

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

COMCAST CABLE COMMUNICATIONS, INC.,)	
)	
)	
)	Docket No. 03-035-28
Claimant,)	
v.)	
)	PREPARED DIRECT TESTIMONY
PACIFICORP, dba UTAH POWER,)	OF COREY FITZ GERALD
)	FOR PACIFICORP
Respondent.)	
)	July 2, 2004

I. BACKGROUND

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Q. Please state your name and business address.

A. My name is Corey Fitz Gerald. My business address is 650 NE Holladay, Suite 700, Portland, Oregon 97232.

Q. By whom are you employed and what is your position?

A. I am employed by PacifiCorp as the Director of Transmission & Distribution Infrastructure Management (“T & D Infrastructure”). I am primarily responsible for all pole attachment related matters in the six states where PacifiCorp operates: Utah, California, Idaho, Oregon, Washington and Wyoming.

Q. Attached to your written testimony are exhibits PC 1.1 through 1.10. Were these prepared by you or under your direction?

A. Yes.

1 **Q. What are your qualifications to testify in this proceeding?**

2 A. I have worked for PacifiCorp for 14 years, since 1990, except for one five-
3 month period in 1998, when I took a leave to coach competitive women's gymnastics.
4 I have held my current position as Director since April 1, 2003, and currently oversee
5 PacifiCorp's entire joint use staff. I am a regular lecturer and attendee at joint use
6 seminars on the management of utility pole plant and joint use operations. I have a
7 B.S. in Business Management from Portland State University.

8 From 1990 to 1994, I was in PacifiCorp's Records Management Department.
9 My work there was primarily data entry, implementing the company's project to
10 electronically store data as to PacifiCorp's rights-of-way which previously had been
11 maintained only on hard copy. Because of my work in carefully coordinating and
12 maintaining important infrastructure records for PacifiCorp, in 1994 I became an
13 Office Specialist in PacifiCorp's Joint Use of Facilities Department. My primary
14 responsibilities during that time were implementing improvements to the company's
15 internal processes. Within the Joint Use of Facilities Department, this entailed
16 administering the filing system and assembling and organizing records,
17 correspondence, billings, and agreements. I eventually moved into doing the billing for
18 the Joint Use of Facilities Department. I remained in this position for approximately
19 three and a half years.

20 In 1997, I became the Contract Administrator for PacifiCorp's joint use
21 contracts and continued the process begun in 1996 of renegotiating all joint use

1 contracts. This included notifying all existing contract holders of PacifiCorp's intent to
2 renegotiate contracts and overseeing the negotiation of joint use contracts in
3 PacifiCorp's service areas. I held this position for a year and a half, when I took a six-
4 month leave. I returned to my position as Contracts Administrator in November 1998.
5 At that time, my responsibilities became more focused on process analysis and the
6 examination of how PacifiCorp was implementing its joint use processes. Concurrent
7 with the contract negotiations period, Mardi Gilkey and I conducted field training of
8 PacifiCorp's field personnel, as well as other utilities' field personnel regarding the
9 terms of the new contract and what the appropriate processes were for permitting, new
10 construction, and make-ready accommodations.

11 I was promoted to Supervisor of Joint Use of Facilities Department in April
12 1999. As Supervisor, I had basically the same duties as I did when I served as Contract
13 Administrator, with added responsibility for process evaluation and improvement and
14 hiring and evaluation of temporary and permanent employees.

15 In December 2001, I was promoted to Manager of T&D Infrastructure,
16 formerly the Joint Use of Facilities Department. This was a newly created position,
17 and I was responsible for staffing and supervising a newly expanded business unit. In
18 April of 2003, I was promoted to my current position, Director of T&D Infrastructure,
19 where my responsibilities include the management of joint use, mapping, data
20 management, and staff oversight.

1 **Q. What areas will your testimony address?**

2 A. My testimony will address PacifiCorp's infrastructure management processes
3 and policies, the history and details of PacifiCorp's business relationship with Comcast
4 Cable Communications, Inc. ("Comcast"), all aspects of PacifiCorp's 2002 to 2004
5 audit of its joint use facilities ("2002/2003 Audit"), PacifiCorp's joint use permitting
6 procedures, the risks posed by unauthorized attachments, Comcast's failure to comply
7 with its permitting and payment obligations, and the present facts of the dispute
8 between PacifiCorp and Comcast.

9

10 **II. PACIFICORP AND T & D INFRASTRUCTURE MANAGEMENT**

11 **Q. Please describe the nature of PacifiCorp's operations in Utah.**

12 A. PacifiCorp is an electric utility operating in Utah as Utah Power. PacifiCorp
13 owns approximately 400,000 distribution poles and 100,000 transmission poles in Utah
14 and serves approximately 690,000 Utah customers. Distribution poles are generally
15 wood poles transmitting electric power at less than 34.5 kV. Third-party
16 telecommunications attachments are typically made at a height of between 20-23 feet
17 on distribution poles.

18 **Q. Please describe the joint use of PacifiCorp's infrastructure.**

19 A. Joint use refers to the attachment of facilities by third parties to the poles owned
20 by electric or telecommunications companies. While third-party access is required by
21 law, PacifiCorp, through its joint use program, works to avoid unnecessary

1 encumbrance of rights-of-way with duplicative and unattractive facilities. In other
2 words, the goal of efficient joint use is to maximize the usefulness of the rights-of-way,
3 while preserving an aesthetic environment. When conducted in a cooperative and
4 appropriate manner, joint use allows utilities to serve their customers in a cost-effective
5 manner. Joint use of utility pole plant has experienced growth over the years due to the
6 Telecommunications Act of 1996, innovations in telecommunications services, and a
7 growth of new entrants into the telecommunications business.

8 Third parties attaching to PacifiCorp's poles include incumbent local exchange
9 carriers ("ILECs"), competitive local exchange carriers ("CLECs"), and cable
10 television companies. Most attachments are made to distribution poles rather than
11 transmission poles because transmission poles are less frequently located in areas
12 where there is a customer base.

13 **Q. Please describe the role of T & D Infrastructure in PacifiCorp's joint use**
14 **operations.**

15 A. T & D Infrastructure is an organization within PacifiCorp that has responsibility
16 for joint use, mapping and data management functions in the six states where
17 PacifiCorp operates. The management of joint use of PacifiCorp's system
18 infrastructure is a critical element to ensuring the safety and reliability of PacifiCorp's
19 electric system through monitoring third-party compliance with applicable safety and
20 construction requirements.

1 Joint use oversight is accomplished through implementation and enforcement of
2 permitting and inspection procedures set forth in joint use agreements with third
3 parties. In conjunction with documenting third parties' use of PacifiCorp infrastructure
4 through the permitting process, T & D Infrastructure is responsible for obtaining
5 appropriate compensation from third parties for their use of PacifiCorp's facilities and
6 equipment. Joint use management protects the interests of electric ratepayers by
7 ensuring reliable electric service and by preventing electric ratepayers' subsidization of
8 third-party use of PacifiCorp's facilities and equipment. T & D Infrastructure also
9 imposes charges on third parties for unauthorized use of PacifiCorp facilities and
10 equipment and for violations of applicable construction, permitting, and safety
11 requirements, to encourage adherence to these requirements. Unauthorized joint use
12 places the reliability of PacifiCorp's electric system at risk because such use is difficult
13 to monitor for compliance with safety and construction requirements and can be costly
14 to ratepayers.

