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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an
Investigation into Pole
Attachments

**COMMENTS OF VOICESTREAM PCS
II CORPORATION DBA T-MOBILE TO
REVISED POLE ATTACHMENT
RULES**

DOCKET NO. 04-999-03

VoiceStream PCS II Corporation dba T-Mobile ("**T-Mobile**"), through its counsel, hereby submits to the Commission its comments to the revised proposed rules for regulating pole attachments ("**Revised Rules**") published by the Commission for comments on January 24, 2005.

COMMENTS

Attached to these Comments as **Exhibit A** are changes to the Revised Rules requested by T-Mobile. The Comments that follow state the reasons why T-Mobile requests these changes to the Revised Rules.

A. Comments to R746-345-5(B)(3)(e)(ii)

Under the Commission's Revised Rules, the space used by a wireless provider's pole attachment shall be determined "by the amount of space on the pole that is physically occupied and/or rendered unusable for other uses, as a result of the attachment or the associated equipment." *See* Revised Rule R746-345-5(B)(3)(d)(v). This definition of the rebuttable presumption for space used by wireless attachments adequately and fairly defines the space used by a wireless attachment on the pole.

On the other hand, Revised Rule R746-345-5(B)(3)(e)(ii) states that the space used by a wireless provider "shall include actual placement of equipment and appropriate standard clearances for said equipment, of equipment placed in the usable space or unusable space on a utility pole." Revised Rule R746-345-5(B)(3)(e)(ii). This provision is duplicative and unnecessary. The terms "actual placement" of equipment in this section are redundant of and already encompassed by the terms "physically occupied and/or rendered unusable" by the pole attachment. Moreover, applicable safety and engineering standards already require wireless attachments to maintain standard clearances, thus the language "appropriate standard clearances" in R746-345-5-B(3)(e)(ii) is also included in the space "physically occupied and/or rendered unusable" by a wireless pole attachment.

Because the Revised Rules already define the rebuttable presumption for space used by a wireless provider, i.e., the space that is "physically occupied and/or rendered unusable for other uses" by the wireless attachment, the language of R746-345-5(B)(3)(e)(ii) is unnecessary and could create confusion about the appropriate definition for the space used by a wireless provider.

Accordingly, T-Mobile requests that R746-345(B)(3)(e)(ii) be deleted entirely from the Revised Rules.

B. Comment to R746-345-5(B)(3)(e)(i)

Under R746-345-5(B)(3)(e)(i) of the Revised Rules, the space used by a wireless provider “shall include the height of the pole above that which the pole owner would generally install to facilitate its own pole attachment or the pole attachments of any attaching entity.” T-Mobile requests that the Commission delete R746-345-5(B)(3)(e)(i) entirely from the Revised Rules because the pictures attached as **Exhibit B** to this Comment make clear that T-Mobile and other wireless providers sometimes attach their equipment below the electrical space. In an instance where the wireless attachment is attached below the electrical space or the area required for other attachments, it would be nonsensical and unfair to charge the wireless provider for the space above the space used for the wireless attachment.

Further, as detailed in **Section A** above, the Revised Rules adequately and fairly define the rebuttable presumption for the space used by a wireless provider. Rule R746-345-5(B)(3)(d)(v) clearly states that the wireless provider’s attachment shall be determined “by the amount of space on the pole that is physically occupied and/or rendered unusable for other uses.” This rebuttable presumption of the space used by a wireless attachment should apply regardless of the location of the attachment on the pole. For these reasons, T-Mobile requests that R746-345-5(B)(3)(e)(i) be deleted in its entirety from the Revised Rules.

REQUEST

For all of the forgoing reasons, T-Mobile requests that the Commission make the changes to the Revised Rules as set forth in **Exhibit A** to these comments.

RESPECTFULLY SUBMITTED this ____ day of _____, 2005.

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