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*Attorneys for Qwest Corporation*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of an Investigation  
Into Pole Attachments

Docket No. 04-999-03

**MOTION OF QWEST CORPORATION  
FOR APPROVAL OF PROPOSED  
POLE ATTACHMENT STANDARD  
CONTRACT**

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Qwest Corporation (“Qwest”) respectfully submits the attached standard Utah Pole Attachment contract for the Public Service Commission's review and approval, and states:

On March 11, 2004, the Division of Public Utilities filed a Request to Open an Investigative Docket concerning pole attachment issues in Utah. The Commission opened a docket and conducted a series of technical conferences in anticipation of making rule changes and accepting a “safe harbor” pole attachment agreement that parties may opt into if they are unable to agree to pole attachment terms through negotiation. The Commission’s Notice of

Change in Proposed Rule 746-345 was published on December 15, 2005 providing, in part, that pole owners shall submit a standard contract for Commission approval.

On March 27, 2006, the Commission approved a “safe harbor” agreement by letter to the Utah Director of Division of Public Utilities. The Qwest standard pole attachment contract, attached hereto as Attachment 1, conforms to the Commission's docket and revised rule, as well discussions and agreements reached at the technical conferences. Minor changes to the “safe harbor” agreement reflect clarifications or Qwest’s administrative processes, or are simply non-substantive wording changes. For example, Section 3.24 clarifies that Qwest may conduct special audits of a particular party’s attachments if an attacher has repeated safety or other violations. Charges associated with those special audits are separate from the system audit charges included in the annual rental charge. Special audit charges should not be imposed on parties that are not responsible for the violations that trigger such audits. Additionally, the invoicing and billing language in Sections 3.01 and 5.01 has been modified to reflect Qwest’s billing processes. Any pole attachers desiring to enter into a pole attachment agreement with Qwest in Utah pursuant to R746-345 and Section 224 of the Act may elect to execute the attached contract.<sup>1</sup>

Qwest’s proposed standard contract also follows the procedural and statutory structure provided in the Act, as interpreted by the FCC and as applied by this Commission. As background, Sections 224 and 251 of the Act each grant entities access to pole attachments, but these sections have different procedural mechanisms. The FCC in the *Local Competition Order* provided guidance on whether Section 224 versus Section 251 and the negotiation, arbitration,

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<sup>1</sup> Notably, Qwest and UTOPIA have already executed Qwest’s standard contract. Because the UTOPIA contract includes additional language that references UTOPIA’s structure and pending litigation between the parties, Qwest has separately submitted that contract to the Commission for approval pursuant to R745-345-3(B)(1).

and filing procedures under Section 252 should apply if a telecommunications carrier requests access to pole attachments:

If a telecommunications carrier intends to invoke the section 252 procedures, it should affirmatively state such intent in its formal request for access to the ILEC. We impose this requirement because the two procedures have separate deadlines by which the parties may or must take certain steps, and therefore the incumbent LEC receiving the request has a need to know which procedure has been invoked. Section 224 shall be the default procedure that will apply if the telecommunications carrier fails to make an affirmative election.<sup>2</sup>

Thus, Section 224 controls unless a telecommunications carrier requests pole attachments pursuant to Sections 251 and 252.

Here, the Commission expressly invoked the authority of Section 224 and state law to proceed in this docket. In accordance with the FCC's *Local Competition Order* and this Commission's indication of the governing statute, Qwest's proposed standard contract states that pole attachments are being provided pursuant to Section 224 and state law, and thus only the procedures required under Section 224 and state law apply to the contract. If a telecommunications carrier requests access to pole attachments pursuant to Section 251, then Qwest will provide access pursuant to that section and follow the procedural mechanisms of Sections 251 and 252, including the filing obligation under Sections 252(a) and (e). For informational purposes, the agreement that will be provided to CLECs that request access pursuant to Section 251 is attached hereto and marked as Attachment 2. That agreement is identical to Qwest's standard Section 224 pole attachment contract submitted herewith for approval, with the exception of the first sentence.

WHEREFORE, Qwest respectfully submits the attached standard pole attachment contract for review and approval by the Commission.

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<sup>2</sup> *Local Competition Order*, 11 FCC Rcd. 15499, para. 1229.

RESPECTFULLY SUBMITTED this 14th day of April, 2006.

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### **CERTIFICATE OF SERVICE**

I certify that the original and five copies of **MOTION OF QWEST CORPORATION FOR APPROVAL OF PROPOSED POLE ATTACHMENT STANDARD CONTRACT** were sent via overnight delivery on April 14, 2006 to:

Julie P. Orchard  
Commission Administrator  
Utah Public Service Commission  
Heber M. Wells Building, 4th Floor  
160 East 300 South  
Salt Lake City, UT 84111

and true and correct copies were sent by U.S. mail, postage prepaid, and/or by email, on April 14, 2006, to:

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