15
16 **III. BUSINESS RELATIONSHIP BETWEEN COMCAST AND PACIFICORP**

17 **Q. Please describe the business relationship between PacifiCorp and Comcast prior**
18 **to 1999.**

19 A. Prior to 1999, one of Comcast's predecessors, TCI Cablevision ("TCI"), made
20 attachments to PacifiCorp poles pursuant to earlier pole attachment agreements. In
21 1996, I began negotiating, on behalf of PacifiCorp, a new pole attachment agreement

1 with TCI for all attachments to PacifiCorp facilities in Utah. This culminated with an
2 agreement in 1999 (“1999 Agreement”) between PacifiCorp and Comcast’s
3 predecessor, AT&T Cable Services (“AT&T”).

4 During the negotiations that led to the 1999 Agreement and for some years
5 after, TCI and other cable television companies entered into a series of transactions that
6 resulted in repeated changes in ownership of cable television systems in Utah. First,
7 TCI and another cable company, Falcon Cable (“Falcon”), entered into an agreement to
8 swap their service territories in Oregon and Washington so that each would have all of
9 its service areas located in one contiguous area. Then in 1999, AT&T acquired TCI,
10 and Charter Communications purchased Falcon. In May of 2002, Precis
11 Communications entered into a transaction with Peak Cablevision. Peak Cablevision
12 was previously a subsidiary of AT&T, but is now a subsidiary of Cox
13 Communications. Then in May 2003, Brensan Communications purchased cable
14 systems from AT&T.

15 Throughout all of this, PacifiCorp was never provided any records documenting
16 which attachments were changing hands as a result of each transaction, nor did the
17 documents provided by Comcast through discovery in this proceeding shed any light
18 on this issue. None of the three witnesses produced by Comcast in response to
19 PacifiCorp’s Notice of Rule 30(b)(6) Depositions could say how or even if Comcast
20 engaged in any due diligence to ensure that its predecessors’ attachments were properly
21 permitted and authorized.

1 **Q. Please describe the negotiations that resulted in the agreement entered into**
2 **between AT&T and PacifiCorp in 1999.**

3 A. As stated in my prior answer, Comcast's predecessor in interest, AT&T,
4 entered into a Pole Contact Agreement with PacifiCorp in 1999. The negotiations that
5 produced the 1999 Agreement began slowly in 1996 with AT&T's predecessor, TCI. I
6 sent a copy of PacifiCorp's new standard agreement to TCI's counsel Robert Trafton in
7 1996 but did not receive a response from Mr. Trafton until the following year. After
8 three years of negotiations, PacifiCorp and AT&T entered into the 1999 Agreement on
9 December 20, 1999.

10 **Q. Please describe the provisions of the 1999 Agreement relevant to this proceeding.**

11 A. Sections 2.1, 2.2, and 2.3 outline the permitting procedures to be followed when
12 obtaining authorization to place equipment on PacifiCorp poles. The relevant language
13 is as follows, with my emphasis added:

14 2.1 Whenever Licensee desires to place Equipment upon any of
15 Licensor's poles, *Licensee shall make written application for permission to do*
16 *so, in the form and number of copies as from time to time prescribed by*
17 *Licensor. . . .*

18 2.2 Licensee shall have the right, subject to the terms of this
19 Agreement, to install, maintain, and use, for the purpose identified in Section
20 1.2, its Equipment described in the application upon the pole(s) identified
21 therein, provided however, that *before commencing any such installation,*
22 *Licensee shall submit to Licensor the written warranty and evidence required*
23 *under 2.16 and shall notify Licensor of the time when it proposes to do the work*
24 *sufficiently in advance thereof so that Licensor may arrange to have its*
25 *representative present when such work is performed. . . .* Licensee further agrees
26 to provide a completed, signed copy of the application referenced in Section 2.1
27 within one business (day) after making attachment.

1 2.3 Licensee shall not have the right to place, nor shall it place, any
2 additional Equipment upon any pole used by it hereunder *without first making*
3 *application for and receiving permission to do so in accordance with 2.1. . . .*

4 In addition, the permit application form is incorporated into the 1999 Agreement. *See*
5 Ex. PC 1.1. As you can see by looking at the form and the contractual obligations, a
6 company such as Comcast is required to submit detailed written information in order to
7 gain authorization to attach to PacifiCorp’s poles. This information is required to be
8 submitted no later than one business day from when the attachment is made.

9 Section 2.21 sets forth PacifiCorp’s right to “inspect each new installation of
10 Licensee’s Equipment” to PacifiCorp facilities and “to make periodic inspections of
11 Licensee’s equipment, as it deems necessary.” Section 2.21 also sets forth
12 PacifiCorp’s right to charge Comcast “*for the expense of any field inspections,*
13 including inspections for make-ready work, inspections during installation of
14 equipment, and *any further inspections deemed necessary by Licensor.*” (My
15 emphasis.) Thus, in accordance with the 1999 Agreement, PacifiCorp was entitled to
16 seek reimbursement from Comcast for the costs of the 2002/2003 Audit.

17 Section 3.1 and Attachment A to the Agreement establish an annual rental fee
18 for authorized attachments of \$4.65 per pole.

19 Section 3.2 sets forth a \$60.00 per pole, per year charge for unauthorized
20 attachments “until said unauthorized Equipment has been removed from Licensor’s
21 poles or until such time that Licensee obtains proper authorization.” That section states
22 that the charge is in addition to back-rent that can be assessed for the period of
23 unauthorized attachments.

1 Section 8.7 provides that “[a]ny termination of the Agreement shall not release
2 Licensee from any liability or obligations hereunder, whether indemnity or otherwise,
3 which may have accrued or may be accruing at the time of termination.” Pursuant to
4 this provision, Comcast remains obligated for charges imposed for pole rental,
5 unauthorized attachments and audit costs.

6 Section 8.8 provides that the 1999 Agreement “shall supersede all prior
7 negotiations, agreements and representations, whether oral or written, between the
8 Parties relating to the attachment and maintenance of Licensee’s facilities on
9 PacifiCorp’s poles within the locality covered by this Agreement.” Section 8.8 also
10 provides that the Agreement, along with any attached exhibits to the Agreement,
11 “constitutes the entire agreement between the parties, and may not be amended or
12 altered except by an amendment in writing executed by the parties.”

13 It is my understanding that Comcast contends that prior to the 1999 Agreement,
14 PacifiCorp personnel told Comcast employees that detailed pole applications were not
15 required. Comcast has been unable to identify these conversations. While I doubt the
16 accuracy of Comcast’s allegations, such prior discussions are nevertheless irrelevant
17 pursuant to Section 8.8 of the 1999 Agreement. Further, to my knowledge, the 1999
18 Agreement was never amended under these provisions, and neither Comcast nor its
19 predecessors ever made, much less requested, a written amendment to the Agreement.

