

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Utility Service Schedules and Electric Service Regulations)
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) **DOCKET NO. 10-035-124**
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DIRECT TESTIMONY

OF

D. M. (MARTI) GUDE

Qwest Communications/CenturyLink

May 18, 2011

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is D. M. (Marti) Gude. My business address is 1314 Douglas-on-the-Mall, Omaha, Nebraska.

Q. PLEASE IDENTIFY YOUR EMPLOYER AND EXPLAIN YOUR POSITION AND RESPONSIBILITIES.

A. I am testifying on behalf of Qwest Communications. Qwest Communications is a subsidiary of CenturyLink, Inc. (Qwest Communications is hereinafter referred to as “CenturyLink” or the “Company”). I am currently employed by CenturyLink as a Director in the Finance organization. In that capacity, I am responsible for various regulatory and management accounting functions, which include developing TELRIC-based cost study factors, preparing and analyzing embedded cost studies for use in connection with the Company’s deregulation, cost accounting and regulatory filings and overseeing the development of the Company’s pole and conduit attachment rates. I am also responsible for various accounting classification functions.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

1 **A.** I received a Bachelor of Science degree in Business Administration, with a major in
2 Accounting, from the University of Nebraska - Lincoln and a Master of Business
3 Administration degree, with honors, from the University of Nebraska at Omaha. I am
4 also a Certified Public Accountant, certified in the State of Nebraska as an inactive
5 registrant.

6
7 I was a member of a large public accounting firm for four years prior to joining the
8 Company's predecessors (Qwest, U S WEST and Northwestern Bell) in 1979. My public
9 accounting experience included audits for companies in various industries, which
10 included the issuance of opinions on financial statements. During my tenure at
11 CenturyLink and its predecessors, I held various positions in the Budget, Finance,
12 Corporate Accounting and Public Policy departments. I have worked in the area of cost
13 accounting since January 1986.

14

15 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY OR TESTIFIED BEFORE**
16 **THIS AND/OR OTHER REGULATORY COMMISSIONS ON THE SUBJECT OF**
17 **COST DISTRIBUTION, COST FACTOR DEVELOPMENT AND/OR COST**
18 **ACCOUNTING RELATED MATTERS?**

19

20 **A.** Yes I have. APPENDIXES A-1, A-2 and A-3 of my testimony provide a chronological
21 listing of the dockets/cases, by state, in which I have previously testified.

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II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my direct testimony in this proceeding is to address the pole attachment issues raised in the Direct Testimony of Jeffrey M. Kent and the exhibit of Steven R. McDougal filed on behalf of Rocky Mountain Power (“RMP”). CenturyLink’s interest in this proceeding is related to the pole attachment issues raised in RMP’s rate case filing. Specifically, CenturyLink’s interest lies with RMP’s proposed changes that attempt to revisit the inclusion of cost elements previously excluded from the pole attachment formula and RMP’s modification of the pole attachment rate formula previously approved and codified in the Public Service Commission of Utah’s (the “Commission”) rules.

**III. CENTURYLINK’S CONCERNS ABOUT POLE ATTACHMENT ISSUES
RAISED BY RMP IN THIS NON-GENERIC PROCEEDING**

Q. PLEASE EXPLAIN CENTURYLINK’S CONCERNS ABOUT THE POLE ATTACHMENT ISSUES RAISED BY RMP IN THIS PROCEEDING.

A. Previously, in a generic rulemaking proceeding (Docket No. 04-999-03), the Commission established the current pole attachment rules (R746-345) that are applicable to all pole owners under its jurisdiction. It is my understanding that if the Commission approves the

1 proposed pole rental rate changes requested by RMP in this non-generic proceeding, this
2 does not automatically change the Commission rules in R746-345 as they apply to other
3 pole owners and attachments.

