

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

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
Hearing Room 451
160 East 300 South
Salt Lake City, Utah

DATE: Tuesday, October 30, 2012

TIME: 9:02 a.m.

REPORTED BY: Scott M. Knight, RPR

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APPEARANCES

PRESIDING OFFICER: DAVID R. CLARK

FOR DIVISION OF PUBLIC UTILITIES:

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4 201 South Main Street, Suite 800

5 Salt Lake City, Utah 84111

6

7 FOR URTA:

8 KIRA SLAWSON, ESQ.,

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10 257 East 200 South, Suite 800

11 Salt Lake City, Utah 84111

12

13 FOR AT&T SERVICES, INC.:

14 ROGER MOFFITT, ESQ.,

15 (Appearing via telephone)

16 AT&T SERVICES, INC.

17 645 East Plumb Lane, Room B132

18 Reno, Nevada 89502

19

20 ALSO PRESENT:

21 Sharon Mullin (Director--Regulatory, AT&T

22 Services, Inc., appearing via telephone)

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24 Janice Ono (AT&T Docket Manager, appearing via

25 telephone)

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INDEX

WITNESS	Page
JEFFREY M. KENT	
DIRECT EXAMINATION	9
BY-MS.HOGLE	
JAMES FARR	
DIRECT EXAMINATION	21
BY-MR.SOMERS	
TOM McGOWAN	
DIRECT EXAMINATION	22
BY-MR.SOMERS	
CASEY COLEMAN	
DIRECT EXAMINATION	35
BY-MR.JETTER	

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Hearing Proceedings

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October 30, 2012

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PROCEEDINGS

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THE HEARING OFFICER: On the record.

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This is the time and place duly noticed for a

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hearing in Docket No. 10-035-97, in the Matter of the

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Consolidated Applications of Rocky Mountain Power for

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Approval of Standard Reciprocal and Non-Reciprocal Pole

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Attachment Agreements.

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Let's begin with the appearances of Counsel.

11

MS. HOGLE: Good morning, Your Honor. Yvonne

12

Hogle with Rocky Mountain Power. And with me here today is

13

Jeff Kent, who will be supporting the stipulation.

14

MR. SOMERS: Good morning, Your Honor. Torry

15

Somers, associate general Counsel of CenturyLink. And with

16

me available today for a panel, if you request, is Jim Farr,

17

director of regulatory affairs for CenturyLink; and Tom

18

McGowan, network services manager for CenturyLink.

19

THE HEARING OFFICER: Thank you. Mr. Somers,

20

you might want to pull your microphone a little closer. That

21

would be helpful.

22

Any other appearances?

23

MS. SLAWSON: Kira Slawson from Blackburn &

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Stoll on behalf of URTA.

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THE HEARING OFFICER: Thank you.

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MS. BERTELSEN: Good morning. Sharon Bertelsen on behalf of Comcast Cable Communications.

THE HEARING OFFICER: Thank you.

Any others?

MS. HOGLE: Your Honor, I'm wondering if we can--

THE HEARING OFFICER: Let's be off the record.

(A discussion was held off the record.)

(Recess taken, 9:03-9:11 a.m.)

THE HEARING OFFICER: Back on the record. We were--we're in the process of entering appearances when we went on the record--or off the record. We'll resume that. We have a party that has joined us on the telephone. We'll begin with you. If you'd please identify yourselves.

MS. MULLIN: Yes. Sharon Mullin and Janice Ono with AT&T.

THE HEARING OFFICER: Would you mind spelling the surnames, please?

MS. MULLIN: Sharon Mullin, M-U-L-L-I-N. And Janice Ono, O-N-O.

MR. MOFFITT: And Roger Moffitt, also for AT&T.

THE HEARING OFFICER: Thank you.

Anyone else on the phone?

All right, Mr. Jetter.

MR. JETTER: Justin Jetter for the Division of Public Utilities.

1 THE HEARING OFFICER: Thank you.

2 And I'm David Clark. And I've been designated as
3 the presiding officer for this proceeding this morning. And what
4 I propose to do is to have those of you who are here in support
5 of the settlement stipulation that's been filed to identify
6 yourselves and describe whether or not you desire to present
7 testimony in support of the settlement. Then we'll hear from
8 opponents, if there be any, as well. But let's begin with those
9 supporting the settlement stipulation.

10 MS. HOGLE: Thank you, Your Honor. As I said
11 before, with me here today supporting the stipulation is Mr. Jeff
12 Kent. And I believe that he would want to give testimony this
13 morning and thus would need to be sworn.

14 THE HEARING OFFICER: Any other party have a
15 witness here?

16 MR. SOMERS: Yes. Torry Somers of CenturyLink.
17 We also support the settlement stipulation. I have available
18 today Tom McGowan and Jim Farr, who are available to sit on
19 panel to answer questions and can make a brief statement, as
20 well.

21 THE HEARING OFFICER: Thank you.

22 Any others?

23 MR. JETTER: For the Division, Casey Coleman is
24 here. He's available to answer questions. I don't think we're
25 going to have him provide testimony, unless you wish for him to

1 do that.

2 THE HEARING OFFICER: Thank you.

3 All right. Well, for those of you who will be
4 testifying, if you would raise your right hands, I'll swear you en
5 masse. And then we'll make you available to offer your direct
6 testimony or summary and then for cross-examination, if there is
7 any.

