

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Consolidated
Applications of Rocky Mountain Power for
Approval of Standard Reciprocal and Non-
Reciprocal Pole Attachment Agreements

DOCKET No. 10-035-97

SETTLEMENT STIPULATION

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I. INTRODUCTION

1. This Settlement Stipulation (“Stipulation”) is entered into in Docket No. 10-035-97 by and among the parties whose signatures appear on the signature pages hereof (collectively referred to herein as the “Parties” and individually referred to as a “Party”).

2. The Parties conducted settlement discussions over the course of several days and met June 25, 2012. Notice of the settlement conference was provided in the Commission’s June 7, 2012 scheduling order. Intervening parties to the docket in attendance with Rocky Mountain Power were: the Division of Public Utilities, CenturyLink, Comcast Cable Communications, LLC; New Cingular Wireless PCS, LLC; NextG Networks of California, Inc.¹ (“NextG”); and Utah Rural Telecom Association (“URTA”). Intervenors Integra Telecom and Frontier Communications Corporation were subsequently contacted and informed of the proposed settlement.

3. Drafts of this Stipulation were circulated to the Parties for review and comment on June 29, 2012, and there have been further discussions among various parties.

¹ It does not appear that NextG has formally been granted intervention in this docket or Docket 10-035-43; however, NextG has filed comments on several occasions.

This Stipulation has been entered into by the Parties after consideration of the views of all those expressed during that process.

4. The Parties represent that this Stipulation is just and reasonable in result and provides acceptable terms for Rocky Mountain Power's Safe Harbor agreement and its tariff of non-recurring fees pursuant to the Public Service Commission of Utah ("Commission") rule R746-345-3. The Parties recommend that the Commission approve the Stipulation and all of its terms and conditions. The Parties request that the Commission make findings of fact and reach conclusions of law based on the evidence and on this Stipulation and issue an appropriate order thereon.

II. BACKGROUND DOCKET 10-035-97

1. Rocky Mountain Power submitted for Commission approval a proposed standard non-reciprocal pole attachment agreement April 26, 2010 in Docket No. 10-035-43 which was consolidated into this docket with its August 31, 2010 application for approval of a proposed standard non-reciprocal pole attachment agreement.

2. Rocky Mountain Power submitted an Amended Application February 9, 2012 in lieu of both of its earlier applications. Rocky Mountain Power amended its application to be consistent with the Commission's Order in this Docket and Docket 10-035-124, issued June 1, 2011, as modified June 9, 2011, authorizing the "Company to file in Docket 10-035-97 the direct testimony filed in [Docket 10-035-124] addressing pole attachment rental rates and recovery of non-recurring costs, together with additional relevant material if it so elects."

3. Along with its Amended Application, Rocky Mountain Power submitted a redlined version of proposed changes to the Safe Harbor, and a redlined version of proposed changes to Electric Service Schedule No. 4, along with supporting testimony and exhibits.

4. The Amended Application proposed changes to the Safe Harbor in several respects: 1) changes for conformity with the Rule and Commission directive; and 2) substantive changes to Sections 3.01, 3.02, 3.04 and 5.04.

5. The Amended Application proposed an amendment to Electric Service Schedule No. 4 to incorporate a schedule of non-recurring fees as required by Public Service Commission Rules, R746-345-3.A.2. Rocky Mountain Power sought to consolidate several variable rate fees charged depending on the work involved with an application into a flat fee applicable to each pole in an application, approval for a fee of \$100 plus five years back rent applicable to unauthorized attachments, and formal approval of fees now charged for make ready and other miscellaneous work.

6. The Division of Public Utilities filed comments on March 21, 2012 recommending that the Commission set and hold a Scheduling Conference.

7. The Commission held a duly noticed scheduling conference April 2, 2012 to discuss the process and schedule in the docket. The parties agreed on a discovery schedule and a technical conference to be held April 26, 2012 wherein Rocky Mountain Power would address the amended application along with questions filed by April 13, 2012.

8. At the Technical Conference, Rocky Mountain Power made a presentation and responded to questions filed in advance by URTA and CenturyLink, as well as questions presented during the presentation. As a result of the technical conference, Rocky Mountain Power filed May 3, 2012 a revision to its exhibit entitled, "2010 Per Pole Application Fee Calculation," originally filed as Exhibit F to its Application. The calculation was revised to use a Utah-specific allocation of those costs tracked only at a corporate level.

9. The Commission held a duly noticed second scheduling conference June 5, 2012 and established an additional scheduling order allowing for comments to be filed by July 25, 2012 and responses by August 13, 2012, with August 17, 2012 reserved for a potential hearing. The parties agreed that discovery would continue “on the same terms as specified in the Commission’s April 3, 2012 order. The Commission also noted, “the applicant has made arrangements for the parties to meet and discuss settlement.” Scheduling Order Issued June 7, 2012.

