

**DIRECT TESTIMONY OF STEVE PROPER**

**Q1: Please state your name, title, and business address for the record.**

A: My name is Steve Proper. I am the Senior Director of Government Affairs, Comcast Mountain Region. The address is 9602 South 300 West, in Sandy, Utah.

**Q2: Please state your work history and responsibilities.**

A: In conjunction with other Comcast employees in the Government Affairs Department, I represent Comcast on federal, state, and local legislative and regulatory matters. I have been working with Comcast since 2002, when it acquired cable systems in Utah.

**Q3: What is the purpose of your testimony?**

A: This testimony is in connection with the request filed with the Utah Public Service Commission (the "Commission") by Rocky Mountain Power to change the pole attachment rental rate formula in Utah Admin. Code R746-345-5 and to increase its pole attachment rates. On behalf of Comcast, I am testifying as to the importance of effective pole attachment rules that are uniform, predictable and verifiable, and the reasons why the Commission should continue to apply its established pole attachment rental rate formula. In response to the testimony submitted by Rocky Mountain Power, electric rate payers are not subsidizing attachments to poles. It is clear that Rocky Mountain Power is already receiving adequate compensation for pole attachments, as the current rate formula has been found by the courts, including the U.S. Supreme Court, to fully compensate pole owners. Finally, Rocky Mountain Power's proposed non-recurring joint use charges are inconsistent with prior findings by the Commission.

1 **Q4: Why are pole attachment rental rates and procedures important to Comcast?**

2 A: Comcast, by and through its subsidiaries, is the leading provider of video, high-  
3 speed Internet and phone services to residential and business customers in the  
4 country. As of the end of 2010, Comcast's cable systems served approximately  
5 22.8 million video customers, 17 million high-speed Internet customers, and 8.6  
6 million phone customers, and passed over 51 million homes and businesses in 39  
7 states and the District of Columbia. Comcast is attached to millions of poles  
8 nationwide, and as a result, Comcast has experience with state and federal  
9 regulators and the entities that own or control utility poles. Comcast has  
10 participated in other proceedings at the Commission involving PacifiCorp's pole  
11 attachment rates and penalties. In 2003, Comcast filed a petition to intervene in a  
12 proceeding on PacifiCorp's request to increase its rate for pole attachments, Docket  
13 No. 03-035-T11, and Comcast also filed a request for agency action concerning  
14 PacifiCorp's assessment of unauthorized attachment penalties and survey costs,  
15 Docket No. 03-035-28. Based upon this history, Comcast is concerned about the  
16 risk that it could face higher, and possibly unlawful, pole attachment costs in Utah  
17 and other states.

18 **Q5: Please state the number of poles to which Comcast's cables are attached that**  
19 **are owned and controlled by Rocky Mountain Power in Utah.**

20 A: Our records indicate that Comcast's cable plant and related equipment are attached  
21 to approximately 116,800 poles that are owned and controlled by Rocky Mountain  
22 Power in Utah.

1 **Q6: Why is it important for the Utah Public Service Commission to have effective**  
2 **pole attachment rules, including reasonable pole attachment rates?**

3 A: Effective pole attachment regulations, including the use of application and make-  
4 ready timelines, self-help options for make-ready work, reasonable pole attachment  
5 rates, and dispute resolution provisions, speed access to poles, reduce unnecessary  
6 costs, and promote deployment of advanced services. Effective regulations are  
7 necessary to encourage competition and decrease litigation. Congress, the FCC,  
8 and the courts have long recognized the vital role that reasonable pole attachment  
9 rates play in the deployment of advanced communications services. Excessive and  
10 non-uniform pole rents unnecessarily increase costs and delay deployment.

11 According to the FCC's National Broadband Plan, the costs of obtaining permits  
12 and leasing pole attachments and rights-of-way can amount to 20% of the cost of  
13 fiber optic deployment. Numerous parties filing comments with the FCC in a  
14 recent proceeding on pole attachments have indicated that many electric utilities  
15 view their poles as profit centers and are engaged in numerous strategies to  
16 generate unjustified revenues from their monopoly assets. In the absence of  
17 effective pole attachment regulations in Utah, attachers would be at the mercy of  
18 pole owners to the detriment of competition and consumer choice.

