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Submitted September 21, 2010

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 **RESPONSIVE COMMENTS**

Comcast Cable Communications, LLC, on behalf of its operating subsidiaries and affiliates ("Comcast"), by and through its attorneys, Ballard Spahr LLP, hereby submits these Responsive Comments to Rocky Mountain Power's Reply Comments of August 31, 2010 (the "Reply"). These Responsive Comments are submitted to the Public Service Commission (the "Commission") pursuant to the Commission's Second Amended Scheduling Order in this Docket issued September 20, 2010.

I. INTRODUCTION

In 2006, the Commission amended its rules on pole attachments in Utah Administrative Code R746-345 (the "Rules"), and approved the Utah Pole Attachment Standard Contract as a "safe harbor" agreement for parties unable to reach an agreement on pole attachment terms

through negotiations (the, "Safe Harbor Agreement"). *See In the Matter of an Investigation into Pole Attachments*, Docket No. 04-999-03. The Safe Harbor Agreement, approved by the Commission on March 27, 2006, incorporates the Commission's Determinations dated September 6, 2005 (attached as Exhibit A), and February 2, 2006. The final Rules and Safe Harbor Agreement are the result of exhaustive negotiations by the parties to that Docket. The Safe Harbor Agreement is currently available to any attacher who is unable to reach an agreement on pole attachment terms through negotiations with any pole owner.

In this Docket, Rocky Mountain Power requests that the Commission approve a standard non-reciprocal pole attachment agreement (the "Proposed Agreement"), and has confirmed that its intent is not to change or replace the Safe Harbor Agreement approved by the Commission in Docket No. 04-999-03, rather its stated intent is to set forth its proposed standard terms for negotiating non-reciprocal contracts with attachers.[1] However, the Commission rules clearly provide that in the event the parties are unable to agree upon an agreement form, the Safe Harbor Agreement is to be used. If the parties do agree to a separate agreement, such agreement is submitted to the Commission on a case-by-case basis.

Rocky Mountain Power has neither urged the Commission to in any way change the Safe Harbor Agreement, nor has it met or even attempted to meet its burden of demonstrating why the Safe Harbor Agreement is not just and reasonable; as Rocky Mountain Power does not intend to revise or replace that agreement. The sole issue presented by Rocky Mountain Power, therefore, is whether there should be a second agreement to be offered to attachers who have not entered into a separate negotiated agreement. That question has already been answered by the Commission's rules: In the event the parties are unable to negotiate an agreement, the Safe

[1] Rocky Mountain Power, Supplemental and Clarifying Filing, at p. 2.

Harbor Agreement should be used. Furthermore, many of the provisions in Rocky Mountain Power's proposed agreement are inconsistent with the Safe Harbor Agreement and unreasonable, and should not appear in any pole attachment agreement. Its filing is an attempt to circumvent the Commission's established pole attachment scheme. If Rocky Mountain Power is looking for an agreement going forward, it should be the Safe Harbor Agreement. If Rocky Mountain Power is seeking approval of a different agreement, it is free to negotiate with individual attachers and request the Commission's approval on a case-by-case basis.

The Commission should maintain the rules and policies adopted in Docket No. 04-999-03 to ensure that timely access to poles at reasonable rates is not frustrated by pole owners.

II. HISTORY OF POLE REGULATION

In 1978, Congress enacted the Pole Attachment Act[2] "as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service." *Federal Communications Commission v. Florida Power Corp*. 480 U.S. 245, 247 (1987).[3] Congress, the Federal Communications Commission ("FCC"), and the Courts recognize the status of poles and conduit as "essential facilities" and thus, access is vital to facilities-based competition in telecommunications and cable markets.[4] The Pole Attachment Act mandated that the FCC regulate pole attachments and access to conduit so that monopoly-owned facilities were available

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2 Pole Attachment Act of 1978, Pub. L. No. 95-234, 92 Stat. 35 (1978), codified at Section 224 of the Communications Act, 47 U.S.C. § 224.

3 *See also Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, ¶ 21 (2001), *aff'd sub nom. Southern Co. Serv. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002).

