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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power for Approval of Standard Non-reciprocal Pole Attachment Agreement)	<u>DOCKET NO. 10-035-43</u>
)	Initial Comments of Frontier Communications Corporation
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Frontier Communications Corporation (“Frontier”) welcomes this opportunity to submit comments to the Utah Public Service Commission ("Commission") in response to its Orders of May 17 and May 25, 2010, in Docket No. 10-035-43, *In the Matter of the Application of Rocky Mountain Power for Approval of Standard Non-reciprocal Pole Attachment Agreement*. Frontier understands that if approved by the Commission, the so-called standard non-reciprocal pole attachment agreement that Rocky Mountain Power (“RMP”) filed in this Docket on April 26, 2010, would replace the joint use agreement that the Commission approved in Docket No. 04-999-03, *In the Matter of an Investigation into Pole Attachments*, in cases where the renter has no poles of its own to which RMP is also attached. Citizens Telecommunications of Utah, an ILEC affiliate of Frontier in Utah, rents nearly 1,100 pole attachments from RMP, while RMP is not

attached to any of Frontier's poles. In light of these facts, Frontier submits the following comments:

1. Frontier urges the Commission to convene a Technical Conference addressing RMP's proposed standard pole attachment agreement. Several entities, including the Division of Public Utilities, spent many months drafting a safe harbor agreement, which the Commission ultimately approved, during the proceedings in Docket No. 04-999-03. This safe harbor agreement was styled as a joint use agreement merely for the sake of convenience. It was clear to all the participants at the table that the approved joint use agreement could be easily modified to accommodate situations in which the contracting parties do not jointly own poles. RMP's proposed "non-reciprocal" agreement does considerably more. RMP's proposal substantially revises important terms in subtle ways that are sometimes difficult to identify because of the manner in which RMP has chosen to reorganize the safe harbor agreement. Frontier finds certain of RMP's proposed revisions at best unclear in their effect and at worst contrary to the public interest, and other parties may find additional terms equally unclear or objectionable.

2. Section 2.02 of RMP's proposed agreement confines the Licensee's attachments to a "permitted purpose." The meaning of "permitted purpose" is unclear, and the approved safe harbor agreement contains no such term. R746-345-2 defines an attaching entity as "... public utility, wireless provider, cable television company, communications company, or other entity that provides information or telecommunications services ...". The Commission's pole attachment rule in effect gives entities satisfying this definition the right to attach to a pole owner's poles consistent with the rule's terms and

conditions and the terms and conditions of the approved safe harbor agreement. Introducing an undefined “permitted purpose” into a standard contract risks injecting confusion into the process. Frontier has modified Section 2.02 RMP’s proposed agreement so as to make it consistent with Section 2.02 of the approved safe harbor agreement.

3. Section 2.03 of RMP’s proposed agreement allows RMP in its sole judgment to reject an attachment application for certain listed reasons. This provision gives RMP much greater latitude than does Section 3.02 of the approved safe harbor agreement and removes the Commission’s role as an arbiter. Frontier has substituted parts of Section 3.02 of the approved safe harbor agreement for RMP’s Section 2.03.

4. Section 3.01 of RMP’s proposed agreement requires an attaching entity to obtain permission to overlash. This provision is inconsistent with the approved safe harbor agreement, which requires 14-day prior notice of intent to overlash. Frontier has modified Section 3.01 of RMP’s proposed agreement to render it consistent with Section 3.01 of the approved safe harbor agreement with regard to overlash.

5. Section 3.02 of RMP’s proposed agreement grants RMP the privilege of determining whether in its sole judgment Make-ready Work is necessary. In contrast, the approved safe harbor agreement at Section 3.09 requires the pole owner to exercise “reasonable” judgment in regard to whether Make-ready work is needed. Accordingly, Frontier has substituted “reasonable” judgment for “sole” judgment in RMP’s Section 3.02.

6. RMP’s Section 3.02 requires RMP to approve the contractor and schedule when the attaching entity chooses the self-build option, but unlike the approved safe harbor agreement, RMP’s version does not establish a time limit for RMP to provide its

approval. Consistent with Section 3.02 of the approved safe harbor agreement, Frontier has modified RMP's Section 3.02 to give RMP 14 days to either approve or disapprove the attaching entity's contractor and self-build schedule.

7. Section 3.05 of RMP's proposed agreement requires attaching entities to observe RMP's Distribution Construction Standards and its current Engineering Handbook, neither of which was included in RMP's April 26, 2010, filing. While Section 3.04 of the approved safe harbor agreement also allows for construction standards in addition to National Electrical Safety Code to be incorporated in the agreement, Frontier and other parties should be given a reasonable opportunity to review and comment on the additional standards that RMP proposed in its April 26, 2010, filing.

8. Sections 4.01 and 4.03 and the definition of "Cost Estimate" found in Article I, of RMP's proposed agreement all refer to Exhibit B. According to these provisions, Exhibit B contains flat rates for Make-ready Work and penalties for unauthorized attachments, but an Exhibit B was not included in RMP's April 26, 2010, filing. Frontier and other parties should be given an opportunity to review and comment on any proposed charges of this nature before they effect.

9. Finally, it is not clear to Frontier why RMP's substantive revisions to the approved safe harbor agreement are needed. After months of give and take under the leadership of the Division of Public Utilities, the approved safe harbor agreement became available for use by pole owners and attaching entities in August of 2006. Have circumstances arising in the last four years shown the terms of the safe harbor agreement to be deficient in particular respects? Frontier is certainly not aware of any. Did the parties involved in crafting the approved safe harbor agreement fail to anticipate fully the

complexities that may arise in applying for and approving pole attachments? Frontier is not aware of how the authors of the approved safe harbor agreement may have failed to craft terms adequate to the task. Accordingly, it would be instructive to hear from RMP concerning how it believes the approved safe harbor agreement has proven to be inadequate.

Respectfully submitted this 15th day of June, 2010.

Frontier Communications Corporation

Curt Huttsell, Ph.D.
Manager, Government and External Affairs

Certificate of Service

I hereby certify that on June 15, 2010, I e-mailed a true and correct copy of the Initial Comments of Frontier Communications Corporation in Docket No. 10-035-43, *In the Matter of the Application of Rocky Mountain Power for Approval of Standard Non-reciprocal Pole Attachment Agreement*, to the following:

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