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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
	)	**REPLY COMMENTS**

Comcast Cable Communications, LLC ("**Comcast**") by and through its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, hereby submits these Reply Comments in response to the Commission's March 19, 2004 Notice of Further Agency Action and Scheduling requesting

initial and reply comments identifying the issues the Commission should address in the above-captioned proceeding.

I. REPLY COMMENTS

A. Rates

1. Two Tiered, Urban/Rural Rate System

Comcast opposes URTA's suggestion that the Commission should consider implementing separate rates for rural and urban areas. (*See* URTA Initial Comments ¶ 3). As stated in its Initial Comments, Comcast strongly urges this Commission to adopt the FCC's cable rate formula for all attachers on a state-wide basis. (*See* Comcast Initial Comments at 16-17; *see also* Comments of XO Communications at 1-2; Comments of Electric Lightwave at 2). Because the FCC's cable rate does not contemplate separate charges for rural and urban areas, adoption of a two-tiered rate would require this Commission to modify the existing formula and would create an unnecessarily complicated regime, ultimately leading to higher costs for rural providers (and disincentives to rural expansion) and excessive compensation for pole owners. As Comcast suggested in its Initial Comments, the various elements of the FCC's formula complement each other and taken as a whole, provide for a fair and reasonable rate.[1] Comcast strongly urges this Commission to consider the formula as a whole and not to consider an urban v. rural modification.

Specifically, Comcast questions whether utilities could provide accurate, reliable and readily-available source data to calculate separate costs of rural and urban attachments. The information utility pole owners provide to attachers (or that is publicly available) to justify rates is generally not categorized into rural and urban cost categories. Rather, the utilities supply data

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[1] *See FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987) (finding that the FCC's rate formula providing for fully allocated costs, including actual cost of capital, constitutes just compensation).

on a state or multi-state basis that is not tied to population density. As a result, this Commission would be forced to develop new or special studies, accountings or cost reporting methodologies that would force heavy reliance on internal pole owner data, which is at odds with fundamental principles of pole regulation. This could (and most likely would) embroil the parties, the Division and the Commission into potentially endless and costly disputes regarding cost elements that would defeat the core purpose of pole-rate regulation which is to provide communications parties with just and reasonable pole attachments rates. Comcast's recommendation to adopt the FCC's basic rate avoids all these pitfalls and accords the Commission, competitors and pole owners with over 25 years of precedent and numerous checks against excessive utility recovery and broadband-to-electric subsidy.

This is exactly the result Congress sought to prevent when it specified that the information used to calculate just and reasonable pole attachment rates should come from the electric utilities' publicly-filed FERC Form 1 data and from the telephone utilities' ARMIS data filed with the FCC:

> Congress was concerned with regulatory complexity, opting for a simple plan requiring a minimum of staff, paperwork and procedures and the avoidance of a large-scale ratemaking proceeding. Congress did not believe that special accounting measures or studies would be necessary because most cost and expense items attributable to utility pole, duct and conduit plant were already established and reported to various regulatory bodies, for example forms submitted to the [FCC] by local exchange carriers ("LECs") and to the Federal Energy Regulatory Commission ("FERC") for electric utilities. Congress also did not expect the Commission to re-examine the reasonableness of the cost methodologies that various regulatory agencies had sanctioned.[2]

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2 *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd. 6453, ¶ 7 (2000). For further discussion of the FCC's disapproval of using non-public information to calculate rates *see Cable Television Association of Georgia, Inc. v. BellSouth Telecommunications, Inc.*, 17 FCC Rcd. 13807 (Enf. Bur. 2002) and *Nevada State Cable Television Association v. Nevada Bell*, 17 FCC Rcd. 15534 (Enf. Bur. 2002).