4 *See, e.g.*, 123 Cong. Rec. H35008 (1977) (statement of Rep. Broyhill, co-sponsor of the Pole Attachment Act) ("Primarily because of environmental concerns, local governments have prohibited cable operators from constructing their own poles. Accordingly, the cable operators are virtually dependent on the telephone and power companies. . . ."); *Common Carrier Bureau Cautions Owners of Utility Poles*, 1995 FCC Lexis 193 (Jan. 11, 1995); *Section 214 Certificates for Channel Facilities Furnished to Affiliated Community Antenna Television Systems*, 21 FCC 2d 307 (1970); *National Cable & Telecoms. Assoc. v. Gulf Power Co.*, 534 U.S. 327 (2002).

at just and reasonable rates, terms, and conditions, and in order to promote competition. The Telecommunications Act of 1996 expanded the jurisdiction over poles and conduits to cover telecommunications attachments as well.[5]

States that certify to the FCC that they effectively regulate the rates, terms and conditions for pole attachments are permitted to opt out of the FCC's regulatory regime.[6] Utah certified to the FCC that it regulates the rates, terms and conditions of pole attachments.[7] Pursuant to Utah Code Ann. § 54-4-13, the Commission has the authority to prescribe reasonable compensation and reasonable terms and conditions for the joint use of poles by utilities, and to determine whether pole attachment contracts are in the public interest. Utah law provides that a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms, and conditions that are just and reasonable.

In Docket No. 04-999-03, the Commission adopted a comprehensive pole attachment regulatory scheme, removing many of the technical and economic barriers to attaching that existed prior to that time. Rules and policies, like those adopted by the Commission, have played a significant role in promoting broadband deployment and competition, objectives of Congress and the FCC.[8] In the absence of effective pole attachment regulations in Utah,

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5 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

6 *See* 47 U.S.C. § 224(c); *see also States that have Certified that they regulate Pole Attachments*, FCC Public Notice, DA 10-893 (rel. May 19, 2010).

7 *See* Utah Code Ann. § 54-4-13; Utah Admin. Code R746-345-1; *Utah Cable Television Operators Assoc. v. Public Serv. Comm'n of Utah*, 656 P.2d 398, 403 (Utah 1982).

8 The FCC recently acknowledged that, although cable and telecommunications carriers have valuable rights under Section 224 to access poles and conduits, the superior bargaining power of utilities poses a substantial continuing risk that pole owners "could nullify the statutory rights of a cable or a telecommunications carrier" through "take it or leave it" pole attachment agreements. *See Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, FCC 10-84 ¶ 104 (rel. May 20, 2010).

communications attachers would be at the mercy of pole owners to the detriment of competition and consumer choice.

III. THE SAFE HARBOR AGREEMENT IS THE AGREEMENT CONTEMPLATED BY UTAH ADMINISTRATIVE CODE RULE R746-345-3(A)

The Commission previously determined that the Safe Harbor Agreement is reasonable and that it is the template upon which any pole owner's standard agreement must be based. *See* Commission Determinations, September 6, 2005. The Commission explicitly stated that the terms of the Safe Harbor Agreement would be the **"default provisions for the generic agreements**." *Id.*, p.1 (emphasis added). Although the Commission indicated that it will "permit parties to negotiate unique terms that could differ from" the terms outlined by the Commission, it noted that the terms "are in the nature of 'safe harbors.'" *Id*. Furthermore, the Commission has represented to the FCC that "the rulemaking process [in Docket No. 04-999-03] resulted in rules incorporating the following components: . . . 4) Approval of a "safe harbor" standard contract or Statement of Generally Available Terms to be used unless the parties voluntarily agree to different terms." *See Comments of the Utah Public Service Commission* in FCC Docket No. 07-245, filed March 7, 2008. Therefore, pole owners filing an application for Commission approval of a standard or "generic" agreement under Utah Admin. Rule 746-345-3(A)—as Rocky Mountain Power has[9]—must default to the Safe Harbor Agreement provisions.[10]

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9 *See* Reply, p.1.

10 On August 28, 2006, the Commission approved Qwest Corporation's standard pole attachment contract, finding it consistent with the Utah pole attachment rules and the Safe Harbor Agreement, except for non-substantive word changes. As a result the Commission stated that Qwest is in compliance with Utah Admin. Code Rule R746-345's requirement to offer a Commission approved standard pole attachment contract. *See* Order in Docket No. 04-999-03 (August 28, 2006).

If Rocky Mountain Power and an attaching entity cannot reach mutually agreeable terms, the parties may fall back on the Safe Harbor Agreement.