20

1 **Q. Was the 1999 Agreement terminated?**

2 A. Yes. In December 2001 PacifiCorp notified AT&T that it was terminating the
3 1999 Agreement effective December 31, 2002 pursuant to Section 10.1 of the
4 Agreement. PacifiCorp intended to negotiate a new agreement with AT&T prior to
5 December 31, 2002.

6 **Q. Was a new agreement negotiated between AT&T/Comcast and PacifiCorp prior**
7 **to the December 31, 2002, termination date?**

8 A. No, unfortunately PacifiCorp and Comcast were unable to reach a final
9 agreement by December 31, 2002, and have not reached one since. PacifiCorp was
10 under the assumption that the twelve-month notice period would afford AT&T and
11 PacifiCorp ample opportunity to negotiate a new agreement. However, PacifiCorp did
12 not anticipate AT&T and later Comcast to ignore repeated attempts to initiate
13 negotiations. After PacifiCorp had prepared a draft of its standard agreement, Branden
14 J. Wagner, PacifiCorp's representative for negotiation purposes, e-mailed the draft
15 agreement to Mr. Trafton on April 18, 2002, as a means to initiate negotiations.
16 Despite repeated attempts by Ms. Wagner to contact Mr. Trafton, she did not receive a
17 red-lined response of the agreement from Mr. Trafton until December 11, 2002.
18 Unfortunately, PacifiCorp and Comcast were unable to reach a final agreement by
19 December 31, 2002, and have not reached one since.

20

1 **Q. Please describe the terms of the relationship between PacifiCorp and Comcast**
2 **subsequent to the termination of the Agreement.**

3 A. PacifiCorp and Comcast have continued to deal with each other pursuant to the
4 terms of the 1999 Agreement. It is my understanding and belief that pursuant to the
5 parties' course of dealing and Section 8.7 of the 1999 Agreement, Comcast remains
6 responsible for any liability or obligations to PacifiCorp. For the past year and a half,
7 T & D Infrastructure has continued to process applications for new attachments and
8 charge Comcast the annual rental fees of \$4.65 per attachment, the rate specified in the
9 1999 Agreement. Further, except for past-due amounts for charges for unauthorized
10 attachments, Comcast has paid the annual rental fees charged by PacifiCorp according
11 to the terms of the Agreement. However, Comcast is currently past due on
12 approximately \$10,259.65 for annual rental fees and \$28,756.61 in application and
13 permit inspection fees.

14

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IV. AUDIT PROCEDURES

16 **Q. Please describe the different categories of audits that are routinely conducted by**
17 **electric utilities of their facilities.**

18 A. The most common audit performed by electric utilities is referred to as a
19 "Detailed Inspection and Test and Treat Program." This audit is a detailed inspection
20 of a utility's electric facilities that is conducted to ensure that such facilities are being
21 maintained in a safe condition. Some electric utilities perform what is referred to as a

1 “Connectivity Audit.” The frequency of such audits can be related to a particular
2 utility’s outage rates. With the advent of new automated outage systems, many utilities
3 find it necessary to conduct Connectivity Audits prior to implementing the automated
4 outage system. The Connectivity Audit ties end-user customers to a circuit by tracking
5 the circuit from the substation all the way to the customer’s premises. Finally, many
6 utilities also conduct Pole Attachment Audits in order to determine the number, type,
7 ownership, and safety condition of third-party attachments to the utility’s facilities.
8 Third-party attachers can include both municipal governments and communications
9 companies.

10 **Q. Which types of audits does PacifiCorp conduct of its facilities?**

11 A. PacifiCorp has conducted all three types of audits mentioned above.
12 PacifiCorp’s Detailed Inspection Audit is continuous and ongoing in nature, and is
13 currently being performed by Osmose Holdings, Inc. (“Osmose”). While PacifiCorp
14 has in the past performed a Connectivity Audit, it does not perform these audits on a
15 continuous basis. PacifiCorp has performed two Pole Attachment Audits recently, one
16 from 1997-1998, which I will refer to as the “1997/1998 Audit,” and another from
17 November 2002 to May 2004, the 2002/2003 Audit. Of the three types of audits
18 performed by PacifiCorp, only Pole Attachment Audit costs are invoiced directly to
19 third-party attachers. In other words, third-party attachers are not invoiced directly for
20 Detailed Pole Inspection Audits and Connectivity Audits. Contrary to the assertions
21 made by Comcast in its Request for Agency Action in this case, PacifiCorp only

1 invoiced Comcast for its pro rata share of the 2002/2003 Pole Attachment Audit, not
2 for a Detailed Inspection Audit.

3 **Q. How many audits of PacifiCorp's joint use utility poles have been conducted?**

4 A. Through the course of my employment with PacifiCorp, I have actively
5 participated in two audits of PacifiCorp's joint use utility poles. The first audit was the
6 1997/1998 Audit, and the second was the 2002/2003 Audit.

7 *A. The 1997/1998 Audit*

8 **Q. What was the purpose of the 1997/1998 Audit?**

9 A. As of 1997, PacifiCorp had not conducted a system-wide Pole Attachment
10 Audit. In light of the 1996 Telecommunications Act and the expected increase in
11 communications network installation/build due in part to that Act, the 1997/1998 Audit
12 was intended to ensure that all companies were paying rent to PacifiCorp for all poles
13 to which such companies were attached and to ensure that PacifiCorp's rental records
14 were accurate. In short, the 1997/1998 Audit was conducted in order to confirm the
15 foundation for PacifiCorp's records and update them. This foundation would then be
16 used to better manage third-party use of PacifiCorp facilities on a daily basis and to
17 inform subsequent Pole Attachment Audits.

18 As part of this effort, PacifiCorp conducted a series of joint use meetings in
19 1996, 1997, and 1999 in Utah and elsewhere to facilitate discussions and address
20 questions regarding joint use. Specifically, these meetings were conducted in order to
21 inform third parties about the proper permitting procedures to be followed when

1 attaching to PacifiCorp poles. Notices of these meetings were sent to numerous TCI
2 personnel, and at least four TCI employees, Mike Stockdale, Gary Goldstein, Bryan
3 Hatcher, and Roger Peterson, attended the utility meeting held on October 18, 1996, in
4 Salt Lake City. Those notices, along with two sign-in sheets for the meetings are
5 attached as Ex. PC 1.2. At these meetings, I explained to the attendees the purpose of
6 the 1997/1998 Audit and reminded them of licensees' obligations to PacifiCorp,
7 including the obligation to properly obtain permits. I also distributed copies of
8 PacifiCorp's distribution construction standards and reminded participants of their
9 obligation to adhere to NESC safety standards and PacifiCorp distribution construction
10 standards.

11 **Q. What was the scope of the 1997/1998 Audit?**

12 A. The scope of the 1997/1998 Audit was limited to determining which
13 communication companies were attached to which of PacifiCorp's joint use utility
14 poles and to which third-party poles PacifiCorp was attached. The 1997/1998 Audit
15 did not identify the number of attachments owned by each communications entity nor
16 did it assess compliance issues. In other words, the results of the 1997/1998 Audit
17 identified which companies maintained attachments on individual poles identified by
18 pole number.