Moreover, relying on the utility pole owners to provide information that has not been tracked and reported previously in Utah would cause a number of delays in the rate setting process. Both Comcast and T-Mobile (See T-Mobile's Initial Comments at 7-8) have had difficulty securing PacifiCorp's Utah-specific FERC data (or other data) for rate calculation purposes.[3] Considering the difficulties attachers confront today in Utah in gaining access to this standard reporting information, Comcast is extremely concerned about delays that would surely be associated with new, unreported, non-public data calculations. As a result, Comcast urges this Commission to embrace a single rate system based on the FCC's cable rate formula and to require support structure owners such as Qwest and PacifiCorp to file state-specific ARMIS and FERC Form 1 information. In the case of electric utilities such as PacifiCorp, this should include the total number of poles, conduit and duct feet in service in Utah. This information which is not normally part of an electric utility's annual public filing, but recently has become more problematic for competitive communications companies to secure notwithstanding the fact that it is a critical element of the FCC's rate formula that pole owners are required to provide.[4]

2. Subsidies

PacifiCorp's suggestion that its electric rate payers are subsidizing cable television and telecommunications subscribers has no merit. (See PacifiCorp's Comments at 2-3). Not only has PacifiCorp not offered a shred of support for this contention (relying on mantra-like

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[3] In addition to sharing T-Mobile's difficulty in securing Utah-specific FERC data, Comcast also notes that adoption of T-Mobile's view that rate, terms and conditions protections should be extended to wireless telecommunications carriers in Utah is consistent both with the FCC's regulation and precedent of the United States Supreme Court. *See National Cable & Telecommuns. Ass'n v. Gulf Power Co.*, 534 U.S. 327, 342 (2002) (affirming that the FCC's has jurisdiction under the federal Pole Attachment Act, 47 U.S.C. § 224, to regulate wireless carriers' attachments to utility poles and facilities).

[4] *See, e.g.*, 47 C.F.R. 1.1404. PacifiCorp does not publicly file state-specific accounts in it annual FERC Form 1 filings but files on a six-state, company-wide basis. This has proven to be somewhat problematic in reaching a prompt resolution to the still-pending Tariff 4 proceeding. *See e.g., In the Matter of the Proposed Revisions of PacifiCorp, dba Utah Power & Light Company, to its Schedule 4- Pole Attachments- Cable Television Tariff by Advice Filing 03-09*, PSC of Utah, Docket No. 03-035-T11.

repetition rather than any substantiating evidence), but a number of courts, including the United States Supreme Court, have clearly indicated that any recovery above marginal cost is fully compensatory.[5] The FCC's fully allocated cable rate formula that Comcast recommends be adopted exceeds—generously—incremental cost.[6]

More specifically, Congress determined that "a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments" nor more than the fully allocated rate.[7] In so doing, Congress set a minimum rate, consisting of the "additional costs of providing pole attachments" which include pre-construction, survey, engineering, make-ready and change-out costs,[8] as well as a maximum (fully allocated) rate. This means that so long as PacifiCorp is recovering the minimum allowable rate (additional costs) then PacifiCorp has received what Congress,[9] the FCC,[10] the federal Courts of Appeals[11] and the U.S. Supreme Court[12] have determined to be just and reasonable rates. The suggestion

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5 *See FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987) (finding that the FCC's rate formula providing for fully allocated costs, including actual cost of capital, constitutes just compensation); *Georgia Power Co. v. Teleport Communications Atlanta, Inc.*, 2003 U.S. App. LEXIS 19989 (11th Cir., Sept. 29, 2003); *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002) (marginal costs provide just compensation for pole use; FCC's cable rate provides more than just marginal costs).

6 *See Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002) (marginal costs provide just compensation for pole use; FCC's cable rate provides more than just marginal costs).

7 47 U.S.C. § 224(d)(1).

8 *See Cavalier Telephone*, ¶ 22.

9 47 U.S.C. § 224(d)(1).

10 *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Memorandum Opinion and Second Report and Order, 72 FCC 2d 59, ¶ 8 (1979) ("Simply put, an acceptable attachment rate would fall in the range between the incremental and fully allocated costs of providing CATV pole attachment space.").

11 *See Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002) (marginal costs provide just compensation for pole use; FCC's cable rate provides more than just marginal costs); *see also Georgia Power Co. v. Teleport Communications Atlanta, Inc.*, 2003 U.S. App. LEXIS 19989 (11th Cir., Sept. 29, 2003).

12 *See FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987) (finding that the FCC's rate formula providing for fully allocated costs, including actual cost of capital, constitutes just compensation).

that any pole attachment rate set at less than the maximum, but more than the minimum allowable rate constitutes a subsidy at the electric rate payers' expense is simply contrary to prevailing law.