8 Why don't you--yes, where you're seated is fine. If
9 you'd raise your right hands. Do you solemnly swear that the
10 testimony you're about to give shall be the truth, the whole
11 truth, and nothing but the truth?

12 MR. KENT: I do.

13 THE HEARING OFFICER: And would you each
14 identify yourselves for the record, please?

15 MR. KENT: Jeffrey M. Kent.

16 THE HEARING OFFICER: And describe who you're
17 here--

18 MR. KENT: With Rocky Mountain Power.

19 THE HEARING OFFICER: Thank you.

20 MR. FARR: Jim Farr with CenturyLink.

21 MR. McGOWAN: Tom McGowan, CenturyLink.

22 THE HEARING OFFICER: Thank you very much.

23 Ms. Hogle, would you like to proceed, then?

24 MS. HOGLE: Sure. Thank you.

25 THE HEARING OFFICER: Thank you.

1 JEFFREY M. KENT, being first duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY-MS.HOGLE:

5 Q. Good morning, Mr. Kent.

6 A. Good morning.

7 Q. Can you please state your position with Rocky
8 Mountain Power for the record?

9 A. My present position is director of distribution
10 support in the construction and support services department.

11 Q. Did you prepare direct testimony in this case?

12 A. Yes.

13 Q. Do you have any changes to your direct testimony?

14 A. No.

15 Q. So, if I were to ask you the questions in your
16 testimony again here today, would your answers be the same?

17 A. Yes.

18 Q. Did the company also prepare reply comments and
19 response to comments filed by other parties and file them with
20 the Commission August 27, 2012?

21 A. Yes.

22 Q. And were such reply comments prepared by you or
23 under your direction?

24 A. Yes.

25 Q. To the best of your knowledge, are the statements

1 therein true and correct?

2 A. Yes.

3 Q. Do you adopt the company's reply comments as
4 part of your testimony in this case?

5 A. Yes.

6 MS. HOGLE: Mr. Hearing Officer, I move for the
7 admission of Mr. Kent's direct testimony and the company's
8 reply comments into the record.

9 THE HEARING OFFICER: Any objection?

10 They'll be identified in the record as RMP Exhibit 1
11 and RMP Exhibit 2.

12 MS. HOGLE: Thank you.

13 BY MS. HOGLE:

14 Q. Have you prepared a summary of the development
15 of the stipulation and of the stipulation itself for the Commission
16 today?

17 A. Yes.

18 Q. Please proceed.

19 A. First, I will review briefly the history of events and
20 key elements of the stipulation that was entered into by the
21 company, the Division of Public Utilities, CenturyLink, the Utah
22 Rural Telecom Association, Frontier Communications, and
23 Integra Telecom. In addition, other parties, including Comcast
24 Cable Communications and NextG and New Cingular,
25 participated in this docket.

1 On April 26 of 2010, Rocky Mountain Power
2 submitted for Commission approval a proposed standard
3 nonreciprocal pole attachment agreement in Docket 10-035-43,
4 which was consolidated into this docket upon application for
5 approval of a reciprocal pole attachment agreement. Rocky
6 Mountain Power submitted an amended application in this
7 docket on February 9, 2012.

8 Along with its amended application, Rocky
9 Mountain Power submitted proposed changes to the safe harbor
10 agreement and is Schedule 4--Schedule No. 4 along with
11 supporting testimony and exhibits.

12 The amended application proposed changes in the
13 safe harbor agreement in several respects, changes for
14 conformity with the rule and Commission directive, and
15 substantive changes to four sections--Section 3.01, 3.02, 3.04,
16 and 5.04 of the safe harbor agreement.

17 In this amended application, the company sought
18 approval for the company's use only of certain changes to the
19 safe harbor agreement. The amendment application proposed
20 an amendment to Schedule No. 4 incorporating a schedule of
21 nonrecurring fees as required by Rule R746-345-3A(2). Rocky
22 Mountain Power sought to consolidate several variable rate fees
23 charged for work involved with an application into a flat fee
24 applicable to each pole in an application and approval for a fee
25 of \$100 plus up to five years back rent applicable to

1 unauthorized attachment and formal approval for fees now
2 charged for make-ready work and other miscellaneous work.

3 A technical conference was held April 26, 2012,
4 wherein Rocky Mountain Power addressed the amended
5 application along with questions filed April 13, 2012.

6 At the technical conference, the company made a
7 presentation and responded to questions filed in advance by
8 URTA and CenturyLink, as well as questions presented during
9 the technical conference. Subsequently at parties' request, the
10 company file a May 3, 2012, revision to its exhibit entitled "2010
11 Per Pole Application Fee Calc"-- "Calculation." That was
12 originally filed as Exhibit F in its application. And the
13 calculation was revised to use Utah-specific allocation of those
14 costs tracked only at a corporate level.

15 Over the course of several days, parties conducted
16 settlement discussions and met June 25 of 2012. Intervening
17 parties to the docket in attendance of the duly noticed
18 settlement conference included Rocky Mountain Power, the
19 Division, CenturyLink, Comcast, New Cingular, NextG, and
20 URTA. Intervenors Integra and Frontier were subsequently
21 contacted and informed of the proposed settlement.

