

Stephen F. Mecham
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, Utah 84133
Telephone: (801) 530-7316
Facsimile: (801) 364-9127
Email: sfmecham@cnmlaw.com

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| In the Matter of the Application of Rocky Mountain Power for Approval of Standard Non-reciprocal Pole Attachment Agreement | Docket No. 10-035-43 URTA Responsive Comments to Rocky Mountain Power's August 31, 2010 Comments on the Standard Non-Reciprocal Pole Attachment Agreement |
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Pursuant to the Amended Scheduling Order issued by the Commission in this docket August 3, 2010, the Utah Rural Telecom Association (“URTA”) submits the following responsive comments to the comments Rocky Mountain Power (“RMP”) filed August 31, 2010 for its proposed non-reciprocal agreement:

INTRODUCTION

Based on its comments, RMP would revise the history of both Docket No. 04-999-03, In the Matter of the Investigation of an Investigation into Pole Attachments (“04-999-03”), and Admin. Code Rule R746-345, the Commission’s rule on pole attachments (“Rule”). 04-999-03 began when RMP suddenly tried to increase the annual pole rental rate to \$27.50, attempted to impose unreasonable penalties for attachments RMP alleged were unauthorized, and insisted on one-sided contract terms in favor of RMP.¹ This proposal, and the joint pole attachment

¹ See Request to Open an Investigative Docket filed March 11, 2004 in 04-999-03.

agreement filed August 31, 2010, appear to be attempts to re-argue several issues resolved by the Commission in 04-999-03.²

The Rule and the Safe Harbor Agreement approved by the Commission emanated simultaneously from 04-999-03. That is clear from a review of that docket.³ The parties were not able to negotiate a fair contract and the dispute required that the Commission intervene and arbitrate an agreement. Following a lengthy, laborious process, the Commission resolved the parties' differences on a point by point, provision by provision basis.⁴ Whether in conjunction with RMP's draft non-reciprocal pole attachment agreement or its draft joint pole attachment agreement, RMP is raising many of the same arguments it raised in 04-999-03 and lost.⁵ Generally, they are not new deficiencies that have come to light since the development of the Safe Harbor Agreement as RMP claims.⁶ Rehashing issues the Commission has resolved and settled is inefficient, a waste of resources, poor public policy, and not in the public interest.

The Safe Harbor Agreement is the standard by which all pole attachment agreements have been analyzed to determine public interest.⁷ That has been the intent and practice of the

²URTA will comment on the joint pole attachment agreement later in this proceeding.

³ It is also clear from comments that the Commission made to the FCC in WC Docket No. 07-245 attached hereto as Attachment 1. In describing the process that occurred in 04-999-03, the Commission informed the FCC that it had spent more than two years amending the pole attachment rules which included the approval of a safe harbor standard contract for parties unable to reach agreement.

⁴ In a September 6, 2005 memorandum to the parties in 04-999-03 attached hereto as Attachment 2, the Commission resolved ten issues for the safe harbor agreement.

⁵ See PacifiCorp's comments filed May 31, 2006 and Pacificorp's Reply Brief filed May 13, 2005 in 04-999-03, and footnote 3 herein.

⁶ RMP comments at 3.

⁷ See the Commission's letter to Constance White, the director of the Division of Public Utilities dated March 27, 2006 issued in 04-999-03 attached hereto as Attachment 3 in which the Commission accepted the Safe Harbor Agreement. The Commission solicited additional comment in that docket, but the March 27, 2006 letter apparently remained effective.

Commission and that is the standard by which RMP's non-reciprocal pole attachment agreement should be judged in this docket.⁸

RESPONSE TO RMP

Safe Harbor Agreement as the Standard

In its comments, RMP acknowledges that its proposed non-reciprocal agreement deviates from the Safe Harbor Agreement. RMP maintains the differences are needed to reflect its six-state consolidated construction and business standards. Given the resources and effort the Commission devoted to the pole attachment agreement and rule in Utah in 04-999-03, it makes no sense to alter the Safe Harbor Agreement to satisfy RMP in five other states that have held no similar proceeding. If anything, RMP should seek adoption of the Safe Harbor Agreement in its other states to achieve the uniformity it claims it needs.

RMP argues that its proposed non-reciprocal pole attachment agreement is reasonable because other sophisticated parties, including some members of URTA, have accepted similar contracts.⁹ Under Admin. Code R746-345-3B1, private parties are permitted to negotiate agreements that are different than the Safe Harbor, but that section of the rule also makes clear that the differences with the Safe Harbor Agreement must be justified and the Safe Harbor Agreement must be available for use pending settlement of any dispute by the Commission.¹⁰

⁸The redline version of the Safe Harbor Agreement filed by the Division of Public Utilities July 29, 2010 in this docket illustrates how significant the differences are between RMP's proposal and the Safe Harbor Agreement.