Comcast has ample evidence that it has paid "additional costs," including pre-construction, survey, engineering, make-ready and change-out costs *in addition* to the $4.65 Tariff 4 rate, which places PacifiCorp's current recovery somewhere between the minimum and maximum allowable rates. As a result, the Commission should reject PacifiCorp's unsupported suggestion that it has subsidized cable television subscribers.

3. Rate Increase Phase-in

Comcast supports XO Communications' suggestion that any new rate be phased-in over a number of years. As a result of pending proceedings, attachers could be facing a drastic increase in pole attachment rates which will translate into the hundreds of thousands of dollars per year in additional expenses. Comcast believes that to alleviate this "sticker shock" the new rate should be phased-in incrementally over the course of a minimum of five years. As discussed above, PacifiCorp is currently receiving a rate that falls somewhere between the minimum and the maximum allowable rate calculated under the FCC's formula, so no harm should come to its rate payers as a result of a phase-in.

B. Transmission Poles: Access and Rates

Comcast suggests that this Commission consider several issues relating to "transmission" poles. First, Comcast agrees that it is worthwhile at least to consider URTA's suggestion that the Commission exclude transmission pole costs from the pole attachment rate calculations. (*See* URTA comments ¶ 4). However, to the extent that any electric utility "transmission" poles are

used for wire communications (a threshold requirement for applicability of pole-attachment regulation),[13] the pole owner must provide non-discriminatory access to such structures.

1. Access To Transmission Poles

The need for such clarification has becoming increasingly apparent in PacifiCorp's service territory where it is replacing a significant number of shorter "distribution" poles, with much taller poles containing some electric transmission circuits on the top of the pole which it refers to as "transmission" poles. PacifiCorp's current policy (at least with respect to Comcast) is that if Comcast has an attachment to an old distribution pole slated for replacement, Comcast will be allowed to transfer that existing attachment from the old pole to the new pole. However, if Comcast seeks to modify its attachments by overlashing an additional fiber-optic line, PacifiCorp does not allow such a modification. Similarly, if there is no communications wire on a particular pole (even if the poles immediately adjacent to that pole have communications wires on them) PacifiCorp does not allow attachment to be made to that pole. Not only is this contrary to prevailing precedent,[14] but would allow pole owners to deny access to essential support structures simply by putting in taller poles, calling them "transmission" poles and proclaiming that communications facilities will not be allowed.

As Utah continues to build its broadband infrastructure, particularly in new, developing communities and in rural areas—the very places where electric providers can be expected to upgrade their poles—Comcast believes strongly that it would be unwise for the Commission to

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[13] 47 U.S.C. 224(a)(1).

[14] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 14 FCC Rcd. 18049, ¶ 79 (1999) (Reaffirming the conclusion that "use of any utility pole, duct, conduit, or right-of-way for wire communications triggers access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility, including those not currently used for wire communications."). *See also Cable Information Services, Inc. v. Appalachian Power Company*, 81 F.C.C.2d 383, ¶ 23 (1980).

allow this utility practice to devolve into acceptable policy, or law. Where pole owners such as PacifiCorp have made no secret of their ability to become competitors in Broadband Over Power Line ("BPL") services, [15] the case for clear Commission policy on this point is even stronger.

2. Rate Treatment of "Transmission" Poles

In connection with a pole-rate proposal introduced by PacifiCorp in the *Tariff 4* proceeding, PacifiCorp proposed a rate methodology that blended "transmission" pole assets with "distribution" pole assets.[16] However, the FCC formula does not permit blending transmission and distribution pole assets together. By including transmission costs in the rate factors, PacifiCorp produces an annual rental rate approximately $2.00 per pole per year higher than if "distribution" only poles had been included. This produces an inequitable result because the overwhelming majority of communications attachments are placed on "distribution" poles.