19 **Q. What were the geographic areas covered by the 1997/1998 Audit?**

20 A. The geographic areas covered by the 1997/1998 Audit included Utah, the other
21 five states where PacifiCorp currently operates, and Montana.

1 **Q. Who performed the 1997/1998 Audit?**

2 A. The Pole Maintenance Company, pursuant to a contract entered into 1996. This
3 contract carefully specified the work that was to be performed and how the Pole
4 Maintenance Company was to perform that work. See, Ex. PC 1.3.

5 **Q. How did PacifiCorp collect, record and maintain the results of the 1997/1998**
6 **Audit?**

7 A. The contractors hired by PacifiCorp to conduct the 1997/1998 Audit had hand-
8 held devices that were used to collect data. In addition, the contractors had access to
9 hard copies of all of PacifiCorp's system maps. The contractors would mark up the
10 maps and make entries into the hand-held devices, which in turn compiled the data into
11 a text file. The contractors in the 1997/1998 Audit went pole by pole to each
12 individual joint use pole. At the completion of the 1997/1998 Audit, all of the data was
13 carefully input by PacifiCorp into its JTU system by converting the text file provided
14 by the contractor and uploading the information into JTU. The JTU system is the name
15 given to PacifiCorp's data base containing joint use attachment information. JTU
16 stands for "Joint Use."

17 **Q. Please describe what other information is contained in the JTU system in addition**
18 **to the 1997/1998 Audit data results.**

19 A. The JTU system is utilized by PacifiCorp on a daily basis as its primary means
20 to track the permitting and use of its joint use poles. All permitted attachment
21 information is carefully entered by PacifiCorp into the JTU system on a regular basis

1 as a means to ensure that PacifiCorp's joint use pole records remain current. In short,
2 the JTU system contains all data concerning third-party attachments to PacifiCorp's
3 facilities, including utility codes for attaching companies, attachment information for
4 specific poles in specific regions, a list of PacifiCorp's poles by pole number, records
5 of violations by third party attachers and related corrective action, billing data, and
6 unauthorized attachment data. JTU also contains records of any subsequent
7 authorization for unauthorized attachments. Finally, JTU contains a record of permits
8 for attachments that have been authorized by PacifiCorp since 1996, as well as
9 notifications to licensees from PacifiCorp for other work required on their part, such as
10 transfers and safety corrections. JTU was activated in August of 1996. When JTU was
11 created, all records pertaining to joint use maintained in a previous data base were
12 transferred into JTU.

13 **Q. Were any unauthorized attachments charges assessed as a result of the 1997/1998**
14 **Audit?**

15 A. PacifiCorp did not assess any charges for unauthorized attachments in Utah that
16 were detected as a result of the 1997/1998 Audit. However, as a result of the
17 1997/1998 Audit, PacifiCorp was able to collect pole attachment rental fees for a
18 substantial number of poles being used by third parties who had not been making pole-
19 attachment rental payments to PacifiCorp for such attachments prior to the Audit.

1 **Q. Did the total amount of annual rental fees paid by Comcast's predecessors**
2 **increase as a result of additional attachments being discovered in the 1997/1998**
3 **Audit?**

4 A. Yes. Although, it is not possible to extract reports providing a snapshot of the
5 exact data existing in JTU at the conclusion of the 1997/1998 Audit, I know that the
6 total number of documented attachments increased significantly as a result of the
7 1997/1998 Audit.

8 **Q. Did Comcast's predecessors ever complain to PacifiCorp about the results of the**
9 **1997/1998 Audit or the total amount of annual rental fees it was required to pay?**

10 A. No. Comcast never questioned the accuracy of the 1997/1998 Audit or the total
11 amount of attachment fees it was being charged.

12 *B. The 2002/2003 Audit*

13 **Q. What was the purpose of the 2002/2003 Audit?**

14 A. The purpose of the 2002/2003 Audit was to identify the ownership of all third-
15 party attachments to PacifiCorp's poles, the type of each attachment, and the location
16 of each attachment. A second purpose of the 2002/2003 Audit was to determine
17 whether third-party attachments were in compliance with the requirements of
18 PacifiCorp's Distribution Construction Standards, the National Electric Safety Code or
19 General Order 95, in addition to state or federal standards that may exceed all of the
20 preceding. Finally, PacifiCorp also sought to identify its own attachments to third-
21 party poles during the 2002/2003 Audit (as distinct from an audit to determine

1 PacifiCorp's compliance with the National Electrical Safety Code). No costs for this
2 aspect of the Audit were invoiced to third-party attachers.

3 **Q. What were the motivations leading to the 2002/2003 Audit?**

4 A. There were several motivations for the 2002/2003 Audit. A primary motivation
5 was the increasing number of complaints from PacifiCorp field personnel about
6 possible unauthorized attachments being made to PacifiCorp's infrastructure and
7 unsafe practices being employed by third-party attachers, primarily Comcast. In
8 addition, the level of growth that had taken place in Utah, partly in conjunction with
9 the 2002 Olympics, created a flurry of telecommunications activity that PacifiCorp had
10 reason to believe was not properly permitted. Finally, PacifiCorp's T&D Infrastructure
11 had been prompted by regulators to ensure that all costs and revenue associated with
12 joint use activities were being fully recovered.

13 **Q. What were the geographic areas covered by the 2002/2003 Audit?**

14 A. The geographic areas covered by the 2002/2003 Audit were to be all of
15 PacifiCorp's service areas within the states of Utah, Washington, Oregon, California,
16 Idaho and Wyoming.

17 **Q. Who conducted the 2002/2003 Audit?**

18 A. PacifiCorp hired Osmose as the contractor to perform the 2002/2003 Audit.

19

1 **Q. How did PacifiCorp select Osmose as its contractor to perform the 2002/2003**
2 **Audit?**

3 A. In July of 2002, PacifiCorp distributed a request for proposals (“RFP”) to
4 qualified contractors to perform an inventory audit of PacifiCorp facilities throughout
5 the service territory. As a result of the RFP process, Osmose was chosen as the
6 contractor for the 2002/2003 Audit.

7 **Q. Was Comcast ever informed of PacifiCorp’s intent to conduct the 2002/2003**
8 **Audit in Utah?**

9 A. Yes. Comcast was well aware of PacifiCorp’s intent to audit all of its pole
10 plant. As a member of Oregon’s Joint Use Task Force (“Oregon Task Force”), I was in
11 bi-weekly contact with Comcast’s predecessor, AT&T, which was also a member of
12 the Oregon Task Force. At some point during the Oregon Task Force’s meetings, I
13 informed AT&T/Comcast and other companies present that PacifiCorp would be
14 conducting a system-wide audit of its entire pole plant. I also discussed the intention to
15 perform the Audit with Mike Sloan, inside counsel for AT&T. At no time did any
16 AT&T representative contact me or any other employees in T & D Infrastructure to
17 request to participate in the audit process. In fact, only one company, Qwest
18 Communications, expressed an interest in participating in the audit and actually did so
19 by accompanying Osmose employees in the field.

