



Wyoming. I have held my current position since April 1, 2003, and except for one five month period in 1998, I have worked for PacifiCorp on pole attachment matters since 1994. Currently, I oversee a staff of 79 people, including Jim Coppedge, a Manager of Inventory and Inspections; John Cordova, the Supervisor of the Southeast Region; and Laura Raypush, Supervisor of Contract and Administrative Services

2. I am a regular lecturer and attendee at joint use seminars on the management of utility pole plant and joint use operations. I have a B.S. in Business Management from Portland State University. I attest to the following, based on my personal knowledge of and involvement in the matters set forth.

#### **Agreement**

3. Comcast's predecessor in interest, AT&T Cable Services ("AT&T") entered into an agreement with PacifiCorp on December 20, 1999 ("Agreement"). The negotiations that produced the Agreement began slowly in 1996 with AT&T's predecessor TCI Cablevision ("TCI"). I sent a copy of PacifiCorp's new standard agreement to TCI's counsel Robert Trafton in 1996 but did not receive a response from Mr. Trafton until the following year. Eventually, after three years of negotiations PacifiCorp and TCI entered into the Agreement on December 20, 1999.

4. It is also my understanding that during the negotiations with TCI and for several years after, TCI and other cable television companies entered into a series of transactions that resulted in a constant change in ownership of cable television systems. First, TCI and another cable company, Falcon Cable ("Falcon"), entered into an agreement to swap their service territories so that each would have all of its service areas located in one contiguous area. Then in 1999, AT&T acquired TCI and Charter Communications purchased Falcon. In May, 2002,

Precis Communications entered into a transaction with Peak Cablevision. Peak Cablevision was previously a subsidiary of AT&T, but is now a subsidiary of Cox Communications. Then in May 2003, Bresnan Communications purchased cable systems from AT&T. Throughout all of this, PacifiCorp was never provided any records documenting which attachments were changing hands as a result of each transaction. Instead, PacifiCorp was simply sent letters by the parties' counsel requesting that the relevant agreements governing the joint use of PacifiCorp's poles be assigned. Perhaps a lot of the confusion that Comcast is currently having locating its attachments is attributable to these transactions

5. In December 2001, PacifiCorp notified AT&T that it sought to terminate its Agreement effective December 31, 2002. PacifiCorp was under the assumption that the twelve month notice period would afford AT&T and PacifiCorp ample opportunity to negotiate a new agreement. However, PacifiCorp did not anticipate AT&T and later Comcast to ignore repeated attempts to initiate negotiations. After PacifiCorp had completed its standard agreement, Branden J. Wagner, PacifiCorp's representative for negotiation purposes, e-mailed the draft agreement to Mr. Trafton on April 18, 2002, as a means to initiate negotiations. Despite repeated attempts by Ms. Wagner to contact Mr. Trafton, she did not receive a red-lined response of the agreement from Mr. Trafton until December 11, 2002.

6. Unfortunately, PacifiCorp and Comcast were unable to reach a final agreement by December 31, 2002 and have not reached one since. Nevertheless, PacifiCorp and Comcast have continued to deal with each other pursuant to the terms of the Agreement. For almost a year, T & D Infrastructure has continued to process applications for new attachments and charge Comcast the annual rental fees of \$4.65 per attachment, the rate specified in the Agreement.

Further, except for past due amounts, Comcast has paid the annual rental fees charged by PacifiCorp according to the terms of the Agreement.

### **Audit Procedures**

Through the course of my employment with PacifiCorp, I have actively participated in two audits of PacifiCorp's joint use utility poles; the first audit was scheduled in 1998 ("1998 Audit") and the second was initiated in November 2002 ("2002 Audit"). The results of the 1998 Audit are maintained in PacifiCorp's mainframe system called JTU. The JTU system also contains data concerning permits for attachments that have been authorized by PacifiCorp since 1998

8. The purpose of the 2002 Audit was to identify all attachments located on each pole, including the type of each attachment, the owner of each attachment, the location of each attachment, and whether the attachment violated applicable safety codes, including the National Electrical Safety Code. The 2002 Audit does not include a review of any of PacifiCorp's attachments. PacifiCorp conducts a separate system-wide audit of its own facilities at its sole expense.

9. In July of 2002, PacifiCorp issued a request for proposals ("RFP") from contractors interested in performing the audit of PacifiCorp's pole plant in all of its service territories. After reviewing numerous proposals, PacifiCorp selected OSMOSE Utilities Services, Inc. ("Osmose"), an industry-recognized company that has conducted joint use audits for a number of major utilities.

10. Comcast through its predecessor AT&T was well aware of PacifiCorp's intent to audit all of its pole plant. As a member of Oregon's Joint Use Task Force ("Task Force"), I was in bi-weekly contact with AT&T, which was also a member of the Task Force. At some point

during the Task Force's meetings, I informed Comcast and other companies present that PacifiCorp would be conducting a system-wide audit of its entire pole plant. At no time did any AT&T representative contact me or any other employees in T & D Infrastructure to request to participate in the audit process. In fact, only one company, Qwest Communications, expressed an interest in participating in the audit and actually did so by accompanying Osmose.