22 Drafts of the stipulation were circulated to the
23 parties for review and comment on June 29 of 2012. And there
24 were further discussions among various parties. On July 20,
25 2012, Rocky Mountain Power, CenturyLink, and URTA filed a

1 request for a two-week extension of the comment period in this
2 docket, citing that several parties were close to reaching an
3 agreement and were finalizing a settlement stipulation. And on
4 August 6, 2012, the parties filed a settlement stipulation with
5 the Commission, recommending approval of all of its terms and
6 conditions.

7 On August 8, NextG filed comments indicating it
8 was not supportive of certain aspects of the Commission's
9 existing safe harbor language, and therefore chose not to sign
10 the settlement stipulation. NextG indicated it would instead
11 seek to address concerns in negotiations directly with Rocky
12 Mountain Power. Also, on August 8, Comcast filed comments
13 indicating it was not supportive of certain compacts of the
14 settlement stipulation and therefore chose not to sign. Comcast
15 was the only party to oppose any of the changes proposed in
16 the settlement stipulation. And on August 27, Rocky Mountain
17 Power filed reply comments addressing the arguments made by
18 Comcast.

19 Q. Can you briefly describe the terms of the stipulation
20 for the Commission, in particular the differences between the
21 company's initially proposed safe harbor agreement and the
22 safe harbor agreement that parties agree to and that is
23 presented here today for consideration and approval?

24 A. Yes. The parties agreed to the company's
25 proposed safe harbor agreement, with a few exceptions. With

1 respect to the timing of rental fees, the parties agree that rent is
2 applicable upon approval of an application. However, because
3 rent is invoiced on a forward-looking annual basis and is not
4 prorated, rent does not actually begin until the invoice date, so
5 parties clarified that in the stipulation.

6 With respect to overlashing, the parties agreed that
7 third-party overlashing is allowable. With respect to third-party
8 overlashing, parties agree that third-party overlashing is
9 allowable upon agreement with the three parties involved. This
10 is necessary to avoid conflicts with the National Electrical
11 Safety Code to alleviate concerns that parties had about the
12 subleasing of regulated space at market rates and to meet the
13 need for pole owners to have some control over the parties
14 attached to their poles.

15 With respect to service drops, the parties agreed
16 that licensees may take up to 30 days as opposed to ten days,
17 to either notify or make application to Rocky Mountain Power
18 after insulation of a service drop.

19 With respect to overlashing, the parties agreed that
20 a 96-count fiber cable could be substituted for the 48-count fiber
21 originally proposed.

22 With the changes to Schedule 4, which were also
23 part of the stipulation, the parties agreed to the company's
24 proposed changes with the following exceptions: The
25 application fee, the parties agreed to the company's

1 proposed--let's see. The parties agreed that the application fee
2 would be reduced \$55.64 to reflect Utah-specific costs. This
3 was a change from the \$58.30 originally proposed by the
4 company.

5 The parties corrected a couple of minor
6 typographical errors in the section on unauthorized attachments
7 and the parties adopted an unauthorized attachment fee of \$100
8 and agreed to waive the unauthorized attachment fee if credible
9 evidence of any of the following was presented--
10 that is, payment of rent to another owner, good-faith belief of
11 full ownership or attaching in good-faith, or if the attachment
12 was in place prior to January 1 of 2007.

13 Q. Are you familiar with the comments filed by
14 Comcast on August 8, 2012?

15 A. Yes, I am.

16 Q. And do you have any brief comments regarding the
17 concerns raised by Comcast in its comments?

18 A. Yes. Comcast included concerns with the
19 settlement language with regard to when rent fees apply,
20 overlashing, service drops, and which unauthorized attachments
21 would be subject to unauthorized attachment fees.

22 With respect to when rent fees apply, as explained
23 earlier in my summary, the language in the settlement clarified
24 that rent is applicable when the application to attach is
25 approved, but rent doesn't actually begin until the rent is

1 invoiced. This language has little or no financial impact to
2 licensees.

3 With respect to overloading, the parties to the
4 settlement agreed that the language in the settlement
5 agreement addresses safety and reliability concerns and at the
6 same time allows licensees to perform most overloads
7 without prior evaluation or approval from the pole owner.

8 The requirement for advance evaluation for
9 overloading is limited to high-risk situation involving the
10 company's high-voltage transmission lines, un-guyed spans, and
11 conductors that are likely to cause ground clearance issues or
12 pole loading issues.

13 And with respect to service drops, the parties to the
14 settlement agreement agreed that the service drop attachments
15 which occupy usable space on a pole previously not occupied by
16 the licensees are subject to rental fees and necessitate an
17 after-the-fact application.

18 Further, the parties acknowledge that service drops
19 can impact safety of utility workers, communications workers,
20 and the public, and a timely after-the-fact notice allows for
21 timely safety checks and follow-up.

22 The parties did not limit the ability of the licensees
23 to attach a service drop to serve a customer in advance of
24 notification or application to the pole owner, and allows for 30
25 days after the fact for such correspondence.

1 And finally, with respect to unauthorized
2 attachments to which unauthorized attachments are subject to
3 unauthorized attachment fees, the parties to the settlement
4 agree to a number of waiver provisions, as mentioned earlier in
5 my summary, which allow the opportunity to demonstrate
6 good-faith efforts to follow the law and impose reasonable limits
7 on how far back in time such fees would apply.

