
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

COMCAST CABLE COMMUNICATIONS,)	
INC.,)	
)	Docket No. 03-035-28
Claimant,)	
v.)	PREPARED REBUTTAL
)	TESTIMONY OF COREY
PACIFICORP, dba UTAH POWER,)	FITZ GERALD
)	FOR PACIFICORP
Respondent.)	
)	July 14, 2004
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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. Have you previously filed prepared direct testimony in this case?

A. Yes. I filed testimony and exhibits marked as Exhibits 1.0 through 1.10.

Q. Attached to your rebuttal testimony are Exhibits PC 1.12 through 1.14. Were these prepared by you or under your direction?

A. Yes.

Q. What areas will your testimony address?

A. My testimony will address PacifiCorp's application and permitting process, the contractual obligations that exist between Comcast and PacifiCorp and the inaccuracies presented in the initial testimony of Comcast's witnesses.

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I. THE CRUX OF THE DISPUTE BETWEEN PACIFICORP AND COMCAST

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Q. Have you read the direct testimony of Rodney Bell, Mark Defendall, Gary Goldstein, Michael Harrelson, Joanne Nadalin and Martin Pollock on behalf of Comcast in this proceeding?

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A. Yes, I have read their testimony.

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Q. Do you have any response to Comcast's witnesses' claims that PacifiCorp's permitting and attachment procedures were informal and even haphazard in the 1980s and 1990s?

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A. While there may be some truth to these allegations, they are irrelevant. Although the primary thrust of the testimony offered by Comcast concerns activity occurring prior to the 1996 training sessions, the 1997/1998 Audit and the 1999 Agreement, the practices during that period play no role in the current dispute over unauthorized attachments. Comcast's allegations of an informal permitting process prior to the 1997/1998 Audit have no effect on the reliability of the 2002/2003 Audit.

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Q. Why is that?

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A. As I explained in my direct testimony, the practices of Utah Power prior to the 1997/1998 Audit did not affect the results of the 2002/2003 Audit because the most recent audit used as a foundation the information collected in the 1997/1998 Audit. Any inconsistency in Utah Power or PacifiCorp's record keeping prior to 1996 was

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1 resolved as a result of the 1997/1998 Audit. In other words, the 1997/1998 Audit
2 created a “clean slate” for third-party attachers. Accordingly, Comcast is only being
3 asked to account for unauthorized attachments made after the 1997/1998 Audit. In
4 recognition of this fact, PacifiCorp is not seeking any unauthorized attachment charge
5 for periods prior to the 1997/1998 Audit.

6 PacifiCorp has explained in painstaking detail its record-keeping methodology
7 and demonstrated the lengths it goes to in order to maintain accurate and complete joint
8 use documentation. Comcast, on the other hand, had not presented any documentation
9 prior to bringing this action to demonstrate that it had submitted applications or
10 received authorization for any of the attachments invoiced as unauthorized as a result
11 of the 2002/2003 Audit. Then, during the discovery phase of this proceeding, Comcast
12 provided PacifiCorp with documents pertaining to its pole attachment activity on
13 PacifiCorp’s poles. However, a review of this documentation revealed only seven
14 applications dated prior to the date of the corresponding invoices for unauthorized
15 attachments.

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17 **II. COMCAST’S ADHERENCE TO PERMITTING OBLIGATIONS**

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19 **Q. What is the source of the appropriate application and permitting procedures that**
20 **Comcast was to adhere to when making attachments to PacifiCorp’s poles?**

1 A. The 1999 Agreement between PacifiCorp and AT&T. The permitting
2 procedures that Comcast is required to follow when making initial attachments and
3 overlash attachments to PacifiCorp's facilities are contained in Article II of the 1999
4 Agreement.

5 **Q. In your direct testimony, you stated that the permit application form required by**
6 **PacifiCorp was incorporated in the 1999 Agreement. When exactly did this**
7 **occur?**

8 A. The permit application form was included as Attachment B in the 1999
9 Agreement, which was signed by representatives of both PacifiCorp and AT&T on
10 December 20, 1999.

