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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

DOCKET No. 10-035-43

**COMMENTS OF NEXTG
NETWORKS OF CALIFORNIA, INC.**

NextG Networks of California, Inc. ("NextG") respectfully thanks the Public Service Commission of Utah ("Commission") for this opportunity to comment on the above referenced docket. NextG is a telecommunications provider holding a certificate of public convenience and necessity ("Certificate") from the Commission, granted March 30, 2005 in docket number 04-2445-01. NextG desires to attach its facilities to the distribution poles belonging to PacifiCorp, doing business as Rocky Mountain Power, pursuant to the agreement submitted by Rocky Mountain Power in the above referenced docket (the "Agreement").

NextG respectfully requests the Commission instruct Rocky Mountain Power to redraft its Agreement to include just and reasonable terms in the public interest. In support of this request, NextG states as follows:

1. Rocky Mountain Power is a public utility in the state of Utah and subject to the jurisdiction of the Commission. Pursuant to Utah Administrative Rules ("UAR") R746-345-1(B)(2), Rocky Mountain Power is obligated to provide attaching entities with just and reasonable terms and conditions.

2. The Agreement submitted by Rocky Mountain Power includes unjust and unreasonable terms regarding indemnification, limitation of liability, and the location and type of equipment allowed for attachments.

3. Article V. Indemnification; Limitation of Liability; Warranties of the Agreement is not mutual and requires attaching entities to indemnify Rocky Mountain Power for its own negligence. Section 5.01 requires attaching entities to indemnify Rocky Mountain Power for all claims except those arising out of its “gross negligence and intentional misconduct”. Furthermore, it requires attaching entities to indemnify it for liabilities related to “Licensee’s service to its customers which may be caused, or which may be claimed to have been caused, by any action of Rocky Mountain Power undertaken in furtherance of the purposes of this Agreement, including damages caused by Rocky Mountain Power’s ordinary negligence.” Section 5.02 limits the liability of Rocky Mountain Power without extending the same limitation of liability to the attaching entity.

4. NextG is restricted by internal policy and insurance requirements from agreeing to indemnify a counter-party for claims arising out of the negligent actions of the counter-party. NextG would like the Commission to instruct Rocky Mountain Power to make Article V mutual as it applies to indemnification and the limitation of liability because pole owners tend to extend just and reasonable terms when those terms are mutual.

5. While not binding, it is instructive to the Commission that the Federal Communications Commission (“FCC”) determined in *The Cable Television Association of Georgia v. Georgia Power Company*, Order, 18 FCC Rcd 16333, 16334 (Enf. Bur. 2003), that pole owners should extend mutual indemnification terms to attaching entities. The FCC recognized that placing an unfair and harsher burden on attaching entities is neither just nor

reasonable and not the public interest, and NextG requests the Commission recognize the same and order Rocky Mountain Power to offer mutual indemnification and liability language to attaching entities.

6. In addition, the Agreement submitted by Rocky Mountain Power does not comply with UAR R746-345-2(E) because it restricts the location and types of attachments allowed under the Agreement contrary to what is allowed under the UAR. Article I of the Agreement defines “Attachment” in a way that removes the placement of pole top antenna attachment for regulated poles.

7. UAR R746-345-2(B) states that “Attachment Space” is the “[t]he amount of usable space on a pole occupied by a pole attachment . . .” The “Usable Space” definition in R746-345-5(A)(2)(d) includes the pole top, and R746-345-5(A)(3)(a) assumes that the average pole height equals 37.5 feet. By extension, this means that Rocky Mountain Power should allow pole top attachment on poles at or below 37.5 feet above ground level at the regulated rate outlined in R746-345-5.

8. NextG is not raising an objection at this time to Rocky Mountain Power’s current practice of charging what the market will bear for pole top antennas on poles over 37.5 because those poles may fall outside of UAR R746-345. However, NextG requests the Commission instruct Rocky Mountain Power allow pole top antennas under the Agreement with the above listed parameters.

9. Finally, according to section 4.02 of the Agreement, Rocky Mountain Power also does not allow attachment of equipment below the communication space, which is contrary to R746-345-2(B), which defines “Pole Attachment” in a way that allows for equipment in the usable and the unuseable space of the pole.

10. It is standard practice to place associated equipment in the unusable space in compliance with National Electric Safety Code (“NESC”) requirements. This practice avoids placing stub poles or ground furniture in the public rights-of-way, thus limiting the amount of “clutter,” which communities appreciate. NextG requests the Commission instruct Rocky Mountain Power to allow equipment attachments under the Agreement in conformance with UAR and the NESC.

11. There are other aspects of the proposed contract that could be more just and reasonable, which NextG will continue trying to negotiate directly with Rocky Mountain Power. However, the above requests are the most critical areas in need of revision to insure that Rocky Mountain Power treats attaching entities in a fair and equal manner and in accordance with the UAR.

WHEREFORE, NextG respectfully request that the Commission issue an order instructing Rocky Mountain Power to revise Article V of the Agreement as outlined above.

DATED this 14 day of June, 2010.

Respectfully submitted,



Natasha Ernst
NextG Networks of California, Inc.

Attorneys for NextG Networks of California, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **COMMENTS OF NEXTG NETWORKS OF CALIFORNIA, INC.** to be served upon the following by electronic mail or U.S. postage to the addresses shown below on June 14, 2010:

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