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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
Reply Comments of Frontier Communications Corporation)

Frontier Communications Corporation (“Frontier”) hereby responds to the Reply Comments of Rocky Mountain Power (RMP) filed on August 31, 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*. RMP submitted its self-styled standard non-reciprocal pole attachment agreement in this Docket on April 26, 2010. Despite claims to the contrary, RMP’s newly filed agreement, if approved by the Commission, would supplant the safe harbor agreement the Commission approved in Docket No. 04-999-03, *In the Matter of an Investigation into Pole Attachments*.

Consequently, Frontier submits the following responsive comments:

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1. Frontier has two ILEC affiliates that provide public telecommunications services Utah using cables attached to RMP's poles. Citizens Telecommunications Company of Utah rents nearly 1,100 pole attachments from RMP, and Navajo

Communications Company, Inc. leases just over 375 pole attachments from RMP. Frontier's two affiliates have no poles to which RMP is attached.

2. As Frontier pointed out in its Initial Comments in this Docket, the Division of Public Utilities ("DPU"), RMP, Frontier and several other parties spent many months drafting a safe harbor agreement during the proceedings in Docket No. 04-999-03.¹ The DPU acted as a keeper and recorder of various drafts. This safe harbor agreement was drafted as a joint use agreement merely for the sake of convenience, and 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.²

3. The DPU submitted the final draft of the safe harbor agreement to the Commission on February 10, 2006, describing it as a "standard contract."³ This submission followed a letter from the Commission directing that certain revisions be made to the penultimate version of the draft agreement.⁴ The Commission subsequently sent a letter to the DPU acknowledging receipt of the final version of the safe harbor agreement and noting:

... having received no comment or objection to the Agreement as filed, the Commission acknowledges receipt of the Agreement and provides notice that said Agreement shall remain on file as a "safe harbor" for use by parties unable to agree to terms governing their pole attachment relationship.⁵

¹ Memorandum to the Public Service Commission from the Division of Public Utilities, In the Matter of an Investigation into Pole Attachments Docket No. 04-999-03, February 10, 2006, at page 1. "On March 11, 2004 the Division filed a request to open an investigative docket into the rules dealing with pole attachments. Over the course of the next two years a number of technical conferences have occurred as well as numerous briefs, memos, and pleadings have been filed to investigate Pole Attachments."

² Ibid., p. 1. "One of the objectives of the investigation was to draft a contract that could be adopted by either attachers or pole owners."

³ Ibid., Exhibit A.

⁴ Correspondence from the Commission to the Parties in Docket No. 04-999-03, February 2, 2006.

⁵ Correspondence from Julie Orchard to Constance White, Docket No. 04-999-03, March 27, 2006.

4. In light of the foregoing history, the clear intent of the Commission was to afford attaching entities and pole owners the option of adopting the safe harbor agreement if they are unable to agree on contract terms. Accordingly, Frontier recommends the Commission amend R746-345 so as to make it absolutely clear this option remains open. Specifically, Frontier recommends the following revisions to R746-345-3(B)(1) in the following manner:

Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for ~~resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT; an order directing the parties to adopt terms substantially equivalent to the terms of the safe harbor agreement approved by the Commission in the Correspondence from Julie Orchard to Constance White in Docket No. 04-999-03 on March 27, 2006. Pending such an order, the parties shall observe the terms of aforementioned safe harbor agreement.~~

5. Although mentioning both, the safe harbor agreement contains neither non-recurring fees for inspections and audits nor ancillary terms such as construction standards. In contrast, RMP's standard non-reciprocal pole attachment agreement has attached to it Exhibit B, Fee Schedule for non-recurring charges, and Exhibit C, PacifiCorp Distribution Construction Standards. However, RMP's fee schedule has not been supported by any cost studies establishing the reasonableness of the proposed non-recurring charges. The Commission should require RMP to submit such studies before approving any non-recurring fees or charges in accordance with R746-345-3(A)(2)(a). Finally, while the safe harbor agreement allows for construction standards in addition to the National Electrical Safety Code ("NESC"), Frontier submits that when the

Commission provides its needed approval, it should note that any conflict between the NESC and PacifiCorp's standards should be resolved in favor of the NESC.

Respectfully submitted this 21st day of September, 2010.

Frontier Communications Corporation

A handwritten signature in black ink that reads "Curt Huttell". The signature is fluid and cursive, with "Curt" on top and "Huttell" below it.

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

Certificate of Service

I hereby certify that on September 21, 2010, I caused to be emailed a true and correct copy of the foregoing Reply Comments of Frontier Communications Corporation to the following:

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