That said (and as indicated in the preceding subsection), PacifiCorp is replacing a sizeable number of its poles with significantly taller poles containing at least some transmission circuits at the top of those poles. Comcast (and perhaps other communications attachers as well), has placed some of its attachments on PacifiCorp's "transmission" poles. Comcast, therefore, suggests that should the Commission want to consider separate cost recovery for "transmission" poles essential to communications use, it might consider a slight modification to the FCC formula. Specifically, to the extent that these poles are in fact classified and accounted for as transmission poles (with costs booked to FERC Account 355, as opposed to Account 364—which is the distribution pole account) a separate transmission pole rate could be warranted. Consider the following example based on Comcast's deployment.

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[15] JOINT WIRE AND POLE USAGE, BEST PRACTICES TO MAXIMIZE REVENUE OPPORTUNITIES AND MINIMIZE ATTACHMENT COSTS CONFERENCE held Dec. 8-9, 2002 Scottsdale, AZ, Presentation by Paul Brown, Managing Director of Distribution Support for PacifiCorp ("PacifiCorp Presentation").

[16] This appears to be the transmission pole issue on which URTA focuses in its comments.

Comcast estimates that it is attached to approximately 130,000 PacifiCorp poles in Utah. Of that number, Comcast estimates that about 1,300 (or about 1%) of the poles are what PacifiCorp calls "transmission" poles. Even assuming a "transmission" pole rate that is considerably higher than a "distribution" pole rate (which may or may not be the case), it would be more equitable and more precise to pay this higher rate as to the specific "transmission" poles to which a party attaches. On the other hand, an imprecise methodology that blends "transmission" and "distribution" poles together and increases the per pole rate by, for example, $2.00, shifts to Comcast and its subscribers the costs of maintaining transmission facilities it does not use. Under this scenario of a $2.00 across-the-board transmission-pole surcharge, PacifiCorp would stand to over-recover approximately $250,000 per year for Comcast attachments alone.

Comcast, therefore, proposes that because there is a significant, and perhaps modestly growing number of transmission poles, and because these assets may be accounted for separately, the Commission might consider applying the same basic FCC methodology to "transmission" poles. However, rather than using Account 364 for distribution poles, the formula would use Account 355 (transmission poles), and the appropriate maintenance, administration, taxes, and depreciation accounts and methodologies that are used in the FCC's formula. In addition, instead of using the FCC's presumptive 13.5 feet of usable space in the usage allocator of 7.41% (which is based on an assumed average pole height of 37.5 feet and one foot of space used by the communications attachment) for "distribution" poles, the usage allocator would be adjusted to reflect taller "transmission" poles and increased usable space. For example, if the average "transmission" pole height were 55 feet, then the usable space number

would be adjusted as well. In this example a 55-foot pole would be expected to have approximately 29.5 feet of usable space, and use ratio would be 1/29.5 or 3.38%.[17]

C. Bifurcation of Proceedings

While Comcast agrees with PacifiCorp that expeditious resolution of new pole attachment rates is a very important aspect of this Investigative Docket, Comcast opposes PacifiCorp's request to bifurcate the proceeding into a rate docket and a terms and conditions docket. Any decision the Commission reaches on setting a just and reasonable rate or method of calculation cannot be made without also considering terms and conditions of attachment. A critical aspect of achieving just and reasonable rates is determining which administrative costs the utility includes in its rental rate base to ensure that they are not recovered again as incremental or non-recurring costs during the installation process. The Commission must consider both the cost factors recoverable in the rate and the cost factors PacifiCorp attempts to recover as fees. Otherwise, PacifiCorp stands to reap significant double recoveries. Instances of this precise problem abound and has been the subject of considerable litigation.

For example, in *Cavalier Telephone*, the FCC invalidated the utility's application fee of $50 per permit or $4 per pole[18] (whichever was larger) because the utility failed to show that the fees were not already recovered in the rental rate.[19] The Commission explained that a just and reasonable pole attachment rate assures a utility of recovery of not less than the incremental cost

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[17] This 55-foot pole example assumes a buried segment of 7.5 feet and 18 feet to the first attachment.

[18] Often attachers submit a whole run of poles together on one application. Both pole owners and attachers often find it easier to manage submission, review and approval if the applications are submitted in manageably-sized groups.

