September 6, 2005

To the Parties in Docket No. 04-999-03

Re: In the Matter of an Investigation into Pole Attachments; Commission Direction Concerning Ten Issues Regarding the Pole Attachment Standard Contract

The Commission provides the Parties to this Docket with the following determinations regarding the issues submitted. The Commission believes that the following resolutions are reasonable. While the Commission will still permit parties to negotiate unique terms that could differ from what is provided herein, these are in the nature of 'safe harbors.' Agreements which contain these provisions would be approved by the Commission (if other terms are reasonable); they will be the default provisions for the generic agreements or where parties do not or can not propose alternative, mutually agreed upon terms.

1. FEES [3.01, 3.20, 3.25, 5.02]:Parties disagree on which fees are appropriate to be charged in addition to the annual pole attachment rental charge. Although parties also disagree on the dollar amount of fees, this issue will be addressed in individual company tariff and SGAT filings. Specific fees in dispute are application fees, pre-construction survey charges, post construction and removal verification inspection fees, and fees for unauthorized attachments.

Commission Direction: Pole owners may charge an application fee, actual cost for make ready work (after accepted), and unauthorized attachment fees. Application fees should cover the expected cost of doing the survey and engineering work required to determine what make ready work must be done to accommodate the application. It may be a per pole fee, or it may be charged according to groups of quantities contained in the application. The unauthorized attachment fee shall be the back rent to the last audit plus $25 per pole. The proposed post construction and removal verification inspection fees cover activities the costs of which the commission believes are to be recovered through the pole attachment rental charge.

2. TIME FRAMES [3.02, 3.09]:Parties disagree on application and make-ready time frames. [Parties attempted to determine the parameters for "standard" projects and an appropriate time frame. Parties also attempted to identify situations where the time frame should be shorter or longer than the "standard." Although there was some agreement, Parties were not able finalize a schedule of time frames to apply in Utah.]

Commission Direction: The Commission directs the parties to adopt a "Vermont type" approach. Specifically, if the application is for 1 to 20 poles then pole owner shall respond to the application with either an approval or a rejection within 45 days. The pole owner will provide at the same time as the approval, a completed make ready estimate explaining what make ready work must be done, the cost of that work, and the time by which the work could be finished (given an estimated starting date) that is no later than 120 days from receiving an initial deposit payment for the make ready work. If the pole owner rejects the application, the pole owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole owners stated reasons are sufficient grounds for rejection.
The Commission proposes the following, as the approval and make ready scheme:

For applications that represent greater than 20 poles but equal to or less than .5% of the pole owner's poles in the State of Utah, the time for the pole owner's approval and make ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

For applications that represent greater than .5% but equal to or less than 5% of the pole owner's poles in the state of Utah the time for the approval and make ready estimate] shall be extended to 90 days, and the time for construction will be extended to 180 days.

For applications that represent greater than 5% of the pole owner's poles in the State of Utah, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make ready estimate and make ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make ready estimate and construction period information should be delivered or to arbitrate the negotiations.

For all applications, the applicant will either accept or reject the make ready [~~bid~~] estimate. If it accepts the make ready estimate and make ready construction time line, the work must be done by the pole owner on schedule and for the estimated make ready amount or less (applicant will be billed for actual charges up to the bid amount). Applicants must pay 50% of the make ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the remaining balance after the work is completed. Applicants may elect to pay the entire amount up front. If the applicant rejects the bid, the applicant may, at its own expense use approved contractors to self-build the make ready work.

3. SERVICE DROPS [3.01]:Parties disagree on the extent and timing of notification and/or application for installing service drops.

Commission Direction: An attaching entity need not submit a new application for the installation of service drops originating from the attaching entity's existing pole attachment. This would include service drops made from poles on which the attaching entity may not originally have had an attachment, as long as the pole is adjacent to poles on which the attach attaching entity does

have authorized attachments. The attaching entity will provide quarterly notification for service drops installed during the quarter, with sufficient information (e.g., pole identification numbers for poles from which service drops have been made, identification of the type or specifications for the equipment that was used, etc.) for the pole owner to update its records and appropriately monitor and bill, if applicable, for the added service drops.

4. OVERLASHING [3.01]:(A) Parties disagree whether there should be an application requirement for overlashing. (B) Parties also disagree that application and fees should be assessed on third party overlashers.