8 Q. Do you have any final comments, Mr. Kent?

9 A. Yes. The company would like to thank the
10 Commission, the signatories to the settlement, and all the
11 parties that participated in the docket. The company realizes
12 that a lot of work went into this effort to get this settlement and
13 appreciates the parties' willingness to come together and
14 propose a reasonable settlement that, for the most part, we can
15 all agree with.

16 The company and five other parties agree that the
17 proposed safe harbor agreement before you today is reasonable
18 and result in the public's interest and recommends that the
19 Commission approve it. Thank you.

20 MS. HOGLE: The witness is available for
21 questions.

22 THE HEARING OFFICER: Are there any questions?
23 I don't see any. I have a couple, but I think I'll wait to ask mine
24 until after all of the witnesses have provided their summaries or
25 direct testimony.

1 Mr. Somers.

2 MR. SOMERS: Yes. CenturyLink does not have
3 prepared testimony in this docket, but CenturyLink is prepared
4 to make a brief statement and then address a couple specific
5 issues. I think Mr. Kent did a very good job explaining the
6 overall settlement, but we would like to give CenturyLink's
7 position, as well.

8 JAMES FARR, being first duly sworn, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY-MR.SOMERS:

12 Q. I would like to ask Mr. Farr: Mr. Farr, do you have
13 an overall comment with respect to the settlement stipulation?

14 A. Yes, I do. CenturyLink believes the stipulation is a
15 just and reasonable resolution of the disputed issues in this
16 proceeding for both the pole owner perspective and also as an
17 attacher. CenturyLink is both a pole owner and a pole attacher
18 on poles owned by other companies such as Rocky Mountain
19 Power and various municipal power companies. Given
20 CenturyLink's unique position, it has a balanced perspective
21 regarding the issues in this proceeding.

22 Q. Mr. Farr, Comcast raised an issue in their
23 comments dealing with a concern they have with possible double
24 recovery of costs with the Schedule 4 fee. Do you have any
25 comment on that issue?

1 A. CenturyLink agrees that pole owners should not be
2 allowed to double-recover costs. In regards to the pole
3 application fee being recommended by Rocky Mountain Power,
4 CenturyLink wanted to make sure the costs being recovered in
5 the pole application fee were not being recovered in the pole
6 rental fee. CenturyLink served discovery on Rocky Mountain
7 Power. A review of the data responses alleviated CenturyLink's
8 concerns regarding whether Rocky Mountain Power was also
9 getting recovery of these same costs in the pole rental fee.

10 Q. Thank you, Mr. Farr.

11 And I have a brief question for Mr. McGowan
12 regarding the overlashing issue by an existing attacher.

13 MR. McGOWAN: Good morning.

14 TOM McGOWAN, being first duly sworn, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY-MR.SOMERS:

18 Q. Mr. McGowan, are you aware that Comcast in their
19 comments raised concerns with respect to the issue in the
20 settlement stipulation regarding overlashing by an existing
21 attacher?

22 A. I am.

23 Q. Do you have any comments on that issue?

24 A. Overlashing by an existing attacher, we believe that
25 the 96-fiber threshold is a reasonable approach to balancing the

1 safety concerns of the pole owner with the need of the attacher
2 to be able to reinforce the facilities in a more timely manner. If
3 the pole line does happen to fail, the pole owner has a
4 responsibility to correct, and it may be liable for any damages.
5 A pole owner will incur costs to verify that the facilities larger
6 than a 96-fiber will not trigger necessary make-ready costs to
7 ensure that pole lines remain safe. It is not unreasonable that
8 an attacher pay an application fee to cover these costs for
9 attachments beyond a 96-fiber count. We also believe that
10 the--this is more--simpler way to administer this as compared to
11 the New York standards cited by Comcast in its comments.

12 MR. SOMERS: Thank you, Mr. McGowan.

13 Mr. Clark, our witnesses would be available for
14 panel--for questions.

15 THE HEARING OFFICER: Thank you.

16 I think that we've heard from all the witnesses who
17 are here in support of the settlement stipulation. Am I correct in
18 that?

19 All right. And are there any questions--
20 is there any cross-examination?

21 Okay. This is for--my question--first question is for
22 Mr. Kent or Mr. Farr. I appreciated the testimony on the
23 potential for duplication of recovery among the categories of
24 application fees, rental charges, and the miscellaneous fees
25 that are addressed in Comcast's comments. So, did I

1 understand your testimony, Mr. Farr, to be that CenturyLink
2 examined these cost structures-- each of them and determined
3 that there was not a potential for duplicate recovery?

4 MR. FARR: Yeah, standard requests, trying to
5 determine how these costs--various costs would--

6 THE REPORTER: Sorry. I missed a word. Could
7 you just back up?

8 MR. FARR: At CenturyLink, we asked data
9 requests and looking at the--how the various costs mapped to
10 the various--what they call FERC accounts. And our cost group
11 did a review of that and felt that--by the way they responded to
12 the data request, that those accounts mapped properly and were
13 not being recovered. The rental rate does not recover the same
14 costs as the application fee.

15 THE HEARING OFFICER: Did your examination
16 also include the other miscellaneous fees that Comcast
17 expressed some concern about?

18 MR. FARR: We focused on the rental rate,
19 because that's--in the past I think that's where there's been a lot
20 of concerns about double recovery. But, no, we didn't look at
21 every miscellaneous fee.