4
5 CenturyLink believes that RMP's attempt to recover specific administrative costs from
6 FERC Account 588 (FERC 588) via the annual pole rental charge is not proper. The
7 Commission already addressed issues with respect to the pole attachment rate formula
8 and the recovery of administrative costs in Docket No. 04-999-03. RMP alleges that it
9 "is requesting deviation from the rental rate formula set forth in R746-345.A.1 as allowed
10 in R746.345-5.B." ¹ However, RMP's request for deviation is not appropriate; this is
11 simply an attempt by RMP to once again seek an increase in its pole attachment rates.

12 First and foremost, RMP ignores two primary tenets of the Commission's pole
13 attachment rules. Utah Admin. Code § R746 345-5.A specifically requires (1) the use of
14 publicly available data and (2) a formula that must conform to the Federal
15 Communications Commission's rules and regulations governing pole attachments.

16 RMP's proposal does not comply with this requirement. Second, even though Utah
17 Admin. Code § R746 345-5-5.B. permits a pole owner to petition the Commission to
18 review the rate formula; the rule specifically requires that the petition "must include a
19 factual showing that a rental rate, rate formula or rebuttable presumption is unjust,
20 unreasonable or otherwise inconsistent with the public interest." ² RMP's testimony does

¹ Testimony of Mr. Jeffrey M. Kent in Docket No. 10-035-124 at page 2, lines 35-37.

² Utah Admin. Code § R746-345-5-5.B

1 not set forth a factual showing that the current pole attachment rate formula is unjust,
2 unreasonable or otherwise inconsistent with the public interest.

3
4 If the Commission were to reconsider its pole attachment formula, it is more suitably
5 addressed in a rulemaking proceeding. The Commission previously resolved issues
6 surrounding the pole attachment rate formula in a generic rulemaking proceeding, and
7 that is where any further change should be made as well. The previous generic
8 rulemaking proceeding correctly resulted in a consistent formula for all pole attachments,
9 and any future changes to the underlying formula should be addressed in a rulemaking to
10 ensure consistency. However, opening another rulemaking docket to once again address
11 issues that were recently addressed is unnecessary, and the Commission should deny
12 RMP's request for deviation.

13
14 Furthermore, RMP has given no indication whether it believes that its proposed formula
15 if approved should apply to other pole owners, and has given no indication whether they
16 will reciprocate and pay (without opposing) pole attachment rates based on its proposed
17 formula where it is simply an attacher, not an owner. If the Commission is inclined to
18 approve any of RMP's requests for pole rental rate-related changes in this proceeding, the
19 Commission should not implement any change until after it initiates a proceeding to
20 make sure any changes to the formula are made generally applicable to all pole
21 attachment owners. This would ensure continued consistency in the application of the
22 pole rate attachment formula for all pole owners under the Commission's jurisdiction.

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Q. WHAT IS YOUR UNDERSTANDING ABOUT THE APPLICABILITY OF RMP'S PROPOSED NEW POLE ATTACHMENT RATE WITH RESPECT TO CENTURYLINK IN UTAH?

A. Based on the testimony and exhibits filed by Mr. Steven McDougal ³, RMP does not appear to be seeking Commission authority to immediately charge the proposed new pole attachment rate to CenturyLink, given an existing settlement agreement with Qwest effective from December 2005 through 2015. Nonetheless, CenturyLink is still opposed to RMP's attempt to change the established pole attachment rate formula in this proceeding. As previously stated, the Commission should apply a consistent pole attachment formula for all pole owners, and RMP's proposal would deviate from this approach. Further, CenturyLink would be impacted by RMP's proposed new rental rate once the settlement agreement referenced in Exhibit RMP___ (SRM-3), Exhibit C⁴ expires, or to the extent RMP attempts to negotiate a new pole agreement prior to the expiration of the settlement agreement.

³ *See* Direct Testimony of Mr. Steven R. McDougal, Exhibit RMP __ (SRM-3), Exhibit C, at page 3.5.1.

