

August 4, 2005

BY HAND DELIVERY

Ms. Julie Orchard
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111

Re: Docket No. 04-999-03 – Utopia’s Response to Qwest’s Reply to Supplemental Comments

Dear Ms. Orchard:

Enclosed please find the following: an original and 5 copies of *Utopia’s Response to Qwest’s Reply to Supplemental Comments* and a disk with an electronic version of the filing. We have also e-mailed a copy of the filing to lmathie@utah.gov.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Parsons Behle & Latimer

Vicki M. Baldwin

VMB/gm
Enclosures

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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

**UTOPIA’S RESPONSE TO QWEST’S
REPLY TO SUPPLEMENTAL
COMMENTS**

On July 6, 2005, Qwest Corporation (“Qwest”) filed supplemental comments (“Qwest’s Comments”) in the above-captioned docket suggesting the Utah Public Service Commission (“Commission”) add language to the proposed pole attachment rules incorporating the National Electric Safety Code (“NESC”) and the Bellcore rules. Thereafter, the Utah Telecommunication Open Infrastructure Agency (“UTOPIA”) submitted its Supplemental Comments in response to Qwest’s Comments, and on July 26, 2005 Qwest replied. UTOPIA respectfully submits its response to Qwest’s reply.

UTOPIA'S RESPONSE

Contrary to Qwest's continual assertion, the Bellcore rules have not been followed by pole owners and all other attaching entities in Utah without exception. Qwest Reply at p. 2. Nevertheless, as pointed out in UTOPIA's prior Comments, it is unnecessary to require that the language of the rule be changed so that the NESC and other regulatory standards be specifically incorporated into the rules because this is already provided for in the way the rules are currently drafted. Proposed R746-345-3.A requires that the standard pole attachment agreement or a Statement of Generally Available Terms ("SGAT") be submitted to the Commission for approval. Section 3.04 of the proposed standard agreement requires:

Licensee shall, at its own sole risk and expense, place and maintain its Equipment upon the poles *in conformity with the requirements and specifications of the NESC and other applicable law, as well as any additional construction standards approved by the Commission* and attached to this Agreement as Exhibit ___. Licensee agrees that, *consistent with industry practice and in consideration of safety and service concerns, twisted pair copper cable or wire shall be the lowest Attachment on Pole Owner's poles. All other cable or wire Attachments shall be placed above twisted pair copper cable.* On a going forward basis, Pole Owner and Licensee shall endeavor to attach twisted pair copper cable or wire at the lowest point available to meet applicable standards in order to mitigate unnecessary costs by other attachers.

Utah Pole Attachment Agreement (Proposed) § 3.04 (emphasis added).

Therefore, the rules as proposed already require conformance with the NESC and "all other state, local or other rules and regulations" as well as all standard engineering and construction practices. The proposed contract also already provides that twisted pair cable shall be the lowest attachment. Qwest's proposal is therefore superfluous and unnecessary. Also, allowing the safety requirements to be specified in the contract and then providing that the contract be approved by the Commission allows more flexibility in the event that new rules or standards are adopted or changed. Therefore, the rule as originally proposed (without Qwest's amendments) serves the purpose of incorporating safety rules in the most efficient manner.

If Qwest is truly concerned with safety and the order of attachment, the regulations and proposed standard contract provide the appropriate safeguards for which Qwest appears to be arguing. The Bellcore rules, which despite Qwest's repeated insistence, are not "followed by pole owners and all other attaching entities in Utah without exception" and should not be incorporated into the regulations themselves. Because the safety requirements are already adequately addressed, it appears Qwest's real concern is to ensure the costs of "any and all make ready" work are imposed on the new attacher in all cases. As UTOPIA explained in its previous Comments this is unfair and discriminatory, and in direct contravention of the pro-competition legislative purpose of the Telecommunications Act of 1996 ("1996 Act"). It blatantly ignores

the stated intent of Congress in passing the 1996 Act to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” FTA, Pub. L. No. 104-104, pmb., 110 Stat. 56 (1996).

Qwest asserts in its latest Reply that the NESC is not the exclusive authority on lowest attachment height due to requirements imposed by transportation agencies that, in some cases, are more restrictive than NESC. This argument, however, has no bearing on the applicability of the Bellcore rules. Section 3.04 of the standard agreement specifically recognizes that pole attachments must be made “in conformity with the requirements and specifications of the NESC *and other applicable law.*” Utah Pole Attachment Agreement (Proposed) § 3.04 (emphasis added). Construction regulations imposed by transportation agencies are sufficiently covered as other applicable law. Nonetheless, such regulations have no bearing on who should grant an owner of copper facilities that right of lowest attacher.

Therefore, UTOPIA urges the Commission to adopt the position set forth by the Vermont Public Service Board (“Vermont PSB”) regarding lowest attachment (at whichever height is applicable under NESC or other regulations) and make ready expenses as explained in UTOPIA’s prior Comments. This methodology is fair and nondiscriminatory. If the telecommunications utility must lower its facilities to remain at the lowest position, fairness requires that it should bear its share of the costs to do so. Fairness requires that the owner of the heaviest facilities equally share with a new entrant the costs for make ready work to move such heavier facilities to the lowest position. Fairness also requires that the rule apply as to the heaviest facilities, not as to who owns the facilities. An attacher with heavier copper facilities and lighter fiber optic facilities should not be automatically be granted the right of lowest attacher at all times, but rather only as to the heavier copper facilities, after equally sharing in the make ready costs necessary to attain such right.

CONCLUSION

Based on the foregoing, UTOPIA respectfully requests that the Commission reject Qwest’s suggested changes to R746-345-3.A.2 of the proposed rules as stated in Qwest’s Comments and Reply.

DATED this _____ day of August, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 2005, I caused to be emailed and/or mailed, first class, postage prepaid, a true and correct copy of the foregoing **UTOPIA'S RESPONSE TO QWEST'S SUPPLEMENTAL COMMENTS**, to:

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