19 **Q7: What is your understanding of Rocky Mountain Power's proposal in this**  
20 **proceeding?**

21 A: Based upon Jeffrey Kent's testimony, Rocky Mountain Power is proposing two  
22 changes to the Utah pole attachment scheme: (1) an additional component to the  
23 pole attachment rental rate formula to include the "Administrative Support costs" it

1 claims it incurs to accommodate the joint use of its poles, and (2) a fee schedule of  
2 non-recurring joint use charges. In its response opposing the motions filed by the  
3 Utah Rural Telecom Association (“URTA”), Rocky Mountain Power states that it  
4 is seeking a deviation from the pole attachment rate formula as it applies to Rocky  
5 Mountain Power and a rate increase.

6 **Q8: Why should the Commission continue to use the current pole attachment**  
7 **rental rate formula in Utah Admin. Code R746-345-5, and deny Rocky**  
8 **Mountain’s request to add the component, “Administrative Support costs,” to**  
9 **the formula?**

10 A: There are at least two reasons why it is important for the Commission to continue  
11 to apply the uniform rate formula in Utah Admin. Code R746-345-5, and deny the  
12 request to apply a different rate formula to Rocky Mountain Power.

13 First, Utah’s current rate formula is just and reasonable. It is based on the  
14 FCC’s cable rate formula, which has been found by the FCC, the courts, including  
15 the U.S. Supreme Court, and numerous state regulatory commissions, to be just and  
16 reasonable. It fully compensates pole owners for the amount of all pole costs that  
17 are attributable to the attaching party, including administrative, maintenance, tax  
18 expenses, depreciation and a rate of return. The FCC has determined what is  
19 included in the elements of the rate formula. Although some pole owners have  
20 asked the FCC to draw in more expenses, the FCC has declined to do so because  
21 this would unduly complicate the pole attachment rate calculation process without  
22 materially increasing its accuracy. The current rate fully compensates pole owners.  
23 It is uniform, simple to administer, and based upon publicly available information

1 which can be verified. Adding more components would add complexity, making it  
2 more difficult for the Commission and pole attachers to verify rates.

3 Second, Rocky Mountain Power owns or controls the majority of the utility  
4 poles in Utah. As such, Rocky Mountain Power is the primary provider of poles  
5 for attachments by cable operators and telecommunications service providers, and  
6 there are no practical or cost-effective alternatives. Zoning, municipal,  
7 environmental, land use, and financial constraints make it impractical for any third  
8 party to construct new poles in any significant way. In most areas, there is only  
9 one provider of pole space and there is usually space on those poles. Allowing  
10 Rocky Mountain Power to arbitrarily alter its rental rate formula will result in an  
11 abuse of its monopoly status.

12 Based upon these reasons, the Commission should continue to use the  
13 uniform rate formula in Utah Admin. Code R746-345-5 for calculating pole  
14 attachment rates if the pole owner and the attacher cannot negotiate their own  
15 agreement because the formula is reasonable and provides appropriate balance  
16 between Rocky Mountain Power's control of its facilities and the benefits to the  
17 public of increased competition and deployment.

18 **Q9: Is the pole attachment rental rate formula in Utah Admin. Code R746-345-5**  
19 **easy to apply and does it require minimum Commission involvement?**

20 A: Yes, the Utah pole attachment rate formula is straight-forward and requires little, if  
21 any, Commission involvement. Because Utah's pole attachment rental rate  
22 formula is based on the FCC's sound cable rate, the Utah rate should not be  
23 disturbed, as it has been found to fully compensate the utility pole owner. Any

1 pole attachment rate that is based on the rate formula in Utah Admin. Code R746-  
2 345-5 is considered just and reasonable unless the Commission determines  
3 otherwise. The rate must be based on publicly filed data and must conform to the  
4 FCC's regulations governing pole attachments, except as modified by this rule.  
5 The rule sets forth the formula, definitions and rebuttable presumptions. The  
6 Commission will recalculate the rental rate only when it determines that it is  
7 necessary. Using this formula, which is straight-forward, the rate can be updated  
8 annually with minimum effort, using publicly available information contained in  
9 existing annual reports, thus allowing each year's costs to be substituted for the  
10 costs in place during the prior year. New pole attachment rates based on the latest  
11 year-end actual publicly reported costs are brought current with a minimum  
12 amount of private effort and minimum regulatory involvement.

