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OVERNIGHT MAIL


Mr. Steve McClellan
Executive Secretary
Washington Utilities and
Transportation Commission
1300 S Evergreen Park Drive
Olympia, WA 98504-7250

Re: Docket No. UT-970723

Dear Mr. McClellan:

Enclosed for filing are the original and 11 copies of PacifiCorp's Comments in this docket.

Very truly yours,


for James C. Paine

JCP:jlf
Enclosures

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for)	
Rulemaking by TCI Cablevision of)	Docket No. UT-970723
Washington, Inc., to Adopt Rules,)	
Regulations and Procedures Regarding)	COMMENTS OF PACIFICORP
Attachments to Transmission Facilities)	

PacifiCorp, an Oregon corporation, is a public service corporation rendering retail electric service in seven western states¹ and wholesale electric service throughout the western United States. PacifiCorp's retail operations in the state of Washington are under the jurisdiction of the Washington Utilities and Transportation Commission ("WUTC").

PacifiCorp has a significant number of poles and other facilities located in Washington that would be effected by any attachment regulations adopted by the WUTC under chapter 80.54 RCW.

PacifiCorp asks that all documents associated with this rule making proceeding be served on the following:

Robert S. Coates
PacifiCorp
Public Service Building, Rm. 1000
920 SW Sixth Avenue
Portland, OR 97204

with a copy to:

James C. Paine
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Suite 2300
900 SW Fifth Ave
Portland, OR 97204-1268

¹Washington, Oregon, California, Idaho, Montana, Utah and Wyoming.

PacifiCorp appreciates the opportunity to file these comments and states that it will participate in the negotiated rule making process. PacifiCorp makes these brief, preliminary comments in response to the WUTC's Preproposal Statement of Inquiry.

1. "Transmission" Facilities

PacifiCorp notes that TCI Cablevision of Washington, Inc.'s ("Petitioner") Petition for Rulemaking caption would appear to be limited to "transmission" facilities. Clearly Petitioner contemplates adoption of regulations applicable to not only transmission facilities as that term is used in the electric industry, but also to distribution facilities, ducts, and conduits. The scope of this rulemaking should be clarified to make clear what facilities will be effected.

2. Rental Rates for "Distribution" and other Facilities

Petitioner's Exhibit A to its Petition describes a "generally applicable formula" for calculating the maximum attachment rate. The accounts incorporated into the formula for electric utilities (i.e., Gross Investment in Account Nos. 364, 365 and 369) only reflect "distribution" facility accounts as established for electric utilities by the Federal Energy Regulatory Commission ("FERC"). The workshops and any adopted regulations should address how rental rates should be determined for attachments to facilities that are not distribution facilities.

3. Access to Private Rights-of-Way

Section 224(f)(1) [47 USC § 224(f)(1)], as amended by the Telecommunications Policy Act of 1996² ("Telco Act of 1996") states that utilities should grant access to, among

²Public Law 104-104

other things, “right-of-way” that is “owned or controlled” by the utility. The scope of a utility’s ownership or control of an easement or right-of-way is a matter of state law.³ In the Federal Communications Commission’s (“FCC”) “Interconnection Order,”⁴ the FCC concluded that the access obligations of § 224(f) will depend on whether state law permits such access. Interconnection Order, ¶ 1179. Electric utilities regulated in Washington possess a number of private easement agreements with third-party property owners. The WUTC should address the question of whether Washington real property law permits cable television operators and telecommunications carriers access to the private rights-of-way possessed by electric utilities and the related question of whether such access constitutes an unconstitutional “taking” without just compensation.

4. Space Other than “Usable” Space as Component of Rental Rates

Section 224(e)(2) [47 USC § 224(e)(2)] provides:

“A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.”

Congress has therefore found merit in allocating costs associated with space other than usable space to attaching entities. The WUTC should include this issue, as well as utilization of “usable space” to set rental rates, within the scope of this rule making proceeding.

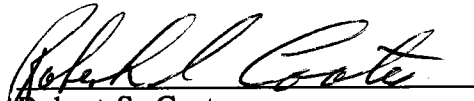
³See S. Rep. No. 380, 95th Cong., 1st Sess. 16 (1977).

⁴*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98.*

5. Conclusion

PacifiCorp appreciates the opportunity to submit comments on the proposed regulations in Docket No. UT-970723 and looks forward to participating in scheduled workshops.

Respectfully submitted this 14 day of November, 1997.


Robert S. Coates
PacifiCorp