

JOEL D. WRIGHT (10477)  
HOLLAND & HART LLP  
60 E. South Temple, Suite 2000  
Salt Lake City, UT 84111-1031  
Telephone: (801) 799-5800  
Facsimile: (801) 799-5700

DAVID J. SHAW (8477)  
Utah Telecommunication Open Infrastructure  
Agency  
1385 West 2200 South, #302  
West Valley City, Utah 84119  
Telephone: (801) 990-5457  
Facsimile: (801) 908-7225

Attorneys for UTOPIA

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of an Investigation into Pole  
Attachments.

Docket No. 04-999-03

**UTOPIA'S COMMENTS TO DRAFT  
STANDARD POLE ATTACHMENT  
AGREEMENT**

The Utah Telecommunication Open Infrastructure Agency ("UTOPIA"), by and through its attorneys, Holland & Hart LLP, hereby submits these comments to the draft Utah Pole Attachment Agreement ("Standard Contract") submitted to the Utah Public Service Commission ("Commission") by the Division of Public Utilities on February 10, 2006.

UTOPIA's comments to the Standard Contract will address the following issues: (1) timeframes; (2) UTOPIA's experience trying to negotiate a pole attachment agreement with

PacifiCorp in 2004; and (3) UTOPIA's experience trying to negotiate a pole attachment agreement with an incumbent competitor to UTOPIA's service providers (the "Competitor") between 2004 and 2006.

## COMMENTS

### I. Timeframes

UTOPIA endorses the comments that Comcast filed with the PSC on this matter on May 31, 2006 under "Section I. Timeframes" of Comcast's filing. Specifically, UTOPIA is confused as to why the Commission changed the language in Section 3.02 from the prior draft of the Standard Contract, which read:

If notice is not received from Pole Owner within the above mentioned time frames, Licensee may proceed with installing the Attachment, and such Attachment shall be deemed authorized, subject to all other terms and conditions of this Agreement.

*See* December 9, 2005 Draft Standard Contract.

In sharp contrast, the current draft provides in Section 3.02:

If notice is not received from Pole Owner with the above mentioned time frames, Licensee must check back with the Pole Owner before proceeding with installing the Attachment and can appeal to the Commission for permission to proceed.

The original language gave the Licensee some degree of certainty, gave the Pole Owner the proper incentive to work with Licensee, and substantially decreased the need to appeal to the Commission for intervention. It is unclear why the Commission would "downgrade" Section 3.02 given the substantial costs involved on the part of a Licensee, when the record does not indicate that anyone has requested this change, or made a substantive argument as to what the benefits would be from making this change. Given the lack of cooperation UTOPIA has

received to date, as described below, UTOPIA anticipates that, if approved by the Commission, a Pole Owner who competes with UTOPIA would use the proposed language of Section 3.02 to delay UTOPIA's project. In contrast, the existing language of Section 3.02 places the responsibility of responding to pole attachment applications squarely on the party most suited to respond – the pole owner.

Now that UTOPIA has reached a pole attachment agreement with the Competitor, which has been filed with the Commission and was based on the December 9, 2005 Draft Standard Contract, it is unclear what impact, if any, an amendment to the language in Section 3.02 would have on UTOPIA's agreement with the Competitor. Consequently, UTOPIA urges the Commission to reject the proposed amendment to Section 3.02 and leave the current provision in tact. Alternatively, the Commission should clarify that any agreements executed based on the December 9, 2005 Draft Standard Contract are unaffected by this change.

## **II. UTOPIA's Pole Attachment Agreement with PacifiCorp in 2004**

UTOPIA began negotiations with PacifiCorp for a pole attachment agreement in February 2004, and eventually signed a pole attachment agreement with PacifiCorp in July 2004 ("UTOPIA/PacifiCorp Agreement"). This UTOPIA/PacifiCorp Agreement required nearly six months to negotiate largely because the parties at PacifiCorp could typically only meet once every three or four weeks, and then required another three or four weeks before they could review any revision and meet again. This delay added to UTOPIA's costs, and also hampered UTOPIA's ability to promptly begin construction on its project in 2004. Had the Standard Contract been available in February 2004, it would have saved UTOPIA substantial time and resources, as well as saving the time and resources of PacifiCorp.