A. Any Application for an Agreement That Differs From the Safe Harbor Agreement Must Demonstrate Why it is no Longer Just and Reasonable

Utah Administrative Code Rule R746-345-4(A)(1) provides that "a pole owner must petition the Commission for any changes or modifications to the rates, terms or conditions of its tariff, *standard contract or SGAT*." Any application for approval of a standard contract that departs from the Safe Harbor Agreement is necessarily a change or modification to the standard contract. Consequently, Rocky Mountain Power must meet the requirement that its application "include a showing why the rate, term, or condition is no longer just and reasonable." *Id*.

Rocky Mountain Power has failed to provide any cogent basis as to why the existing Safe Harbor Agreement--an agreement it helped negotiate and to this point has not publicly opposed--is no longer just and reasonable. Comcast agrees with the Division of Public Utilities (the "Division"), that Rocky Mountain Power has not "adequately demonstrated why the [Safe Harbor] Agreement approved in Docket No. 04-999-03 is no longer just and reasonable or will not work for the basis of negotiating non-reciprocal agreements." Division Comments of July 1, 2010, p. 2.

B. Rocky Mountain Power Does Not Demonstrate that the Safe Harbor Agreement is Unjust or Unreasonable

1. Allegations of Inconvenience are Insufficient to Prove that the Safe Harbor Agreement is Unjust or Unreasonable

Rocky Mountain Power does not meet its burden of proof; in fact, Rocky Mountain Power does not even allege that the Safe Harbor Agreement is unreasonable or unjust. Rather, Rocky Mountain Power justifies its Proposed Agreement by stating that "several provisions" of it "are written to accommodate standardized, and thus more efficient management of the joint

use administration functions from one office for the six states" in PacifiCorp's service territory.[11] Reply, p. 3. The purpose of the Safe Harbor Agreement and the Commission's Rules have never been to "accommodate" Rocky Mountain Power and the Commission need not approve the Proposed Agreement merely because it would be more convenient for the utility. On the contrary, the purpose of the Safe Harbor Agreement and the Rules are to "allow . . . access to utility poles at rates, terms, and conditions that are just and reasonable"--not at rates, terms, and conditions that are expedient for Rocky Mountain Power. Utah Admin. Rule 746-345-1.

2. Rocky Mountain Power's Allegations that the Current Pole Attachment Scheme Diminishes its Ability to Operate Safely and Reliably are Unfounded

Rocky Mountain Power argues that the Commission should approve its Proposed Agreement because "aspects of the Safe Harbor . . . diminish [its] ability to operate a safe and reliable electric system." Reply, p.2. Rocky Mountain Power specifically refers to safety issues relating to overlashing and service drops, but fails to provide even a scintilla of supporting evidence.

Comcast, like other attachers, is legally obligated to comply with state and local laws, franchise agreements, and pole attachment agreements. Comcast is vitally interested in maintaining properly authorized facilities that are reliable and in compliance with applicable safety codes, for the safety of its employees, contractors, others who work on the poles, and the public. While Comcast understands and appreciates Rocky Mountain Power's obligation to provide safe and reliable electric service, it does not believe that baseless assertions are adequate

[11] Rocky Mountain Power does not contest that Utah, as an FCC certified state, may exercise autonomy in its regulation of pole attachments. However, in seeking uniformity across PacifiCorp's service territory, Rocky Mountain Power asks the Commission to regulate pole attachments in conformity with Washington, Oregon, California, and Idaho and not according to its own prior determinations of what is just and reasonable. The other state in PacifiCorp's service territory, Wyoming, is not an FCC certified state.

to convince the Commission to adopt the Proposed Agreement, especially in light of the fact that overlashing and service drops are not inherently unsafe.[12]

Illustrative on this point, the FCC found that several provisions of Georgia Power Company's pole attachment contract were unjust and unreasonable, and rejected "Georgia Power's principal defense to the Cable Operators' claims—preservation of safety." *Cable Television Association of Georgia v. Georgia Power Co.*, 18 FCC Rcd 16333 ¶ 10 (2003). The FCC found that the record developed in that proceeding did not support Georgia Power Company's "assertions that the host of new contract provisions are necessary to preserve safe operations." *Id*., ¶12. One of the contract terms held unjust and unreasonable was a requirement that the utility provide prior written consent to any overlashing. *Id*., ¶13. The Commission should make a similar finding in this case.