[19] *See Cavalier Tel., LLC v. Virginia Electric & Power Co.*, 15 FCC Rcd. 9563, ¶ 22 (2000), *vacated by settlement* 17 FCC Rcd. 24414 (2002). In issuing the *vacatur*, the Commission specifically stated that its decision did not "reflect any disagreement with or reconsideration of any of the findings or conclusions contained in" *Cavalier Tel. LLC v. Virginia Elec. & Power Co.*

of providing pole attachments nor more than the fully allocated costs. If the fully allocated costs already include administrative costs, then the utility may not recover those same administrative costs again as incremental costs. The Commission then explained the differences between incremental costs and fully allocated costs and how they may be subject to double recovery:

> Incremental costs may consist of both recurring and non-recurring costs. Non-recurring incremental costs are out-of-pocket expenses attributable to pole attachments. They include pre-construction, survey, engineering, make-ready, and change-out costs. Non-recurring incremental costs are directly reimbursable to the utility and are excluded from the incremental rate. We [the FCC] stated that a "separate charge or fee for items such as application processing or periodic inspections of the pole plant is not justified if the costs associated with these items are already included in the rate, based on fully allocated costs, which the utility charges the cable company since the statute does not permit utilities to recover in excess of fully allocated costs."[20]

Thus, if the utility books the administrative costs of providing application services to a FERC account that is factored into the fully allocated rate, the utility may not recover those administrative costs again in an application fee.

The FCC further explained that since the application fee did not appear to reflect actual costs, "it must be a recurring cost recoverable through the annual fee and included in the carrying charges when calculating the maximum rate."[21] As such, the FCC concluded that the application fee effectively increased the annual fee beyond the maximum permissible rate and was therefore unjust and unreasonable.[22]

Despite this finding, utilities in Utah today are charging communications companies application fees that are many times in excess of that which the FCC found to be impermissible in *Cavalier Telephone*. For example, PacifiCorp today charges Comcast (and perhaps other

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[20] *Cavalier Tel.*, ¶ 22, *citing Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd. 4387, ¶ 44 (1987).

[21] *Id.*

[22] *Id.*

communications companies as well) $55 per pole application fee for both new attachments, *and for overlashing to existing attachments*. This is nearly 14 times higher than the FCC found to be unlawful in *Cavalier Telephone*.[23]

This is just one example of many cases in which utilities have attempted to double recover administrative costs (once in the rental rate and again as an incremental cost), and the FCC has cautioned utilities time and again that it will closely examine make-ready charges and other charges to ensure that there is no double recovery.[24] Considering this potential for double recovery and the delicate balance this Commission must strike in establishing just and reasonable rental rates and incremental costs, Comcast urges this Commission not to bifurcate the proceeding. Comcast is, however, sensitive to PacifiCorp's desire to settle these issues as quickly as possible and Comcast supports an expeditious resolution of this docket.

D. Codification of Terms and Conditions

Comcast opposes PacifiCorp's suggestion that this Commission should engage in a limited inquiry into the terms and conditions of pole attachments. Comcast believes that a comprehensive pole attachment regulatory scheme will not only help to provide stability and consistency, but is required as a part of the Commission's certification to the FCC that it regulates pole attachments.[25] Considering the magnitude of the problems with access, rates, terms and conditions that Comcast and the other parties described in their Initial Comments, it is imperative that the Commission act now.

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[23] *See* note 16, *supra*.

[24] *Id.*; *see Knology, Inc. v. Georgia Power Co.*, FCC 03-292, File No. PA 01-006, ¶¶51-53 (rel. Nov. 20, 2003) (unlawful overhead surcharge); *Cable Television Assoc. of Ga. v. Georgia Power Co.*, DA 03-2613, File No. PA 01-002, ¶¶17-20 (Enf. Bur. rel. Aug. 8, 2003) (unlawful administrative fees); *Texas Cable & Telecomms. Assoc. v. Entergy Servs., Inc.*, 14 FCC Rcd. 9138, ¶¶ 5-14 (Cab. Serv. Bur. 1999) (unlawful application and engineering fees).

[25] 47 C.F.R. § 1.1414.