⁴ *Id.*

1 **IV. CHANGES TO THE POLE ATTACHMENT RATE FORMULA**
2 **CONTAINED IN UTAH ADMIN. CODE §R746-345.**

3 **Q. PLEASE DESCRIBE RMP'S PROPOSED CHANGES TO THE UTAH**
4 **COMMISSION'S APPROVED POLE ATTACHMENT RATE FORMULA?**

5
6 **A.** When Utah Admin. Code § R746-345 became effective, the Commission adopted a
7 formula consistent with the FCC's cable television (CATV) rate formula ⁵, making it
8 applicable to all pole owners in Utah under the jurisdiction of the Commission. RMP is
9 now proposing to modify the Commission approved formula by adding an additional
10 component to the pole attachment rental rate formula in order to recover additional
11 administrative support costs, which are recorded in FERC 588. Costs recorded in this
12 FERC account were specifically *not* included by the FCC in its approved CATV rate
13 formula; these costs were also *not included or allowed* in the Utah pole attachment rate
14 formula.

15
16 In addition to attempting to collect administrative costs that were previously not allowed
17 by the FCC or the Commission, RMP's approach also differs from a fundamental concept
18 the Commission utilized in setting the Utah pole attachment rental rate formula. The
19 FCC CATV rate formula, which the Commission adopted, was based on the concept that

⁵ See FCC 01-170, CS Docket No. 97-98 CS, *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*; Docket No. 97-151, *In the Matter of Implementation of Section 703(e) of The Telecommunications Act of 1996*, Released: May 25, 2001

1 identified costs associated with pole functions were allocated to pole users via the
2 calculation of “carrying charges”. These carrying charges were applied on a “per foot” of
3 attachment space required – thereby ensuring that the costs were spread to all pole
4 attachers, including the pole owner. RMP’s formula and approach differs because it does
5 not allocate the additional administrative costs among all attachers by incorporating the
6 costs in the carrying charge rates like the existing attachment rate formula. Rather, the
7 RMP approach would charge these costs only to other attachers on a “per attachment” or
8 “add-on fee” basis, thereby significantly increasing the annual rental rate for all third
9 party attachers.

10
11 RMP alleges that inclusion of this additional cost component and the change in the
12 attachment rate formula is necessary to “ensure that pole occupants who are causing the
13 costs to be incurred are responsible for paying those costs.”⁶ RMP asserts that without
14 these changes it is not able to get adequate cost recovery for its administrative costs
15 through the application of the Commission-approved pole rental fee rules and fees. If the
16 additional component and rate formula change are adopted by the Commission in this
17 proceeding, it would increase RMP’s monthly pole attachment rental rate by \$1.76,
18 which represents more than a 27% increase from its most recently calculated rental rate
19 of \$6.34⁷ (note, this rate is not yet reflected in its existing tariff)⁸, yet, RMP has not

⁶ Direct Testimony of Jeffrey M. Kent for RMP, page 3, lines 52 and 53.

⁷ RMP’s rental rate in its tariff is \$7.02, evidently not reflecting the most recent calculated rate.

1 demonstrated that the existing formula and rules are unjust, unreasonable or otherwise
2 inconsistent with the public interest.

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4 **Q. PLEASE DESCRIBE THE TYPE OF COSTS INCLUDED IN FERC 588, AND**
5 **WHY AN UNDERSTANDING OF THESE COSTS IS RELEVANT TO**
6 **CENTURYLINK'S CONCERNS IN THIS PROCEEDING?**

7

8 **A.** FERC 588 (Miscellaneous Distribution Expenses) is not limited to costs attributed
9 exclusively to poles or the management of third party pole attachers, but instead,
10 includes a litany of costs relating to the utility's core regulated business services including
11 all types of power distribution facilities.⁹ The FCC did not simply ignore the fact that
12 FERC 588 includes some costs attributable to pole attachments. Rather, the FCC
13 previously found that the pole-related costs in FERC 588 were small in comparison to
14 general operations and were more than compensated for in the FCC's CATV overall
15 formula components.¹⁰

⁸ Absent the inclusion of the additional administrative cost element and the use of its formula change, on its surface, it would appear that RMP's newly calculated pole attachment rate of \$6.34 was compiled in a manner consistent with its calculations made in previous years, which were governed by the Commission's existing rental rate formula and the rules codified in R746-345.

