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State of Utah
Department of Commerce
Division of Public Utilities

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Action Request Response

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Energy Section Manager

Justin Christensen, Utility Analyst

Myunghee Sim Tuttle, Utility Analyst

Date: May 24, 2018

Re: **Approval** Docket No. 18-035-12, Application of Rocky Mountain Power for Approval of the Pole Attachment Agreement between Rocky Mountain Power and Commnet Cellular Inc. Network Corporation, D/B/A Verizon Wireless

Recommendation (Approval)

The Division of Public Utilities (Division) recommends that the Public Service Commission (Commission) approve the Pole Attachment Agreement (Agreement) between Rocky Mountain Power (RMP) and Commnet Cellular Inc. Network Corporation, D/B/A Verizon Wireless (Commnet).

Issue

On April 24, 2018, RMP filed an application with the Commission for approval of the Agreement between RMP and Commnet (collectively, Parties). In the application, RMP submitted a copy of the Agreement, Exhibit A – Electric Service Schedule No. 4, Exhibit B –

Small Cell Antenna Installation Guidelines, Exhibit C – Wi-Fi Antenna Installation Guidelines, and Exhibit D – Sample Application.

Under Utah Administrative Rule R746-345-3(B)(1), the parties to pole attachment contracts may voluntarily negotiate an alternative contract that differs from the Commission’s approved pole attachment agreement (Safe Harbor) in Docket No. 10-035-97.¹ An alternative contract must be submitted to and approved by the Commission.

Since the Agreement between RMP and Commnet differs from Safe Harbor, RMP submitted its filing and requested that the Commission issue an order approving the Agreement and finding the terms and conditions of the Agreement to be just, reasonable, and in the public interest.²

On April 24, 2018, the Commission issued an Action Request to the Division for a review of RMP’s application for approval of the Agreement. This memorandum is in response to the Commission’s Action Request.

Discussion

The Agreement represents the Parties’ agreed-to terms and conditions that will allow Commnet to attach certain equipment, such as antennas and Small Cell wireless communication devices, to RMP’s poles in Utah. The Agreement was negotiated voluntarily between the Parties and was signed by RMP on March 13, 2018, and by Commnet on March 5, 2018.³

The Division reviewed the application and found substantive differences between the Agreement and Safe Harbor. The Division enumerates these substantive differences below:

- Article I. Definitions
 - The definitions of “Application,” “Cellular Communications Site Installation Guidelines,” “Cost Estimate,” “Electric Facilities,” “Electric Service

¹ Report and Order, 10-035-97, November 21, 2012.

² Docket No. 18-035-12, In the Matter of the Application of Rocky Mountain Power for Approval of the Pole Attachment Agreement between Rocky Mountain Power and Commnet Cellular Inc. Network Corporation, D/B/A/ Verizon Wireless, page 3.

³ Docket No. 18-035-12, Pole Attachment Agreement, page 23.

Requirements,” “Emergency Condition,” “Estimated Attachments,” “Inspection,” “Permitted Purpose,” “Security,” “Service Provider,” “Small Cell,” and “Wi-Fi Antenna Installation Guidelines” are added.

- The definition of “Attachment(s)” is modified to include “any Equipment used for the transmission of Small Cell or Wi-Fi technology communications installed upon any Pole.”⁴
- The definition of “Equipment” is modified to include “antennas and Small Cell wireless communication devices.”⁵
- Article II. Scope of Agreement
 - In addition to the Geographic Scope in Section 2.01, the issues of “Grant of License” and “Permits” are described in this section.
 - Section 2.03 “Compliance with Governmental Requirements,” Section 2.04 “Governmental Approvals,” and Section 2.05 “Rejection of Application” are added.
- Article III. Licensee’s Use of Poles
 - Modifications made in Section 3.01 “Application for Permission to Install Attachment” allow changes to the radio frequency without submitting a new application, provided that Commnet can demonstrate the change will not cause any interference with existing equipment on the pole.⁶
 - Changes in Section 3.02 “Make-Ready Work” include provisions regarding make-ready work associated with an application and make-ready work associated with conformance to requirement and specifications.
 - Modifications made in Section 3.08⁷ “Nonconforming Equipment” allow RMP to correct any nonconformance upon Commnet’s failure to do so after thirty (30) days’ written notice from RMP.⁸

⁴ Docket No. 18-035-12, Pole Attachment Agreement, page 1.

⁵ Docket No. 18-035-12, Pole Attachment Agreement, page 2.

⁶ Docket No. 18-035-12, Pole Attachment Agreement, page 5.