⁹ RMP Comments at 6.

¹⁰ In both cases in which a member of URTA entered into an agreement different than the Safe Harbor, the Commission compared the proposed agreement to the Safe Harbor to highlight the differences. See Docket Nos. 10-035-42 (South Central) and 10-035-61 (Manti).

RMP claims no party has held up the Safe Harbor as the agreement they want to sign.¹¹ RMP fails to state, however, whether or not RMP informed those parties that the Safe Harbor Agreement was available as an option. If the Commission adopts a lopsided RMP agreement as the safe harbor, there will be no safe harbor and the purpose of 04-999-03 will be defeated.

RMP's Sole Judgment

RMP questions URTA's challenge to RMP's attempt to insert the exercise of sole judgment in several contract provisions.¹² RMP's exercise of sole judgment was the genesis and driving force for opening the investigation into pole attachment agreements in 04-999-03 and if this sole judgment language makes it so that parties are unable to negotiate, it will lead to more disputes before the Commission and cause additional expense to the parties.

Overlapping¹³

RMP's overlapping proposal is an example of issues RMP is raising again in this docket that the Commission resolved against it. RMP lost this issue in 04-999-03.¹⁴

Full Annual Payment¹⁵

URTA opposes RMP's effort to collect the full annual rental payment no matter when during the year the parties enter into a pole attachment agreement. There should be a provision for proration to be fair to both parties. RMP has not provided any evidence of the costs it alleges it incurs to maintain an attachment inventory to justify this proposal and it appears that it will result in a windfall to RMP.

¹¹ RMP Comments at 6.

¹² RMP Comments at 7.

¹³ RMP Comments at 8.

¹⁴ See Attachment 2, issue 4.

¹⁵ RMP Comments at 8.

Service Drops¹⁶

RMP's proposed provision for service drops is another example of the issues RMP is raising again that the Commission resolved against it. RMP lost this issue in 04-999-03.¹⁷

Removal of Attachments¹⁸

RMP is proposing to collect an application fee to remove attachments. In 04-999-03, the Commission tried to simplify the pole attachment process by providing for an application fee at the outset of the application process, allowing recovery of make-ready costs, and imposing a \$25 penalty for unauthorized attachments. The Commission wanted to eliminate duplicative fees and promote cost recovery through the rental rate. RMP's recommendation creates unnecessary complication and reverses the Commission's efforts in 04-999-03.

Insurance, Credit, and Security

RMP also remarks in its comments that URITA pointed out that RMP's insurance, credit, and security provisions in the new proposed agreement are higher. Similar provisions were at issue in 04-999-03 and resolved after argument in the Safe Harbor Agreement. The insurance issue was apparently resolved in RMP's favor, but RMP has come back to seek an increase in the amount of insurance required.¹⁹ RMP insists on its own terms and conditions, which as noted above, is the reason parties turned to the Commission to arbitrate an agreement in 04-999-03. RMP's proposals often increase the costs and complexity of the pole attachment process without justification and rarely clarify or simplify.

¹⁶ RMP Comments at 9.

¹⁷ See Attachment 2, issue 3.

¹⁸ RMP Comments at 10.

¹⁹ See Attachment 2, issue 10.

CONCLUSION

URTA recommends that the Commission reject RMP's proposed non-reciprocal pole attachment agreement and retain the Safe Harbor Agreement as the Commission approved it in 04-999-03. Pursuing another lengthy process rehashing issues the Commission has already resolved is a waste of time, energy, and resources and is not in the public interest. If private parties desire to negotiate a different agreement than the Safe Harbor Agreement with RMP, that is permitted under Admin. Code Rule R746-345, but every provider attaching to RMP's poles should not be forced to use a Safe Harbor Agreement that will be no safe harbor at all.

Respectfully submitted this 21st day of September, 2010.

Callister Nebeker & McCullough

Stephen F. Mecham

Certificate of Service

I hereby certify that on September 21, 2010, I caused to be emailed a true and correct copy of the foregoing **URTA Responsive Comments to Rocky Mountain Power's August 31, 2010 Comments on the Standard Non-Reciprocal Pole Attachment Agreement** to the following:

Patricia Schmid
pschmid@utah.gov

Paul Proctor
pproctor@utah.gov

Daniel E. Solander
Daniel.solander@pacificorp.com

Barbara Ishimatsu
Barbara.ishimatsu@pacificorp.com

Cathy Murray
catherine.murray@integratelecom.com

Curt Huttsell
Curt.Huttsell@frontiercorp.com

Sharon Bertelsen
BertelsenS@ballardspahr.com

Natasha Ernst
nernst@nextgnetworks.net