PacifiCorp also notified Comcast of its intent to conduct the audit thirty (30) days before it commenced the audit in specific areas throughout Utah. Jim Coppedge sent letters to Comcast to this affect for the following areas: Ogden (letter sent Feb. 3, 2003), American Fork and Layton (letter sent Dec. 30, 2002), Jordan Valley (letter sent Feb. 24, 2003), Salt Lake City metro area (letter sent Mar. 31, 2003), and Tooele and Park City (letter sent Oct. 8, 2003). Each letter advised Comcast that upon completion of the audit, PacifiCorp would notify Comcast of any unauthorized attachments. Mr. Coppedge further advised Comcast that it would be invoiced according to the terms of the Agreement.

12. Once Osmose completed the audit for a particular area, T & D Infrastructure employees compared the data results from the 2002 Audit against existing records of pole attachments maintained in the JTU mainframe. Any pole attachments attributable to Comcast that T & D Infrastructure employees were unable to validate against existing records were deemed to be unauthorized. So far we have identified and billed Comcast for 15,312 unauthorized attachments belonging to Comcast in the American Fork, Layton and Ogden, Utah service districts.

#### **Billing for Unauthorized Attachments**

13 From January 29, 2003 through March 11, 2003, Ms. Raypush sent numerous invoices to Comcast for the unauthorized attachments that were identified during the 2002 Audit

of the American Fork, Layton and Ogden, Utah service districts. The invoices were based on a \$250.00 per unauthorized attachment charge as allowed by applicable sections of the Agreement. Each invoice indicated that Comcast had thirty (30) days to refute any charges it considered to be erroneous. In addition, each invoice advised that a proper method for Comcast to demonstrate that the charges had been assessed in error would be to send PacifiCorp a copy of the signed permits authorizing the attachments. To date, Comcast has never provided Ms. Raypush or any PacifiCorp employee with any permits to demonstrate that a particular attachment is not unauthorized

14. In April, 2003, Kaei Majors of Comcast contacted Jim Coppedge to discuss the results of PacifiCorp's audit. During that discussion, Mr. Majors expressed surprise that Comcast had been found to be unauthorized on as many as 15,312 poles. Mr. Coppedge advised Mr. Majors that if Comcast could produce any application or permit records for those unauthorized attachments, PacifiCorp would revise the number of unauthorized attachments. Mr. Majors stated that Comcast would perform its own audit and would get back to Mr. Coppedge on the details of that audit.

15. In the meantime, several of Comcast's invoices for the unauthorized attachments became overdue, some as much as ninety (90) days. Ms. Raypush sent a letter to Comcast on June 30, 2003 notifying Comcast of its past due invoices. Due to the lack of response, Ms. Raypush advised Comcast that PacifiCorp would cease granting any applications for the use of PacifiCorp's poles until such time as the matter reached a resolution.

16. T & D Infrastructure employees had approximately three or four additional communications with Comcast concerning payment of the overdue invoices. During some of those communications, PacifiCorp provided Comcast with the opportunity to come to our offices

to do a “desk-top audit” of the attachments instead of having to expend resources to go out into the field to do a complete audit from a blank slate. A “desk-top audit” would have afforded Comcast the opportunity to print out the 2002 Audit information from our computer so it could then verify the results in the field. Comcast advised me that they thought the offer was a good idea, but they never took advantage of it. Instead, Comcast went ahead and hired its own contractor, MasTec, to verify our 2002 Audit results. Though MasTec has contacted PacifiCorp on occasion to discuss the 2002 Audit, neither MasTec nor Comcast has ever provided PacifiCorp with any data from its audit of the poles in question disproving PacifiCorp’s figures.

7. On September 8, 2003, PacifiCorp and Comcast entered into a letter agreement (“Letter Agreement”) whereby Comcast agreed to pay PacifiCorp \$3,828,000.00 for its outstanding pole attachment charges, and in exchange PacifiCorp promised to immediately resume processing Comcast’s pole attachment applications, so long as Comcast did not become more than 30 days past due on any invoice. In addition, the Letter Agreement provided Comcast sixty days (60) in which it could identify poles within the Ogden, American Fork and Layton, Utah service districts where Comcast had documentation that the attachments PacifiCorp identified as unauthorized: (1) are subject to a valid installation permit granted by PacifiCorp to Comcast, AT&T, or any other of their predecessors; (2) are the personal property of an entity other than Comcast; or (3) they do not exist.

18. To date, Comcast has failed to provide any documentation to PacifiCorp demonstrating that it was not responsible for an unauthorized attachment that was charged to Comcast as a result of the 2002 Audit.

19. Mere days after executing the Letter Agreement, Comcast fell more than 30 days overdue on other invoices from PacifiCorp. In addition, Comcast failed to pay an October 21,

2003 invoice from PacifiCorp for pole contact rental, an amount exceeding \$230,000.00 that should be paid regardless of Comcast's views on unauthorized attachment fees.

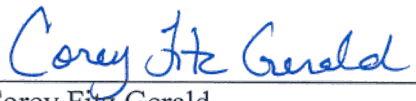
#### **Audit Fees**

20. All of the costs incurred to date as a result of the 2002 Audit are being allocated *pro rata* among all the licensees on PacifiCorp's pole plant based upon the total number of applicable attachments that each licensee has. In October 2003, PacifiCorp began issuing bills for districts that have been completed.



I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated December 1, 2003

  
Corey Fitz Gerald