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Submitted January 17, 2006

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an Investigation into Pole Attachments	)	Docket No. 04-999-03 **COMMENTS TO CHANGE IN PROPOSED RULE**

Comcast Cable Communications, LLC, formerly Comcast Cable Communications, Inc. ("Comcast"), by and through its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, hereby submits these comments to the proposed pole attachment rules published on December 15, 2005.

I. The Definition of "Pole Attachment" Should Be Amended.

Proposed R746-345-2(C) provides the following definition for pole attachment.

> All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. 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. Additional equipment that is placed within an attaching entity's existing attachment space, and equipment placed in the unuseable [sic] space which is used in conjunction with the attachments, is not an additional attachment for rental rate purposes. All equipment and devices shall meet applicable code and contractual requirements. Pole attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

Comcast supports the Commission's pro-competitive proposal prohibiting utilities from charging additional rent for cable equipment in unusable space. However, the first sentence of this section, which defines a "Pole Attachment" as only the equipment that exists "within [the] attaching entity's allocated attachment space," could be interpreted to exclude equipment placed in "unusable" space from the other protections of these rules. As a result, utilities may attempt to impose unreasonable access denials and/or unreasonable terms and conditions of attachment on equipment typically installed in the unusable space, (*i.e.*, outside the allocated "Attachment Space") like risers and power supplies. Equipment attached outside an attaching entity's "allocated attachment space" must be given the same protections against unreasonable terms and conditions as an attacher's equipment in allocated space. Accordingly, this definition should be revised by simply deleting the words: "within that attaching entity's allocated attachment space."[1]

[1] *See* 47 U.S.C. § 224(a)(4), defining the term "pole attachment" to mean "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit or right-of-way owned or controlled by the utility."

II. The "Tariffs and Contracts" Section Should be Amended to Reflect the Commission's September 6, 2005 Directive.

Proposed R746-345-3(A)(2)(a) provides:

> The tariff, standard contract, and SGAT shall also include:
>
> a. a description of the permitting process, the inspection process, the joint audit process, *including shared . . . costs, and any non-recurring fee or charge applicable thereto*. (Emphasis added).

In contrast, the Commission's Directive provides that "the estimated cost of the audits [should] be included in the rental rate."[2] Under the Standard Pole Attachment Contract, the defined term "Audit" includes both safety inspections and counting audits.[3] As a result, there should be no additional "shared costs" or non-recurring fees or charges for audits or inspections, because any such costs would be included in the fully allocated annual rental rate. Thus, the language in the proposed rule is misleading and could be misinterpreted to allow utilities to impose *additional* costs for safety inspections and counting audits. Under the Commission's Directive, utilities may only charge non-recurring costs associated with the permitting process to 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."[4]

Accordingly, R746-345-3(A)(2)(a) should be amended to clarify that the shared costs associated with inspections and audits are recovered in the annual rental rate and non-recurring charges are only applicable to the permitting process.

III. The Definition of "Carry Charge Rate" Should Be Clarified.

The term "Carrying Charge Rate" is currently defined as:

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2 Commission Directive at Section 5. Audit Costs.

3 Standard Contract at Article 1. Definitions.

4 Commission Directive at Section 1. Fees.

> [T]he percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, pro-rated annualized costs for pole audits or other expenses that are attributable to the pole owner's investment and management of poles.

As written, this definition could be misinterpreted to allow pole owners to tack on to the annual rental invoice an additional charge for the "pro-rated annualized costs for pole audits." The Commission should clarify that the costs of audits should be booked to the appropriate FERC or ARMIS accounts and recovered as part of the rental rate formula, rather than as an additional line item.[5]

Similarly, the reference to "other expenses" could also be interpreted to allow pole owners to charge for additional expenses that are not recovered in the depreciation, administrative and general, maintenance, taxes and rate of return carrying charges. However, those carrying charge components make up the fully allocated rental rate in the formula. "A rate based upon fully allocated costs . . . by definition encompasses all pole related costs and additional charges are not appropriate."[6]

Therefore, in order to reduce the incidence of disputes that may arise as a result of the current language, and to ensure that only appropriate recovery of costs occurs, the following language should be removed from this section: "pro-rated annualized costs for pole audits or other expenses."

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5 *See* Motion for Clarification, filed October 19, 2005.

6 *Texas Cable & Telecom Ass'n v. Entergy Serv., Inc*., 14 FCC Rcd 9138, ¶ 10 (1999); *see also Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd 4387, ¶ 74 (1987) ("In theory, if a utility is purportedly charging a rate based on fully allocated costs, then it should not also be charging additional fees because, by definition, fully allocated costs encompass all pole-related costs.").

IV. Conclusion.

For the foregoing reasons, the Commission should adopt the minor changes discussed in these Comments.

RESPECTFULLY SUBMITTED this January 17, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2006, an original, five (5) true and correct copies, and an electronic copy of the foregoing COMMENTS TO CHANGE IN PROPOSED RULE were hand-delivered to:

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