11 **Q. Was this form made available to Comcast or its predecessors prior to the signing**
12 **of the 1999 Agreement?**

13 A. Yes. I circulated the form in 1996 when I conducted utility meetings
14 throughout PacifiCorp's service area, including Utah. As I stated in my initial
15 testimony, employees of Comcast's predecessor, TCI, received written notice of the
16 utility meetings and attended the meetings conducted in Utah. See Ex. PC 1.2. At
17 these meetings, I outlined the permitting requirements contained in the standardized
18 agreement that eventually became the 1999 Agreement. I also provided copies of the
19 application form to TCI employees and informed them that PacifiCorp was requiring
20 that these forms be used when making attachments to PacifiCorp's poles. In fact, a
21 TCI employee requested that PacifiCorp provide these forms in packets of 50-100,

1 rather than individually, to make it easier for TCI contractors in the field to complete
2 applications in a timely fashion. PacifiCorp agreed that this was a good idea and
3 provided the packets of applications to TCI employees within 30 days of the request.

4 Upon receiving reports from PacifiCorp employees in the field that Comcast's
5 predecessors were continuing to ignore PacifiCorp's established permitting
6 requirements, I again conducted training for third-party attachers through a series of
7 utility meetings in 1999 and again provided copies of the application form.

8 **Q. Mr. Bell testified that, when he became an Upgrade Project Manager for Comcast**
9 **in 1999, there was no formal permitting process in place. Is this an accurate**
10 **statement?**

11 A, First, I am unsure what criteria Mr. Bell uses to distinguish between an informal
12 process and a formal one. Second, as I have said, there was a process in place and that
13 process was confirmed in writing in the 1999 Agreement. Even if Comcast refused to
14 acknowledge the permitting process firmly established no later than 1996, it must be
15 bound by the permitting procedures set forth in the 1999 Agreement. In his testimony,
16 Mr. Bell refers to his "understanding" of PacifiCorp's permitting and application
17 procedures. In light of his direct testimony, his "understanding" of these requirements
18 was apparently not derived from an examination of AT&T's contractual obligations as
19 contained in the 1999 Agreement.

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1 **Q. How would you explain Comcast's lack of understanding of PacifiCorp's**
2 **permitting requirements?**

3 A. I cannot explain it. It is difficult to believe that no one at Comcast or its
4 predecessors had any knowledge of PacifiCorp's joint use application and permitting
5 procedures. As I stated, I canvassed PacifiCorp's Utah service area between 1996 and
6 1999 and conducted utility meetings in which I educated third-party attachers as to the
7 appropriate application and permitting procedures to be followed when attaching to
8 PacifiCorp's poles. I made it clear at these meetings that questions regarding joint use
9 should be directed to me.

10 Written notice of these utility meetings was provided to numerous TCI
11 employees, including Mr. Goldstein. In fact, there is a "sign-in sheet" recording his
12 attendance, along with five other TCI employees, at one of the utility meetings. When
13 asked about these meetings in his deposition, Mr. Goldstein had no recollection or
14 awareness that these meeting ever took place.

15 Moreover, the 1999 Agreement restated the terms of the parties' relationship
16 with regard to joint use, and my reading of the Comcast's witnesses' direct testimony is
17 that the 1999 Agreement played no role in the way they carried out their duties on
18 behalf of Comcast.

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1 **Q. Did PacifiCorp provide its employees with training with regard to the terms of**
2 **the 1999 Agreement?**

3 A. Yes. Whenever there were new hires within T&D Infrastructure (or the Joint
4 Use Department), I would train employees as to the terms contained in PacifiCorp's
5 standard template pole attachment agreements, which is the same template that was
6 executed by AT&T in 1999.

7 **Q. How was this training conducted?**

8 A. During training sessions which lasted four hours, I would review the provisions
9 of the standard template agreement and explain the meaning of each provision and how
10 each provision applied to the particular trainee's job function.

11 **Q. To the best of your knowledge, did Comcast or its predecessors conduct similar**
12 **training with its employees working in joint use related positions?**

13 A. I do not believe that Comcast or its predecessors properly trained its employees
14 as to the terms and conditions existing prior to, then confirmed, in the 1999 Agreement
15 or the permitting requirements contained in that agreement.

16 **Q. How did you come to this conclusion?**

17 A. First, both Mr. Bell and Mr. Pollock stated in their initial testimony that they
18 were not aware of the existence of PacifiCorp's application form until it was brought to
19 their attention by a PacifiCorp employee. Further, in his deposition testimony, Mr.
20 Pollock admitted that he received no training from Comcast or its predecessors with
21 regard to his role as permit coordinator. In fact, he went on to say that neither his

1 predecessor nor his current supervisor provided him with any training. Rather, he
2 “trained himself.”