⁹ 18 C.F.R. Part 101, Description of Accounts.

¹⁰ *See* FCC 01-170, CS Docket No. 97-98 CS, *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*; Docket No. 97-151, *In the Matter of Implementation of Section 703(e) of The Telecommunications Act of 1996*, Released: May 25, 2001, at para. 108, and para.115, where it states for LECs, that: "We do not believe Congress intended us to discover and aggregate all *de minimis* expenses which might have some intangible nexus to pole attachments. On the contrary, we believe Congress gave us a clear mandate *not* to engage in full-scale ratemaking exercises every time we had a pole attachment complaint before us. We have chosen not to disaggregate the major accounts selected for inclusion in our calculations in order to eliminate expenses not directly attributable to administrative costs with a nexus to pole

1 The FCC, in accordance with its interpretation of 47 U.S.C. § 224(d)(1), has repeatedly
2 chosen not to include FERC 588 costs in the FCC CATV formula because this FERC
3 account is an operational account to which electric utilities report expenses relating to the
4 utility's core regulated business services, and not specifically pole or conduit expenses.
5 This position was recently reaffirmed by virtue of the FCC's release of its new pole
6 attachment rate formula Order, in which it did not revisit the includable costs / accounts
7 or the previous exclusion of certain of the LECs' 47 C.F.R. Part 32 administration-related
8 expenses, which would be comparable to an electric company's FERC 588-related costs
9 used in determining pole attachments rates.¹¹ The FCC did not believe it was necessary
10 to include FERC 588, because the FCC CATV formula, similar to the formula used in
11 Utah, already includes a comprehensive set of expenses.
12

attachments, such as corporate strategic planning. On reconsideration, we decline to draw in more expenses to the administrative element because we already apply a comprehensive set of expenses in conformance with the statutory directive to allocate a percentage of operating expenses attributable to pole attachments.” (Citations omitted).

And, at para.119 where it similarly states for Electric that: “We will not include any portion of Accounts 580, 583, 584, **588** or 598 in the calculation of the maintenance element of the carrying charge rate for pole or conduit because the costs or expenses reported to these accounts do not reflect a sufficient nexus to the operating expenses and actual capital costs of the utility attributable to the pole or conduit attachment.” (Emphasis added)

¹¹ See FCC 11-50, WC Docket No. 07-245, GN Docket No. 09-51, *In the Matter of Implementation of Section 224 of the Act A National Broadband Plan for Our Future*, REPORT AND ORDER AND ORDER ON RECONSIDERATION, Adopted and Released: April 7, 2011 at Section V. - Pole Rental Rates and Appendix A – Rules; *See also* FCC 11-44, EB Docket No. 04-381, *In the Matter of Florida Cable Telecommunications Association, Inc.; Comcast Cablevision of Panama City, Inc.; Mediacom Southeast, L.L.C.; and Cox Communications Gulf, L.L.C., Cable Operators, v. Gulf Power Company*, REPORT AND ORDER AND ORDER ON RECONSIDERATION, Adopted: March 16, 2011, Released: April 12, 2011

1 **Q. WHAT ADDITIONAL OBSERVATIONS CAN BE MADE FROM THE RMP**
2 **POLE ATTACHMENT RATE CALCULATION EXHIBIT THAT WAS FILED**
3 **BY MR. KENT IN THIS PROCEEDING?**

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5 A. The FCC has supported and preferred an approach to calculating pole attachment rates
6 that relies on publicly available data so that pole attachers can readily validate the
7 appropriateness of the annual rental charge. Similarly, the Commission's rules state this
8 requirement in Utah Admin. Code § R746-345-5.A. RMP's proposal is not consistent
9 with this requirement in that RMP is proposing to use only a limited subset of the costs
10 included in this account, costs that are not publicly available to all attachers.
11 Furthermore, RMP seeks to charge these additional costs to all third party pole attachers
12 via the annual rental rate, notwithstanding the fact that a large portion of these costs are
13 related to non-recurring activities such as make ready that are typically charged via
14 separate fee.

