

Stephen F. Mecham (4089)  
Callister Nebeker & McCullough  
Gateway Tower East Suite 900  
10 East South Temple  
Salt Lake City, UT 84133  
Telephone: 801-530-7300  
Facsimile: 801-364-9127  
Attorneys for Utah Rural Telecom Association

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of an Investigation into Pole Attachments	<p style="text-align: center;"><u>Docket No. 04-999-03</u></p> <p style="text-align: center;">Utah Rural Telecom Association ("URTA") Comments to Proposed Rule R746-345 Pole Attachments of Public Utility Companies</p>
---------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The URTA generally supports the Public Service Commission's proposed Rule R746-345 pole attachment rule published September 1, 2004 and makes the following comments:

R746-345-3 A 1. should be amended to read:

A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the proposed rate, term or condition is ~~no longer~~ just and reasonable. A change in rate, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

The proposed language is more flexible. There could be instances where, because of circumstances, it is necessary for just one or two contracts to deviate from the standard form. The pole owner either would not want to or could not show that the existing rate, term or condition is unjust and unreasonable in all cases. If the pole owner has to affirmatively show that the proposed change is just and reasonable, that showing could apply to both single contract deviations and permanent changes. As the rule is written, it appears to contemplate that all changes will be permanent and will apply prospectively to all contracts.

R746-345-5. B 2 b. defines the “Cost of Bare Pole” as being either net cost or gross cost, but the rule does not otherwise state when a pole owner uses one or the other in the formula. In an earlier draft, the rule had the following sentence at the end of the definition: “A Pole Owner may use gross cost only when its net cost is a negative balance.” That sentence or one similar to it must be restored to make it clear when a pole owner uses the net or gross cost in the formula. In addition, if using the net or gross costs results in an unfair or unreasonable outcome, it appears that a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C. If there is doubt that the rule operates that way, the URTA urges the Commission to insert an express reference to R746-345-5 C in R746-345-5 B 2 b. to address that possibility.

The URTA recommends that the Commission treat these changes as non-substantive so that the rule can become effective immediately to avoid any further delays in this proceeding. If the Commission concludes that the proposed changes are substantive, the URTA recommends that the Commission allow the rule to take effect without the changes and then engage in subsequent rulemaking to make the changes. We would like to resolve the disputes over pole attachments as soon as possible.

Respectfully submitted this 1<sup>st</sup> day of October, 2004.

Callister Nebeker & McCullough

---

Stephen F. Mecham for URTA

Certificate of Service

I hereby certify that on October 1, 2004 I emailed or mailed, postage prepaid, a true and correct copy of the URTA's Comments to Proposed Rule R746-345 Pole Attachments of Public Utility Companies in Docket No. 04-999-03 to the following:

Michael Ginsberg  
Assistant Attorney General  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
[mginsberg@utah.gov](mailto:mginsberg@utah.gov)

Reed Warnick  
Assistant Attorney General  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
[rwarnick@utah.gov](mailto:rwarnick@utah.gov)

[bcahoon@swlaw.com](mailto:bcahoon@swlaw.com)

[charles.zdebski@troutmansanders.com](mailto:charles.zdebski@troutmansanders.com)

[dthomas@crblaw.com](mailto:dthomas@crblaw.com)

[gerit.hull@pacificorp.com](mailto:gerit.hull@pacificorp.com)

[gregkopta@dwt.com](mailto:gregkopta@dwt.com)

[harrism@att.com](mailto:harrism@att.com)

[jennifer.chapman@troutmansander.com](mailto:jennifer.chapman@troutmansander.com)

[michael\\_woods@cable.comcast.com](mailto:michael_woods@cable.comcast.com)

[mpeterson@utahcooperatives.org](mailto:mpeterson@utahcooperatives.org)

[oldroydj@ballardspahr.com](mailto:oldroydj@ballardspahr.com)

[raymond.kowalski@troutmansanders.com](mailto:raymond.kowalski@troutmansanders.com)

[robert.brown@qwest.com](mailto:robert.brown@qwest.com)

[Gsackett@joneswaldo.com](mailto:Gsackett@joneswaldo.com)