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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
:
: **REPLY OF QWEST CORPORATION TO**
: **SUPPLEMENTAL COMMENTS FILED**
: **BY UTOPIA AND T-MOBILE IN**
: **RESPONSE TO QWEST’S**
: **SUPPLEMENTAL COMMENTS**

On July 6, 2005, Qwest Corporation (“Qwest”) filed supplemental comments in the above-captioned docket. In response to Qwest’s supplemental comments, the Utah Telecommunication Open Infrastructure Agency (“Utopia”) and VoiceStream PCS II Corporation dba T-Mobile (“T-Mobile”) filed comments. Utopia and T-Mobile assert that Qwest’s supplemental comments should be disregarded because they were filed after the deadline. Notwithstanding, each have offered supplemental comments of their own.

As to the timeliness of Qwest’s comments, it should be noted that the above docket is still open. The Commission has not issued a final rule and it is Qwest’s understanding that, in fact, an additional draft rule may be issued for comment. Moreover, Qwest’s supplemental comments are directly in response to the issues raised by the Commission at the June 8, 2005 technical

conference and Utopia's actions and late intervention into this docket. On March 19, 2004, the Commission issued an order opening this docket for the purpose of investigating issues associated with pole attachments, including crafting new rules, and creating a standard pole attachment agreement that attaching entities and pole owners in Utah may rely upon. Over the course of thirteen months, the Division conducted a series of technical and non-technical sessions that were attended by interested parties, including pole owners and attaching entities. Utopia chose not to participate in these proceedings. Rather, Utopia moved to intervene more than one year after the docket was opened and after all of Division's collaborative industry sessions had concluded. Utopia's argument that comments submitted in response to their intervention should be disregarded as untimely is inappropriate and self-serving, and should be rejected.

Utopia's comments on the merits should also be rejected. The placement of cables in a uniform order and above the telephone company copper cable as contemplated under the NESC and Bellcore rules is consistent with generally accepted industry practice and has been followed by pole owners and all other attaching entities in Utah without exception. The need to clarify the order of attachment has only become an issue since entry of Utopia within the State of Utah as a commercial wholesaler of facilities attached to poles. Although Utopia argues that "Qwest's proposal is superfluous" and inefficient (Utopia Comments at 3), the necessity for this clarification is highlighted by Utopia's own actions. Qwest has previously provided data with respect to line interference and safety risks of fiber cable being placed below heavier copper cable. No party, including Utopia, has refuted this added potential for risk. Pole owners and attaching entities operating within the State of Utah agree understand that uniform compliance with industry standards and practices is essential to ensure the safety and reliability of their

employees and services. Utopia's failure to comply with standard engineering and construction practices has already had serious, negative consequences, including but not limited to interference with competitors' attachments and interruption of vital services to the residents of Utah. Adding language to the rules that expressly requires compliance with these industry standards cannot be considered superfluous or inefficient.

Utopia also argues that if they are required to follow the NESC and Bellcore order of attachment rules, Qwest should be required to share the cost of correcting Utopia's violations. Specifically, Utopia argues that if additional make-ready costs are incurred to lower an existing telephone cable that was placed higher than the NESC minimum clearance requirement, the telephone company should share in that cost. Utopia argues that it should not bear additional make-ready cost because of a company's decision to place heavier copper facilities on a pole. Utopia fails to acknowledge that most of the copper telephone cable has been in existence for years, long before the requirement for or proliferation of pole attachments. Moreover, the NESC is a minimum clearance requirement. Several factors might impact the clearance decision when placing telephone cable, including but not limited to state and local requirements and preferences in addition to the NESC minimum. For example, Qwest is often required to raise its cables by local department of transportation rules or directives to provide clearance greater than that required by the NESC. PacifiCorp, the electric utility in Utah, requires compliance with "the NESC, the Commission's 'Safety Provisions for Joint-use of Poles' and 'Line Inspection Requirements for Utility Operators,' and such requirements and specifications as PacifiCorp shall from time to time prescribe, including without limitation, PacifiCorp's Distribution Construction Standards. In the event of any conflict between any of the requirements and specifications of the NESC, of the Commission, and those prescribed by Owner, the more

stringent requirements and specifications shall govern.” The Division also added language into their draft template agreement that would require attachments to comply with the Commission’s “Safety Provisions for Joint-use of Poles” and “Line Inspection Requirements for Utility Operators.” Consequently, even if Qwest were to agree that on a going forward basis it would attempt to attach new cable no higher than the NESC minimum clearance requirement, such state, local or other rules and regulations may dictate otherwise.

It is well established industry practice that, as the cost causer, the new attaching entity is responsible for the costs associated with accommodating its attachments, including make-ready costs to transfer existing attachments. To change this practice for Utopia would be discriminatory to all other attaching entities and pole owners operating in the Utah.

With respect to T-Mobile’s substantive supplemental comments, Qwest believes that T-Mobile’s interpretation of the proposed language is excessively limiting and incorrect to the extent that it is interpreted to limit wireless attachments. Such an interpretation is not intended and Qwest acknowledges that, consistent with industry practice, wireless antennas are typically attached above the highest cable and that certain wireless equipment may be vertically attached on the pole below the lowest cable. The inclusion of the NESC and Bellcore rules does not preclude such accepted industry practice. In fact, R746-345-3.A.2, as proposed by Qwest, expressly includes “generally accepted industry practice” as part of the requirements of any tariff

or contract. To the extent a clarification is needed, Qwest proposes language stating that the order of facilities applies to facilities that connect to a minimum of two poles within the same pole line.

RESPECTFULLY SUBMITTED: July 26, 2005

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Certificate of Service

I hereby certify that on July 26, 2005, I emailed or mailed, postage prepaid, a true and correct copy of Qwest's Supplemental Comments on the Commission's Published Pole Attachment Rules in Docket No. 04-999-03 to the following:

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