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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of an Investigation into Pole Attachments	)))))	DOCKET NO. 04-999-03 Comments of the Utah Rural Telecom Association on the Division's June 4, 2004 Draft Rule

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Pursuant to the Commission's Notice of Revised Schedule issued June 1, 2004, the Utah Rural Telecom Association (hereinafter "URTA") submits the following comments with respect to the Division of Public Utilities' ("Division") draft pole attachment rule:

1. Generally, URTA supports the Division's approach that establishes a statewide average pole attachment rate. That should simplify the attachment process by making it uniform and minimize the disagreements between pole owners and attaching entities.

2. In **R746-345-1 C.**, Application of Rate Methodology, why are "telecommunications corporations" listed separately? Are they not included in the definition of public utilities?

3. In **R746-345-2**, "Pole Owner" is defined as a public utility that owns or controls poles. Is that intended to include "telecommunications corporations" that own poles?

4. URTA supports the requirement that a standard contract be filed at the Commission. In **R746-345-3 A. 2**., however, the contract is to "identify all non-recurring charges for pre-construction surveys, engineering, make-ready, and change-out." The contract is supposed to include all applicable non-recurring fees and charges. In URTA's initial comments in this proceeding we stated: "The formula the Commission establishes in this proceeding to set pole attachment rates should be the only available mechanism for cost recovery." In URTA's reply comments we continued: "The Commission should, however, scrutinize the make-ready costs PacifiCorp wants to impose beyond the attachment rate to ensure they are necessary and do not result in over recovery of costs. In the initial comments URTA generally opposed the additional charges and fees PacifiCorp has sought."

URTA remains concerned about the extra charges the standard contract allows. We recommend that the rule require that the standard contract be drafted much more narrowly to reduce the disputes that are sure to arise over what charges are legitimate and appropriate. As the rule is drafted now, the non-recurring charges could impose significant costs on pole attachments and allow the owner to over recover.

5. **R746-345-4** provides for pole labeling. The rule may not be the appropriate place to address the existing mislabeling of poles, but mislabeling must be resolved at no cost to the pole owner whose pole has been mislabeled by someone else.

6. URTA supports the Division's proposed rate formula in **R746-345-5**. We question, however, if the original investment in wood poles in the definition of Net Cost of Bare Pole in **5.B. 2.b.** includes investment in transmission poles or any other category that may not be used by attaching entities?

7. URTA believes the rebuttable presumption for a telecommunications attachment in **R746-345-5B. 3.c.(2)** should be 1 foot, not 1.5 feet. An actual telecommunications attachment takes less space than one foot so the presumption should be no more than one foot.

8. URTA supports **R746-345-5B 4.** There should be no non-recurring charges that are already recovered in the annual pole attachment payment. As indicated above, we would recommend that the rule go further in scaling back non-recurring charges to avoid disputes and cost over recovery.

9. URTA favors the single statewide average rate established by **R746-345-5 C.**, however, it is not clear how the average is to be established. The result would be different if the Commission uses the costs and expenses of one company to calculate the average as opposed to the costs and expenses of several companies. What does the Division intend by that sentence? In addition, is the use of the term "Public Utilities" intended to include all entities over which the Commission has jurisdiction that should be subject to this requirement? Finally, the reference in that section should be to 5B, not 6B.

10. There is no allowance in **R746-345-5 D.** for two parties to mutually agree to a deviation from any provision of this draft rule. Should there be? Does the Commission need to be involved if the parties agree to changes? That could slow down the pole attachment process if the parties have to make a filing even where there is mutual agreement and acceptance.

11. URTA generally supports **R746-345-6**, the section on dispute resolution. That could be a less expensive way of resolving disagreements between pole owners and attaching entities. URTA recommends that there be an immediate effort to resolve existing billing and illegal attachment disputes even before this rule is presented to the Commission.

12. With respect to the PacifiCorp Joint Use of Facilities Agreement distributed with the draft rule, URTA submits the agenda with italicized notes from a meeting URTA held separately with the Division and PacifiCorp November 20, 2003. We reviewed the provisions listed in the agenda where there was disagreement. We reserve the right to raise other issues in working with the Division and other parties in finalizing the standard contract to ensure that the provisions are fair and acceptable.

Agenda for November 20, 2003 Meeting with Pacificorp and the Division on Pole Attachments

1. Pacificorp's proposed Joint Use of Facilities Agreement.

    a. Section 3.01 requires the use of the Electronic Notification System, which is not in use in Utah, to arrange for pole attachments. (*Refer to the ENS in the contract but do not make the language effective until it is available in Utah*.)
    b. Section 3.02 gives Pacificorp 45 days to approve or deny attachment requests. That could jeopardize service delivery timeframes.
    c. Section 3.03 requires Association members to identify and mark past attachments at the rate of 5,000 per month. That is onerous and will be expensive. (*PacifiCorp is open to using a different number*.)
    d. The rules for grounding when Association members do not use Pacificorp's neutral referred to in the final paragraph of Section 3.04 need to be clarified. (*Can add language to the second sentence for clarification*.)
    e. Association members may need more than the 90 days allowed in Section 3.06 to complete their attachments. (*Could ask for more time. Change contract language*.)
    f. What does "the cost in place of the new pole" mean in Section 3.09? Do Association members pay for the new pole as well as for the value of the old pole? (*Open for discussion*.)
    g. The Association members' pole size requirements are different than those stated in Section 3.10. That has an effect on costs imposed on the members.

h. The Association members want to discuss their needs for pole line design. Under Section 3.12 they could be required to pay for half the pole lead and still have no ownership.

i. What constitutes an emergency in Section 3.16? Can Pacificorp make that decision unilaterally and then bill Association members without explanation? (*Define emergency or add immediate threat of danger*.)

j. Why does Section 3.17 require an application fee to remove an attachment? (*PacifiCorp says that processing creates a cost*.)

k. Is it clear in Section 3.20 that the Association members must be the ones who caused the damage before they are charged with repairs? (*Change language*.)

l. There are no controls in Section 3.21 limiting the costs of inspection Pacificorp can impose on Association members. The Occupancy survey costs are unilaterally assigned to the Association members. They then have to bear both Pacificorp's costs as well as their own.

m. The last paragraph of Section 4.04 should be deleted. Pacificorp should not be released from liability when they act negligently. (*Change and clarify*.)

n. There are no administrative rules governing pole attachments in Utah except with respect to cable companies. Section 8.06 is not necessary.

o. We assume that Section 8.07 will reflect that the agreement will be governed by the laws of Utah.

p. We need the attached exhibits.

Respectfully submitted this 21st day of June, 2004.

Callister Nebeker & McCullough

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Stephen F. Mecham
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Certificate of Service

I hereby certify that on June 21, 2004, I emailed or mailed, postage prepaid, a true and correct copy of URTA's Comments on Division's June 4, 2004 Draft Rule in Docket No. 04-999-03 to the following:

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