13 **Q10: Are there other state public utility commissions that support the cable rate for**  
14 **all pole attachers?**

15 A: Yes, a number of State public utility commissions have adopted the cable rate  
16 formula for all attachments because they have determined that it fairly compensates  
17 utilities and promotes broadband deployment and competition. In addition to the  
18 Utah Public Service Commission, the State public utility commissions in Michigan,  
19 California, New York, Alaska, and Oregon, for example, have adopted uniform  
20 pole rent based on the FCC's cable rate formula for all attachers and all services.  
21 Application by numerous states of the cable rate formula to all attachers provides  
22 support for the Commission's continued use of the cable rate formula for all  
23 attachers and its continued uniform application to all utilities, because it

1 appropriately balances the need to reasonably compensate pole owners with the  
2 State's service competition and deployment objectives. Furthermore, it is a  
3 predictable, straight-forward method that is based on publicly filed data and  
4 therefore verifiable.

5 **Q11: Rocky Mountain Power proposes a schedule of non-recurring joint use**  
6 **charges. Is this proposal consistent with Utah's pole attachment scheme?**

7 A: No. According to Rocky Mountain Power, these charges have been in use since 2002 in  
8 its contracts and are not otherwise included in the pole attachment rental rate. This is  
9 inconsistent with the Commission's rulings in Docket No. 04-999-03 (a copy is attached  
10 to my testimony as Exhibit A). For example, Rocky Mountain Power proposes to charge  
11 separate fees for various inspections. The Commission has already determined that it is  
12 reasonable for pole owners to charge an application fee, the cost for make-ready work,  
13 and unauthorized attachment fees, and that post construction and removal verification  
14 inspection fees are to be recovered through the pole attachment rental charge. Based on  
15 the Commission's rulings, the application fee, make-ready charges, and unauthorized  
16 attachment fees are reasonable. Any other additional fees are unreasonable. Rocky  
17 Mountain Power's proposal would result in over compensation.

18 **Q12: Does this conclude your direct testimony?**

19 A: Yes.

**VERIFICATION**

I, Steve Proper, hereby declare under penalty of perjury, that the foregoing testimony is true and correct to the best of my knowledge and belief.

Executed on May 18, 2011.

/s/ Steve Proper  
Steve Proper, Senior Director  
Government Affairs, Comcast Mountain Region



**CERTIFICATE OF SERVICE**  
**Docket No. 10-035-124**

I hereby certify that on the 18th day of May, 2011, an original, five (5) true and correct copies, and an electronic copy of the foregoing **COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC'S DIRECT TESTIMONY** were hand-delivered to:

Julie P. Orchard  
Commission Secretary  
Public Service Commission of Utah  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
[psc@utah.gov](mailto:psc@utah.gov)

and a true and correct copy, was emailed to:

Paul H. Proctor  
Assistant Attorney General  
Utah Office of Consumer Services  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

Patricia Schmid  
Assistant Attorney General  
Utah Division of Public Utilities  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

Michele Beck  
Cheryl Murray  
Dan Gimble  
Utah Office of Consumer Services  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, UT 84111  
[mbeck@utah.gov](mailto:mbeck@utah.gov)  
[cmurray@utah.gov](mailto:cmurray@utah.gov)  
[dgimble@utah.gov](mailto:dgimble@utah.gov)

Chris Parker  
William Powell  
Dennis Miller  
Utah Division of Public Utilities  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)  
[wpowell@utah.gov](mailto:wpowell@utah.gov)  
[dennismiller@utah.gov](mailto:dennismiller@utah.gov)

Peter J. Mattheis  
Eric J. Lacey  
Brickfield, Burchette, Ritts & Stone, P.C.  
1025 Thomas Jefferson St., NW, 800 West  
Washington, D.C. 20007  
[pjm@bbrslaw.com](mailto:pjm@bbrslaw.com)  
[elacey@bbrslaw.com](mailto:elacey@bbrslaw.com)

Kevin Higgins  
Neal Townsend  
Energy Strategies  
215 S. State Street, #200  
Salt Lake City, UT 84111  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)  
[ntownsend@energystrat.com](mailto:ntownsend@energystrat.com)

Gloria D. Smith  
Sierra Club  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
[gloria.smith@sierraclub.org](mailto:gloria.smith@sierraclub.org)

Kurt J. Boehm  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[kboehm@bklawfirm.com](mailto:kboehm@bklawfirm.com)

Stephen J. Baron  
J. Kennedy & Associates  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075  
[sbaron@jkenn.com](mailto:sbaron@jkenn.com)

Stephen F. Mecham  
Callister Nebeker & McCullough  
10 East South Temple, Suite 900  
Salt Lake City, UT 84133  
[sfmecham@cnmlaw.com](mailto:sfmecham@cnmlaw.com)