3 In addition, there are several e-mails from Mr. Pollock and another Comcast
4 permit coordinator, Sheryl Pehrson, indicating that neither of them was aware of or
5 understood Comcast’s contractual obligations to follow the permitting procedures set
6 forth in the 1999 Agreement. On October 29, 2002, Sara Johnson sent an e-mail to Mr.
7 Pollock and Ms. Pehrson explaining that pursuant to the 1999 Agreement, Comcast
8 was allowed to make an initial attachment to PacifiCorp’s poles on the condition that it
9 submit an application within 24 hours of making the attachment. In Ms. Pehrson’s
10 response, she expressed relief to “finally know how the process works” and admitted
11 that she and Mr. Pollock had up until that time “been flying by the seat of their pants.”
12 See Ex. PC 1.12.

13 On November 11, 2002, Mr. Pollock contacted Ms. Johnson in order to assist
14 him in understanding the requirements he must adhere to as Comcast’s Permit
15 Coordinator. In that request, Mr. Pollock inquired about the “rules/procedures/
16 requirements for overlashing to existing aerial lines.” In her response, Ms. Johnson
17 correctly directed Mr. Pollock to Section 2.3 of the 1999 Agreement and informed him
18 that applications for attachment were required for overlashed attachments. Further, she
19 referenced that she had sent Ms. Pehrson a copy of this provision in response to a
20 previous inquiry. Exhibit PC 1.13 contains a copy of this correspondence.

1 Mr. Pollock also testified in his deposition that while he was aware of the 1999
2 Agreement between PacifiCorp and AT&T, he had not seen it. Having reviewed the
3 depositions and direct testimony of the Comcast personnel in this case, I can only
4 conclude that no one from Comcast reviewed the requirements of the 1999 Agreement
5 with those employees responsible for its administration. In fact, Mr. Pollock and Mr.
6 Bell continue to misconstrue the appropriate permitting procedures

7 Mr. Pollock's testimony indicates that he failed to review the contractual
8 provisions directly related to his job responsibilities, even after these individual
9 provisions were identified for him by Ms. Johnson. However, Mr. Pollock, in his
10 direct testimony, attempted to describe the application and permitting requirements
11 contained in that agreement.

12 **Q. In that direct testimony, did Mr. Pollock accurately describe PacifiCorp's**
13 **permitting requirements, as restated in the 1999 Agreement?**

14 A. No. Mr. Pollock was incorrect in asserting PacifiCorp had no pole attachment
15 application requirement prior to 2001. Mr. Pollock appears to base this conclusion
16 solely on the fact that he rarely spoke to Joyce Russell prior to 2001. This assertion
17 makes no sense. As Ms. Russell states in her Rebuttal Testimony, she was not
18 employed at PacifiCorp until August of 2001 and would not have spoken to Mr.
19 Pollock about PacifiCorp's permitting procedures prior to that time. Mr. Pollock also
20 states that he did not become aware of the permit application form required by
21 PacifiCorp until 2001, when Katie Stoll informed him that PacifiCorp had a permitting

1 application process that PacifiCorp wanted Comcast to use. This cannot be an accurate
2 statement because Ms. Stoll was not employed by PacifiCorp until late 2002 and did
3 not contact Mr. Pollock until December 2002. See Ex. PC 1.14.

4 Mr. Pollock further mischaracterized the permitting requirements set forth in
5 the 1999 Agreement by claiming that Comcast has permission to overlash its facilities
6 within 24 hours of making an application to do so. Not only is the 24-hour window he
7 refers to limited in application to new attachments, Mr. Pollock seems to have a
8 backwards understanding of the provision in question. However, lack of awareness of
9 or confusion regarding the contractual obligations of his employer on the part of Mr.
10 Pollock does not change the fact that AT&T was required to use the application form
11 and the permitting process set forth in the 1999 Agreement.

12 **Q. Please address Mr. Pollock's view that an application is approved if the attaching**
13 **party does not hear from PacifiCorp within 24 hours of an application.**

14 A. Section 2.2 allows a third-party attacher to make an initial attachment to
15 PacifiCorp's facilities on the condition that it submit an application for attachment
16 within 24 hours of making the attachment. I do not know how Mr. Pollock came to the
17 conclusion that permission is granted if AT&T does not hear back from PacifiCorp
18 within 24 hours. This is not what was conveyed to him by Sara Johnson in the e-mail
19 provided as Exhibit 3 to his testimony, and there is no such provision contained in the
20 1999 Agreement.

