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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an
Investigation into Pole
Attachments

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

DOCKET NO. 04-999-03

VoiceStream PCS II Corporation dba T-Mobile ("**T-Mobile**"), through its counsel, hereby submits to the Public Service Commission ("**Commission**") its comments to the Commission's proposed Standard Pole Attachment Contract that was filed by the Division of Public Utilities ("**DPU**") on October 15, 2004.

Comments

T-Mobile submits the following comments and suggestions to the proposed Standard Pole Attachment Contract filed by DPU.

A. General Comment to proposed Standard Contract

1. Section 3.07 of the Standard Contract should contain a provision requiring the pole owner to perform Make Ready Work within a specific period of time. T-Mobile requests that the pole owner be required to perform Make Ready Work, or to allow the Licensee to perform the work itself, within 30 days of the date that Make Ready is authorized. T-Mobile also requests that similar time limits be placed on all provisions of the Standard Contract that require the pole owner to perform an act on behalf of the attaching entity or to respond to a request by the attaching entity. Specific time limits will ensure that attachments are completed expeditiously and without unreasonable delays.

2. The Standard Contract should require that all access decisions made by an Owner be made based on objective criteria. The Owner should not have discretion to deny access in its “sole judgment.” This will ensure that all Licensees are treated in a non-discriminatory manner.

B. Comment to Definitions Section

The Definitions section should state that the definitions in the Pole Attachment Rules, R746-345 *et seq.*, apply to the Standard Pole Attachment Contract and that the definitions in the Rules will govern conflicts between the Standard Contract and the Rules. This will ensure that the Rules adopted by the PSC ultimately govern the relationship between the pole owner and the attaching entity.

C. Comment to Definition to “Nonrecurring Charges”

T-Mobile seeks clarification whether “nonrecurring charges” should include “anchors and guys.” If the Licensee can use the anchors and guys already on the pole, then the Owner is already being compensated for the Licensee’s use of Owner’s anchors and guys in the rent that is being paid to the Owner. The Owner should not be compensated twice by including anchors and guys in “nonrecurring charges.”

D. Comment to Section 2.01 Poles; Geographic Scope.

T-Mobile seeks clarification whether the term “transmission poles” as used in the third paragraph of 2.01, is included within the term “distribution poles” regarding the right of Licensee to access under the Standard Contract, or whether the term “transmission poles” is included within the term “transmission towers.”

Further, if there is a change in use of transmission poles, the Licensee alone should be able to reasonably determine that “Joint Use is no longer feasible” such that the Licensee must remove its Equipment with no cost to the Owner. As long as the Licensee’s use is compatible with the change in use, the Licensee should be allowed to keep its equipment on the pole.

E. Comment to Section 3.10 Pole Replacement for Licensee’s Benefit.

The Standard Contract should state that any costs charged to a Licensee by an Owner for prematurely replacing a pole for the benefit of the Licensee “must be billed on a time-and materials basis for costs actually incurred and at rates or charges consistent with tariffs, price lists, or Statement of Generally Available Terms on file with the Commission.” *See* Rule R746-

345-3. This change will ensure that the pole owner does not charge the attaching entity an unreasonable or unduly burdensome fee for swapping out the old pole.

REQUEST

For all of the forgoing reasons, T-Mobile requests that the Division make the changes to the proposed Standard Contract as suggested by T-Mobile. T-Mobile further requests that the PSC and DPU continue discussion of the terms of the proposed Standard Contract at the upcoming Pole Attachment Conference. T-Mobile reserves the right to address other issues concerning the Standard Contract not raised by any other party or addressed herein.

RESPECTFULLY SUBMITTED this ____ day of October, 2004.

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