22 THE HEARING OFFICER: Mr. Kent, can you
23 address the miscellaneous fees and the potential for duplication
24 of recovery?

25 MR. KENT: Sure. With respect to the

1 miscellaneous fees, these are fees that are directly attributable
2 to costs caused by the attachers either for make-ready work,
3 which are directly recoverable from the attacher, or for
4 emergency work that the utility might have to do on behalf of the
5 attacher for a downed line or something to that effect. And
6 those costs are directly recoverable under the terms of the safe
7 harbor and under joint use in general.

8 The FERC accounts that those are booked to, it's
9 understood that just a fraction, if any--there's a certain amount
10 of the pole owner's maintenance costs that are recovered in the
11 rent, but that's part of the rent formula. But these are costs
12 above and beyond routine maintenance to maintain poles and
13 lines. So, these are directly recoverable costs.

14 THE HEARING OFFICER: When you say "these,"
15 you're referring to the miscellaneous--

16 MR. KENT: Right.

17 THE HEARING OFFICER: --fees. Thank you.

18 Regarding the fee for unauthorized attachments, if
19 the agreement as presented in this settlement stipulation is
20 approved, would that fee, then, apply to any unauthorized
21 attachments discovered from that date forward or how would
22 the fee be applied?

23 MR. KENT: Yes. It would apply to any discovered
24 from that date forward.

25 I want to clarify, if I may. The parties agreed that

1 there would be a date of January 1, 2007, for which a licensee
2 could show that the attachment was in place prior to that date
3 and not be subject to unauthorized attachment fees. And the
4 parties agreed to that. But I understood your question to be
5 upon discovery.

6 So, just to clarify, an attachment may have been
7 placed after January 1 of 2007, but we--
8 it may not be discovered to be unauthorized until a month from
9 now. And that would be subject to fees, because it was
10 discovered after the date of approval of this fee schedule.

11 THE HEARING OFFICER: Thank you. My question
12 assumed that the conditions that an attacher can demonstrate
13 that would excuse the fee didn't apply. But if you could address
14 those for a moment. From your perspective, how much
15 likelihood is there that controversy will exist around whether or
16 not good-faith efforts have been made or--the other conditions
17 that might excuse an unlawful or unauthorized attachment exist?
18 How much controversy is likely to exist on those issues between
19 the parties? And what is the likelihood that the parties would be
20 able to resolve that? I guess what I'm really asking is, are we
21 creating a situation where there's likely to be significant
22 disagreements that the commission may have to resolve in the
23 future?

24 MR. KENT: And I understand the concern. And
25 my--in my experience, there may be some controversy. But I do

1 believe, based on my experience with what's gone on in my time
2 in the job, which has been four years, that Rocky Mountain
3 Power would--has and will continue to take the word of the
4 licensee with respect to their claims and waive the fee and
5 resolve the issue amicably. So, I don't anticipate anything going
6 beyond what the parties can resolve.

7 MR. SOMERS: Your Honor, could Mr. Farr also
8 address that?

9 THE HEARING OFFICER: Absolutely. Certainly.
10 Mr. Farr.

11 MR. FARR: I don't think any party was opposed to
12 the language, the qualifying language, that would allow in good
13 faith to be able to dispute. And I think the intent of that is so
14 parties do try to work it out. It's trying to deal with the bad
15 actors.

16 And we actually--you know, years ago had a
17 situation where we wish we had this in place, where we were
18 meeting with somebody that was attaching to our poles. We told
19 them we had poles. And they refused to enter into an
20 agreement, because they believed that the municipal power
21 company owned them. And we ended up having to get into a
22 lawsuit in order to get them to come with--with a pole
23 attachment is one of the reasons why we filed a lawsuit.

24 But had there been this \$100-per-pole fee out
25 there, maybe they would have looked at this differently. They

1 weren't going to be harmed by signing a pole attachment
2 agreement with us. They could have resolved the dispute of the
3 pole ownership as far as not paying two bills to two different
4 pole owners that claimed ownership of the same poles. But they
5 just seemed to have a very cavalier attitude.

6 And when we went and inspected in the field, they
7 went ahead and attached to the poles without permission,
8 without an attachment agreement. When we went and inspected
9 that in preparation for the lawsuit, we found all kinds of safety
10 violations. We saw damage to the facilities, including
11 Comcast's facilities.

12 One example where they moved, they went ahead
13 and just moved other parties and placed on their pole--on our
14 pole, and they moved Comcast up into the power space, which
15 is a safety violation. Another situation where they moved
16 Comcast facilities, they took all the slack by moving it
17 up--removed all the slack in the drop. And you could see at the
18 home, where it was pulling out of the home, where it was
19 attached to the home.

20 So, I think this is really geared at the bad actors,
21 not those that are acting in good faith and you have an
22 inadvertent mistake, those kinds of things. I think parties will
23 try to work that out. We don't--no party is interested to get
24 involved in litigation to try to resolve issues when there's been
25 good faith involved.

1 THE HEARING OFFICER: Thank you, Mr. Farr.
2 Mr. Jetter.

3 MR. JETTER: Excuse me. Can we swear in Casey
4 Coleman real quick? He would like to add a few comments.

5 MR. COLEMAN: I rose my hand and said "Yes,"
6 so-- actually, in case I had to answer questions, so . . .

7 (To Mr. Harvey) You saw that right, John, that I
8 raised my hand?