20

1 **Q. What else did PacifiCorp do to notify AT&T or Comcast of its intention to**
2 **conduct the 2002/2003 Audit in Utah?**

3 A. In addition to the conversations I had, PacifiCorp notified Comcast by letter of
4 its intent to conduct an audit 30 days before it commenced the audit in areas throughout
5 Utah (except Layton). James Coppedge sent letters to Comcast to this effect for the
6 following areas: Ogden (letter sent Feb. 3, 2003), American Fork and Layton (letter
7 sent Dec. 30, 2002), Jordan Valley (letter sent Feb. 24, 2003), Salt Lake City metro
8 area (letter sent Mar. 31, 2003), and Tooele and Park City (letter sent Oct. 8, 2003).
9 Each letter advised Comcast that, upon completion of the audit, PacifiCorp would
10 notify Comcast of any unauthorized attachments. Ex. PC 1.4. Mr. Coppedge further
11 advised Comcast that it would be invoiced according to the terms of the Agreement.

12 **Q. Are policies and procedures for PacifiCorp's audits included in any contract or**
13 **agreement between the parties?**

14 A. The policies and procedures with respect to the inspections, audits or surveys of
15 pole attachments are contained in the 1999 Agreement. Specifically, Section 2.21
16 provides that PacifiCorp has the right to charge licensees for the expense of any field
17 inspections.

18 **Q. How was the 2002/2003 Audit performed?**

19 A. Osmose was tasked with collecting data associated with the following: the
20 specific licensee attachment, types of equipment, the height of the attachment, any
21 violations associated with the licensee, pole tag information that identifies the pole,

1 GPS coordinates and photograph of the pole in its current condition. Fielders were
2 required to physically visit every distribution pole to obtain the required information.
3 The fielders would input data they collected into a handheld device. Once the data
4 collection was completed and submitted to Quality Control (“QC”), the data was sent
5 electronically to PacifiCorp.

6 **Q. How is the data collected from the 2002/2003 Audit used by PacifiCorp?**

7 A. The data from the 2002/2003 Audit is used by PacifiCorp to (1) ensure that
8 third-party attachments are in compliance with the requirements of PacifiCorp’s
9 Distribution Construction Standards, the National Electrical Safety Code or General
10 Order 95, whichever is applicable, in addition to state or federal standards that exceed
11 all of the preceding; (2) to identify unauthorized attachments for the purpose of
12 ensuring that PacifiCorp is billing third-parties for all attachments; and (3) to ensure
13 that PacifiCorp has an accurate record of the attachments on its pole for purposes of
14 proper plant management.

15 **Q. How did Osmose and PacifiCorp ensure the accuracy of the 2002/2003 Audit and**
16 **resulting data?**

17 A. Prior to the data being submitted to PacifiCorp, Osmose was required to do a
18 random quality-control sample of 10% of the poles that it inspected in order to ensure
19 accuracy. In addition, PacifiCorp conducted a random sample of 5% of the poles to
20 validate the integrity of the data. Work that failed the Customer Acceptance Quality
21 Control (“CAQC”) was reworked by Osmose and resubmitted to PacifiCorp with

1 corrections. In addition, PacifiCorp's contract with Osmose obligated Osmose to
2 maintain an accuracy rate of no less than 97% in the Audit. To ensure the necessary
3 high level of quality control for the Audit, PacifiCorp contracted with Volt for
4 temporary contract employees to provide quality control.

5
6 **V. JOINT USE PERMITTING PROCEDURES**

7 **Q. Please describe the current process and procedures for filing joint use**
8 **applications.**

9 A. PacifiCorp's current permitting process in Utah is the same throughout the
10 state. PacifiCorp has developed an application form for all communication company
11 requests for activity relating to PacifiCorp poles. The application is filled out by the
12 licensee (entity requesting to attach) and submitted to the Administrative Services
13 Coordinator ("ASC") assigned to that particular region. This submission may be
14 received via fax, e-mail or U.S. Mail. The ASC then verifies the information on the
15 application and ensures that all key fields are filled out. If any key information such as
16 the mapstring (geographic location numbers), pole number, or address is missing, the
17 ASC then requests that the licensee provide the missing information. When all of the
18 key fields are filled out, the ASC then sets up a request for inspection.

19 The application is sent to a Utility/Field Specialist who will perform an initial
20 inspection to determine the existing integrity of the pole and whether the pole has
21 adequate clearance and can accommodate the additional load that the proposed

1 attachment will place upon the pole. Once the inspection process is complete, the
2 results are communicated back to the licensee by the ASC. If the pole has the space
3 and can accommodate the load of the proposed attachment, it is approved. If the pole
4 does not have the space or cannot accommodate the load, the licensee is given the
5 option to approve the make-ready work required to allow the licensee to attach. It is
6 required that make-ready work be completed before approval is given. Once the
7 licensee is given permission to attach, PacifiCorp waits 90 days, unless a response is
8 received sooner from the Licensee stating the work is complete, to perform the post-
9 inspection to verify that the work was completed as proposed and meets all safety and
10 construction requirements. This process is dependent upon a licensee's adherence to
11 this process and applicable contract requirements.

12 **Q. Where are the process and procedures for filing joint use permit applications set**
13 **forth?**

14 A. The process and procedure for filing applications are set forth in the 1999
15 Agreement; the application form was part of the Agreement. The application form was
16 changed in early 2004, and the new form requires the same information as the old form
17 and a greater level of engineering detail. Attached as Ex. PC 1.5 is the new application
18 form, along with the notification letter sent to third parties alerting them to the change
19 in the form, instructions on completing the form, and an example of a completed form.

20

1 **Q. What was the former process and procedure for filing joint use applications?**

2 A. The former process involved sending the applications to the local district office
3 of PacifiCorp. The local office determined if the application required a pre-inspection
4 and then communicated its approval or make-ready recommendation to the Joint Use
5 of Facilities department located in Portland, Oregon. The application was processed
6 and the Licensee was communicated with by utilizing the same process and systems
7 currently used to track and maintain pole attachment applications. This process
8 originated as early as the 1950's or 60's and was centralized in 2002 when T & D
9 Infrastructure was created to handle permit application processing in PacifiCorp's
10 Portland, Oregon office.

11 The changes to the permitting process were ministerial in nature and did not
12 create a new permitting requirement. Pursuant to the former and the current
13 procedures, third parties wishing to attach to PacifiCorp's facilities are required to seek
14 authorization for such attachments through permit applications requiring approval by
15 PacifiCorp personnel. Indeed, Article II of the 1999 Agreement clearly sets forth the
16 requirement that Comcast and its predecessors are required to seek authorization for
17 attachments to PacifiCorp's facilities. Authorization is required for both underlying
18 attachments and attachments overlashed to existing attachments. Obtaining a permit
19 for an overlash attachment does not excuse any lack of authorization for the underlying
20 attachment. Section 2.3 of the 1999 Agreement provides that licensees do not have the

1 right to place additional equipment upon a pole used by it pursuant to the Agreement
2 without making an application for and receiving permission to do so.