1 **Q. Can you say when, if at all, Comcast began adhering to PacifiCorp's permitting**
2 **requirements?**

3 A. No. As far I can tell, Comcast to this day is still avoiding compliance with its
4 application and permitting obligations. Comcast appears to be providing no
5 supervision and coordination to ensure that its employees are aware of, much less
6 understand and follow, PacifiCorp's permitting requirements. Even Comcast's direct
7 testimony reflects this disconnect. Mr. Bell states that he first learned of PacifiCorp's
8 permitting requirements in 2000, while Mr. Defendall acknowledges that he was aware
9 that PacifiCorp was requiring applications and permits as early as the late 1990's.
10 However, Mr. Pollock claims that he was not aware that there was even an application
11 form until sometime in 2001. The witnesses' testimony, taken together, indicates to
12 me that neither Mr. Defendall nor Mr. Bell informed Mr. Pollock, one of Comcast's
13 Permit Coordinators, about these requirements until years later.

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15 **III. EVIDENCE OF UNAUTHORIZED ATTACHMENTS**

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17 **Q. Please summarize how the 1997/1998 Audit and the 2002/2003 Audit establish the**
18 **existence of Comcast's unauthorized attachments to PacifiCorp's facilities.**

19 A. Taken together, the two audits provide a baseline and a comparison of current
20 data against that baseline. The 1997/1998 Audit was used to ensure the accuracy of
21 PacifiCorp's records. The results of that audit were entered into the JTU (joint use

1 database) and served as the foundation of PacifiCorp's joint use records on a
2 prospective basis. During the 2002/2003 Audit, the information collected by Osmose
3 was compared to PacifiCorp's existing records maintained in JTU to determine
4 whether and to what extent unauthorized attachments had been made to PacifiCorp's
5 poles since the conclusion of the 1997/1998 Audit.

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7 **A. The 1997/1998 Audit**

8 **Q. Please explain how the 1997/1998 Audit assisted PacifiCorp in its record keeping**
9 **efforts.**

10 A. The 1997/1998 Audit was conducted in order to confirm the foundation for
11 PacifiCorp's records and update the records with newly discovered information. In
12 light of the expected increase in telecommunications network build subsequent to the
13 Telecommunications Act of 1996, PacifiCorp felt that a pole attachment audit would
14 serve as a valuable tool to ensure that all companies maintaining attachments to
15 PacifiCorp's poles were paying rent owed to PacifiCorp for use of its facilities. The
16 foundation created by the 1997/1998 Audit would then be used to better manage third-
17 party use of PacifiCorp's facilities and inform subsequent audits. During the
18 1997/1998 Audit, PacifiCorp's distribution joint use poles were numbered and tagged.
19 Accordingly, Mr. Goldstein's contention that PacifiCorp's distribution poles were not
20 tagged would not apply to the period subsequent to the 1997/1998 Audit.

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1 **Q. Were third parties informed as to the purpose of the 1997/1998 Audit?**

2 A. Yes. During the utility meetings I conducted in 1996, I informed third party
3 attachers of PacifiCorp's intention to conduct the 1997/1998 Audit and that the
4 information collected as a result of that audit would be used to update existing
5 attachment records and serve as the foundation for processing all future permits.

6 **Q. Did TCI request to participate in the 1997/1998 Audit?**

7 A. No such request was made to me during the utility meetings or thereafter.

8 **Q. Did PacifiCorp detect attachments not previously recorded in its records as a**
9 **result of the 1997/1998 Audit?**

10 A. Yes.

11 **Q. Did PacifiCorp levy any unauthorized attachment charges as a result of the**
12 **1997/1998 Audit?**

13 A. No. As I informed third party attachers during the utility meetings in 1996, the
14 1997/1998 Audit was in effect an amnesty audit.

15 **Q. What do you mean by the term "amnesty audit?"**

16 A. Because of some uncertainty surrounding the accuracy of PacifiCorp's records
17 prior to the 1997/1998 Audit, PacifiCorp did not believe it would be fair or reasonable
18 to charge attachers for unauthorized attachments detected as a result of the audit.
19 Instead, third party attachers were required only to pay additional annual rental fees for
20 those attachments detected as a result of the audit. However, I did explain to third
21 party attachers during the 1996 utility meetings that amnesty for unauthorized

1 attachments would not be granted in connection with subsequent audits conducted after
2 1998.

3 **Q. Did TCI object to PacifiCorp's rationale for conducting an "amnesty audit?"**

4 A. No. Not one TCI representative expressed any concern to me regarding
5 PacifiCorp's initiation of the 1997/1998 Audit, the results of the Audit, or the notion
6 that the audit results would be used to update existing records, as well as serve as the
7 foundation for all future records.