⁷ In Section 3.08, RMP references “Section 3.077.” However, the Agreement does not have Section 3.077. The Division believes that RMP intended to refer to “Section 3.07” instead of “Section 3.077.”

⁸ Docket No. 18-035-12, Pole Attachment Agreement, page 8.

- Changes in Section 3.09 “Interference with Rocky Mount Power’s Equipment” include Commnet removing its attachment from the pole within thirty (30) days of written notification by RMP if Commnet does not accept the cost to accommodate rearrangements or transfers of the attachment. Commnet must notify RMP of its removal within five (5) Business Days of completion of the removal.⁹
- Section 3.06 “Licensee’s Installation Responsibilities,” Section 3.11 “Vegetation Management,” Section 3.15 “Pole Abandonment,” and Section 3.19 “Emergency Access” are added.
- Article IV. Radio Frequency; Interference; Emergencies
 - Section 4.01 “Radio Frequency Emissions,” Section 4.02 “Interference Prohibited,” Section 4.03 “Preventing Interference,” Section 4.04 “RF Power cut-off Switch; Emergency Condition,” Section 4.05 “Emergency and Emergency After Hours Contact Information,” and Section 4.06 “Installation and Upkeep of Sign(s)” are added.
- Article V. Billing & Payments; Annual Rent
 - Section 5.05 “Interest on Late Payments” is added. All amounts payable under this Agreement should be paid within forty-five (45) days of the invoice date.¹⁰
- Article VII. Insurance and Security Requirements
 - Modifications in Section 7.01 “Insurance” require Commnet to acquire commercial general liability insurance on the most recently approved ISO policy form with a minimum limit of \$5,000,000 for each occurrence of bodily injury and property damage. Commercial automobile liability insurance should also have a minimum limit of \$5,000,000.¹¹
 - Section 7.02 “Additional Insurance Requirements” and Section 7.03¹² “Security” are added.

⁹ Docket No. 18-035-12, Pole Attachment Agreement, page 9.

¹⁰ Docket No. 18-035-12, Pole Attachment Agreement, page 15.

¹¹ Docket No. 18-035-12, Pole Attachment Agreement, page 17.

¹² Both “Additional Insurance Requirements” and “Security” sections were enumerated as “Section 7.02.” The Division believes that RMP incorrectly enumerated “Security” section. The Division will label “Security” as “Section 7.03” in this memo.

- Article VIII. Term¹³, Default and Termination
 - Changes in Section 8.01 “Term and Termination” specify that the initial term will be for five (5) years from the effective date. The Agreement will automatically be extended for five (5) additional five (5) year terms unless either party gives written notice.¹⁴
 - Section 8.02 “Default” and Section 8.03 “Notice of Default/Cure Period” are added.
- Article IX. General Provisions
 - Section 9.01 “Confidentiality,” Section 9.02 “Entire Agreement,” Section 9.04 “Changes in Law,” 9.06 “Encumbrances,” Section 9.11 “Time is of Essence,” Section 9.13 “No Third-party Beneficiaries,” Section 9.14 “Attorneys’ Fees,” and Section 9.15 “Waiver of Jury Trial” are added.

After reviewing the substantive changes described above, the Division finds that the terms and conditions in the Agreement are reasonable and conform to R746-345-3(A). The changes were made in order to add, expand, or specify negotiated terms and conditions between RMP and Commnet, a wireless communication network business.

In addition to the Agreement, RMP’s filing includes Exhibit A, B, C, and D. The Agreement refers to Exhibit A, RMP’s Electric Service Schedule No. 4, for the annual rental rate (\$5.76 per foot of space used) and non-recurring fees. The Agreement requires conformity with the standards and specifications of the National Electrical Safety Code (NESC) and the Federal Communications Commission (FCC). Exhibit B, Cellular Communications Site installation Guidelines, and Exhibit C, Wi-Fi Antenna Installation Guidelines, are referenced in the Agreement¹⁵ as additional specifications. Exhibit D is Sample Application spreadsheet.

¹³ In RMP’s Agreement, the title of Article VIII is “ERM, DEFAULT AND TERMINATION.” The Division believes that RMP meant “[T]ERM, DEFAULT AND TERMINATION” as the title of article VIII.

¹⁴ Docket No. 18-035-12, Pole Attachment Agreement, page 19.

Conclusion

After reviewing RMP's filing and accompanying documents, the Division finds that the Agreement between the Parties is reasonable and should be approved. The approval of this Application is in the public interest as this Agreement will allow Commnet to conduct its business in a number of areas within the state of Utah.

Cc: Jana Saba, RMP
Daniel Solander, RMP
Michele Beck, Office of Consumer Services