3 **Q. Comcast may contend that joint use permits were orally or informally approved**
4 **and not recorded. Do you have an opinion about such a contention?**

5 A. Such a contention may be based on a conversation alleged to have taken place
6 in 1994 or 1995 between Mark Defendall (who worked for Insight at the time) and a
7 PacifiCorp employee identified by Comcast as possibly being Clyde Latta. During the
8 training sessions I conducted in 1996 throughout PacifiCorp's service areas, I made it
9 clear that formal permitting requirements were to be followed. In any event, the
10 written terms of the 1999 Agreement clearly supersede conversations alleged to have
11 occurred in 1994 or 1995.

12 **Q. During your tenure in PacifiCorp's Joint Use Department (now T&D**
13 **Infrastructure), were joint use permits ever granted to Comcast orally or**
14 **informally?**

15 A. In 1996, I personally went into the field and instructed PacifiCorp field
16 personnel on the proper permitting procedures to be followed in accordance with
17 PacifiCorp standard pole attachment contracts. I also held numerous meetings or
18 workshops with attaching entities during 1996 in order to inform them about the proper
19 permitting procedures to be followed when attaching to PacifiCorp poles. Ex. 1.2. As
20 explained in my previous answers, these procedures did not provide for informal or

1 oral approvals. I have never granted authorizations orally or informally, nor have I
2 ever condoned the informal or oral granting of authorization.

3 **Q. How did PacifiCorp record and maintain data as to joint use permits that had**
4 **been granted?**

5 A. PacifiCorp utilized the JTU database to track the permitting and use of its joint
6 use poles.

7 **Q. Are there any fees associated with filing a joint use application?**

8 A. Yes, in April 2002 PacifiCorp started charging licensees application fees. The
9 applications fee was revised in October 2002. In early 2002, PacifiCorp decided that
10 application fees should be charged because the increasing telecommunications and
11 joint use activity occurring in PacifiCorp's service areas was requiring PacifiCorp to
12 expend additional resources at greater costs in order to process and monitor permit
13 applications.

14

15 **VI. UNAUTHORIZED ATTACHMENTS**

16 **Q. What is an unauthorized attachment?**

17

18 A. An unauthorized attachment is an attachment that is made to a PacifiCorp
19 facility without first obtaining a permit demonstrating PacifiCorp's approval for such
20 attachment.

21 **Q. How does PacifiCorp identify unauthorized attachments?**

22

A. The JTU system is employed by PacifiCorp, in part, to track pole attachment
23 authorizations. There would be no record of an unauthorized attachment in JTU. This

1 indicates that such attachment was placed on PacifiCorp's facilities without the filing
2 of a permit application.

3 **Q. What are the effects on PacifiCorp's system of unauthorized attachments?**

4 A. Because there is no record of an unauthorized attachment, PacifiCorp is unable
5 to collect rental fees for such an attachment or perform necessary safety inspections
6 related to the attachment prior to its detection.

7 **Q. Why are unauthorized attachments a concern to PacifiCorp?**

8 A. Unauthorized attachments place the reliability and safety of PacifiCorp's
9 electric system in jeopardy because there is no mechanism whereby PacifiCorp can
10 ensure that the attachments were made or maintained in accordance with applicable
11 safety and construction standards. If an entity attaches to PacifiCorp's facilities
12 without authorization, PacifiCorp is unable to make an initial determination as to
13 whether the relevant pole meets the standards of the applicable safety codes, including
14 the National Electrical Safety Code. Such precautions may include weight and wind-
15 loading studies and rearranging any pre-existing attachments of other licensees to
16 ensure proper separation from energized lines. Furthermore, because PacifiCorp is
17 unable to collect the appropriate rental fees for unauthorized attachments prior to
18 detection, the electric ratepayers subsidize such attachments and any resulting damage
19 to PacifiCorp's infrastructure caused by such attachments. Unauthorized attachments
20 also impose burdens on the property upon which PacifiCorp's facilities are located in
21 excess of what may be allowed by public authorities and private property owners.

1 **Q. Please describe the safety rules applicable to licensees on PacifiCorp's poles.**

2 A. Licensees are required to adhere to the safety standards contained in
3 PacifiCorp's Distribution Construction Standards and the National Electrical Safety
4 Code or General Order 95 (which is applicable in California), in addition to state or
5 federal standards that exceed all of the preceding.

6 **Q. Why are safety violations a concern to PacifiCorp?**

7 A. Safety violations present a significant threat to the reliability and safety of
8 PacifiCorp's pole plant. Safety violations also put PacifiCorp workers, the licensee's
9 workers and all contractors at risk, as well as the general public. For example,
10 PacifiCorp has become aware that a motorcyclist in Utah sustained serious injuries
11 alleged to have resulted from a Comcast cable line being strung too low. Further,
12 safety violations pose a risk to the attachments of other licensees and can affect the
13 reliability of their services.

14

15 **VII. THE RESULTS OF THE 2002/2003 AUDIT WITH REGARD TO COMCAST**

16 *A. Unauthorized Attachments*

17 **Q. In addition to other purposes, did PacifiCorp utilize the data from the 2002/2003**
18 **Audit to identify unauthorized attachments on its joint use poles?**

19 A. Yes.

20

1 **Q. What process or procedure was used by PacifiCorp to identify unauthorized**
2 **attachments on its joint use poles?**

3 A. Once Osmose completed the audit for a particular area, T& D Infrastructure
4 employees compared the data results from the 2002/2003 Audit against existing
5 records of pole attachments maintained in the JTU mainframe. Any reported
6 discrepancies between the pre-existing attachment in the JTU system and the data
7 constituting the results of the 2002/2003 Audit provided the basis to identify
8 unauthorized attachments. PacifiCorp used 1998 as the baseline year for billing for
9 unauthorized attachments.

10 Data gathered from the 2002/2003 Audit was uploaded into JTU for
11 comparison to the data maintained in JTU, which dated back to 1996 and includes the
12 1997/1998 Audit. A Mismatch Report was then generated from JTU. The Mismatch
13 Report identified companies whose attachment records did not exist at all for a
14 particular PacifiCorp pole identified by pole number within JTU, but whose
15 attachments were detected on the poles as a result of the 2002/2003 Audit. In other
16 words, the Mismatch Report identified particular poles where there was a complete
17 absence of a company's attachment as early as 1996, but where that company now had
18 an attachment.

19

1 **Q. As a result of this process, did PacifiCorp identify any unauthorized attachments**
2 **attributable to Comcast?**

3 A. Yes, PacifiCorp identified 15,312 poles with unauthorized attachments
4 attributable to Comcast in the American Fork, Layton, and Ogden districts of Utah.
5 PacifiCorp has also identified 20,127 additional unauthorized attachments by Comcast
6 in the districts of Jordan Valley, Metro, Park City and Tooele. Data continues to be
7 processed in four other districts where Comcast maintains attachments.