3. Rocky Mountain Power Improperly Raises Allegations that the Safe Harbor Agreement is Inconsistent with the Rules

Rocky Mountain Power alleges that "aspects of the Safe Harbor [Agreement] . . . are inconsistent with Commission Rules." Reply, p.2. Raising the issue in this forum is inappropriate and untimely. Rocky Mountain Power should have filed a petition for agency action, pursuant to Utah Code Ann. § 63G-3-601, rather than circumventing the Utah Administrative Rulemaking Act through this proceeding.

Further, Rocky Mountain Power's arguments are untimely in light of the fact that Rocky Mountain Power already tacitly agreed to the Safe Harbor Agreement. Rocky Mountain Power stated that the Commission's provision of default terms through the Safe Harbor Agreement was

[12] In addressing two provisions wherein the Proposed Agreement differs from the Safe Harbor for alleged safety corrections, the Division correctly stated that "service drops do not normally require engineering or load bearing assessments" and that "overlashing should not typically present a loading problem." Division of Public Utilities Initial Brief of April 15, 2005, pp.7-8, Docket No. 04-999-03.

"sound, because it would provide a wealth of guidance as to what the Commission believes is just and reasonable, but does not foreclose other appropriate arrangements going forward on a *case-by-case* basis."[13] Rocky Mountain Power's allegations that the Safe Harbor Agreement is inconsistent with the Rules should have been raised in Docket No. 04-999-03.

IV. MANY PROVISIONS OF THE PROPOSED AGREEMENT ARE UNREASONABLE

Rocky Mountain Power admits that "the [Proposed] Agreement does differ from the Safe Harbor [Agreement]." Reply, p. 5. Comcast will respond to some, but not all, of the important differences between the Safe Harbor Agreement and the Proposed Agreement.

A. Additional Fees

The FCC estimated that "[c]ollectively, the expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment. These costs can be reduced directly by cutting fees."[14] Lower fees promote system upgrades and deployment and provide an opportunity for reduced prices for consumers. Higher pole fees translate directly into higher service costs to consumers.

The Commission determined that it is reasonable for pole owners to "charge an application fee, actual cost for make-ready work (after accepted) and unauthorized attachment fees" but the Commission also stated that "application fees should cover the expected cost of doing the survey and engineering work required to determine what make ready work must be done to accommodate the application." *Id.* Further, the Commission expressly stated that "post construction and removal verification inspection fess cover activities the costs of which the

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[13] Brief of PacifiCorp as to Terms and Provisions of the Standard Pole Attachment Agreement, April 15, 2005, p. 3, Docket No. 04-999-03 (emphasis added).

[14] Federal Communications Commission, Connecting America: The National Broadband Plan at 109 (2010).

[C]omission believes are to be recovered through the pole attachment rental charge." *Id*. Therefore, any fee in addition to the application fee, the cost of performing accepted make-ready work, and unauthorized attachment fees is unreasonable.[15] The Commission adopted pole rent formulas for all attachers and services based on the FCC's cable formula; those authorized pole rates fairly compensate utilities.[16] Pole owners should not be permitted to conduct additional inspections of attachers' facilities at the attacher's expense.[17]

Rocky Mountain Power's Proposed Agreement would impose additional categories of fees, including fees associated with make-ready work, attachment removal, and various inspections. If Rocky Mountain Power believes it is not being fairly compensated through application and rental fees, it should have submitted a change to its tariff, pursuant to Rule 746-345-3(A).

B. Unauthorized Attachment Fees

Without demonstrating that the current $25 unauthorized attachment fee is unreasonable, Rocky Mountain Power would quadruple the Commission approved unauthorized attachment fee amount from $25 to $100. Proposed Agreement, Section 4.03, Fee Schedule. However, the Commission determined that "the unauthorized attachment fee shall be the back rent to the last audit, plus $25 per pole." Commission Determinations, September 6, 2005, p.1. Rocky Mountain Power's filings in this proceeding fail to address, let alone justify, this massive fee

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15 Additionally, the FCC has consistently held that "[a] separate fee for recurring costs, such as applications processing or periodic inspections is not justified" because it would result in double recovery. *Texas Cable & Telecom. Assoc'n v. Entergy Serv., Inc*. 14 FCC Rcd 9138 ¶5 (1999).

