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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an
Investigation into Pole
Attachments

**T-MOBILE'S MOTION TO
DISREGARD SUPPLEMENTAL
COMMENTS OF QWEST
CORPORATION TO THIRD REVISED
POLE ATTACHMENT RULES**

DOCKET NO. 04-999-03

VoiceStream PCS II Corporation dba T-Mobile ("**T-Mobile**"), through its counsel, hereby submits to the Public Service Commission ("**Commission**") this Motion to Disregard the *Supplemental Comments of Qwest Corporation on the Public Service Commission's Published Proposed Pole Attachment Rules* ("**Supplemental Comments**") filed by Qwest on July 6, 2005. The reasons for T-Mobile's Motion are: (1) Qwest's Supplemental Comments were filed after the deadline for filing Comments to the Proposed Pole Attachments Rule, R746-345-1 *et seq.* (the "**Proposed Rules**"); and (2) Qwest's Supplemental Comments, if followed, would

effectively prevent wireless companies such as T-Mobile from attaching to utility poles under the Proposed Rules.

ARGUMENT

1. Qwest's Supplemental Comments Were Filed Two Months Late.

Because Qwest filed its Supplemental Comments after the deadline for filing comments specified in the Proposed Rules, the Commission should disregard the Supplemental Comments from the record in this matter and refuse to consider the contents thereof.

Under the Utah Administrative Rulemaking Act, UTAH CODE ANN. § 63-46a-4(8) (2001), following publication of a proposed rule, the agency is required to establish a comment period, which must run for at least 30 days, during which time interested persons can comment on the proposed rule. The Administrative Rulemaking Act does not provide for the filing of comments after the comment period deadline has expired.

Here, the Commission filed the Proposed Rules on February 28, 2005. *See* DAR File No. 27348. The Commission's notice of the Proposed Rules stated that interested persons must submit their comments to the Proposed Rules to the Commission by 5:00 p.m. on April 14, 2005, and that the Proposed Rules may take effect as early as April 15, 2005. *See id.* Qwest's Supplemental Comments were filed more than two months after this deadline. To allow Qwest to submit additional comments to the Proposed Rules well after the deadline to file comments has passed would render meaningless the comment deadline and would be prejudicial to other interested parties tasked with having to respond to late-filed comments ad infinitum.

2. If Adopted, Qwest's Supplemental Comments Would Prevent Wireless Attachments.

Qwest's Supplemental Comments state that the order for attachment onto utility poles should "include[] twisted-pair copper telecommunication facilities as the lowest attachment and power facilities as the highest attachment on a utility pole." (Qwest's Supplemental Comments at p. 2.) Qwest then states that to allow a different order of attachment would violate the safety standards of the industry. *See id.* However, if the Commission adopted Qwest's Supplemental Comments into the Proposed Rules, wireless providers such as T-Mobile would be prevented from attaching to utility poles under the Proposed Rules.

As the Commission is aware, the purpose of this Pole Attachment Act and this Investigation is to establish the basic terms and conditions whereby attaching entities, including wireless providers, can attach to a utility pole. Throughout this Investigation, the Proposed Rules have contemplated that the usable space on a pole "means the space on a utility pole above the minimum grade level to the top of the pole." *See Proposed Rule R746-345-5(B)(2)(d).*

In most cases, in order to provide adequate wireless signal coverage, T-Mobile must attach its antenna to the very top of the utility's pole. T-Mobile has filed with the Commission several images depicting these types of existing wireless attachments. Sometimes T-Mobile must replace an existing pole with a taller pole to accommodate the wireless attachment. In most instances, if T-Mobile were not allowed to attach its antenna to the very top of the pole, T-Mobile's antenna would not be located high enough above the clutter of foliage and buildings to provide adequate signal to its customers. Alternatively, in some cases T-Mobile also has

attached its equipment below the lowest attachment on a pole. T-Mobile has also filed with the Commission images depicting these types of lower attachments. T-Mobile can point to literally dozens of instances in which its antennae or other equipment has been safely attached as either the highest or lowest attachment on a pole. Engineers from T-Mobile and the pole owner routinely have authorized these types of attachments.

Qwest's dilatory comments ignore that a substantial number of safe wireless attachments are the highest or lowest attachments on a utility pole. If the Commission were to dictate by rule, as Qwest suggests, that the power company have the highest attachment on the pole and the wireline phone company have the lowest attachment on the pole, then T-Mobile would be prevented from attaching to utility poles. Neither safety concerns nor the Pole Attachment Act support that outcome, and the Commission should not endorse it.

CONCLUSION

Based on the forgoing, T-Mobile respectfully requests that the Commission disregard Qwest's stale Supplemental Comments.

RESPECTFULLY SUBMITTED this ___ day of July, 2005.

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