8 **Q. What did PacifiCorp do once it identified unauthorized attachments attributable**
9 **to Comcast?**

10 A. PacifiCorp issued invoices to Comcast for the unauthorized attachments that
11 were identified during the 2002/2003 Audit. From February 5, 2003 through
12 September 11, 2003, Laura Raypush sent numerous invoices to Comcast for the
13 unauthorized attachments that were identified during the 2002/2003 Audit of the
14 American Fork, Layton, and Ogden Utah service districts.

15 **Q. Would the unauthorized attachment invoices that were sent to Comcast contain**
16 **identification information to Assist Comcast in evaluating the unauthorized**
17 **attachment charges?**

18 A. Yes. For every pole identified in the invoices, PacifiCorp provided the GPS
19 location for longitude and latitude, as well as PacifiCorp's map string number and pole
20 identification number. The invoices also list the number of unauthorized attachments
21 found on each pole. The letter accompanying the invoice invited Comcast to refute the

1 unauthorized attachment charge by providing a copy of signed permits to PacifiCorp
2 indicating the attachments at issue were authorized. Further, PacifiCorp requires that
3 all applications for permits identify PacifiCorp's map string number and pole number
4 for the pole that is the subject of the application. Had Comcast actually submitted
5 permit applications or retained its applications, Comcast would have been able to find
6 poles even without the additional information provided in the invoices. As a
7 representative example of the data provided with every invoice sent to Comcast, I have
8 included Ex. PC 1.6, which includes a cover February 5, 2003, letter sent to AT&T, an
9 invoice for the Layton district, and supporting documentation underlying the charges
10 set forth in the invoice.

11 **Q. What is the applicable charge for an unauthorized attachment?**

12 A. Section 3.2 of the Agreement authorizes PacifiCorp to charge \$60.00 per pole
13 per year for unauthorized attachments until such time as the attachment is removed or
14 proper authorization is obtained. This amount is in addition any back-rent that is due
15 to PacifiCorp for the period of the attachment.

16 **Q. How did PacifiCorp arrive at the \$250.00 per unauthorized attachment charge?**

17 A. PacifiCorp reviewed the 1999 Agreement and determined that a charge of
18 \$60.00 per pole per year was applicable in addition to five years back rent at a rate of
19 \$4.65 per year. Based upon the most recent data from the 1997/1998 Audit, PacifiCorp
20 determined that these attachments were most likely made at least four to five years
21 prior to discovery during the 2002/2003 Audit. Assuming an average of five years for

1 the unauthorized period prior to discovery, this information equated to a maximum
2 potential initial charge of \$323.25 per unauthorized attachment, including back rent,
3 plus interest and an on-going \$60.00 per pole per year charge until such time that
4 application was made by Comcast and authorized by PacifiCorp for such attachments.

5 In consideration of PacifiCorp's and Comcast's collaborative involvement in
6 the Oregon Task Force that voted in consensus to implement just and reasonable
7 unauthorized attachment charges of \$250.00, PacifiCorp opted to impose the lesser of
8 the two charges since Comcast had agreed to the \$250.00 charge in Oregon, and it was
9 consistent with the 1999 Agreement.

10 **Q. Did PacifiCorp provide Comcast an opportunity to refute any unauthorized**
11 **attachment charges?**

12 A. Yes, the letters sent with each invoice indicated that Comcast had 30 days to
13 refute any charges it considered to be erroneous. In addition, the letters sent with each
14 invoice advised that a proper method for Comcast to demonstrate that the charges had
15 been assessed in error would be to send PacifiCorp a copy of the signed permits
16 authorizing the attachments. See Ex. PC 1.6.

17 **Q. Did Comcast submit any refutation or copies of signed permits?**

18 A. No.

19

1 **Q. Did PacifiCorp encounter any difficulty in obtaining payment from Comcast for**
2 **the unauthorized attachment invoices?**

3 A. Yes. Several of Comcast's invoices for the unauthorized attachments became
4 overdue, some as much as 90 days. As a result, Laura Raypush, who works for me as a
5 Supervisor of Contracts and Administrative Services, sent a letter to Comcast on June
6 30, 2003, notifying Comcast of its past-due invoices. See Ex. PC 1.7. Due to the lack
7 of response, Ms. Raypush advised Comcast that PacifiCorp would cease granting any
8 applications for the use of PacifiCorp's poles until such time as the matter reached a
9 resolution. T & D Infrastructure employees had approximately three or four additional
10 communications with Comcast concerning payment of the overdue invoices. During
11 some of those communications, PacifiCorp provided Comcast with the opportunity to
12 come to PacifiCorp's offices to do a "desk-top audit" of the attachments instead of
13 having to expend resources to go out into the field to do a complete audit from a blank
14 slate.

15 **Q. What would have been the benefit of a "desk-top audit?"**

16 A. A "desk-top audit" would have afforded Comcast the opportunity to view the
17 2002/2003 Audit information from our computer and print out any potential
18 discrepancies so it could then verify the results in the field. Comcast advised me that
19 they thought the offer was a good idea, but they never took advantage of it.
20 Information available to Comcast through this process would have included digital

1 photographs of each pole and attachment, as well as all supporting data of attachment
2 height, safety conditions, and location attributes.

3 **Q. Did PacifiCorp and Comcast pursue methods to conclude the invoice dispute and**
4 **recommence the joint use application review process?**

5 A. In mid-July 2003, PacifiCorp stopped processing pending pole attachment
6 applications submitted by Comcast as a result of Comcast's ignoring repeated requests
7 by PacifiCorp to either pay the charges for unauthorized attachments or to provide
8 evidence that the charges had been assessed in error. PacifiCorp, however, never
9 stopped performing inspections involved with application processing. To allow
10 PacifiCorp to continue processing applications, on September 8, 2003, PacifiCorp and
11 Comcast entered into a letter agreement ("Letter Agreement") whereby Comcast
12 agreed to pay PacifiCorp \$3,828,000.00 for its outstanding pole attachment charges,
13 and in exchange PacifiCorp promised to immediately resume processing Comcast's
14 pole attachment applications, so long as Comcast did not become more than 30 days
15 past due on any invoice. A true and correct copy of the parties' Letter Agreement is
16 attached as Ex. PC 1.8. In addition, the Letter Agreement provided Comcast an
17 additional 60 days in which it could identify poles within the Ogden, American Fork
18 and Layton, Utah service districts where Comcast had documentation that the
19 attachments PacifiCorp identified as unauthorized: (1) are subject to a valid installation
20 permit granted by PacifiCorp to Comcast, AT&T, or any other of their predecessors;

1 (2) are the personal property of an entity other than Comcast; or (3) they do not exist.

2 Again, Comcast never provided any such evidence.

3 **Q. After PacifiCorp and Comcast entered into the Letter Agreement, was Comcast**
4 **invoiced for any further unauthorized attachments uncovered during the**
5 **2002/2003 Audit?**

6 A. Yes. Laura Raypush sent Comcast invoices from September 11, 2003 through
7 June 25, 2004 for unauthorized attachments identified in the Layton, Metro, Park City,
8 Tooele, and Jordon Valley districts.