15
16 The use of non-public data in RMP's annual rental rate calculation invokes a process that
17 would be potentially burdensome going forward. RMP's approach in determining these
18 add-on costs, and the calculation of the fee itself, suggests that its proposal warrants
19 careful scrutiny, both as to amount and as to result. This proceeding is ill-suited for this
20 purpose, given the potential impact to the attachment rate calculations of other pole
21 owners governed by the Commission's pole attachment rate rules.

22

1 **Q. IN ADDITION TO THE CONCERNS YOU HAVE ALREADY RAISED, ARE**
2 **THERE ANY OTHER RECOMMENDATIONS YOU HAVE WITH RESPECT**
3 **TO WHAT SHOULD BE CONSIDERED WHEN EVALUATING RMP'S**
4 **PROPOSAL?**

5
6 **A.** Yes, I recommend that the Commission look at the following:

- 7 • Make sure that RMP is not already recovering at least a portion of these
8 administrative costs in its basic electric rates or in its (non-recurring) fees (e.g. in
9 its application, inspection and make ready charges).
- 10 • Determine whether the FCC adequately covered administrative costs in the
11 construct of the original CATV rate formula, which the Commission embraced in
12 establishing the R746-345-5 Rental Rate Formula and Method rules.
- 13 • Before agreeing to a formula change which would include the subset of expenses
14 from the FERC 588, determine whether RMP has demonstrated that the current
15 formula and rate is unjust, unreasonable or otherwise inconsistent with the public
16 interest.
- 17 • If additional FERC accounts and cost elements are to be allowed and included in
18 the rental rate development, determine how the requisite data would be obtained
19 and made publically available, since such data is not publicly filed today. With
20 the current rental rate formula, pole attachers can review publicly filed
21 information and verify the accuracy of the calculated pole attachment rate that
22 results from utilizing the company specific inputs in the formula.

- 1 • Determine the approach for recognizing these additional costs. That is, should
2 they be incorporated in determining the attachment rate by including them in the
3 carrying charge factor calculations currently employed in the cable rate formula
4 or should there be a modification to the formula to allow a separately calculated
5 “add-on” fee as RMP proposes? If the latter, the Commission will need to
6 determine whether the additional fee should apply to all third party attachers or
7 only to the specific cost-causer licensee that caused the additional costs to be
8 incurred. If the add-on approach is being considered, then the Commission will
9 also need to determine whether the CATV annual rental rate formula should
10 change for those licensees or whether the basis for computing other existing fees
11 (e.g. make ready or inventory fees) should be modified instead.
- 12 • If the Commission approves an annual rental rate formula change for RMP, it
13 should determine how that formula would be made generally applicable to other
14 pole owners, and should ensure that RMP also abide by any new ruling or
15 revisions to the pole attachment rate formula.

16
17 **Q. WHAT ACTION DO YOU RECOMMEND THAT THE COMMISSION TAKE IN**
18 **REGARD TO THE RMP POLE RENTAL RATE PROPOSAL IN THIS**
19 **PROCEEDING?**

- 20
21 **A.** The Commission should deny RMP’s request to change the pole attachment rate formula,
22 and in turn deny RMP’s request to increase its pole attachment rate by the \$1.76 add-on.

1 RMP has not demonstrated why the current formula and rate is unjust, unreasonable or
2 otherwise inconsistent with the public interest. RMP has not provided the Commission
3 with enough information to adequately assess the costs that RMP seeks to include and
4 recover solely from other attachers, and RMP's proposed modification of the Utah pole
5 rental rate formula would violate the underlying FCC tenets relied on in setting the
6 current Utah cable rate formula. This would in turn create potential ramifications to the
7 rates charged by other pole owners in the State of Utah.

8

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10

11 **A.** Yes, it does.