9 Anyways, unless you want to do it again.

10 THE HEARING OFFICER: For the record, Mr.
11 Coleman, let's have you do it again, because I didn't note that
12 you had participated.

13 MR. COLEMAN: Sorry.

14 THE HEARING OFFICER: Do you solemnly swear
15 the testimony you are about to give shall be the truth, the whole
16 truth, and nothing but the truth?

17 MR. COLEMAN: Yes.

18 THE HEARING OFFICER: And please, Mr. Jetter,
19 proceed.

20 (Sound system interference.)

21 THE HEARING OFFICER: Off the record.

22 (A discussion was held off the record.)

23 THE HEARING OFFICER: Back on the record.

24 MR. JETTER: Okay. The Division would just like
25 to ask our expert here, Casey Coleman, for a few comments

1 regarding the unauthorized attachment provisions in this
2 stipulation.

3 MR. COLEMAN: Like the Commission, as the
4 Division, we were also, I guess, concerned or interested on the
5 fact that there could seem to be an opportunity for companies to
6 have disagreement over the language in that. And so we did
7 look at it and evaluate it, as well. And having been involved
8 with the pole attachment agreement for numerous years, we
9 were aware that the Commission had set a fee that was
10 considerably less than \$100.

11 But in the internal discussions, and also in our
12 internal analysis, kind of what we were comfortable with, again,
13 as part of what Mr. Farr said in his testimony, the reality is, this
14 is there more to be a deterrent than--where you have two
15 companies who are working in good faith. And so we felt that
16 increasing that amount to something a little bit higher may act
17 more as a deterrent than what the present fee level was with
18 that, as well.

19 And we also felt comfortable that, you know, the
20 companies probably would be able to work out--if both parties
21 are working in good faith, which--it's hard to define, they
22 probably would be able to resolve something. And so that's why,
23 as a Division, we at first were a little bit leery or skeptical of it,
24 but our comfort level increased as we were able to discuss with
25 the parties, get a sense that it really wasn't going to be

1 something that would be used quite often.

2 And, you know, the reality of it is, is with the safe
3 harbor agreement, that's only one element of it. Companies can
4 negotiate something different if they're uncomfortable with it,
5 because they have the ability to negotiate something. And
6 if--you know, the reality of it is, if a company was uncomfortable
7 with it, they could negotiate something different to begin with in
8 something other than a safe harbor agreement. And it's kind of
9 a Catch-22, if they're uncomfortable with it, that--because
10 they're understanding that they may have this problem come up
11 down the road. So, that's why, as a Division, we kind of went
12 through the process, want to make this more comfortable with
13 increasing that unauthorized attachment fee.

14 THE HEARING OFFICER: Thank you, Mr.
15 Coleman.

16 Anything else, Mr. Jetter?

17 MR. JETTER: No, sir.

18 THE HEARING OFFICER: Thank you.

19 Mr. Kent, just another question for you that relates
20 to overlashing. In the context of Comcast's comments about
21 overlashing, can you address for me third-party overlashing
22 versus overlashing by an existing pole user or attacher, and how
23 the agreement in its proposed form, safe harbor agreement, as
24 proposed in the stipulation?

25 MR. MOFFITT: This is Roger Moffitt for AT&T.

1 We're having problems hearing folks after that little equipment
2 issue.

3 THE HEARING OFFICER: Thank you. Is this
4 better?

5 MR. MOFFITT: No.

6 THE HEARING OFFICER: It's not better. Because
7 we--it's--there's a lot of volume in the room here. I'm
8 just--pardon me just a second. We'll be off the record.

9 (A discussion was held off the record.)

10 THE HEARING OFFICER: Let's take a recess for
11 five minutes.

12 (Recess taken, 9:49-9:54 a.m.)

13 THE HEARING OFFICER: On the record.

14 MR. JETTER: Can we just add--add just quickly
15 that one more question for Casey?

16 THE HEARING OFFICER: Yes. Just before we do
17 that, let me note for the record that the parties who I believe
18 were all from AT&T who had been on the phone are no longer
19 on the phone. And we have taken a recess of about five or six
20 minutes to provide them an opportunity to call back in, but they
21 have not done so.

22 So, Mr. Jetter, now, please take up your matter.

23 MR. JETTER: Thank you. Just like to put this on
24 the record at the hearing and ask Casey Coleman from the
25 Division.

1 CASEY COLEMAN, being first duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY-MR.JETTER:

5 Q. Have you reviewed the stipulation that was signed
6 by the Division?

7 A. Yes, I have.

8 Q. And is the Division still in agreement with the
9 stipulation?

10 A. Yes, we are.

11 Q. And does the Division believe that the stipulation is
12 in the public interest and will result in just and reasonable
13 charges throughout the line attachment stipulation and the
14 various charges within that?

15 A. Yes, we do.

16 MR. JETTER: Thank you.

17 THE HEARING OFFICER: Thank you.

18 Mr. Kent, I was in the midst of asking you a
19 question. Let me just restate it for you. And I'm going to put it
20 in the context of a statement in Comcast's comments that Rocky
21 Mountain Power's restrictions on overlashing are inconsistent
22 with the positions of the Commission--that is, the Public Service
23 Commission, I believe--and the FCC.

24 And--so, in the context of those--of that statement,
25 would you address overlashing and distinguish, if you can, for

1 me any different treatment for attachers versus third-party
2 overlashers that the settlement agreement or the new safe
3 harbor would create?

