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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an
Investigation into Pole
Attachments

**COMMENTS OF VOICESTREAM PCS
II CORPORATION DBA T-MOBILE TO
STANDARD POLE ATTACHMENT
CONTRACT**

DOCKET NO. 04-999-03

VoiceStream PCS II Corporation dba T-Mobile ("**T-Mobile**"), through its counsel, hereby submits to the Commission its comments to the Standard Pole Attachment Contract ("**Standard Contract**") dated April 1, 2005.

COMMENTS

Attached to these Comments as **Exhibit A** are changes to the Standard Contract requested by T-Mobile. The Comments that follow state the reasons why T-Mobile requests these changes to the Standard Contract.

A. Comments to Section 2.03 Reservation of Rights

The Standard Contract includes a provision that allows the pole owner to reserve space on the pole for its own purposes:

Pole Owner may reserve space on its poles if such reservation is consistent with a bona fide development plan that reasonably and specifically projects and identifies a need for that space in the provision of its core utility service. In granting permission to use a pole or poles upon which space has been reserved, Pole Owner shall inform Licensee of the space reservation. Pole Owner shall permit use of its reserved space until such time as Pole Owner has an actual need for that space, when Pole Owner may recover the reserved space for its own use. Pole Owner shall give the displaced Licensee commercially reasonable notice of the reclamation of space as well as the opportunity to make alternate arrangements, if available, including but not limited to allowing Licensee to pay for any reasonable modifications needed to continue to accommodate the Attachments that would otherwise be displaced.

Standard Contract § 2.03.

T-Mobile does not dispute that the pole owner should be able to reserve space on its poles for purposes consistent with its own development plan and with the needs of its core utility service. Nevertheless, the pole owner's ability to reserve space, and the licensee's resulting obligation to pay for modifications needed to accommodate its attachments, should not be of an infinite duration.

To attach its equipment to a utility's pole, T-Mobile typically must replace the utility's pole with a stronger, taller pole and then attach its equipment to the new pole. Under the current version of the Standard Contract, T-Mobile would have a continuing obligation, even many years down the road, to modify the pole to accommodate the utility. This obligation may even require

T-Mobile to once again replace the entire pole to accommodate the utility. Such an ongoing obligation makes it extremely difficult for T-Mobile to project future costs and liabilities, and amounts to an unreasonable condition to attachment, which is prohibited by the Utah proposed Pole Attachment Rules and by the Federal Pole Attachment Act. To remedy this situation, T-Mobile requests that the pole owner's right to reserve space on the pole be limited to one year from the time that the licensee attaches its equipment to the pole. *See Exhibit A* § 2.03.

B. Comments to Section 3.04

Section 3.04 of the Standard Contract states that “consistent with industry practice and in consideration of safety and service concerns, twisted pair copper cable or wire shall be the lowest Attachment on Pole Owner’s poles.” T-Mobile has consulted with the Division of Public Utilities and with the other parties to this Investigation who have helped draft the Standard Contract and has confirmed that the language in Section 3.04 was not intended to apply to wireless pole attachments. To clarify the intent of the parties, T-Mobile suggests including language in Section 3.04 that specifically excludes wireless attachments from the language of Section 3.04. *See Exhibit A* § 3.04.

REQUEST

Based on the forgoing, T-Mobile requests that the Commission make the changes to the Standard Contract as set forth in **Exhibit A** to these comments.

RESPECTFULLY SUBMITTED this ____ day of _____, 2005.

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