III. TERMS OF STIPULATION

1. Subject to Commission approval and for purposes of this Stipulation only, the Parties agree as follows.

2. The Parties agree that the Company’s proposed changes to the Safe Harbor agreement are acceptable as submitted in its Amended Application with the exceptions noted in the following paragraphs. A redline comparing Rocky Mountain Power’s stipulated version of the Safe Harbor to the Commission’s Safe Harbor is attached as Exhibit A1 and redline comparing Rocky Mountain Power’s stipulated version of the Safe Harbor to Rocky Mountain Power’s proposed version is attached as Exhibit A2. A clean copy is attached as Exhibit B.

a. The Parties do not object to the record of an attachment being added to the rent rolls upon approval rather than when the application is physically in place. However, the Parties wish to clarify that because rent is invoiced on a forward-looking annual basis and is not prorated, rent does not actually “begin” until the invoice date. In Section 3.01, the last sentence of the first paragraph of section 3.01 will read, “Rental Fees shall be applicable when the application is approved.”

b. At the request of the attaching parties, Rocky Mountain Power determined that a ninety-six count fiber cable could be substituted for the forty-eight count fiber originally proposed. In the third paragraph of Section 3.01, the second sentence will read, “Licensee may overlash a single ninety-six (96) or fewer count fiber cable, or coaxial cable of equivalent diameter(s) and weight(s) without submitting an application.”

c. The Parties agree that it is important to clarify that prior to any third party overlashing, the third party overlasher must have an agreement with the pole owner and the overlashed party. This clarification is necessary to prevent conflicts with the National Electrical Safety Code, to alleviate concerns about allowing subleasing a regulated space at market rates, and to meet the need for pole owners to have some control over the parties attached to its poles. The Parties agree that such overlashing is allowable if all three parties to the proposed overlashing agree, but neither the Pole Owner nor the overlashed licensee should be forced to accept such overlashing. Thus, in section 3.01, Rocky Mountain Power’s proposed language, “Licensee shall not allow any Third Party to overlash equipment upon an existing Attachment owned by Licensee” shall be stricken and replaced with “Third Party overlashing is not allowed absent a separate contractual agreement between the third party, the overlashed party, and the pole owner.”

d. The Parties agree that licensee may take up to 30 days to notify Rocky Mountain Power after installation of a service drop. In the sixth paragraph of section 3.02, the two references to a ten (10) business day notification period shall be replaced with a thirty (30) calendar day period.

3. The Parties agree that the Company’s proposed changes to the Electric Service Schedule No. 4 are acceptable as submitted in its Amended Application with the

exceptions noted in the following paragraphs. A redline to Rocky Mountain Power's existing Electric Service Schedule No. 4 is attached as Exhibit C.

a. The Per Pole Application fee will be \$55.64 per pole rather than \$58.30 as originally proposed. The fee will be calculated with costs that are tracked at a corporate level being allocated based on activity in Utah as shown in the revised exhibit filed May 3, 2012.

b. Typographical errors were discovered in item two. The first sentence is revised as follows, "This fee is applicable when the Company discovers a Licensee attachment on a Company pole where the Company has no record of approving the attachment."

c. The Unauthorized Attachment Fee will be \$100 but only applicable to certain attachments. The following sentences will be added at the end of item two: "The Unauthorized Attachment Fee shall be waived if Licensee presents credible evidence of any of the following: approval by and payment of rent to a putative pole owner; good faith belief of pole ownership; or of attaching in good faith. The Unauthorized Attachment Fee shall also be waived if Licensee presents credible evidence the attachment was in place prior to January 1, 2007.

IV. GENERAL TERMS AND CONDITIONS

1. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties are not able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result with respect to Rocky Mountain Power's Safe Harbor and its tariff and is in the public

interest. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to, any issues not specifically called out and settled herein.

2. The Parties believe the schedule for comments provides the appropriate process for consideration of this Stipulation. The Parties do not see any need for the Commission to hold a separate hearing on this Stipulation.

3. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the Division, the phrase “use its best efforts” means that it shall do so in a manner consistent with its statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review opposed to the Stipulation.

4. Except with regard to the obligations of the Parties under the three immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission.

5. This Stipulation is an integrated whole, and any Party may withdraw from it and may file comments if it is not approved without material change or condition by the Commission or if the Commission’s approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission’s approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties

agree to meet and discuss the applicable Commission or court order within ten business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

6. This Stipulation is made upon the express understanding that it constitutes a negotiated settlement. The provisions of this Stipulation shall not be construed as or deemed to be a precedent by any party or the Commission with respect to any issue, principle, or interpretation or application of law and regulations, for any purpose or in connection with any proceeding before a court of law or any state or federal government regulatory body. Further, this Stipulation shall not be used in any manner or deemed precedent in the negotiation of or execution of any agreement between any Parties with respect to pole attachment issues if the Parties do not use the Rocky Mountain Power Safe Harbor agreement.

7. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

V. RELIEF REQUESTED

Based on the foregoing, the Parties request that the Commission consider any comments that may be submitted on this Stipulation and, thereafter, enter an order approving the terms and conditions set forth in this Stipulation.

RESPECTFULLY SUBMITTED: August , 2012.

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NEW CINGULAR WIRELESS PCS

By: _____

NEXTG NETWORKS OF CALIFORNIA, INC.

By: _____