4 MR. KENT: Sure. Absolutely. Yes. With respect
5 to third-party overlashing and the language in the settlement
6 stipulation, there were no parties objecting to that language,
7 including Comcast. Comcast's comments were specific to their
8 overlashing of their own facilities.

9 But with respect to the similarities, the--
10 both will be governed by a pole attachment agreement and then
11 both will be--which would have rates, terms, and conditions.
12 And the nuance between a licensee overlashing to its own
13 facilities versus a third-party overlashers, one of the nuances is
14 in order for a third-party overlasher to attach, they have to
15 violate the clearance requirements between two communications
16 conductors, which the National Electric Safety Code--

17 (Telephone beep interruption.)

18 MS. HOGLE: Hello?

19 MS. ONO: Hello.

20 THE HEARING OFFICER: Hi, this is David Clark.
21 And you have the hearing room. Are these the AT&T people?

22 MS. ONO: Yes, this is Roger and Janice.

23 THE HEARING OFFICER: Can you hear me?

24 MR. MOFFITT: We can hear you fine now. Thank
25 you.

1 THE HEARING OFFICER: That's great. I think
2 there was some problem with the connection. And we did start
3 without you about two minutes ago. Let me describe, if I may,
4 what you've missed. There's been testimony from the Division's
5 witness, Mr. Coleman, in general support of the settlement
6 stipulation. And I have addressed a question to Mr. Kent
7 regarding overlashing. And he's in the midst of answering that
8 question. So, unless you object, those of you on the phone,
9 we'll just continue with Mr. Kent's response. Is that agreeable?

10 MR. MOFFITT: No objection. Go ahead. Thank
11 you.

12 THE HEARING OFFICER: Thank you.

13 MR. KENT: The only additional comment I had on
14 third-party overlashing is the National Electric Safety Code
15 requires clearances between two communications conductors
16 owned by different parties. And there is, however, an exception
17 to that that allows them to be closer than four inches, which
18 certainly an overlashing would cause. But that exception
19 requires that the pole owner agree to that reduced clearance.
20 And so that's, in effect, what we put into the stipulation
21 language, which parties have not objected to, is that there
22 needs to be agreement between not only the party overlashing,
23 party being overlashed to, but the pole owner, as well.

24 THE HEARING OFFICER: Does any other party
25 desire to address this general subject before we leave it?

1 MR. SOMERS: Mr. McGowan would like to make--

2 THE HEARING OFFICER: Mr. McGowan.

3 MR. MCGOWAN: Thank you. Am I on?

4 THE HEARING OFFICER: You're on.

5 MR. MCGOWAN: Okay. I think, just to reiterate a
6 little bit more about the third party and overlashing requirement,
7 I think as a pole owner allowing attachers to overlash without a
8 permit, basic--and to allow the attacher to determine whether or
9 not the pole is overloaded really shifts the burden of actual
10 liability in managing a pole from the pole owner to the attacher.

11 So, having the permit provisions as in the
12 stipulation there allows the pole owner to not only see what the
13 over--what's going on on their pole, but also to determine in
14 a--to better determine what the load and the load factors are on
15 the pole, because they know exactly what's--
16 what their facilities weigh, transformers, their own wire facilities.
17 So, it's not just--they're taking a look at the entire pole load, not
18 just the pole--the loading of the new attacher's facility.

19 THE HEARING OFFICER: Thank you.

20 Anything else on this subject?

21 Mr. Kent, we've referred to Rocky Mountain Power
22 often in discussing or describing the safe harbor agreement.
23 The agreement really includes PacifiCorp, am I right, and Rocky
24 Mountain Power as a division of PacifiCorp? Do I have the
25 structure correct?

1 MR. KENT: Yes.

2 THE HEARING OFFICER: And then regarding the
3 reference to 2007 in the context of unauthorized attachments,
4 was that when your last comprehensive audit of attachments on
5 your system was, or was it before that, or have you had one
6 since that?

7 MR. KENT: It was before that. And we haven't had
8 one since other than through the course of, you know, routine
9 work whereby we might be out performing other related work
10 and note the inventory of the pole.

11 THE HEARING OFFICER: So, is there any
12 significance to the year 2007?

13 MR. KENT: It was a date that we came to through
14 our discussions at the settlement conference.

15 THE HEARING OFFICER: Sort of a statute of
16 limitations.

17 MR. KENT: Yeah, exactly. That's exactly what it
18 was.

19 THE HEARING OFFICER: Anyone else desire to
20 address that subject?

21 I believe that concludes my questions. Any other
22 evidence or information to come before the Commission?

23 Mr. Farr.

24 MR. FARR: Going back to the third-party
25 overlashing, just wanted to make a couple of other points. Jeff's

1 already mentioned that no party in this proceeding raised any
2 concerns with that change. Also, in our settlement discussions,
3 no party was aware of this situation ever coming up, because if
4 I'm attached to a pole and to allow a third party to overlash to
5 my facilities, what that does is limits my ability to reinforce my
6 own facilities and may cause me as an attacher to trigger a lot
7 of make-ready costs if I end up having to reinforce.

8 So, I don't know--that's why a third party desiring to
9 overlash should have an agreement with the pole owner. Pole
10 owner should have the right to know who's attached to their
11 pole. And second of all, receive permission from the existing
12 attacher. Shouldn't mandate an existing attacher to have to
13 give up that right that they currently have to be able to overlash
14 their own facility.

