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Submitted October 19, 2005

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of an Investigation into Pole Attachments )  
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) Docket No. 04-999-03  
) **MOTION FOR CLARIFICATION**  
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Comcast Cable Communications, LLC, formerly Comcast Cable Communications, Inc. (“Comcast”), by and through its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, hereby moves for clarification of the Public Service Commission’s (“Commission”) September 6, 2005

letter providing “Commission Direction Concerning Ten Issues Regarding the Pole Attachment Standard Contract” (hereinafter “Commission Directive” or “Directive”).

## **I. INTRODUCTION**

The parties involved in this docket have spent much of the last year negotiating the terms of a standard pole attachment agreement, through a series of technical conferences supervised by the Division of Public Utilities. The purpose of this standard agreement is to provide both pole owners and attachers with “safe harbor” provisions that will govern the parties’ pole attachment relationship in the event that they cannot agree on the terms and conditions of a pole attachment contract specific to those parties. Although the parties involved in the technical conferences resolved many of their differences over the terms to be included in the standard contract, ten disputed issues remained. Those ten issues were submitted to the Commission earlier this year for resolution.

On September 6, 2005, the Commission issued its Directive addressing the ten disputed issues. The Commission’s Directive included a determination that audit costs should be included in the annual pole attachment rental rate. Comcast now seeks clarification of this determination.

Specifically, the Commission’s Letter provides as follows:

**AUDIT COSTS [3.24]:** Parties disagree on whether audit costs should be charged directly to attachers or included in the monthly pole attachment rental rate.

**Commission Direction:** Since it is necessary for audits to be conducted, it is a known and anticipated expense. The Commission directs that the estimated cost of the audits be included in the rental rate. The Commission further directs that pole owners work with the DPU and all licensed attaching entities to develop an agreed upon plan as to the type of activities that will be included in the audit shall, the estimated cost of the audit, and appropriate means of converting the expected cost into a rental charge prior to either the inclusion of the audit costs in the rental rate, or the actual implementation of an audit.

While Comcast supports the Commission's determination that audit costs should be included in the pole attachment rent, Comcast requests that the Commission clarify that audit costs should be booked to the appropriate FERC and ARMIS accounts and recovered through the maintenance carrying charge that factors into the rental formula, rather than as a line-item to be tacked on to each annual pole attachment rental invoice. This will allow pole owners to be fully compensated for audit expenditures without the risk of double recovery for attachers. In contrast, allowing an additional charge for audit costs on top of the fully allocated annual rent would result in over recovery.

## **II. REQUEST FOR CLARIFICATION**

Audits must be conducted and are, therefore, a "known and anticipated" cost of doing business. (See Commission Directive). Consequently, the Commission must clarify that the only proper way to recover these costs through the annual rent is to book them to the appropriate FERC and ARMIS maintenance accounts once an audit occurs. It is well-established that the "costs attendant to routine inspections of poles, which benefit all attachers, should be included in the maintenance costs account and allocated to each attacher in accordance with the" fully allocated rental rate.<sup>1</sup> This tried and true method of cost recovery will allow pole owners to receive reimbursement for audit costs while ensuring that attachers do not pay twice for the same audit.

The Commission's Directive as written, however, could be interpreted to allow pole owners to tack on a line item to their rental rate for "expected" audit costs and include the actual audit expenses *again* in the maintenance carrying charge, which would then be used to calculate the rental rate. Without clarification on this issue, pole owners would obviously have an easy

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<sup>1</sup> *The Cable Television Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd 16333, ¶ 16 (2003).

avenue for double recovery. Accordingly, audit costs should not be recovered as a separate line item on a rental invoice because the types of costs associated with audits are required to be booked as expenses to accounts that factor into the annual rental rate.

For example, FERC Account 593 (which is used to calculate an electric utility's maintenance carrying charge) includes the expenses for inspection and maintenance of overhead distribution lines. Likewise, ARMIS Account 6411, includes all pole related expenses and determines the maintenance carrying charge in an ILEC's annual rental rate. It would be very difficult, if not impossible, to ensure that audit expenses incurred by a utility were not funneled through the maintenance carrying charge even though the "expected" costs were already recovered *via* a separate line item on an attachers' annual rental invoice. Comcast does not believe that the Commission intended such a result and clarification on this issue is, therefore, essential.

In addition, little, if any, Commission oversight would be necessary if pole owners were required to book audit expenses as they occur and recover them as part of the maintenance carrying charge. This is because calculating pole attachment rental rates based on publicly filed and certified FERC and ARMIS data (including any audit expenses incurred) allows for "a stable and certain regulatory framework that may be applied simply and expeditiously requiring a 'minimum of staff, paperwork and procedures consistent with fair and efficient regulation.'"<sup>2</sup>

The Commission has expended considerable resources establishing a rental rate formula and methodology for pole attachment rates in order to minimize uncertainty and rate disputes. (See Notices of Proposed Rule or Change, published June 3, 2004, September 1, 2004,

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<sup>2</sup> *Alabama Cable Telecomm. Ass'n v. Alabama Power Co.*, 15 FCC Rcd 17346 at ¶ 5 (2000) (citing legislative history of the Pole Attachment Act mandating that the FCC institute a "simple and expeditious" formula).

November 1, 2004, January 24, 2005, March 15, 2005, and September 1, 2005). Complicating the new rate formula by allowing an add-on for anticipated or actual audit expenses (even though utilities are required to book such expenses to the maintenance accounts that factor into the pole attachment formula) would, therefore, undermine one of the Commission's primary goals in instituting this proceeding.

Granting Comcast's request and clarifying that pole owners should recover audit costs in the annual rent by booking these expenses to the appropriate FERC and ARMIS Accounts, on the other hand, will ensure that pole owners recover their audit expenses, without doubly-recovering, and reduce the incidence of pole attachment disputes in Utah.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of October, 2005.

**COMCAST CABLE COMMUNICATIONS, LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of October, 2005, an original, five (5) true and correct copies, and an electronic copy of the foregoing MOTION FOR CLARIFICATION were hand-delivered to:

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and a true and correct copy, hand-delivered and electronically mailed to:

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