are coded as "I" on PacifiCorp's spreadsheet. In many cases, PacifiCorp found authorization evidence regarding the poles to be inconclusive because relevant pole locations changed since the time the original Exhibit A's were executed by Comcast and Utah Power and Light in the 1970s and 1980s, and Comcast did not provide evidence of authorization to attach to poles situated in the new locations. In addition, in several instances, the maps provided by Comcast were unclear or the pole locations could not be read.

The Commission's February 10th Order specifically stated that it would reject Comcast's "general claims of authorization" or attempts "to shift the burden to PacifiCorp." PacifiCorp has expended its best efforts to make a determination as to each and every pole listed on Comcast's spreadsheet, but could not do so where Comcast failed to provide adequate, readable documentation. Accordingly, PacifiCorp contends

that Comcast is not entitled to a refund for the 95 poles for which no conclusion could be drawn due to the insufficiency of Comcast's evidence.

CONCLUSION

In its analysis, PacifiCorp gave Comcast the benefit of the doubt whenever possible. However, those poles for which Comcast failed to provide adequate proof of authorization in compliance with the Commission's Order of Clarification are not properly included in the refund requested by Comcast. Comcast appears to have demonstrated authorization to the extent required by the Commission's February 10th Order for 5,301 poles and is entitled to a refund of \$318,060 rather than the \$455,760 refund requested by Comcast.

For the foregoing reasons, PacifiCorp requests that the Commission find that Comcast has only demonstrated authorization for 5,301 poles and that the appropriate refund is \$318,060.

RESPECTFULLY SUBMITTED this 20th day of April 2005.

PACIFICORP

Gerit Hull
Counsel
PACIFICORP

Gary G. Sackett
JONES WALDO HOLBROOK & MCDONOUGH,

Charles A. Zdebski
Raymond A. Kowalski
Allison D. Rule
TROUTMAN SANDERS, LLC

Attorneys for PacifiCorp, dba Utah Power

ATTACHMENT 1

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Brief of **PACIFICORP'S PETITION FOR CERTIFICATION OF Refund** by first-class mail or hand delivery the following participants in the captioned proceeding, on April 20, 2005:

Michael L. Ginsberg
Patricia E. Schmid
Assistant Attorneys General
Office of the Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857
Counsel for the Division of Public Utilities

Jerold G. Oldroyd
Ballard Spahr Andrews & Ingersoll
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2221

J. Davidson Thomas
Jill M. Valenstein
Genevieve D. Sapir
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., N.W., 2nd Floor
Washington, D.C. 20006
Counsel for AT&T Corp.
Counsel for Comcast Cable
Communications, LLC