### **III. UTOPIA's Pole Attachment Agreement with the Competitor**

In November 2004 UTOPIA began discussions and negotiations with the Competitor for a pole attachment agreement. UTOPIA believes that the Competitor deliberately delayed signing a pole attachment agreement as long as possible with UTOPIA in order to gain a competitive advantage. Despite numerous attempts by UTOPIA to gain reasonable access to Competitor's poles, the Competitor repeatedly failed to provide UTOPIA with a reasonable pole attachment agreement that reflected UTOPIA's nature as a governmental entity (i.e. the unrated nature of UTOPIA's insurance carrier). In addition, as a result of the Competitor's delay, UTOPIA was required to redesign its network to build around poles where the Competitor refused access. As a result of the Competitor's conduct, in the affected areas UTOPIA cannot deploy its network, and UTOPIA's service providers cannot offer any of their respective services. UTOPIA believes the Competitor's actions were anticompetitive and were conducted in an effort to preclude or diminish UTOPIA's ability to compete in certain markets.

Finally, because the draft Standard Contract was available, UTOPIA obtained a pole attachment agreement with the Competitor in April 2006. If the draft Standard Contract had not been available, it is likely that UTOPIA still would not have a pole attachment agreement with the Competitor.

### **IV. Conclusion**

UTOPIA respectfully requests the Commission reject the proposed amendment to Section 3.02 of the Standard Contract, as requested in Section I, and supports the Commissions efforts to create a fair and reasonable Standard Contract due to the challenges it faced signing a timely pole

attachment agreement with PacifiCorp and reaching reasonable pole attachment terms with the Competitor.

DATED this 14 day of August , 2006.

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JOEL D. WRIGHT  
HOLLAND & HART LLP  
DAVID J. SHAW  
UTOPIA  
Attorneys for UTOPIA

## CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of August, 2006, an original, five (5) true and correct copies, and an electronic copy of the foregoing **UTOPIA'S COMMENTS TO DRAFT STANDARD POLE ATTACHMENT AGREEMENT** were hand-delivered to:

Ms. Julie Orchard  
Commission Secretary  
Public Service Commission of Utah  
Heber M. Wells Building, Fourth Floor  
160 East 300 South  
Salt Lake City, Utah 84114  
[mlivingston@utah.gov](mailto:mlivingston@utah.gov)

and a true and correct copy, hand-delivered to:

Michael L. Ginsberg, Esq.  
Patricia E. Schmid, Esq.  
Assistant Attorney Generals  
Office of the Utah Attorney General  
Heber M. Wells Building, Fourth Floor  
160 East 300 South  
Salt Lake City, Utah 84114  
[mginsberg@utah.gov](mailto:mginsberg@utah.gov)  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

Marlin Barrow  
Casey J. Coleman, Utility Analyst  
State of Utah  
Division of Public Utilities  
Heber M. Wells Building, Fourth Floor  
160 East 300 South  
Salt Lake City, Utah 84114  
[mbarrow@utah.gov](mailto:mbarrow@utah.gov)  
[ccoleman@utah.gov](mailto:ccoleman@utah.gov)

and a true and correct copy mailed, postage prepaid thereon, or emailed in pdf format, to the following:

Meredith R. Harris, Esq.  
AT&T Corp.  
One AT&T Way  
Bedminster, New Jersey 07921  
[harrism@att.com](mailto:harrism@att.com)

Michael D. Nelson  
Director, Government Affairs  
Comcast Cable Communications, Inc.  
West Division  
183 Inverness Drive West  
Englewood, Colorado 80112  
[Michael.Nelson@cable.comcast.com](mailto:Michael.Nelson@cable.comcast.com)

Martin J. Arias, Esq.  
Comcast Cable Communications, LLC  
1500 Market Street  
Philadelphia, Pennsylvania 19102  
[martin\\_arias@comcast.com](mailto:martin_arias@comcast.com)

John Sullivan, Esq.  
Vice President & Chief Counsel - Telephony  
Comcast Cable Communications, Inc.  
Cable Law Department  
1500 Market Street  
34th Floor, East Tower  
Philadelphia, Pennsylvania 19102  
[John.Sullivan@comcast.com](mailto:John.Sullivan@comcast.com)