8 TCI employees participating in the 1996 utility meetings were told of the
9 upcoming audit and its purposes. I was surprised that Mr. Goldstein, in his direct
10 testimony, had no recollection of the 1997/1998 Audit or the results of that Audit. As I
11 have mentioned previously, there is a "sign in sheet" noting Mr. Goldstein's attendance
12 for at least one of the utility meetings in 1996. Mr. Goldstein also expressed his
13 surprise that PacifiCorp did not raise the "unauthorized attachment issue" prior to the
14 most recent audit, when in fact, it was this concern that led PacifiCorp to conduct
15 training for third party attachers.

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17 **B. The 2002/2003 Audit**

18 **Q. Comcast suggests that the 2002/2003 Audit was prompted by a profit motive. Is**
19 **that why PacifiCorp conducted a second pole attachment audit in 2002/2003?**

20 A. No. The 2002/2003 Audit was initiated for several reasons. Immediately
21 preceding the 2002/2003 Audit, PacifiCorp became aware of a dramatic level of

1 growth in the build-out and upgrade of telecommunications systems in Utah. At the
2 same time, I was receiving an increasing number of complaints from field personnel
3 that a great deal of this activity, as it related to joint use, was being conducted without
4 the authorization of PacifiCorp. Along with a growing concern over unauthorized use,
5 PacifiCorp field personnel also reported that much of the work being performed on
6 PacifiCorp's infrastructure by third parties was being conducted in an unsafe manner.
7 Finally, PacifiCorp had been prompted by regulators to ensure that all costs and
8 revenue associated with joint use activities were being fully recovered.

9 **Q. Please summarize how unauthorized attachments were identified during the**
10 **2002/2003 Audit.**

11 A. PacifiCorp hired Osmose as the contractor to perform the 2002/2003 Audit.
12 Osmose workers were carefully trained and their work was subjected to quality control
13 by both Osmose and PacifiCorp. Once an audit for a particular area was completed and
14 subjected to quality control, the data results were compared against PacifiCorp's
15 existing records of pole attachments in the JTU mainframe. PacifiCorp had updated its
16 records as a result of the 1997/1998 Audit, and its records of pre-existing attachments
17 provided a basis for the identification of unauthorized attachments.

18 During the 2002/2003 Audit, PacifiCorp did not attribute any unauthorized
19 attachments to poles for which Comcast had submitted applications, whether fully
20 processed or not. Thus, even assuming that Comcast's allegation that PacifiCorp

1 employees had not responded to certain applications is true—which it is not—Comcast
2 was not invoiced for attachments for which it had submitted applications.

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IV. INVOICES FOR UNAUTHORIZED ATTACHMENTS

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6 **Q. In her direct testimony, Ms. Nadalin asserts that PacifiCorp was assessing**
7 **unauthorized attachment charges to Comcast without identifying which**
8 **attachments were unauthorized. Is this claim accurate?**

9 A. No. With every invoice provided to Comcast, PacifiCorp provided detailed
10 backup data supporting the charges for unauthorized attachments. As demonstrated in
11 Ex. PC 1.6, the backup data provided with every invoice was presented in a table with
12 seven columns. The first column lists the utility code for Comcast. The second
13 column lists the type of pole identified. The third and fourth columns list the
14 Mapstring Number and point number for each pole. The Mapstring Number, together
15 with the point number, constitutes a unique and specific pole number for each pole in
16 PacifiCorp's infrastructure. The fifth column lists the number of unauthorized
17 attachments found on each pole. Finally, the sixth and seventh columns list the GPS
18 coordinates for each pole.

19 During the course of the several conversations I had with Ms. Nadalin, it
20 became apparent that no one from Comcast provided her with any of PacifiCorp's
21 supporting documentation for the invoiced unauthorized attachment charges.

1 **Q. What is your response to Ms. Nadalin's contention that Comcast was unable to**
2 **cross-check the invoiced charges against Comcast's records?**

3 A. In light of the almost total lack of documentation provided by Comcast
4 regarding attachment authorizations, I believe that any cross-check by Ms. Nadalin
5 would be extremely difficult due to the lack of Comcast's joint use records, not
6 because of any insufficiency in PacifiCorp's data.

