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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 Utah Rural Telecom Association ("URTA") Comments on Proposed Rule R746-345 Pole Attachments Published December 15, 2005 and to PacifiCorp's Supplementary Comments filed December 23, 2005 on the Joint-Use Agreement

URTA submits comments on the Public Service Commission's ("Commission") proposed Rule R746-345 and on PacifiCorp's Supplementary Comments filed December 23, 2005 on the Joint-Use Agreement and makes the following recommendation:

URTA recommends that the Commission schedule a technical conference, or if necessary a hearing, to ensure that the Commission has the benefit of the positions of all of the parties on both the proposed rule and the proposed standard contract before either one becomes final. PacifiCorp filed supplementary comments with the Commission December 23, 2005 on the standard contract. The December 23, 2005 filing was to be directed to the Division of Public Utilities ("Division"), not to the Commission, and was intended to address the standard contract before the Division submitted the draft standard contract to the Commission. Thereafter, parties were to comment to the Commission on the standard contract. URTA followed the intended schedule. Parties have not yet seen the Division's final proposed standard contract and are therefore unable to thoroughly address the contract.

Under these circumstances it is not clear when parties are to respond to the contract or when the Commission will be able to simultaneously review the rule and the contract. Holding a technical conference or a hearing will ensure that the Commission has all the information before it to make informed decisions and to coordinate the rule with the standard contract. A conference or a hearing should also help avoid protracted rounds of additional rulemaking.

Comments on Rule

With respect to the proposed rule, URTA concurs with the Commission's deletion of the original R746-345-5 A. The change eliminates potential confusion as to the method of calculating a rate. URTA recommends that the new R746-345-5 A. be narrowed to indicate that the calculation is formulaic. The change may be as simple as changing "Any" to "A" so the sentence would state, "A rate based on the formula in this Subsection shall be considered just and reasonable unless determined otherwise by the Commission." Such a change is non-substantive, but it gives the impression of being narrower and connotes greater precision. The rate setting stage that follows finalization of this rule could be contentious and a signal from the Commission in rule that the calculation is formulaic and requires precision could be helpful.

In R746-345-5 A.2.b. in the definition of "Net Cost" there are so many commas that the section is confusing. At the very least the comma between "purchase price" and "of" needs to be deleted; otherwise the sentence does not make sense.

Comments on PacifiCorp's Supplementary Comments, the Rule, and the Standard Contract

1. Self-Build of Make-Ready Work

Trigger and Notice. URTA agrees with PacifiCorp that one trigger for the self-build option should be a pole owner's inability to meet the make-ready work timelines and that notice to the pole owner of a licensee's intention to exercise the self-build option should be included in R746-345-3 C.8. and in Section 3.02 of the standard contract. The pole owner should be informed about changes to its network.

In addition to the timeline trigger, there may be other circumstances that warrant the exercise of the self-build option. For example, if a licensee is able to perform the make-ready work through a pole-owner-approved contractor at lower cost, the licensee should be permitted to perform the work. The licensee should not be forced to absorb a pole owner's higher costs.

As the rule is currently proposed, however, Section R746-345-3.C.8. is too open ended. As drafted, a licensee can exercise the self-build option whenever make-ready work is required and that is not good policy. A licensee should not be allowed to reject a make-ready estimate "for whatever reason." There should be a reason justifying a licensee's exercise of the option. Section R746-345-3.C.8. should be redrafted as follows:

> 8. If the pole owner fails to meet the timelines established above or the pole owner's make-ready estimate exceeds bids from approved contractors to do the work, the applicant may reject pole owner's make-ready estimate, and, at its own expense use an approved contractor to self-build the required make-ready work subject to the pole owner's inspection.

Coordination between the rule and the contract. URTA disagrees with PacifiCorp's contract proposal to refer only to R746-345-3.C., the rule that establishes the timelines to

respond to applications and make-ready work, rather than paraphrasing the rule in the contract. Whether the rule is included verbatim in the contract or whether the rule is paraphrased in the contract, the contract should have the timelines in it. That is the clearest way for parties in the field to know and understand their obligations to each other.

Alternative Proposal. URTA opposes PacifiCorp's alternative self-build proposal on p.6 of its comments that would limit the self-build option to communications facilities. URTA is not anxious to change electric attachments, but to exclude those from the self-build option eviscerates the self-build option. Using pole-owner-approved contractors who are trained to do electric attachments should alleviate PacifiCorp's concerns.

2. Creditworthiness

URTA supports the position the Division took on the creditworthiness issue in its December 9, 2005 memorandum to the Commission deleting Section 10.04 from the contract. Deleting Section 10.04 also eliminates the definition of "material adverse change" in Article I of the contract. Given that licensees prepay for pole attachments and for half the make-ready work, PacifiCorp's proposal is onerous and unnecessary. The risk involved does not warrant the imposition of PacifiCorp's creditworthiness proposal. Pointing to two other PacifiCorp contracts with similar provisions does not mean the provision is common in commercial agreements or that it constitutes commercial best practices. It simply means that it is PacifiCorp's practice to include such a provision.

If the Commission takes PacifiCorp's position on creditworthiness, URTA recommends that Section 10.04 be amended to require Commission approval as is required by Section 10.03, the bonding provision.

3. Other Provisions

Overlashing. As written, the draft contract requires that third-party overlashers obtain their own pole attachment permit and that is adequate. No additional obligation needs to be imposed on the original licensee as PacifiCorp proposes.

Service Drops. In its December 23, 2005 comments PacifiCorp deleted the language it amended from Section 3.02 of the draft contract that it proposes to change, but URTA does not object to reinserting language so the sentence states, "Licensee shall have the right to install service drops originating from the attaching entity's existing pole attachment without prior approval by Pole Owner." That reflects the intent of the parties and the Commission's resolution of the issue in the Commission's letter ruling dated September 6, 2005.

Property Rights. This is an issue that has been hashed and rehashed and decided by the Commission in it September 6, 2005 letter ruling. As long as Section 3.11 of the contract is clear that the contract does not bestow any easement or access rights to land beneath the attachments, that is adequate. It should not be necessary for the licensee to produce anything more. With the accompanying indemnification, the pole owner is protected against actions filed by an upset landowner.

Core Business requirements. In order for a pole owner to reserve space on a pole for its core utility business, the pole owner is supposed to reserve the space in a bona fide development plan. As the contract is currently drafted it is not clear what a bona fide plan is. If the Commission retains the bona fide development plan language, that term should be defined in the contract to avoid disputes. Otherwise, URTA agrees with PacifiCorp that bona fide plan should be struck from Section 2.03.

Conclusion

URTA recommends that the Commission make the non-substantive changes to the rule URTA has recommended, coordinate the provisions of the standard contract with the rule in a technical conference or hearing, and allow the rule to become effective. The Commission should then commence a new rulemaking to make clear when the self-build option is available. This would resolve many of the disputes between the parties and allow them to move to the rate-establishment phase of the pole attachment proceeding.

Respectfully submitted this 17th day of January, 2006.

Callister Nebeker & McCullough

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Stephen F. Mecham for URTA

Certificate of Service

I hereby certify that on January 17, 2006 I emailed or mailed, postage prepaid, a true and correct copy of the URTA's Comments on Proposed Rule R746-345 Pole Attachments Published December 15, 2005 and on PacifiCorp's Supplementary Comments filed December 23, 2005 on the Joint-Use Agreement in Docket No. 04-999-03 to the following:

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