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Submitted October 1, 2004

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Pursuant to the Notice of Proposed Rule published in the *Utah State Bulletin*, September 1, 2004, Vol. 2004, No. 17, pages 29-32, Comcast Cable Communications, LLC (“Comcast”), by and through its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, hereby submits the following Comments.

I. Introduction

The proposed rule published by the Utah Public Service Commission (the “Commission”), would amend Administrative Code Rule 746-345 concerning the rates, terms and conditions by which attachments are made to the poles of public utilities.

Comcast generally supports the proposed rule as published and suggests only minor changes for clarification purposes. Comcast respectfully requests that the Commission adopt these minor changes as detailed in Exhibit “A” of these Comments, and as summarized below.

II. Rate Formula and Methodology

The proposed rule sets forth a pole attachment formula which incorporates the Federal Communications Commission’s (“FCC”) formula for attachments to poles by cable operators providing cable services, 47 C.F.R. § 1.1409 (the “FCC Cable Formula”). This rule prescribes a single, uniform statewide pole attachment rate that would apply to all pole attachers, and is consistent with the ‘just and reasonable’ mandate of Section 224 of the Pole Attachment Act¹ and Section 54-4-13 of the Utah Code Annotated.

A. Rate Must be Based on Publicly Filed Data

Pursuant to R746-345-5 as proposed, the pole attachment rate must be based on publicly filed data that can be easily verified by all parties. Comcast suggests that the Commission make two additions to this rule to clarify the requirement. First, the data for rate calculations should be taken directly from the Federal Energy Regulatory Commission (“FERC”) Form 1 for electric pole owners, such as PacifiCorp, or the FCC Automated Reporting Management Information System (“ARMIS”) for telecommunications pole owners, such as

¹ Pub. L. No. 95-234, 92 Stat. 35 (1978), codified at 47 U.S.C. § 224.

Qwest Corporation. This is information that pole owners already file with regulatory agencies. See 47 C.F.R. § 1.1404.

Second, the number of poles that the public utility company owns is required for the pole attachment rate calculation, however, this information is not publicly filed. Comcast suggests that the Commission require public utilities to file annual reports on the total number of poles that it has in service in the State of Utah. This additional requirement would be the only major source of data for pole rent calculations and will further assist in the administration of the rule, thus allowing pole owners and attachers to resolve rate issues without the Commission's involvement.

B. Space Used by an Attaching Entity

Consistent with the FCC Cable Formula, the proposed rule would apply the presumption that one foot of pole space is the appropriate allocation to cable television operators and other providers of communications services. Comcast urges the Commission to delete confusing portions of the proposed rule R746-345-5 that make reference to electric primary and secondary pole attachments. This information on space allocation and placement of electric attachers would be more appropriate in sections of the Administrative Rules, if any, addressing construction and engineering standards. For instance, the determination of whether a high voltage electrical line must be placed lower on the pole is irrelevant to R746-345-5, which is the rule for determining rental rate for the pole attachment. Accordingly, the Commission should also delete references to primary and secondary pole attachments from the definitions listed in R746-345-2 of the proposed rule.

III. CONCLUSION

In conclusion, Comcast generally supports the proposed rule and urges the Commission to adopt the minor changes discussed in these Comments and specifically identified in Exhibit A.

RESPECTFULLY SUBMITTED this 1st day of October, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2004, an original, five (5) true and correct copies, and an electronic copy of the foregoing **COMMENTS TO THE PROPOSED RULE** were hand-delivered to:

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