

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of an Investigation into Pole Attachments)
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DOCKET NO. 04-999-03
ORDER APPROVING POLE
ATTACHMENT CONTRACTS OF
QWEST CORPORATION

ISSUED: August 28, 2006

By The Commission:

By motions submitted April 17, 2006, Qwest Corporation (Qwest) requested the Commission to approve two pole attachment contracts submitted with the motions. The requested approvals are predicated on Utah Administrative Code Rule No. R746-345-3. In one contract, Qwest and the Utah Telecommunications Open Infrastructure Agency (UTOPIA) have negotiated the terms and conditions by which UTOPIA may make attachments to Qwest's poles. The second contract is Qwest's proposed standard contract through which Qwest offers pole attachment terms and conditions to an entity willing to use the standard contract instead of negotiating a separate pole attachment agreement with Qwest.

The contract with UTOPIA is the same as the standard contract proposed by Qwest, with minor modification, generally to acknowledge pending litigation between Qwest and UTOPIA. Qwest argues that the standard contract follows the procedural and statutory structure of the Federal Pole Attachment Act, as interpreted by the Federal Communications Commission and applied by the Commission. Qwest argues that the standard contract is consistent with the Commission's administrative rule dealing with pole attachments, R746-345, and with the "safe harbor" concepts that have been discussed in technical conferences and workgroup discussions addressing pole attachment agreement terms and conditions. Qwest states the standard agreement

conforms to the “safe harbor” draft agreement submitted to the Commission by the Division of Public Utilities (Division) and approved by the Commission on March 27, 2006. Qwest notes that there are some differences between the March 27 “safe harbor” draft and Qwest’s submitted standard contract, but they only reflect clarifications or Qwest’s administrative processes or are simply non-substantive word changes. Qwest notes that the submitted standard contract is intended to fulfill the requirements of Section 224 of federal law (Title 47) and that the standard contract is identical to the SGAT contractual terms offered by Qwest in compliance with Sections 251 and 252, with the exception of the first sentence; which references the respective directing statutory basis for the agreement. On August 17, 2006, the Division submitted its memorandum, providing discussion of the contracts and the Division’s recommendation for approval. The Division concludes that the proposed contracts are consistent with the rule and the ‘safe harbor’ concepts and ‘safe harbor’ draft agreement. No other comments regarding the two contracts have been submitted to the Commission.

Based upon our review of the Motions, the contracts and the Division’s memorandum, we will approve both contracts. The standard contract proposed by Qwest, with its April 17, 2006, motion, is approved for use to fulfill the responsibilities of Utah Administrative Code rule R746-345. Wherefore, we enter this ORDER, wherein we:

1. Approve the pole attachment contract between Qwest and UTOPIA, submitted April 17, 2006.
2. Approve the standard pole attachment contract, submitted by Qwest on April 17, 2006, as Qwest’s approved standard contract as Qwest’s compliance with Utah Administrative Code Rule R746-345's requirement to offer a Commission approved standard pole attachment contract.

DOCKET NO. 04-999-03

-3-

Dated at Salt Lake City, Utah this 28th day of August, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#50245