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Submitted June 15, 2010

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

)	
)	Docket No. 10-035-43
In the Matter of the Application of Rocky)	
Mountain Power for Approval of Standard)	COMMENTS OF
Non-reciprocal Pole Attachment Agreement)	COMCAST PHONE OF UTAH, LLC
)	
)	

Comcast Phone of Utah, LLC (“Comcast”), by and through its attorneys, Ballard Spahr LLP, hereby submits comments to the Application of Rocky Mountain Power for Approval of Standard Non-reciprocal Pole Attachment Agreement (“Application”) submitted to the Public Service Commission of Utah (“Commission”) to be used for cable and telecommunications companies desiring to attach equipment to the distribution poles of PacifiCorp, dba Rocky Mountain Power. These comments are submitted to the Commission pursuant to the Commission’s Order in this Docket issued May 17, 2010, and the Order extending the comment period issued May 25, 2010.

Comcast urges the Commission to deny Rocky Mountain Power’s Application. In the alternative, Comcast urges the Commission to open a generic proceeding to consider whether changes should be made to the standard Utah pole attachment agreement approved by the

Commission in Docket No. 04-999-03 (also referred to as the Commission-approved “Safe Harbor Agreement”). Such a proceeding would also allow the Commission and interested parties the opportunity to consider the treatment of pole attachment issues by the Federal Communications Commission (“FCC”) in connection with a pending rulemaking proceeding regarding implementation of Section 224 of the Communications Act, 47 U.S.C. § 224, and the National Broadband Plan.¹ The FCC is currently taking steps to lower costs for telecommunications, cable, and broadband deployment, to speed access to utility poles, and to promote competition in the provision of voice, broadband and video services. Comcast strongly urges the Commission to carefully consider whether Rocky Mountain Power’s proposed pole attachment agreement would increase the costs of deployment and delay access for companies desiring to attach to Rocky Mountain Power’s poles.

I. Background

On March 19, 2004, the Commission, pursuant to its jurisdiction recognized in 47 U.S.C. § 224(c),² opened investigative Docket No. 04-999-03 for the purpose of investigating issues associated with pole attachments, including the adoption of new pole attachment rules and a standard Utah pole attachment agreement for pole owners and attaching entities.³ The Commission solicited the participation of interested parties and the Division of Public Utilities (“Division”) held a series of technical conferences. Those parties included PacifiCorp, the Utah Rural Telecom Association, the Utah Rural Electric Association, AT&T Corp., XO Utah, Inc.,

¹ See *Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, FCC 10-84 (rel. May 20, 2010).

² Under Section 224(c), the Federal Communications Commission regulates pole attachments except where such matters are regulated by a state. See also *States that have Certified that they regulate Pole Attachments*, FCC Public Notice, DA 10-893 (rel. May 19, 2010).

³ Pursuant to Utah Code Section 54-4-13, the Commission has authority to prescribe reasonable compensation and reasonable terms and conditions for the joint use of poles by utilities, and determine whether pole attachment contracts are in the public interest.

Qwest Corporation, Electric Lightwave, LLC, VoiceStream PSC II Corporation dba T-Mobile, the Utah Telecommunication Open Infrastructure Agency, and Comcast Cable Communications, LLC.⁴ In addition to the technical conferences, the interested parties filed numerous briefs, comments, and other pleadings, and assisted with drafting new pole attachment rules (Utah Administrative Code Rule R746-345) and a pole attachment agreement that was adopted by the Commission. This process took well over two years to complete.

In adopting the Safe Harbor Agreement, the Commission stated in its February 2, 2006, correspondence to the parties in that Docket:

While the Commission will still permit parties to negotiate unique terms that could differ from what is provided herein, these are in the nature of “safe harbors.” Agreements which contain these provisions would be approved by the Commission (if other terms are reasonable); they will be the default provisions for the generic agreements or where parties do not, or cannot, propose alternative mutually agreed upon terms.”

