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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

**REQUEST TO OPEN AN INVESTIGATIVE  
DOCKET**

IN THE MATTER OF AN INVESTIGATION  
INTO POLE ATTACHMENTS

DOCKET NO. 04-999-03

The Division of Public Utilities (“Division”) hereby moves the Utah Public Service Commission (“Commission”), pursuant to Utah Code Ann. §§ 54-4-1, 54-4-2 and 54-5-13, to open a docket to allow the Division and the parties to investigate establishing new and revised regulations pertaining to the joint use of properties by utilities. The Division also requests that this docket provide a forum to investigate the general terms and conditions for contracts used to execute pole attachment and other issues, including conduit use pursuant to Rule 746-345-3 if the Division and the parties deem appropriate.

**BACKGROUND**

The federal Pole Attachment Act, as amended by the 1996 Telecommunications Act, allows states to preempt Federal Communications Commission (“FCC”) jurisdiction. The 1996 amendment also provides for nondiscriminatory access to utility poles. Utah has exercised jurisdiction over pole attachments.

According to Utah Code Ann. § 54-4-13(a), where public utilities have failed to agree upon the joint use of properties, “the commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use.”

Pursuant to R746-345-2(C), "When a utility uses a contract or agreement for execution of a pole attachment tariff and physical arrangement, that contract or agreement shall be directly referenced in the tariff. A copy of the general form of that contract or agreement will be provided to the Commission with the tariff filing."

PacifiCorp has pole attachment agreements with several providers in Utah including Comcast Cable Communications ("Comcast"), Qwest Communications, Inc. ("Qwest"), XO Utah, and the majority of the Utah Rural Telephone Association ("URTA") members. Comcast, Qwest, XO Utah, and several URTA members have voiced their concerns over the new pole attachment rates being proposed by PacifiCorp, and general terms and conditions in the pole attachment agreements with PacifiCorp. In addition to PacifiCorp, other utilities, such as Qwest, rural telephone companies, and municipal electric companies, permit attachments to their poles. Utopia has also expressed an interest in participating in discussions concerning these issues.

On October 2, 2003, PacifiCorp filed with the Commission Advice Filing 03-09, Docket No. 03-035-T11, proposing to increase its cable pole attachment rate from \$4.65 to \$9.20. Subsequently, Comcast filed a statement of issues.

Then, on October 31, 2003, Comcast filed a complaint against PacifiCorp, Docket No. 03-035-28, alleging inappropriate charges for pole attachments, audits, and unauthorized pole attachments penalties and rents. The issues in the complaint concerned the general terms and conditions of PacifiCorp's contracts used to execute its pole attachment tariff with cable providers.[\[1\]](#)

The Division facilitated three meetings with PacifiCorp and the URTA to discuss the telecommunications pole attachment rate and general terms and conditions in PacifiCorp's revised pole attachment agreement. No agreements were reached.

Subsequently, the Division decided it was appropriate to discuss pole attachment issues with a broader group. Accordingly, the Division held a statewide pole attachment technical conference on February 13, 2004. Among those attending were representatives from the Commission, the Division, the Committee of Consumer Service, PacifiCorp, Qwest, Comcast, AT&T, XO Utah, URTA member companies, Electric Lightwave, Utah Rural Electric Association, Salem City Power, Moonlake Electric, Dixie Escalante Electric, and Strawberry Electric Service District.

On February 4, 2004, AT&T filed a letter with the Commission suggesting that conduit be addressed in the pole attachment docket and claiming that the Commission does not comply with the Federal Communications Act regarding conduit regulation.

The Division believes that an investigative docket will facilitate the information gathering process, and will provide a forum for disputed issues among companies to be addressed and resolved.

### ISSUES REQUESTED TO BE INVESTIGATED

The Division requests that the Commission open a docket to allow the Division and parties to address and resolve the following partial list of pole attachment issues, along with any other issues the Commission deems appropriate:

- Pole attachment regulation:
  - Consider whether there should be an adoption of a statewide methodology for calculating pole attachment rates
  - Explore application of methodology to all providers/attachers
  - Determine whether wireless attachments should be treated differently due to physical differences in attachment configuration
  - Determine what costs should be allowed to be recovered in the pole attachment rate
  - Evaluate who should bear the burden of pole costs (fully allocated or incremental costs)
  - Assess use of the FCC formula for pole attachment rates, including the allocation of usable space and unusable space
  - Evaluate rebuttable presumptions in FCC's formula
    - Amount of space used
    - Pole height
    - Number of attachers
  - Determine whether differences for rural versus urban attachments should be considered
  - Consider exempting rural electric cooperatives from pole attachment regulation
  - Identify and consider other issues relating to pole attachments
- Conduit Regulation (if exploration is deemed appropriate here):
  - Explore potential regulatory treatment of conduit

## General Terms and Conditions included in contracts used to execute pole attachment

- Consider audit issues
  - Burden of costs, who should pay
  - Access to records
- Discuss additional fees and charges
- Explore unauthorized pole attachment charges
- Identify and consider other issues relating to general terms and conditions

## REQUESTED RELIEF

The Division requests that the Commission open a docket to allow the Division and the parties to investigate pole attachment rates, conduit if deemed appropriate, and related issues. The Division asks the Commission to request initial comments from parties to identify the relevant issues. The Division proposes these comments be due thirty days from the date the Commission provides notice of the docket. The Division also requests that after the comments are received, a prehearing conference be held to establish a schedule and to discuss further the scope of issues. Lastly, the Division requests that the Commission notify all local exchange communications corporations, cable companies, electric utility companies, and any other pole owner or user in Utah of the existence of the docket, and to take any other action that the Commission deems appropriate.

Dated this 11th day of March 2004.

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## CERTIFICATE OF SERVICE

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[1] While this is not the docket in which to discuss specific facts between Comcast and PacifiCorp as there is a separate docket for that purpose, the Division believes that issues raised by Comcast should be discussed generally in this docket. However, it is the Division's position, as well as the position of other parties that attended the February 13, 2004, technical conference, that Comcast's complaint docket should not be "rolled" into this general docket, but should remain in its own specific docket.