7 **Q. Did PacifiCorp provide Ms. Nadalin with additional data or assistance?**

8 A. Yes. Despite having already been provided backup data with the invoices for
9 unauthorized attachments, Ms. Nadalin contacted Laura Raypush and specifically
10 requested a list of all Comcast attachments to PacifiCorp poles in particular districts.
11 Ms. Raypush sent a subsequent package of material to Ms. Nadalin containing the lists
12 of poles that she requested. I do not know why she would want the information in this
13 format, and I cannot understand why Ms. Nadalin complains about the format of
14 information when she was provided with exactly what she requested. The information
15 Ms. Nadalin requested was quite voluminous and contained a list of all poles with
16 Comcast attachments, both authorized and unauthorized, while the information
17 provided with the invoices listed the exact poles (and their location) invoiced as having
18 unauthorized attachments. Moreover, prior to reading her direct testimony, I was not
19 aware that Ms. Nadalin was having difficulty understanding the information she
20 specifically requested. She never contacted me or Laura Raypush asking for assistance

1 in interpreting the additional data sent by Ms. Raypush. If she had done so, we would
2 have been able to help clear up some of her confusion at that time.

3 **Q. Were GPS coordinates the sole method provided by PacifiCorp to aid in the**
4 **location of the particular poles?**

5 A. No. The backup data provided with every invoice provided not only GPS
6 coordinates for each pole, but also provided the Mapstring Number and identification
7 number for each pole listed. See Ex. PC 1.6.

8 **Q. Ms. Nadalin alleges that Comcast did not have the ability to determine the validity**
9 **of the unauthorized attachment charges because it knew “relatively little about**
10 **PacifiCorp’s attachment audit.” Do you agree with her position?**

11 A. Absolutely not. I do not believe that Comcast “knew relatively little about
12 PacifiCorp’s attachment audit.” Comcast had ample notice of the 2002/2003 Audit, as
13 I explained in my direct testimony. PacifiCorp in no way acted to prevent the
14 participation of third parties in the Audit. PacifiCorp provided Comcast with the
15 opportunity to come to PacifiCorp’s offices to do a “desk-top audit” of the invoiced
16 attachments. Comcast never took advantage of this offer.

17 **Q. In his testimony, Mr. Pollock expressed concern that PacifiCorp may be**
18 **attempting to circumvent the Commission’s April 30, 2004 order by including**
19 **charges for unauthorized attachments on make-ready invoices. What is your**
20 **response to Mr. Pollock’s allegations?**

1 A. PacifiCorp's actions have been in full compliance with the Commission's order.
2 First, contrary to Mr. Pollock's testimony, the Commission did not preclude PacifiCorp
3 from continuing to impose unauthorized attachment fees. It only prohibited PacifiCorp
4 from ceasing to process Comcast applications due to non-payment of unauthorized
5 attachment charges. PacifiCorp did begin invoicing for unauthorized attachments that
6 were confirmed as unauthorized as a result of individual make-ready inspections
7 pursuant to an internal procedural change. However, in compliance with the
8 Commission's order, PacifiCorp has not and will not deny applications for overlash
9 based on non-payment of the unauthorized attachment charge.

10 The unauthorized attachments confirmed as a result of make-ready inspections
11 were cross-checked to determine if they had already been billed in separate invoices
12 generated as a result of the 2002/2003 Audit. Those unauthorized attachments not
13 billed in separate invoices are included on invoices for make ready work.

14 **Q. Is PacifiCorp detecting unauthorized attachments not found in the 2002/2003**
15 **Audit?**

16 A. No. All of the unauthorized attachments set forth in make-ready invoices had
17 been identified as Comcast attachments during the 2002/2003 Audit. However,
18 PacifiCorp did not include these particular attachments in its original invoices for
19 unauthorized attachments. The exclusion of particular unauthorized attachments on the
20 original invoices occurred for two reasons. First, if there was a pending application for
21 any attachment on a particular pole during the 2002/2003 Audit, that pole was noted in

1 JTU as having a pending application, and no charge for any unauthorized attachments
2 on that pole were assessed. Subsequent to the 2002/2003 Audit, PacifiCorp has
3 confirmed, through make-ready inspections, that there are unauthorized attachments on
4 several poles previously designated as having a pending application. The other reason
5 there are some unauthorized attachments charges that were not included on the original
6 invoices is because there was a relatively small number of poles for which no
7 comparison could be conducted in JTU during the 2002/2003 Audit. These poles were
8 listed on an exception report. Once a formalized record of these poles was created in
9 JTU, the required comparison could take place. If unauthorized attachments were
10 detected as a result of the comparison, PacifiCorp included the unauthorized
11 attachment charge on the make-ready invoice.

12 PacifiCorp does reconcile the various invoices in an effort to prevent
13 duplicative billing for the same unauthorized attachment. Because the inclusion of
14 unauthorized attachments charges on make-ready invoices is a relatively new
15 procedure being employed by PacifiCorp, that procedure is currently being subjected to
16 quality control to further guard against double billing third party attachers to
17 PacifiCorp's facilities. In the event PacifiCorp discovers instances where a third party
18 was erroneously billed in two separate invoices for the same unauthorized attachment,
19 PacifiCorp will rescind the duplicate invoiced charges.