For example, Comcast has identified a number of PacifiCorp's current pole attachment practices and policies that would be unlawful in states under the FCC's jurisdiction. Many are the subject of the Request for Agency Action Comcast filed in October 2003, but others have not been raised before this Commission—yet. These practices and procedures include (but are not limited to) a $250 unauthorized attachment penalties, improper allocation of survey costs, application fees for new and overlashed attachments, permitting for overlashed attachments, double recovery of administrative costs, failure to provide detailed invoices and refusing to grant or deny permit applications in writing within 45 days. PacifiCorp's practices have flourished in Utah, due in part to the lack of regulatory restraints in place to govern its conduct. Unless the Commission implements a comprehensive regulatory scheme, these issues will come before it in future Requests for Agency Action and it will be forced to address Comcast's and other attachers' complaints on a case-by-case basis. It would be far more expedient to dispose of these issues in a single rulemaking.

Furthermore, PacifiCorp's assertion that the FCC has not attempted to codify permissible terms and conditions of attachments is wrong. Beginning in 1978, when the Pole Attachment Act was passed, the FCC opened a rulemaking docket that set forth rules and regulations governing, rates, terms and conditions of access.[26] In its 1978 rulemaking docket, the FCC established a number of rules governing access and the complaint process, including the rule (still in existence today) requiring utilities to provide 60 days notice prior to removing cable television facilities from poles and 60 days notice prior to a rate increase (codified at 47 C.F.R.

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[26] *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 68 FCC 2d 3 (1978) (Notice of Proposed Rulemaking implementing the Pole Attachment Act of 1978); *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 FCC 2d 1585 (1978) (Rulemaking promulgating rules governing rates, terms and conditions of attachment).

§ 1.403).[27] In 1979, the FCC issued a Second Report and Order which set forth additional terms and conditions.[28] Some of those terms and conditions include requiring the utilities to provide information regarding pole counts and cost accounting[29] and requiring utilities to pro-rate expenses attributable to more than one beneficiary.[30] Although it decided to promulgate these rules, the FCC deferred additional rulemaking on terms and conditions until it was able to gain more experience in pole attachment regulation.[31] By the mid-1980s, the FCC had gained additional experience and opened rulemakings to establish additional bedrock terms and conditions in 1987,[32] 1996,[33] 1998,[34] 1999,[35] 2000[36] and 2001.[37] These additional rules, some of which may be found at 47 C.F.R. 1.1401 *et seq.* make up a large portion of the FCC's body of

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27 *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 FCC 2d 1585 ¶ 8 (1978).

28 *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Memorandum Opinion and Second Report and Order, 72 FCC 2d 59 (1979).

29 *Id.* ¶¶ 10-13.

30 *Id.* ¶ 29.

31 *Id.* ¶ 33.

32 *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd. 4387 (1987).

33 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd. 15499 (1996).

34 *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd. 6777 (1998).

35 *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration,* 14 FCC Rcd. 18049 (1999).

36 *Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd. 6453 (2000).

37 *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments, In the Matter of the Implementation of 703(e) of the Telecommunications Act of 1996, Consolidated Partial Order on Reconsideration*, 16 FCC Rcd. 12103 (2001).

law and provide a significant amount of guidance to attachers and pole owners negotiating agreements and attempting to resolve disputes.

As a result, Comcast urges this Commission to disregard PacifiCorp's request for a limited proceeding and instead to maintain the broad docket that it has opened already to allow for in-depth exploration of the issues.

E. Unauthorized Attachment Penalties, Audits and Billing

Finally, Comcast reiterates its request that this Commission consider carefully implementing standards to ensure accurate and fair penalty assessments and cost allocations. Nearly every communications attacher submitting comments in this proceeding has described problems with PacifiCorp's administration of its unauthorized attachment penalty program, including accuracy of the inventory audit and allocation of costs. This is clearly a pressing problem, not only for Comcast, but for all attachers statewide and requires some form of global resolution on a going-forward basis.

II. CONCLUSION

For the foregoing reasons, the Commission should conduct a broad investigation into pole attachment regulation. Comcast looks forward to submitting additional comments on the substantive issues.

RESPECTFULLY SUBMITTED this 16th day of April, 2004.

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I hereby certify that on the 16th day of April, 2004, an original, fifteen (15) true and correct copies, and an electronic copy of the foregoing **Reply Comments** were hand-delivered to:

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