15 One thing is, we thought that if somebody wanted
16 to come in and do that and they weren't able to reach the three
17 parties involved in this, were not able to agree--the pole owner,
18 the existing attacher, and the overlasher--that this could be
19 brought before the Commission. And the Commission would
20 have the benefits of specific facts in order to make a finding.

21 I mean, there are some issues that, you know, we
22 didn't attempt to try to resolve that would be better to resolve in
23 a proceeding. For example, what should be the existing
24 attacher--
25 what should they be able to charge somebody that's coming in

1 and overlashing their facility?

2 On one hand, the pole owner's not able--
3 they have to charge a cost-based rate for the rental, and then
4 you're going to allow somebody that--that's an attacher to resell
5 that at a market-based rate. I mean, there's a lot of those kind
6 of concerns. The bottom line is, we weren't aware of any
7 situation where this has come up. And so maybe we were
8 spending a lot of time worrying about something that just hasn't
9 happened.

10 THE HEARING OFFICER: Thank you, Mr. Farr.
11 Any other comments on any subject before we
12 adjourn?

13 MS. BERTELSEN: Yes.

14 THE HEARING OFFICER: Ms. Bertelsen.

15 MS. BERTELSEN: Sharon Bertelsen for Comcast.

16 THE HEARING OFFICER: I think--

17 MS. BERTELSEN: Is it not? Thank you.

18 I would first like to respectfully move that
19 Comcast's August 8, 2012, comments be admitted into evidence.

20 THE HEARING OFFICER: Is there any objection to
21 that?

22 (Indistinct voice on the telephone.)

23 THE HEARING OFFICER: I'm sorry.

24 MS. ONO: Want to take his car?

25 THE HEARING OFFICER: I still couldn't hear that.

1 If someone on the phone is addressing us, we need you to
2 speak up. We're not hearing anything if you're speaking.

3 MS. HOGLE: She may think she's on mute.

4 (Indistinct voice on the telephone.)

5 MS. HOGLE: Should we tell her?

6 THE HEARING OFFICER: Yeah.

7 MS. HOGLE: Excuse me. You're not on mute. We
8 can hear you. You may want to mute yourself.

9 THE HEARING OFFICER: All right.

10 MS. BERTELSEN: And, Your Honor--

11 MS. ONO: You know what? You should have taken
12 some of those long . . .

13 THE HEARING OFFICER: To the people on the
14 phone, we're hearing conversation that we're certain is not
15 pertinent to the hearing. And so we--it would be helpful to us if
16 there are other conversations going on if you'd mute your
17 telephone. Thank you.

18 Okay. So, there's--I don't believe there's an
19 objection. I hear no objection to receiving the August 8
20 comments into evidence, so they're received.

21 MS. BERTELSEN: Yes, Your Honor. I wanted to
22 just--two things quickly. One is cost and two, safety. The pole
23 rate formula has been repeatedly found by regulatory agencies
24 and by the court to produce rates that are just and reasonable
25 and fully compensatory to the utility--

1 MS. HOGLE: Excuse me, Your Honor. I'm sorry. I
2 must object. I object to the fact that Counsel for Comcast is
3 testifying. And she is not a witness in the case, so I think it's
4 improper.

5 THE HEARING OFFICER: I'm going to sustain the
6 objection. If you have argument to make on the basis of the
7 comments, I think that would be fair.

8 MS. BERTELSEN: Okay. I do.

9 THE HEARING OFFICER: But to introduce new
10 factual information, I think we need to have a witness that would
11 be subject to cross-examination.

12 MS. BERTELSEN: I understand. And I'm sorry. I
13 was not making new arguments. I was trying to urge the
14 Commission to carefully consider the cost issue.

15 Also, in response to the safety issue, I wanted to
16 just address the fact that Rocky Mountain Power incorrectly
17 suggests that Comcast is not concerned with safety and that
18 Comcast made very important comments in--regarding safety.
19 And safety is--it's paramount. And Comcast, along with all the
20 pole owners and attachers in this docket, are interested in
21 safety. And they're all under the same obligations to comply
22 with the safety requirement.

23 THE HEARING OFFICER: Thank you.

24 Anything else before we adjourn?

25 MR. MOFFITT: Hearing Officer, this is Roger

1 Moffitt for New Cingular Wireless. I'm just very quickly
2 reiterating the positions I think we've made clear in our letter,
3 so we are not joining in the stipulation. We do not oppose it,
4 but we will address our issues with Rocky Mountain Power in an
5 appropriate time. Thank you.

6 THE HEARING OFFICER: Thank you, Mr. Moffitt.

7 MS. HOGLE: One more.

8 THE HEARING OFFICER: Ms. Hogle.

9 MS. HOGLE: Yes. At this point, Rocky Mountain
10 Power proposes that Your Honor issue a bench order. Thank
11 you.

12 THE HEARING OFFICER: I appreciate the motion.
13 I'm not empowered to do that. And I am not going to be able to
14 do that today. I will, however, assure the parties that the matter
15 will receive the Commission's attention in due course. And we'll
16 issue a written order as soon as practical. And so thank you
17 very much for your participation today. We're adjourned.

18 (Proceedings adjourned at 10:10 a.m.)
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