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1 **V. MISSTATEMENTS IN MICHAEL HARRELSON'S DIRECT TESTIMONY**

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3 **Q. Do you agree with Mr. Harrelson's opinion that there should be no charge**
4 **assessed against Comcast for its unauthorized use of PacifiCorp's facilities?**

5 A. No. Mr. Harrelson assumes incorrectly that PacifiCorp's position is that
6 unauthorized attachment issues center solely on safety concerns. While PacifiCorp is
7 highly concerned with the integrity, reliability and safety of its pole plant, this specific
8 dispute is about the business terms negotiated by two large companies in a joint use
9 relationship. Mr. Harrelson's views aside, I believe the parties are bound by the
10 procedures in place no later than 1996 and the contractual obligations set forth in the
11 1999 Agreement, which clearly sets forth PacifiCorp's rights to assess a charge for
12 unauthorized use of its facilities.

13 **Q. Do you agree with Mr. Harrelson's contention that unauthorized penalty charges**
14 **discourage cooperation and joint use solutions?**

15 A. No. Mr. Harrelson acknowledges that "[j]oint use can be a tricky business" and
16 "a full-time job to keep all that in balance." Indeed, that process is made even more
17 difficult by third-party attachers avoiding their contractual obligations. Having tried all
18 other options, including repeated face-to-face training, establishing clear application
19 and permitting requirements, and obtaining AT&T's voluntary agreement to specific
20 contract terms, charges for unauthorized use represent the only effective leverage

1 available to PacifiCorp to require third-party attachers to accurately report attachments
2 made to PacifiCorp's facilities and pay their fair share of annual rental fees.

3 PacifiCorp is providing a service to Comcast through its joint use program.
4 Just as Comcast expects payment from its customers for the services it provides
5 pursuant to customer contracts, PacifiCorp also expects to be compensated for the
6 service it provides to third-party attachers like Comcast. Comcast actually engages in
7 "aggressive house-to-house audits" of its customers (see "Stop Thief," *Cablefax*, Vol.
8 15, No. 91, May 12, 2004), enforces statutory penalties on its customers for
9 nonpayment, and favors prosecution of those who steal its services on the grounds that
10 paying customers should not have to subsidize the thefts of others through higher cable
11 rates. Why should Comcast expect PacifiCorp to allow its joint use customers a free
12 ride?

13 **Q. How are electric ratepayers affected by unauthorized use of PacifiCorp's**
14 **facilities?**

15 A. Unauthorized use places additional burdens on PacifiCorp's essential facilities
16 and places the integrity, reliability and safety of PacifiCorp's electric system at risk.
17 Because PacifiCorp is unable to collect appropriate rental fees for unauthorized
18 attachments, electric customers are forced to subsidize such attachments and any
19 resulting damage to PacifiCorp's infrastructure caused by such attachments.

20 **Q. Is Mr. Harrelson correct in his assumption that the enforcement of safety**
21 **standards and permitting requirements for third-party attachers is in reality part**

1 **of a money-making scheme developed by PacifiCorp to “reap extraordinary**
2 **profits?”**

3 A. No. PacifiCorp is acting in the public interest in its development and
4 enforcement of safe and reliable joint use practices and pole plant management. It is
5 PacifiCorp’s responsibility to both its customers and the customers of third-party
6 attachers to run its pole plant effectively and safely. The correction of safety violations
7 throughout PacifiCorp’s pole plant is the next phase of the system-wide improvement
8 being implemented by PacifiCorp for joint use management.

9 Unlike Comcast, PacifiCorp is involved in a highly regulated business.
10 Revenues derived from joint use are ultimately factored into the rates that electric
11 customers pay. Because the revenues generated from joint use operations are a single
12 element in the overall determination of the company’s rates, there are no “profits”
13 associated with joint use operations.

14 **Q. Mr. Harrelson claims that in deposition testimony you admitted that PacifiCorp**
15 **had no uniform permitting procedures in place prior to 2002. Is this an accurate**
16 **description of your deposition testimony?**

17 A. Absolutely not. I have never made any such statement in either my deposition
18 testimony, my direct testimony, or at any other time. As I have stated repeatedly, the
19 current permitting process was firmly established and taught to TCI and others no later
20 than 1996, then clearly set forth in the 1999 Agreement between PacifiCorp and
21 AT&T.