16 *See Comments of the Utah Public Service Commission* in FCC Docket No. 07-245, filed Mar. 7, 2008.

17 *See Mile Hi Cable Partners, L.P. v. Public Serv. Co. of Colo.,* 15 FCC Rcd 11450, ¶ 8 (Cab. Serv. Bur. 2000) ("a separate charge or fee for periodic inspections of the pole plant, including a pole count survey, is not justified if the costs associated with the inspection are already included in the rate, based on fully allocated costs"), *aff'd sub nom. Public Serv. Co. Colo. v. FCC,* 328 F.3d 675 (D.C. Cir. 2003).

increase. Unauthorized fee attachment rates have been the subject of much litigation. For example, in *Mile Hi Cable Partners, L.P. v. Public Serv. Co. of Colorado,* the FCC held that a reasonable unauthorized attachment charge would "equal five times the annual rent that [the attacher] would have paid if the attachment had been authorized." *Mile Hi Cable Partners, L.P. v. Public Serv. Co. of Colorado*, 17 FCC Rcd 6268, 6272 (2002). The $100 unauthorized attachment fee proposed by Rocky Mountain Power is therefore greater than not only Commission guidance, but is also greater than illustrative FCC standards and should not be approved.

C. Overlashing

Overlashing plays a critical role in service upgrades to cable systems and is the simplest and fastest way to expand a cable network. The FCC "has made clear that 'neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.'" *Salsgiver Communications, Inc. v. North Pittsburgh Telephone Co*., 22 FCC Rcd 20536, ¶ 23 (2007) (internal citations omitted). The FCC has extensively considered the effects of overlashing on safety in light of the National Electric Safety Code ("NESC"), and concluded that any structural issues caused by overlashing should be addressed at the make-ready level and paid for by the attacher.[18] Consistent with FCC findings, the Commission previously determined that not requiring "an attaching entity to submit an additional permitting application for overlashing in its existing pole space" is reasonable. Commission Determinations, September 6, 2006, p. 3.

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[18] *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, ¶ 77 (2001), *aff'd sub nom. Southern Co. Serv. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002).

However, the Proposed Agreement would require a licensee to "apply for prior permission from Rocky Mountain Power to . . . overlash its [e]quipment to any existing [a]ttachments or other [e]quipment already attached to [p]oles." Proposed Agreement, Section 3.01. Requiring a licensee to submit an application and application fee for overlashing imposes undue costs and burdens on the licensee; further, it impedes cable system upgrades. Rocky Mountain Power unpersuasively claims that "the additional weight of an overlashing can cause the pole to break or result in a dangerous sagging of the power lines." Reply, p. 8. This argument is not well taken. Fiber optic cables, the type typically overlashed, do not add appreciable load to the pole. Rocky Mountain Power's unsupported assertions should not persuade the Commission that the conclusions it previously reached are no longer reasonable.

D. Service Drop Pole Attachments[19]

Cable operators and other service providers rely on the current service drop pole attachment scheme to fulfill new business requests expeditiously in an increasingly competitive and time-sensitive environment. Any potential delay will impact Comcast's ability to provide service to its customers. Recognizing that unreasonable service drop pole attachment requirements impact cable operators' ability to serve customers, the Commission does not require an attaching entity to submit an additional application, or provide prior notification to the pole owner, for the installation of service drops originating from the attaching entity's existing pole attachment. Commission Determinations of September 6, 2005, p.2.[20] Rather, the attaching entity must provide quarterly notification of service drop poles installed during the quarter,

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[19] Attachers should not be required to obtain a permit prior to attaching to service drop poles. *See Mile Hi Cable Partners, L.P. v. Public Serv. Comm'n of Colo.*, 15 FCC Rcd 11450, ¶ 19 (attacher need only notify the pole owner of attachment to drop pole).

[20] This includes service drops made from poles that are adjacent to a pole on which the attaching entity has an authorized attachment.

including pole identification number and specifications for the equipment used to allow the pole owner to update its records and bill if appropriate. *Id*. Pursuant to R746-345-2, a "new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule."