Commission Direction: 4A - The Commission will not require an attaching entity to submit an additional permitting application for overlashing in its existing pole space. The attaching entity will provide a 14 day prior notice to the pole owner of the proposed overlashing, providing information (e.g., pole identification numbers for poles to be overlashed, identification of the type or specifications for the equipment that is to be installed, etc.) needed by the pole owner to monitor and maintain its pole facilities. 4B - The Commission will not permit additional third party overlashing without the third party submitting, to the pole owner, its own application for its attachments and paying any applicable fees and its own rental payments for its attachments to the pole owner.

5. AUDIT COSTS [3.24]:Parties disagree on whether audit costs should be charged directly to attachers or included in the monthly pole attachment rental rate.

Commission Direction: Since it is necessary for audits to be conducted, it is a known and anticipated expense. The Commission directs that the estimated cost of the audits be included in the rental rate. The Commission further directs that pole owners work with the DPU and all licensed attaching entities to develop an agreed upon plan as to the type of activities that will be included in the audit shall, the estimated cost of the audit, and appropriate means of converting the expected cost into a rental charge prior to either the inclusion of the audit costs in the rental rate, or the actual implementation of an audit.

6. EASEMENTS [3.11]:Parties disagree whether the current language restricts lawful access rights to right-of-way and easements owned and/or controlled by pole owner.

Commission Direction: The Commission believes that the attaching entity is responsible to assure that its use of the pole owner's poles and the attaching entity's property access to install and maintain its attachments is authorized or permitted by the property owner upon whose land a pole may be located. The proposed language identified in the draft, "The right of access to pole owner's poles granted by this Agreement does not include any right of access to the land upon which the pole is situated nor does it include any right to cross the land from pole-to-pole with Licensee's Equipment and such access rights are specifically disclaimed," is not viewed by the Commission as placing any additional burden upon an attaching entity.

7. RELOCATION COSTS [3.12 through 3.18]:Parties disagree on who should bear the cost of relocation when required by the Pole Owner for the Pole Owner's benefit (accommodating new customer's etc.)

Commission Direction: The attachers shall pay for the required relocations. The pole owner should not incur additional costs to conduct their primary utility service as a result of attachments. The Commission accepts the DPU's position on this issue that the pole owner should be able to improve and expand its core business without incurring the costs associated with the presence of an attaching entity's attachments to its poles.

8. DISPUTED BILLS [5.03, Article XI]:Parties disagree that disputed bills must be paid prior to resolution.

Commission Direction: The parties will have 60 days to pay disputed bills, all undisputed amounts must be paid by the regular billing deadlines. Parties may bring disputes before either the Commission or an appropriate court. If it is found that the disputed amounts (or some part of the disputed amounts) were billed in error, the pole owner shall pay back the erroneous amounts plus interest.

9. INDEMNITY, LIABILITY, AND DAMAGES [9.01]:Parties disagree on appropriate reciprocal language.

Commission Direction: The Commission supports PacifiCorp's proposed language, but believes this section should also oblige the Pole Owner to properly construct and maintain its own attachments. Therefore, the sentence "Pole Owner warrants that its work in constructing and maintaining the poles covered by this Agreement shall be consistent with prudent utility practices" should be followed by one reading "Pole Owner further warrants that its own attachments to its poles shall be constructed and maintained consistent with prudent utility practices." The Commission concludes that the pole owner should be responsible/liable for damage that may be done to an attaching entity's property attached to a pole if the damage arises from the violation of these pole owner warranties. T he final sentence of this proposed section should be changed to reflect this responsibility.

10. INSURANCE AND BOND [Article X]:Parties disagree on generic language for insurance and bonding.

Commission Direction: The Commission supports PacifiCorp's proposed language regarding Insurance. However, the Commission believes that, since prepayment of most fees makes bonding unnecessary, bonding should be available to the Pole Owner only upon application of the Pole Owner to the Commission. Therefore, proposed section 10.3 should be changed as follows: "Upon application to and approval by the Commission, Pole Owner may require Licensee to furnish a bond or other form of financial security instrument to cover the faithful performance by Licensee of its obligations hereunder. Terms and conditions of the bond or other financial security shall be those approved by the Commission." The remainder of section10.3 should be deleted.

DATED at Salt Lake City, Utah, this 6th day of September, 2005.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
GW#47274