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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of an Investigation into Pole
Attachments)

DOCKET NO. 04-999-03

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) Initial Comments of the Utah Rural Telecom
Association ("URTA")

In accordance with the Notice of Further Agency Action the Public Service Commission of Utah (hereinafter "Commission") issued in this matter March 19, 2004, the Utah Rural Telecom Association (hereinafter "URTA") submits the following comments with respect to the investigation:

1. URTA urges the Commission to address only pole attachments in this docket. Conduit regulation should be investigated separately. The controversy over pole attachments has been ongoing for some time and needs swift resolution. PacifiCorp's initial proposed attachment rate increase of 120 percent, or \$27.40 per pole per year, is scheduled to take effect July 1, 2004. PacifiCorp's proposal automatically increases the rate by 20 percent each year for the next two years.

EXHIBIT

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2. Generally, URTA supports the development of a single electric utility pole attachment rate for all attaching entities. It is unreasonable and not in the public interest for telecommunications companies to pay a different and significantly higher rate than cable companies whose attachment requirements are virtually identical to those of telecommunications companies. The decision to apply a uniform rate across attaching entities would be a first step in the establishment of fair and reasonable pole attachment rates. This method is a much more rational approach and treats all attaching entities equally and equitably.

3. If, however, the Commission finds that on average the cost of pole attachments is less in rural areas than in urban areas, URTA would support a two-tiered urban/rural rate within the state. Some of the reasons pole costs, and therefore pole attachment rates, may be less in rural areas are because: a) there is more concrete and asphalt to contend with in urban Utah; b) restoration costs are higher in urban areas because of landscaping, driveways, and sidewalks; c) there are more congested work areas in larger cities; d) more poles have to be set by hand with hand tools in urban areas because of the congestion and difficult access; e) the expense of traffic control to do repairs is greater in urban areas; f) damage to poles occurs more frequently in cities; g) smaller poles are required in rural Utah and therefore the poles are less expensive; h) more poles per mile are necessary in urban areas because of greater customer density.

4. URTA opposes the use of the FCC telecom formula for electric utilities, at least as PacifiCorp applies it, because it leads to unjust and unreasonable results. Utah Code Ann. §54-4-13 allows the Commission to prescribe reasonable compensation and reasonable terms and conditions for joint use. PacifiCorp's new rate of \$27.40 per pole per year using the FCC telecom formula with 20 percent increases for each of the next two years is unreasonable and URTA believes this represents far more than a fair and reasonable portion of PacifiCorp's pole

plant costs.¹ The proposed rate increase discourages joint use because it motivates URТА members to seek alternatives other than using PacifiCorp's existing poles. These alternatives include URТА members placing their own poles or installing buried or underground facilities. URТА believes PacifiCorp's dramatic rate proposals lead to a poor use of existing available resources, and defeat the purposes of joint use of facilities. The proposed rate increases also impose unnecessary strain and upward pressure on the universal service fund, which will affect all telecommunications companies' customers, all of whom pay the monthly universal service fund surcharge.

5. If the Commission decides to use the FCC telecom formula for electric utilities to establish pole attachment rates for PacifiCorp, URТА supports a thorough examination of the FCC's rebuttable presumptions. URТА does not accept the presumptions of three attachments per pole on average in rural areas and two feet of space for each attachment.² Generally, telecommunications companies need no more than approximately six inches for an attachment and URТА believes that most poles in rural Utah have more than three attachments. PacifiCorp maintains that the smallest increment available for attachment is one foot.

6. The allocation of unusable space, which is not a specific rebuttable presumption under the FCC telecom formula for electric utilities, has the most dramatic impact on the cost of attachments and therefore is one of the most important factors for the Commission to review. URТА recommends modifying the unusable space allocation to reflect specific issues related to the cost recovery and regulation of the electric utilities by this Commission. For example, to the

¹ Utah Admin. Code §R746-345-3. Though this rule applies to cable attachments, the principle is the same for telecommunications attachments.

² In FCC Order 01-170, Paragraph 87, the presumed space for a telecommunications attachment is one foot. PacifiCorp has stated the presumption is two feet.

extent pole costs have been included in the rate base for the electric utility, then the unusable space allocation to attaching entities should be zero (0).

7. The rebuttable presumptions affect how unusable space is allocated to attaching entities, which is why the presumptions must be reviewed and changed to reflect actual conditions in Utah. URTA is interested as well in ensuring that only distribution poles, as opposed to transmission poles, are included in any formula the Commission uses to set pole attachment rates. Including transmission poles will increase the attachment rates produced by the formula because transmission pole investment per pole is much larger than the investment for distribution poles per pole. URTA members generally do not attach to transmission poles.

8. URTA is also concerned about back billing and penalties for attachments PacifiCorp alleges are unauthorized. In some instances, URTA companies have had long-time handshake agreements with PacifiCorp and its predecessors that permitted URTA members to attach to electric utility poles. PacifiCorp now classifies some of these long-time attachments as unauthorized. In areas where URTA members purchased Qwest exchanges, PacifiCorp has treated as unauthorized many of the attachments that were formerly Qwest attachments. In addition, several URTA member companies have had a dispute with PacifiCorp over billings PacifiCorp has imposed and have not been able to come to terms. URTA believes the Commission should resolve these billing and penalty issues in this docket.

9. URTA has begun trying to resolve the issue of accounting for pole ownership through inventories, but the Commission may have to review and help solve this issue as well. The issue arose when PacifiCorp began tagging all of the poles where it had facilities and then billed URTA members for pole attachments, even when the poles were owned by URTA members. Needless to say, where that has occurred, PacifiCorp's billings to the URTA have

been inaccurate and inflated. There continue to be several outstanding disputes over this issue. For example, following inventories performed exclusively and unilaterally by PacifiCorp, PacifiCorp has billed URTA members \$13.25 for each URTA member attachment to pay for the cost of the inventory. URTA members will not rely on any inventory where they have not participated and monitored the process. Nor should URTA members be required to pay additional charges beyond the rate established by the Commission's uniform methodology to be developed in this proceeding.

10. URTA would support a Commission-approved pole attachment contract with general terms and conditions for use when parties cannot come to terms otherwise. It could be helpful to have a default pole attachment contract on file as long as the accepted terms and conditions are reasonable.

11. URTA does not oppose the exemption of rural electric cooperatives from pole attachment rules as long as their rates remain reasonable and acceptable. URTA members' past experience in working with the rural cooperatives has been good.

12. URTA opposes any other fees or charges being included in a pole attachment rate (e.g., application fees and inspection fees). The formula the Commission establishes in this proceeding to set pole attachment rates should be the only available mechanism for cost recovery.

Respectfully submitted this 1st day of April, 2004.

Callister Nebeker & McCullough


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Certificate of Service

I hereby certify that on April 1, 2004, I emailed or mailed, postage prepaid, a true and correct copy of URTA's Initial Comments on the Commission's Investigation of Pole Attachments in Docket No. 04-999-03 to the following:

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