According to the terms of the Proposed Agreement, a service drop pole licensee would be forced to "follow all procedures applicable to [a]ttachments generally" including the application process. Proposed Agreement, Section 3.03. The Proposed Agreement would require such an application to be submitted within the condensed time period of five (5) business days of installation. *Id*. Not only would this impose an additional monetary cost on the licensee, it would also become much more burdensome for the licensee to update Rocky Mountain Power. Rocky Mountain Power again provides nothing more than an unsupported assertion that the current scheme causes "a very large percentage of safety clearance violations." Reply, p. 10. If there is a problem with service drop pole attachments, such issues will be discovered in the ordinary course of business and there is no need to have an attacher make a separate application for service drop poles. Rocky Mountain Power's arguments should fail to persuade the Commission that its previously determined service drop pole process is unreasonable.

E. Security Requirements

The potential security requirement in the Proposed Agreement would provide Rocky Mountain Power with the ability to limit attachers to large corporations. Smaller companies may not be able to meet the security and bond requirements, which would effectively reduce competition in the provision of cable and other services. The damage from this decrease in competition would far outweigh any benefits that would accrue to Rocky Mountain Power. The Commission found that "prepayment of most fees makes bonding unnecessary" and therefore

"bonding should be available to the [p]ole [o]wner *only* upon application of the [p]ole [o]wner to the [C]omission." Commission Determinations of September 6, 2005, p.4. Therefore, the Commission expressed a willingness to impose a security requirement only under exceptional circumstances, and the imposition of such a requirement will be determined by it on a case-by-case basis.

The Proposed Agreement would require a licensee to post security in many instances, unless the licensee makes various representations and warranties to Rocky Mountain Power and meets the applicable credit requirement. Proposed Agreement, Section 6.04. And although Rocky Mountain Power states the "current economic climate" provides it with an adequate reason for requiring a licensee to post security, nothing about the economy has changed the licensee's requirement to pay most attachment fees in advance. Consequently, Rocky Mountain Power's argument is not persuasive in refuting the Commission's 2004 logic. Posting security, or alternatively, making and complying with various representations, either increases the cost of attaching or imposes additional bureaucratic layers to the attachment process. Either result will lead to cable and other systems operators spending more time and money complying with Rocky Mountain Power's requirements than building out their network.

F. Limitations of Liability

Rocky Mountain Power attempts to downplay the distinctions between the Safe Harbor Agreement and its Proposed Agreement; however, any provision that shifts the liability of the parties to a contract is a crucial alteration of terms. In various instances throughout the Proposed Agreement, Rocky Mountain Power limits its liability in instances of its own negligence or willful misconduct. Recognizing that pole owners have the upper hand when negotiating a pole attachment agreement, the Commission approved specific indemnities in the Safe Harbor Agreement to level the playing field and balance the interests of pole owners and attachers. The

Safe Harbor Agreement includes provisions that acknowledge the inherent unfairness in forcing an attacher to indemnify a pole owner for the pole owner's negligence or willful misconduct. For example, Safe Harbor Agreement Section 9.01 provides a carve-out of the attacher's liability in instances of pole owner gross negligence or willful misconduct. *See also* Safe Harbor Agreement Sections 3.07, 3.10, and 3.17 (limiting the liability of an attacher in instances of pole owner negligence). Rocky Mountain Power's attempt to force attachers to indemnify its negligence or willful misconduct should not be approved by the Commission, as such an approval would be fundamentally unjust. Moreover, it would serve as a perverse incentive for Rocky Mountain Power that could lead to serious safety issues for the attaching community and the public.

V. CONCLUSION

The Commission and various other parties exhaustively addressed the issues raised by Rocky Mountain Power in its current application in Docket No. 04-999-03. The result of that Docket is a just and reasonable solution to the pole attachment problems previously faced by the attaching community in Utah. Rocky Mountain Power has failed to provide the Commission with any evidence that the conclusions it reached in Docket No. 04-999-03 are no longer just and reasonable; therefore its Applications for Approval of its Proposed Agreements should be denied. The Commission should affirm its previous findings that any attacher who cannot reach an agreement with a pole owner—including Rocky Mountain Power—may fall back on the Safe Harbor Agreement.

RESPECTFULLY SUBMITTED this 21st day of September, 2010.

Comcast Cable Communications, LLC

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I hereby certify that on the 21st day of September, 2010, an original, five (5) true and correct copies, and an electronic copy of the foregoing **RESPONSIVE COMMENTS OF COMCAST CABLE COMMUNICATIONS, LLC** were hand-delivered to:

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