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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 OTHER PARTIES,
REQUEST FOR CLARIFICATION,
AND REQUEST FOR CONFIRMATION**

Qwest Corporation ("Qwest") respectfully submits the following Response to Comments

Submitted by Other Parties, Request for Clarification and Request for Confirmation:

I. Introduction and Response to Comments Submitted by Other Parties

The Public Service Commission (the "Commission") opened this docket on March 11, 2004. After a series of technical conferences, industry collaborative meetings, comments, briefings, reply briefings, draft rules, and draft contracts conducted and developed over the span of almost two years, the Commission published a proposed rule amendment. The rule

amendment became effective February 8, 2006. However, as the result of concerns raised by PacifiCorp, the Commission indicated that it would publish a new additional amendment to the rule regarding make-ready work. The Division of Public Utilities (the "Division") submitted a Standard Contract to the Commission and, by notice dated March 27, 2006, the Commission placed it on file as a "safe harbor" for use by parties unable to agree to terms governing their pole attachment relationship.

Now, several parties have filed comments to the new proposed rule amendment and to the Standard Contract. For the most part, these comments do nothing more than resurrect arguments previously raised and considered in the collaborative meetings and by the Division and the Commission. At this late stage, after so much time and effort has been expended by everyone involved, Qwest urges the Commission to disregard attempts by various parties to comment on issues previously raised and discussed at length -- in essence, attempts to take a second bite out of the apple.

II. The New Proposed Rule Amendment and Request for Clarification

The new proposed rule amendment attempts to carve out an exception to the self-build option for make-ready work by requiring that all make-ready work in the electric space be conducted by the electric pole owner. This issue was discussed at length in the industry collaborative meetings. The consensus reached by the participants was that either the electric company or a qualified electrical contractor could perform work in the electric space. Because it is Qwest's practice to have the electric company perform any make-ready work required in the electric space, this issue is not of particular concern to Qwest. Accordingly, Qwest did not file comments to the new proposed rule amendment.

Of concern to Qwest, however, are the comments filed by PacifiCorp and Comcast Cable Communications, Inc. regarding the new proposed rule amendment. These comments bring into question whether Qwest's interpretation of the new proposed amendment is consistent with the Commission's intent. To the extent that the Commission approves an amendment creating an exception to the self-build option for make-ready work, Qwest believes that Commission should clarify the amendment's language. For the first alternative that the Commission proposes adding to the introductory section under paragraph C of R746-345-5, the amendment should be clear that the pole owner is responsible for coordinating the make-ready work of other attachers, as is the industry practice, as opposed to actually performing the make-ready work for all attachers. For the second alternative that the Commission proposes adding to the introductory section under paragraph C of R746-345-5, the proposed amendment should be modified to clarify that it refers to an "electric company" pole owner.

III. Standard Contract and Request for Confirmation

During the course of the past two years, it was painstakingly clear that all of the parties would not be able to agree on all of the terms of a Standard Contract. Nevertheless, based on collaborative meetings, the Division submitted a Standard Contract to the Commission on February 10, 2006. In doing so, the Division quoted direction provided by the Commission on February 2, 2006 as to the nature and purpose of the Standard Contract:

While the Commission will still permit parties to negotiate unique terms that could differ from what is provided herein, these are in the nature of "safe harbors." Agreements which contain these provisions would be approved by the Commission (if other terms are reasonable); they will be the default provisions for the generic agreements or where parties do not, or cannot, propose alternatively agreed upon terms.

Based on this directive, Qwest understood that the Commission would refer to the terms of the Standard Contract as reference for “safe harbors” when it reviewed agreements submitted for approval or in cases of disputes in agreement negotiations. Utah Administrative Code Rule 746-345-3 expressly requires a pole owner to submit a tariff or its own standard agreement for approval. Consistent with the Commission's directive and R746-345-3, Qwest submitted its standard agreement to the Commission for approval on April 17, 2006. In that filing, Qwest makes certain clarifications or minor corrections to the Standard Contract language. Similarly, PacifiCorp and other pole owners have an opportunity to make their own changes to the Standard Contract in their filings with the Commission. Qwest believes that these individual agreements are the appropriate forum for changes to the Standard Contract and to reflect each pole owner’s particular interests. During the approval process, parties may comment on the proposed individual agreements submitted by pole owners. Once approved by the Commission, these individual agreements become the pole owners' default agreements, which are available for opt-in by any pole attacher.

Qwest respectfully asks the Commission to confirm Qwest's understanding, as set forth above, concerning the nature and purpose of the Standard Contract and the individual standard agreements submitted by pole owners under R746-345-3.

WHEREFORE, Qwest respectfully asks the Commission to accept its response to comments filed by other parties, issue clarifications regarding the new proposed amendment, and confirm the nature and purpose of the Standard Contract and individual pole owner template pole attachment agreements.

RESPECTFULLY SUBMITTED this ____ day of June, 2006.

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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 June 7, 2006 to:

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and true and correct copies were sent by U.S. mail, postage prepaid, and/or by email, on June 7, 2006, to:

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