Gerald H. Kinghorn  
Jeremy R. Cook  
Parsons Kinghorn Harris, P.C.  
111 East Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[ghk@pkhlawyers.com](mailto:ghk@pkhlawyers.com)  
[jrc@pkhlawyers.com](mailto:jrc@pkhlawyers.com)

Sophie Hayes  
Sarah Wright  
Utah Clean Energy  
1014 2<sup>nd</sup> Avenue  
Salt Lake City, UT 84111  
[sophie@utahcleanenergy.org](mailto:sophie@utahcleanenergy.org)  
[sarah@utahcleanenergy.org](mailto:sarah@utahcleanenergy.org)

Gary A. Dodge  
Hatch James & Dodge  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
[gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

Holly Rachel Smith  
Hitt Business Center  
3803 Rectortown Road  
Marshall, VA 20115  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)

Ryan L. Kelly  
Kelly & Bramwell, P.C.  
11576 South State St. Bldg. 1002  
Draper, UT 84020  
[ryan@kellybramwell.com](mailto:ryan@kellybramwell.com)

Steve W. Chriss  
Wal-Mart Stores, Inc.  
2001 SC 10<sup>th</sup> Street  
Bentonville, AR 72716  
[stephen.chriss@wal-mart.com](mailto:stephen.chriss@wal-mart.com)

Shayla L. McNeill  
Karen S. White  
AFLOA/JACL-ULFSC  
139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403  
[shayla.mcneill@tyndall.af.mil](mailto:shayla.mcneill@tyndall.af.mil)  
[karen.white@tyndall.af.mil](mailto:karen.white@tyndall.af.mil)

Yvonne R. Hogle  
David L. Taylor  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, UT 84111  
[yvonne.hogle@pacificorp.com](mailto:yvonne.hogle@pacificorp.com)  
[dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com)  
[datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

F. Robert Reeder  
William J. Evans  
Vicki M. Baldwin  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
[bbreeder@parsonsbehle.com](mailto:bbreeder@parsonsbehle.com)  
[bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com)  
[vbaldwin@parsonsbehle.com](mailto:vbaldwin@parsonsbehle.com)

Rob Dubuc  
Western Resource Advocates  
150 South 600 East, Suite 2A  
Salt Lake City, UT 84102  
[rdubuc@westernresources.org](mailto:rdubuc@westernresources.org)

Mike Legge  
Roger Swenson  
US Magnesium LLC  
238 North 2200 West  
Salt Lake City, UT 84116  
[mlegge@usmagnesium.com](mailto:mlegge@usmagnesium.com)  
[roger.swenson@prodigy.net](mailto:roger.swenson@prodigy.net)

Arthur F. Sandack  
8 East Broadway, Suite 411  
Salt Lake City, UT 84111  
[asandack@msn.com](mailto:asandack@msn.com)

Randy N. Parker  
Leland Hogan  
Utah Farm Bureau Federation  
9865 South State Street  
Sandy, UT 84070  
[rparker@fbfs.com](mailto:rparker@fbfs.com)  
[leland.hogan@fbfs.com](mailto:leland.hogan@fbfs.com)

Janee Briesemeister  
AARP  
98 San Jacinto Blvd., Suite 750  
Austin, TX 78701  
[jbriesemeister@aarp.org](mailto:jbriesemeister@aarp.org)

Nancy Kelly  
Western Resource Advocates  
9463 N. Swallow Rd.  
Pocatello, ID 83201  
[nkelly@westernresources.org](mailto:nkelly@westernresources.org)

Torry R. Somers  
Century Link  
6700 Via Austi Pkwy.  
Las Vegas, NV 89119  
[torry.r.somers@centurylink.com](mailto:torry.r.somers@centurylink.com)

Sonya L. Martinez  
Betsy Wolf  
Salt Lake Community Action Program  
764 South 200 West  
Salt Lake City, UT 84101  
[smartinez@slcap.org](mailto:smartinez@slcap.org)  
[bwolf@slcap.org](mailto:bwolf@slcap.org)

Bruce Plenk  
2958 N. St. Augustine Pl.  
Tucson, AZ 85712  
[bplenk@igc.org](mailto:bplenk@igc.org)

Steven Michel  
Western Resource Advocates  
2025 Senda de Andres  
Santa Fe, NM 87501  
[smichel@westernresources.org](mailto:smichel@westernresources.org)

/s/ Sharon M. Bertelsen