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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 COMMENTS ON PROPOSED
RULE FOR POLE ATTACHMENTS OF
PUBLIC UTILITY COMPANIES AND
STANDARD CONTRACT**

On September 1, 2005, at the direction of the Public Service Commission of Utah ("Commission"), the Division of Administrative Rules ("DAR") published for comment the proposed amendments to R746-345, the Rule for Pole Attachment of Public Utility Companies. On September 6, the Commission issued its Direction Concerning the Pole Attachment Standard Contract. Pursuant to Utah Code Annotated 63-46a of the Utah Administrative Rulemaking Act,

the Utah Telecommunication Open Infrastructure Agency (“UTOPIA”) submits the following comments.

COMMENTS

1. With respect to the proposed changes to R746-345-3.C dealing with make ready work, UTOPIA supports the Commission’s adoption of time frames required for performance of make ready work based on the number of poles. Some other parties have expressed a concern over the ability to complete the make ready work in the proposed regulatory timeframes. UTOPIA understands this concern and believes that the Commission should allow the applicant the option of choosing a pre-approved contractor upon approval of the application. UTOPIA suggests, therefore, that R746-345-3.C.6 be amended as follows:

6. For all approved applications, the applicant ~~will~~ may either accept ~~or reject~~ the make ready estimate and construction timeline or choose a pre-approved contractor that meets the objective engineering qualifications and criteria established by the pole owner to perform the make ready work at the applicant’s own expense. If ~~it~~ the applicant accepts the make ready estimate and make ready construction timeline provided by the pole owner, the work must be done by the pole owner on schedule and for the estimated make ready amount or less and applicant will be billed for actual charges up to the bid amount.

UTOPIA suggests that this concept also be carried over to §§ 3.02 and 3.09 of the Standard Contract.

In the event an applicant chooses to accept the construction timelines established by the pole owner, UTOPIA supports the position of the Utah Rural Telecommunication Association. Accordingly, UTOPIA urges the Commission to change the response time for applications for attachments up to 20 poles in R746-345-3 C.1. from 45 days to 30 days. The response time in R746-345-3 C.2. should be reduced from 60 to 45 days. These timeframes fairly balance the

needs of the pole owner to manage its own resources, while not unduly delaying an attacher's construction project.

2. In addition to the anticipated difficulty in meeting the regulatory timeframes, some parties have expressed a concern that attachers may overwhelm a pole owner by submitting applications piece-meal, i.e. submitting applications for 20 poles each over several consecutive days. In response to this concern, it has been proposed that an applicant be required to submit at one time its application to the pole owner for the applicant's entire project. This solution is commercially unrealistic and unreasonable. This proposal would force an applicant to incur engineering costs that otherwise would only be incurred pursuant to financially responsible planning solely for the purpose of submitting pole applications. Such a requirement would chill otherwise fiscally reasonable commercial development.

Recognizing that an applicant could game the system by submitting applications piece-meal, but also recognizing the financial realities of commercial development, UTOPIA proposes a compromise. Instead of requiring that an entire construction project be included in an attacher's application, UTOPIA proposes that applications be required to encompass the proposed development for each neighborhood or community. In reality, the engineering will be performed on this basis and therefore, it makes sense to base the application submittals on the same criteria.

3. UTOPIA also encourages the Commission to adopt the position adopted by the Vermont Public Service Board ("Vermont PSB") regarding lowest attachment and make ready work expenses.

[The telecommunications utility] generally wishes to keep its own pole attachments at the lowest actual attachment point on the pole.

To accomplish this, [the telecommunications utility] and other telephone companies must sometimes lower their own cables to allow room for a new attacher. The commenters disagreed about how these costs should be paid. The Final Proposed Rule provides that under these circumstances the costs of lowering the existing lowest attachment will be divided equally between the new attacher and the existing attacher (usually a telephone company). The Board has concluded that before these circumstances can arise, the existing attacher must have originally placed its own facilities higher than is required by safety codes. Accordingly, the original attacher should share in the cost of freeing up space for the new attacher. Likewise, the new attacher is a cause of the relocation, and should pay a portion of that cost. To omit this provision would give telephone companies the right to impose additional and unnecessary costs on new attachers simply by setting their attachments high on new poles.

Vermont Public Service Board Rule 3.700 – Pole Attachments, Policy Explanation and Summary of Comments at 15, attached hereto as Exhibit A. UTOPIA believes that the methodology adopted by the Vermont PSB is fair and nondiscriminatory. As the Vermont PSB points out, the only reason a telecommunications utility would have to lower its facilities to become the lowest attacher when a new attacher requests attachment is because the telecommunications utility originally placed its facilities higher than required. Thus, 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. Similarly, a company's decision to maintain heavier copper facilities that have a higher likelihood of damaging lighter facilities should not automatically confer upon that company the ability to increase another's make ready costs to avoid line interference. 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.

In addition, the Commission should not allow a pole owner with copper facilities to assume special rights or privileges for its fiber facilities. The lowest attacher position should only be allowed for copper facilities. The fiber facilities of a pole owner should be treated no differently than the fiber facilities of an attacher.

DATED this _____ day of October, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3d day of October, 2005, I caused to be emailed and/or mailed, first class, postage prepaid, a true and correct copy of the foregoing **UTOPIA'S COMMENTS ON PROPOSED RULE FOR POLE ATTACHMENTS OF PUBLIC UTILITY COMPANIES AND STANDARD CONTRACT**, to:

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