9 **Q. Are any of these invoices outstanding?**

10 A. Yes.

11 **Q. Has Comcast ever offered any documentation to PacifiCorp to demonstrate that**
12 **unauthorized attachment charges were assessed in error?**

13 A. To date, Comcast has not provided any PacifiCorp employee with any permits
14 or other evidence to demonstrate that a particular attachment billed as unauthorized
15 was, in fact, authorized. Through discovery in the present case, Comcast has provided
16 permit documentation for a number of overlash attachments. It, however, failed to
17 document that the underlying attachments were properly permitted.

18 James Coppedge carefully analyzed the data provided by Comcast pursuant to
19 discovery in this proceeding and discovered that virtually all of the documentation
20 provided by Comcast was unrelated to the invoices sent by PacifiCorp for unauthorized
21 attachments found as a result of the 2002/2003 Audit in American Fork, Layton, and

1 Ogden. Mr. Coppedge did ascertain that of the 1,809 documents provided by Comcast
2 relating to American Fork, Layton, and Ogden, only 302 corresponded to poles for
3 which Comcast was invoiced in those areas. However, only seven of those documents
4 were applications dated prior to the date of the invoices for unauthorized attachments.

5 **Q. Has Comcast ever contacted PacifiCorp regarding the results of the 2002/2003**
6 **Audit?**

7 A. Yes. It is my understanding that in April, 2003, Kaei Majors of Comcast
8 contacted James Coppedge to discuss the results of PacifiCorp's 2002/2003 Audit. As
9 I understand that discussion, Mr. Majors expressed surprise that Comcast had been
10 found to be unauthorized on as many as 15,312 poles. Mr. Coppedge advised Mr.
11 Majors that if Comcast could produce any application or permit records for those
12 unauthorized attachments, PacifiCorp would revise the number of unauthorized
13 attachments. Mr. Majors stated that Comcast would perform its own audit and would
14 get back to Mr. Coppedge on the details of that audit.

15 **Q. Did Comcast ever perform its own audit of PacifiCorp's results?**

16 A. Yes, I understand that Comcast hired its own contractor, MasTec Services of
17 Canada ("MasTec"), to verify PacifiCorp's 2002/2003 Audit results.

18

1 **Q. Has Comcast ever provided PacifiCorp the results of the MasTec audit to refute**
2 **the results of the 2002/2003 Audit?**

3 A. No. Although MasTec contacted PacifiCorp on occasion to discuss the
4 2002/2003 Audit, prior to filing this action, Comcast never provided PacifiCorp with
5 any data from its audit of the poles in question.

6 **Q. Have you since come to learn the results of the MasTec Audit?**

7 A. Yes. Apparently, the MasTec Audit of the American Fork region confirmed the
8 accuracy of PacifiCorp's 2002/2003 Audit. It is my understanding that as a result of
9 this confirmation, Comcast halted any further audits performed by MasTec.

10 **Q. How did you become aware of this information?**

11 A. Through discovery in this proceeding, PacifiCorp has obtained internal
12 Comcast email correspondence from Steve Brown to Patrick O'Hare and Michael
13 Woods clearly stating that the audit performed by MasTec in the American Folk
14 district demonstrated the accuracy of the results obtained by PacifiCorp in the
15 2002/2003 Audit. Indeed, Mr. Brown determined that the verification audits should be
16 prevented from going forward "as it appears it would be a waste of Comcast funds due
17 to the accuracy of the records." See Ex. PC 1.9. Mr. Brown confirmed that he ordered
18 the MasTec audit be stopped in his deposition.

19

1 **Q. What amount does Comcast currently owe PacifiCorp for unauthorized**
2 **attachments?**

3 A. Comcast is currently past due for payments for unauthorized attachments an
4 amount totaling \$4,166,265.03.

5 *B. Safety Violations*

6 **Q. During the 2002/2003 Audit did PacifiCorp identify any safety violations**
7 **attributable to Comcast?**

8 A. Yes.

9 **Q. What types of safety violations were attributable to Comcast?**

10 A. Exhibit PC 1.10 is a matrix of safety violations attributable to Comcast. The
11 matrix lists the type of violation in one column and the number of occurrences in the
12 other column. Comcast's safety violations are an ongoing problem, as explained in the
13 testimony of Brian Lund.

14

15

VIII. AUDIT FEES

16 **Q. How did Osmose charge PacifiCorp for the 2002/2003 Audit?**

17 A. Osmose charged PacifiCorp \$12.27 per pole for joint use poles and \$3.25 per
18 pole for poles without joint use. The total estimated cost to PacifiCorp for the Utah
19 specific portion of Osmose's work to date is \$2,795,389.29. This amount reflects what
20 has been invoiced by Osmose to PacifiCorp to date. It does not reflect costs associated
21 with Volt contractors or costs related to PacifiCorp QC and staff time. The total cost to

1 PacifiCorp for the Utah portion of the 2002/2003 Audit is \$3,103,903.93.
2 Approximately 12% of this total is not passed on to third-party attachers, as such costs
3 are related to aspects of the audit conducted for PacifiCorp's internal benefit.

4 **Q. How did PacifiCorp determine how to allocate costs for the 2002/2003 Audit**
5 **among Comcast and third-party attachers?**

6 A. First, PacifiCorp allocated to itself all costs for the 2002/2003 Audit incurred in
7 determining PacifiCorp's attachments to third party poles and in capturing certain data
8 elements useful only to PacifiCorp. After paying the full amount of those costs,
9 PacifiCorp allocated the remaining balance of the costs for the 2002/2003 Audit *pro*
10 *rata* among all the licensees on PacifiCorp's pole plant based upon the total number of
11 applicable attachments that each licensee has. So, PacifiCorp charged Comcast
12 \$502,294.25 or \$13.25 per attachment, times 37,909 attachments, as its pro rata cost of
13 the 2002/2003 Audit in the Ogden, Layton and American Fork districts.

14 **Q. Has Comcast paid its share of the 2002/2003 Audit in the Ogden, Layton and**
15 **American Fork districts?**

16 A. On December 23, 2003, Comcast paid PacifiCorp \$374,299.25 related to its pro
17 rata cost of the 2002/2003 Audit in the Layton and Ogden districts. Comcast has not
18 paid any additional invoiced amounts since that time for its share of the 2002/2003
19 Audit in those districts.

20

1 **Q. Please summarize the important points of your testimony.**

2 A. Comcast has had many opportunities to properly document its attachments or to
3 refute the accuracy of PacifiCorp's data. Comcast has also twice voluntarily negotiated
4 arms'-length contracts requiring it either to obtain permission for attachments or pay
5 for unauthorized attachment charges. Despite these opportunities and commitments,
6 Comcast has repeatedly failed to live up to its obligations. PacifiCorp exercised
7 industry-leading care and attention to detail and used state-of-the-art technology in
8 managing and tracking its joint use processes and data and in complying with its side
9 of the parties' agreement. Clear contractual provisions and compelling policy concerns
10 regarding unauthorized attachments and safety violations require that Comcast account
11 for the uncontradicted evidence of unauthorized attachments.

12 **Q. Does this conclude your testimony?**

13 A. Yes it does.