J. Davidson Thomas, Esq.  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Avenue, N.W., 2d Floor  
Washington, D.C. 20006  
[dthomas@crblaw.com](mailto:dthomas@crblaw.com)

Genevieve D. Sapir, Esq.  
Cole, Raywid & Braverman, LLP  
2381 Rosecrans Avenue, Suite 110  
El Segundo, California 90245  
[gsapir@crblaw.com](mailto:gsapir@crblaw.com)

Curt Huttsell, Ph.D.  
Manager, State Government Affairs  
ELECTRIC LIGHTWAVE, LLC  
4 Triad Center, Suite 200  
Salt Lake City, Utah 84180  
[chuttsel@czn.com](mailto:chuttsel@czn.com)

Charles L. Best, Esq.  
Associate General Counsel  
ELECTRIC LIGHTWAVE, LLC  
4400 N.E. 77th Avenue  
Vancouver, Washington 98662-6706  
[charles\\_best@eli.net](mailto:charles_best@eli.net)

Gerit F. Hull, Esq.  
PACIFICORP  
825 N.E. Multnomah, Suite 1700  
Portland, Oregon 97232  
[gerit.hull@pacificorp.com](mailto:gerit.hull@pacificorp.com)

Charles A. Zdebski, Esq.  
Raymond A. Kowalski, Esq.  
Jennifer D. Chapman, Esq.  
Troutman Sanders, LLP  
401 Ninth Street, NW, Suite 1000  
Washington, DC 20004-2134  
[charles.zdebski@troutmansanders.com](mailto:charles.zdebski@troutmansanders.com)  
[raymond.kowalski@troutmansanders.com](mailto:raymond.kowalski@troutmansanders.com)  
[jennifer.chapman@troutmansanders.com](mailto:jennifer.chapman@troutmansanders.com)

Gary Sackett, Esq.  
Jones Waldo Holbrook & McDonough  
170 South Main, #1500  
Salt Lake City, Utah 84101  
[gsackett@joneswaldo.com](mailto:gsackett@joneswaldo.com)

Robert C. Brown, Esq.  
Theresa Atkins, Esq.  
Melissa K. Thompson, Esq.  
Qwest Services Corporation  
1801 California Street, 49th Floor  
Denver, Colorado 80202  
[Robert.Brown@qwest.com](mailto:Robert.Brown@qwest.com)  
[Theresa.Atkins@qwest.com](mailto:Theresa.Atkins@qwest.com)

Michael Peterson  
Executive Director  
Utah Rural Electric Association  
10714 South Jordan Gateway  
South Jordan, Utah 84095  
[mpeterson@utahcooperatives.com](mailto:mpeterson@utahcooperatives.com)

Stephen F. Mecham, Esq.  
Callister Nebeker & McCullough  
Gateway Tower East, Suite 900  
10 East South Temple  
Salt Lake City, Utah 84133  
[sfmecham@cnmlaw.com](mailto:sfmecham@cnmlaw.com)

Bradley R. Cahoon, Esq.  
Scott C. Rosevear, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101  
[bcahoon@swlaw.com](mailto:bcahoon@swlaw.com)  
[srosevear@swlaw.com](mailto:srosevear@swlaw.com)

Gregory J. Kopta, Esq.  
Davis Wright Tremaine LLP  
2600 Century Square  
1501 Fourth Avenue  
Seattle, Washington 98101-1688  
[gregkopta@dwt.com](mailto:gregkopta@dwt.com)

Danny Eyre  
General Manager  
Bridger Valley Electric Association, Inc.  
Post Office Box 399  
Mountain View, Wyoming 82939  
[derye@bvea.net](mailto:derye@bvea.net)

Mr. Carl R. Albrecht  
General Manager / CEO  
Garkane Energy Cooperative, Inc.  
120 West 300 South  
Post Office Box 465  
Loa, Utah 84747  
[calbrecht@garkaneenergy.com](mailto:calbrecht@garkaneenergy.com)

LaDel Laub  
Assistant General Manager  
Dixie Escalante Rural Electric Association  
71 East Highway 56  
HC 76 Box 95  
Beryl, Utah 84714-5197  
[ladell@color-country.net](mailto:ladell@color-country.net)

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