II. Comcast’s Comments on Rocky Mountain Power’s Application

The provisions in the Safe Harbor Agreement previously approved by the Commission in Docket No. 04-999-03 were negotiated by the interested parties participating in that Docket. Rocky Mountain Power’s proposed agreement in its Application contains major changes from the Commission-approved Safe Harbor Agreement. We agree with the Division that a preliminary review of Rocky Mountain Power’s proposed standard pole attachment agreement “reveals several major changes that are likely to affect those seeking to attach equipment to the Company’s poles.” Division comments to the Commission, April 29, 2010.

⁴ Comcast Cable Communications, LLC, in addition to its interest in Docket No. 04-999-03, filed, on October 28, 2003, a Petition to Intervene in a separate proceeding on PacifiCorp’s request to increase its rate for pole attachments. *See In the Matter of the Proposed Revisions of PacifiCorp, dba Utah Power & Light Company, to its Schedule 4 – Pole Attachments – Cable Television Tariff by Advice Filing 03-09*, Docket No. 03-035-T11. On October 31, 2003, Comcast Cable Communications, LLC filed a Request for Agency Action concerning PacifiCorp’s assessment of unauthorized attachment penalties and survey costs. *See Comcast Cable Communications, Inc. v. PacifiCorp, dba Utah Power*, Docket No. 03-035-28.

Rocky Mountain Power, in its Application, states that “[t]he proposed Agreement is substantially similar to the pole attachment agreements with TCG Utah and Leavitt Group Enterprises, approved by the Commission in Docket Nos. 09-035-52 and 10-035-01, respectively.” Application at 2. Since these two agreements referenced by Rocky Mountain Power were privately negotiated, the terms have limited value when the Commission is considering a standard agreement.

Rocky Mountain Power has not fully explained why it believes the provisions in the Commission-approved Safe Harbor Agreement are no longer reasonable and why its proposed changes are reasonable. For example, as compared to the Commission–approved Safe Harbor Agreement, Rocky Mountain Power’s proposed agreement has additional definitions, additional application requirements, including fee requirements, and additional insurance requirements. *See, e.g.*, Rocky Mountain Power proposed agreement, Article I, definitions, Section 3.03 on licensee’s installation responsibilities; Section 3.12 on removal of attachments by licensee; Article VI, insurance, security and credit requirements. There are instances in which Rocky Mountain Power has substituted its sole judgment on determinations where the Commission-approved Safe Harbor Agreement provides for a reasonable judgment standard or a determination by the Commission. *See, e.g.*, Rocky Mountain Power proposed agreement, Section 3.02 on make-ready work. Several of Rocky Mountain Power’s proposed changes are inconsistent with the FCC’s efforts to speed access to utility poles and lower costs for cable, telecommunications, and broadband deployment.

If the Commission approves Rocky Mountain Power’s Application, the collaborative efforts of the Division and all of the interested parties in Docket No. 04-999-03 in contributing to the Safe Harbor Agreement would be lost and Rocky Mountain Power would be offering a different agreement that is based upon agreements that were privately negotiated with TCG Utah

and Leavitt Group Enterprises. When a company desiring to attach equipment to the distribution poles of Rocky Mountain Power does not agree with the terms offered by Rocky Mountain Power, the Commission-approved Safe Harbor Agreement should be used.

III. Conclusion

For the foregoing reasons, Comcast urges the Commission to deny Rocky Mountain Power's Application for Approval of Standard Non-reciprocal Pole Attachment Agreement or in the alternative, open a generic proceeding to determine whether changes should be made to the Safe Harbor Agreement approved by the Commission in Docket No. 04-999-03.

RESPECTFULLY SUBMITTED this 15th day of June, 2010.

COMCAST PHONE OF UTAH, LLC

/s/ Sharon M. Bertelsen

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2010, an original, five (5) true and correct copies, and an electronic copy of the foregoing **COMMENTS OF COMCAST PHONE OF UTAH, LLC TO ROCKY MOUNTAIN POWER'S APPLICATION FOR APPROVAL OF STANDARD NON-RECIPROCAL POLE ATTACHMENT AGREEMENT** were hand-delivered to:

Julie Orchard
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and a true and correct copy mailed, postage prepaid thereon, to:

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