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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an Investigation
Into Pole Attachments

Docket No. 04-999-03

**RESPONSE BY QWEST
CORPORATION TO COMMENTS
SUBMITTED BY UTOPIA ON THE
STANDARD POLE ATTACHMENT
AGREEMENT AND REQUEST FOR
APPROVAL OF AGREEMENT
BETWEEN QWEST AND UTOPIA**

Qwest Corporation (“Qwest”) respectfully submits the following Response to Comments submitted by the Utah Telecommunication Open Infrastructure Agency (“UTOPIA”).

I. Introduction

The Utah Public Service Commission (the "Commission") opened this docket on March 11, 2004. Numerous industry representatives participated in a series of technical conferences and industry collaborative meetings to reach a consensus on as many issues as possible. Half-

way through these proceedings, UTOPIA moved to intervene in April 2005. After a series of additional technical conferences, industry collaborative meetings, comments, briefings, reply briefings, draft rules, and draft contracts conducted and developed over an additional year, the Commission published a proposed rule amendment. The rule amendment became effective February 8, 2006. On July 1, 2006, the Commission published certain additional amendments to the rule.

In connection with the rule-making proceeding, the Division met with industry representatives to fashion a Standard Contract. On February 10, 2006, the Division of Public Utilities (the “Division”), after numerous industry collaboratives, several drafts, and Commission direction, filed a memorandum recommending the Commission approve the Standard Contract attached to the memorandum. The Standard Contract submitted to the Commission included changes discussed at prior industry collaboratives, including one held in December, 2005. No parties commented or objected to the Standard Contract. Accordingly, on March 27, 2006, the Commission provided notice to the Division acknowledging receipt of the Standard Contract and stating that the Standard Contract would remain on file as a “safe harbor” for use by parties unable to negotiate terms for pole attachments. Subsequently, certain parties claimed they were unaware of the Division’s filing and requested an opportunity to further comment. Accordingly, by notice dated May 1, 2006, the Commission gave parties until May 31, 2006 to provide written comments regarding the Standard Contract filed by the Division.

Since that time, several parties have submitted comments which, for the most part, do nothing more than resurrect arguments previously raised and considered in the collaborative meetings with the Division, and rejected by the Commission.

II. Comments by UTOPIA

On August 14, 2006, UTOPIA filed its comments to the Standard Contract. Although the comments were filed late and offer no new arguments, UTOPIA asserts several allegations in an attempt to demonstrate lack of cooperation by pole owners. Specifically, Utopia makes certain allegations with respect to pole attachment agreement negotiations with “an incumbent competitor to UTOPIA’s service providers (‘the Competitor’).” We assume, since Qwest is the incumbent provider in Utah, UTOPIA is referring to Qwest and its pole attachment agreement negotiations. The statements made by UTOPIA are defamatory and patently false.

Specifically, UTOPIA states that it believes “that the Competitor deliberately delayed signing a pole attachment agreement as long as possible with UTOPIA in order to gain a competitive advantage” and that “as a result of the Competitor’s delay, UTOPIA was required to redesign its network to build around poles where the Competitor refused access.”¹ Nothing could be farther from the truth.

First, UTOPIA's claim that it experienced any delay from the lack of a pole attachment agreement is absurd since UTOPIA did in fact attach to numerous Qwest poles, notwithstanding the fact that it did not have an agreement or any other permission from Qwest to do so. Additionally, when UTOPIA did request access to Qwest’s poles, Qwest proffered its non-251 (Section 251 agreements are reserved for CLECs) standard pole attachment agreement. UTOPIA requested access to Qwest’s poles pursuant to Section 224 of the Act, which is limited to access to poles for cable companies and telecommunications providers. Curiously, UTOPIA’s sole claim in its comments is that Qwest refused to make changes to its standard pole attachment

¹ Utopia’s Comments to Draft Standard Pole Attachment Agreement at page 4.

agreement to reflect its nature as a governmental entity. In fact, Qwest did agree to make certain insurance requirement changes to accommodate UTOPIA's inability to obtain rated insurance carrier coverage. Moreover, while solely focusing on its entity status, which is not at all clear, UTOPIA fails to state the true scope of the changes it demanded. Specifically, UTOPIA insisted that Qwest waive all unauthorized attachment charges associated with UTOPIA attachments placed on Qwest poles prior to the date of the agreement. UTOPIA also insisted that it be allowed to place its facilities on Qwest poles below Qwest copper cable, which is contrary to Bell Core standards and common industry practice in place for decades.² The result of the requested changes by UTOPIA would have been to shift costs to Qwest and other attachers. Therefore, Qwest rejected UTOPIA's demands based on Qwest's obligations of non-discrimination, industry practice, and/or safety concerns.

Finally, UTOPIA claims that it was only able to enter into an agreement with Qwest because the Commission's safe harbor Standard Contract was available in April 2006. In fact, UTOPIA's counsel, David Shaw, in December 2005 at a technical conference in Salt Lake City, made a request to Qwest's counsel, Theresa Atkins, to suspend negotiations on a pole attachment agreement with Qwest until the Standard Contract was filed, to which Qwest counsel agreed.

III. Qwest's Standard Utah Pole Attachment Agreement and Utopia Agreement

In its rules and comments, the Commission made it clear that while the Standard Contract placed on file March 27, 2006 was to be used as a "safe harbor" in disputes, pole owners were required to file their own standard agreements or tariffs setting forth the terms and conditions

² BellCore Standards. See figures 25, 26 and 27 in REGN 627-070-016RG (noted as US WEST Communications Standards, Issue 1, October 1989).

applicable to attachments to their particular poles. On April 14, 2006, Qwest filed its Qwest standard Utah Pole Attachment Agreement with the Commission based on the filed Standard Contract, with Qwest specific changes made for clarification or to reflect Qwest administrative processes. Simultaneously, Qwest filed the pole attachment agreement between Qwest and UTOPIA, which the parties executed on March 28, 2006. The pole attachment agreement between Qwest and UTOPIA is identical to Qwest's standard Utah Pole Attachment Agreement, with the exception of a paragraph that references ongoing litigation between the parties. On August 7, 2006, the Division recommended that the Qwest – UTOPIA agreement be approved. Qwest requests that the Commission approve its standard Pole Attachment Agreement as well as the agreement “negotiated by the parties in good faith”³ and that the same be unaffected by any changes the Commission entertains to its safe harbor Standard Contract.

IV. Conclusion

WHEREFORE, Qwest respectfully asks the Commission to accept its response to comments filed by UTOPIA and approve the Qwest Standard Pole Attachment Agreement and the agreement between Qwest and UTOPIA

RESPECTFULLY SUBMITTED this 18th day of August, 2006.

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³ Division of Public Utilities Memo to the Commission dated August 7, 2006 recommending approval of the Qwest – UTOPIA pole attachment agreement.

CERTIFICATE OF SERVICE

I certify that the original and five copies of **RESPONSE BY QWEST CORPORATION TO COMMENTS SUBMITTED BY OTHER PARTIES, REQUEST FOR CLARIFICATION, AND REQUEST FOR CONFIRMATION** were sent via overnight delivery on August 18, 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 August 18, 2006 to:

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