1 **Q. Do you agree with Mr. Harrelson's claims disputing the accuracy of PacifiCorp's**
2 **records?**

3 A. No. Mr. Harrelson is careful not to dispute the accuracy of the 2002/2003
4 Audit. His assertions are supported by only two anecdotal examples, neither of which
5 bears on the accuracy of the 1997/1998 Audit, PacifiCorp's records, or the accuracy of
6 the 2002/2003 Audit. First, Mr. Harrelson indicates that PacifiCorp cannot find
7 approximately 15,000 poles in the Salt Lake City area that it believes it owns. I have
8 no knowledge of a proposal from Osmose to PacifiCorp to find any pole in Salt Lake
9 City (or elsewhere in our service area), nor am I aware that PacifiCorp has poles it
10 cannot find. This appears to be a third-hand, rumor-based claim on Mr. Harrelson's
11 part. Second, Mr. Harrelson chastises PacifiCorp for placing "ownership" tags on
12 poles that it does not own. This claim is based on unsupported comments in an
13 unrelated proceeding. The tags Mr. Harrelson is referring to are not intended to claim
14 ownership of poles belonging to third parties. Rather, these tags are used to indicate
15 where PacifiCorp is maintaining attachments on the poles of other utilities. This
16 practice is often employed by other third-party attachers to help them monitor in the
17 field the poles bearing their attachments.

18 Mr. Harrelson does claim that for the past several years (which I assume means
19 through 2001), Comcast has been submitting "extremely detailed permit applications to
20 PacifiCorp." Comcast, however, has provided no record of such applications to refute
21 the results of the 2002/2003 Audit.

1 **Q. Do you agree with Mr. Harrelson's assertion that PacifiCorp is benefiting from**
2 **multiple recovery for the costs of the 2002/2003 Audit?**

3 A. No. First, Mr. Harrelson incorrectly claims that PacifiCorp did not charge itself
4 for any of the cost of the Audit. As I stated in my direct testimony, PacifiCorp
5 allocated to itself all costs for the 2002/2003 Audit incurred in determining
6 PacifiCorp's attachments to third-party poles and in capturing certain data elements
7 useful to PacifiCorp.

8 Second, PacifiCorp charged licensees for the cost of the 2002/2003 Audit on a
9 pro-rata basis. PacifiCorp determined the pro-rata rate by performing a cost analysis of
10 the five districts where the 2002/2003 Audit had been completed and determining the
11 costs incurred by Osmose and PacifiCorp in conducting the 2002/2003 Audit and any
12 quality control testing. These costs, minus any costs incurred for the sole benefit of
13 PacifiCorp, were then totaled. Accordingly, the costs incurred by PacifiCorp for its
14 sole benefit were excluded from the pro-rata evaluation. The total number of
15 attachments was then compiled, and the sum total of attachments for each district was
16 divided into the cost of the audit as determined per district. The resulting per-
17 attachment rates for each district were then averaged to arrive at an across-the-board
18 per-attachment rate. Each licensee was invoiced based on the number of attachments
19 reported in that district as a result of the Audit. My reading of Mr. Harrelson's direct
20 testimony leads me to the conclusion that he completely misunderstands the
21 explanation of the costs related to the audit and the cost recovery methodology.

1 **Q. Would the existence of drop poles affect the accuracy of the 2002/2003 Audit?**

2 A. Mr. Harrelson is correct that “a service provider must hook up a customer very
3 quickly after a request for service comes in.” This is precisely why PacifiCorp had a
4 provision in its contract allowing initial attachments to be made one day in advance of
5 turning in an application, so they could respond to these requests in a timely manner.
6 This does not, however, in any way relieve Comcast of its obligation to provide a
7 permit for those drop poles. As I understood from TCI employees during the 1996
8 training sessions, this is the exact reason that they requested 50-100 forms on a pad—
9 so that they could put them in the installers’ vehicles, the installers could write down
10 the pole number and/or customer address.

11 Mr. Harrelson is correct that this could affect the number of unauthorized
12 attachments. This is a major concern for all cable operators because, from what I have
13 seen, they typically hire contractors to do new service work, and they do not hold these
14 contractors accountable for the permits when they attach to a drop pole. As far as I can
15 tell, Comcast has never provided their contractors or employees with a proper
16 procedure to ensure that these permits are finalized. However, Comcast is arguing that
17 all they have been doing for years is overlashing. Service drops are not overlashes. If
18 the bulk of Comcast work has been overlash, as they claim, the issue of service drops
19 really would not apply.

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

21 A. Yes.